IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned On Brief 8/27/03

CATHY LEGGETT, ET AL. v. KRISTA MINNICK, ET AL.

Direct Appeal from the Juvenile Court for Obion County
No. 3197 Sam C. Nailling, Jr., Judge

No. W2002-02672-COA-R3-JV - Filed September 12, 2003

Paternal grandparents sought change of custody of grandchildren from their mother to grandparents. The trial court denied the petition but modified previously ordered visitation and mother appeals. We affirm.

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

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Damon E. Campbell, Union City, Tennessee, for the appellant, Krista Leigh Minnick.

David L. Hamblen, Union City, Tennessee, for the appellees, Cathy Leggett and Tom Leggett.

MEMORANDUM OPINION[1]

Petitioners Cathy Leggett and Tom Leggett (Leggetts) are the paternal grandparents of minor children Haley Patterson and Hayden Patterson. The Leggetts sought an order from the trial court changing custody of the minor children from their mother, Krista Leigh Minnick, to themselves.

It is alleged in the petition and admitted in the response that on October 23, 1996, Donnie Patterson was ordered to be the natural father of the said minor children. On November 18, 1997, the court awarded custody of the minor children to Ms. Minnick. The court further ordered that the parties would continue to share time with the children as previously ordered on October 23, 1996,

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[1] **Rule 10. MEMORANDUM OPINION**[.] This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

and that the Leggetts have continued to alternate times with the children since 1996 with the Leggetts having the children from Thursday to Sunday and Ms. Minnick having the children from Sunday to Thursday.

The petition was filed December 13, 2001, and the matter was heard on August 27, 2002. Subsequent thereto, an order was entered by the trial court denying the petition for change of custody but modifying the visitation order by changing Petitioners' visitation from "Friday afternoon after the children get out of school and continuing until Monday morning at which time the Petitioners will take the children to school."

Ms. Minnick, the appellant, filed a notice that no transcript of the evidence would be filed in this case. Thus, the record before us is absent a transcript or statement of the evidence. Our review of findings of fact by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). Questions of law are reviewed *de novo* with no presumption of correctness. *See Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996). The burden is upon an appellant to show that the evidence presented below preponderates against the trial court's decision. In the absence of a transcript or statement of the evidence, a presumption arises that the parties presented sufficient evidence to support the trial court's judgment, and this Court will affirm the judgment. *See Manufacturers Consol. Services, Inc. v. Rodell*, 42 S.W.3d 846, 865 (Tenn. Ct. App. 2000); *Coakley v. Daniels*, 840 S.W.2d 367, 370 (Tenn. Ct. App. 1992); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 653 (Tenn. Ct. App. 1988).

Ms. Minnick argues that unless a substantial risk of harm to the child is shown, the awarding of visitations rights to grandparents is an unconstitutional invasion of privacy rights of parents under the Tennessee Constitution. However, as alleged in the petition and admitted in the response, visitation was awarded to the grandparents in October of 1996 and there is no indication in the sparse record before us that an appeal was taken from that ruling. The grandparents in the present action sought a change of custody. They had already been given visitation by the 1996 order. The grandparents have not appealed the trial court's modification of visitation. It is obvious from the trial court's order cited above that the children are now in school. Furthermore, the pleadings establish that Mr. Patterson was determined to be their natural father in 1996, thus the children would now be of school age.

In the absence of a transcript or statement of the evidence, we find no basis to reverse the order of the trial court and therefore affirm. Costs of this appeal are taxed to the appellant, Krista Leigh Minnick and her surety.

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DAVID R. FARMER, JUDGE