

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 10, 2004 Session

LINDA OTTINGER, ET AL. v. SHELLY EVANS OTTINGER

Appeal from the Circuit Court for Hamilton County
No. 01-D-1899 Jacqueline E. Schulten, Judge

No. E2003-02893-COA-R3-CV Filed July 21, 2004

CHARLES D. SUSANO, JR., J., concurring.

I concur completely in Judge Swiney's opinion. I write separately to emphasize what the majority opinion expressly states, *i.e.*, that the Defendant in the instant case did not challenge the constitutionality of Tenn. Code Ann. § 36-6-306 (2001 & Supp. 2003). I continue to have some doubt that the deprivation of a relationship with grandparents can form the basis for the type of substantial harm contemplated by the Supreme Court's decision in *Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993). See *Dugan v. Myers*, C/A No. E2001-00281-COA-R3-JV, 2001 WL 1117514, at *2 (Tenn. Ct. App. E.S., filed September 24, 2001), *no perm. app. requested* (Susano, J., concurring). However, since that issue is not before us in this case, we do not need to reach it.

CHARLES D. SUSANO, JR., JUDGE