

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2021-0587

In the Matter of Brianna Kauble and William Kauble

Appeal pursuant to Rule 7 from a judgement of the 10th Circuit Court, Brentwood Family Division

BRIEF FOR HERBERT NOVELL

Herbert Novell, *pro se*
34 Sanborn Road
East Kingston, NH 03827
(603) 772-1182
herbnov@comcast.net

(15 minutes requested)

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STATEMENT OF THE FACTS AND CASE

On February 10, 2021, I, Herbert Novell filed a Motion to Intervene in the divorce matter between my daughter Brianna Kauble and her now ex-husband William Kauble by filing a Motion for Grandparent's Visitation. The reason for this was due to Brianna cutting off access to my granddaughters Brylee, Harper and Lydia whom both myself and my wife had a close and loving relationship with since their birth. Appellant App. Pg. 3.

This Motion for Grandparent's Visitation was filed after I had exhausted all attempts to communicate with my daughter Brianna regarding allowing us to continue our relationship with the girls and begin to see them on a regular basis. Tr. 30-31. Although Brianna testified that she moved to NH to escape her abusive relationship with her husband William Kauble, Appellant Brief pg. 4. The fact was they were moving to NH as a family including her husband. The agreement between them was that her husband William, was to stay back in Arizona to work for six months with the intent to then transfer his job to NH in November 2018. Tr. 25-26.

Brianna stated in her brief that she only briefly resided with myself and my wife Lori and the amount of time we spent with the girls prior to her moving from Arizona to NH was minimal. Appellant Brief pg. 4. Brianna and the granddaughters lived with me for six months from May 30, 2018 – November 30, 2018. Per my testimony, I testified that although Brianna, William and the girls lived in Arizona which was 3,000 miles apart, we saw the granddaughters at least one week per year, and the two years prior to them moving to NH, Brianna and the girls spent several weeks in both 2016 and 2017 with us during the summer, as well as continuous

communication through telephone conversations, Skype, and FaceTime on a minimum of a weekly basis. Tr. 23-25.

Brianna stated in her brief that during the time she lived with me that I “was absent” and “just hung out in his office”. Tr. 5. I testified to the time my wife and I spent with the girls, along with my niece Katy (28 years old), and my sister Shez, as well as with the girls great-grandparents. We all spent an enormous amount of time with the girls. Between simple things like playing in the yard, making snow cones, going to the zoo, Stratham fair, the beach, picking blueberries, and most importantly babysitting while Brianna worked a part-time job. It took a village to provide the support Brianna needed so that she could work. Tr. 26-28. I never refused to watch the children as Brianna stated in her brief. Appellant Brief pg. 5. I only asked that she reach out to others to HELP with support.

In my testimony, I testified to how much the girls rapidly developed social skills and learned numerous things in their new environment during the six months they lived with me. They had exposure to many other family members they’d never been a part of and developed strong bonds with them during this six-month period. Tr. 26-29.

In Brianna’s Brief pg. 5, she testified that her father told daughter Brylee “you’re going to be a loser just like your mom” and that he called her daughter Lydia a “little bitch”. In the same paragraph of Appellant Brief pg. 5, Brianna’s boyfriend Joshua Colwell also testified that Brylee told him Mr. Novell called her and her sister’s “little bitches”, and that Mr. Novell’s wife Lori told her she was “going to be a loser like her mom”. Their testimony contradicted one another. One said I told Brylee “she would be a loser just like your mom”, and the other said

my wife Lori said it. Never ever did myself or my wife ever use vulgar language toward any of the grandchildren. We spoke only kind words. As I testified, my wife Lori had an extremely special connection and bond with Brylee. Lori would make time to take Brylee to do things alone with the two of them. Things like pedicures, manicures, going to lunch, or even just a ride in "Hunny's" (Lori) convertible. Tr. 29-30.

As I testified, my support for the girls and Brianna continued from the time they moved into their own home at the end of November 2018 through March 2020, which was the time she cut me, my wife and every other local family members and affiliated friends off from seeing the girls or having any type of conversation, phone contact, Facetime, etc. We continued to take the girls to fun events, and I was always Brianna's go to person when she needed help with the girls. I would get the distress call to help her out because one of the girls were sick and she had to work, or she had appointments and needed someone to watch one or all of the girl's, or pick them up at school or even get them off the bus for her. Whatever she needed, I was there to help Brianna and the girls. Tr. Pg. 29. I also testified that until March 2020, my wife and I would attend Brylee's school functions, and even helped her with a science project. Tr. 39.

Brianna testified that she fears that her children are at risk of physical, emotional and mental abuse if her father is granted visitation with them because they already were by him. Appellant Brief Pg. 6. Brianna gave no facts or proof nor evidence of any such abuse toward the girls from myself or my wife Lori. As I stated in my testimony, on one occasion I did have to have a discussion with Lydia after the third time of her being told not to try to turn the keys on the John Deere tractor after I told her she could hurt someone else or even herself, and I testified that she jumped off the tractor, ran around the garage, flipped me the middle finger,

and says, "I'll kick your ass you mother f---er if you come after me." Tr. 130. Any responsible adult who was in that circumstance would sit the child down and explain to them why what they said was improper and have them apologize. This is not abusive. It is trying to teach a child about respect and right from wrong.

In Appellant Brief, pg. 5, it was stated that I called Brianna a bitch. As I testified, it was only during a phone conversation where she was demanding I provide her documentation she needed to provide to her Attorney and she wanted it sooner rather than later. This was after she had texted both my wife and I multiple times over a couple of hours trying to get us to give her a time she would get the documentation she needed. She expected me to drop whatever I was doing to get her what she wanted. Tr. 78-79. To Brianna, I could just pull it together and hand it over, but what she needed was going to take time for me to pull together for sake of overwhelming data and detail being requested by her attorney. As I also stated, I may have called her a bitch at a time she was swearing and cussing at me about something that I'm doing or have done, or she was cussing or swearing at her children. Tr. 80.

Since early childhood, Brianna was going to do things her way. She did not like to follow rules, and was a "pistol", just as stated by her attorney, Ms. LaCoste. Tr. 105. In my testimony, I testified that Brianna did push the envelope. Throwing a fork across the room, sticking it on her sister's nose, kicking a hole in the sheet rock walls, breaking fences, slamming doors, taking them off the hinges, and driving across the lawn instead of driving up the driveway because she could. Always a pistol. Still a pistol. Tr. 132.

As stated in my testimony, Brianna was distraught over the fact that she was going to go live in a mobile home with her family. She stated that she might as well pack her shit and move back to F-ing Arizona if she was going to have to live in a F-ing tin can for a house. I refurbished the mobile home which ended up being a beautiful place for her and our three granddaughters. Tr. 61-62. This caused friction between herself and I. I also testified that she drank while she was living with me and was very loud and always screaming at the girls. I also testified of the morning the girls walked into my office after a trip to Walmart with Brianna and said, "Grampy, Grampy, look what we got, new backpacks." Brianna said, "five-finger discount". I had the children go out of my office and I challenged Brianna as to what the F she was doing. I encouraged her to take them back which did not happen. Tr. 63. These things could be perceived as friction between Brianna and I. For me, I was looking out for the well-being of my granddaughters.

As stated in Brianna's Brief, pg. 6, on October 28, 2021, the court ordered that Mr. Novell shall have grandparent visitation. This decision was based on the testimony presented at the final hearing on October 4, 2021, as well as the balance of the parties' testimony, and having assessed the credibility, and having determined the relevance and the weight to be afforded to the evidence presented.

SUMMARY OF THE ARGUMENT

The evidence was sufficient to support the court's award of grandparent's visitation to I, Herbert Novell. The Appellants Case Brief pg. 8 stated that due to friction between her and her father and the toxic relationship between her father and the children, the court erred in its decision. The final decision by the court demonstrated that Brianna continued allowing the children to spend time with myself and my wife after she moved to her home in November 2018 through mid-March 2020. Had I been verbally, emotionally, or physically abused Brianna's children, Brianna wouldn't have allowed us to continue seeing the children and taking them to do special things together.

Brianna stated in her Appellant Brief pg. 8 that the court erred when it denied her Motion to Dismiss because the triggering event of a "divorce" or "absence of a nuclear family" had not yet occurred when she denied her father access to the children. There was an "absence of a nuclear family". The father was living in Arizona and Brianna had moved on and was living with her current boyfriend Josh Colwell.

My testimony along with my Exhibit presented in court of a story with numerous pictures over all the years which clearly demonstrates the relationship between my wife and I, as well as numerous other NH family members and our three granddaughters since their births. Opposing Appendix. Pg. 3-19.

The evidence was sufficient to support the court's award of Grandparent's Visitation. RSA 461-A:13 I.(c) The nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the

grandparent and length of time of such residence, and when there is no reasonable cause to believe that the child's physical and emotional health would be endangered by such visitation or lack of it. This was proven in court through my testimony and the court's assessment of credibility and having determined the relevance and the weight to be afforded to the evidence presented. Appellant Brief pg. 31.

Through my testimony, I was able to demonstrate that visitation with the grandchildren would be in the best interest of the children which supports RSA 461-A:13 (a). This visitation extends beyond just my wife and I, but to the other extended family members, Katy, Shez and my parents and long-time friends who were all shut out of the children's lives in March 2020, and who were part of the village who helped Brianna with babysitting the children, taking them to the beach, apple picking, blueberry picking, attending fairs, swimming in the pool, shopping, among many other things. All of us have been cut out of the children's lives. Tr. 26-28.

Through my testimony, I demonstrated how much the girls developed both socially and emotionally from the time they moved in with me in November 2018. My wife and I were able to provide them a loving home on 2 acres of land where the children could run and play which they had never experienced before living in Arizona. Their favorite thing to do was use Grampy's walkie talkies outside. Tr. 27. They would ask my wife and I to use one too so we could all communicate and be part of the game. I also shared how Brylee always wanted to spend the night after they moved to Exeter. She loved our time together. Tr. 132. This doesn't sound like a child who was being verbally or emotionally abused by her grandfather as Brianna testified to. Tr. 112.

The court could see that the friction between grandparent, Herbert, and parent Brianna would not interfere with the parent-child relationship. Herbert has never told Brianna how to raise her children. The Grandfather just wants to spend time with his grandchildren. Life is not about monetary things. It is about the love you can share, the exposure to new things you can share, and through his testimony the court saw that was what Mr. Novell provided to the children.

In the Appellant's Brief. Pg. 13, Brianna stated that the court failed to weigh the first two statutory factors more heavily than the remaining listed factors in determining whether visitation is in the best interest of the children. RSA 461-A:13 I. Grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child. The provisions of this section shall not apply in cases where access by the grandparent or grandparents to the minor child has been restricted for any reason prior to or contemporaneous with the divorce, death, relinquishment or termination of parental rights, or other cause of the absence of a nuclear family. The absence of a nuclear family began when Brianna and the girls moved to NH on May 30, 2018. The motion to file for Grandparents visitation was not filed until February 10, 2021 which was well after the absence of a nuclear family began. Appellant App. Pg. 3.

ARGUMENT

I. 461-A:13 GRANDPARENTS VISITATION RIGHTS

Grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child as provided in paragraph III. 461-A:13 II.(c) which states that the nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and length of time of such residence, and when there is no reasonable cause to believe that the child's physical and emotional health would be endangered by such visitation or lack of it. Also, 461-A:13 II. (e) which states "The circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause". Also, 461-A13 II (h) which states "Any such other factors as the court may find appropriate or relevant to the petition for visitation".

Through court documents and testimony presented by Herbert Novell at the final hearing on October 4, 2021, it was stated that Brianna Kauble and her 3 daughters lived with her father, Herbert Novell and his wife for six months from May 30, 2018 – November 30, 2018. That was followed by continuous contact with the children over the next sixteen months through March 2020. During those sixteen months after Brianna and children moved into the mobile home in Exeter, NH, Mr. Novell spent hundreds of hours babysitting the children, watching them if they were sick so Brianna could work, getting the children off the bus, and taking the children to do fun activities with his wife Lori.

In March 2020 Brianna ceased all contact between Mr. Novell and the children. The court noted that *In the matter of Tammy RUPA and Alan Rupa*, “*With respect to the grandparent’s request for visitation, the trial court found, among other things, that: (1) the grandparents had enjoyed significant contact with the child over the course of her life; (2) between 2000 and 2008 she regularly spent two weekends per month with her grandparents; (3) when not visiting with her grandparents she maintained consistent telephone contact with them.*”

The trial court further stated: *Andy Engart, (the child’s) therapist, stated that overnight weekend visits with the grandparents which occur in a less structured, less restrictive environment that is more focused on (the child) having fun “is a good thing.”*” The Court has considered the criteria set forth in RSA 461-A:13, and finds that continued visitation with the grandparents, which the child has enjoyed regularly throughout most of her life, is in her best interest.” Based upon these findings, the trial court ruled that the grandparents were entitled to visitation one weekend a month, as well as entitled to unsupervised weekly mail, email and telephone contact with the child.” See court’s Order dated December 22, 2010.

The trial court further stated *In the matter of Tammy RUPA and Alan Rupa*: “*The authority of the trial court to grant grandparent visitation is derived from RSA 461-A:6, “the statute relating to parental rights and responsibilities is set forth in section I, which provides, “In determining parental rights and responsibilities, the court shall be guided by the best interest of the child...”*” “*RSA 461-A:6, I. In keeping with this standard, section V provides, in relevant part: “If the court determines that it is in the best interest of the child, it shall in its decree (of parental rights and responsibilities) grant reasonable visitation privileges to a party who is agrandparent of the child pursuant to RSA 461-A:13.”* RSA 461-A:6, V. Thus the

legislature has made clear that the best interests of the child are paramount when the court considers an award of grandparent visitation.”

RSA 461-A:6 provides the trial court with authority to determine parental rights and responsibilities and expressly states that in doing so “the court shall be guided by the best interest of the child.” The statute further provides “If the court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 461-A:13”.

Here, the court considered all the factors set forth in RSA 461-A:13 including the prior motions related to Grandparents Visitation as well as the testimony at the final hearing and awarded grandparent’s visitation to Mr. Novell. The testimony showed that although there was some friction between Brianna Kauble and her father Mr. Novell, it would not interfere with Ms. Kauble’s parent-child relationship or her authority over the children. Brianna testified that Herbert called Brianna’s daughter Lydia a “little bitch” and told Brianna’s daughter Brylee, “you’re going to be a loser just like your mom”, there was no actual proof of that. Brianna never heard her father ever swear at her children. Herbert testified that he never ever swore at the children. That he only provided loving words and kindness towards the children. Tr. 28-29.

Also, testimony from the children’s father William Kauble, at the final hearing fully supported Mr. Novell having grandparent’s visitation with the children. William Kauble was always present during any trips Mr. Novell and his wife made to Arizona to visit the family and was on several of the trips Brianna and he made to NH. Mr. Kauble also testified that he agreed with the testimony Mr. Novell gave regarding the close and loving relationship the children had with Grandpa and Lori (Hunny). Tr. 84-86. This recommendation from the girls father only further supports the court’s decision that visitation is in the best interest of the children.

As Mr. Novell stated in his testimony, all he wants is to re-establish his relationship with the grandchildren; to be able to spend time with them. To swim in the pool, have cook-outs, spend time with other family, attend school events, celebrate Christmas and birthdays with them. Tr. 38-39. As shared by Mr. Novell in his testimony, what he misses most is Brylee, Harper and Lydia's smiles, their laughter, their silly little childhood, crazy behaviors, and antics with their innocence and innocence and purity. He misses their requests, like "Grampy, I want to do this, Grampy can we go to McDonalds, Grampy I want snow cones, Grampy I want to go in the pool." Mr. Novell would follow that up by saying to the girls, "Whoa, whoa, whoa, there's only one of Grampy and three of you." Tr. 40.

I. EVIDENCE OUTSIDE THE RECORD

Brianna Kauble stated in her Brief that the court made its ruling based heavily on the GAL report where one child expressed to her therapist that she was upset about no longer seeing her grandfather. Appellant Brief. Pg. 15. Mr. Novell's testimony portrayed the loving relationship between himself and his wife Lori, along with the Exhibit entered into court which was a story in pictures that supported his testimony of the loving relationship both himself and his wife had with all three of the girls since the day they were born and through mid-March 2020 when the Appellant stopped allowing us to see our granddaughters. Opposing Appendix. Pg. 3-19.

II. STANDING

Brianna Kauble continues to state that the court did not properly apply New Hampshire law when it decided to afford Mr. Novell standing to request grandparent's visitation leaning strongly on RSA 461-A:13:I. As stated previously, the absence of a nuclear family happened in May 2018 when Brianna relocated to New Hampshire and asked to live with us for six months. Brianna stated in her Brief, that she and her children lived in Arizona, effectively restricting Herbert's access to the children. Appellant Brief pg. 17. Herbert's testimony shared that prior to Brianna and the girls relocating to New Hampshire in May 2018, both himself and his wife had a strong relationship with Brianna and had for all of the 10+ years she lived in Arizona. Herbert was her "go to" person. Whenever Brianna needed someone to talk to, she needed something, even when she wanted to file for divorce two prior times before and needed money for an attorney before locating to NH, Herbert was the person she called for help. Tr. 132-133.

In Herb Novell's testimony, he spoke of all the time spent with Brianna, her husband William and the girls starting with when Brylee was born in 2008. My wife Lori even went to help her with Brylee for a week shortly after her birth. The two summers prior to Brianna's relocation to NH, in both 2016 and 2017 I flew Brianna and the girls to NH for 2-3 weeks each summer where they spent the whole time with us in our home. If there were frictions in our relationship or "abuse" as she has stated, any mature adult would not bring her children into a home where there was potential abuse to be had. Both extended visits were full of fun and laughter and Brianna was so glad to be here with family. Tr. 23-25.

In the Order Regarding Grandparent Visitation, the court stated that “Contrary to Ms. Kauble’s contention, the court finds that the photographs spanning twelve (12) years paint a more accurate reflection of Mr. Novell’s and his wife Lori’s relationship with the children.” Appellant Brief pg. 29. This would coincide with RSA 461-A:13 II (d) and (h).

CONCLUSION

For the foregoing reasons, the Intervenor, Herbert Novell respectfully request that this Honorable Court uphold the final ruling made by the trial court which awarded, Herbert Novell Grandparents Visitation on two separate rulings based on testimony and exhibits presented to the court at final hearing.

RULE 16(11) STATEMENT

This brief contains approximately 4168 words, within the 9500 word limit.

Respectfully Submitted

Herbert Novell, pro se

Date: July 16, 2022

34 Sanborn Road
East Kingston, NH 03827
(603) 772-1182
herbnov@comcast.net

Certificate of Service

I hereby certify that this Brief has been forwarded this day to Brianna Kauble, through her attorney, Jared Bedrick, Esq. by first-class mail.