

SUPREME COURT OF KENTUCKY

Larry Massie and Christina Massie v. Deborah Navy

487 S.W.3d 443 (Ky. 2016) · No. 2015-SC-000499-DGE · Decided May 5, 2016

SUMMARY

The Kentucky Supreme Court reviewed a grandparent-visitation dispute involving a child residing with his paternal uncle and the uncle's wife. The court held that the grandparent failed to preserve her challenge to application of the clear-and-convincing-evidence standard, upheld the trial court's consideration of relevant best-interest factors, reversed the Court of Appeals, and reinstated the order denying visitation.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Cunningham
JURISDICTION	Kentucky
DECIDED	May 5, 2016
DOCKET	2015-SC-000499-DGE
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Kentucky granted discretionary review of a divided Court of Appeals decision that reversed the Greenup Circuit Court's denial of a maternal grandmother's petition for grandparent visitation and remanded for further consideration.
STANDARD OF REVIEW	The court reviews factual findings for clear error under CR 52.01 and reviews legal conclusions de novo.
PRECEDENTIAL VALUE	Published opinion; designated to be published
PARTIES	Larry Massie, Christina Massie v. Deborah Navy

TOPICS

[grandparent rights](#)[visitation](#)[family law procedure](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

[Family law](#)[Appellate procedure](#)[Constitutional law](#)

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by applying a less stringent standard than the clear-and-convincing-evidence standard governing grandparent-visitation claims under *Walker v. Blair*.
2. Whether the circuit court adequately considered the relevant Walker factors and whether its denial of grandparent visitation was clearly erroneous or legally erroneous.
3. Whether the Court of Appeals erred by directing the circuit court to consider additional evidence and issues that had not been properly preserved.

HOLDINGS

1. The court declined to reach the merits of Deborah Navy's argument that the trial court should not have applied the Walker clear-and-convincing-evidence standard because the issue was not preserved in the trial court. The court also found no palpable error because the trial court had not been given an opportunity to rule on the issue.
2. A trial court need not consider all eight Walker factors in every grandparent-visitation case; the facts of each case determine which factors are most relevant and potentially dispositive.
3. The circuit court did not clearly err in its factual findings or err in applying the governing law, and its order denying Navy's petition for visitation was properly reinstated.
4. The Court of Appeals erred by directing the trial court to consider additional testimony, expert evidence, mental evaluations, and issues concerning an interview with Ian and visitation with his half-sister when those evidentiary matters had not been properly preserved for appellate review.

KEY QUOTATIONS

"In rebutting this presumption, 'the grandparent must show by clear and convincing evidence that visitation is in the child's best interest.'" (487 S.W.3d at 445)

"In other words, all eight Walker factors need not be considered when determining whether grandparent visitation is clearly in the child's best interest." (487 S.W.3d at 449)

FACTUAL BACKGROUND

Deborah Navy, the child's maternal grandmother, sought visitation with Ian, who lived in Kentucky with his paternal uncle Larry Massie and Christina Massie. Ian had apparently been removed from his mother shortly after birth, and neither parent was closely involved in his life; both parents were served but did not participate in the visitation proceeding. Navy's contact with Ian had been limited and sporadic, including a substantial period during which she did not see him, and the circuit court denied visitation after an evidentiary hearing.

PROCEDURAL HISTORY

Deborah Navy filed a grandparent-visitation action in Greenup Circuit Court. After an evidentiary hearing, the circuit court denied visitation. The Court of Appeals reversed and remanded, concluding that the trial court had failed to consider all required factors and had applied an insufficiently stringent standard because the child's

custodians were not his biological parents. The Supreme Court of Kentucky reversed the Court of Appeals and reinstated the circuit court's order.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered by the Supreme Court. The Court reversed the Court of Appeals and reinstated the Greenup County Circuit Court's order denying visitation.

CASES CITED

- Reichle v. Reichle, 719 S.W.2d 442, 444 (Ky. 1986)
- Nash v. Campbell County Fiscal Court, 345 S.W.3d 811, 816 (Ky. 2011)
- Walker v. Blair, 382 S.W.3d 862, 866, 871-73 (Ky. 2012)
- Troxel v. Granville, 530 U.S. 57 (2000)
- Mitchell, M.D. v. Hall, 816 S.W.2d 183, 185 (Ky. 1991)
- Norton Healthcare, Inc. v. Deng, No. 2013-SC-000526-DG, 2016 WL 962600, at *5 (Ky. Feb. 18, 2016)
- Doane v. Gordon, 421 S.W.3d 407 (Ky. App. 2014)
- Scott v. Scott, 80 S.W.3d 447 (Ky. App. 2002)
- Vibbert v. Vibbert, 144 S.W.3d 292 (Ky. App. 2004)