

SUPREME COURT OF VERMONT

Craven v. McCrillis, 2005 VT 22

868 A.2d 740 (Vt. 2005) · No. No. 04-157 · Decided February 4, 2005

SUMMARY

The Supreme Court of Vermont affirmed the dismissal of a grandmother's petition for visitation with her grandchild and the denial of her motion for relief from judgment. The court held that the father's decision to deny grandparent visitation was entitled to a presumption of validity, which the grandmother failed to rebut with evidence of parental unfitness, significant harm to the child, or other compelling circumstances. The court also declined to consider an inadequately briefed argument concerning expert testimony.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley; Johnson; Skoglund; Reiber; Allen, C.J. (Ret.), Specially Assigned
JURISDICTION	Vermont
DECIDED	February 4, 2005
DOCKET	No. 04-157
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a family court order dismissing a grandmother's petition for grandparent visitation and denying her motion for relief from judgment.
STANDARD OF REVIEW	Because the family court took evidence and made factual findings, the motion was treated as one for judgment as a matter of law under V.R.C.P. 50 rather than summary judgment. Judgment as a matter of law is improper if evidence exists that may fairly and reasonably support all elements of the nonmoving party's claim; the evidence is viewed in the light most favorable to that party, excluding the effects of modifying evidence.
PRECEDENTIAL VALUE	published
PARTIES	Deborah Paradis v. Charles McCrillis

TOPICS

grandparent rights

family law procedure

standard of review

appellate procedure

civil procedure

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the family court properly dismissed the grandparent-visitation petition when Paradis failed to rebut the presumption that the father's decision to deny visitation was valid.
2. Whether the evidence established parental unfitness or significant harm sufficient to justify judicial interference with the father's visitation decision.
3. Whether Paradis's inadequately briefed argument concerning the exclusion or denial of expert testimony should be considered.

HOLDINGS

1. A parent's decision concerning grandparent visitation is entitled to a presumption of validity. A grandparent must provide evidence of compelling circumstances, such as parental unfitness or significant harm to the child absent visitation, to overcome that presumption.
2. Paradis failed to establish parental unfitness or that the absence of a visitation order would cause significant harm to Cheyenne; therefore, the family court properly dismissed the petition.
3. The Supreme Court declined to address Paradis's argument regarding expert testimony because it was inadequately briefed.

KEY QUOTATIONS

"Courts are not at liberty to substitute their judgment for that of a bad parent; we can substitute our judgment only for that of an unfit parent." (743)

"In order to establish parental unfitness, the grandparent must prove that the parent's actions or the failure to grant grandparent visitation will "cause the child significant harm by adversely affecting the child's health, safety, or welfare."" (742-743)

FACTUAL BACKGROUND

Cheyenne McCrillis was the child of Charles McCrillis and Jesse Craven, who had received sole physical rights and responsibilities and shared legal responsibility under the parties' divorce order. After Craven died in 2003, Charles assumed sole physical and legal rights and responsibilities and refused to allow Cheyenne's maternal grandmother, Deborah Paradis, to visit. Paradis presented evidence concerning the child's alleged unhappiness, father's alleged intoxication and threats, and alleged physical abuse of Craven, but did not present expert testimony or establish that the denial of visitation substantially harmed or threatened the child's health, safety, or welfare.

PROCEDURAL HISTORY

Paradis petitioned the family court for visitation under 15 V.S.A. § 1012. The family court allowed her to present witnesses, treated the father's motion to dismiss as a motion for summary judgment, and dismissed the petition after concluding that the evidence did not establish parental unfitness or sufficient harm to overcome the presumption favoring the father's visitation decision. The Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Glidden v. Conley, 2003 VT 12, 175 Vt. 111, 820 A.2d 197
- Gero v. J.W.J. Realty, 171 Vt. 57, 757 A.2d 475 (2000)
- State v. Cameron, 163 Vt. 626, 658 A.2d 939 (1995) (mem.)
- Johnson v. Johnson, 158 Vt. 160, 605 A.2d 857 (1992)