

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 2007-TS-02237

PAMELA L. FERGUSON

APPELLANT

Vs.

JUANITA H. LEWIS

APPELLEE

On Appeal from the Chancery Court of Hinds County, Mississippi

REPLY BRIEF OF APPELLANT

PAMELA L. FERGUSON

Oral Argument Requested

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I. ARGUMENT

A. Grandparent Visitation In This Case Was Against the Overwhelming Weight of the Evidence.

The Chancellor below granted overnight visitation that was against the overwhelming weight of the evidence. The Appellee argues that the Martin factors were considered by the chancellor and therefore the decision must be correct. The Appellee's argument fails to acknowledge the overwhelming weight of the evidence that forced visitation was not in Hannah Grace's best interest.

The First factor is *the amount of disruption that extensive visitation will have on the child's life*. The Appellee argues that there was no testimony or evidence at trial to show how emotionally distraught Hannah Grace was by her grandmother's actions. On the contrary the record shows at Tr. pg. 59-60 one incident where Hannah Grace was extremely distraught because of her grandmother's actions and words. Hannah Grace testified about her encounter with her grandmother, Juanita, at the mailbox and how Juanita's conduct was upsetting. Hannah Grace was very polite and tried to end the conversation, but before she could do that her grandmother told Hannah Grace that her mother was mentally ill and needed to be taken to a doctor. The conversation greatly upset Hanna Grace and when she returned to her house her mother comforted her while she cried.

Hannah Grace also told the court at Tr. page 60 -61, that her grandmother had tried to break in or physically force her way into Hannah Grace's home. At which point Hanna Grace told her grandmother, "Grandmother, I want nothing to do with you." Hannah Grace has made it clear to her grandmother that she does not want to spend time with her. Since Hannah Grace had repeatedly expressed these same wishes the Appellant submits that the length of the visitation awarded in the lower Court in this case was exorbitant and against the overwhelming weight of the evidence.

The second factor is the *suitability of the grandparents home*. The Appellee asserts that Grandmother has a “suitable” home for a fourteen year old child and ignores the evidence of witnesses, including the grandmother, that Hannah Grace was no longer comfortable spending the night at her grandmother’s house and had not been comfortable staying overnight for several years. (Tr.21:21; 88:3-10). It is undisputed that Hannah Grace spent a lot of time with her grandparents when she was a small child, however things changed once Hannah Grace’s grandfather passed away. Based on the testimony at trial the overwhelming weight of the evidence puts this factor in favor of the Appellant.

The fifth factor is *emotional ties between grandparent and grandchild*. The Appellee is wrong when she contends that there was “no evidence that the grandmother’s actions towards either Pamela or Hannah Grace served to sever the emotional ties.” As stated previously Juanita has had emotional turmoil with the majority of her family. Juanita pits family members against one another by trying to control them using “gifts” such as money and land. It is undisputed that Hannah Grace had a relationship with her grandmother when she was a young child. However, now that Hannah Grace’s grandfather has passed away, there is no one to keep peace in the family. While this is unfortunate at many levels, a teenager should not bear the brunt of an adult conflict. The evidence was clear that the grandmother had drawn other grandchildren into the family conflict and she had every intention and was actually following suit with Hannah Grace. Pamela made the parental decision to remove Hannah Grace from the situation by moving to Madison. Rather than recognize the effects on Hannah Grace, the Chancellor focused more on the emotional impact to her grandmother. This factor when considering the evidence of Hannah Grace’s feelings towards her grandmother should have gone in favor of the Appellant.

The eighth factor is any *undermining of the parent’s general discipline of the child*. The Appellee agrees that “Juanita questioned some of Pamela’s decisions as to schooling and

discipline.” As stated before Juanita testified that she did not approve of Pamela’s decision to home school Hannah Grace. (Tr.23:24). Juanita also testified that she considered Pamela’s general discipline decisions, like limiting television programs, “weird.” (Tr. 25:21). Juanita’s comments that Hannah Grace’s mother was “mentally ill” was an attempt to undermine Pamela’s entire relationship with her daughter. Juanita’s actions prove that she can not be trusted to speak well of Pamela in Hannah Grace’s presence. This factor should be weighed in favor of the Appellant.

The tenth factor is *the willingness of the grandparent to accept that the rearing of the child is the responsibility of the parents and that the grandparent will not interfere with the parents manner of child rearing*. The Appellee is right when he contends that, this Court in Martin, said that the ten (10) factors set forth above are not all inclusive – that the Chancellor can weigh all circumstances and factors that he feels appropriate. Id at 916. However, the Appellee does not dispute the Appellant’s argument that Hannah Grace’s “best interests” were pushed to the side in favor of her grandmother’s best interests. In “determining whether grandparent visitation should be granted the best interests of the child and the Martin factors should be the determining elements, not what is in the best interest of the grandparent.” See Morgan, 812 So.2d at 994.

B. The Chancellor Abused His Discretion by Granting Overnight Visitation

The Appellee’s argument also fails to acknowledge the ruling in Stacey v. Ross and its obvious application to the case below. In Stacey, this Court stated that, “[c]learly, forced, extensive, unsupervised visitation cannot be ordered absent compelling circumstances which suggest something near unfitness of the custodial parents.” Stacey v. Ross, 1280, 1275 (Miss.2001). This language is clear and unambiguous. The Chancellor below abused his discretion when he ordered extensive overnight visitation. Based on the testimony at trial there were no allegations or evidence of unfitness of the mother in this case. It is respectfully submitted that the

Chancellor abused his discretion by ordering overnight visitation for two weeks in the summer.

C. Visitation Was Not *Unreasonably* Denied

The mother argues that her decision to deny visitation was reasonable under the circumstances. The grandmother argues that there was no proof of a "hostile environment." The grandmother has blatantly ignored the testimony given by both Pamela and Hannah Grace when they described how Juanita tried to break into their house and threatened to call the police if they did not let her in. A hostile environment was also created by Juanita when she told Hannah Grace that her mother was mentally ill and needed to be taken to a doctor. Pamela was keeping Hannah Grace's best interests at heart when she decided to remove Hannah Grace from the emotional rollercoaster and hostile environment that her grandmother had created. Pamela acted in her daughter's best interest and her actions were not unreasonable. Therefore, she did not unreasonably deny visitation to Juanita and the chancellor erred in granting grandparent visitation.

II. CONCLUSION

For the reasons stated in the Appellant's brief and above, the Appellant submits that the chancellor abused his discretion by granting unsupervised and overnight visitation absent compelling evidence that the mother was unfit and such visitation was in the child's best interest. The Appellant respectfully requests that the Supreme Court reverse the ruling of the Chancery Court below and render a decision in favor of the Appellant.

Respectfully submitted this the 14th day of August, 2008.

PAMELA L. FERGUSON, Appellant

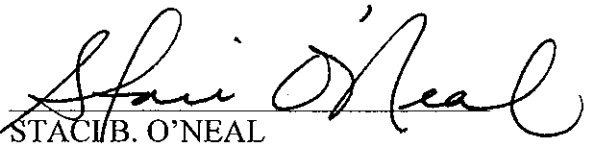
BY: 
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CERTIFICATE OF SERVICE

I, Staci B. O'Neal, attorney for Pamela L. Ferguson, Defendant/Appellant herein, certify that a true and correct copy of the above and foregoing Brief of Appellant has been forwarded to the following by depositing the same in the United States Postal Service with postage pre-paid and addressed to:

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