STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1350

In re the Petition of:
Lee Warmuth for reasonable visitation
of T.W. (a minor child), petitioner,
Respondent,

vs.

Gary Koski, et al.,
Appellants.

Filed September 16, 2008
Reversed and remanded
Toussaint, Chief Judge

St. Louis County District Court
File No. 69HI-FA-06-234

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Considered and decided by Schellhas, Presiding Judge; Toussaint, Chief Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellants Gary Koski, Pat Koski, and Matthew Koski challenge the district court's order (1) granting respondent Lee Warmuth visitation with T.W., (2) preventing Matthew Koski, T.W.'s father, from moving out of state with T.W., (3) ordering T.W.'s father to place her in therapy, and (4) authorizing respondent to speak with the therapist and review the therapist's records. Because the district court erred in holding that respondent had standing to object to Matthew Koski's removal of T.W. to North Carolina, we reverse and remand.

FACTS

Matthew Koski is the father of T.W., born September 17, 1996. T.W.'s mother, Jeralee Warmuth, died on August 12, 2006. T.W.'s father and mother were never married, never lived together, and were minors when T.W. was born.

When T.W. was approximately one year old, paternity was established, and her parents stipulated that they would share joint legal and physical custody. They shared equal custody of T.W. until Jeralee Warmuth entered drug and alcohol treatment in 2005. Following her death in 2006, Matthew Koski gained full physical and legal custody. T.W. was ten years old when the district court awarded visitation to respondent.

Jeralee Warmuth also had two other children, T.W.'s younger half-brothers. T.W. has developed a loving, affectionate relationship with her half-brothers. Following Jeralee Warmuth's death, respondent, who is T.W.'s maternal grandfather, was granted temporary sole legal and physical custody of T.W.'s half-brothers because their father

was incarcerated. Currently, respondent has sole legal and physical custody of T.W.'s half-brothers because both of their parents are deceased.

When Jeralee Warmuth became pregnant with T.W., she was living at respondent's home. Respondent was providing her with financial and emotional support, health insurance, food, shelter, and clothing, among other things. After T.W. was born, she and her mother continued to reside with respondent for a year and a half.

T.W. and her mother eventually moved into their own apartment, but respondent continued to have a close relationship with T.W. He would often visit T.W. and her mother, usually twice per week, talk to T.W. on the phone, baby-sit T.W. at his home, and provide groceries for T.W. and her mother. T.W. called respondent "Papa," and they had a very loving, affectionate relationship that continues today. As T.W. grew older, respondent attended her school functions and spent much time with her, especially on holidays, birthdays, and on vacation.

When Jeralee Warmuth was alive, respondent had minimal contact with appellants because he could see T.W. by contacting his daughter. When Jeralee Warmuth entered treatment, respondent did not have contact with T.W. because she was living with her father, Matthew Koski. But in April 2006, respondent had T.W. for an overnight visit, and in May 2006, respondent took T.W., her mother, and her half-brothers camping for three days. In addition, there was a weekend camping trip and a sleepover in July 2006.

When Jeralee Warmuth died, T.W. was staying with her father. Immediately after the funeral and in the subsequent weeks, respondent attempted to arrange visits with T.W., but Matthew Koski would frequently refuse respondent's requests. Respondent

was eventually permitted to visit with T.W. on a few occasions following her mother's death. Eventually, Matthew Koski told respondent that "he didn't think it was necessary or appropriate" for respondent to visit T.W. and that if respondent wanted visitation with T.W., he "would have to take [Matthew Koski] to court."

Respondent filed a petition for reasonable visitation of T.W. Following a hearing, the district court issued a temporary order on October 13, 2006, granting respondent visitation with T.W. every other weekend. Following additional hearings, the district court issued another order on December 21, 2006, continuing the temporary award of visitation pursuant to the previous order.

A guardian ad litem was assigned to the case and submitted a report. The report stated:

> In my time with both famil[ies] it became apparent that [T.W.] has had a great deal of love and affection from both parties. While at her father's home I observed [the father and T.W.] interact[ing] appropriately [and] discussing such things as home work and what activities they participate in as a family . . . .
>
> While visiting [T.W.] with her brothers, this GAL observed typical sibling interaction and visited with [respondent] who showed us many pictures of [T.W.] growing up, which [T.W.] enjoyed reviewing.

The guardian ad litem recommended that respondent be awarded substantial visitation with T.W., that T.W. "participate in individual therapy" and that Matthew Koski follow through with any recommendations made by the therapist.

During the pendency of respondent's visitation petition, Matthew Koski informed the court that he planned to move to North Carolina to pursue employment with a business owned by his aunt and uncle. Respondent objected to the move and requested

that the court order Matthew Koski to remain in Minnesota.

Following hearings in February 2007, the district court issued its May 14, 2007, order awarding respondent visitation with T.W. every other weekend, every other Thursday evening, one week per month during the summer, T.W.'s half-brothers' birthdays, the day preceding or following Christmas, the day preceding or following T.W.'s birthday, and other certain holiday weekends. The district court barred Matthew Koski from moving T.W. to North Carolina because such a move was not in T.W.'s best interests. Because of T.W.'s previous diagnosis of "adjustment disorder," her father was ordered to place her in therapy with her previous therapist, follow through with the therapist's recommendations, and sign releases to allow respondent to speak with the therapist about T.W.'s therapy and to review the therapist's reports.

D E C I S I O N

Appellants argue that (1) respondent did not have standing to object to relocation, (2) it is in T.W.'s best interests to move to North Carolina with her father, (3) it is not in T.W.'s best interests to have such extensive visitation with respondent, and (4) it is not in T.W.'s best interests to continue to see her previous therapist or to have respondent involved with her therapy sessions.

I.

Appellants contend that respondent did not have standing to object to Matthew Koski's proposed move with T.W. because respondent is not a "parent." Challenges to standing are questions of law, which this court reviews de novo. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). Standing

exists when a "litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Id.* (quotation omitted).

Minn. Stat. § 518.175, subd. 3(a) (2006) provides:

> The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other *parent, if the other parent has been given parenting time* by the decree. If the purpose of the move is to interfere with parenting time given to the other parent by the decree, the court shall not permit the child's residence to be moved to another state.

(Emphasis added.)

The district court determined that respondent had standing to object to the move because the court believed Minn. Stat. § 257C.08, subd. 1 (2006) (deceased-parent visitation provision) and Minn. Stat. § 518.175, subd. 3 (relocation provision) "should be read together and interpreted in a manner which makes them harmonious with each other." The district court concluded that when grandparents are granted visitation under section 257C.08, subdivision 1, they "step into the shoes of the deceased parents." If Matthew Koski were to move with T.W., the district court reasoned that "it would be impossible for [T.W.] to have the visitation with her grandfather which the Court believes is appropriate and necessary." The district court reasoned that if it "did not grant [respondent] standing [to object to the move], this would essentially make Minn. Stat. § 257C.08, subd. 1, ineffective and uncertain in cases of this nature."

Under the strict language of section 518.175, subdivision 3(a), respondent did not have standing to object to the move because he is not a "parent" with "parenting time." The term "parent" is unambiguous, so we cannot look beyond the statute's plain language

and consider other rules of statutory construction as respondent suggests. *See* Minn. Stat. § 645.16 (2006) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."); *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995) ("Where the intention of the legislature is clearly manifested by plain unambiguous language . . . no construction [of the statute] is necessary or permitted.").

Because the district court erred in interpreting the statute, we reverse its holding that respondent had standing under section 518.175, subdivision 3(a), to object to the move to North Carolina. As a result, we reverse the district court's holding that it is not in T.W.'s best interests to move to North Carolina. Matthew Koski's decision to move should have been left legally unchallenged.

II.

The authority of a district court to determine visitation rights is a question of law reviewed de novo. *Simmons v. Simmons*, 486 N.W.2d 788, 790 (Minn. App. 1992). The district court has broad discretion, however, to determine what is in the best interests of a child regarding visitation, and its determination will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995).

The district court concluded that it was in T.W.'s "best interests to have frequent visitation" with respondent. Minn. Stat. § 257C.08, subd. 1, provides that:

> If a parent of an unmarried minor child is deceased, the parents and grandparents of the deceased parent may be granted *reasonable visitation rights* to the unmarried minor child during minority by the district court

> upon finding that visitation rights would be in the *best interests of the child* and would *not interfere with the parent child relationship*. The court shall consider the *amount of personal contact* between the parents or grandparents of the deceased parent and the child prior to the application.

(Emphasis added.) "[W]hat is at issue in grandparent visitation cases is the right of the child to . . . know her grandparents, and not the interests of the grandparents." *Olson*, 534 N.W.2d at 549 (quotation omitted). When addressing grandparent visitation, the court's "paramount commitment" is to the best interests of the child. *Id.* "Generally, the reasonableness of an award of visitation turns on the specific facts and circumstances of each case." *Soohoo v. Johnson*, 731 N.W.2d 815, 826 (Minn. 2007). "The district court, having heard the witnesses, is in the best position to determine what is reasonable under the circumstances." *Id.*

Here, the record establishes that respondent has always been very involved in T.W.'s life and that it is certainly in T.W.'s best interests to have substantial visitation with him and her siblings. Based upon the record, the district court did not abuse its discretion in awarding respondent substantial visitation with T.W. *See Olson*, 534 N.W.2d at 550 (affirming grandparent-visitation award where district court "made sufficient findings on the issue of best interests and . . . record adequately supports those findings."); *Foster v. Brooks*, 546 N.W.2d 52, 55 (Minn. App. 1996) (affirming grandparent-visitation award where "court clearly considered the factors relevant to grandparent visitation"); *Gray v. Hauschildt*, 528 N.W.2d 271, 274 (Minn. App. 1995) (affirming grandparent-visitation award where grandparent and children had extensive prior relationship, there were no behavioral problems after children visited grandparent,

and grandparent "played an important role in the children's lives since they were born").

But because the district court erred in holding that respondent had standing to object to the move, we must reverse the district court's visitation award to respondent. We remand to the district court for issuance of a new visitation award to respondent under section 257C.08, subdivision 1, balancing T.W.'s best interests and Matthew Koski's right to move out of state. We also remand to the district court for issuance of a new therapy determination considering T.W.'s state of residence at the relevant time.

Reversed and remanded.