IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

M. M.,
Petitioner,

vs. **Case No. 10 DR 0000 N**
T. M.,
Respondent,

ORDER DENYING MOTION TO INTERVENE

This matter having come before the court today on the "Verified Motion to Intervene" of D. and J. V., filed 12/20/2010, it is ordered:

1. Findings

The original *pro se* petition was filed by M. M. on 2/3/2010. It swore that the petitioner is the paternal grandmother of S. M., born (*Date omitted*), and it asked for temporary custody of the child pursuant to Chapter 751, Florida Statutes.

The respondent T. M. is the child's father. The petition swore that the child's mother died on 6/16/2009. The petition alleged that the father was facing a jail sentence, so presumably he might not be able to care for the child. The petition also said: "There is a alledge (*sic*) abuse (physical) with another child not related to this case." The father filed an answer and waiver, in which he admitted the essential allegations of the petition, waived notice and a hearing, consented to the petition, and asked the court to grant the petition.

Therefore, the court entered an order on 2/3/2010, which granted M. M. temporary custody of the child pursuant to Chapter 751. That order is the final judgment on the petition because no further proceedings are necessary on the petition. The order does not grant visitation rights to the father because neither the petitioner nor the father requested a visitation order.

The motion to intervene avers that D. and J. V. are the child's maternal grandparents. It says they "have attempted to arrange visitation and contact" with the child and that they have not been able to reach an agreement with M. M. concerning visitation that is acceptable to them. They say "it would be in the manifest best interest of the ... child" that the child have contact with them. They ask the court to "fashion an access schedule for the maternal grandparents as deemed in the best interests of the ... child." It says the child is a dependent child as defined by F.S. Chapter 39 and therefore pursuant to §39.509 the maternal grandparents are entitled to visitation with the child.

2. Ruling

Pursuant to the order of 2/3/2010 M. M. has temporary custody of the child until that order

is terminated or modified pursuant to §751.05(6). That provision allows a parent to bring a petition to terminate or modify the order. It also allows the parties to consent to a modification or a termination of the order. §751.03 allows a parent to have concurrent custody of a child, but the petition in this case did not ask for concurrent custody so the order of 2/3/2010 did not grant concurrent custody to the father. Therefore, M. M. has exclusive custody of the child.

As the exclusive custodian of the child under a Chapter 751 order, M. M. has full parental authority over the child until the order is terminated or modified as allowed by §751.05(6). Therefore, as the child's only parent, M. M. can deny all persons contact with the child, and she can grant any person contact with the child on such terms and conditions as are acceptable to her, just as any parent can control who may or may not have contact with the parent's child.

A parent has a "... fundamental right to raise his or her child ... free from governmental intrusion and control," *Richardson v. Richardson*, 766 So.2d 1036, 1038-1039 (Fla. 2000), and "'the state can satisfy the compelling state interest standard [only] when it acts to prevent demonstrable harm to a child.'" *Id.* at 1039, quoting *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996) at 1276. Therefore, in *Richardson* the Florida supreme court struck down a statute that gave grandparents an equal right to custody of a child if the child was actually residing with the grandparent. The court found that the statute elevated the grandparents to an equal status with parents and therefore it violated the parents' right to raise their children free from government intrusion. Earlier, in *Beagle, supra,* and in *Von Eiff v. Azicri*, 720 So.2d 510 (Fla. 1998) the Florida supreme court struck down a statute that gave grandparents visitation rights, "because it invoked a best interest standard without requiring proof of a substantial threat of significant and demonstrable harm to the child ..." *Richardson* at 1038.

Judges and the Department of Children and Families are "the state." Under *Richardson, Beagle* and *Von Eiff*, judges and the D.C.F. can intrude in a parent's control of a child only to prevent harm to the child. A private person bringing a petition under §39.501 to declare a child dependent is subject to the same standard.

A grandparent seeking to intervene in a Chapter 751 case is subject to the same standard. Consistent with *Richardson, Beagle,* and *Von Eiff,* Chapter 751 grants the court the subject matter jurisdiction to order a visitation schedule only to a parent of the child. *See* §751.05(4)(b). In other words, there is no provision similar to §39.509 in Chapter 751.

This case is not a proceeding under Chapter 39. The petition is not a petition under §39.501, and it is not a petition under §751.03(9) that alleges abuse, abandonment or neglect of the child. It is a petition under §751.03(9) that alleged and proved that the father consented to the petition.

Therefore, §39.509 has no application to this case, the court has no subject matter jurisdiction to grant grandparent visitation, and the V.s have no legal right to visitation with the child that is enforceable in this case. Their ability to make contact with the child is entirely within the discretion of the person acting as the child's parent, that is, M. M..

Therefore, the V.s' motion to intervene is denied.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
T. M., *pro se*; M. M., *pro se*, and C. C., Esq.