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Recent Developments: In re Victoria C.: Adult Seeking Visitation with Her Minor Siblings Must Make an Initial Threshold Showing of Exceptional Circumstances or Parental Unfitness; Exceptional Circumstances Are Those Which Would Lead to a Deleterious Effect on the Children by the Lack of Visitation

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RECENT DEVELOPMENT

IN RE VICTORIA C.: ADULT SEEKING VISITATION WITH HER MINOR SIBLINGS MUST MAKE AN INITIAL THRESHOLD SHOWING OF EXCEPTIONAL CIRCUMSTANCES OR PARENTAL UNFITNESS; EXCEPTIONAL CIRCUMSTANCES ARE THOSE WHICH WOULD LEAD TO A DELETERIOUS EFFECT ON THE CHILDREN BY THE LACK OF VISITATION.

By: Tonya M. Bland

The Court of Special Appeals of Maryland held that an adult sibling seeking visitation with minor siblings must first show exceptional circumstances demonstrating that the lack of visitation will have a deleterious effect on minor siblings. *In re Victoria C.*, 208 Md. App. 87, 56 A.3d 338 (2012) *cert. granted*, 430 Md. 344, 61 A.3d 18 (2013). Furthermore, the court refused to recognize a common-law presumption in favor of sibling visitation over other third-party visitation. *In re Victoria C.*, 208 Md. App. at 98-99, 56 A.3d at 344 (citing *In re Tamara R.*, 136 Md. App. 236, 764 A.2d 844 (2000)).

Victoria C. (“Victoria”) was born on August 25, 1993. Her father, George, married Kieran in 2005, and the couple had two minor children together, Lance and Evan. Victoria lived with George and Kieran in the family home where she had a “loving and caring” relationship with her younger brothers. In March 2009, Victoria left her father’s house to live with her aunt in Texas after abuse allegations against George were sustained. In March 2010, Victoria returned to Maryland, but George did not allow her to return to the home. On April 26, 2010, after the Carroll County Department of Social Services filed a petition on her behalf, the Circuit Court for Carroll County adjudicated Victoria as a child in need of assistance (“CINA”).

In an ancillary action to a CINA proceeding, Victoria sought visitation with her minor siblings. George and Kieran opposed Victoria’s request for visitation with her brothers because they did not feel comfortable introducing the children to someone with a hostile relationship with George. Lance sometimes asked about Victoria, but did not recognize her in photographs, and Evan had no memory of Victoria.

On June 15, 2011, the Master assigned to the visitation petition recommended that Victoria be allowed visitation with her brothers. The Master determined that there was sufficient evidence of exceptional circumstances as required by Maryland law. George and Kieran filed a timely exception, and the Circuit Court for Carroll County heard arguments on the exceptions on September 29, 2011. On February 2,

2012, the circuit court denied George and Kieran's exceptions, thereby permitting visitation between Victoria and her minor siblings. George and Kieran appealed the decision to the Court of Special Appeals of Maryland.

The Court of Special Appeals, which reviewed the circuit court's decision under a *de novo* standard, analyzed two issues. *In re Victoria C.*, 208 Md. App. at 96, 56 A.3d at 343. The court first determined the appropriate standard to apply, in a situation involving an adult sibling's petition for visitation with her minor siblings. *Id.* Secondly, the court analyzed whether the circuit court properly applied the appropriate standard to the facts of the case. *Id.*

As to the first issue, the Court of Special Appeals of Maryland held that the standard set forth in *Koshko*, which dealt with grandparent visitation, was applicable to adult sibling visitation. *In re Victoria C.*, 208 Md. App. at 97, 56 A.3d 338 at 343 (citing *Koshko v. Haining*, 398 Md. 404, 921 A.2d 171 (2007)). The *Koshko* standard requires a third-party seeking visitation to first make a threshold showing that the parents are unfit to make decisions in the child's best interest, or there are exceptional circumstances that would lead to deleterious effects on the child, before a court will interfere in decisions regarding third-party visitation. *In re Victoria C.*, 208 Md. App. at 97, 56 A.3d 338 at 343 (citing *Koshko*, 398 Md. at 441, 921 A.2d at 192-93). The court determined that this heightened scrutiny was required to preserve "fundamental parental liberty interests." *Id.*

Victoria relied on a Court of Appeals of Maryland decision, *In re Tamara R.*, for the proposition that, in Maryland, there is a common-law presumption in favor of sibling relationships. *In re Victoria C.*, 208 Md. App. at 98-99, 56 A.3d at 344 (citing *In re Tamara R.*, 136 Md. App. 236, 764 A.2d 844 (2000)). She also argued that this relationship was granted special protection as compared to other third-party visitation challenges. *Id.* In distinguishing *In re Tamara R.* from the instant case, the court pointed out that the former was decided before *Koshko* and dealt with a minor child in the custody of the State. *In re Victoria C.*, 208 Md. App. at 98-99, 56 A.3d at 344 (citing *In re Tamara R.*, 136 Md. App. at 254, 764 A.2d at 854).

The Court of Special Appeals of Maryland, however, determined that Victoria, as an adult, must be held to the same standard as any adult third-party seeking visitation. *In re Victoria C.*, 208 Md. App. at 99, 56 A.3d at 344-45. The court concluded that, contrary to Victoria's assertion, Maryland has not recognized the right to associate with one's siblings to be of "constitutional dimension." *Id.* at 100, 56 A.3d at 345 (citing *In re Tamara R.*, 136 Md. App. at 257, 764 A.2d at 855).

Next, the Court of Special Appeals analyzed whether the circuit court properly applied the *Koshko* standard to the facts of the case. *In re Victoria C.*, 208 Md. App. at 101, 56 A.3d at 345-46. Victoria did not allege parental unfitness, therefore the court's focused on whether Victoria made a sufficient showing of exceptional circumstances. *Id.* at 101, 56 A.3d at 346. The court refused to define exceptional circumstances warranting the court's interference in parental visitation decisions, but indicated that it is a difficult burden to meet. *Id.* at 101-02, 56 A.3d at 346 (citing *Brandenburg v. LaBarre*, 193 Md. App. 178, 190, 996 A.2d 939 (2010)). The court emphasized, however, that the deleterious effects on the minor child from the lack of visitation as being an important factor to consider. *In re Victoria C.*, 208 Md. App. at 102, 56 A.3d at 346 (citing *Brandenburg*, 193 Md. App. at 191-93, 996 A.2d at 939).

In determining whether Victoria sufficiently demonstrated exceptional circumstances, the court looked to *Brandenburg*. *In re Victoria C.*, 208 Md. App. at 103-04, 56 A.3d at 347 (citing *Brandenburg*, 193 Md. App. at 180, 996 A.2d at 939). In that case, grandparents sought visitation with their grandchildren after the parents cut off all communication with the grandparents following a year of daily contact with the grandchildren. *In re Victoria C.*, 208 Md. App. at 103-04, 56 A.3d at 347 (citing *Brandenburg*, 193 Md. App. at 180, 996 A.2d at 939). The Court of Special Appeals of Maryland held that there was no clear evidential showing that the children were harmed by the lack of visitation, and therefore, denied visitation. *In re Victoria C.*, 208 Md. App. at 104, 56 A.3d at 347-48.

The Court of Special Appeals held that, although Victoria had a close relationship with her brothers when she lived in the home, she presented no evidence demonstrating that the lack of visitation would result in harm. *In re Victoria C.*, 208 Md. App. at 106, 56 A.3d at 348-49. According to the court, both the Master and the circuit court erroneously considered the harm suffered by Victoria due to a lack of visitation, because harm to an adult is never a relevant factor. *Id.* at 105-06, 56 A.3d at 348.

In *In re Victoria C.*, the Court of Special Appeals of Maryland held that adults who seek visitation with their minor siblings will be held to the same standard as any other adult third-party seeking visitation. In affirming a parent's constitutional right to make visitation decisions regarding their children, but refusing to define exceptional circumstances that would warrant third-party visitation, the court has failed to recognize the realities of the modern family. With family structures becoming more complex due to divorce and remarriage, this decision highlights the

burdens that are placed on deserving third-parties who seek visitation with their family members.

On February 22, 2013, the Court of Appeals of Maryland granted Victoria's petition for a writ of certiorari to consider three issues: whether the Court of Special Appeals applied the correct standard of review; whether the best interests of a juvenile adjudicated to be a CINA should be considered even after the juvenile becomes an adult; and whether there should be an amended standard for adults seeking visitation with their minor siblings.