

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 judgment of the 10th Circuit Court, Brentwood Family Division

REPLY BRIEF FOR BRIANNA KAUBLE

Jared Bedrick #20438
CHAMPIONS LAW
170 West Road, Suite 6D
Portsmouth, NH 03801
(603) 436-8100
jared@champions.law

(15 minutes requested)

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ARGUMENT

Mr. Novell filed a brief contending that the lower court properly weighed the factors in RSA 461-A:13 and that the GAL report did not substantially affect that analysis.¹ In making his argument, he admits to issues well beyond the lower court's finding.

Even the way Mr. Novell writes his brief supports that there was more than mere friction in this relationship; there was toxicity. Mr. Novell admits in his brief, as he did in the lower court, to calling his daughter, the Appellant, a “bitch” because she was seeking documentation to provide her attorney. NB 7; Tr. 79.² Yet, in his brief, he elaborates with excuses for why it was appropriate for him to call her that. He talks about things that his daughter has done that deserved punishment, then he says his daughter was “[a]lways a pistol” and is “[s]till a pistol.” NB 7; *see also* Tr. 132–33. He admits that during this time Brianna drank and had a tough relationship with the girls. NB 8; Tr. 61. He then recounts disagreement over the living arrangements for the children, which, as he admits, “caused friction between” them and that he swore at her in a confrontation over his assumption that she had stolen backpacks. NB 8; Tr. 63. Yet, at the hearing, he maintained that there was no friction in his relationship with Brianna prior to March 2020. Tr. 62.

This is not a case in which one party has a simple distaste for the other—Mr. Novell's conduct posed a serious detriment to Brianna's mental well-being. As Mr. Colwell testified, Brianna would “shut down” after conversations with Mr. Novell. Tr.

¹ The issue of standing was also briefed by both parties, but should be considered waived in these proceedings.

² Mr. Novell's brief is referenced herein as “NB.”

94. And, to compound things, Mr. Novell was spreading rumors to the children about Mr. Colwell, Brianna’s boyfriend, being a “loser” that “had no car, didn’t have a job” and “was homeless.” Tr. 95. Mr. Colwell also testified that one daughter had reported that Mr. Novell’s wife told the eldest daughter that she would “be a loser like her mom” and that “[her mom] had a fucked up relationship with her dad.” Tr. 97.³ These statements were not hurled in a vacuum; they were a continuous theme throughout Brianna’s life. *See* Tr. 110–14, 138–39.

Part I, Article 2 of the New Hampshire Constitution and the Due Process Clause of the Federal Constitution grant Brianna the latitude to expel such negative influences. *See In re Jeffrey G. & Janette P.*, 153 N.H. 200, 203 (2006) (“[T]he right of biological ... parents to raise and care for their children is a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire Constitution.”); *Troxel v. Granville*, 530 U.S. 57, 68 (2000). And she did just that when she made the grave, personal decision not to associate with her own father. This was a conscious effort to improve her life. Not one easily made, either, as she needed the help of a therapist to help her set boundaries and be firm about them. Tr. 98. And this decision paid off, too, as it brought her into a “good space” where she found recovery from alcoholism, got back into school, and a loving, long-term relationship. Tr. 99, 114, 120–21. She was finally free from the person who physically and emotionally abused her throughout her childhood. Tr. 140–141. Denying her father access to her children protected them from the same abusive person and from

³ While Mr. Novell had the opportunity to cross-examine this testimony, he chose not to question it. Tr. 102.

the cycle of abuse that plagued her family growing up. *See generally*, Tr. 105, 110–11, 118, 120, 139–142.

Affirming the lower court’s order makes Brianna’s continued interaction with her abusive father inevitable. As Brianna testified, this would interfere with her ability to parent. At the very least, there would have to be communication with Mr. Novell about the restrictions she places on her children. Tr. 120. More importantly, the children have special medical and emotional needs of which Mr. Novell is not fully apprised. Tr. 70–71, 123. None of this was addressed by the lower court, despite requests for finding of facts and rulings of law and a motion to reconsider asking for elaboration. Appellant’s Brief Appendix 54, Request for Findings of Fact and Rulings of Law, *infra*, 9; *see also In re Rupa*, 161 N.H. 311, 318 (2010) (“[I]n order to assist in any appellate review, we exercise our supervisory authority over the trial courts and instruct those courts to make express findings of fact with respect to all of the enumerated factors that it considers.”).

If the lower court had fully addressed the constitutional contours of this dispute, it would have to reach a different conclusion. Mr. Novell’s brief cites a single case *In re Rupa*, 161 N.H. 311 (2010), the facts of which support reversal. There, the grandchild had a developmental disorder that made transitions difficult, so the parent decided to end visitation. *Id.* at 313. The parent had also contested the grandparents’ lack of “appropriate limits” during the visits. *Id.* The grandparents had regular contact with the grandchild over the course of their lives and happy times, just as Mr. Novell claims here. *Id.* at 313–14. The trial court found that the child was having “fun” and that was a “good thing,” granting the grandparents visitation rights. That decision, however, was reversed. This

Court remanded the case for reconsideration in light of the “constitutional overlay” that restricts this Court’s interpretation of RSA 461-A:13. Consider further, that this Court was not even considering Part I, Article 2 and the Fourteenth Amendment directly, as that issue was waived in those proceedings. It found that the lower court did not properly consider that the “parent’s determination of what is in the child’s best interests must be given special consideration by the trial court.” *Id.* at 318. This Court went so far as to say this is a “presumption” that is “well-established” where the parent is not deemed unfit. *Id.*

Yet, Brianna concerns with discipline and abuse as it related to her daughters and her own well-being were dismissed by the lower court in favor of granting visitation based on general good times that Mr. Novell had enjoyed in the past. This posture was not enough in *Rupa* and it should not be here, as this Court ought to honor its tradition of “emphasiz[ing] the significance of the parent-child relationship and the fundamental rights of parents....” *Id.* This Court should, as it did in *Rupa*, remand the case to “accord[] due deference to the [parent’s] determination of the best interests of her child....” *Id.* at 319 (emphasis added).

CONCLUSION

In his brief, Mr. Novell laments that Brianna, since early childhood, “was going to do things her way.” NB 7. Indeed, the state and federal constitutions grant her the right to do just that – parent her children as she sees fit. She, as a grown woman and parent of the children at issue, has the right to rid her household of elements she deems toxic, such as her own father, Mr. Novell. This is true no matter how many fun times Mr. Novell was able to share with the grandchildren. Nothing illustrates the importance of this any better

than Brianna's alcoholism, which she was only able to overcome once she had the strength to separate herself from her major stressor, Mr. Novell.

As an abused spouse and mother of children with special needs, Brianna's ability to care for her children is difficult enough. Affirming the lower court would place even more weight on her shoulders for no reason other than that Mr. Novell wants it his way. The constitutions, however, reserve that right exclusively for Brianna. Because the lower court's ruling conflicts with that scheme, it must be reversed.

RULE 16(11) STATEMENT

This brief contains approximately 1498 words, within the 3,000-word limit.

Respectfully Submitted,

Brianna Kauble

By her attorney:

Date: August 8, 2022

/s/ Jared Bedrick, Esq. #20438

CHAMPIONS LAW

170 West Road, Suite 6D

Portsmouth, NH 03801

(603) 436-8100

jared@champions.law

Certificate of Service

I hereby certify that this Brief been forwarded this day through the NH eCourt System to Herbert Novell and Chantal Crawley, Esq., both registered e-filers.

/s/ Jared Bedrick, Esq. #20438

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

10TH CIRCUIT COURT
BRENTWOOD FAMILY DIVISION

In the Matter of Brianna Kauble and William Kauble and
Herbert Novell, Grandparent Intervenor

Docket No. 618-2019-DM-00217

PETITIONER BRIANNA KAUBLE'S
REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

NOW COMES the Petitioner, Brianna Kauble, by her attorney, Laurie A. Lacoste, Champions Law, PLLC, who respectfully requests that the court make the following findings of fact and rulings of law:

1. In Parham v. JR, the United States Supreme Court explained: "Our constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations... The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." 442 U.S. 584, 602 (1979). That principle was re-affirmed in Troxel v. Granville, 530 U.S. 57 (2000), which held that the Due Process Clause of the United States Constitution protects a parent's decision to refuse a grandparent visitation, absent "special circumstances." *Id.* at 68.

2. New Hampshire's Grandparent's Rights statute, RSA 461-A:13, on its face, purports to provide such "special circumstances" for situations where the disruption of the nuclear family causes a grandparent to lose the ability to visit with a grandchild. Here, however, applying the circumstances of RSA 461-A:13 violates both Brianna's Substantive Due Process and Equal Protection rights guaranteed by the State and Federal Constitutions. This occurs because Herbert's claim lacks anything by a tenuous, coincidental connection to any of the circumstances outlined in RSA 461-A:13. The relationship between Brianna and Herbert occurred because of incidents that unfolded directly between each other. Thus, there is no interest at play that overrides Brianna's natural right to parent.
3. Furthermore, an order in Herbert's favor would discriminate against Brianna for choosing to get divorced. Crucial to the analysis here is that Herbert is Brianna's biological parent. This is dissimilar to the number of cases in which a grandparent seeks visitation over a non-biological parent's objection after the last remaining ties between the two were severed by death, divorce, or loss of parental rights. Here, the decision affects whether Brianna is forced to acquaint herself and her children with her father, who she identifies as her abuser. The same connection that bound them before and during the marriage binds them to this day, even after a final decree of divorce. Thus, the distinction between a married-Brianna and a divorced-Brianna has no consequence whatsoever.

4. In LeClair v. LeClair, 137 NH 21 (1993), New Hampshire has recognized that Part 1, Article 2 of the New Hampshire Constitution protected against arbitrary discriminatory treatment between divorced and married individuals. That case involved a mere “economic” interest, so the “rational basis” test was applied. Here, however, as noted above, the right at issue that is affected by the discriminatory treatment, as applied, is a fundamental right protected by the Due Process Clause of the United States Constitution, warranting a strict-scrutiny analysis. This is all but fatal to Herbert’s claim because the State cannot assert an interest in overriding Brianna’s decision to remove Herbert from her life where Herbert’s claim’s connection to the interests identified by the legislature in RSA 461-A:13 is so attenuated. Therefore, the New Hampshire and Federal constitutions compel this Court to deny Herbert’s claim.
5. RSA 458-A:13 provides that grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child as provided in paragraph III. 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. See RSA 461-A:13, I. (2005).
6. The court shall consider the following criteria in making an order relative to a grandparent's visitation rights to the minor child:
 - (a) Whether such visitation would be in the best interest of the child.

(b) Whether such visitation would interfere with any parent-child relationship or with a parent's authority over the child.

(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.

(d) The nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and the effect such friction would have on the child.

(e) The circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause.

(f) The recommendation regarding visitation made by any guardian ad litem appointed for the child pursuant to RSA 461-A:16.

(g) Any preference or wishes expressed by the child.

(h) Any such other factors as the court may find appropriate or relevant to the petition for visitation.

See RSA 461-A:13, II. (2005).

7. The parties' minor children Brylee, Harper, and Lydia only briefly resided with their grandfather Herbert Novell who is Brianna Kauble's father for approximately six months from on or about October 2018 until April or May of 2019.

8. Herbert Novell has not had consistent visitation and/or contact with the parties' minor children since their birth and while the parties resided in Arizona prior Brianna's move with the children from Arizona into Herbert Novell's residence in East Kingston.
9. The breakdown of Herbert Novell's relationship with Brianna Kauble arose out of circumstances unrelated to the divorce in this case.
10. The circumstances which resulted in the absence of a nuclear family was caused by the breakdown of Brianna Kauble and William Kauble's marriage which resulted in Brianna filing her Petition for Divorce.
11. Herbert Novell, father to Petitioner Brianna Kauble, was physically, verbally, and emotionally abusive to Brianna during her childhood.
12. Herbert Novell continued to be verbally and emotionally abusive to Brianna while in the presence of her minor children Brylee, Harper, and Lydia and while the children temporarily and briefly resided with their grandfather Herbert Novell after Brianna and her children moved into Mr. Novell's residence in East Kingston, on or about October of 2018.
13. Herbert Novell is verbally and emotionally abusive to the parties' children by calling them little "bitches" and berating them, telling Brylee that she "will grow up to be a loser like her mother" and by his abusive discipline of Harper, for instance, while he and Harper were in his office at his home in East Kingston, New Hampshire.
14. It is not in the best interest of the parties' minor children Brylee, Harper, and Lydia to have visitation with their grandfather Herbert Novell because he is

verbally and emotionally abusive to them, calling them little “bitches” and berating them, telling Brylee that she “will grow up to be a loser like her mother” and by abusively disciplining Harper, for instance, while he and Harper were in his office at his home in East Kingston, New Hampshire.

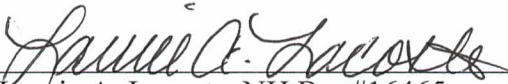
15. There is reasonable cause to believe that the children’s physical and emotional health would be endangered by visitation with their grandfather Herbert Novell.
16. The nature of Herbert Novell’s relationship with his daughter Brianna Kauble is abusive and toxic due to Herbert Novell’s continued verbal and emotional abuse of Brianna which causes friction between Herbert Novell and Brianna Kauble and such friction between Mr. Novell and his daughter Brianna would have grave or negative emotional impact on the parties’ minor children.
17. It is not in the best interest of the parties’ minor children Brylee, Harper, and Lydia to have visitation with the because their grandfather Herbert Novell is demeaning and verbally and emotionally abusive to his daughter Brianna Kauble while in the presence of her children.
18. If Herbert Novell were to be granted grandparent’s visitation with the parties’ minor children such visitation would interfere with Brianna’s relationship with or her authority over her children Brylee, Harper, and Lydia.
19. Based upon this court’s findings of fact and rulings of law, the grandfather Herbert Novell’s request for grandparent visitation is denied.

WHEREFORE, the Petitioner Brianna Kauble prays that this Honorable Court:

- A. Grant Petitioner's Request for Findings of Fact and Rulings of Law;
- B. Issue a Final Order incorporating Petitioner's Findings of Fact and Rulings of Law into the court's Final Order on Herbert Novell's Motion to Intervene and Request for Grandparent's Visitation; and
- C. Issue any other orders as justice requires.

Respectfully submitted,
Brianna Kauble,
By Her Attorney,

Date: October 15, 2021


Laurie A. Lacoste, NH Bar #16465
Champions Law, PLLC
170 West Road, Suite 6D
Portsmouth, NH 03801
603-436-8100

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioner's Request for Findings of Fact and Rulings of Law was forwarded by first class mail, postage prepaid to Attorney Chantal Crawley, counsel for the Respondent, and Herbert Novell, *pro se*, at their addresses of record.

Date: October 15, 2021


Laurie A. Lacoste