

RENDERED: JUNE 24, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000298-ME

RANDA LYNN

APPELLANT

v. APPEAL FROM CHRISTIAN FAMILY COURT
HONORABLE JUDY A. HALL, JUDGE
CIVIL ACTION NO. 02-CI-01216

KENNETH DEWAYNE GRANT

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER AND SCHRODER, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: Randa Lynn is the maternal grandmother of Kenneth Dewayne Grant's children, Jordan and Skylark. Following the death of her daughter, Lynn petitioned Christian Family Court for grandparent visitation rights. Ultimately, the family court denied Lynn's petition because, under the then-prevailing standard established in Scott v.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Scott,² she had failed to show by clear and convincing evidence that being deprived of her visitation would harm the children. Because Scott v. Scott has since been overruled by this Court, we vacate the orders denying Lynn's petition and remand the case to Christian Family Court for reconsideration in light of our recent holding in Vibbert v. Vibbert.³

This case has a lengthy and complicated procedural history; we will provide a brief summary of those facts pertinent to the resolution of this appeal. Lynn's daughter, Julie, married Kenneth Dewayne Grant in 1991. The couple's marriage was dissolved in 1995. Under the settlement agreement which was incorporated into the final decree, they were awarded joint custody of their two children, with Grant designated as the primary physical custodian. In 1999, Julie filed a motion in Hopkins Circuit Court to modify the joint custody agreement, requesting that she be designated primary physical custodian. Eventually, the case made its way to this Court⁴ where it was remanded for reconsideration under the new standard for determining modification of joint custody set forth in Scheer v.

² 80 S.W.3d 447 (Ky.App. 2002).

³ 144 S.W.3d 292 (Ky.App. 2004).

⁴ 2000-CA-002636-MR (2002).

Ziegler.⁵ We ordered that the children remain in Julie's custody until such a determination was made.

Before the action could proceed further, Julie died from complications following surgery. On August 19, 2002, the children were returned to Kenneth by order of Hopkins Circuit Court. Lynn claims that Kenneth subsequently advised her that she would not be allowed to visit or have any contact with her grandchildren. Lynn filed a Petition to Establish Visitation Rights, alleging that the children would suffer detrimental harm were she not granted visitation rights. She also filed a motion for a visitation evaluation to aid the circuit court in determining whether the children would be harmed if they were deprived of her visitation. The court granted her motion, but Kenneth did not comply in scheduling the evaluations. Lynn filed a motion for Grant to show cause why he should not be held in contempt of court. Grant thereafter filed an original action with this Court seeking to stay all proceedings. We vacated the circuit court's order granting Lynn's motion for visitation evaluations, and further directed the circuit court not to order visitation evaluations unless and until Lynn showed by clear and convincing evidence that the deprivation of grandparental visitation would harm the children.

⁵ 21 S.W.3d 807 (Ky.App. 2000).

Lynn made several subsequent motions to alter, amend or vacate and to make additional findings of fact. Ultimately, all her motions were denied by the family court on the ground that she had failed to present facts from which the court could find that the lack of grandparent visitation would cause harm to the children. In making this determination, the circuit court relied on Scott v. Scott,⁶ in which we held that grandparent visitation may only be granted over the objection of an otherwise fit custodial parent if it is shown by clear and convincing evidence that harm to the child will result from a deprivation of visitation with the grandparent.⁷

But on August 27, 2004, we overruled Scott, commenting that it had imposed "an unnecessarily strict and unworkable standard."⁸ Instead, we adopted a standard whereby "[t]he grandparent seeking visitation must prove, by clear and convincing evidence, that the requested visitation is in the best interest of the child."⁹ We further directed that

the courts must consider a broad array of factors in determining whether the visitation is in the child's best interest, including but not limited to: the nature and stability of the relationship between the child and the grandparent seeking

⁶ Supra, note 2.

⁷ Id. at 451.

⁸ Vibbert, supra, note 3, at 294.

⁹ Id. at 295.

visitation; the amount of time spent together; the potential detriments and benefits to the child from granting visitation; the effect granting visitation would have on the child's relationship with the parents; the physical and emotional health of all the adults involved, parents and grandparents alike; the stability of the child's living and schooling arrangements; the wishes and preferences of the child.¹⁰

We therefore vacate the Christian Family Court judgment and order of November 20, 2003, and the amended judgment and order of December 2, 2003, and remand this case for further consideration in light of the new standards set forth in Vibbert v. Vibbert.¹¹

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard Kip Cameron
Hopkinsville, Kentucky

BRIEF FOR APPELLEE:

Katherine Hicks Demps
Hopkinsville, Kentucky

¹⁰ Id.

¹¹ Id.