

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal Nos. 2006AP2692, 2006AP2693

Cir. Ct. Nos. 2004JG3, 2004JG4

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE GRANDPARENTAL VISITATION OF
DEREK L. C.:**

KATHRYN M.,

PETITIONER-APPELLANT,

v.

CYNTHIA A.,

RESPONDENT-RESPONDENT.

**IN THE MATTER OF THE GRANDPARENTAL VISITATION OF
IVY M. C.:**

KATHRYN M.,

PETITIONER-APPELLANT,

v.

CYNTHIA A.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Sheboygan County:
JAMES J. BOLGERT, Judge. *Affirmed.*

Before Brown, C.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Kathryn M. appeals from the order of the circuit court that denied her motion for grandparent visitation with overnights and holidays. We conclude that the circuit court properly exercised its discretion when it considered the best interests of the children and denied the motion. We affirm.

¶2 Cynthia A. was appointed the guardian of Derek L. C. and Ivy M. C. in March 2004, because the children's mother is in prison. Cynthia A. is the children's paternal grandmother. By an order dated September 7, 2005, the children's maternal grandmother, Kathryn M., was granted grandparent visitation that did not include overnight visits. In 2006, Kathryn M. petitioned the court to allow her to have overnight and holiday visits. The court appointed a guardian *ad litem* to represent the children. Cynthia A. objected to the overnight and holiday visits. The court held a hearing on the matter. The guardian *ad litem* stated that he did not object to the overnight and holiday visits. A social worker also testified that she supported the visits.

¶3 The trial court denied the motion. The trial court characterized the dispute as one between a grandparent and a guardian, and the guardian stood in the place of the parents. The trial court said that there was a "heavy presumption" in favor of the guardian's wishes, and that while it was in the children's best interests to have some contact with their mother and her family, the existing visitation schedule accommodated that interest. The trial court further stated that it would

not grant the additional periods of visitation over the objections of the children's guardian.

¶4 Kathryn M. has represented herself in this appeal, and filed a very short brief that is not supported by legal authority. Neither Cynthia A. nor the guardian *ad litem* have filed briefs. We have, therefore, only the record on which to base our decision. Based on that record, we conclude that the trial court acted to protect the best interests of the children.

¶5 Kathryn M. raises the issue of whether the circuit court applied the correct standard when it found that the guardian stands in the place of the parents. While this issue has some interest, she has not cited to any legal authority to support it, and the other parties have not responded. We decline, therefore, to decide this issue. For the purposes of this opinion, however, we will assume without deciding that the trial court may have erred when it made this finding. We still, however, affirm the trial court's decision.

¶6 The decision whether to grant or deny visitation is within the trial court's discretion. *Martin L. v. Julie R. L.*, 2007 WI App 37, ¶4, 299 Wis. 2d 768, 731 N.W.2d 288 (citation omitted). Three conditions must be satisfied before a trial court may grant grandparents visitation rights: "(1) the grandparents must have a parent-like relationship with the child, (2) the parents must have notice of the hearing, and (3) the court must determine that grandparent visitation is in the child's best interest." *Rogers v. Rogers*, 2007 WI App 50, ¶11, 300 Wis. 2d 532, 731 N.W.2d 347. In *Rogers*, we concluded that the circuit court properly considered the children's best interests when it denied a request for court-ordered placement with the grandparents. *Id.*, ¶16. The trial court had considered, among other things, that the children's mother allowed the grandparents to have visits

with the children, and that grandparents had considerable contact with the children, including seeing them at their school and sporting activities. *Id.*, ¶¶16 and 21.

¶7 In this case, the trial court considered that the grandmother had court-ordered visitation every other Saturday for a full day. Moreover, the record suggests that there were some concerns about the visits with Kathryn M. While the social worker who testified supported the visits, her testimony was hardly unequivocal. When asked if extending the visits with Kathryn M. to include overnights would “disrupt the stability” in the children’s lives, the social worker responded that she was “hoping that wouldn’t be the result.” The record also indicates that there was a lurking issue about three men who the court had previously ordered not to be allowed to visit the children unless Kathryn M. was present. Two of these men apparently have a record of sexual assaults. While we note that the trial court indicated that these men might no longer be of concern, the order that Kathryn M. be present if these men visit the children still appears to be in effect.

¶8 Based on this record, we conclude that the trial court considered the best interests of the children, and on this basis, denied the motion to extend the visits to include overnights and holidays. This was a proper exercise of the trial court’s discretion, and we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

