

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

2010- CA- 00409

**LORI LYNN WALLEY AND
CHRISTOPHER BLAKE WALLEY**

APPELLANTS

VS.

**KATHY LYNN PIERCE AND
TONY CURTIS PIERCE**

APPELLEES

BRIEF OF APPELLANTS

Oral Argument Not Requested

Appeal from the Chancery Court of Greene County, Mississippi

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CHRISTOPHER BLAKE WALLEY

APPELLANTS

VS.

KATHY LYNN PIERCE AND
TONY CURTIS PIERCE

APPELLEES

Certificate of Interested Persons

The undersigned counsel of record 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 the Supreme Court or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Defendants/Appellants:

Lori Lynn Walley
Christopher Blake Walley

Counsel for Defendants/Appellants:

Chris D. Hennis

Plaintiffs/Appellees:

Kathy Lynn Pierce
Tony Curtis Pierce

Counsel for Plaintiffs/Appellees:

Joey Fillingane

Respectfully submitted,



Chris D. Hennis

Table of Contents

Certificate of Interested Persons	ii
Table of Authorities.....	v
Statement of Issues.....	1
Statement of the Case.....	2
1. Nature of the Case.....	2
2. Course of the Proceedings.....	2
3. Disposition in the Court Below.....	4
4. Statement of the Facts.....	4
Summary of the Argument.....	6
Argument.....	7
I. Mississippi Code Annotated § 93-16-3(2)(a) Requires A Trial Court To First Determine That A Grandparent Has Established A Viable Relationship With A Grandchild And Then The Trial Court Must Find That The Parent Of The Child Has Unreasonably Denied The Grandparent Visitation With The Child.....	7
II. The Trial Court Committed Manifest Error And Abused Its Discretion In Its Failure To Accord Special Weight To Lori And Blake Walley's Determination As To How Much Visitation Kathy And Tony Pierce Should Have With Their Children.....	11
III. The Trial Court's Application Of Mississippi's Grandparent Visitation Statute To Lori And Blake Violates Their Due Process Rights Under The Fourteenth Amendment.....	14
Conclusion.....	16

Table of Authorities

Cases	<u>Page</u>
<i>Hillman v. Vance</i> , 910 So. 2d 43 (Miss.Ct.App. 2005).....	8
<i>Stacey v. Ross</i> , 798 So. 2d 263 (Miss. 2001).....	8, 11, 12, 15
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000).....	8, 11, 12, 15
Constitution and Statutes:	
Miss. Code Ann. § 93-16-3 (Rev. 2004).....	7

Statement Of The Issues

1. Whether the trial court committed manifest error in finding that Lori and Blake Walley had unreasonably denied visitation with their children to Kathy and Tony Pierce.
2. Whether the trial court committed manifest error in failing to accord special weight to Lori and Blake Walley's determination as to the amount and type of visitation Kathy and Tony Pierce should have with their children.
3. Whether the trial court's application of the Mississippi Grandparent Visitation Act violated Lori and Blake's constitutional rights under the Fourteenth Amendment.

Statement Of The Case

1. Nature Of The Case.

This is a grandparent visitation case involving Lori Lynn Walley and Christopher Blake Walley (hereinafter referred to as "Lori and Blake" or "the Walleys") and Lori's parents Kathy Lynn Pierce and Tony Pierce (hereinafter referred to as "Kathy and Tony" or "the Pierces"). Lori and Blake are the parents of three children: namely, Melonie Walley, age 6, Juliana Walley, age 4, and Rachel Walley, age 9-1/2 months at the time of trial. Kathy and Tony Pierce are the maternal grandparents of these children. All parties are adult resident citizens of Greene County, Mississippi.

All parties, with the exception of Lori, work at Performance Industries in Pascagoula, Mississippi. Lori has always been a stay at home mother and housewife. Lori also home schools the two oldest children.

At the time of trial Lori and Blake had been married approximately eight years. From the time of their marriage until October 2008, Lori and Blake resided in a mobile home located on Kathy and Tony's property. In October 2008, due to animosity then existing between the parties, Lori and Blake moved from Kathy and Tony's property into a rental home. At the time of trial, Lori and Blake had purchased their own home.

At the trial, Lori and Blake stipulated that Kathy and Tony had established a viable relationship with their minor children, however, they disputed that they had unreasonably denied visitation with the children to Kathy and Tony Pierce.

2. Course Of The Proceedings.

On February 11, 2009, Kathy and Tony filed a Petition for Grandparents Visitation Rights against Lori and Blake in the Chancery Court of Greene County, Mississippi. Kathy and Tony alleged that Lori and Blake had unreasonably denied them visitation with their grandchildren. On

March 19, 2009, Lori and Blake filed their Answer and Affirmative Defenses denying that Kathy and Tony were entitled to visitation with their children. On April 6, 2009, the parties entered into an Agreed Temporary Order which allowed Kathy and Tony temporary supervised visitation with the grandchildren. The Agreed Temporary Order also provided that Kathy and Tony would pay unto Lori and Blake \$1,000.00 in reasonable attorney's fees.

The trial of this cause was had on November 30, 2009, at the Greene County Courthouse. The trial court, in its Findings of Fact, Conclusions of Law, Ruling and Judgment of the Court, dated December 4, 2009 and filed on December 8, 2009, granted Kathy and Tony extensive unsupervised visitation with Lori and Blake's minor children.

On December 16, 2009, Lori and Blake timely filed their Motion for Reconsideration, For Relief from the Judgment and to Amend the Judgment. In their post trial motions, Lori and Blake asked that the trial court reconsider its judgment concerning its finding that they had unreasonably denied visitation with their children to Kathy and Tony Pierce. Lori and Blake, in support of their Motion to Reconsider, directed the trial court's attention to testimony elicited at the trial showing that Kathy and Tony Pierce had an open invitation to visit the children at Lori and Blake's home. That Kathy and Tony had been allowed to see the children since Lori and Blake had moved off of the Pierce's property. That Kathy had visited with the children at Lori and Blake's home on occasions when Blake was at work. Finally, the trial court was reminded that Lori and the children had actually rode to town with Tony Pierce to grocery shop, buy horse feed and eat lunch.

The trial court was also asked to reconsider its judgment in light of the applicable Mississippi case law on point when a chancery court is faced with awarding visitation to grandparents over the objections of fit custodial parents. The trial court was reminded that there was no allegations made and no finding by the court that Lori and Blake were unfit parents. Lori and Blake also asked the

trial court to reconsider its judgment and took issue with the trial court's finding of fact regarding Lori and Blake's refusal to allow unsupervised visitation with their children to Kathy and Tony.

Lori and Blake finally asked the trial court to amend its award of visitation to Kathy and Tony Pierce due to the fact that part of the summer visitation awarded to the Pierce's coincided with the oldest child's birthday.

On January 29, 2010, a hearing was held on Lori and Blake's post trial motions. The trial court in its Judgment entered on February 3, 2010, denied Lori and Blake's motion to reconsider and granted their Motion to Amend the Judgment in part. On March 3, 2010, Lori and Blake timely perfected their appeal to this Court.

3. Disposition In The Court Below.

The trial court found that Lori and Blake had unreasonably denied visitation with their children to Kathy and Tony Pierce. (R.E. 100). That was error.

The trial court failed to accord special weight to Lori and Blake's determination as to the amount and type of visitation Kathy and Tony Pierce should have with their children. (R.E. 100). That was error.

The trial court granted Kathy and Tony Pierce extensive, unsupervised visitation with Lori and Blake's minor children. That also was error.

This appeal followed.

4. Statement Of The Facts.

Lori and Blake are the married custodial parents of three children: namely, Melonie Walley, age 6, Juliana Walley, age 4, and Rachel Walley, was born during this litigation and was 9-1/2 months old at the time of trial. Kathy and Tony Pierce are Lori's natural mother and father and the maternal grandparents of these children. All parties are adult resident citizens of Greene County, Mississippi.

All parties, with the exception of Lori, work at Performance Industries in Pascagoula, Mississippi. Lori has always been a stay at home mother and housewife. Lori also home schools the two oldest children.

At the time of trial, Lori and Blake had been married approximately eight years. From the time of their marriage until October 2008, Lori and Blake resided in a mobile home located on Kathy and Tony's property. Due to Lori and Blake living on Kathy and Tony's property, the Pierces saw their grandchildren on an almost daily basis and enjoyed a close relationship with the children. Lori is a stay at home mother and house wife and she home schools the two oldest children. Lori and Blake are very involved in their children's lives. They enjoy spending time together as a family when Blake is off from work on the weekends. The Walleys and their children are very involved in church and attend church with their children every time the doors are open.

Early in 2008, there was a physical altercation between Lori and her mother-in-law and her then seventeen year old sister-in-law. Blake had to intervene to stop the physical altercation. Later in 2008, at a horse show in Greene County, there was another physical altercation this time between Blake's now eighteen year old sister and Lori's mother, Kathy Pierce, who had come to the horse show to confront Blake's sister.

As a result of these physical altercations, there were charges and counter-charges filed between the Pierce's and Walley's. These charges were eventually dropped by all involved. Lori and her mother-in-law and sister-in-law were able to work out their differences and mend their relationships. The relationship between the Walleys and Kathy Pierce did not improve. In October 2008, due to animosity existing between the parties, Lori and Blake moved from Kathy and Tony's property into a rental home.

After Lori and Blake moved they only allowed Kathy and Tony visitation with their children at their home or when Lori went to Kathy and Tony's home. This restriction placed on the Pierce's visitation with the minor children by Lori and Blake was due to the animosity existing between the parties. Lori and Blake were also concerned for their children's safety due to an unfenced, in-ground swimming pool that had recently been constructed on the Pierce's property. Despite the ongoing animosity, the Pierces spent several hours at Lori and Blake's home for Christmas 2008. On several occasions after Lori and Blake moved, Kathy Pierce came to Lori and Blake's new home while Blake was working and visited with Lori and the children. Lori and the children, on one occasion, rode to Lumberton with Tony Pierce to shop for groceries, buy horse feed and eat lunch. In November 2008, Lori and the children went to the Pierce's home to celebrate Lori's birthday and spent most of the day there. Lori and the children also spent part of New Year's Day in 2009 at the Pierce's home.

Lori and Blake are by all accounts fit, loving parents to their children. This fact was admitted to by Kathy and Tony Pierce.

Summary of the Argument

For a trial court to award grandparent visitation under the section of our grandparent visitation statute applicable in this case, it must first find that the grandparents have established a viable relationship with their grandchildren. The trial court is then required to find that the parents of the minor children have unreasonably denied the grandparents visitation with the grandchildren. The Walleys stipulated that Lori's parents had a viable relationship with their children. Therefore, the trial court had to next determine whether or not Lori and Blake had unreasonably denied the Pierces visitation with their children.

The trial court erred in its determination that Lori and Blake had unreasonably denied the Pierces visitation with their children. The trial court's finding of fact regarding this issue is not supported by the testimony elicited at the trial. The trial court was required to accord special weight to Lori and Blake decision to restrict the Pierces visitation with their children. There was no allegation and no finding by the trial court that Lori and Blake are anything but fit, loving parents.

The trial court erred in awarding Kathy and Tony Pierce such extensive, forced and unsupervised visitation with Lori and Blake's minor children. Applicable case law from the United States Supreme Court and the Mississippi Supreme Court, as well as good sound public policy dictates that such breathtakingly liberal visitation cannot be ordered over fit parents' objections absent a finding of near unfitness of the custodial parents. There was no such finding by the trial court and therefore, the trial court committed manifest error and abused its discretion and violated Lori and Blake's due process rights under the Fourteenth Amendment in its award of such liberal unsupervised visitation rights to the Pierces with Lori and Blake's minor children.

Argument

The trial court was required to give special weight to Lori and Blake Walley's determination of whether Kathy and Tony Pierce should have visitation with their children and how much visitation they should be allowed with their children.

I. Mississippi Code Annotated § 93-16-3(2)(a) Requires A Trial Court To First Determine That A Grandparent Has Established A Viable Relationship With A Grandchild And Then The Trial Court Must Find That The Parent Of The Child Has Unreasonably Denied The Grandparent Visitation With The Child.

The Walleys stipulated that Kathy and Tony Pierce had established a viable relationship with their minor children. Lori and Blake stipulated to this even though the youngest child was only a new born infant when this litigation was commenced. Miss. Code Ann. § 93-16-3(2)(a) (Rev. 2004)

requires that the trial court specifically find that the custodian or parents of a child have unreasonably denied the grandparent visitation with the grandchild. Also, the United States Supreme Court has recognized that there is a “presumption that fit parents act in the best interest of their children.” *Troxel v. Granville*, 530 U.S. 57, 68, 120 S.Ct. 2054, 2061 (2000).

In a 2001 case that is factually similar to the present case, the Mississippi Supreme Court had to determine if a chancellor had manifestly erred in awarding unsupervised visitation to grandparents over the objections of the fit, married custodial parents. *Stacey v. Ross*, 798 So.2d 1275 (Miss. 2001). As in the present case, the parents in *Stacey* stipulated that the grandparents had established a viable relationship with the grandchild. *Id.* at 1280. The *Stacey* Court reversed and rendered the visitation granted by the chancellor to the grandparents and found that the custodial parents had not unreasonably denied visitation to grandparents. *Id.* at 1284. The Court recognized that there had been a deterioration in the relationship between the parents and grandparents that had led to at least one physical altercation and also that the parents had been willing to allow some visitation. *Id.* at 1282. The court also recognized that the trial court had showed little regard for the wishes of the fit parents. *Id.* at 1280-81. The trial court in the case sub judice also showed little regard for the wishes of Lori and Blake.

In another factually similar case, the Mississippi Court of Appeals affirmed a chancellor’s decision finding that the fit, married custodial parents had not unreasonably denied a grandparent visitation with her grandchildren. *Hillman v. Vance*, 910 So.2d 43 (Miss.Ct.App. 2005). The *Hillman* court agreed with the chancellor’s finding that the parents had not been unreasonable in limiting the grandmother’s visitation with the children considering the tension existing between the adult family members. *Id.* at 47.

Lori and Blake testified that they had to move from the Pierce's property due to Kathy's interference in their marriage and Kathy interjecting herself in their child rearing decisions. (Tr. at 32, 33, 45 and 54). Interestingly, the trial court was not even convinced that Kathy would refrain from interfering with Lori and Blake's decisions concerning their children. (R.E. 5 at 11) After Lori and Blake moved from the Pierce's property, this conduct by both Kathy and Tony continued. (Tr. at 14-15). Lori testified in open court that her mother had told her that the youngest child, Rachel Walley, was not born out of love. (Tr. at 47, 54). Kathy Pierce denied making this statement, however, Kathy's contempt and disdain for Blake and his family was obvious to all in the courtroom and is even evident from the reading of the cold, emotionless transcript of the trial proceedings. (Tr. at 22, 24).

Blake and Lori both testified of Kathy speaking negatively of Blake and his family in the presence of the minor children. (Tr. at 47, 54, 63 and 75). It was the united decision of Lori and Blake to limit Kathy and Tony's visitation with the grandchildren due to the conflict and animosity existing between the adult family members. (Tr. at 54). This is not an unreasonable position for fit, custodial parents to take when they are concerned with the best interest of their minor children.

The trial court also erred in finding Lori and Blake had unreasonably denied the Pierces visitation with the grandchildren because the trial transcript shows that they did not deny the Pierces contact with the grandchildren. The trial court even recognized that Lori and Blake were willing to allow the Pierces to exercise visitation. (R.E. 5 at 4). There was also no evidence that Lori and Blake intended to permanently deny the Pierces contact with the grandchildren. After Lori and Blake moved from the Pierces property, the Pierces continued to have contact and visitation with the children. (Tr. at 12, 24-5, 48, 49).

Kathy admitted that she came to Lori's home on several occasions to visit Lori and the children while Blake was at work. (Tr. at 24-5, 48). Lori testified that on one occasion she and the children rode to Lumberton, Mississippi, with Tony to buy horse feed, groceries and to eat lunch. (Tr. at 48). In November 2008, to celebrate her birthday, Lori and the children went to the Pierce's home and ate hamburgers. (Tr. at 48). Tony and Kathy admitted that they came to Lori and Blake's home for Christmas 2008, where Lori cooked them lunch and they then spent most of the afternoon there. (Tr. at 12, 25, 49). Even though the Pierces denied it at trial, Lori testified that she and the children went to the Pierces for part of the day on New Years Day 2009. Kathy was also at the Walley's home in the middle of January, 2009, just a couple of weeks prior to filing this action.

Lori and Blake did not stop all visitation between their children and the Pierces. Lori and Blake made a determination that it was in their children's best interest not to be with the Pierces unsupervised. Lori and Blake each testified that the Pierces were welcome to come to their home to visit the children and the Pierces admitted that they had never been told any different. (Tr. at 10, 11, 30, 57, 78).

Due to the conflict and animosity existing between the Walleys and Pierces, Lori and Blake's determination of how much visitation and where said visitation should take place is not unreasonable. The trial court's finding that Lori and Blake were acting out of spite is not supported by the testimony elicited at trial. (R.E. 5 at 5). Because the trial court committed manifest error in finding that Lori and Blake had unreasonably denied the Pierces visitation with the grandchildren, this Court must reverse and render the chancellor's award of visitation to the Pierces.

II. The Trial Court Committed Error And Abused Its Discretion In Its Failure To Accord Special Weight To Lori And Blake Walley's Determination As To How Much Visitation Kathy And Tony Pierce Should Have With Their Children.

The United States Supreme Court has recognized that there is a "presumption that fit parents act in the best interest of their children." *Troxel v. Granville*, 530 U.S. 57, 68, 120 S.Ct. 2054, 2061 (2000). That Court also held that when a court is called on to second guess a fit parent's determination of whether it is in a child's best interest to have a relationship with a grandparent, "the court must accord at least some special weight to the parent's own determination." *Id.* at 70.

The Mississippi Supreme Court has held that "[p]arents with custody have a paramount right to control the environment, physical, social, and emotional, to which their children are exposed." *Stacey v. Ross*, 798 So.2d 1275, 1280 (Miss. 2001). The *Stacey* court further held that "[i]nterference with that right based upon anything less than compelling circumstances is not the intent of the visitation statute." *Id.* The court in *Stacey* also held that "forced, extensive unsupervised visitation cannot be ordered absent compelling circumstances which suggest something near unfitness of the custodial parents." *Id.*

In the present case, there was no allegation that Lori and Blake were unfit parents. In fact, Kathy and Tony each admitted that Lori and Blake were fit parents. (Tr. at 15, 40). There was no finding of fact by the trial court that Lori and Blake were unfit parents. Actually, quite the opposite was found by the trial court. The trial court found that Lori and Blake spend considerable time with their minor children, engage in many activities as a family unit, that they are involved in worship service and that Sundays are important to Lori, Blake and their children. (R.E. 5 at 5-6). The trial court accorded no weight to Lori and Blake's determination and showed no regard to their wishes in this case. This fact is indisputable given the breathtakingly liberal visitation granted to the Pierces by the trial court. The courts in *Troxel* and *Stacey* each took issue with the trial courts failure to consider

the wishes of the custodial parents in those cases. *See Troxel v. Granville*, 120 S.Ct. 2054, 2062 (2000); *Stacey v. Ross*, 798 So.2d 1275, 1280-81 (Miss. 2001). The trial court committed manifest error and abused its discretion.

The trial court did not find that there were any compelling circumstances which warranted disregarding Lori and Blake's wishes concerning their children being in the unsupervised company of the Pierces. Lori and Blake testified that they did not think it was in their children's best interest to allow unsupervised visitation with their children to the Pierces due the animosity existing between the parties. (Tr. at 47, 54, 55, 56, 74, 81). The trial court was obviously concerned about the possibility of a physical altercation erupting between the parties in the presence of the children if it awarded the Pierces supervised visitation. (R.E. 5 at 7 and R.E. 8 at 18). It should be pointed out to this court that at the time of the trial and the post trial motion hearing, that there had never been a physical altercation between Lori and Blake and Kathy and Tony. The trial court rightly recognized that the animosity and tension between the parties mainly emanated from Kathy. (R.E. 5 at 7). This is precisely what Lori and Blake are trying to protect their children from.

The trial court found that "[t]he Walleys are denying the unsupervised visitation in an effort to spite the Pierces because both Lori and Blake know that the children have been in no danger with the Pierces." (R.E. 5) There was no allegation by Lori and Blake that their children would be in physical danger with the Pierces other than their concerns over the unfenced swimming pool located on the Pierces' property. In fact, Blake testified that neither of the Pierces would ever hurt the children. (Tr. at 74).

In further support of Lori and Blake's reasonableness throughout this dispute and litigation, Lori and Blake entered into an Agreed Temporary Order which allowed the Pierces supervised visitation with the grandchildren. (R.E. 4). At trial, Lori testified that she loved her parents, the

Pierces. (Tr. at 54) Lori and Blake also each testified that they wanted the Pierces to have a relationship with the grandchildren. (Tr. at 55, 74, 81, 88, 91). The testimony and evidence that was heard by the trial court was that Lori and Blake, as the custodial parents of their minor children had decided that their children did not need to be in the unsupervised company of the Pierces due to the animosity existing between the parties. (Tr. at 54, 55). There was also no testimony from the Walleys that they intended to permanently deny the Pierces visitation with the grandchildren. There was no testimony from any party that the Pierces were not welcome to come to Lori and Blake's home to see the grandchildren. (Tr. at 10, 11, 30, 57, 78). In fact, the testimony from both sides show that the Pierces had been allowed visitation with the children even after Lori and Blake moved.

The facts of this case clearly show that there is a conflict between the families, and that regardless of fault, the Walleys had been willing to allow some visitation, just not the amount or type of visitation the Pierces desired. (Tr. at 9, 40) Lori and Blake's decision restrict her parents visitation with the grandchildren was not one made out of spite for the Pierces, but rather, it was a decision made by caring, fit custodial parents who have a constitutionally guaranteed right to control the environment their children are exposed to. Simply put, the trial courts judgment in this case allows a grandparent who has established a viable relationship with a grandchild, to be openly hostile to and contemptuous towards a fit parent and still be awarded extensive unsupervised visitation with that parent's child. To uphold the trial court judgment would not only set bad precedent in our jurisdiction, it would be a travesty to public policy in our state.

Lori and Blake stated that they did not want their children at the Pierces' home without them due to there being an unfenced, in-ground swimming pool on the Pierce's property. (Tr. at 61, 74). Lori and Blake's children are all under the age of seven. Fit parent's know how mischievous and prone to explore children of this age are and no fit parent would want their child

on property containing an unfenced swimming pool. Sadly, the evening news contains too many examples of the tragedies that can befall a family when there is a pool on the premises. This fact standing alone would be enough for any fit parent to refuse to allow their children on such property without the parent being physically present. Lori and Blake are not unreasonable in their determination that their children should not be at the Pierce's property without them. It is simply not enough for the trial court to order the Pierces to personally supervise the children when they are in the pool area. (R.E. 7 at 3).

The trial court, in reviewing the Walleys' determination, did not accord any deference whatsoever to these unquestionably fit parents' wishes and therefore, committed manifest error and abused its discretion. The trial court's finding on this issue is clearly erroneous and must be reversed and rendered.

III. The Trial Court's Application Of Mississippi's Grandparent Visitation Statute To Lori And Blake Violates Their Due Process Rights Under The Fourteenth Amendment.

The trial court granted the Pierces extensive unsupervised visitation, including overnight visitation, with Lori and Blake's children over their stated objections. There was no finding by the trial court that Lori and Blake were unfit parents. The trial court did not accord any weight to Lori and Blake's determination concerning the amount and type of visitation the Pierces should have with the grandchildren. Therefore, the trial court's failure to accord special weight to Lori and Blake's determination violates their fundamental right under the Fourteenth Amendment to make decisions regarding the care, custody and control of their children. Accordingly, the trial courts award of visitation should be reversed and rendered.

The United States Supreme Court has found that "the interest of parents in the care, custody, and control of their children - is perhaps the oldest of the fundamental liberty interests

recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The *Troxel* Court, in reviewing the Washington visitation statute at issue in that case, found that the statute “contains no requirement that a court accord the parent’s decision any presumption of validity or any weight whatsoever.” *Id.* at 67. The court further found that the statute placed the best interest determination solely in the hands of the judge and that if he/she disagrees with the parent’s determination, then the judge’s view prevails. *Id.* The *Troxel* court also found it very important that there were no allegations and no finding by any court that the parent in that case was unfit. *Id.* at 68. The court found that aspect of the case to be important because “there is a presumption that fit parents act in the best interest of their children.” *Id.*

In reviewing Mississippi’s Grandparent Visitation Act, the Mississippi Supreme Court has held that our statute requires no less than the Fourteenth Amendment. *Stacey v. Ross*, 798 So.2d 1275, 1280 (Miss. 2001). The *Stacey* court also held that “[t]he determination of whether parents are unreasonable in denying visitation in whole or part to grandparents is not a contest between equals.” *Id.* And that “[p]arents with custody have a paramount right to control the environment, physical, social, and emotional, to which their children are exposed.” *Id.* The court in *Stacey* went even further and found that “[i]nterference with that right based upon anything less than compelling circumstances is not the intent of the visitation statute. *Id.* Finally, the court in *Stacey* held that “forced, extensive unsupervised visitation cannot be ordered absent compelling circumstances which suggest something near unfitness of the custodial parents.” *Id.*

There simply was no finding of compelling circumstances suggesting the unfitness of Lori and Blake. Again, even the Pierces and their attorney recognized that Lori and Blake were fit parents. (Tr. at 15, 40). The trial court did not make a finding of anything near unfitness against Lori and Blake and the trial court should have stopped its analysis there and denied the Pierces visitation.

Unfortunately, the trial court did not stop there, but rather, it stated that “it had searched for some justifiable reason to deny the grandparents unsupervised visits with their grandchildren.” (R.E. 5 at 5). The justifiable reason that the trial court should have found in its search was the determination and wishes of the fit, custodial parents, Lori and Blake Walley.

The Walleys testified that due to the animosity between the parties they did not feel that it was in their children’s best interest to be in the unsupervised company of the Pierces. (Tr. at 47, 54, 55, 56, 74, 81). The trial court simply ignored Lori and Blake’s determination and substituted its judgment for that of fit, custodial parents and awarded the Pierces forced, extensive unsupervised visitation with Lori and Blake’s small children. Sound public policy should not allow a trial court to substitute its judgment for that of loving, fit custodial parents.

The trial court, by substituting its judgment in place of the judgment of fit, custodial parents, violated Lori and Blake’s fundamental right to control the environment that their children are exposed to. The trial court did not follow precedent setting case law from the United States Supreme Court and the Mississippi Supreme Court and this court must reverse and render the trial court’s judgment.

Conclusion

Lori and Blake Walley are the married, custodial parents of their three little girls. They are fit parents who have made a united decision to limit Kathy and Tony Pierce’s visitation with their grandchildren due to the animosity existing between the families. It is Lori and Blake’s desire that Lori’s parents have a normal relationship with their grandchildren, however, until the friction and animosity existing between the families is resolved and the harmony restored, they do not feel that it is in their children’s best interest to be with the Pierces unsupervised. Lori and Blake’s determination on this issue should be granted the deference it deserves and this Court should reverse and render the trial court’s judgment.


The trial court erred in its finding that Lori and Blake had unreasonably denied the Pierces visitation with the grandchildren. The evidence presented does not support this finding by the trial court. The Pierces had and still have any open invitation to visit the children at Lori and Blake's home. The Pierces simply want the children delivered to them so they can do as they please with them and while not having to interact with Lori and Blake. The trial court accommodated the Pierces wish while ignoring Lori and Blake's own determination of what is in the best interest of their children.

Since there was no allegation or finding of unfitness on the part of Lori and Blake, the trial court committed manifest error and violated Lori and Blake's constitutional rights by awarding such forced, extensive unsupervised visitation with their children to the Pierces against Lori and Blake's wishes. The trial court simply substituted its judgment for that of fit parents in direct contravention of the Mississippi Grandparent Visitation Act and controlling case law. That was error and the trial court's judgment should be reversed and rendered.

Respectfully submitted,

BY:



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ATTORNEY FOR APPELLANTS

Dated: August 30, 2010

CERTIFICATE OF SERVICE

I, Chris D. Hennis, one of the attorneys for the Appellant, do hereby certify that I have this date filed the original and three (3) copies of the above and foregoing **APPELLANTS' BRIEF** with the Clerk of the Supreme Court; and have mailed, by U.S. Mail, postage prepaid, a true and correct copy of same to the following:

Honorable G. Charles Bordis, IV
Chancery Court Judge
P.O. Box 998
Pascagoula, Mississippi 39568-0998

Joey Fillingane, Esq.
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This the 31st day of August, 2010.



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