

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RICKEY LEN CONERLY AND
LINDA R. CONERLY,

Appellants

vs.

Supreme Court No.:
2009-CA-00534-COA

NAN B. DAVIS,

Appellee

APPEAL FROM THE CHANCERY COURT OF AMITE COUNTY, MISSISSIPPI
HONORABLE DEBBRA HALFORD, PRESIDING

BRIEF IN REPLY TO APPELLEE'S ARGUMENT
ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record, in accordance with Rule 28(a)(1) of the Mississippi Rules of Appellate Procedure, certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Rickey Len Conerly and Linda R. Conerly, Appellants

Wayne Smith, Attorney for Appellants

Nan B. Davis, Appellee

Ronald L. Whittington, Attorney for Appellee

Honorable Debbra K. Halford, Chancellor

Fourth Chancery Court District



WAYNE SMITH
Attorney for Appellants

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REPLY TO APPELLEE'S ARGUMENT

1. Did the trial court err in failing to specifically address the *Martin* Factors relevant to the award of grandparent visitation?

The lower court herein failed to apply the *Martin* Factors and make a specific ruling concerning same. The record is void of any ruling concerning the *Martin* Factors. One of the two leading cases concerning this matter is *Morgan v. West*, 812 So.2d 987 (Miss.2002) wherein the Court held as follows:

"We conclude that the chancellor did not speak to the best interest of [the child] and that several factors set forth in *Martin* were not adequately addressed. First and foremost, this Court has repeatedly held that in matters regarding child custody and visitation the best interest of the child is of paramount importance. *Martin* clearly sets forth this standard prior to outlining the factors to be considered in a grandparent visitation matter...."

The Court further stated:

"Therefore, making findings of fact under the *Martin* factors is an integral part of a determination of what is in the best interests of a child."

It is clear and was presented through testimony that the child did not have a viable relationship with Nan B. Davis. Further, upon the Court's examination of the child, the Court asked the specific question:

Q "How do you feel about - you know, that's my job to devise a plan so that y'all can get to know each other again and see each other occasionally. How do you feel

about that?"

A "I really don't want to see her, but she wants to see me is pretty much what it is." T 82-83

The child expressed to the Court that he did not desire to see Nan B. Davis. The child, at that time of the trial, was eleven years of age and, throughout his examination, appeared to be very capable and able of understanding the Chancellor's questions. It is clear that the child does not desire to see or visit Nan B. Davis.

The second case is *T.T.W. v. C.C.*, 839 So.2d 501 (Miss.2003) wherein there are several discussions dealing with the *Martin* Factors. The Court has made a specific ruling in the *Martin* case and has now reaffirmed its position in *Morgan v. West*, 812 So.2d 987 (Miss.2002) in *T.T.W. v. C.C.*, 839 So.2d 501. Further, it is clear from his testimony, that the child does not wish to visit with Nan B. Davis. In *T.T.W.*, the Court stated as follows:

"The best interests of the child must be the polestar consideration in awarding grandparent visitation."

The Court further stated:

"A chancellor's failure to follow enumerated guidelines is manifest error when specific findings of fact corresponding to such guidelines is required." *Gray v. Gray*, 745 So.2d 234 (Miss.1999)

The standard in this case is clear and the Court did not follow this standard and did not make the appropriate findings of fact as required in the case law mentioned herein.

CONCLUSION

That due to the Chancellor's failure to follow the case law and not making a specific ruling along the enumerated guidelines is, in fact, error and this cause of action should be reversed and rendered.

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CERTIFICATE OF SERVICE

I, Wayne Smith, do hereby certify that I have this date mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing document to:

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Honorable Debbra K. Halford
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Kathy Gillis, Clerk
Supreme Court of Mississippi
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This the 5th day of March, A.D., 2010.


WAYNE SMITH