

**IN THE
MISSOURI SUPREME COURT**

MARY HANSON and)	
DAVID HANSON,)	
)	
Petitioners-Appellants,)	
)	
v.)	No. SC96179
)	
MARGARET CARROLL and)	
BRIDGET CARROLL,)	
)	
Respondents-Respondents.)	

**Appeal from the Circuit Court of the
City of Saint Louis, State of Missouri
The Honorable Christopher McGraugh, Judge**

**SUBSTITUTE REPLY BRIEF OF PETITIONERS-APPELLANTS,
MARY HANSON AND DAVID HANSON**

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POINT RELIED ON

THE TRIAL COURT ERRED IN DISMISSING THE PETITION OF GRANDPARENTS FOR CUSTODY AND VISITATION BECAUSE SUCH ACTION BY THE TRIAL COURT CONSTITUTED A MISAPPLICATION OF LAW IN THAT REVIEW OF THE PETITION IN THE LIGHT MOST FAVORABLE TO GRANDPARENTS REVEALS THAT THEY STATED A CLAIM UNDER SECTION 452.375 R.S.MO. AS AMPLIFIED BY *IN RE T.Q.L.*, 386 S.W.3D 135 (MO. BANC 2012) AND THAT ALLOWING GRANDPARENTS RIGHTS WOULD NOT IMPINGE IN ANY WAY ON ANY RIGHTS OF PARENTS.

In re T.Q.L., 386 S.W.3d 135 (Mo. banc 2012)

Kinder v. Holden, 92 S.W.3d 793 (Mo. App. 2002)

Boulevard Bank v. Malott, 397 S.W.3d 458 (Mo. App. 2013)

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Industrial Relations Commission, 810 S.W.2d 72 (Mo. App. 1990)

ARGUMENT

THE TRIAL COURT ERRED IN DISMISSING THE PETITION OF GRANDPARENTS FOR CUSTODY AND VISITATION BECAUSE SUCH ACTION BY THE TRIAL COURT CONSTITUTED A MISAPPLICATION OF LAW IN THAT REVIEW OF THE PETITION IN THE LIGHT MOST FAVORABLE TO GRANDPARENTS REVEALS THAT THEY STATED A CLAIM UNDER SECTION 452.375 R.S.MO. AS AMPLIFIED BY *IN RE T.Q.L.*, 386 S.W.3D 135 (MO. BANC 2012) AND THAT ALLOWING GRANDPARENTS RIGHTS WOULD NOT IMPINGE IN ANY WAY ON ANY RIGHTS OF PARENTS.

Guardians presented the trial court with a Motion to Dismiss. The Motion had two bases: failure to state a claim and standing. The trial court, in sustaining the Motion, held that Grandparents had failed to state a claim. Guardians would have this Court believe that Judge McGraugh ruled on standing. Such was not the case. In any event, Grandparents not only have standing, but also stated a claim. The trial court's judgment should be reversed.

When a court gives no reason for a dismissal, this Court will presume that the trial court acted for one of the reasons stated in the motion. *Boulevard Bank v. Malott*, 397 S.W.3d 458, 462 (Mo. App. 2013). That being the case, following the general rule that mention of one thing implies the exclusion of another, *Kansas City v. J.I. Case Threshing Mach. Co.*, 87 S.W.2d 195, 205 (Mo. banc 1935), the trial court should be taken at its

word that its decision was based upon its assessment of whether Grandparents had stated a claim.

Guardians insist that Grandparents cannot pursue their action for custody and visitation because, despite the holding of this Court in *In re T.Q.L.*, 386 S.W.3d 135 (Mo. banc 2012), no original proceeding for custody rights can be maintained. *In Matter of Adoption of C.T.P.*, 452 S.W.3d 705 (Mo. App. 2014). The holding of the Western District in *C.T.P.* notwithstanding, *T.Q.L.* specifically allows such an action to be maintained as an original proceeding.

At any rate, Grandparents clearly had standing to pursue this action. Standing is related to the doctrine which prohibits courts from issuing advisory opinions. *Kinder v. Holden*, 92 S.W.3d 793, 803 (Mo. App. 2002). A party has standing to sue when it has an interest in the subject matter of the suit. *Portfolio Recovery Associates, LLC v. Schultz*, 449 S.W.3d 427, 434 (Mo. App. 2014).

Guardians also posit that Grandparents do not have standing because of the existence of the Guardianship. In doing so, they take the position that the exclusive remedy for Grandparents lies in the Guardianship proceeding. This argument presents the classic *Catch 22* situation. Guardians seek to terminate this case on the basis that Grandparents should, instead, take up their request in the Guardianship proceedings. However, Guardians have already successfully argued that Grandparents have no standing in the Guardianship proceedings. *See, In re R.C.H.*, 419 S.W.2d 158 (Mo. App. 2013), The appellant in *Dore & Associates Contracting, Inc. v. Missouri Department of*

Labor & Industrial Relations Commission, 810 S.W.2d 72 (Mo. App. 1990) could not be simultaneously precluded from exhausting administrative remedies and denied judicial review due to the failure to exhaust such remedies. *Id.* at 76. The same reasoning applies to the situation of Grandparents. They cannot be prevented from pursuing rights to their grandchild in a domestic proceeding by pointing them to the probate division, while at the same time ensuring that the door to probate is securely locked.

Moreover, Guardianship does not provide in any way, shape, or form for custody or visitation rights; only for the appointment of a guardian or guardians. In essence, a guardian stands in the place of a parent. Letters of Guardianship are not custody decrees. *Flathers v. Flathers*, 948 S.W.2d 463, 468 (Mo. App. 1997). In fact, Chapter 475 provides a guardianship court no authorization to delineate or apportion custody or visitation rights. *See, A.E.B. v. T.B.*, 354 S.W.3d 167 (Mo. banc 2011) which held that Chapter 452 provided no authority to allow a trial court to compel a parent's relocation. *See, also, Vowell v. Kinder*, 451 S.W.3d 267 (Mo. banc 2014), which held that the statutes assigning the Secretary of State with the ministerial task of certifying names and addresses of candidates did not grant the holder of the office the authority to investigate any of the qualifications of such candidates. Just as the Guardians themselves are creatures of statute, *Matter of Estate of Meyer*, 744 S.W.2d 844, 847 (Mo. App. 1988), so too is the guardianship itself limited by legislative enactment. Without such authorization, the probate division cannot grant Grandparents the relief they seek.

If Grandparents are allowed to proceed in the trial court, Guardians envision a

veritable parade of horrors. According to Guardians, anyone could seek custody or visitation rights to a child, including, but not limited, to a “bus driver.” [p. 10, Substitute Brief of Respondent-Respondent]. Of course, *T.Q.L.* is the result of this Court’s interpretation of Section 452.375 R.S.Mo. Guardians attempt to take that interpretation to its most illogical extreme. However, statutes are interpreted by this Court to avoid such unreasonable or absurd results. *St. Louis Police Officers’ Association v. Board of Police Commissioners of City of St. Louis*, 259 S.W.3d 526, 528 (Mo. banc 2008). Allowing Grandparents specific rights of custody and/or visitation when a child is under the guardianship of a great-grandmother and great aunt is not unreasonable or absurd.

Therefore, since Grandparents cannot procure the remedy they seek within the context of a Guardianship proceeding, they cannot be prevented from pursuing it in an independent proceeding. Consequently, the Judgment of the trial court dismissing their cause of action should be reversed.

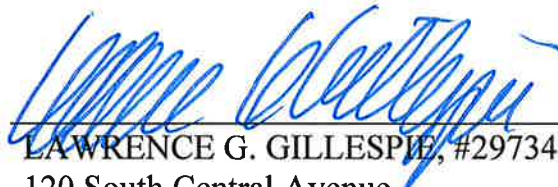
CONCLUSION

For all of the foregoing reasons and those set forth in the original Substitute Brief, Petitioners-Appellants, MARY HANSON and DAVID HANSON, respectfully request that the Court reverse the trial court's dismissal of their Petition for Custody and Visitation and remand to the trial court for further proceedings in accordance therewith or, in the alternative, that the dismissal be designated as without prejudice.

Respectfully submitted,

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