

IN THE COURT OF APPEALS OF THE CHOCTAW NATION OF OKLAHOMA

FRANCIS FARRELL,  
Petitioner/Appellant,

vs.

MADISON ALEXIS FARRELL,  
Respondent/Appellee.

APPEAL FROM THE CHOCTAW NATION TRIBAL DISTRICT COURT  
HONORABLE MARK MORRISON PRESIDING  
DISTRICT COURT NUMBER: FD-22-65  
APPEALS COURT NUMBER: AC-23-3

AFFIRMED

Jeremy Elliot, 323 West Evergreen Street, Durant Oklahoma, 74701  
Attorney for Appellant/Petitioner

Ken Rainbolt, 323 West Main, Durant, Oklahoma 74701  
Attorney for Appellee/Respondent

FILED  
CHOCTAW NATION OF OKLAHOMA  
APPELLATE COURT CLERK

DEC 11 2023

DECISION

COURT CLERK  
BY 

Opinion by Judge Gotcher

This is an appeal from a Ruling denying Grandparent Visitation by the District Court of the Choctaw Nation of Oklahoma, the Honorable Mark Morrison, District Judge presiding. The hearing was held on the 5<sup>th</sup> day of December 2022. Journal Entry of Judgement was filed on the 6<sup>th</sup> day of January 2023. Timely appeal was commenced thereafter seeking reversal of the trial court's order and requesting grandparent visitation for the Petitioner/Appellant.

STANDARD OF REVIEW

In cases involving child custody and visitation the best interests of the child is the paramount consideration of this court. When reviewing the trial court's determination of grandparent visitation, this court evaluates the record for an abuse of discretion. Under this

standard the court will reverse only if the trial court's determination is clearly against the weight of the evidence or is clearly contrary to a governing principle of law.

#### DISCUSSION

Before a court may disrupt the Constitutional Right of parents to raise their children by granting grandparent visitation over the objections of the surviving parent, the court must find pursuant to our Tribal Code, *Section 109.4, Choctaw Nation Family Code*, that grandparent visitation is in the best interests of the child, that the parent is either unfit or that the child will be harmed or potentially harmed by not being allowed to visit with his grandparents and lastly that the nuclear family is not intact. Reference is made to the statute for a full understanding of the elements necessary to grant grandparent visitation. In this case, the parties agree that the mother isn't an unfit parent. It clearly appears that the Petitioner's son and the father of the grandchild in question is deceased. Therefore the issue before the trial court is whether or not the failure of the court to award grandparent visitation will harm or potentially harm the child.

This issue before the trial court was fact intensive and our review must consider the facts shown at the hearing. The court did not in this case issue findings of fact. The court merely ruled that the "Petitioner has failed to prove by clear and convincing evidence that the minor child would suffer harm or potential harm should the grandparent request for visitation be denied." ROA page 14-15. The designation of record of petitioner filed on February 6, 2023 states that no transcript was made. The record on appeal does not contain a transcript. The record does not disclose nor contain a narrative statement in lieu of a transcript. *Choc.Ct.App.R. 1.30*. Therefore there is no factual record before this court.

The Petitioner in her brief states that Respondent, natural mother herein, testified that the minor child had been negatively affected by the death of her father and would be further negatively affected by having her relationship with her grandmother severed. Page 5 of Petitioner's brief<sup>1</sup>. The brief of the Respondent states that, "There are no transcripts of any hearing or trial in this case. The case law specifically states that the grandparent must, among other things, prove by clear and convincing evidence of the harm or potential harm. There is absolutely no evidence in this cause that would show any harm or potential harm if granting visitation is not ordered." Page 3 of Respondent's brief<sup>2</sup>. The standard of review in this case is abuse of discretion, i.e., is the court's decision clearly against the weight of the evidence. Since the appealing party has not provided either a transcript of the evidence or a narrative in lieu of a transcript, this court in absence of any record of evidence at trial/hearing will not presume an abuse of discretion by the trial court, especially when the parties as set out in their respective briefs have clearly opposing views of the evidence concerning the main issue, i.e., harm to the child in not having visitation with the grandmother.

ACCORDINGLY, the decision of the trial court is affirmed.

Phelps, C.J., Concur

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<sup>1</sup>The brief of Petitioner does not contain numbered pages however the quote is found on the fifth page of the brief. Attention is called to *Choc. Ct.App.R. 1.11(a)*.

<sup>2</sup>The brief of Respondent does not contain numbered pages, but the quote is found on the third page of the brief. Attention is called to *Choc. Ct.App.R., 1.11(a)*.

**CERTIFICATE OF DELIVERY**

I hereby certify that on the on this the 11th day of December 2023, I emailed the Decision in the above styled case to:

Jeremy Elliott, Attorney for Appellant/Petitioner

Ken Rainbolt, Attorney for Appellee/Respondent

Choctaw Nation Appellate Court Clerk

By: 

