

Courts Gets Case Of Grandparental Visitation Rights

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The state's highest court is set to hear a case today about grandparent visitation rights, an issue so constitutionally troublesome that the nine justices of the U.S. Supreme Court in 2000 issued six conflicting opinions on the topic in a single case.

In taking the case, which began in Suffolk County, the New York Court of Appeals is entering a national debate about the rights of mothers and fathers to make child-rearing decisions without government interference. New York's Court of Appeals, which sits in Albany, has yet to say decisively whether allowing judges to order grandparent visitation rights violates the rights of parents to control their children.

The case has attracted the attention of the office of the attorney general, which during Eliot Spitzer's tenure filed a friend of the court brief defending the constitutionality of a state law allowing grandparents to obtain visitation orders.

The office of the attorney general says the law does not violate the 14th Amendment rights of adults to raise their children as they see fit. "Because the statute can be and has been construed as requiring a trial court to give great weight to a parent's objections to visitation, it adequately safeguards the right of parents to make decisions regarding the control and custody of their children," the attorney general's brief said.

Under the provision of the state's Domestic Relations Law, grandparents usually are allowed to petition for visitation only when one parent of the child is dead. Judges can give grandparents visitation rights even when the surviving parent opposes any contact between the child and the grandparent. Those visitation awards can require a parent to send a child to visit with grandparents for whole weekends, or even more than a week, as happened in the case before the court today.

Still, the Court of Appeals may not get the final word on what level of deference courts must give parental wishes in such intergenerational family disputes. The U.S. Supreme Court is currently considering whether to take a new grandparent visitation case and revisit the question, which splintered the court six years ago.

The most recent Supreme Court case on grandparent visitation, which involved a challenge to a Washington State law, resulted in six opinions, giving little guidance to states across the country. A sticking point for the Supreme Court was the practical concern that families take many forms, and grandparents sometimes play a primary role in raising children.

"The demographic changes of the past century make it difficult to speak of an average American family," the plurality decision, written by Justice O'Connor, said. The case is *Troxel v. Granville*.

Still, Justice O'Connor wrote that the wishes of a fit parent must receive "special weight" in visitation disputes.

Courts across the country are in "great disagreement" over how to apply Justice O'Connor's standard, a Philadelphia attorney who is petitioning the Supreme Court to revisit the issue, Howard Bashman, told *The New York Sun*. Recent decisions by the high courts of more than 20 states suggest a split over how critically the courts evaluate grandparent visitation requests, Mr. Bashman last month wrote in a certiorari petition to the Supreme Court seeking review of a Pennsylvania Supreme Court decision on grandparent visitation.

Both lower courts in New York to review today's case have sided with the 82-year-old grandmother who requested visitation with her grandson following the death of her daughter, the boy's mother. The boy's father, from Huntington, is appealing the visitation order. The father opposes all contact between his son and the 13-year-old boy's maternal grandmother, according to court records.

The reasons behind the family dispute are varied. During a 14-day trial, the father claimed that the grandmother sought to contradict the advice he gave his son. Apparently, the father and grandmother disagreed on child-rearing issues ranging from proper tooth-brushing habits to whether the boy needed Ritalin, according to a 2003 decision by a state judge, Sandra Lynne Sgroi. The father, an associate professor at Touro Law Center who is identified in court papers only by his initials, claims a court's decision to schedule visitation time for the grandmother violates his constitutional rights under the 14th Amendment.

For a time, it seems the father and grandmother of the boy had been on close terms. Before the boy's mother died of cancer, the grandmother had moved in with the family and played a major role in raising the boy. That arrangement continued after the death of the boy's mother and lasted for nearly five years. Relations soured, and the father later barred the grandmother from his home, going so far as to call the police when she visited, according to court records.

A mid-level appellate court largely upheld Judge Sgroi's visitation order, although it did take away the grandmother's visitation rights during Jewish holidays.

The grandmother is being represented today by an attorney from Ronkonkoma, Thomas Campagna. The father is represented by William O'Leary of Albany. The boy's interests are being represented by a court-appointed attorney, Robert Gallo of Sayville.