

[Cite as *Celek v. Celek*, 2009-Ohio-4990.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IN RE: JORDAN CELEK	:	APPEAL NO. C-081117
		TRIAL NO. F05-1996X
DEBBIE ESTEP	:	
and	:	<i>DECISION.</i>
STEVEN BLAIR,	:	
Plaintiffs-Appellants,	:	
vs.	:	
STEPHANIE CELEK,	:	
Defendant-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas, Domestic Relations  
Division

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: September 25, 2009

*The Helbling Law Firm, LLC, and John J. Helbling, for Plaintiffs-Appellants,*

*Donovan Law and Mary J. Donovan, for Defendant-Appellee.*

PLEASE NOTE: This case has been removed from the accelerated calendar.

**Per Curiam.**

{¶1} Plaintiffs-appellants Debbie Estep and Steven Blair (collectively, “the paternal grandparents”) appeal the trial court’s judgment denying their request for visitation with their grandchild, Jordan Celek (“Jordan”). Because the trial court applied the wrong test in determining whether to grant visitation to the paternal grandparents, we reverse.

{¶2} Jordan was born on October 19, 2004. Her parents are the defendant-appellee, Stephanie Celek, and Zachary Blair. Celek and Blair lived together briefly but were never married. After they separated, the paternal grandparents filed for visitation with Jordan in August 2005. This request was denied because Blair had not established paternity, and the paternal grandparents therefore had no standing to request visitation with Jordan. But the record indicates that, between 2005 and 2007, Celek allowed the paternal grandparents to visit with Jordan sporadically.

{¶3} In the spring of 2007, Blair was adjudicated Jordan’s father, and at that time, Celek and Blair joined in an agreed entry designating Celek as the sole residential parent and legal custodian of Jordan. Blair was granted standard visitation time. In the fall of 2007, Blair and Celek were involved in a physical altercation while exchanging Jordan for visitation. As a result of this incident, Blair was convicted of assault, and a civil protection order was entered against him, prohibiting him from having any contact with Celek or Jordan. Therefore, in

November 2007, the paternal grandparents filed a petition for visitation with Jordan.<sup>1</sup>

{¶4} At the visitation hearing before a magistrate, Celek testified that she did not want the paternal grandparents to have visitation rights because she believed that they would allow Blair to visit with Jordan despite the civil protection order. Both paternal grandparents testified that they would honor the civil protection order during their visitation time, although the paternal grandfather testified that he believed that Blair had been wrongly convicted of assault. Finally, the paternal grandmother testified that Jordan had developed a relationship with her extended paternal family and introduced photographs to that effect.

{¶5} The magistrate denied visitation, stating that the paternal grandparents had erred by arguing that the “only matter at issue in this case is the best interest of the child.” Instead, the magistrate’s decision indicated that the court had to consider the wishes of the residential parent, and “absent a showing that the parent [wa]s unfit to make a sound judgment as to the child’s care or the demonstration of a compelling state interest to second-guess the parent, the parent’s judgment must prevail. No such showing has been made.” The paternal grandparents filed objections to the magistrate’s decision, which were summarily overruled by the trial court. This appeal followed.

{¶6} In their single assignment of error, the paternal grandparents maintain that the trial court erred by overruling their objections to the magistrate’s decision denying their visitation request under R.C. 3109.12. Specifically they argue

---

<sup>1</sup> The paternal grandparents live in separate residences. Therefore, each filed a separate petition for visitation, but they were both represented by the same attorney.

that the magistrate applied the wrong standard of law by only considering Celek's wishes instead of focusing on the "best interest" of the child.

{¶7} After a thorough review of the record, we sustain the paternal grandparents' assignment of error because it is unclear whether the trial court, in considering the paternal grandparents' visitation request, balanced Celek's wishes regarding the grandparents' visitation with the best interest of Jordan.

{¶8} R.C. 3109.12(A) provides in part that "[i]f a child is born to an unmarried woman and if the father of the child has acknowledged the child \* \* \* or \* \* \* [has] been determined \* \* \* to be the father of the child, \* \* \* the parents of the father and any relative of the father may file a complaint requesting that the court grant them reasonable companionship or visitation rights with the child." And the court may grant such a request "if it determines that the granting of the parenting time rights or companionship or visitation rights is in the best interest of the child."<sup>2</sup> In determining the best interest of the child, the court must "consider all relevant factors, including, but not limited to, the factors set forth in division (D) of section 3109.051 of the Revised Code."<sup>3</sup>

{¶9} There are sixteen factors to consider under R.C. 3109.051(D), including "the wishes and concerns of the child's parents, as expressed by them to the court." With respect to this factor, the Ohio Supreme Court held in *Harrold v. Collier* that "courts are obligated to afford some special weight to the wishes of parents of minor children when considering petitions for nonparental visitation made pursuant to R.C. 3109.11 or 3109.12."<sup>4</sup> In reaching this decision, the *Harrold*

---

<sup>2</sup> R.C. 3109.12(B).

<sup>3</sup> *Id.*

<sup>4</sup> *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165, ¶11-12.

court noted that the United States Supreme Court had held that “if a fit parent’s decision regarding non-parental visitation becomes subject to judicial review, ‘the court must accord at least some special weight to the parent’s own determination.’”<sup>5</sup> But despite requiring courts to give special weight to a parent’s wishes regarding non-parental visitation, the *Harrold* court was careful to point out that this factor was not the sole determinant of the child’s best interest.<sup>6</sup> Instead, the *Harrold* court noted that the trial court must take into consideration the 15 other factors set forth in R.C. 3109.051(D) and balance those factors against the parent’s desires to determine the child’s best interest.<sup>7</sup>

{¶10} With respect to the trial court’s obligation to afford some special weight to a parent’s wishes, we note that the *Harrold* court held that a trial court is not required to find “overwhelmingly clear circumstances” before ordering visitation for the benefit of the child over the opposition of the parent.<sup>8</sup> Instead, because a parent’s wishes are to be given some special weight, those wishes must be weighed against the other factors under R.C. 3109.051(D) bearing upon whether it is in the best interest of the child to grant non-parental visitation. And the manner in which this standard is to be applied to each case must be “elaborated with care.”<sup>9</sup> Thus, there must be some meaningful rationale given for either abiding by or overriding the wishes of the parent.

{¶11} Here, the record does not demonstrate whether the trial court balanced the other factors listed in R.C. 3109.051(D) with the mother’s wishes.

---

<sup>5</sup> Id. at ¶11, citing *Troxel v. Granville* (2000), 530 U.S. 57, 120 S.Ct. 2054.

<sup>6</sup> Id. at ¶44.

<sup>7</sup> Id. at ¶43.

<sup>8</sup> Id. at ¶46; but, see, *In re Madison C.*, 2<sup>nd</sup> Dist. No. 22029, 2007-Ohio-5983 ¶18 (holding that a parent’s wishes should be given significant and substantial deference and that there must be “overwhelmingly clear circumstances” to support overriding those wishes).

<sup>9</sup> *Troxel*, supra, at 73.

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

Instead, the trial court seems to have considered the mother's wishes as the sole determinant of what was in the best interest of the child, in violation of what was required by statute. The trial court should have balanced the mother's wishes with the other statutory factors to determine whether visitation was in the best interest of the child.

{¶12} Because the record does not demonstrate whether this balancing test was undertaken to determine the best interest of the child, or, if so, whether the balancing was "elaborated with care," we sustain the paternal grandparents' assignment of error. Accordingly, we reverse the judgment of the trial court and remand this case so that the correct standard is applied in evaluating whether it is in the best interest of Jordan to grant paternal-grandparent visitation.

Judgment reversed and cause remanded.

**HILDEBRANDT, P.J., CUNNINGHAM and WINKLER, JJ.**

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

*Please Note:*

The court has recorded its own entry on the date of the release of this decision.