

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-260

JANUARY TERM, 2003

	}	APPEALED FROM:
	}	
Louis D. Lawton	}	Franklin Family Court
	}	
v.	}	
	}	DOCKET NO. 171-6-00 Frdm
DeAnna Farnham Patenaude	}	
(Lawton)	}	Trial Judge: Jane E. Dimotsis
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Mother appeals from the family court' s dismissal of her motion to vacate an earlier order enforcing grandmother' s right to visitation. We affirm.

In September 2001, the family court awarded grandmother visitation with her grandson, who had been placed in the custody of her daughter-in-law in prior proceedings. That same month, grandmother filed a motion to enforce visitation, but the court denied the motion, ruling that mother' s appeal of the visitation order to this Court automatically stayed the visitation order under V.R.F.P. 12(a) and (e). On November 9, 2001, this Court dismissed mother' s appeal on procedural grounds. Mother' s motion to reinstate the appeal was denied on December 12, 2001. The next day, grandmother filed another motion to enforce, alleging that this Court no longer had jurisdiction over the case, and that mother continued to defy the family court' s visitation order.

On December 20, 2001, the family court granted grandmother' s emergency motion to enforce the visitation order. The court stated that it was reasserting jurisdiction over the matter because this Court had dismissed mother' s appeal. The court awarded grandmother attorney' s fees, ordered mother to arrange immediate visitation between her son and grandmother, and warned that if mother did not comply with the order, she would be brought before the court to show cause why she should not be held in contempt.

On January 8, 2002, mother filed a motion to vacate the family court' s December 20 order, arguing that she had not been obligated to allow grandmother visitation until the mandate issued in her appeal after grandmother' s motion to enforce was filed. See V.R.A.P. 41(b) (mandate shall issue seven days after denial of motion for reargument). In February 2002, the family court granted mother' s request for a hearing on her motion. On April 12, 2002, grandmother filed a motion to dismiss all pending motions without prejudice, stating that the parties were working out a visitation schedule without their lawyers. Mother did not respond to the motion, and on May 15, 2002, the court dismissed all pending motions without prejudice.

Mother now appeals, raising the same argument asserted in her motion to vacate. She contends that the family court should have granted her motion to vacate its December 20 order because her appeal of the visitation order was still pending, and thus the order was still automatically stayed, at the time grandmother filed her motion to enforce. We disagree. Mother is correct that the mandate in this Court' s disposition of her appeal of the visitation order had not issued at the time grandmother filed her December 13 motion to enforce, but, contrary to the family court' s earlier

ruling, the visitation order was not automatically stayed under V.R.F.P. 12(a) and (e). Although the present dispute commenced with grandmother' s motion for visitation under 15 V.S.A. § 1011 and mother' s petition to modify child support, the matter stemmed from a divorce action under V.R.F.P. 4 between mother and grandmother' s son, and later a relief-from-abuse proceeding. See 15 V.S.A. § 1011(a) (" court which has considered or is considering the custody or visitation of a minor child may award visitation rights to a grandparent of the child, upon written request of the grandparent filed with the court, if the court finds that to do so would be in the best interest of the child") (emphasis added). Thus, to determine the status of grandmother' s visitation order during the pendency of mother' s original appeal, we turn to V.R.F.P. 4.

Rule 4(p) provides that " [a] grandparent who has visitation rights shall have the right to move under Family Court Rule 4(j) to enforce or modify a judgment with respect to visitation rights of the grandparent." See also 15 V.S.A. § 1011(d) (" A grandparent who has visitation rights under this section may move the court for enforcement of the court' s order in the same manner as would a party."). Under Rule 4(j)(1), the family court may, in its discretion, entertain motions involving minor children as provided in V.R.F.P. 12(d), " notwithstanding the pendency of an appeal." See also V.R.F.P. 12(d) (when appeal has been taken from judgment in action under Rule 4, court may, in its discretion, entertain motions for enforcement during pendency of appeal.) Rule 12(a) provides that, in actions under Rule 4, orders " relating to parental rights and responsibilities . . . shall not be stayed . . . during the pendency of an appeal." Here, mother never sought a stay of grandmother' s visitation order pending her appeal of that order. Thus, the order was not stayed during the pendency of the appeal, and the family court retained jurisdiction to entertain grandmother' s motion to enforce, regardless of whether the mandate in the appeal had issued. Consequently, the principal basis for mother' s motion to vacate is incorrect. Although mother also complained about misrepresentations that grandmother made in her motion to enforce, she failed to demonstrate grounds upon which the court could have granted her motion to vacate under V.R.C.P. 60(b).

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice