

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-306

Judge:

Complainants:

ORDER

December 11, 2019

The Complainants alleged a superior court judge improperly denied their request for grandparent visitation and had prejudged their case.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on December 11, 2019.

CONFIDENTIAL

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2019 - 306

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

This was the second time we appeared before Judge _____ Back in _____ we were present at a " _____ Judge _____ made it clear before myself, my wife and my attorney that she was predetermined to state that the parents (not grandparents) have overwhelming rights when deciding on visitation. It was apparent that she was prejudicial in her remarks even before we discussed the issues.

Our attorney prepared a number of compromises that were sent to the parents of our grandchild only to be dismissed without cause. That led us to file for a trial (once again with a predisposed opinionated judge _____ whereby exhibits would be presented).

Our trial date of _____ at approximately _____ was to begin with " _____ " to both parties. This did not occur and noticeably Judge _____ continued to look at the clock. At _____ Judge _____ finally allowed our attorney to question witnesses (the parents). Every time he raised an objection to the answers that had no bearing on the case, Judge _____ over ruled his objections (review and read thoroughly the court transcript). Our side was only able to hold court for _____ in total. Again, Judge _____ continued

In her decision (see attached), she blatantly ignored the history of our participation with our Granddaughter and relied only on " _____ ' presented by the parents which were continually raised by our attorney as objection or conjecture only to be over ruled constantly. The Judge also included in her ruling a statement by _____ that father " _____ " which was contradicted by two witness; myself and my wife. Yet the judge apparently believed his accusation. She also states in her ruling citing a statement that _____ " _____ ' without a follow up as to how he can prove this. Yet the Judge seemed to think it was not important as he is still one of the custodial parents.

Mother testified " _____ " and stated that we should have contacted her about her ex-husbands drug abuse. She would never return our phone calls and is a narcissistic belligerent person who has had animus towards my wife and I since the day we met her. She acted as the questioner for her side and posed many irrelevant and vicious accusations at every witness she addressed. The judge never asked her to redress the witnesses but only encouraged her to strengthen her vindictiveness. It was a total sham and she was allowed to take up much of the courts time.

We believe that our honest efforts were put forth and that a suitable " _____ " visitation by a third party would warrant our relief. I stated emphatically that we would do anything the parents requested in order to grant us visitation. Read the court reporters transcript! This did not happen.

Overall, Judge _____ was totally unabsorbed in our plea's and totally admonished the parents for the " _____ Judge _____ is an embarrassment to the court and needs to be reprimanded. Certainly with the judge's behavior, I would not doubt that she has never ruled in favor of Grandparents rights and would obviously have additional complaints in her file.

COURT OF ARIZONA
COUNTY

CLERK OF THE COURT

HONORABLE

IN RE THE MATTER OF

AND

JUDGE

UNDER ADVISEMENT RULING
ON GRANDPARENT VISITATION

Intervenors/Paternal Grandparents ("Grandparents") filed a Petition for Grandparent Visitation on _____ Petitioner/Mother and Respondent/Father (together "Parents") have appeared in opposition to the Petition. Previously, Parents entered a Consent Decree of Dissolution that was approved by the Court and filed on _____ Parents filed an agreement to modify parenting time on _____ by which they have equal parenting time. The child subject to these proceedings was born _____ ("Child").

The Trial on Grandparents' Petition was held _____ after which the Court took the matter under advisement. The Court has weighed the evidence, including the demeanor of the witnesses, and considered the parties' arguments. The Court now makes the following findings and orders:

OF ARIZONA
COUNTY

Jurisdiction

THE COURT FINDS that, pursuant to A.R.S. § 25-409(C), the Court has jurisdiction to decide Grandparents' Petition because Parents' marriage had been dissolved for at least when Grandparents filed their Petition.

A.R.S. § 25-409(E) Factors

Having found the Court has jurisdiction to decide the Petition, the Court must determine whether the requested visitation is in the Child's best interests. A.R.S. § 25-409(C). To determine the Child's best interests, according to A.R.S. § 25-409(E), the Court must consider "
" including the factors listed below.

1. The historical relationship, if any, between the child and the person seeking visitation.

It is undisputed Grandparents have had a relationship with the Child since in and that from to Father lived with Grandparents so that when the Child was with Father, she too lived with Grandparents. Grandfather testified that in they called police to have Father removed from the house due to Father's drug use and threatening behavior. Since the removal, Father testified he has offered opportunities for supervised visitation that Grandfather "
" Grandmother has had some visits with the Child and Father.

2. The motivation of the requesting party seeking visitation.

The Court finds Grandparents want a relationship with the Child. At Trial, however, Grandparents made very little reference to the Child's best interests; rather, their motivation seemed to arise from wanting to show that Parents are not good people.

3. The motivation of the person objecting to visitation.

The Court finds Parents' objection to Grandparents' visitation is motivated by the best interests of the Child. Among specific concerns raised by Parents are Grandparents' alleged abuse of alcohol, pain medication and marijuana. Grandmother told Father she no longer used marijuana but when Father took the Child to visit Grandmother, they saw a partially-smoked marijuana joint Father, who is recently sober, also claimed that Grandfather regularly drinks to excess. It appears the parties discussed Grandparents submitting to alcohol/drug testing but did not agree on the terms of the testing.

COURT OF ARIZONA
COUNTY

In addition, Father had talked to Grandparents about focusing on building relationships with the Child rather than gift giving (" " Father said), a boundary he felt Grandmother violated by taking the Child to the and getting her a doll. Grandmother testified the doll was not expensive but the Court finds that is not relevant to Father's point.

Also of concern to Parents is Grandparents' alleged " " and " " behavior. Father testified that Grandparents had not changed for the worse since he and the Child lived with them. Rather, he said, the change was in him quitting drugs, which allowed him to see the behavior he finds problematic. Father testified to Grandmother screaming and cursing at an employee in front of the Child (and Father) regarding a missing which turned out not to be missing. At Trial, Grandfather called Parents " " and " " Father testified that when Grandfather saw him across the recently Grandfather yelled " !" Father's testimony was not refuted.

Mother testified that she has not felt comfortable leaving the Child alone with Grandparents since the Child was She also stated that if Grandparents had found Father's drug use and behavior when he lived in their home so problematic, in the best interests of the Child, they should have contacted Mother and did not.

4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.

Grandparents requested visitation from to which will effectively take about half of one of the Parent's (likely Father's) weekend time under Parents' schedule and, therefore, negatively impact the Child's ability to have customary activities with that Parent. The Grandparents also requested visitation one from after school until during summer break from school; and " telephone access. At Trial, Grandfather testified that they would like any visitation time but there was no evidence presented as to whether a different schedule was proposed to parents and/or whether there was potential adverse impact on the Child's customary activities.

5. If one or both of the child's parents are deceased, the benefit in maintaining an extended family relationship.

Not applicable.

COURT OF ARIZONA
COUNTY

Additional Relevant Factors

Under A.R.S. § 25-409(E), the Court must consider “ _____ ,” not just those specifically enumerated in the statute. In addition to the factors specifically enumerated in A.R.S. § 25-409(E), the Court also finds the following factor to be relevant in this case.

At Trial and in _____ Grandfather demonstrated active animus towards Parents, including Grandfather cursing at Parents. The Court finds it is not in the Child’s best interests that she be required to spend time with people who appear unable to contain their criticisms of Parents. Grandfather testified that it is Parents’ vindictiveness causing the animus but, even if true, the Court finds ordering the Child into the middle of a hateful relationship is not in her best interests.

Parents’ Opinion on Best Interests

In addition to consideration of the factors and findings identified above, A.R.S. § 25-409(E) requires the Court to give “ _____

” As instructed by the _____ Court, the Court gives Parents’ opinion “ _____ ” while weighing whether Grandparents’ visitation is or is not in the Child’s best interests. *In Re Marriage of Friedman and Roels*, 244 Ariz. 111, 119 (2018).

Accordingly, the Court has considered all relevant factors regarding the Child’s best interests, and does so giving deference to Parents’ position. The Court accepts and has applied the presumption that Parents have made and will continue making decisions that are in the Child’s best interests. Because the presumption is rebuttable, the Court also considers Paternal Grandparents’ evidence to support visitation with the Child. All evidence considered,

THE COURT FINDS Paternal Grandparents have not proven by a preponderance of the evidence that Parents’ decision to deny them visitation impairs the Child’s best interests. Accordingly,

IT IS ORDERED denying the Petition for Grandparent Visitation.

No further matters remain pending for the Court to decide. Therefore,

IT IS FURTHER ORDERED pursuant to Rule 78(C), Arizona Rules of Family Law Procedure, this final judgment/decree is signed by the Court and it shall be entered by the Clerk. The time for appeal begins upon entry of this judgment by the Clerk. For more information on appeals, see Rule 8 and other Arizona Rules of Civil Appellate Procedure.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**