

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 3, 2008

502738

In the Matter of FLOYD L. COUSE
JR. et al.,

Appellants,

v

MEMORANDUM AND ORDER

PEGGY S. COUSE et al.,
Respondents.

(And Another Related Proceeding.)

Calendar Date: February 21, 2008

Before: Peters, J.P., Carpinello, Kane, Kavanagh and
Stein, JJ.

Samuel D. Castellino, Elmira, for appellants.

Norbert Higgins, Law Guardian, Binghamton.

Stein, J.

Appeals from two orders of the Family Court of Chenango County (Sullivan, J.), entered June 1, 2007, which dismissed petitioners' applications, in two proceedings pursuant to Family Ct Act article 6, for visitation with their grandchildren.

Petitioners are the biological parents of respondent Peggy S. Couse and the grandparents of her three children. Petitioners filed two petitions seeking visitation with their grandchildren. Family Court dismissed the petitions, sua sponte, on the basis that petitioners were not entitled to visitation, as a matter of law, unless their daughter was no longer alive. Although Family Court did not specifically denominate the issue as such, it

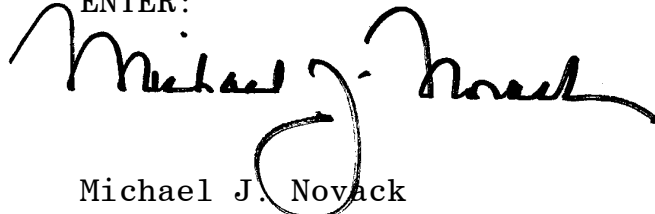
essentially found that petitioners lacked standing.

Family Court erred in dismissing the petitions. While it is true that grandparents have an absolute right to petition for visitation with their grandchildren where either or both of the children's parents has died (see Domestic Relations Law § 72; Family Ct Act § 651 [b]; Matter of Emanuel S. v Joseph E., 78 NY2d 178 [1991]), that right also exists when the grandparents establish circumstances in "which equity would see fit to intervene" (Domestic Relations Law § 72 [1]; see Matter of Emanuel S. v Joseph E., 78 NY2d at 181; Matter of Varney v McKee, 44 AD3d 1178 [2007]). Here, Family Court failed to examine whether petitioners had established equitable circumstances which would permit the court to entertain their petitions and, if so, whether visitation would be in the children's best interests (see Domestic Relations Law § 72 [1]; Family Ct Act § 651 [b]; Matter of Emanuel S. v Joseph E., supra; Matter of Varney v McKee, supra). Accordingly, the matters must be remitted to Family Court.

Peters, J.P., Carpinello, Kane and Kavanagh, JJ., concur.

ORDERED that the orders are reversed, on the law, without costs, and matters remitted to the Family Court of Chenango County for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court