



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of Visits with Children L.P.J. and B.M.J.

GLENNA MUELLER,

Appellant,

v.

MICHAEL JOHNSON,

Respondent. No. 85481-0-I

DIVISION ONE

UNPUBLISHED OPINION

BOWMAN, J. Glenna Mueller dismissal of her

petition for nonparental relative visitation for failing to show her minor

grandchildren are likely to suffer harm or a substantial risk of harm if the court

denied visitation. She argues that the trial court erred by dismissing her petition

without an evidentiary hearing. We affirm.

FACTS

L.J. and B.J. are the children of Katie Dyes and Michael Johnson. Dyes

and Johnson shared custody of L.J. and B.J. subject to a parenting plan. Under

the parenting plan, the children lived with Johnson from Tuesday to Friday and



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

with Dyes at all other times. In January 2023, Dyes passed away. Johnson then assumed full custody of nine-year-old L.J. and seven-year-old B.J.

Mueller is the maternal grandmother of L.J. and B.J. In April 2023,

Mueller petitioned under chapter 26.11 RCW for nonparental relative visitation

with the children. Mueller requested visits with L.J. and B.J. Mueller asserted that she had an ongoing and substantial relationship with

L.J. and B.J. because She explained that Dyes and the children lived with her off and on for the past several years the children split their time between her and

, every Thursday to Monday morning

since mid- Mueller said that before death, she ile Dyes was at work.

Mueller asserted that the children were at substantial risk of harm without

visitation because they already lost their mother, consistent relationship with [her], . . . they will experience additional She said that the children need [her] for love and support and to make sure they

Mueller filed a declaration with her petition. She asserted that in the three

months since Dyes passed, she had while Johnson was present. Mueller declared that

] relationship

harmful way:

With the loss of their mother, the children experienced one of the greatest losses a human can endure. The children should not have to lose their relationship with their grandmother and their connection with their mother s side of the family too. They have aunts, uncles and cousins that all miss them very much. Johnson objected to the petition. In his response, Johnson said that he

lived with

Mueller every Thursday to Monday. Johnson also disa that the children would lose contact with her if



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

the court did not order visitation because he arranges visits with other family

On May 24, 2023, the court reviewed the petition. It found that Johnson

that demonstrate [that] he is not a fit parent or that significant harm to the children

would result from his decision to limit visits with [Mueller] Petition for Visits So, the court dismissed the petition without a

hearing.

Mueller moved for reconsideration. She argued the trial court erroneously

required her to show that Johnson is unfit to parent before holding an evidentiary

hearing. The court denied reconsideration. It petition because she [that] agreed that the children would benefit from

maintaining a relationshi , so Mueller did not

satisfy the harm element of RCW 26.11.040(3).

Mueller appeals. ANALYSIS

Mueller argues that the trial court erred by dismissing her petition. We

disagree.

We review a trial court s decision on a petition for nonparental visitation for

an abuse of discretion. In re Visits with R.V., 14 Wn. App. 2d 211, 220-21, 470

P.3d 531 (2020). Id. at

221 1 (quoting In re Custody of L.M.S., 187 Wn.2d 567, 574, 387 P.3d 707

rounds if the record does not support its

In re Visits

with A.S.A., 21 Wn. App. 2d 474, 481, 507 P.3d 28 (2022) (quoting State v.



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)).

Parents have a fundamental right to make decisions concerning the rearing of their children, including the right to decide on visitation with grandparents. *Troxel v. Granville*, 530 U.S. 57, 69-70, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). Recognizing this fundamental right, chapter 26.11 RCW provides a narrow basis for nonparental relatives to petition for court-ordered visitation. See *R.V.*, 14 Wn. App. 2d at 218-19.

A party seeking nonparental visitation must petition the court, asserting that (1) the petitioner and child have an ongoing and substantial relationship, (2)

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Internal quotation marks omitted. a , .030(6).

The petitioner must also file a declaration specific facts establish visitation is warranted. *R.V.*, 14 Wn. App. 2d at 219 (quoting *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 346, 227 P.3d 1284 (2010)); RCW 26.11.030(5), (6).

A trial court will hold an evidentiary hearing on the request for nonparental visitation if it finds from the petition and declaration that it is more likely than not that it will grant visitation. RCW 26.11.030(8). But if the petitioner does not meet this threshold showing, a

R.V., 14 Wn. App. 2d at 219; RCW 26.11.030(8). If the court determines an evidentiary hearing is not warranted, it will dismiss the petition. See *R.V.*, 14 Wn.



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

App. 2d at 228; A.S.A., 21 Wn. App. 2d at 481, 483.

If the court conducts a hearing, it starts with the presumption that a fit parent's decision to deny visitation is in the best interest of the child and does not create a likelihood of harm or a substantial risk of harm to the child. R.V., 14 Wn. App. 2d at 219 (quoting RCW 26.11.040(2)). A petitioner can rebut the presumption that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child were not granted. A.S.A., 21 Wn. App. 2d at 481 (quoting RCW 26.11.040(3)). If the petitioner meets this burden of proof at a hearing, then the petitioner must establish by clear and convincing evidence that visitation is in the best interest of the child. RCW 26.11.040(4). If the petitioner meets both burdens of proof, then the court should grant visitation. RCW 26.11.040(1)(a). Here, the court demonstrated that [Johnson] is not a fit parent or that significant harm to the children would result from his decision to limit visits with [Mueller] to a supervised visitation schedule. It concluded Mueller's Petition for Visitation and dismissed her petition. Mueller argues that the trial court erred because it required her to show that Johnson is an unfit parent before holding an evidentiary hearing, contrary to the statutory scheme. But Mueller misconstrues the court's holding. It is true that in its initial order, the trial court held that Mueller failed to show that Johnson is an unfit parent. But the court also determined Mueller failed to show that



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

And on reconsideration, the trial

court clarified that it dismissed a prima facie case that the children are likely to suffer harm or there is a risk of

substantial harm to the children if the petition is not granted, not because

Mueller failed to show that Johnson is an unfit parent. The trial court applied the correct legal standard to the petition.

Mueller argues that even if the trial court applied the correct standard, it erred by concluding that she failed to make a threshold showing of harm. Again, we disagree.

A petitioner seeking nonparental visitation must allege that the child will suffer substantial harm if the court does not grant visitation. RCW

26.11.030(5)(b); see also RCW 26.11.040(3). The petition should focus on the relationship between the petitioner and the child and the harm that will come to

the child if they are denied contact with the petitioner. See A.S.A., 21 Wn. App.

2d at 482. That is, the petitioner must show the petitioner brings

something unique to the child without which the child would suffer harm. Id.

Belief that visitation might better a child's quality of life does not justify

state intervention. In re Custody of Smith, 137 Wn.2d 1, 20, 969 P.2d 21 (1998).

Nor does the fact that lack of visitation may sever the child from half of their

familial heritage. R.V., 14 Wn. App. 2d at 225. While a child may benefit from a

continuing relationship with their extended family members, a petitioner does not

show harm merely by claiming that the child will lose such a benefit. A.S.A., 21



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

Wn. App. 2d at 485 (Pennell, J., concurring). Still, our Supreme Court has recognized that when a child has enjoyed a substantial relationship with a third person, arbitrarily depriving the child of the relationship could cause them severe psychological harm. Smith, 137 Wn.2d at 20. That is not the case here.

Mueller alleges her grandchildren will suffer harm if the court does not grant her petition because [t]he children have already lost their mother, if they also lose their consistent relationship with [her], . . . they will experience She also claims that [her] . . . to make sure they have relationships with their maternal fami But Mueller agrees that Johnson has arranged visits and that she has seen the children several times.

So, she fails to show that Johnson has arbitrarily deprived her of a relationship d have more frequent contact or unsupervised visits with her does not warrant state intervention.

Citing a New Jersey case, Moriarty v. Bradt, 177 N.J. 84, 827 A.2d 203 (2003), Mueller argues that she satisfied her threshold burden to show harm. In Moriarty her death. 177 N.J. at 90-91. The trial court granted visitation. Id. at 93. In doing so, the trial court recognized the importance of maintaining familial relationships after the death of a parent. Id. at 121. But, found that the grandparents showed harm based on substantial evidence that the father was seeking to alienate the grandparents because of his hostile relationship with them. Id. That evidence included expert testimony opining that



Glenna Mueller, Appellant V. Michael Johnson, Respondent

2024 | Cited 0 times | Court of Appeals of Washington | April 22, 2024

without the requested visitation, , would believe essentially that half of them, that their mother s half is evil, is

damaged, is bad, and that this would cause self-esteem problems for the children

since the children know that they re made up of their mother and their father. Id.

The New Jersey Supreme Court affirmed the trial court, concluding that the

record supported its finding of harm and that such a finding presumption in favor of [the father] Id. at 122.

Mueller makes no effort to show that the New Jersey nonparental statutory

Even so, this case is different from Moriarity.

Mueller does not argue that Johnson is hostile to her or seeks to alienate her

from her grandchildren. Instead, she alleges that Johnson has not offered her

the type and frequency of visits that she desires. The trial court did not abuse its discretion by dismissing

We affirm.

WE CONCUR:

