

STATE OF MICHIGAN

COURT OF APPEALS

IN THE MATTER OF:

ALYSSA ANNE KEAST and
AMBER MARIE KEAST,

Court of Appeals No. 279820

Minors.

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Lower Court No. 05-06388-NA

**APPELLEES TIMOTHY AND BARBARA ATWOOD'S
MOTION TO SET ASIDE STAY OF GRANDPARENT VISITATION**

This Honorable Court granted the Appellant's Motion for Stay of Proceedings on August 9, 2007, the same day the Motion was served on Appellees. The Court granted the Motion without benefit of response from the Appellees. The Appellees now move this Court to lift the stay to allow grandparent visitation.

The Appellees are the maternal grandparents of two little girls, Alyssa (DOB 1/22/2000) and Amber (DOB 8/18/2002) Keast. These children are currently placed with in foster care with the Appellant Nicole Coppess.

The subject of this appeal is the Appellee's Motion for Grandparent Visitation, which was heard and decided by the trial court. On August 5, 2007, the trial court issued its Opinion and Order

Relative to Maternal Grandparents Motion for Visitation, wherein the court found it to be in the best interest of the minor children to have visitation with their grandparents. (Exhibit 1).

MCR 7.209(A) contains prerequisites to filing a motion for a stay of proceedings in the Court of Appeals. Specifically, the rule states, "A motion for bond or for a stay pending appeal may not be filed in the Court of Appeals unless such a motion was decided by the trial court." MCL 7.209(A)(2). The Appellant Foster Mother never sought such a stay in the trial court prior to bringing her appeal. The trial court did deny a motion for a stay, but that motion was orally made by the Department of Human Services, not Appellant Coppess, and only dealt with the trial court's order relative to the Appellees' Motion pursuant to MCL 710.45. (Exhibit 2). Because Appellant Coppess failed to fulfill this prerequisite, the stay of proceedings should be lifted.

Perhaps in an attempt to get around this requirement, Appellant Coppess cited the Adoption Code, specifically MCL 710.65(2), as a basis for her Motion to Stay. This statute provides, "An order of the court entered **under this chapter** shall not be stayed pending appeal unless ordered by the court of appeals upon motion for good cause shown and on such terms as are deemed just." (Emphasis added). The order allowing grandparent visitation was not entered pursuant to the Adoption Code, but pursuant to MCL 722.27b, which is part of the Child Custody Act of 1970. Therefore, this statute does not apply, and Appellant Coppess was required to first seek an order to stay through the trial court.

Even if MCL 710.65(2) did apply, Appellant Coppess failed to show good cause for a stay to enter. As grounds for her Motion to Stay, Appellant Coppess claimed that the grandparent visitation statute does not apply to situations where parental rights have been terminated. The grandparent visitation statute, MCL 722.27b, clearly provides for specific situations when a grandparent has standing to request visitation. That statute provides as follows:

(1) A child's grandparent may seek a grand-parenting time order under 1 or more of the following circumstances:

...
(e) Except as otherwise provided in subsection (13), **legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of a parent.**
...

(Emphasis added). A recent published opinion of the Court of Appeals shows that Appellant Coppess is incorrect in her assertion that the grandparent visitation statute does not apply in situations where parental rights have been terminated. This Court stated that, for purposes of the grandparent visitation statute, **children are considered to be placed outside of the parents' home in situations where the parents have "temporarily or permanently lost legal control over their children."** *Brinkley v Brinkley*, __ Mich App __; __ NW2d __ (October 16, 2007) (slip op at 6) (emphasis added). (Exhibit 3). Notably, the *Brinkley* Court also noted that this type of situation involves "special circumstances where there are legitimate reasons for recognizing heightened protection of the grandparent-grandchild relationship." *Id.* The minor children at issue are currently placed in a home outside of that of a parent; therefore, as their maternal grandparents, the Atwoods may be granted grandparenting time pursuant to MCL 722.27b.

Appellant Coppess urged this Court to adopt a restrictive reading of the statute to prevent grandparent visitation. MCL 722.26(1), however, applies to the Child Custody Act of 1970, of which the grandparent visitation statute is a part, and provides that it must be liberally construed and applied. *Mason v Simmons*, 267 Mich App 188, 194, 704 NW2d 104 (2005). Specifically, MCL 722.26(1) provides, "This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved."

Appellant Coppess contends that the Appellee grandparents' legal connection to the minor children has been severed. The Child Custody Act, however, provides that a legal connection

exists. MCL 722.22(e) provides that a grandparent is defined as the “natural or adoptive parent of a child's natural or adoptive parent.” As the Atwoods are the natural parents of the children’s natural mother, they have a legal connection under the grandparent visitation statute to request visitation with the minor children. The statute clearly and unambiguously allows for grandparent visitation when the child’s parent no longer has legal custody of the child, or the child is placed outside of and does not reside in the home of a parent. Either situation applies to the case before the Court.

The grandparent visitation statute does not contemplate that the termination of parental rights in an abuse or neglect action severs the grandparent relationship. In fact, this is explicitly excluded by the grandparent visitation statute, which references adoption as an impediment to grand-parenting time (except in step-parent adoptions), but does not state that the termination of parental rights has the same result. MCL 722.22(13).

Appellant Coppess also argued in her Motion to Stay that the children experienced periods of regression after visits with their grandparents. The testimony at the hearing did not support that contention. None of the witnesses could say affirmatively what the regression was caused by. All of the witnesses were co-workers and social friends of the foster-care mother. (8/2/07 Transcript, p. 154). Since they worked with the foster-care mother, they would hold impromptu meetings with her in the office and at social gatherings to discuss the progress of the children. (8/2/07 Transcript, p. 167). They did not keep notes of these discussions or provide any documentation. It should be noted that the foster-care mother talked of all the problems that were related to the visitation. However, she also told the children to call 911 if someone was hurting them, prior to sending them to visitation with the grandparents. She refused to provide anything for the children to go to prior visitations – no pajamas, change of clothes, toothbrush, blanket or stuffed animal. (8/2/07 Transcript, p. 127).

Finally, Appellant Coppess argues that the visitation time awarded to the grandparents in this case is too extensive, and that permanency for the minor children cannot be achieved as quickly if such visitation is allowed. First, it should be noted that the visitation was designed to not infringe on the foster mother's time with the children and primary was occurring when the foster care mother was working. In lieu of daycare, the children would be with their grandparents. The cost of daycare for the foster mother (or the state) would be eliminated and the children would continue in their relationship with their grandmother and grandfather.

CONCLUSION AND RELIEF REQUESTED

Appellant Coppess failed to follow the court rules by first requesting a stay from the trial court before moving this Court for a stay of proceedings. Appellant Coppess also failed to show good cause or that any irreparable harm would result to the children as a result of visits with their grandparents. As such, Appellees Timothy and Barbara Atwood respectfully request that this Honorable Court lift the stay imposed on grandparent visitation and allow them to see their granddaughters.

Respectfully submitted,

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Dated: November 1, 2007

By


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