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Therefore, we find that Craig does not have a claim for any compensation for loss and that the district court did not err by granting DOR's motion for summary judgment and dismissing Craig's complaint.

CONCLUSION

[6] Having determined that the district court properly granted summary judgment on the ground that Craig was not an abutting property owner and, as such, does not have a claim for any compensation for loss, we need not address Craig's remaining assignments of error. An appellate court is not obligated to engage in an analysis which is not needed to adjudicate the controversy before it. *Castillo v. Young*, 272 Neb. 240, 720 N.W.2d 40 (2006). Therefore, we affirm.

AFFIRMED.

CHRISTINA B. VRTATKO AND RODNEY VRTATKO, APPELLANTS, v. KARRI M. GIBSON, APPELLEE.

800 N.W.2d 676

Filed June 28, 2011. No. A-10-546.

1. **Visitation: Appeal and Error.** Determinations concerning grandparent visitation are initially entrusted to the discretion of the trial judge, whose determinations, on appeal, will be reviewed de novo on the record and affirmed in the absence of an abuse of the trial judge's discretion.
2. **Judges: Words and Phrases.** A judicial abuse of discretion exists when a judge, within the effective limits of authorized judicial power, elects to act or refrain from action, but the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result in matters submitted for disposition through a judicial system.
3. **Visitation.** At common law in Nebraska and elsewhere, grandparents lacked any legal right to visitation and communication with their grandchildren if such visitation was denied by the parents.
4. **Visitation: Proof.** The statutory right to grandparent visitation in Nebraska, pursuant to Neb. Rev. Stat. § 43-1802(1) (Reissue 2008), requires the petitioning grandparent to satisfy a steep and significant burden of proof.
5. ____: ____. A court is without authority to grant grandparent visitation unless the petitioning grandparent can prove by clear and convincing evidence the statutory requirements set forth in Neb. Rev. Stat. § 43-1802(1) (Reissue 2008).
6. **Parent and Child: Presumptions.** There is a presumption that fit parents act in the best interests of their children.

7. **Visitation.** A fit parent's decision concerning the denial of grandparent visitation must be accorded at least some special weight.
8. **Visitation: Presumptions.** Notwithstanding the special weight to be accorded a fit parent's decision concerning the denial of grandparent visitation, the presumption in favor of fit parents is rebuttable under the appropriate circumstances.

Appeal from the District Court for Scotts Bluff County: DEREK C. WEIMER, Judge. Affirmed.

Donald J.B. Miller, of Matzke, Mattoon & Miller, L.L.C., L.L.O., for appellants.

On brief, Andrew W. Snyder and Joseph A. Kishiyama, of Chaloupka, Holyoke, Hofmeister, Snyder & Chaloupka, for appellee.

IRWIN, SIEVERS, and MOORE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Christina B. Vrtatko and Rodney Vrtatko appeal an order of the district court for Scotts Bluff County, Nebraska, denying their request for court-ordered grandparent visitation with their now 3-year-old grandchild, Kaylee Gibson. On appeal, the Vrtatkos challenge the district court's findings that they failed to prove the existence of a significant beneficial relationship between themselves and Kaylee and that they failed to prove that it is in the best interests of Kaylee that any such relationship continue. We find that the district court did not abuse its discretion in denying the Vrtatkos' request for grandparent visitation, and we affirm.

II. FACTUAL BACKGROUND

This case concerns a petition for grandparent visitation filed by the Vrtatkos seeking court-ordered grandparent visitation rights with their grandchild, Kaylee. Kaylee's parents are Karri M. Gibson and the Vrtatkos' son Michael Vrtatko, who is now deceased. Karri and Michael had a brief relationship, during which she became pregnant with Kaylee. Kaylee was born in December 2007, and Karri has had custody of Kaylee since her birth.

In early 2008, Karri and Michael litigated a paternity case to establish that Michael was Kaylee's biological father and to establish Michael's visitation rights. During that litigation, Michael requested that the Vrtatkos not get involved, and they honored that request. Michael was awarded a graduated visitation schedule that started in May 2008, when Kaylee was approximately 6 months of age. Under the graduated visitation schedule, Michael initially was allowed one weekly visit of a few hours at a time in Karri's home. After approximately 6 weeks, Michael was allowed once per week to pick Kaylee up in the morning and return her to Karri in the afternoon. That arrangement continued for 4 to 5 months, after which Michael was allowed overnight visitation for two consecutive nights per week. Michael exercised this overnight visitation on five or six occasions before passing away in July 2009.

Prior to Michael's death, the Vrtatkos spent limited time with Kaylee. The Vrtatkos saw Kaylee at the hospital the day after she was born. They saw her a second time in January 2008, at Karri's home. Throughout the rest of 2008, the Vrtatkos did not have significant contact with Kaylee because paternity, custody, and visitation rights were being litigated between Karri and Michael and because the Vrtatkos honored Michael's request not to get involved in the litigation. Between Christmas 2008 and Michael's death in July 2009, the Vrtatkos saw Kaylee during some of Michael's visitations. Christina testified to approximately eight occasions when the Vrtatkos spent time with Kaylee during Michael's visitations, mostly on holidays or family birthday celebrations. After Michael's death, at the Vrtatkos' request, Karri permitted two visits between the Vrtatkos and Kaylee during September 2009. After the second such visit, the Vrtatkos requested additional visitation, which Karri declined. The Vrtatkos have not seen Kaylee since September 2009.

On March 8, 2010, the Vrtatkos filed an amended petition seeking court-ordered grandparent visitation with Kaylee. A hearing on the amended petition was held on March 17. The evidence adduced established the limited contact the Vrtatkos had with Kaylee during the first 2 years of her life, as set forth above.

Concerning the visits the Vrtatkos had with Kaylee after Michael's death, Christina testified that at the first visit, Kaylee was initially shy and did not recognize who the Vrtatkos were, but eventually warmed up to them. Similarly, Christina testified that on the second visit, she again had to reestablish herself with Kaylee before Kaylee recognized her. Karri's mother testified that at both visits, Kaylee warmed up to Rodney relatively quickly, but really did not want anything to do with Christina.

Karri testified that she had concerns about the Vrtatkos' having visitation with Kaylee based on information Michael had told her about his relationship with the Vrtatkos. She testified that Kaylee is "afraid of" Christina. Karri testified that she did not think visitation was a good idea because of the way Kaylee acted after visits with the Vrtatkos and that she did not want to put Kaylee in a situation where she is uncomfortable. Karri testified that she was not "shutting the door" to Kaylee's having a relationship with the Vrtatkos at some point in time, but that she was opposed to court-ordered visitation rights at this point in Kaylee's young life.

Following the hearing, the trial court entered an eight-page order that includes careful consideration of the factual circumstances of this case, the evidence adduced, and the applicable principles of law governing grandparent visitation. The court found that the Vrtatkos had, in totality, approximately eight interactions with Kaylee during the first 2 years of her life. The court noted that Karri and Michael knew each other only briefly and that Karri and the Vrtatkos have a very limited relationship with one another. The court noted that Kaylee has been hesitant around the Vrtatkos during their limited interactions, that Kaylee does not ask about the Vrtatkos, and that she has no special names for them.

The trial court found that Karri's hesitancy to grant grandparent visitation to the Vrtatkos was based on her belief that it was not in Kaylee's best interests, because she had concerns about Kaylee's reaction after visits with the Vrtatkos, because she felt the Vrtatkos had been overly aggressive and intrusive in pushing for more time with Kaylee, because of Kaylee's young age, and because she personally did not know

the Vrtatkos very well and was not comfortable leaving her very young daughter with people who are essentially strangers to her.

The trial court considered the relevant legal principles that guide grandparent visitation cases in Nebraska and concluded that there was no evidence to suggest that Karri was acting other than in the best interests of Kaylee, that her decision as the natural mother was entitled to special weight, and that her concerns appeared to be reasonable. In light of Kaylee's young age and the Vrtatkos' very limited contact with her during the first 2 years of her life, the court concluded that the Vrtatkos presented insufficient evidence to establish that they had developed a significant beneficial relationship with Kaylee, regardless of the Vrtatkos' laudable desire to be an active resource in Kaylee's life. The court also found that the Vrtatkos had adduced insufficient evidence to demonstrate that Kaylee's best interests would be served by ordering grandparent visitation against the wishes of her natural mother, Karri. The court thus denied the Vrtatkos' petition, and they brought the present appeal.

III. ASSIGNMENT OF ERROR

On appeal, the Vrtatkos have assigned five errors, which we consolidate for discussion to one. The Vrtatkos assert that the district court erred in denying their request for grandparent visitation.

IV. ANALYSIS

The Vrtatkos assert that the district court erred in denying their request for court-ordered grandparent visitation rights with Kaylee. Nebraska appellate jurisprudence in the area of grandparent visitation demonstrates both that grandparents must satisfy a substantial burden to demonstrate that their desire for court-ordered visitation should override a fit natural parent's reluctance to grant such visitation and that the trial court's decision concerning grandparent visitation is to be accorded deference. In this case, we find no abuse of discretion by the district court in its conclusion that the Vrtatkos failed to satisfy their substantial burden.

[1,2] Determinations concerning grandparent visitation are initially entrusted to the discretion of the trial judge, whose determinations, on appeal, will be reviewed de novo on the record and affirmed in the absence of an abuse of the trial judge's discretion. *Nelson v. Nelson*, 267 Neb. 362, 674 N.W.2d 473 (2004). A judicial abuse of discretion exists when a judge, within the effective limits of authorized judicial power, elects to act or refrain from action, but the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result in matters submitted for disposition through a judicial system. *Id.*

[3-5] At common law in Nebraska and elsewhere, grandparents lacked any legal right to visitation and communication with their grandchildren if such visitation was denied by the parents. *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006). Nebraska was the last state in the nation to grant grandparent visitation rights. *Id.* The statutory right to grandparent visitation in Nebraska, pursuant to Neb. Rev. Stat. § 43-1802(1) (Reissue 2008), requires the petitioning grandparent to satisfy a steep and significant burden of proof. Indeed, the Nebraska Supreme Court has indicated that a court is *without authority* to grant grandparent visitation unless the petitioning grandparent can *prove by clear and convincing evidence* the statutory requirements set forth in § 43-1802(1). *Hamit v. Hamit, supra.* The Nebraska Supreme Court has also noted that as part of its legislative findings in regard to § 43-1802(1), the Nebraska Legislature recognized that the State presumes the critical importance of the parent-child relationship in the welfare and development of the minor child and that the parent-child relationship, in the absence of parental unfitness or a compelling state interest, is entitled to protection from intrusion. *Hamit v. Hamit, supra*.

[6-8] The most recent discussion of Nebraska's grandparent visitation statute was in the Nebraska Supreme Court's decision in *Hamit v. Hamit, supra.* In that opinion, the Supreme Court examined Nebraska's grandparent visitation statute in light of the U.S. Supreme Court's plurality opinion in *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49

(2000). The Nebraska Supreme Court recognized that in the area of grandparent requests for visitation, natural parents enjoy certain due process rights. *Hamit v. Hamit, supra*. The court set forth a number of relevant principles that are applicable to grandparent visitation cases:

> (1) There is a presumption that fit parents act in the best interests of their children.
>
> (2) In light of this presumption, a fit parent's decision concerning the denial of grandparent visitation must be accorded at least some special weight.
>
> (3) Notwithstanding the special weight to be accorded a fit parent's decision, the presumption in favor of fit parents is rebuttable under the appropriate circumstances.

Hamit v. Hamit, 271 Neb. at 671-72, 715 N.W.2d at 524. The district court quoted those principles in its order denying the Vrtatkos' petition. In its extensive and thorough order in this case, the district court carefully considered each of these principles, in conjunction with the specific statutory requirements of § 43-1802(1), including the requirements that the grandparent demonstrate a significant beneficial relationship with the child and that it be in the best interests of the child to continue the relationship.

The Vrtatkos assert that their significant beneficial relationship with Kaylee is illustrated by their attempts to give her love and affection and that "[t]here can be no doubt that the Vrtatkos' love and affection for Kaylee is in Kaylee's best interests." Brief for appellants at 11. This assertion is substantially similar to the policy notion stressed by the trial court in *Nelson v. Nelson*, 267 Neb. 362, 674 N.W.2d 473 (2004). That case concerned a request by grandparents for visitation in a situation where the children's natural father was deceased. In that case, the trial court concluded that it was important for the children to have a relationship with their grandparents; that if it were left to the natural mother to foster the relationship, it was unlikely to occur; and that the policy notion of the importance of the relationship between the grandparents and children was sufficient to constitute a significant beneficial relationship. The trial court thus granted grandparent visitation. On appeal, this court reversed.

On further review, the Nebraska Supreme Court affirmed this court's reversal of the trial court's award of visitation to the grandparents. In so doing, the Supreme Court stated:

> While we certainly agree with the general proposition that a strong and healthy relationship with grandparents is in the best interests of children, *that is not the issue before us.* In the legitimate exercise of her parental rights, [the natural mother] has concluded that the interests of her children would not be served by an ongoing relationship with their grandparents at the present time, given the generally strained familial relationship. *Whether or not we agree with that decision, we do not have legal authority to countermand it by ordering grandparent visitation in the absence of clear and convincing evidence that "a significant beneficial relationship exists, or has existed in the past, between the grandparent and the child and that it would be in the best interests of the child to allow such relationship to continue."* See § 43-1802(2). The statutory requirement that grandparents present such evidence *before a court may even consider ordering visitation* gives proper deference to the fundamental right of a fit parent to make decisions regarding [her] children's upbringing. See *Troxel v. Granville*, 530 U.S. 57, . . . 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) . . . .

Nelson v. Nelson, 267 Neb. at 372-73, 674 N.W.2d at 481 (emphasis supplied) (emphasis omitted). Thus, while recognizing the validity of this policy notion, the Supreme Court explicitly rejected it as the basis for awarding grandparent visitation and stressed the significant burden on the grandparents seeking visitation to present sufficient evidence to override the decision of a fit parent to deny visitation. Despite the validity of this policy notion, there is no prior case in this state where a trial court has denied grandparent visitation on the basis of insufficient evidence and that decision has been overturned on appeal. See, *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006) (trial court's grant of visitation affirmed); *Nelson v. Nelson*, 267 Neb. 362, 674 N.W.2d 473 (2004) (trial court's grant of visitation reversed); *Morris v. Corzatt*, 255 Neb. 182, 583 N.W.2d 26 (1998) (trial court's denial of visitation affirmed);

Eberspacher v. Hulme, 248 Neb. 202, 533 N.W.2d 103 (1995) (trial court's denial of visitation reversed by Court of Appeals and Court of Appeals' decision reversed by Supreme Court); *Beal v. Endsley*, 3 Neb. App. 589, 529 N.W.2d 125 (1995) (trial court's grant of visitation affirmed when not challenged on appeal).

In this case, the Vrtatkos presented evidence suggesting their love for Kaylee and their desire to have a relationship with her. They also presented evidence concerning the interaction they had with Kaylee on the very few occasions on which they saw her. Other witnesses agreed that there was a loving relationship during these brief and limited interactions. However, Karri presented conflicting evidence about the Vrtatkos' interactions with Kaylee. Karri testified that Kaylee was "afraid of" Christina, that she did not think visitation was a good idea because of the way Kaylee acted after visits, and that she had concerns about visitation with the Vrtatkos based on what Michael had told her about them. She testified that she did not want to put Kaylee in a situation where Kaylee is uncomfortable. She testified that she was not "shutting the door" to Kaylee's having a relationship with the Vrtatkos at some point in time.

In *Eberspacher v. Hulme, supra*, the Nebraska Supreme Court recounted evidence about a relatively lengthy and significant relationship between the grandparents and minor child. There was certainly substantially more evidence of interaction between the grandparents and child than in the present case, but the trial court concluded that the grandparents had failed to meet their burden to prove a significant beneficial relationship. The trial court recognized that there was nothing bad to be said about the relationship, but simply concluded that the grandparents had not met their burden.

On appeal, the Supreme Court noted:

> The undisputed evidence of record is that the grandparent-grandchild relationship here is an unremarkable, typical, healthy relationship. The district court, however, which observed the witnesses, did not find clear and convincing evidence that the relationship was such that it would be in the best interests of the children that it continue or that court-ordered grandparent visitation would

> not adversely interfere with the parent-child relationship. Even assuming the Court of Appeals was correct—that there was clear and convincing evidence of the three criteria required by § 43-1802—we cannot say that the district court abused its discretion in denying the grandparents' petition, in light of the litigious relationship in this case.

Eberspacher v. Hulme, 248 Neb. at 208-09, 533 N.W.2d at 106-07. Thus, the abuse of discretion standard of review is of significance in our review of these kinds of cases.

This case presents a factual situation in which the natural mother and father of the child had a very brief relationship that resulted in pregnancy and the birth of the minor child. After the child's birth, the father himself had limited contact with the child and requested that the paternal grandparents not have significant contact with the child. The grandparents chose to honor his request and chose not to have a substantial relationship with the child. The trial court found that in totality, the grandparents had approximately eight interactions with the child. The trial court found that there was evidence that the child is hesitant around the grandparents until she "warms up" to them, that she does not ask about them, and that she has no special names for them. The grandparents are virtually strangers to the mother because of the limited relationship between the mother and father prior to the child's birth. The trial court found that the mother has resisted granting visitation to the grandparents at this time because she does not feel it is in the child's best interests, because she has concerns about the child's reaction after visits, because she feels that the grandparents have been overly aggressive and intrusive in pushing for more time with the child, because of the child's young age, and because she does not personally know the grandparents well enough to be comfortable letting her very young daughter go with people who are essentially strangers to her. The mother also acknowledged that she was not foreclosing the possibility of fostering a relationship between the grandparents and the child at a later time, when the child is older and in a better position to understand their relationship to her.

The trial court heard and observed all of the witnesses, carefully reviewed all of the relevant jurisprudence in this area, and issued a thorough and well-reasoned opinion addressing the legal requirements imposed on grandparents in the Vrtatkos' position and the evidence adduced in this case. The trial court concluded that the Vrtatkos failed to adduce clear and convincing evidence that they had a significant beneficial relationship with Kaylee, based on their very limited contact with her, and it concluded that they failed to adduce clear and convincing evidence that judicially imposing more of a relationship at the present time was in Kaylee's best interests when opposed by the wishes of Karri, a fit natural parent. We cannot conclude that this decision is an abuse of discretion.

V. CONCLUSION

This case presents an unusual and difficult factual situation, where the natural father of the minor child passed away during the first few years of the child's life and after having only a brief relationship with the natural mother. The child's paternal grandparents desire to have a relationship with the child, but the mother has resisted court-ordered grandparent visitation rights. We certainly do not dispute the potential importance of relationships between children and their grandparents, but the law imposes a substantial burden on grandparents seeking court-ordered visitation rights, and the trial court's conclusion after seeing and hearing the witnesses and weighing the evidence is entitled to deference. In this case, we find no abuse of discretion, and we affirm the district court's decision.

AFFIRMED.