

Barrett v. Barrett

KEVIN J. BARRETT, Plaintiff, v. ANGELA BARRETT, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, F.R. 1977-198

Custody - Visitation - Grave Threat Standard, Parental Rights, Factors to Consider

1. Visitation concerns the constitutionally protected liberty interest of allowing contact between parents and their children and requires a stricter standard than the child's best interest standard.
2. When considering a request for visitation, the Court must determine whether the petitioner suffers from mental or moral deficiencies which pose a grave threat to the child.
3. A parent does not lose all parental visitation rights because of incarceration alone.
4. The fact that a child does not want to see her parent is not sufficient reason alone to deny visitations.
5. The Court is not prohibited from using the child's wishes as a factor in its determination whether the petitioner suffers from a mental or moral deficiency which poses a grave threat to the emotional well-being of the child.
6. Petitioner Kevin Barrett suffers from a moral deficiency which poses a grave threat to the emotional well-being of Keila Barrett.

Appearances:

Kevin Barrett, *pro se*

Janice M. Hawbaker, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., February 27, 2003

Factual Summary

This issue comes before the Court again on a complaint for visitation filed by Kevin J. Barrett (petitioner) against Angela Barrett (respondent), petitioner's ex-wife and mother of his child, Keila C. Barrett. The subject of the complaint for visitation is Keila Barrett, a 14-year-old child currently residing with the respondent. The parties have another daughter, Tai Barrett, age 21, the respondent's natural daughter, who was adopted by the petitioner in July 1988.

The petitioner and respondent were married in February 1988, separated in March 1989 and divorced in May 1997. At first, custody was amicably shared by mutual agreement for the year following the separation. The next year, respondent assumed primary custody and Keila spent every other weekend with the petitioner, her father.^[1] This lasted until about September 1997. Currently, Keila resides with the respondent and Jeffrey Cutshall, Keila's stepfather.

In September 1997, petitioner was incarcerated for the first degree murder of his former girlfriend, Wendy

Schuchman. The petitioner is currently serving a life sentence at SCI-Graterford for the murder of Wendy Schuchman.

Under a 1997 conciliation agreement between the petitioner and the respondent, Jim and LaVerne Barrett, petitioner's parents, have visitation rights with the children. Keila Barrett reports that she has a good relationship with her grandparents and wishes to continue with that relationship. LaVerne Barrett testified that the petitioner exercised his visitation rights in the beginning at his parents' home. LaVerne Barrett testified that Keila would often come and sleep with them in the middle of the night. It's the Court's understanding that neither party would like to destroy the relationship that Keila has with her grandparents.

In his complaint, Petitioner Kevin Barrett seeks monthly visitations with Keila to be exercised at SCI-Graterford. Petitioner Barrett avers that he is willing to work with respondent to set up a schedule that fits both Keila and respondent's schedules. Keila would be transported to SCI-Graterford by Jim and LaVerne Barrett, at their costs, in one of their personal vehicles, which Jim Barrett testified are well maintained and properly insured. The drive takes about three hours each way.

An original hearing on this matter occurred on August 14, 2001. Petitioner Barrett, *pro se*, filed two petitions for writs of habeas corpus ad testificandum, which were both denied. Jim Barrett appeared and acted on behalf of the petitioner. After all of the evidence presented, the Court denied the petitioner's request for visitation because the Court felt that the visitation was not in the best interest and welfare of Keila Barrett. The Court issued its rule and reasoning in an opinion and order dated November 16, 2001.

Petitioner Barrett timely appealed the Court's decision to the Superior Court. In his appeal, the petitioner argued that the Court erred when it did not allow the petitioner to appear at the hearing. The petitioner also argued that the Court erred when it used the best interest standard instead of grave threat standard.

The Superior Court entered its judgment on June 27, 2002. In its judgment, the Superior Court reversed this Court's decision denying Barrett's visitation complaint and remanded the same back. The Superior Court stated that Petitioner Barrett was denied the opportunity to be heard. As such, Petitioner Barrett was entitled to a hearing on the matter. It is important to note that the Superior Court found sufficient evidence in the record establishing that Petitioner Barrett imposed a grave threat on Keila. The Superior Court found that this Court's use of best interest of the child standard to be harmless error.^[2]

Petitioner Barrett was granted a hearing. This hearing took place on November 14, 2002. At this hearing, the Court heard testimony from Jim Barrett (petitioner's father), LaVerne Barrett (petitioner's mother), Tai Barrett (petitioner's adopted daughter and respondent's natural daughter), Petitioner Kevin Barrett, Respondent Angela Barrett^[3], and Keila Barrett, the child at issue. At the close of the hearing, the Court asked that both parties submit letter briefs in support of their respective positions.

The Court has reviewed the complaint, the transcript of the hearing, the letter brief from Petitioner Kevin Barrett, the letter brief of Respondent Angela Barrett, and the applicable law.

This opinion and order result from such review.

Discussion

This case deals with one of the most important relationships we have as human beings, the relationship between parents and their children. This Court cannot emphasize enough the need for a strong relationship between parents and their children. Enough of a concern for parental visitation exists that parental visitation has become a constitutionally protected liberty interest. After careful consideration of the record, the Court has determined that the petitioner suffers from a moral deficiency that poses a grave threat to Keila's emotional well-being, and consequently, the petitioner's request for visitation is denied.

Visitation concerns the constitutionally protected liberty interest of allowing contact between parents and their children and requires a stricter standard than the child's best interest standard. Green v. Sneeringer, 635 A.2d 1074, 1075, 413 Pa. Super. 66, 69 (Pa. Super. Ct. 1993). The Superior Court has stated that a court may only deny a parent visitation when the evidence demonstrates the petitioner parent suffers from mental or moral deficiencies, which pose a grave threat to the emotional well-being of the child. Green, 413 Pa. Super. at 70. This higher standard is necessary to protect the interests of both the child and the parent.

When considering a request for visitation, the Court must determine whether the petitioner suffers from mental or moral deficiencies which pose a grave threat to the child. Green, 635 A.2d at 1076. From

the evidence, the Court must be able to determine if the petitioner suffers from a moral deficiency which poses a great threat to the child's emotional well-being. This case is not like any other run of the mill visitation petition. The petitioner murdered his former girlfriend, Wendy Schuchman, who, at least the Court got this impression, Keila was relatively close with.

This Court would agree that a parent does not lose all parental visitation rights because of incarceration alone. Etter v. Rose, 684 A.2d 1092, 1093, 454 Pa. Super. 138, 141 (Pa. Super. Ct. 1996). Although, there is a presumption, which can be rebutted by the petitioner, that visitation between a child and an incarcerated parent is not in the best interest of the child. Etter, 684 A.2d at 1093. With that said, this Court must consider the fact that Petitioner Barrett is incarcerated for murder in its determination of whether Petitioner Barrett suffers from a moral deficiency which poses a grave threat to Keila's emotional well-being. Petitioner Barrett must rebut the creation of the presumption and establish the relative benefits to Keila by visitation with him in prison. Etter, 684 A.2d at 1093.

After hearing the evidence, the Court has no doubt that Petitioner Barrett poses a grave threat to the emotional well-being of Keila. First, the petitioner murdered Wendy Schuchman. Keila spent every other weekend with the petitioner and Ms. Schuchman. Ms. Schuchman seemed like a parental figure for Keila on every other weekend. The Court got the impression that Keila had developed a good relationship with Ms. Schuchman. For example, Keila testified about an incident that occurred at Raystown Lake where the petitioner jumped out of the boat and left Ms. Schuchman, Keila, Tai and Tara (Ms. Schuchman's daughter) stranded in the middle of the lake. Keila sought comfort from Ms. Schuchman. There must have been some bond in order for Keila to feel comfortable with Ms. Schuchman.

The Court believes that the Superior Court's finding in Green v. Sneeringer lends guidance to our situation. In Green, the Court found that the petitioning parent manifested severe moral deficiencies precluding visitation rights with his child because he was incarcerated for killing the child's other parent. Green, 635 A.2d at 1077. The case at bar is similar. Petitioner Barrett was convicted of killing his girlfriend, whom Keila spent every other weekend with and had a very close relationship with. Petitioner Barrett argues that the killing did not occur in the presence of Keila, and therefore, does not affect Keila. This Court, however, does not share this same belief. Just because a parent engages in the premeditated killing of the other parent, or parental figure in this case, outside the presence of the child, this does not make it any less egregious. Here, Petitioner Barrett's murder of Ms. Schuchman outside Keila's presence does not make his actions any less egregious. Accordingly, Petitioner Barrett suffers from a moral deficiency constituting a grave threat to Keila's emotional well-being.

It is also important to note that Keila attends school with Ms. Schuchman's daughter, Tara. If this Court forced Keila to visit with Petitioner Barrett, then this would undoubtedly open a whole new can of worms. Keila has already testified that she feels uncomfortable around Tara and, in fact, is kind of afraid of Tara. Forcing Keila into visitation would almost certainly increase those uncomfortable feelings and pose a grave threat to her emotional well-being.

Next, Keila herself testified that she does not want to see the petitioner. In fact, Keila wrote the petitioner a letter, which was entered into the record, adamantly asking him not to proceed with these proceedings. More recently, and more indicative of Keila's true feelings, Tai Barrett testified that Keila told her on the Sunday before the hearing that she (Keila) does not want to be forced to see the petitioner because of her fear of him and what he has done. The fact that a child does not want to see her parent is not sufficient reason alone to deny visitations. Nancy E.M. v. Kenneth D.M., 463 A.2d 1386, 1389 (Pa. Super. Ct. 1993). Of course, this does not prohibit the Court from using the child's wishes as a factor in its determination,^[4] as well it should not.

Keila's unequivocal desire not to see her father surfaces because of a number of reasons. Keila testified that she is afraid of her father. After all, Petitioner Barrett had murdered Ms. Schuchman less than six years ago.^[5] She also testified that she is not just afraid of the petitioner but she is also afraid to visit the prison. She does not know anybody (besides the petitioner) who is or has been incarcerated. She never visited any other facility for any other reason. Undoubtedly, a fourteen-year-old girl would be afraid of visiting a facility that housed a great number of convicted felons, one being her father, a convicted murderer who is incarcerated for life. Finally, Respondent Barrett testified that, for some time after the murder and the ensuing trial, Keila was terrified, unable to sleep by herself, and unable to be alone. The Court is sure that these feelings have not completely disappeared, as evidenced by Keila's fear of the petitioner. Forcing Keila to visit her father in a place where Keila could not possibly be comfortable poses a grave threat on the emotional well-being of Keila. As such, the Court denies the petitioner's request for visitation.

Petitioner Barrett presented the Court with a number of certificates from classes that he completed while he was incarcerated. Certificates that evidenced the completion of religious education classes, drug

and alcohol rehabilitation classes and classes on sexually transmitted diseases supposedly made him a changed person. The Court would like nothing more than to believe that. The problem is that the Court witnessed first hand the demeanor of Petitioner Barrett. During the hearing, the petitioner was openly hostile toward the Court and to the respondent. The petitioner failed to show the restraint that he allegedly learned during his classes. This same hostility is what got him into trouble years ago. For example, Keila testified that her dad threw beer bottles at her mother. The Court believes that Petitioner Barrett's demeanor evidences that he still suffers from a moral deficiency. The Court observed that Keila still today fears her father. Forcing Keila to visit the state correctional institution would only feed that fear. As such, it would pose a great threat to the emotional well-being of Keila.

The petitioner made every effort to prove to this Court that it should force Keila to visit because Tai Barrett (Keila's sister) visited Mr. Barrett almost every weekend. Tai Barrett testified that she was fearful at first, but got used to going to the prison. Accordingly, Keila would lose that fear soon after visiting with her father.

The Court must take a different approach. There could be no doubt that Keila and Tai are two different individuals. First, the Court did not get the impression that the murder of Ms. Schuchman affected Tai as much as it affected Keila. It seemed that Keila was more emotionally unbalanced because of her father's actions. Keila was terrified of sleeping alone or being alone. There was no evidence that Tai had so much trouble coping with her father's actions. There is also evidence that Keila fears her father while Tai does not have that fear. As such, the Court must take a different approach.

Second, Tai Barrett began to visit her father after her 18th birthday. She made that decision on her own. This is remarkably different than what the petitioner is asking the Court to do. The petitioner wants the Court to force Keila at age 14 to visit a place where she feels very uncomfortable and a person whom she still fears for his unspeakable actions. Keila and Tai are at different stages in life. Tai does not go to school with the daughter of the victim. Keila does. Keila is reminded every day of what her father did to Ms. Schuchman. The Court fails to see how the petitioner does not suffer from a moral deficiency which does not pose a grave threat to Keila's emotional well-being.

Petitioner Barrett also represents that Keila still fears the petitioner because Respondent Barrett manipulates Keila into those thoughts. The Court observed the tension that exists between the petitioner and the respondent. To be sure, both of them took "pot shots" at the other while they were testifying. The Court could see that there is no love lost between them. To that end, Petitioner Barrett claims that if his request is denied, and Keila waits until she reaches 18, the respondent will have Keila totally against him because the respondent has already manipulated Keila. The petitioner claims that this would create a good possibility that Keila would never visit her father and she would be denied his love and affection. The petitioner wants to show Keila that he loves and cares for her.

First of all, the Court does not see any evidence that Keila's opinion was significantly influenced by her mother. Second, the Court understands and commends the petitioner's desire to ensure that Keila knows that he loves and cares for her. The Court, however, believes that court-ordered visitation would not be the best means to achieve the petitioner's goals at this time. It would be counter-productive to compel Keila to visit her father when she is so averse to the idea. The petitioner's actions caused a tremendous amount of grief in Keila's life, and continues to do so today. Now, Keila has a stable home life with a mother and stepfather who love and provide for her. To compel Keila to visit the petitioner in prison is tantamount to tying a fifty-pound weight on her leg and making her drag it around for the rest of her life.

Instead of forcing Keila to visit him, Petitioner Barrett's time and effort may be better off writing Keila a letter acknowledging and taking responsibility for his past mistakes and honor Keila's wishes with regard to visitation. This order by no means denies the petitioner his right to try and develop his relationship with Keila through other means. In fact, the record indicates Petitioner Barrett has given Keila, through his parents, letters and cards over the holidays. The Court would encourage the petitioner to continue to give cards and letters to his parents for Keila.^[6] This might be the best way to develop this relationship until his deficiencies do not pose a grave threat to Keila's emotional well-being.

Keila has lived through the dissolution of her parents' marriage, the petitioner's volatile behavior, the murder of Ms. Schuchman, and the subsequent trial with all the publicity of the media coverage that ensued. Keila is reminded of all of these events regularly because she attends school with Ms. Schuchman's daughter, Tara. Keila is uncomfortable around, and kind of afraid of, Tara. The Court believes that this is enough of a burden on a 14-year-old child, and that nothing would be gained by putting additional pressures on her by imposing visitation with her father against her wishes and against the Court's judgment.

For the foregoing reasons, petitioner's request for visitation is denied.

ORDER OF COURT

February 27, 2003, after reviewing Petitioner Barrett's complaint, the transcript of the hearing, the letter brief from Petitioner Kevin Barrett, the letter brief of Respondent Angela Barrett, and the applicable law, this Court finds that Petitioner Kevin Barrett suffers from a moral deficiency that poses a grave threat to Keila's emotional well-being. Visitation is hereby DENIED.

[1] Petitioner Barrett also had custody of Tai Barrett during this time period. Tai has now reached the age of majority and therefore, is not affected by this Order.

[2] The Superior Court, however, recommended that this Court use the grave threat standard at the new hearing.

[3] Angela Barrett's present name is Angela Cutshall, the wife of Jeff Cutshall. For purposes of this Opinion, the Court will refer to Angela Barrett and Angela Cutshall. Both names will represent the Respondent in this matter.

[4] Keila is 14 years old. She is mature enough to venture her opinion about the Court ordering her to visit her father, Petitioner Barrett.

[5] The hearing on November 14, 2002 was the first time that Keila had seen Petitioner Barrett since his incarceration for the murder of Ms. Schuchman and these feelings of fear are still on the surface.

[6] The Court would recommend that these cards and letters be sent through an intermediary, like the Mr. and Mrs. Barrett until Keila decides that she does not want them.