

220VA754

SUPREME COURT OF VIRGINIA

SEP 6 1978

RECEIVED
SEP 6 1978
SUPREME COURT OF VIRGINIA

IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 78-0527

KAREN L. WEST
Appellant,

v.

GLADYS KING
Appellee.

JOINT APPENDIX

Diane Lynch Abdelnour
SMITH and ABDELNOUR
Post Office Box 1233
Grafton, Virginia 23692
Counsel for Appellant

Donald R. Taylor
Attorney at Law
Post Office Box DD
Williamsburg, Virginia 23185
Counsel for Appellant

TABLE OF CONTENTS

	PAGE
Initial pleading - Juvenile Petition	1
Statement of Facts	2
Transcript	5
Order appealed from, entered February 24, 1978	26
Assignments of Error	27

VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF THE CITY OF
WILLIAMSBURG AND COUNTY OF JAMES CITY

IN THE MATTER OF DAVID M. KING, II,
an Infant, age ~~3 1/2 years~~ 4 years

TO: Karen L. West King
~~150 Burgess Street~~
(opposite Crow's Taxi Co.) 210 Williams Avenue
Williamsburg, Virginia 46 Edgewood Lane
(Serve before 5:00 P.M.)

TAKE NOTICE, that on the ^{24th} ~~9th~~ day of ^{May} ~~November~~, 1976, at ^{9:30} ~~10:00~~ A.M.,
or as soon thereafter as counsel may be heard, I shall move the above Court,
at the Courthouse in the City of Williamsburg, Virginia, for the entry of a
Visitation Order, permitting me to have visitation rights with the above named
infant, he being my grandson.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Given under my hand this ^{4th} ~~25th~~ day of ^{May} ~~October~~, 1976.

GLADYS KING

By: *[Signature]*

Counsel

~~D. R. TAYLOR
630 Prince George Street
P. O. Drawer DD
Williamsburg, Virginia 23185~~

*work a 2d case
5-10pm
Long for a
1/2 hour at 11:00*

*11-9-76
Parties to work out visitation with grandmother
Child not to visit while father is at grandmother's*

STATEMENT OF FACTS

IN RE: KAREN L. WEST, Appellant vs. GLADYS KING, Appellee

On August 30, 1976, the Appellant was divorced from the natural father of David M. King, II, on the grounds of desertion. The natural father was Ordered to provide support for the child but has left the State and does not provide any support for his son who is four years old.

On the 28th day of November, 1977, this case came to be heard on appeal from the Order of the Juvenile and Domestic Relations District Court for the City of Williamsburg and County of James City, denying Gladys King, paternal grandmother, an Order of visitation with her grandson.

Present were Karen West and her attorney David Holland, Mrs. Gladys King and her attorney, D. R. Taylor, Dr. G. M. Neis of the Tidewater Mental Health Clinic and Peter Nickerson, Director of the Department of Social Services for the City of Williamsburg, and the Honorable Russell M. Carneal, Judge.

The evidence consisted of reports by Mr. Nickerson and Dr. Neis, which were introduced in evidence. Additionally, both Mr. Nickerson and Dr. Neis testified elaborating on the contents of their reports.

Dr. G. M. Neis testified that she had been seeing Mrs. West for a period of time and that it upset Mrs. West for Mrs. King to see the child. She further testified that, in her opinion, it was not good for the child to see Mrs. King.

In response to Mr. Taylor's inquiry as to whether or not Dr. Neis had ever interviewed Appellee either alone or in the presence of the child, Dr. Neis replied in the negative.

Appellant testified that she had started a new life for herself and she did not want the child's father's family included in her new life and that she was strongly opposed to the visitation of Mrs. King.

Judge Carneal then questioned Mrs. West relative to the present whereabouts of the child and Mrs. West replied that the child was in the care of her friend, Rick Simms and his parents, and that they cared for the child when she worked.

Mrs. West then testified that having the child visit with Mrs. King upset her greatly, and that she, under no circumstances, wished the child to visit Mrs. King.

Mrs. King testified that she had a close relationship with the child since his birth. She stated that both the child and Appellant had lived with her for two months and that during said period of time, Mrs. West was not required to pay any rent for the use of the house, but did buy her own groceries. She further testified that this arrangement was terminated because she did not approve of Appellant allowing her boyfriend in Appellee's home in her absence nor did she approve of the hours Appellant kept.

Mrs. King further testified that she had always enjoyed what she considered a pleasant and warm relationship with her grandson and that she wanted only visitation, not custody.

Judge Carneal indicated that he believed that it was important for the child to have contact with both sides of the family and that he felt it would be to the best interest of the child to permit him to enjoy said relationship with Mrs. King, without regard to Appellant's objection or the reasons therefore.

The Judge accordingly Ordered that Mrs. King be permitted visitation and further instructed the respective attorneys to work out a visitation schedule. A few days later an Order was submitted by Mr. Taylor providing for such visitation and was endorsed by Mr. Holland and entered in due course.

Filed April 3, 1978



MRS. ABDELNOUR: Judge, for the record, prior to starting this, we would ask for a stay of your previous order as to the permitting visitation on the grandmother, on the grounds that this Court -- the grandmother had no standing to bring this matter into this Court, and this Court has no jurisdiction or authority to handle a matter as to visitation between a grandmother and parent, lacking evidence of -- that the child is abused or neglected, giving the Court authority to come forward and -- and be involved in matters between a mother and child or parent and child. And though we -- that's the essence of my objection, your Honor.



and while the Court certainly recognizes that the mother is the mother of the child, the Court also is of the opinion that during this day and time, that the family unit is of great importance, perhaps more so than it has ever been in the history of this country. And it's

1 my feeling and always has been that while the grandmother
2 may not, and I'll repeat may not, have the legal standing
3 to visit this child, it certainly seems to me, in the
4 interest of everybody concerned, that the child know
5 its parentage, its heritage, and, consequently, I have
6 given permission for the grandmother to see it.

MRS. ABDELNOUR: Is there any
question as to Doctor Neis's qualifications --

MR. TAYLOR: No.

MRS. ABDELNOUR: As an expert

MR. TAYLOR: She's an expert.

Q In a report that you have made
that you made, to Mr. Nickerson, the social worker involved
in this matter, you stated that from the information access-
ible to you it appeared that the single factor likely to
prove most detrimental to stabilization of the relation-
ship between this traumatized mother, referring at that
time to Karen King, Karen West, and her vulnerable son
is the continual interference and verbal abuse and attempts
alleged by the paternal grandmother in her efforts to win
custody of David. Is that still your opinion?

A Yes, I would say it is.

Q And on what is that opinion

1 based, Doctor Neis?

2 A That opinion is based on state-
3 ments that have been shared with me by the mother in terms
4 of describing David's behavior immediately upon returning
5 to her after having had visits with the paternal grand-
6 mother.

7 ***
8
9
10
11
12
13
14
15
16
17

18 ***
19

20 A My observation is that David
21 is a very bright child intellectually; he's a sensitive
22 child; and he is very much psychologically aware of the
23 divisiveness and the psychological warfare that exists
24 between his mother and Mrs. King.

25 ***
26

1

2

3

4

5

6

7

8

9

10

11

Q Assuming that the granddaughter
or that -- Mrs. West, Karen West, feels a great deal of
animosity in regards to the grandmother, what would be the
result on the child of such visitation?

12

13

14

15

16

17

18

19

20

A Over a prolonged period of time,
clinical experience indicates that the child becomes a
traumatized victim if he is sensitively aware, and he
also is aware of manipulation on the part of both adults
involved, and may himself resort to manipulation tactics.
For instance, temper tantrums, unusual demands, refusing to
obey certain kinds of management or controls that ordinarily
would be part of his daily life within the setting in which
he ordinarily resides.

21

22

23

24

25

1 involved, it would be if it were I or Mrs. Abdelnour,
2 whoever it would be, you said any other adult?

3 A Any other adult who is
4 interfering with -- the management of a child, or the --
5 behavior controls of a child. That's precisely the
6 point, your Honor.

7 COURT: Well, then, again,
8 I repeat, it isn't the personality of Mrs. King that's
9 involved here. It could be me or you even, if you were
10 the third party involved?

11 A If the other adult is this
12 demanding, your Honor.

13 ***
14
15
16
17
18
19
20
21
22
23
24
25

A Your Honor, that is precisely
the point. It would not matter if it were not Mrs. King.
It would be another adult involved in terms of subjecting
the child to the psychological divisiveness.

COURT: What you're really
saying, it isn't the personality of Mrs. King that's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT: He's four years old,
and you're going to ask a four year old child where he
wants to go, who he wants to stay with, and what he wants
to do?

A No, your Honor, we were simply
trying to clarify what his feelings were about both people,
and his awareness of it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Would your opinion differ in
cases where the grandmother were seeking visitation for the
pure love of the child, and in those cases where the grand-
mother is seeking visitation through an attempt to antag-
onize or hinder the mother?

1
2
3
4
5
6
7
8
9
10
11
12
13
14 A This is a continuation of the
15 question you just raised, and that is that it really does
16 not matter. The point is that the child is having his
17 loyalties divided in a detrimental way.

18 COURT: Doctor, let me come
19 back. Suppose the father were the one involved here
20 instead of the grandmother, would the situation be the
21 same?

22 A This -- no, your Honor. That's
23 what I'm trying to say. The loyalties of the child would
24 be divided. The two adults, it seems to me --

25 COURT: I'm talking if the

Q Doctor Neis, having observed both the mother and David, the child, is it your considered opinion that these visits, continued visits are in the best interest of this child?

A It's my opinion, based on

1 David's responses and the observation that I have had with
2 him over a period of time, that it could only be injurious
3 because of the divisiveness that appears to exist.

4 COURT: I want to know what
5 this is based on. What -- what statements has David given
6 you that --

7 A Very graphically.

8 COURT: Give me some details.

9 A His inability to make a
10 decision. He says that he loves Grandma King, he loves
11 his mother.

12 COURT: You find that unusual?

13 A No, your Honor, I do not. The
14 point being that when he is asked -- which one he likes
15 to be with most, he is not able to answer. He will --

16 ***

17 ***

your Honor, which I think as this child gets older and -- he is not demonstrating at some period in time the level of anxiety, which I feel is apparent within him now, if that were no longer demonstrated, I think that would be a question to be appropriately considered.

COURT: At what age would you consider this to be appropriate?

A I think when the child doesn't demonstrate a level of anxiety, which I see apparent now, and that may be for David at age eight or ten or fifteen.

COURT: It could be at twenty, couldn't it?

A Yes.

COURT: So, in effect, you're saying that until he, he, David, is the one who -- shows lack of anxiety, you believe then the grandmother should never have the opportunity to see him?

A In the best interest of your child, Judge Carneal, that is exactly right.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q All right. Let me ask you another question. Isn't it good clinical practice, where you are testing the interreaction between parties, to talk to all the parties involved rather than only one predominant party?

A That depends upon whether I'm being asked or subpoenaed as an expert witness for one particular view.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

reason why you failed to interview the paternal grandmother,
who is an integral part of this relationship?

A She did not request my services,
and I am a public servant in that clinic. I'm also avail-
able as a private clinician.

1
2
3
4 Q No, it's my couching, but if
5 I understood your answers to Mrs. Abdelnour's questions,
6 and to Judge Carneal's question, that you have stated,
7 and you correct me if I am wrong, that it would not be
8 to the best interest of this four year old child to have
9 any exposure with this lady, Mrs. Gladys King, at this
10 time. As to whether or not in the future any exposure
11 should be had is an unanswered question, which you're
12 not prepared to answer at this time.

13 A I cannot answer it in terms of
14 knowing what the future will bring as far as David's own
15 statement or responses in stressful situations where
16 two or more adults are at differences.

17 ***
18
19
20
21
22
23
24
25

Q But you have not visited Mrs.
West's home. You don't know anything about her. You have
not talked with her.

1 A Mrs. West?

2 Q I beg your pardon, Mrs. King.

3 A No, I have not.

4 ***

11 ***

13 Q Doctor Neis, do you, in your
14 expert opinion, feel that it was necessary to visit the
15 grandmother in making your determination of what was in
16 the best interest of the child as to these visitations?

17 A No, I do not. I feel it would
18 be of superfluous gesture.

19 ***

25 ***

1 *****

12 *****

14 MRS. ABDELNOUR: Judge, I think
15 that Mrs. -- Doctor Neis has been -- it has been stipulated
16 she's an expert in this field, and she has testified, your
17 Honor, in her expert opinion it was not necessary for her
18 to talk with the grandmother.

19 COURT: I disagree with Doctor
20 Neis entirely on that score.

21 *****

25 *****

1

2

3

4

Q What do you now base that --
your position on?

5

6

A The reactions on David since
he has visited the grandmother.

7

8

Q And what are they?

9

A His behavior has changed.
He's -- demanding, more now. He brings home car: fulls of
toys from the grandmother. I don't know if she -- keeps
half of them there and sends half of them home or sends
all of them home. I have not talked to her, but David has
become very stubborn and harder to manage because -- of
certain threats like, "Well, I'll go tell my grandmother,"
or "I'll go live with my grandmother," or he lets me know
what his grandmother does. And -- after talking with him,
I don't see that there's too much restraint or control
over what David does.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IN THE MATTER OF DAVID M. KING, II
an Infant, age 3½ years

ORDER

On February 24, 1978 came Karen L. West, the natural mother of the above named infant, in person and by counsel and Gladys King, the paternal grandmother of the above named infant on motion by Karen L. West for a rehearing of the Order of this Court granting temporary limited visitation to the paternal grandmother, and upon representation to the Court that said visitations had proved not to be in the best interest of the child, and was argued by counsel.

UPON CONSIDERATION WHEREOF, and upon the evidence presented ore tenus, the Court finds that the best interest of the infant, David M. King, II, will be promoted by allowing the said Gladys King to have temporary limited visitation with said infant; and the Court doth ORDER that said visitations shall be on the second and fourth Friday of each month from 12:00 Noon on Friday to 6:30 P.M. on Saturday.

The Court doth further ORDER that the transcript of these proceedings shall be and are hereby made a part of this record.

Karen L. West King, by her counsel, excepted the Order of the Court permitting visitation on the ground that the Court was without jurisdiction to hear this matter, that the grandmother had no standing before this Court and that such visitations were not in the best interest of said infant.

I ask for this:

ENTER THIS 24 DAY OF February 1978

s/ D. R. Taylor
Attorney for Gladys King
Seen and objected to:

s/ Russell M. Carneal
JUDGE

s/ Diane L. Abdelnour
Attorney for Karen L. West King

Handwritten signature: Claude A. [illegible]

ASSIGNMENTS OF ERROR:

1. The Juvenile Court had no original jurisdiction to award rights of visitation to a grandmother and the Circuit Court thus had no jurisdiction to hear the question on appeal and erred in hearing the matter and overruling Appellant's Motion to Stay its Order of visitation.

2. The Circuit Court had no original in rem jurisdiction over the question of visitation by a non parent. A grandparent has no standing to move the Court for an Order of visitation of a grandchild as a non parent is not a proper party in interest.

3. The Court violated Appellant's constitutional rights under the due process and privileges and immunities clauses of the Fourteenth Amendment to the constitution of the United States in that it unreasonably interfered with the liberty of a parent to direct the upbringing and associations of a child under that parents control.

4. The Court erred in Ordering visitation by a non parent over the strong objection of the parent and contrary to the recommendation of the local Department of Social Services and the uncontradicted expert opinion of a psychologist in that the Order was clearly contrary to the evidence as to the best interest of the child and is contrary to the law of substantially all jurisdictions which have ruled in the question.