Circuit Court for Caroline County
Case No. 005-C-16018974

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2601

September Term, 2016

GAIL YVONNE STINCHCOMB

v.

TIFFANY TRAUTMAN, ET AL.

Eyler, Deborah S.,
Meredith,
Arthur,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: September 25, 2017

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Gail Yvonne Stinchcomb ("Ms. Stinchcomb"), the appellant, challenges the decision of the Circuit Court for Caroline County dismissing her complaint for grandparent visitation. The appellees are Ms. Stinchcomb's daughter, Tiffany Trautman ("Tiffany"), and son-in-law, Patrick Bryan Trautman ("Bryan"), the parents of the two minor children who are the subjects of the complaint. Ms. Stinchcomb asks whether the court's ruling was in error. For the following reasons, we hold that it was not and shall affirm the judgment.

FACTS AND PROCEEDINGS[1]

Tiffany and Bryan are the married parents of two children: A. and T., who were ages ten and six respectively when this litigation commenced. The family lives in Easton, in Talbot County. Ms. Stinchcomb is Tiffany's mother and A. and T.'s grandmother. She resides in Easton as well. Until 2015, Ms. Stinchcomb spent time with her grandchildren several times each week.

On April 14, 2015, Tiffany and Ms. Stinchcomb had an argument during a telephone call that ended with Tiffany saying "you're not seeing the kids again." Since then, Tiffany has not allowed Ms. Stinchcomb to come to Tiffany and Bryan's home and have any contact with the children there. Ms. Stinchcomb has had contact with A. and T. at their sports events in public locations and at one family gathering. She has not had any other contact with them.

[1] Because Ms. Stinchcomb appeals from the grant of the Trautmans' motion to dismiss, we present the facts in a light most favorable to her, as the non-moving party.

On March 10, 2016, Ms. Stinchcomb filed a "Complaint for Grandparent Visitation" in the Circuit Court for Talbot County and a motion to transfer venue to the Circuit Court for Caroline County, which was granted.[2] Ms. Stinchcomb alleged that, since A. and T. were born, she had been a "constant presence," "involved in every facet of [their] lives"; had "access to [them] on a virtually constant basis"; had regular sleepovers with them at the Trautmans' home; had weekday dinner visits; and spent birthdays and holidays with them. Ms. Stinchcomb estimates that she has visited A. 1,440 times and has visited T. 710 times since their births, in addition to attending their sporting events and speaking with them on the phone. She paid for almost all their clothing and school uniforms and for three years of private school tuition. She alleged that A. and T. were "very bonded" with her and that she and they were "extremely close on all levels—and especially on an emotional level."

Ms. Stinchcomb further alleged that the Trautmans did not allow her to give the children Christmas presents in 2015, or to see them on Christmas day. She went to the Trautman home on January 2, 2016, to attempt to drop off Christmas presents. She was accompanied by her daughter Lisa Migliorisi (Tiffany's sister). They knocked on the door, but Tiffany would not let them come inside. The following day, Tiffany filed an

[2] In her motion to transfer venue, Ms. Stinchcomb alleged that she had been employed by the Talbot County Sheriff's Department and, in that capacity, had worked in the Circuit Court for Talbot County as a court security officer for many years. In light of her relationship with judges and other court staff, she asked for a transfer of venue to avoid any appearance of impropriety. The Trautmans opposed her motion, but agreed that Caroline County would be a convenient venue. By order entered on May 25, 2016, the case was transferred to the Circuit Court for Caroline County.

"Application for Statement of Charges" against Ms. Stinchcomb in the District Court of Maryland for Talbot County alleging a continuing course of harassing conduct.[3] The Trautmans' lawyer also sent a "Cease and Desist" letter to Ms. Migliorisi, advising her that she was "not welcome" at the Trautmans' home and directing her not to initiate any further contact with them.

Ms. Stinchcomb alleged that it was in the children's best interests to "have a continuing relationship" with her "in light of the prior bonding" and "in light of the emotional detriment they will suffer if that relationship is terminated[.]" She claimed that the children, especially A., "[we]re suffering" as a result of the cessation of contact and would continue to suffer "emotional detriment absent visitation" with her.

On April 12, 2016, the Trautmans filed an answer to the complaint and a motion to dismiss for failure to state a claim for which relief could be granted. *See* Md. Rule 2-322(b)(2). They asserted that grandparent visitation only may be granted against the wishes of a child's natural parents if the grandparent makes a threshold showing of parental unfitness or exceptional circumstances. Ms. Stinchcomb's complaint did not allege unfitness and her "bald conclusory" allegations that A. and T. were suffering harm as a result of the Trautmans' having terminated contact between Ms. Stinchcomb and the children did not rise to the level of exceptional circumstances.

[3] Ms. Stinchcomb was charged with two counts of harassment, one count against Tiffany and one count against the children. The State entered a *nolle prosequi* as to the latter charge and Ms. Stinchcomb was found not guilty of the former charge.

Ms. Stinchcomb filed a sworn and verified opposition to the motion to dismiss that set forth additional allegations of fact. She claimed to have "observed emotional harm and detriment to the children associated with the denial of visitation" three times since the Trautmans cut off contact between her and the children. First, in late spring 2015, Ms. Stinchcomb spoke to A. at a baseball game. She told him he had played well and asked him "what he thinks about during the day." He replied, tearfully, "You." He embraced her tightly, refusing to let her go. A. had never "hugged and held her with such intensity."

Then, in late April 2015, Ms. Stinchcomb observed T. with Tiffany at one of A.'s baseball games. Ms. Stinchcomb twice said, "Hi" to T. T. appeared to become "anxious" and would not look at Ms. Stinchcomb. T. looked to Tiffany for approval and after Tiffany said something to her, T.'s "emotional demeanor instantly changed . . . . [She] broke out in a huge smile . . . [and] ran to [Ms. Stinchcomb], and gave [her] a big embrace and kiss."

Finally, in November 2015, Ms. Stinchcomb attended a birthday party for her niece that Tiffany also attended. After the party, Bryan came to pick Tiffany up and brought the children with him. The children seemed happy to see her, but when they were around Tiffany, they were like "wooden soldiers," appearing "anxious, . . . very still, and . . . afraid to show any emotion toward [her]."

According to Ms. Stinchcomb, these incidents "suggest[ed] that the children have been conditioned to hide their actual feelings and emotions toward [her] to the detriment

of [their] emotional well-being." She attached to her opposition a copy of Tiffany's "Application for Statement of Charges"[4] and the "Cease and Desist" letter sent to Ms. Migliorisi.

The circuit court entered a scheduling order on August 31, 2016.[5] It set a discovery deadline of October 21, 2016. On October 26, 2016, Ms. Stinchcomb provided the Trautmans her answers to interrogatories.

On October 31, 2016, the parties appeared before a family law magistrate for a hearing on the Trautmans' motion to dismiss. The magistrate admitted into evidence parts of Ms. Stinchcomb's answers to interrogatories.[6] After hearing argument, the magistrate made an oral recommendation that the motion to dismiss be granted.

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[4] In the application, Tiffany alleged that she cut off her mother's contact with the children on April 14, 2015, during a phone call in which Ms. Stinchcomb "made several false accusations regarding [Tiffany's] family" and told Tiffany "how she would be painting [Tiffany] in an unfavorable light in the eyes of [her] children when they grow up." Tiffany further alleged that from that date on Ms. Stinchcomb persisted in texting her, including sending texts making false statements about the children; attended sporting and school events she was not invited to; followed their vehicle and parked near it; threatened legal action for visitation; gave her an ultimatum if she did not allow visitation; and sent her a long email making false accusations about her, her children, and her husband.

[5] Also on that date, the court appointed a best interest attorney ("BIA") to represent the children. The Trautmans moved to delay the involvement of the BIA until such time as the court ruled on their motion to dismiss and the BIA did not oppose that request. Ms. Stinchcomb opposed the motion. The motion to delay remained pending when the motion to dismiss was granted. The BIA never met with the children.

[6] The magistrate did not review the answers to interrogatories at the hearing. She told the parties that she would review them after the hearing and if they caused her to change her recommendation, she would advise the parties. Four days later, on November

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Over a month later, on December 19, 2016, the magistrate filed a written "Report and Recommendation" recommending that the court grant the motion to dismiss because Ms. Stinchcomb could not make a threshold showing of parental unfitness or exceptional circumstances.

Meanwhile, on November 9, 2016, Ms. Stinchcomb filed exceptions to the magistrate's oral recommendation. An exceptions hearing went forward on December 20, 2016. The court advised the parties that because no testimony had been taken before the magistrate, it was deciding the motion to dismiss *de novo*. Ms. Stinchcomb's attorney conceded that in and of itself the complaint did not allege with sufficient particularity harm to the children caused by the cessation of contact. He argued, however, that the facts attested to in the verified opposition to the motion to dismiss and Ms. Stinchcomb's answers to interrogatories cured that deficiency. He advised the court that if leave to amend were granted, he would amend the complaint to add the specific allegations of fact set forth in those documents. The court responded that it was inclined to treat the verified opposition and the answers to interrogatories as an "addendum to the complaint" for purposes of the motion to dismiss. The parties consented to that approach.

In her answers to interrogatories, Ms. Stinchcomb asserted that Tiffany was emotionally unstable and, consequently, the Trautman home was a volatile place for the

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4, 2016, the magistrate emailed counsel for the parties stating that she had read Ms. Stinchcomb's answers to interrogatories and that her "recommendation remain[ed] the same."

children.[7] According to Ms. Stinchcomb, her bond with A. and T. was greater than any bond she had seen between a grandparent and a grandchild, and her home was a refuge for them. A. and T.'s paternal grandmother died in 2014, about five months before Tiffany cut off contact between the children and Ms. Stinchcomb. Consequently, the children were "dealing with the death of one grandmother and then the disappearance of the other."

Ms. Stinchcomb described the same three instances when she had seen the children since April 2015. She added that there was "joy" on the children's faces when they saw her; but the children were being "forced to act differently" by their parents and so the "joy" would turn to "terror and sullenness in a matter of seconds." On one such occasion, T. was "running towards [Ms. Stinchcomb]" when she "suddenly stopped and froze . . . [because] she . . . remembered what [Tiffany] had told her." On the occasion when Ms. Stinchcomb had spoken to A., he had hugged her so tightly his "head [was] almost inside [of her] ribs." Ms. Stinchcomb opined that the fact that the children were afraid to display their true emotions about her was not "normal or healthy behavior."

The Trautmans' attorney argued that the complaint, coupled with the verified opposition and answers to interrogatories, did not state facts that could show the

[7] We include only the allegations bearing on harm to A. and T. caused by the cessation of contact with Ms. Stinchcomb. Much of the substance of the answers to interrogatories relates to Tiffany's mental health, her alleged anger issues, and allegations of her mistreatment of Ms. Stinchcomb, Bryan, and A. Because Ms. Stinchcomb does not argue that Tiffany or Bryan is unfit, however, these allegations are not relevant to the issues before us.

existence of exceptional circumstances. Ms. Stinchcomb's attorney responded that her allegations about "the history that's alleged between the children and the grandparent and the time of [sic] relationship existed and the alleged detriment" were sufficient to show exceptional circumstances.

On January 26, 2017, the court entered its memorandum opinion granting the motion to dismiss. The court pointed out that because Ms. Stinchcomb conceded that the Trautmans were fit parents, visitation only could be considered if Ms. Stinchcomb made a threshold showing of "exceptional circumstances." The facts alleged showed that Ms. Stinchcomb "is extremely fond of her grandchildren"; and that, before April 14, 2015, she "spoke to the children several times per week, attended school functions and sporting events[,] and provided some financial support[,] either directly or through gifts." After then, she had "the opportunity to have some contact . . . with her grandchildren" and "on those isolated occasions, the children appeared to express in words and physical appearance that they missed [her]." The court concluded that if those facts were assumed to be true, they did not rise to the level of exceptional circumstances. It observed that if "frequent contact, support[,] and an emotional bond were all that were required to meet that [exceptional circumstances] threshold," then nearly every grandparent would satisfy that requirement.

This timely appeal followed.

STANDARD OF REVIEW

"The standard for reviewing the grant of a motion to dismiss is whether the circuit court was legally correct." *Norman v. Borison*, 192 Md. App. 405, 419 (2010). "[W]e must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000). "'[D]ismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.'" *Id.* (quoting *Bobo v. State*, 346 Md. 706, 709 (1997)). In the case at bar, we shall assume the truth of the relevant allegations contained in Ms. Stinchcomb's complaint for grandparent visitation, her verified opposition to the motion to dismiss, and her answers to interrogatories, as that was the approach stipulated to by the parties at the hearing on the motion to dismiss.[8]

DISCUSSION

"Parents and grandparents do not stand on the same legal footing with respect to visitation." *Brandenburg v. LaBarre*, 193 Md. App. 178, 186 (2010). Parents are "invested with the fundamental [constitutional] right . . . to direct and control the upbringing of their children[.]" *Koshko v. Haining*, 398 Md. 404, 422-23 (2007). By

[8] We agree with Ms. Stinchcomb that because the parties stipulated to the court treating her verified opposition to the motion to dismiss and her answers to interrogatories as exhibits that were incorporated into the complaint, the motion was not converted to a motion for summary judgment. *See, e.g., Converge Servs. Group, LLC v. Curran*, 383 Md. 462, 475 (2004)) (in ruling on a motion to dismiss, the court may consider "the universe of 'facts' . . . [within] the four corners of the complaint and its incorporated supporting exhibits, if any").

contrast, "any right to visitation possessed by grandparents 'is solely of statutory origin.'" *Brandenburg*, 193 Md. App. at 186 (quoting *Koshko*, 398 Md. at 423)).

Maryland's Grandparent Visitation Statute ("GVS"), codified at Md. Code (1999, 2012 Repl. Vol.), section 9-102 of the Family Law Article ("FL"), has been on the books for decades. It provides that "[a]n equity court may . . . consider a petition for reasonable visitation of a grandchild by a grandparent; and . . . if the court finds it to be in the best interests of the child, grant visitation rights to the grandparent." In 2000, the constitutionality of the GVS was called into serious question by the Supreme Court's decision in *Troxel v. Granville*, 530 U.S. 57 (2000). In *Brandenburg*, we explained that, in *Troxel*, a plurality of the Court held that

> application of a grandparental visitation statute in a manner that accords no deference to the decision of a fit parent to deny or limit visitation is unconstitutional because it infringes upon the parent's fundamental right, under the Due Process Clause of the 14th Amendment, to make decisions about the care, custody, and control of his (or her) children.

193 Md. App. at 187.

Post-*Troxel*, the Court of Appeals and this Court have issued a series of decisions construing the GVS. In *Koshko*, the Court of Appeals addressed a facial challenge to the law. After Andrea and Glen Koshko cut off contact between their two children (and Andrea's daughter from a prior relationship) and John and Maureen Haining, Andrea's parents, the Hainings filed a complaint under the GVS. Following a merits hearing, the Hainings were granted visits every 45 days and quarterly overnight visits. The case reached the Court of Appeals, which reversed. It held that the GVS only could be saved

from facial invalidity under the federal constitution by reading into it a "presumption that parental decisions regarding their children are valid." 398 Md. at 425. It further held that Article 24 of the Maryland Declaration of Rights provides heightened protections to the fundamental rights of parents to control the upbringing of their children and that the GVS failed to accord sufficient weight to parental decisions.

Rather than striking down the GVS, the Court engrafted onto it the requirement, transported from third-party custody cases, that a grandparent seeking visitation make a showing, before the court reaches a best interest analysis, "of either parental unfitness or exceptional circumstances indicating that the lack of grandparental visitation has a significant deleterious effect upon the children[.]" *Id.* at 441. The Court further explained:

> [I]f third parties wish to disturb the judgment of a parent, those third parties must come before our courts possessed of at least *prima facie* evidence that the parents are either unfit or that there are exceptional circumstances warranting the relief sought before the best interests standard is engaged.

398 Md. at 440.

Two cases decided by this Court after *Koshko* also are instructive. First, in *Aumiller v. Aumiller*, 183 Md. App. 71 (2008), we affirmed the circuit court's denial of a complaint for grandparent visitation based upon the failure to show parental unfitness or exceptional circumstances. There, the paternal grandparents sought visitation with their two grandchildren over the objection of their deceased son's ex-wife. The grandparents had had very little contact with their grandchildren both before and after their son's death. We explained that in applying "the exceptional circumstances test," courts may

draw from the factors enunciated in third party custody cases, *see McDermott v. Dougherty*, 385 Md. 320, 419 (2005), but that the test "is inherently fact-specific" and "defies a generic definition." 183 Md. App. at 80–81.

The grandparents argued that their evidence that the children's mother was withholding information from the children about their father and that, in light of his death, the children would suffer harm because they would be denied any contact or bond with their father's blood relatives was legally sufficient to prove exceptional circumstances. We disagreed, holding that the circuit court had ruled correctly that this evidence was insufficient to establish any present or future harm to the children caused by the cessation of visitation and, therefore, to prove exceptional circumstances. We emphasized that how the mother, who the grandparents conceded was fit, "ch[ose] to inform [her] children about their father, and who [the mother] allow[ed] her children to associate with, are the types of matters within the fundamental rights of parents[.]" *Id.* at 82–83.

Two years later, this Court decided *Brandenburg*, 193 Md. App. 178. Jason and Nicole Brandenburg challenged an order entered by a circuit court awarding Jason's mother and stepfather, Laura and David LaBarre, visitation with the Brandenburg's four minor children. The LaBarres had been active and involved grandparents, spending time with the children during the week and on weekends; providing childcare for the children in their home while the Brandenburgs worked, during an 18-month period; and having regular overnights with the two youngest children every Sunday night. After the parties

"became involved in a personal dispute unrelated to the children," the Brandenburgs cut off contact between the LaBarres and the children. *Id*. at 181.

The LaBarres petitioned for visitation in the circuit court, alleging that they had "served as parent figures to all of [their] grandchildren" and were "extremely bonded" to them and that this amounted to exceptional circumstances. *Id*. The case was tried to the court and the evidence adduced by the LaBarres bore out "their allegation that they had cared for their grandchildren on a nearly continuous basis from 2004 until 2008, including weekly overnight care for several of the children" and that they had "a loving, bonded relationship with the[ir] grandchildren." *Id*. at 181–82. At the conclusion of the trial, the court found that it would "belie[] both common sense and a decent regard for the importance of human relationships to suggest . . . that the four children . . . suffered no 'significant deleterious effect' when . . . they were swiftly and abruptly denied any contact with close and loving relatives whom they had grown accustomed to seeing . . . on a daily basis over a period of several years." *Id*. at 184. The court awarded the LaBarres overnight visitation with the children the third weekend of every month and one week of summer visitation.

On appeal from that order, this Court reversed. We held that the trial court erred as a matter of law by concluding that the LaBarres had proved the existence of exceptional circumstances. We explained that the court could not infer from the evidence that because the LaBarres were very bonded with their grandchildren and had been "ever-present adult figures in [their] lives," the children had (or would) suffer significant

deleterious effect if contact ceased. *Id*. at 191. Rather, the LaBarres bore the burden of adducing evidence of harm. We observed that "[t]he bar for exceptional circumstances is high precisely because the circuit court should not sit as an arbiter in disputes between fit parents and grandparents over whether visitation may occur and how often." *Id*. at 192.

We return to the case at bar. It is undisputed that the Trautmans are fit parents. As such, they are entitled to the presumption that their decision to cut off contact between their children and Ms. Stinchcomb was made in the best interests of the children. That presumption only may be rebutted by evidence of exceptional circumstances, which, as explained, includes proof that the children have suffered or will suffer "significant deleterious effect" as a result of the cessation of contact.

If credited, the facts alleged in Ms. Stinchcomb's complaint, her verified opposition to the motion to dismiss, and her answers to interrogatories, and the reasonable inferences that may be drawn from those facts, would show that she had a close grandparent-grandchild relationship with A. and T., that she spent a great deal of time with them every week, and that she participated in all of their school and extracurricular activities. Thus, like in *Brandenburg*, Ms. Stinchcomb had been an "ever-present adult figure[]" in her grandchildren's lives until an adult dispute led to the cessation of contact.

Recognizing that this evidence alone is not legally sufficient to show exceptional circumstances, Ms. Stinchcomb further alleged that she has seen her grandchildren on occasion since the cessation of regular contact and they have exhibited behaviors when

they see her evidencing that they love her and miss seeing her. They also have exhibited behaviors consistent with their being anxious that their parents (particularly Tiffany) will be angry if they speak to Ms. Stinchcomb or show her affection. Ms. Stinchcomb maintains that this, together with the "high conflict" she claims exists in the Trautman home, "the emotional instability and volatility of Tiffany," and the recent death of the children's paternal grandmother, is sufficient evidence to make out a *prima facie* showing of exceptional circumstances. We disagree.

Children naturally will feel sad when a grandparent dies. Likewise, children experiencing the end of a close relationship with a living grandparent naturally will be sad. And tense encounters between children's parents and estranged grandparents naturally will cause them anxiety. The sadness Ms. Stinchcomb describes seeing is not an extraordinary or exceptional circumstance. Moreover, as *Koshko* and *Brandenburg* instruct, parental autonomy over their children's upbringing is paramount and may not be compromised unless there is strong evidence that the children will suffer lasting harm. Evidence that the children miss Ms. Stinchcomb and are unsure how to behave around her in the aftermath of this familial dispute will not support a reasonable finding of a "significant deleterious effect."

The Trautmans have a constitutionally protected fundamental right to make decisions about the care, custody, and control of their children, including deciding which family members their children will or will not spend time with. Before they can be forced to litigate the merits of their decision to end the children's contact with Ms.

Stinchcomb, Ms. Stinchcomb must allege facts that are susceptible of making out a *prima facie* showing of exceptional circumstances. Allegations that she has persisted in seeking out contact with the children and that, on those occasions when she has had contact with them (against the wishes of the Trautmans), the children appear sad and anxious are inadequate as a matter of law to prove exceptional circumstances. The circuit court did not err by granting the motion to dismiss the complaint for grandparent visitation.

JUDGMENT OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.