

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 26, 2014 Session

IN RE: LANDON R. W.

**Appeal from the Juvenile Court for Montgomery County
No. VTCV131332 Ray Grimes, Judge**

No. M2013-02216-COA-R3-JV - Filed May 2, 2014

This is a grandparent visitation case. The grandparents filed a petition seeking to have a parenting plan established which designated them as primary caregivers or, in the alternative, provided them with “regular custodial time” with respect to a grandson who previously lived at their home. The juvenile court judge held that the Grandparents did not prove that the mother opposed visitation, and dismissed the petition. Concluding that the evidence does not preponderate against the court’s finding that the mother did not oppose visitation, we affirm the dismissal of the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Michael K. Williamson, Clarksville, Tennessee, for the appellants, Danny W. and Donna W.

Kathryn W. Olita and John W. Crow, Clarksville, Tennessee, for the appellee, Mandy W.

OPINION

This is a grandparent visitation case. On March 28, 2013, Danny and Donna W. (the “Grandparents”) filed a Petition to Establish Permanent Parenting Plan Order and Grandparental Rights with respect to Landon R. W., the son of their daughter Mandy W. (“Mother”).¹ The petition alleged that Landon, born in January of 2007, had lived with the Grandparents from birth, that Mother removed him from the Grandparents’ home on February 13, 2013, and that since his removal, Mother permitted them only brief visitation

¹ Landon’s father is deceased.

with him. The petition sought to have a parenting plan established which designated them as primary caregivers or, in the alternative, provided them with “regular custodial time.” Mother moved to dismiss the petition, and the Grandparents responded in opposition. After a hearing, the court denied Mother’s motion and held that under Tenn. Code Ann. § 36-6-306 “a full hearing is necessitated if a parent opposes court-ordered visitation as presented in a petition for grandparent visitation.”² In response to Mother’s Motion for More Definite Statement, the Grandparents subsequently filed a proposed permanent parenting plan in which Mother was designated primary residential parent with the Grandparents receiving 138 days per year with Landon.³

On June 11 the Grandparents’ petition was heard by a magistrate, and on July 16 the Magistrate entered Findings and Recommendations which awarded the Grandparents 80 days visitation per year and an Order which established the visitation schedule.

Mother requested a rehearing before the juvenile judge, pursuant to Tenn. R. Juv. P. 4(c)(1) and filed a motion to dismiss the petition. The hearing was held on August 5, and the court denied Mother’s motion to dismiss at the outset. On September 17, the court entered an order holding that the Grandparents “have not proven that Mother opposed [their] visitation with the minor child” and dismissed the case.

The Grandparents appeal, articulating the following issue: “Under the facts and circumstances presented in the case at bar, whether the petitioners, the maternal grandparents of the subject child, should be awarded court ordered visitation.”

I. STANDARD OF REVIEW

Because this case was heard by the trial court, sitting without a jury, we review the trial court’s findings of fact *de novo* with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). For the evidence to preponderate against a trial court’s finding of fact, it must support another finding of fact with greater convincing effect. *4215 Harding Road Homeowners Ass’n. v. Harris*, 354 S.W.3d 296, 305 (Tenn. Ct. App. 2011); *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000). However, no presumption of correctness attaches to the trial court’s conclusions of law and our review is *de novo*. *Blair v. Brownson*, 197 S.W.3d 681, 684 (Tenn. 2006) (citing *Bowden*

² The order denying Mother’s motion was not entered until July 16; the reason for the delay is not in the record.

³ In the proposed parenting plan, the Grandparents requested every other weekend beginning at 4:30pm on Friday and ending on the following Monday at 8:00pm.

v. Ward, 27 S.W.3d 913, 916 (Tenn. 2000)). We review *de novo* the trial court’s construction of a statute as a question of law. *Smallwood v. Mann*, 205 S.W.3d 358, 361 (Tenn. 2006).

II. ANALYSIS

“Parents have a superior right over all others to direct the upbringing of their children, including decisions regarding with whom the child interacts.” *Id.* at *3. Tenn. Code Ann. § 36-6-306, however, identifies circumstances in which grandparents are entitled to court-ordered visitation with a minor grandchild.⁴ *Id.* “[I]n order for Tenn. Code Ann. § 36-6-306 to be implicated, visitation by grandparents must be “opposed by the custodial parent or parents.” *Huls v. Alford*, No. M2008-00408-COA-R3-CV, 2008 WL 4682219, at *1 (Tenn. Ct. App. Oct. 22, 2008). The Grandparents in this case bore the burden of proving that Mother “opposed” their visitation. *See id.*

The record contains the Grandparents’ testimony detailing their visits with Landon as well as an exhibit prepared by them listing each visit and its duration. From February 15, when Mother assumed custody of Landon, to April 8, when Mother was served with the Grandparents’ petition, the exhibit shows that Grandparents visited with Landon on February 24, March 17, 19, 24–26, and April 7; these visits lasted several hours or more and included two overnight visits; further, these visits continued following service of process on April 8. The grandmother testified as follows when questioned by Mother’s attorney:

Q: Okay. You’re asking the court to give you 80 to 85 days of visitation with your grandson?

A: Yes, ma’am.

Q: And you want that to be court-ordered?

⁴ Pertinent to this case, Tenn. Code Ann. § 36-6-306(a):

Any of the following circumstances, when presented in a petition for grandparent visitation to the circuit, chancery, general sessions courts with domestic relations jurisdiction or juvenile court in matters involving children born out of wedlock of the county in which the petitioned child currently resides, necessitates a hearing if such grandparent visitation is opposed by the custodial parent or parents:

* * *

(5) The child resided in the home of the grandparent for a period of twelve (12) months or more and was subsequently removed from the home by the parent or parents (this grandparent-grandchild relationship establishes a rebuttable presumption that denial of visitation may result in irreparable harm to the child)

- A: To be a regular schedule, yes, ma'am.
- Q: And you want that amount of visitation because you don't agree with the visitation that you're already getting; correct?
- A: The visitation we're getting is random when she lets us have it.

Mother testified that, between February 15th and April 8th, she did not tell the Grandparents that they could not see Landon, that she did not oppose the Grandparents having visitation with Landon, and that she wished for the Grandparents and Landon to continue to have a relationship.

Although Mother allowed the Grandparents to act as Landon's primary caregivers for a number of years, they are not legally recognized as his parents, and the statute does not provide the relief that they seek.⁵ "The Grandparent Visitation Statute 'cannot be used by grandparents who think they are entitled to more or different visitation in the absence of a finding that the parents actually or effectively 'opposed' visitation.'" *Uselton v. Walton*, No. M2012-02333-COA-R3-CV, 2013 WL 3227608, at * 12 (Tenn. Ct. App. June 21, 2013) (quoting *Huls*, 2008 WL 4682219, at *8). The evidence does not preponderate against the trial court's finding that Mother does not oppose visitation as contemplated by Tenn. Code Ann. § 36-6-306(a). Accordingly, Tenn. Code Ann. § 36-6-306 is not implicated, and the court did not err in dismissing this case.

III. CONCLUSION

We affirm the judgment of the Trial Court for the reasons stated above.

RICHARD H. DINKINS, JUDGE

⁵ The Grandparents sought to "be designated the primary residential parent" of Landon in their original petition; in response to Mother's motion requesting a more definite statement, the Grandparents submitted a proposed parenting plan in which Mother was designated as primary residential parent with Grandparents receiving 138 days with Landon per year. At trial, the Grandparents testified that they wished to have 80 days per year with Landon.