

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

Bender v. Cendali

107 A.D.3d 981, 968 N.Y.S.2d 175 (N.Y. App. Div. 2d Dep't 2013) · Decided June 26, 2013

SUMMARY

The court affirmed an order dismissing the maternal grandparents' proceeding for visitation with their grandson under Domestic Relations Law § 72. It held that the grandparents failed to establish standing because they did not show that either parent had terminated or frustrated their visitation, and no hearing was required because the papers did not raise a triable issue of fact.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Angiolillo, J.P.; Balkin, J.; Dickerson, J.; Cohen, J.
JURISDICTION	New York
DECIDED	June 26, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The maternal grandparents appealed from an order that, without a hearing, effectively denied their petition for grandparent visitation and dismissed the proceeding.
STANDARD OF REVIEW	Whether Supreme Court providently exercised its discretion in determining that the grandparents lacked standing and dismissing the proceeding without a hearing.
PRECEDENTIAL VALUE	published
PARTIES	Maternal grandparents v. Lisa Cendali, John Cendali

TOPICS

grandparent rights family law procedure appellate procedure standard of review

PRACTICE AREAS

family law appellate procedure

QUESTIONS PRESENTED

1. Whether the grandparents established standing under Domestic Relations Law § 72 to seek visitation.
2. Whether a hearing was required to determine standing when the submitted papers did not raise a triable issue of fact.
3. Whether Supreme Court providently exercised its discretion in effectively denying the petition and dismissing the proceeding.

HOLDINGS

1. Grandparents seeking visitation bear the burden of establishing standing, which is conferred in the court's discretion only after examination of all relevant facts, including the nature and extent of the grandparent-grandchild relationship and the nature and basis of the parents' objection to visitation.
2. A hearing to determine standing is unnecessary when the submitted papers do not raise a triable issue of fact.
3. Supreme Court providently exercised its discretion by effectively denying the petition and dismissing the proceeding for lack of standing.

KEY QUOTATIONS

“In a grandparent visitation proceeding, “the burden of establishing standing lies with the grandparent and it is ‘conferred by the court, in its discretion, only after it has examined all the relevant facts’” (982)

“In determining whether grandparents have standing or a right to be heard on a petition for visitation with a grandchild, the essential components to the inquiry are the “nature and extent of the grandparent-grandchild relationship” and “the nature and basis of the parents’ objection to visitation”” (982)

“A hearing to determine the issue of standing is not necessary where the submitted papers do not raise a triable issue of fact” (982)

FACTUAL BACKGROUND

The maternal grandparents had maintained a relationship with their grandson since his birth. After the child's parents divorced in 2011, the grandparents continued to have visitation, including a visit on February 4, 2012, six days before they commenced the proceeding. Although they were upset that the visit was limited to Saturday rather than the customary overnight alternate-weekend visitation, the mother stated that she supported the grandparent-grandchild relationship and did not intend to deprive them of visitation.

PROCEDURAL HISTORY

The grandparents commenced a proceeding under Domestic Relations Law § 72 seeking visitation with their grandson. Supreme Court, Westchester County, determined that they lacked standing because they failed to show circumstances warranting equitable intervention, effectively denied the petition, and dismissed the proceeding. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Roberts v. Roberts, 81 A.D.3d 1117, 1118 (2011)
- Matter of Emanuel S. v. Joseph E., 78 N.Y.2d 178, 182-183 (1991)
- Matter of Agusta v. Carousso, 208 A.D.2d 620, 621 (1994)
- Matter of Lipton v. Lipton, 98 A.D.3d 621, 622 (2012)

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