STATE OF MICHIGAN
IN THE SUPREME COURT OF THE STATE OF MICHIGAN

JUDITH PORTER AND
ROBERT PORTER
Plaintiffs/Appellants,
v.
CHRISTINA HILL,
Defendant/Appellee

Supreme Court No. 147333
Court of Appeals No. 306562,306524
Lower Court No. 11-012799-DZ

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DFAE's Supp'l

APPELLEE'S SUPPLEMENTAL BRIEF

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JUDGMENT OR ORDER APPEALED FROM

The Appellee agrees that the Order from which appeal is sought is the Circuit Court Order correctly granting Summary Disposition on the Porters' Complaint for Grandparent Visitation, and the Court of Appeals decision affirming that Order. Appellants argue that the Court of Appeals gives a whole new meaning to the definitions of "grandparent" and "natural parent", and that this Court should step in to prevent this. The statute as written makes sense: grandparents can petition for grandparent rights. The Porters are not grandparents: they no longer have a legal relationship with these children. They had no legal standing to obtain a court order requiring grandparent visitation, as Russell was not a parent to these children at the time of his death. Their "grandparent rights" did not revive on the death of their son, when they did not exist on the day before.

There is no substantial question of law here, and no reason to believe that the Court of Appeals and the Circuit Judge committed an error of law in this matter. This decision is not clearly erroneous as a matter of law, and the Supreme Court does not need to issue a ruling.

This case does not involve legal principles of major significance to Michigan jurisprudence. The statute is clearly written. The jurisprudence in this area is clear, and was set by the Michigan Supreme Court many years ago, as stated in the Appellee's Brief previously filed with this Court. There is no reason for the Supreme Court to revisit those prior decided cases at this time.

STATEMENT OF QUESTIONS AS STATED BY THE COURT

I. WHETHER THE PARENTS OF A MAN WHOSE PARENTAL RIGHTS TO HIS MINOR CHILDREN WERE TERMINATED PRIOR TO HIS DEATH HAVE STANDING TO SEEK GRANDPARENTING TIME WITH THE CHILDREN UNDER THE CHILD CUSTODY ACT, MCL 722.21 ET SEQ.?

Appellant answers: Yes

Appellee answers: No

II. WHETHER THE TERM "NATURAL PARENT" IN MCL 722.22 (d) and (g) IS THE EQUIVALENT OF "LEGAL PARENT" OR "BIOLOGICAL PARENT"?

Appellant answers: It is the equivalent of biological parent

Appellee answers: It is not necessary to reach this issue, as in either case the man is not a "parent", whether legal, biological, natural, or any other term.

INDEX OF AUTHORITIES

Statutes:

Court Rules:

Cases:

APPELLEE'S SUPPLEMENTAL BRIEF

Christina Hill, by her counsel, Susan J. Tarrant, states the following as her Supplemental Brief. Appellee relies on her previously filed Brief in this matter for the basic legal arguments and will not repeat them here. The purpose of this Supplemental Brief is to address only the issues requested by the Court in addition to the Briefs.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Plaintiffs have moved for an Order from the Court requiring Grandparenting Time with the two minor children, Robert Porter, who is now 5 years old, and Addison Porter, who is now 4 years old. Christina Hill (F/K/A Porter) does not believe Plaintiffs have standing to require grandparenting time, nor does she believe that it is in the best interests of the children to have such time thrust upon them. She also believes it is strongly against public policy to set forth a precedent allowing the Porters to require grandparenting time, over the objection of the children's sole remaining parent, after their son's parental rights to the minor children were terminated due to his severe abuse of the minor child.

The Circuit Court in this matter found that there were grounds to dismiss under MCR 2.116 (C) as these Plaintiffs lack the capacity to sue for Grandparenting time as the Plaintiffs are not the legal grandparents of the named minors. The Court of Appeals, in it's published Opinion on this matter, concluded that "it would be anomalous for the Legislature to authorize a court to terminate a person's parental rights based upon abuse, but then to somehow "revive" those rights for the purposes of grandparent visitation." (Porter v. Hill opinion at 2). The Court of Appeals decision was correct and should be upheld by this Court.

ARGUMENT I: WHETHER THE PARENTS OF A MAN WHOSE PARENTAL RIGHTS TO HIS MINOR CHILDREN WERE TERMINATED PRIOR TO HIS DEATH HAVE STANDING TO SEEK GRANDPARENTING TIME WITH THE CHILDREN UNDER THE CHILD CUSTODY ACT, MCL 722.21 ET SEQ.

Not everyone is given the right to demand "parenting time", on their terms, with someone else's children. These Plaintiffs are arguing that the grandparent visitation statute does just that. Michigan has a statute allowing for grandparenting time, MCLA 722.27b (1) which provides that "A child's grandparent may seek a grandparenting time order under 1 or more of the following circumstances:" The term "grandparent" is defined in the Child Custody Act of 1970, MCLA 722.22(e) as "a natural or adoptive parent of a child's natural or adoptive parent." Section 7b(1) provides that "A child's grandparent may seek a grandparenting time order under 1 or more of the following circumstances.....(c) The child's parent who is a child of the grandparents is deceased."

The children involved in this case have only one parent, Christina Hill. Russell Porter was their father, but he was not the parent of these children at the time of his death, as his parental rights had been terminated due to his abuse of the minor child. That means his parents were not "grandparents" under the statute. As the Court of Appeals noted in the Porter v. Hill opinion "At the time of his death, Russell was not a legal parent of the children. He had no right to any input in their lives: in fact, to do so would have violated a court order. Russell's death had no effect on his rights or those of the Plaintiffs, and there is no authority for Plaintiffs' contention that 'natural' as used in MCL 722.22 is merely a substitute for 'biological'."

The Porter's rights, if any, derive from Russell Porter's rights, which were lost when his parental rights were terminated. When Russell was alive the Porters had no right to force Ms. Hill

to allow visits, as Russell had no right to require visits, due to the termination of his rights. That right did not magically reappear on Russell Porter's death.

In an ideal world, it would always be in the best interests of children to have contact with loving supportive relatives. We do not live in that ideal world. Should the matter come to trial, Defendant disagrees that the Plaintiffs have had a strong and loving relationship with her children, or that it would be in the childrens' best interests to have contact with Plaintiffs. Since the trial Court decided the Porters had no standing, the Court did not allow Ms. Hill to present evidence regarding the reasons for her decision, and the Court here must rely on that record in making that decision. However, suffice it to say that it would not all be positive. The facts in this case show that Addison almost died from a fractured skull at 4 weeks, and her father, Russell Porter confessed to that abuse. Robert saw the abuse, which caused him to be a victim as well. Christina lost her home, her job, and almost lost her family as a result of the abuse. Allowing the Porters to continue to drag her through court for the rest of the minority of these children is not an appropriate outcome, nor the intention of the Legislature.

The real issue in this case is not whether these Plaintiffs should be allowed to see these children: that can happen or be denied without Court intervention. The real issue is should the Court intervene and order such visits, over the objection of a fit parent. The answer is clearly no. Defendant believes she should not have to justify her choice to protect her children. For the benefit of this family, it is important that this mother be allowed to protect her children in the way she sees fit.

The bigger question is whether the Court should issue an opinion which opens this door for other families in this position, and the clear answer to this question is also no. If the remaining

parent believes that the children will be safe and it will be a benefit to see the petitioners, visits will happen without a court order. However, in this small subset of cases, you are dealing with oftentimes fragile children who have been abused or neglected by a parent. Sometimes they have been severely injured, like Addison, or have witnessed the abuse of siblings, like Robert. Those children are often more fragile than the average child, and dragging them through a custody battle and unwanted visits will do far more damage than it does to the average child. Parental rights are not terminated lightly by the Courts. The Court must find abuse or neglect by clear and convincing evidence. There is no doubt that children who have been abused or neglected are more susceptible to abuse or neglect, and may already have damage, seen or unseen. The remaining parent is the person most likely to understand the needs of their children. Once the parent and their children have been through this, it is unfair to then subject them to a court hearing regarding whether the parents of the abuser should be able to gain access to the children over the objections of the parent. This is the only subset of parents and children who will be affected by this decision, and it is a very vulnerable population. The clear language of the statute does not provide for standing in this case. That statute should not be warped to provide legal standing against abused children.

ARGUMENT II: WHETHER THE TERM "NATURAL PARENT" IN MCL 722.22 (d) and (g) IS THE EQUIVALENT OF "LEGAL PARENT" OR "BIOLOGICAL PARENT"

Appellee would agree with the Court of Appeals on this issue: as the Court of Appeals noted in footnote 2 to it's decision in this case, "...in stating that Russell was not a legal parent, we are emphasizing the fact that Russell ceased being a parent at all, in the eyes of the law, after his parental rights were terminated. Because he was not a "parent", it is axiomatic that he could not be a "natural parent." The juxtaposition of "natural parent" and "adoptive parent" in MCL 722.22 makes perfect sense in this context. The use of the term "natural" is used to distinguish a legal parent affiliated with a child by reason of biology from a legal parent affiliated with a child by reason of adoption. As clearly stated in Pecoraro v. Rostagno-Wallat, 291 Mich App 303,314: 805 NW2d 226(2011), "[t]he phrase 'natural parent' [in MCL 722.22(h) was used by the Legislature to distinguish between adoptive parents and non-adoptive parents. It was not used to distinguish between adoptive parents and persons (i.e. non-parents) who produced a child by virtue of biological processes."

Plaintiffs in this case use all types of analogies to probate law, to social security law and others, in an attempt to rewrite the statute, because they do not like the outcome. However, in Appellee's primary Brief, those arguments are shown to be fallacious. The terminology in those statutes does not directly deal with termination of parental rights. Those statutes, because they benefit a child, are generally read broadly by the courts. This grandparent visitation statute, because it impairs a parent's right to decide how to raise their child, must be strictly construed. As stated in Appellee's primary Brief, a parent's right to the care, custody and control of their children is one of our oldest and most cherished rights and it may not be impaired without good

reason. (see page 10 of Brief for argument and citations).

Although not relied on heavily by the Court of Appeals in it's decision, the grandparent visitation statute does directly deal with termination of parental rights. MCL 722.27(b)5 provides that in the case of a termination of parental rights in a stepparent adoption, the grandparents may still petition for visitation despite the termination of parental rights. The Legislature acknowledged terminations in this limited area, i.e., stepparent adoptions, and provided for standing in those limited cases. It is obvious that the Legislature thought about whether to provide for grandparent visitation after a termination, and chose to allow it when there was a stepparent adoption, but at no other time. For them to make such a limited exception would suggest that they were not providing for such visits after terminations for abuse or neglect. The Legislature did not forget that this subset of children was out there. They simply did not wish to override the concerns of the remaining parent when dealing with children who had been abused or neglected. The Court needs to respect that choice by the Legislature and not fall victim to the word games being played in this case. Russell Porter was not a parent at the time of his death. Therefore, Robert and Judith Porter were not the parents of a parent, and have no standing to require visitation with these children.

The Court of Appeals interpreted similar language in People v. Wambar, 300 Mich App 121(2013). In that case the Defendant had his parental rights to a child terminated due to abuse or neglect. He subsequently took the child from the caregiver, and was charged with kidnapping a child. He argued he had to be charged under the parental kidnapping statute, which had lower penalties. The statute involved had virtually identical language; "an adoptive or natural parent of a child shall not be charged with and convicted for a violation of this section." MCL 750.350(2).

That Defendant also claimed that "natural" was a substitute for "biological" parent. The Court concluded that since Defendant's parental rights were terminated he ceased to be a parent, and it did not matter whether they referred to a natural or biological or legal parent: he was simply not a parent. The parental kidnapping statute did not apply because he was not a parent. That is a very logical reading of that statute, and is applicable here.

The Plaintiffs should not be allowed to rewrite this statute to suit their desires. If the Legislature forgot this subset of children, then it is the Legislature's job to amend the statute. In this case, however, all the evidence suggests that the trial Court and the Court of Appeals have strictly construed this statute the way it was written. When the Courts are infringing on a person's right to raise their children as they see fit, these statutes should be strictly construed. Not only is this the legally correct conclusion, it is the right conclusion in this case. To drag children who have already been subjected to abuse through the legal system rather than allow their parent to protect them is not a fair and appropriate outcome, and it certainly does not protect the needs of this group of very vulnerable children.

CONCLUSION

A parent's right to decide how to properly raise their own children should be honored. There is no evidence that Christina Hill is not an adequate or appropriate parent. She has valid reasons for refusing to agree to an order requiring her to provide grandparenting time to the Porters, and her discretion as a parent should be honored. The current statute provides that she is allowed to make rational choices for her children, and does not have to fight in court over who gets to visit with her children. Because the reading of the statute proposed by Appellants attempts to take away a fit parent's right to protect her children, who have already been subject to abuse,

that position cannot be upheld. Judith and Robert Porter have no legal standing or right to request grandparenting time from this Court under current Michigan law, and both the Circuit Court and the Court of Appeals correctly decided this issue. This Request for Leave to Appeal should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, Christina Hill, by her attorney, Susan J. Tarrant, respectfully requests that the Court deny the Request for Leave to Appeal, and uphold the Court of Appeals and the Circuit Court's decision in this matter, as the Appellants do not and should not have standing to request grandparent visitation.

Dated: November 26, 2013

Respectfully Submitted,

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