

MASSACHUSETTS SUPREME JUDICIAL COURT

Care & Protection of Jamison

467 Mass. 269 (2014) · Decided February 20, 2014

SUMMARY

The Massachusetts Supreme Judicial Court considers whether the Juvenile Court has jurisdiction over a sibling-visitation petition when the petitioning child is in the custody of the Department of Children and Families and the siblings are wards of legal guardians. The court holds that jurisdiction exists and that the constitutional presumption protecting parental visitation decisions does not apply to fit guardians in this context. It remands because the record contained insufficient evidence to determine whether visitation served the best interests of all affected children.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Lenk, J.
JURISDICTION	Massachusetts
DECIDED	February 20, 2014
DISPOSITION	vacated
PROCEDURAL POSTURE	The guardians and wards appealed from a Juvenile Court order granting Jamison's petition for sibling visitation. The Massachusetts Supreme Judicial Court transferred the case from the Appeals Court on its own motion.
STANDARD OF REVIEW	The court reviewed the Juvenile Court judge's findings for clear error or abuse of discretion, giving substantial deference to findings made after an evidentiary hearing. A best-interests determination must have a foundation in the record supported by ground-level facts, and a determination based on insufficient evidence constitutes an abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	the guardians and wards of Fergus and Rosalie v. Jamison

TOPICS

- family law procedure
- guardianship procedure
- guardianships
- visitation
- statutory interpretation

PRACTICE AREAS

family law

juvenile law

guardianships

child visitation

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Juvenile Court has subject matter jurisdiction under G. L. c. 119, § 26B (b), over a sibling-visitation petition brought by a child in DCF custody seeking visitation with siblings who are wards of legal guardians.
2. Whether the presumption of validity recognized in *Blixt v. Blixt* for fit parents' decisions concerning grandparent visitation applies to fit legal guardians' decisions concerning sibling visitation.
3. Whether the Juvenile Court judge abused his discretion by finding that visitation was in the best interests of all three children despite insufficient evidence concerning the effect of visitation on Fergus and Rosalie.

HOLDINGS

1. The Juvenile Court has jurisdiction under G. L. c. 119, § 26B (b), over a sibling-visitation petition when State intervention caused the siblings to be separated, even if the petitioning child is in DCF custody and the siblings are wards of legal guardians rather than children currently in foster or adoptive placements.
2. The *Blixt* presumption that a fit parent's decision concerning visitation is valid and in the child's best interests does not apply to the decisions of legal guardians concerning sibling visitation.
3. The Juvenile Court abused its discretion by ordering sibling visitation without sufficient evidence to determine whether visitation would serve the individualized best interests of Fergus and Rosalie.

KEY QUOTATIONS

“The evident purpose of the sibling visitation statute is best understood by viewing the enumerated custodial arrangements as illustrative rather than exhaustive.” (467 Mass. at 279-280)

“The standard permits visitation only where the petitioning child has demonstrated by a preponderance of the evidence that visitation would serve the best interests of each sibling subject to a visitation order.” (467 Mass. at 284-285)

“Whether such fragility persisted, and the likely impact of the proposed visitation on the well being of Fergus and Rosalie, were proper subjects for expert opinion, and the judge need not and should not have made his decision without it.” (467 Mass. at 289-290)

FACTUAL BACKGROUND

Jamison and three siblings were placed under the guardianship of their maternal aunt and her spouse in 2005 after significant family problems involving parental substance abuse and domestic violence. Jamison was removed from the guardians' custody in 2007 and placed in the permanent custody of the Department of Children and Families in 2008, while Fergus and Rosalie returned to the guardians. Jamison sought visitation in 2011; although he and his social worker supported contact, Fergus and Rosalie opposed it or expressed apprehension, and the record contained indications of trauma and possible mental-health difficulties. The

Juvenile Court ordered visitation, but the evidence did not adequately establish the likely psychological impact on Fergus and Rosalie, and no relevant expert testimony or psychological evaluations were presented.

PROCEDURAL HISTORY

Jamison, a child in the permanent custody of the Department of Children and Families, petitioned the Juvenile Court for visitation with Fergus and Rosalie, who were wards of legal guardians. The Juvenile Court determined that it had jurisdiction, appointed counsel and a guardian ad litem for the wards, and, after an evidentiary hearing, ordered supervised written correspondence and quarterly visitation. The guardians and wards appealed; after denying a request for a stay, the Appeals Court matter was transferred to the Supreme Judicial Court.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The order allowing the sibling-visitation motion was vacated and set aside. On remand, the Juvenile Court must conduct further proceedings and require psychological evaluations of Fergus and Rosalie as necessary and appropriate to assess the impact of the requested visitation, with expert evidence and other relevant evidence available when determining whether visitation is in the individualized best interests of each child.

CASES CITED

- Blixt v. Blixt, 437 Mass. 649, 657-658 (2002), cert. denied, 537 U.S. 1189 (2003)
- International Org. of Masters, Mates & Pilots, Atl. & Gulf Region, AFL-CIO v. Woods Hole, Martha's Vineyard & Nantucket S.S. Auth., 392 Mass. 811, 813 (1934)
- Commonwealth v. Raposo, 453 Mass. 739, 743 (2009)
- Sterilite Corp. v. Continental Cas. Co., 397 Mass. 837, 839 (1986)
- Adams v. Boston, 461 Mass. 602, 609 (2012)
- Commonwealth v. Galvin, 388 Mass. 326, 328 (1983)
- Wolfe v. Gormally, 440 Mass. 699, 704 (2004)
- Pentucket Manor Chronic Hosp., Inc. v. Rate Setting Comm'n, 394 Mass. 233, 240 (1985)
- Halebian v. Berv, 457 Mass. 620, 628 (2010)
- Suffolk Constr. Co. v. Division of Capital Asset Mgt., 449 Mass. 444, 458-459 & n.19 (2007)
- Sullivan v. Brookline, 435 Mass. 353, 360 (2001)
- Helvering v. Morgan's, Inc., 293 U.S. 121, 125 n.1 (1934)
- Adoption of Hugo, 428 Mass. 219, 225, 231 (1998), cert. denied, 526 U.S. 1034 (1999)
- Adoption of Cadence, 81 Mass. App. Ct. 162, 173-174 (2012)
- Adoption of Leland, 65 Mass. App. Ct. 580, 583-586 (2006)
- Sharon v. Newton, 437 Mass. 99, 108 (2002)
- Troxel v. Granville, 530 U.S. 57, 63-64, 67-69 (2000)

- Adoption of Ilona, 459 Mass. 53, 64 (2011)
- Bezio v. Patenaude, 381 Mass. 563, 576 n.9 (1980)
- Youmans v. Ramos, 429 Mass. 774, 782 (1999)
- Commonwealth v. Gonzalez, 462 Mass. 459, 467 (2012)
- Rosenberg v. Merida, 428 Mass. 182, 191 (1998)
- Custody of Kali, 439 Mass. 834, 845 (2003)
- Prenaveau v. Prenaveau, 75 Mass. App. Ct. 131, 142 (2009)
- Adoption of Nancy, 443 Mass. 512, 518 (2005)
- Care & Protection of Georgette, 439 Mass. 28, 36 (2003)
- Adoption of Zander, 83 Mass. App. Ct. 363, 367 (2013)
- Adoption of Galvin, 55 Mass. App. Ct. 912, 913 (2002)
- Adoption of Pierce, 58 Mass. App. Ct. 342, 350 (2003)
- Petitions of Dep't of Social Servs. to Dispense with Consent to Adoption, 20 Mass. App. Ct. 689, 697-698 (1985)
- Prince v. Massachusetts, 321 U.S. 158, 160, 170 (1944)
- Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925)
- Pizzino v. Miller, 67 Mass. App. Ct. 865, 876 (2006)
- Adoption of Georgia, 433 Mass. 62, 68-69 (2000)