

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
October 28, 2009 Session

CASSANDRA LYNN RUDD v. HOWARD THOMAS RUDD

**Direct Appeal from the General Sessions Court for Hardin County
No. 6677 Daniel L. Smith, Judge**

No. W2009-00251-COA-R3-CV - Filed December 9, 2009

HOLLY M. KIRBY, J., CONCURRING SEPARATELY:

I concur in the Court's decision but write separately to clarify my view of the evidence as it relates to S.R. I believe that the evidence would support a finding by the trial court, by clear and convincing evidence, that any visitation with Father would result in harm to S.R. However, because the trial court did not make the required finding of harm, I agree with the decision to remand the case on the issue of visitation.

Likewise, I believe that there is evidence in the record to support limiting Father's statutory parental rights as to S.R. to the extent that they involve contact with S.R., such as the statutory right to participate in S.R.'s school activities, athletic activities, church activities, telephone calls with her, and unopened mail. However, I agree with the Court's decision to vacate the trial court's decision and remand on this issue, because the trial court made no findings on S.R.'s best interests.

In all other respect, I fully concur.

HOLLY M. KIRBY, J.