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DISTRICT II/IV

February 13, 2015

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Helen L. Poynter
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You are hereby notified that the Court has entered the following opinion and order:

2014AP432 In the matter of the grandparental visitation rights of Helen L. Poynter: Helen L. Poynter v. Lynn Poynter (L.C. # 2013FA1024)

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ.

Helen Poynter, pro se, appeals a circuit court order that dismissed Helen's petition for grandparent visitation.[1] Helen argues that visitation is in the children's best interest. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[2] We summarily affirm.

In July 2013, Helen petitioned for visitation with her grandsons. Helen sought grandparent visitation under WIS. STAT. § 767.43(1) and the circuit court's equitable power to

[1] Because the parties share a surname, we use their first names for ease of reading.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

grant visitation. Helen also moved the circuit court to appoint a guardian ad litem to represent the boys' best interests.

The boys' parents, Clifton and Lynn Poynter, moved to dismiss the petition. Clifton and Lynn argued that Helen lacked standing to seek visitation under WIS. STAT. § 767.43(1) because there was no underlying action affecting the family. The circuit court found Helen lacked standing and also took judicial notice of the fact that there was a restraining order in place that prohibited Helen from having contact with her grandsons for a four-year period. The court determined there was no basis for it to act in equity to order visitation that was prohibited by the restraining order. Accordingly, the court dismissed Helen's petition.

WISCONSIN STAT. § 767.43(1) allows grandparents to petition the court to order visitation between grandparents and their grandchildren. However, a grandparent does not have standing to petition the court for visitation under § 767.43(1) unless "an underlying action affecting the family unit has previously been filed." ***Marquardt v. Hegemann-Glascock***, 190 Wis. 2d 447, 452, 526 N.W.2d 834 (Ct. App. 1994). This is because "the legislature did not intend that the state intervene in the parents' decision regarding their children's best interests when the family unit is intact." ***Id.*** If there is an underlying action affecting the family, "ordering visitation with non-parents may help to mitigate the trauma and impact of a dissolving family relationship." ***Id.*** at 453 (citation omitted). Thus, there must be "a previously filed action [that] threatens to expose the children to the trauma of a dissolving family relationship [to] justif[y] … the state … interfere[ing] with the parents' decisions regarding what is in the best interest of their children." ***Id.*** (citation omitted).

Here, it is undisputed that Clifton and Lynn are married; that Helen's grandchildren are marital children; and that no action affecting the family unit had been filed when Helen petitioned for grandparent visitation. Accordingly, the circuit court properly determined that Helen did not have standing to seek grandparent visitation under WIS. STAT. § 767.43(1)

We also conclude that we have no basis to disturb the circuit court's decision to deny equitable relief. In ***Holtzman v. Knott***, 193 Wis. 2d 649, 693, 533 N.W.2d 419 (1995), the supreme court held that "a circuit court has equitable power to hear a petition for visitation when it determines that the petitioner has a parent-like relationship with the child." ***Holtzman***, however, concerned visitation in the context of a terminated same-sex relationship, and we have expressed doubt as to whether it applies in the grandparent visitation context. ***Rogers v. Rogers***, 2007 WI App 50, ¶14, 300 Wis. 2d 532, 731 N.W.2d 347 ("[W]e question the relevance of ***Holtzman*** to this case. While ***Holtzman*** is an important nonparent visitation case, it is not a grandparent visitation case and the supreme court's only reference to [the grandparent visitation statute] was to explain why the statute did not apply."). Assuming without deciding that the circuit court otherwise had equitable power to grant visitation in this case, we agree with the circuit court that the restraining order prohibiting contact between Helen and her grandsons precluded that relief.[3]

[3] To the extent Helen challenges the restraining order, we note that this appeal is from the order dismissing Helen's petition for grandparent visitation; the restraining order was issued in a separate case and is not before us in this appeal.

Finally, because we determine that the circuit court properly dismissed Helen's petition, we do not reach Helen's argument that the court should have appointed a guardian ad litem to represent the boys' best interests.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals