

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

Decided and Entered: October 16, 2008

503334

In the Matter of DOLORES A.
BASSETT,

Appellant,

v

MEMORANDUM AND ORDER

ALLISON McGRAW,

Respondent,
et al.,
Respondent.

Calendar Date: September 10, 2008

Before: Mercure, J.P., Peters, Spain, Malone Jr. and Stein, JJ.

Christopher Hammond, Cooperstown, for appellant.

Andrew M. Dunn, Oneida, for respondent.

Joseph Nalli, Law Guardian, Fort Plain.

Malone Jr., J.

Appeal from an order of the Family Court of Otsego County (Coccoma, J.), entered May 24, 2007, which dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for visitation with the subject child.

Petitioner, the paternal grandmother of the subject child (born in 2002), commenced this proceeding seeking unsupervised visitation with him. At the time, respondent Allison McGraw (hereinafter respondent), the child's mother, had custody of the child and respondent Joseph Bassett, the child's father, had supervised visitation. Respondent opposed petitioner's

application and, after a hearing, Family Court dismissed the petition. Petitioner now appeals.

"When grandparents seek visitation under [Domestic Relations Law §] 72 (1), the court must undertake a two-part inquiry. 'First, [the court] must find standing based on death or equitable circumstances'; and '[i]f [the court] concludes that the grandparents have established the right to be heard, then it must determine if visitation is in the best interest of the grandchild'" (Matter of E.S. v P.D., 8 NY3d 150, 157 [2007], quoting Matter of Emanuel S. v Joseph E., 78 NY2d 178, 181 [1991]). Standing is conferred by the court in its discretion after consideration of all the relevant facts, including the nature and basis for a parent's objection to the petition (see Matter of Emanuel S. v Joseph E., 78 NY2d at 182; Matter of Karr v Black, ___ AD3d ___, ___, 863 NYS2d 26, 29 [2008]).

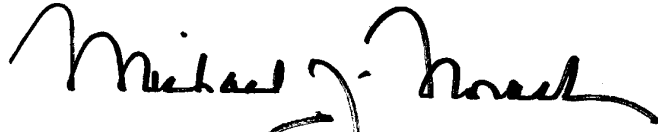
In the instant case, both parents are alive and, thus, petitioner was required to establish standing under the equitable circumstances provision of the statute, which requires more than an allegation of love and affection for the child and an expressed desire for visitation. Rather, the grandparent must demonstrate "a sufficient existing relationship with [the] grandchild, or in cases where that has been frustrated by the parents, a sufficient effort to establish one, so that the court perceives it as one deserving the court's intervention" (Matter of Emanuel S. v Joseph E., 78 NY2d at 182; Matter of Wenskoski v Wenskoski, 266 AD2d 762, 763 [1999]). In this regard, petitioner admitted at the hearing that, with respondent's cooperation, she already enjoyed periodic visitation with the child and her main complaint was that respondent insisted on supervised visitation. Respondent acknowledged her insistence on supervised visitation and explained her reasons therefor; namely, that petitioner has previously allowed unsupervised contact between her other grandchildren and their father, in violation of a court order, and has made inappropriate comments to those children about their mother. Nevertheless, respondent testified that she is willing to continue to accommodate petitioner's reasonable requests to see the child as often as possible, so long as the visits were supervised by either her or her mother. Under the facts presented here, petitioner did not meet her burden of

demonstrating that equitable circumstances existed that warranted court intervention (see Matter of Karr v Black, 863 NYS2d at 29). As petitioner failed to establish the requisite standing to maintain the proceeding, Family Court did not abuse its discretion in dismissing the petition.

Mercure, J.P., Peters, Spain and Stein, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court