Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-413

PHOEBE CRAWFORD IVES

versus

NICHOLAS IVES

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 809-501, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

December 15, 2025

JOHN J. MOLAISON, JR.

JUDGE

Panel composed of Judges Jude G. Gravois,
John J. Molaison, Jr., and Scott U. Schlegel

AFFIRMED

JJM
JGG
SUS

TRUE COPY

LINDA TRAN
DEPUTY CLERK

COUNSEL FOR DEFENDANT/APPELLANT,
NICHOLAS IVES

Laurel A. Salley
Jordan M. Daigle

COUNSEL FOR INTERVENOR/APPELLEE,
PAMELA QUIGLEY

Cindy Williams

MOLAISON, J.

The appellant seeks review of the trial court's judgment granting his mother, Pamela Quigley, unsupervised visitation with his two minor children, pursuant to La. C.C. art. 136(B). We affirm the trial court's judgment for the following reasons.

PROCEDURAL HISTORY

The appellant Nicholas Ives and Phoebe Moya are the parents of two young children. The couple divorced in December 2021 and consented to several judgments granting Mr. Ives sole custody of the children and granting Ms. Moya limited visitation rights. In January 2022, an Interim Consent Judgment reaffirmed Mr. Ives's sole custody and limited Ms. Moya's visitation, pending a custody evaluation by Dr. Kristen Luscher. In January 2023, Ms. Moya filed for sole custody, alleging abuse by Mr. Ives, but later withdrew her request following Dr. Luscher's recommendations, which reinstated the January 2022 custody arrangement.

In February 2023, Ms. Quigley, the children's paternal grandmother, filed for custody while also making various allegations against Mr. Ives; the court dismissed her motion due to lack of evidence. A Consent Judgment in March 2024 adopted Dr. Luscher's recommendations, maintaining Mr. Ives's sole custody and halting Ms. Quigley's visitation.

On February 26, 2024, soon after Dr. Luscher's report was published, Ms. Quigley filed a Motion for Grandparent's Visitation under La C.C. art. 136 and La. R.S. 9:344. On February 28, 2024, Mr. Ives filed an Exception of No Cause of Action, which the Domestic Commissioner denied on April 11, 2024. The trial court denied Mr. Ives's April 17, 2024 Objection to the Domestic Commissioner's Judgment on November 19, 2024.

On February 10, 2025, the trial court held a hearing on Ms. Quigley's Objection to the Hearing Officer's Recommendations, filed on March 5, 2024, and Motion for Grandparent's Visitation, filed on February 26, 2024. After Ms. Quigley withdrew her request for custody, the District Court recessed to allow Dr. Luscher to update her evaluation regarding grandparent visitation. At that time, the trial court granted Ms. Quigley interim supervised visitation of up to six hours on one Saturday each month, without interfering with Ms. Moya's custodial time, pending the evaluation. On May 13, 2025, the hearing resumed. After hearing testimony from Dr. Luscher; Martha Bujanda, the visitation supervisor; and Elizabeth Hickman, Mr. Ives' daughter's teacher, the trial judge took the matter under advisement.

On May 29, 2025, the trial court rendered its Judgment and Reasons for Judgment. The court granted Ms. Quigley's unsupervised visitation two Saturdays a month from 9:00 a.m. to 12:00 p.m., on weekends that do not interfere with Ms. Moya's custodial time; and, commencing in September 2025, Ms. Quigley could opt for an overnight visitation from Saturday at 4:00 p.m. to Sunday at 9:00 a.m., in place of her Saturday visitation, once every three months.

Mr. Ives timely filed this appeal on May 30, 2025.

ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Appellant's Exceptions for No Cause of Action to Ms. Quigley's Motion for Grandparent Visitation.

2. The trial court erred in granting grandparent's visitation to Ms. Quigley, resulting from a faulty application of La. C.C. art. 136.

LAW AND ANALYSIS

We first address the appellant's argument that the lower courts erred in refusing to grant his exception of no cause of action related to Ms. Quigley's Motion for Grandparent's Visitation.

Peremptory exception of no cause of action

In *Succession of Vidrine*, 23-15 (La. App. 5 Cir. 12/6/23), 380 So.3d 590, 592-93, we observed the framework for reviewing an exception of no cause of action on appeal:

> A cause of action, for purposes of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert an action against the defendant. *Show-Me Const., LLC v. Wellington Specialty Ins. Co.*, 11-528 (La. App. 5 Cir. 12/29/11), 83 So.3d 1156, 1159. The function of the peremptory exception of no cause of action is to question whether the law extends a remedy to anyone under the factual allegations of the petition. *Jenkins v. Jackson*, 16-482 (La. App. 5 Cir. 2/22/17), 216 So.3d 1082, 1089, *writ denied*, 17-652 (La. 9/6/17), 224 So.3d 984. The issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *In Re Shell*, 18-709 (La. App. 5 Cir. 5/30/19), 274 So.3d 872, *writ denied*, 19-1068 (La. 10/21/19), 280 So.3d 1166. No evidence may be introduced to support or controvert the exception raising the objection of no cause of action. *Show-Me Const., LLC, supra, citing* La. C.C.P. art. 931. The appellate court standard of review of a judgment sustaining an exception of no cause of action is *de novo* because the exception raises a question of law. *Jenkins, supra*.

In this case, Ms. Quigley filed her motion under La. C.C. art. 136, which specifically provides a pathway for a grandparent to gain visitation with their grandchildren when the parents are not married, if the court finds that such visitation is in the child's best interest. In *State in Int. of D.E.*, 46,644 (La. App. 2 Cir. 10/12/11), 83 So.3d 8, 10-11, the Second Circuit considered whether a similar motion filed by grandparents under La. C.C. art. 136 sufficiently stated a cause of action. In upholding the filing, the Court observed:

> We find that the Gentrys' motion for visitation with their grandson adequately stated a cause of action under Article 136(B). Their pleading included … their role as primary care givers of D.E. when the parents were unable to care for the child, that they are the maternal grandparents of the child and that visitation with them is in the child's best interest, given the length of their relationship with D.E. and the child's preference for continued contact and visitation with his maternal grandparents.

Our *de novo* review of Ms. Quigley's motion shows that the face of her pleading sufficiently states a cause of action under La. C.C. art. 136. Specifically, Ms. Quigley has alleged, in relevant part, that she is the paternal grandmother of the Ives children, that it is in the children's best interests that she have visitation privileges, that the children lived with her for an extended period of time, and that she has a close bond with them.

The motion for visitation

In his second assignment of error, Mr. Ives contends that the court allowed improper evidence into the record, which it subsequently considered in ruling on the motion for visitation. He further argues that his fundamental constitutional rights were not protected or considered. Mr. Ives concludes that a review of all allowable evidence clearly shows that Ms. Quigley did not meet her burden of proof as required by La. C. C. art. 136(D).

Standard of review

In *Main v. Main*, 19-503 (La. App. 5 Cir. 2/19/20), 292 So.3d 135, 142, *writ denied*, 20-545 (La. 6/12/20), 307 So.3d 1036, this Court outlined the standard of review used in child visitation judgments:

> Great weight is given to the trial court's determination in matters of visitation, and the court's judgment will not be overturned unless a clear abuse of discretion is shown. *Zatzkis v. Zatzkis*, 632 So.2d 307, 320 (La. App. 4 Cir. 1993), *writ denied*, 94-0157 (La. 6/24/94), 640 So.2d 1340, and *writ denied*, 94-0993 (La. 6/24/94), 640 So.2d 1341. The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. *Leaf v. Leaf*, 05-592 (La. App. 4 Cir. 3/2/06), 929 So.2d 131, 132. An appellate court may not reverse reasonable findings merely because it would have weighed the evidence differently, but an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. *Silbernagel v. Silbernagel*, 06-879 (La. App. 5 Cir. 4/11/07), 958 So.2d 13, 17.

La. C.C. art. 136

La. C.C. art. 136 provides the authority for non-parent visitation, which provides in relevant parts:

> . . .
>
> B. In addition to the parents referred to in Paragraph A of this Article, the following persons may be granted visitation if the parents of the child are not married or cohabitating with a person in the manner of married persons or if the parents of the child have filed a petition for divorce:
>
> (1) A grandparent if the court finds that it is in the best interest of the child.
>
> . . .
>
> D. In determining the best interest of the child under Subparagraph (B)(1) or (2) of this Article, the court shall consider only the following factors:
>
> (1) A parent's fundamental constitutional right to make decisions concerning the care, custody, and control of their own children and the traditional presumption that a fit parent will act in the best interest of their children.
> (2) The length and quality of the prior relationship between the child and the relative.
> (3) Whether the child is in need of guidance, enlightenment, or tutelage which can best be provided by the relative.
> (4) The preference of the child if he is determined to be of sufficient maturity to express a preference.
> (5) The mental and physical health of the child and the relative.

La. C.C. art. 136 mandates exclusive consideration of the above five factors. And while the Legislature did not provide any guidance on whether one factor carries more weight than the other, in light of *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) and the Legislature's subsequent amendment to La. C.C. art 136 in 2018 to add Section D(1), we find that the trial court must weigh factors (2) – (4) against "a fit parent's constitutionally protected fundamental right of privacy in child rearing, and remember that any rights of nonparents are ancillary to that of a fit parent." *See Cave v. Cave*, 20-240, 2021 WL 1134946, p. 20 (La.

App. 1 Cir. 3/25/21).[1] Furthermore, "[i]n considering the best interest of the child, the trial court must be aware that as nonparent visitation increases, the infringement and burden on the parent's fundamental right of privacy in child rearing increases proportionally." *Id.*

Evidence presented at the trial of the motion

Pamela Quigley's witnesses established her relationship with the Ives children and her role as a primary or secondary caregiver over extended periods, especially when both parents were unable or unwilling to assume responsibility. Testimony from Phoebe Moya confirmed that Ms. Quigley had been deeply involved in her grandchildren's lives, particularly during family crises and after the parents' divorce. Ms. Moya recounted Ms. Quigley's involvement in taking the children to medical appointments, facilitating exchanges, acting as room mother at school, and managing daily care.

Ms. Quigley herself provided detailed testimony about her nursing background and hands-on caregiving—caring for the children overnight, transporting them to school and extracurriculars, coordinating medical and dental appointments, making financial contributions, and generally providing stability, primarily while her son Nicholas worked long hours. She emphasized the abrupt and total estrangement from her grandchildren following a family argument in December 2022, asserting that she had no contact with them afterward, except indirectly through the mother.

The testimony of Astrid Montesi, the children's pre-K teacher and their aunt by engagement, further supported Ms. Quigley's case. Ms. Montesi described the two children as well-dressed, well-fed, and happy under Ms. Quigley's care; she

[1] In *Troxel*, *supra*, the United States Supreme Court recognized parents' fundamental right to make decisions concerning the care, custody, and control of their children, and further determined that a State of Washington visitation statute was unconstitutional as applied due to its failure to accord any special or material weight to fit parents' determinations regarding their children's best interests. *Troxel*, 530 U.S. at 65-72; 120 S.Ct. at 2060-63.

kept observation logs documenting behavioral changes in the granddaughter after she lost contact with her grandmother, noting a decline in demeanor and increased anxiety about accidents or making mistakes, especially regarding her father's discipline.

Margaret Quigley, the children's great-grandmother, added further confirmation of the children's close and affectionate relationship with Ms. Quigley and the extended family. She observed Ms. Quigley as the primary caretaker during the relevant periods. Margaret also mentioned some concern regarding Mr. Ives' sometimes easily angered demeanor but did not allege physical abuse.

Dr. Kristen Luscher, the court-appointed custody evaluator and licensed psychologist, conducted interviews and evaluations of all parties and reviewed extensive collateral information. Her findings recognized the fraught, high-conflict atmosphere among all parties. Still, they acknowledged that historically, Ms. Quigley provided significant help during the period when Mr. Ives and the children resided in her home, even though Dr. Luscher considered Mr. Ives the primary parent. Dr. Luscher nevertheless stressed the risk of emotional harm to the children from an abrupt and total loss of their contact with Ms. Quigley, especially in light of both parents' histories of instability and the overall lack of other supportive adult figures. She recommended that the court permit some level of visitation.

Martha Bujanda, a mental health expert and supervised visitation provider, oversaw three court-ordered visits between Ms. Quigley and the children. Ms. Bujanda's observations highlighted affectionate, age-appropriate, and positive interactions; the children, especially the granddaughter, were immediately comfortable and demonstrated clear attachment during the visits. The granddaughter expressed missing her grandmother. Ms. Bujanda saw no inappropriate behavior or undermining of parental authority by Ms. Quigley, and no

evidence of the children being distressed or fearful in her presence; instead, both children left each visit happy and well-adjusted.

In opposing the motion for visitation, Mr. Ives argued there were no "extraordinary circumstances" under applicable Louisiana law and that any period of close contact with Ms. Quigley was due to necessity and not indicative of a basis for court-ordered visitation. He asserted his fundamental constitutional right as a fit parent to determine with whom his children associate and that Ms. Quigley had not presented evidence of parental unfitness, abuse, or abandonment on his part. Mr. Ives depicted Ms. Quigley as manipulative and emotionally disruptive, inserting herself into parental conflicts and attempting to pit both parents against one another for access to the children.

Mr. Ives submitted school behavior reports, text messages, and other records to show that the children were healthy, happy, and thriving under his sole care. He provided his own testimony and that of his wife, Kimberly Ives, to argue that reintroducing Ms. Quigley would be disruptive and would undermine his parental authority and the family stability the children achieved since the estrangement. Kimberly Ives echoed this assessment, testifying that she and Mr. Ives are the children's primary caregivers and that the children are firmly attached to both of them; she also expressed concerns that Ms. Quigley would disregard Mr. Ives's parental directives if allowed visitation.

Ms. Moya, the children's mother, provided mixed, somewhat ambivalent testimony, confirming periods of her own instability and estrangement from the children, and vacillating in her opinion of Ms. Quigley's involvement. By the time of trial, she essentially deferred to Mr. Ives's wishes, agreeing not to oppose his decision to limit or deny Ms. Quigley's contact.

Consideration of the La. C.C. art. 136 factors

In its May 29, 2025 Judgment and Reasons for Judgment,[2] the trial court demonstrated it had considered each of the La. C.C. art. 136 factors.

Concerning parental fitness, the trial court observed that no ruling found Mr. Ives or Ms. Moya to be unfit parents. But there was much in the record to support its concern for the children's safety and well-being. Specifically, the court referenced evidence of past domestic abuse by Mr. Ives, his issues with mental health stability, his having told the children that Ms. Moya was deceased, and his involvement in an attempt to divest Ms. Moya of her parental authority in favor of his new wife. The court found that "Ms. Moya is still working toward stabilizing her mental health and living situation, and … has not yet demonstrated an ability to consistently advocate for herself or the minor children should the need arise." Based on these findings, the court concluded that "[m]aintaining the grandparent relationship in this case serves to ameliorate the lack of stability and potential violence in the homes of Ms. Moya and Mr. Ives."

We observe that, for the second factor—the length and quality of the prior relationship—the trial court found that the children and Mr. Ives lived with Ms. Quigley for approximately 18 months. The record, however, contains testimony suggesting the actual period of co-residence was at most eight months. For the third factor regarding guidance or tutelage, the trial court found no evidence that Ms. Quigley supplied direction or tutelage that the parents could not provide. The court nevertheless found that she could offer a positive "grandparental relationship." Regarding the child's preference —the fourth factor —the court noted that the children were too young to express a meaningful preference. It cited instead a

[2] Appeals are taken from the judgment, not the reasons for judgment; the written reasons for judgment are merely an explication of the trial court's determinations, and do not alter, amend, or affect the final judgment being appealed. *Perniciaro v. Hamed*, 20-62 (La. App. 5 Cir. 12/16/20), 309 So.3d 813, 836 n.12, *citing Wooley v. Lucksinger*, 09-571 (La. 4/1/11), 61 So.3d 507, 572.

visitation supervisor's testimony about the children's affection for Ms. Quigley based on post-petition contacts.[3] On the health factor, the trial court found "no evidence" that Ms. Quigley's or the children's health would negatively affect their relationship.

After weighing all of the above factors in determining grandparent visitation outlined in La. C.C. art. 136, the trial court granted Ms. Quigley's Motion for Grandparent Visitation.

Conclusion

After a review of the record, including the trial court's thorough written reasons for judgment, we find the trial court did not abuse its vast discretion in granting Ms. Quigley's Motion for Grandparent Visitation under the facts presented. The trial court's determination that granting Ms. Quigley limited visitation would serve as a stabilizing factor in the children's lives is adequately supported, given the evidence presented of both parents' emotional challenges.

We also note that the trial court's conclusion regarding the children's best interest was bolstered by the expert opinion of Dr. Luscher, who concluded, after an evaluation of all parties, that Ms. Quigley should be given consistent and designated visitation with the children. The limited visitation schedule, which amounts to six hours over two days per month or a single overnight visit once every three months, is reasonable, proportional and does not unduly burden Mr. Ives' fundamental right of privacy in child rearing.

DECREE

For the reasons stated, we affirm the trial court's judgments denying the appellant's exception of no cause of action and granting the petition for visitation.

AFFIRMED

[3] We observe that Article 136 directs the focus to the prior relationship, not one created or reinforced during court-ordered supervised visits.

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 15, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-CA-413

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE NANCY A. MILLER (DISTRICT JUDGE)
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