

FILED

12/15/2020

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
September 15, 2020 Session

TIMOTHY A. BAXTER v. JENNIFER D. ROWAN

Appeal from the Juvenile Court for Madison County
No. 55-48873 Larry McKenzie, Judge

No. W2018-02209-COA-R3-JV

KENNY ARMSTRONG, J., concurring separately.

I concur in the majority's holding that an unwed father, who previously executed a VAP, has standing to sue for custody and visitation rights to his minor child. I also concur in the holding reversing the trial court's award of visitation rights to the paternal grandmother. I write separately only to highlight my concern about the procedure used by the unwed father in this case to obtain his visitation rights. Here, father filed his motion to obtain visitation rights under Tennessee Code Annotated section 36-6-301. However, from my research, section 36-6-301 is inapplicable to custody and visitation proceedings that involve parents who have never been married. Rather, I am of the opinion that, in cases such as the one at bar, where the parents were never married, Tennessee Code Annotated section 36-2-311 is the only mechanism by which visitation rights may be obtained. Section 36-2-311 is the parentage statute that specifically addresses a trial court's authority to make an order determining custody and visitation rights where unwed parents are involved. *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010) (citation omitted) ("Where a conflict is presented between two statutes, a more specific statutory provision takes precedence over a more general provision."). Section 36-2-311 provides, in pertinent part, that, "Upon establishing parentage, the court shall make an order declaring the father of the child. This order shall include the following . . . [d]etermination of visitation or parental access pursuant to chapter 6 of this title." Because father is claiming visitation rights based on his execution of a VAP and because mother and father were never married, I conclude that the only mechanism by which father may seek visitation is through section 36-2-311.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE