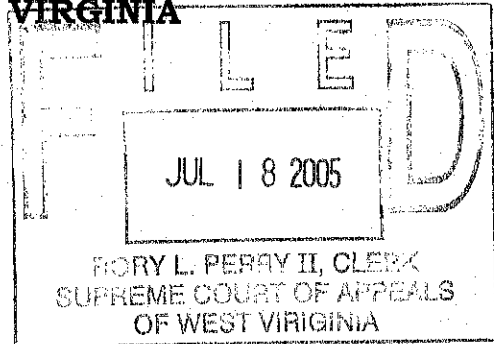


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**FROM THE CIRCUIT COURT OF CABELL
COUNTY, WEST VIRGINIA**



In re: The Matter of:

**Daisy Keesee &
John Keesee, (now deceased)**

Petitioner/Respondent

v.

Appeal No. 32696

**Kimberly Turley (formally Keesee)
& Kevin L. Keesee,**

Respondent/Petitioner

RESPONSE TO PETITION FOR APPEAL

AS FILED BY DAISY KEESEE

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Now comes the Respondent, Daisy Keesee (petitioner below), pursuant to Rule 4 of the West Virginia Rules of Civil Procedure and respectfully responds to the Petitioners brief in which she argues that the family court's decision and the Honorable Judge A. Ferguson's appeal order affirming the trial court's decision granting grandparent visitation be overturned.

FACTS AND PROCEDURAL HISTORY

Mrs. Keesee is the paternal grandparent of Hollie Nicole Keesee and Ashley Mae Keesee. Mrs. Keesee's husband, John, is now deceased. Mr. Keesee died on the 6th day of November, 2004, in St. Mary's Hospital of a lingering illness. Mr. Keesee's deathbed wish was to see his grandchildren one last time, but the petitioner refused to permit the children to visit, even though her voiced concern at trial was that he "drank beer" and "grew pot."

Until the divorce was granted between Kimberly Turley and Kevin Keesee their children spent almost every weekend with Daisy and John Keesee. After the divorce, when Kimberly Turley did not get all of the furniture which she claimed she was entitled to, she wrote Mrs. Keesee and told her if she did not make her son give her the things she wanted, she would not let them see the grandchildren. A copy of the note was entered into the record. Mrs. Keesee further refused to become embroiled in the argument. True to her threat, Mrs. Turley has withheld the children from the grandmother. Because the appellant refused contact with appellees and their grandchildren, the appellees petitioned the Family Court of Cabell County for court ordered grandparent visitation.

In an Order entered on the 1st day of July, 2004, the Cabell County Family Court granted grandparent visitation to the Keesees. The petitioning mother appealed that Order to the Circuit Court. On the 20th day of August, 2004, Judge Dan O'Hanlon remanded the case to the Family Court for the Family Court to address the factors enumerated in W. Va. Code § 48-10-502 and to address the best interests of the child (see attached, Exhibit A). The petitioner alleges that "[o]f specific concern" to the Circuit Court was the trial court's lack of findings dealing with the mother's fears. To put the mother's alleged fears at rest, the Court admonished Mrs. Keesee not to allow the father to be around the children or to have any contact with them while visitation was being exercised and Mrs. Keesee assured the Court she would abide by the Court's order. The mother voices concern that the father might harm her or the children while at the same time she acknowledges he knows where she now lives. This statement is disingenuous in that it attempts to indicate the Circuit Court had a great concern of the children's safety. In fact, as seen in Judge O'Hanlon's Order, this ground for remand was listed secondary to the trial court's failure to use the factors found in the Code. Only briefly does the Order address safety, and then only to make specific findings.

On August 26, 2004 the Cabell County Family Court entered on Order articulating his compliance with the law in granting visitation. The petitioner again appealed, but this time the Cabell County Circuit Court affirmed Judge Anderson's ruling. Thus, pursuant to that Order, Mrs. Keesee is granted visitation with Hollie and Ashlee on the 1st and 3rd Saturday of each month from 1 p.m. to 6 p.m.

STANDARD OF REVIEW

The West Virginia Supreme Court of Appeals review a final order and ultimate disposition of a family court order under an abuse of discretion standard. The standard of review of findings of fact made by a family court is clearly erroneous and the standard applied to the application of law to the facts is an abuse of discretion. Questions of law and statutory interpretations are reviewed de novo. *John P.W. v. Dawn D.O.*, 214 W.Va. 702; 591 SE 2d 260 (2003), and *State Ex rel. W.V. Dept. of Health and Human Resources v. Carpenter*, 211 W.Va. 176, 564 SE 2d 171 (2002).

DISCUSSION OF LAW

- I. The Trial Court and Circuit Court's Decision to award Grandparent visitation was not an abuse of discretion.

The Order on remand of the trial court (exhibit A) deals specifically with the enumerated factors in W. Va. Code § 48-10-502.

The trial court found that grandparent visitation was in the children's best interests. The trial court noted that the children's ages were appropriate for grandparent visitation (as required in (1)); The Court noted that the children's relationship with the grandparent was a good relationship (as required in (2)); The Court considered the relationship between the parent and grandparent (as required in (3)); the Court considered the time elapsed since the children's last visit with Daisy Keese (as required (4)). Further, noted in the Order, the Court obviously considered the current custodial arrangement and considered that the respondent grandparent's son did not have or share custody of the children. Continuing with the factors enumerated in W. Va. Code

§ 48-10-502, the trial court found the grandparents filing was in good faith (as required in (8)); The Court noted that there was not any evidence of physical, emotional or sexual abuse or neglect being performed, procured, assisted or condoned by the grandparent (as required in (9)); The Court considered whether the child had resided with the grandparent in the past (as required in (10)); The Court noted whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparents' residence, the Court found that the children had spent significant time with the grandparents (as required in (11)); The Court obviously took into consideration the preference of the parents with regards to the requested visitation, because that was the objection of the mother (as required in (12)); The Court considered all other factors relevant to the best interest of the child (as required in (13)).

Further, this reviewing Court must also understand this Order was upheld by the Circuit Court upon the mother's Appeal to the Cabell County Circuit Court.

Judge Anderson did not abuse his discretion in awarding Ms. Keesee visitation with her grandchildren. Instead, he diligently followed the law. The appellant, Ms. Turley, lists her chief concern (or failure of the trial and Circuit Court to consider) as the children's safety. She cites a litany of safety concerns, but when analyzed with any scrutiny, the list can be seen for what it is - a sad attempt to prevent a grandmother from seeing her grandchildren.

The list as found in the **appellee's** brief is as follows.

1. The grandparents have daily contact with the children's father. Assuming, *arguendo*, this is a correct statement, the trial court's Order on Remand reaffirms the prior

Order. The trial court's prior Order specifically stated that the court finds that substantial evidence exists to prohibit any contact by and between Kevin Keesee and his children. However, the court does not find any evidence that would demonstrate the children should not have visitation with the petitioner. Further, *W. Va. Code § 48-10-1201* states that [Any grandparent who knowingly allows contact between a minor grandchild and a parent or other person who has been precluded visitation rights with the child by court order is guilty of a misdemeanor] obviously the statute makes it a crime permitting Kevin to see the children during visitation.

2. In the late 1990's, the grandfather was convicted of cultivating marijuana and daily used alcohol. This is now a moot issue. John Keesee is deceased. To include such an assertive argument as a threat to the children's safety evinces the hate this mother feels for the grandparents. In fact, she refused John Keesee's dying wish to see his grandchildren within his last illness at St. Mary's Hospital.
3. The grandparents have a close relationship with their son, Buddy. Buddy lives next door and was arrested on drug charges. The mother cleverly does not reveal the outcome of these criminal charges, and offers as proof of said charges a blurb from the local newspaper. This allegation, assuming *arguendo*, its true, is not a safety concern. Is the appellant mother alleging that Hollie and Ashlee will become Buddy and Kevin from 5 (five) hours

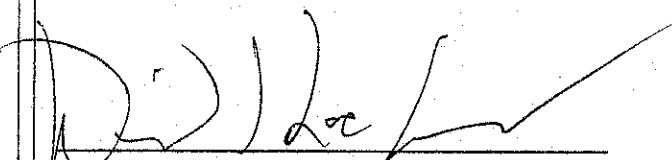
visitation a week with their grandmother? The appellee asks the appeals court to note that all the specific allegations are not made against Daisy. Instead, the petitioning mother is left to make general allegations that drugs are regularly in her home (#6), and she condoned their son's abusive behavior (#7) citing the general record. This is clearly a case of spite and revenge on the part of the mother and has nothing to do with the safety of the children or the bad influence the grandmother will have on the grandchildren.

RELIEF REQUESTED

Wherefore, uphold the trial court and Circuit Court's decision allowing this elderly woman to see her grandchildren! The appellant mother prevented John Keesee from seeing his grandchildren. She successfully stalled until he died. Daisy Keesee requests that this appeals court not permit the same to happen to her.

DAISY KEESEE,

By Counsel



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IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

KIMBERLY TURLEY (formerly Keesee),
Petitioner

Judge Daniel P. O'Hanlon
Civil Action No. 04-D-0073

and

DAISY KEESEE &
JOHN KEESEE,
Respondents

and

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
BUREAU FOR CHILD SUPPORT ENFORCEMENT,
Respondent

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ADELL C SANDLER
CIRCUIT CLERK
CABELL WV

ORDER REMANDING MATTER TO FAMILY COURT

This case came before this court on June 8, 2004 when the Petitioner filed a petition for appeal from Family Court Judge, Ronald Anderson's **ORDER** granting grandparent visitation to the Respondents, which was not entered until August 10, 2004. Respondents filed a response on June 22, 2004.

West Virginia Code § 48-10-501 places the following requirement on a decision to grant grandparent visitation, "[t]he circuit court shall grant reasonable visitation to a grandparent upon a finding that visitation would be in the best interests of the child and would not substantially interfere with the parent-child relationship." The Family Court Judge made no indication either during the hearing or in his Order that his decision was made because grandparent visitation was in the best interest of the children or that grandparent visitation would not substantially interfere with the parent-child relationship.