

# Grandparents' Rights Regarding Visitation

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September 28, 2016

## Troxel v. Granville

530 U.S. 57 (2000)

- ▶ Begins the discussion on the state's right to grant visitation rights to grandparents.
- ▶ U.S. Supreme Court applies a constitutional analysis to the question of what rights do grandparents have regarding visitation with grandchildren.
- ▶ Affirms that parents have a constitutional due process right, also defined as a "liberty interest", in raising their children as they see fit. (14<sup>th</sup> A)
- ▶ The Constitution protects this right.

## The Facts of Troxel

- ▶ Unmarried couple, 2 daughters lived with mother after the parents separated
- ▶ Father lived with his parents; Father had visitation every other weekend.
- ▶ Father died and grandparents wanted to continue visits.
- ▶ Mother wanted to limit grandparents visits to one short visit per month.

## The Law in Washington

- ▶ “ Any person may petition the court for visitation rights at any time, including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been a change of circumstances.”  
(emphasis added)

## Problems with this Law

- ▶ permits any third party seeking visitation to subject any decision by a parent concerning visitation of the parent's children to judicial review.
- ▶ “breathtakingly broad...”
- ▶ The statute contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever.
- ▶ Unconstitutional

## The U.S. Supreme Court opinion said

- ▶ The Troxels did not allege, and no court has found, that Granville was an unfit parent. That aspect of the case is important, for there is a presumption that fit parents act in the best interests of their children. (emphasis added)
- ▶ So long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

## The U.S. Supreme Court opinion said

- ▶ The decision whether such an intergenerational relationship would be beneficial in any specific case is for the parent to make first.
- ▶ The burden of litigating a domestic relations proceeding can itself be "so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated."

## Post Troxel

- ▶ Grandparents are not entitled to visitation.
- ▶ Any right a grandparent has to visitation must be statutorily granted. \*
- ▶ A fit parent has a fundamental right to determine who his/her child associates with.
- ▶ A fit parent is presumed to act in the best interests of his/her child regarding who the child associates with.

\* See: Ryan v. DeMello, 354 A.2d 734(1976)

## Other States

- ▶ All 50 states have statutes that grant visitation to grandparents under different circumstances.
- ▶ Most typical threshold requirement:
  - Death of the their child
  - Grandparent is “de facto” parent
  - Grandchild in the custody of a non-parent
  - Divorce of child’s parents.

## Other Factors

- ▶ Other factors considered once initial requirement is met:
  - Relationship between child and grandparent
  - Preferences of the child
  - Fitness of grandparent(s)
  - Amount & quality of child-GP contact
  - Loss of contact will harm the child
  - Level of antagonism between parent(s) and grandparent(s)
  - **Best interests of child**

## Common Conditions Contained in Statutes of Other States\*

- ▶ Family Disruption
  - Separation or divorce of parents (36)
  - Death of their child (30)
  - Grandchild born out of wedlock, paternity established
  - Grandchild in custody of someone other than parent
- ▶ Grandparent and grandchild have lived together for a certain period of time (11) (de facto parent)

\* See: Atkinson, Jeff. *Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children*. 47 Fam. L. Q. 1 (2013)

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## R.I. Statutes

Grandparents have no statutory right to petition for custody of a grandchild unless the maternal or paternal grandparent, alleges that the surviving parent, in those cases in which one parent is deceased, is an unfit and improper person to have custody of any child or children. R.I.G.L. §14-1-3(2)(vi)

## Child in Custody of DCYF

- ▶ Grandparents have no statutory right to custody or visitation of children in DCYF care.
- ▶ DCYF has obligation to seek out relatives for placement of children in foster care.
- ▶ DCYF often “places” children in the care of fit and willing grandparents.
- ▶ DCYF can recommend the transfer of Legal Guardianship of a child in DCYF care to a grandparent if the custodial parent consents.

## Domestic Relations Proceedings

- ▶ Grandparents may petition for visitation if
  - Their child is deceased (R.I.G.L. §15-5-24.1)
  - In a divorce proceeding (R.I.G.L. §15-5-24.2)
    - If their child was denied visitation
    - If their child has failed to exercise his/her right to visit
  - In other words, the grandparent may assert visitation rights potentially due to their own child where their own child cannot or does not assert them.

## Domestic Relations Proceedings

- ▶ Grandparents may file a Miscellaneous Petition for Visitation. R.I.G.L. §15-5-24.3
  - Notice to both parent(s) and the child
  - Best interests of grandchild
  - Rebut presumption that parent's decision was reasonable by clear and convincing evidence
  - Grandparents are fit to visit with child
  - Repeatedly rebuffed efforts to visit
  - Court intervention is necessary to facilitate visitation

## R.I. Case Law

- ▶ Puleo v. Forgue – a case wherein the parents of a deceased mother filed a petition to visit their granddaughter. There was great animosity between them and the child's father. He objected and the child expressed a desire not to visit. The court construed the 1988 version of the RI grandparent visitation statute and denied the petition.
- ▶ "The peace and sense of security of the child in her relations with her parents should be given primary consideration." *Id.* At 634 A.2d 858



## R.I. Family Court Procedures

- ▶ Grandparents file a Miscellaneous Petition.
- ▶ All Miscellaneous Petitions are automatically referred to Family Court Mediation Unit.
- ▶ Efforts are made to mediate the visitation dispute.
- ▶ If no settlement is reached, the petition is placed on a judge's calendar.

## Mediation Data

- ▶ Miscellaneous Petitions filed by grandparents have layers of intergenerational complexity.
- ▶ Average between 10–20 cases per year.
- ▶ Able to settle or narrow issues
  - 62% of Grandparents' petitions
  - 85% of all Miscellaneous Petitions for custody or visitation.