

**IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA**

**RICHARD FEGLEY and CAROL FEGLEY, husband and wife,**  
Petitioners,

vs.

**JUDY A. LEAK and WILLIAM D. LEAK,**  
Respondents.

Case No. 10751

**DECREE OF GRANDPARENT VISITATION**

**DATE OF HEARING:** May 21, 1999.

**DATE OF DECISION:** June 3, 1999.

**APPEARANCES:**

For petitioners: Michael E. Piccolo with petitioners.

For respondents:

Judy A. Leak: Warren R. Arganbright with respondent.

William D. Leak: no appearance.

**SUBJECT OF ORDER:** decision on the merits following trial to the court in equity upon petition for grandparent visitation.

**FINDINGS:** The court finds and concludes that:

1. Respondents Judy A. Leak (Judy) and William D. Leak (William) were previously married. Their children, Tyler Duane Leak, born July 1, 1992, Cody Alexander Leak, born December 19, 1993, and Tori Caitlin Leak, born March 10, 1998, are the subject of this action. The petitioner, Carol Fegley (Carol), is William's mother. The petitioner, Richard Fegley (Richard), is Carol's husband and thus is William's step-father, but Richard is not William's biological father and there is no evidence that Richard has adopted William.

2. Richard is not "the biological or adoptive parent of a minor child's biological or adoptive parent." NEB. REV. STAT. § 43-1801 (Reissue 1998). Thus, he is not within the class of persons defined as a "grandparent" for purposes of grandparent visitation under

Nebraska law. As he is not a “grandparent,” he is not entitled to seek grandparent visitation, and the petition must be dismissed with prejudice as to Richard.

3. Because the marriage of Judy and William has been dissolved, § 43-1802(1)(b) authorizes Carol to seek visitation. NEB. REV. STAT. § 43-1802 (Reissue 1998).

4. There is clear and convincing evidence that there is, and has been, a significant beneficial relationship between Carol and the children, Tyler and Cody. The evidence is so clear and persuasive on this point that it requires no further discussion.

5. Judy argues that there has not been a significant beneficial relationship between Carol and Tori. The evidence is very limited because that child was born after the parents separated and only about one month before Judy filed her dissolution action.

a. The court finds clear and convincing evidence that Carol did everything reasonably within her power to establish such a relationship and that the beneficial relationship existed to the extent possible under the circumstances.

b. The nature of a grandparent-child relationship is inevitably limited by the surrounding circumstances. Even outside of a divorce, a grandparent’s relationship with a newborn baby is necessarily limited by that circumstance.

c. Under Judy’s interpretation of the grandparent visitation law, a grandparent would be deprived of the opportunity to maintain and improve the grandparent relationship as the child grows and matures in the normal and natural way. The court does not believe that the Legislature so intended.

6. The court further finds by clear and convincing evidence that it is in the best interests of the children that the relationship with Carol continue. The evidence on this point is also so clear and persuasive that no further discussion is required.

7. The main focus of the controversy was upon the requirement that the visitation not adversely interfere with the parent-child relationship.

a. The evidence shows the William physically abused Tyler, causing permanent injury and harm to that child. At first, Carol did not believe Judy's claim that William abused Tyler. That initial refusal damaged Carol's relationship with Judy in a way that continues to this day.

b. Essentially, Judy's objection to visitation boils down to her fear that Carol will allow William to have visitation with the children in a manner contrary to the dissolution decree and contrary to the children's best interests. Carol disclaims any such intention.

c. When appropriate conditions are imposed to assure that Carol does not act as a conduit for impermissible contact by William with the children, no evidence suggests that Carol's continued relationship will adversely interfere with Judy's maternal relationship with any of these children.

d. Thus, the court finds by clear and convincing evidence that, as limited by the conditions herein imposed, Carol's visitation will not adversely interfere with Judy's parent-child relationship.

6. Therefore, the petition should be granted as to Carol to the extent hereinafter set forth.

7. Judy should be encouraged, but not ordered, to allow additional visitation above and beyond the minimum set forth herein, particularly during the children's early years. The court recognizes that as each child increases in age, the child's interest in others, especially same age peers, will naturally increase and his or her interest in a grandparent will correspondingly decrease. The benefit to a grandparent of additional visitation will be greater at their present ages, and will naturally decrease as they continue to grow older. Nevertheless, the court finds that the order should set forth minimum requirements only, and that additional visitation should be determined by the sound exercise of discretion by the child's mother.

**DECREE:**

IT IS THEREFORE ORDERED, ADJUDGED AND  
DECREED that:

1. **DISMISSAL AS TO RICHARD:** As to petitioner Richard Fegley, the petition is dismissed with prejudice.

2. **PARTIAL RELIEF GRANTED TO CAROL:** The petition of petitioner Carol Fegley is granted to the extent set forth below and is otherwise denied.

3. **REASONABLE VISITATION:** The petitioner, Carol Fegley, is granted reasonable rights of visitation and correspondence with the minor children, Tyler Duane Leak, born July 1, 1992, Cody Alexander Leak, born December 19, 1993, and Tori Caitlin Leak, born March 10, 1998, to continue during the lifetime of the petitioner until the particular child reaches the age of majority under Nebraska law (age 19), becomes emancipated, becomes self-supporting, marries, dies, or until the further order of the court.

4. **SPECIAL CONDITIONS:** Notwithstanding any other provision of this order, the following special conditions (which shall control to the extent of any conflict with any other provision of the order) are imposed upon such visitation:

a. **NO CONTACT WITH WILLIAM:** Carol shall not suffer, permit, or allow any contact (whether in person, by telephone, through correspondence, or in any other manner, directly or indirectly) between any one or more of the children with William D. Leak during any such visitation. Violation of this condition shall permit Judy to unilaterally terminate any such particular visitation and shall constitute grounds for modification of the decree to limit or terminate such visitation, including appropriate *ex parte* relief.

b. **NOTIFICATION:** At the beginning of each such visitation, Carol shall notify Judy of all places or locations at which the visitation for that period will be conducted, and if plans change, shall use any reasonable means to notify Judy of any changed or additional locations. Carol shall also provide Judy with the telephone numbers

at all such locations except public restaurants. Violation of this condition shall constitute grounds for modification of the decree to limit or terminate such visitation, including appropriate *ex parte* relief.

c. **VERIFICATION:** Judy shall have the right during any such visitation to take reasonable steps to verify compliance with this order, including, but not limited to:

(1) Obtaining the assistance of law enforcement authorities at any time and from time-to-time to verify compliance. Carol shall cooperate with law enforcement and shall allow any reasonable search of any premises upon which any child may be located. This order does NOT require law enforcement authorities to undertake any particular action or actions upon Judy's request. The order simply requires Carol to permit any reasonable verification activities that law enforcement authorities may agree to undertake upon Judy's request.

(2) Judy may, either personally or through any agent designated in writing, conduct an announced or unannounced inspection during any such visitation to verify compliance. Such inspection shall not occur more than once during any particular visitation. Such inspection shall be limited to verification of compliance with the order and shall not exceed 15 minutes in duration. Carol shall permit and cooperate with any such inspection.

(3) Violation of this condition shall constitute grounds for modification of the decree to limit or terminate such visitation, including appropriate *ex parte* relief.

5. **MINIMUM REQUIRED:** Such visitation shall include, at a minimum, regular visitation, holiday visitation, and extended summer visitation, as set forth below:

a. **REGULAR:** The minimum regular visitation shall consist of, until the particular child attains the age of eight years, one weekend every month, and upon the particular child attaining the age of eight years, one weekend every other month. Each

weekend visitation period shall extend from 6:00 p.m. on Friday to 6:00 p.m. on Sunday. The first visitation shall be on the first full weekend in the month of July, 1999, and continue thereafter on the first full weekend of each month thereafter until the every other month schedule becomes effective. Thereafter, the visitation shall be on the first full weekend every other month.

b. **HOLIDAY:** The minimum holiday visitation shall consist of both of the following:

(1) *Memorial Day:* This holiday shall be from the Friday before the nationally-recognized Memorial Day to Memorial Day.

(2) One of following, which shall be rotated each year, such that petitioner shall have item (a) in 2000, item (b) in 2001, and similar rotation each year thereafter:

(a) *New Year's:* This holiday shall be from December 27 of each year to the day before school resumes after New Year's Day. For purposes of this order, the New Year's holiday for the year 2000 begins on December 27, 1999.

(b) *Thanksgiving:* This holiday shall be from the day school is dismissed for Thanksgiving to the day before school resumes after that holiday.

c. **SUMMER:** The minimum extended summer visitation shall consist of a one week continuous period that begins on the fifth Friday next preceding the date school is to commence, and ends on Friday one week later.

6. **GENERAL PROVISIONS:**

a. **TIME:** Unless otherwise provided or agreed, all visitation shall begin and end at 6:00 p.m. on the day this order states as the start or end of a visitation period, as the case may be.

b. **SCHOOL'S COMMENCEMENT AND END:** School shall be deemed to start and end on the day the school attended by the child starts and ends, but if

child does not attend school, the start and end of the public grade school in the community where the child lives shall control.

c. **TRANSPORTATION:** The children's grandparent shall provide transportation for all visitations. Driving may be done by any responsible adult, other than William D. Leak, who is related to the parties by blood or marriage.

d. **WAIVER:** A grandparent entitled to visitation may waive the same by giving the mother three day's notice by telephone, or by agreement.

e. **MODIFICATION:** As long as the parties agree, and continue to agree, they may modify this visitation schedule as they desire.

7. **APPEARANCE AND DAY-TO-DAY RULES:** The rules laid down by the children's mother on matters concerning personal appearance (hair styles, etc.), and day-to-day rules, such as curfew and bedtime, shall also be enforced by the grandparent as nearly as possible. The mother shall supply clothing sufficient for each visitation.

8. **CONTROL OF VISITATION:** Unless otherwise provided:

a. the person having visitation may take the child to such reasonable places for such reasonable activities as such person may determine;

b. the parent will have the child ready and available promptly for all visits;

c. if advised in advance, the parent will provide the child with such special and additional clothing as may be appropriate for the planned activities;

d. in the event the child is invited or desires to participate in other activities which may interfere with a visit, the parent will not encourage, permit, or consent thereto without previous approval of the person whose visitation will be interfered with, and will not deprecate the denial of such approval;

e. the person entitled to visitation may correspond with the child and the guardian shall not censor such correspondence;

f. the person entitled to visitation may telephone the child for not to exceed 15 minutes between 7:00 P.M. and 9:00 P.M. on Wednesdays and Sundays and at such other times as the parties may agree and the parent shall not participate in such calls;

9. **COMPLIANCE:** Each and all of the parties hereto is ordered to fully comply with the terms of this decree.

10. **COSTS:** The costs of this proceeding are taxed to the petitioners. Any request for attorney's fees, express or implied, is denied. See *Rosse v. Rosse*, 244 Neb. 967, 510 N.W.2d 73 (1994).

Entered: June 3, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 19 \_\_\_\_ by \_\_\_\_\_.
- 9 Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 19 \_\_\_\_ by \_\_\_\_\_.
- : Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 19 \_\_\_\_ by \_\_\_\_\_.
- : Note the decision on the trial docket as: 6/3/99 Signed "Decree of Grandparent Visitation" entered.  
Done on \_\_\_\_\_, 19 \_\_\_\_ by \_\_\_\_\_.

Mailed to:

BY THE COURT:

\_\_\_\_\_  
William B. Cassel  
District Judge