

# Grandparent Visitation Rights

John E. Schowalter, MD

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There is no doubt that there can be a special closeness between grandchildren and grandparents. As far back as the Torah, there is the suggestion that the reason for this affinity stems from the fact that they share a common enemy.

It is easy to believe that sustaining bonds between grandchildren and grandparents were much more the norm in biblical times or in the time of our own great-grandparents. After all, with air travel readily available, there is, on average, more geographical distance between generations than there was in the past. In truth, however, there is probably more grandchild/grandparent interaction in our current society than ever before. True, airplanes can remove the new generation from the old, but for holidays, vacations, and times of family crisis, these same airplanes can readily bring the generations back together again. Since World War II, with the massive movement of women into the workplace, there has been an expanding need felt by many young mothers to find inexpensive, trustworthy babysitters. From time in memorium, the first choice for this surrogate role has been the mother's own mother. Until the 1990s, there was also, over several decades, a rise in births to young teenagers, who often wished or needed to turn to their own mothers to take over the raising of their child. While this increase in births has crested, the prevalence remains substantial. Finally, from the parents' side, there has been for almost 20 years the scourge of AIDS, which has led to a record number of orphans. When she is available, the first person who

is usually sought for placement for these children is the maternal or paternal grandmother.

There is one more factor contributing to the current relatively greater contact between grandchildren and grandparents, and this is a positive factor. There have been during the past two generations many salutary gains both in peoples' longevity and their later quality of life. Thus, grandparents are now present and vigorous during a longer proportion of their grandchildren's lives.

What importance, if any, does this past generation's expansion of grandchild/grandparent interaction have for the Supreme Court of the State of Washington's *Troxel* decision?\* Here the Court ruled that although the state can impose visitation rights for third parties, including grandparents, onto custodial parents, that this breach of parents' rights to raise children without interference from others should only be to protect children from harm. The Court does not believe that parents' decisions to exclude grandparent/grandchild contact can be superseded only because of the state's belief that such contact is in the best interests of the child.

The Washington Supreme Court has set a very high bar, which "grandparents' rights" groups and most individual grandparents will believe unfairly high. The potent emotional valence of this topic is balanced against the relatively small amount of research data available to show either how important noncustodial grandparents are to their grandchildren's well-being or whether or not their exclusion can be harmful. The importance of grandparents is probably in direct relation to the inability of the parents to provide for their children's well-being. Studies of grandparents who be-

\* *In re* Visitation of Troxel, 969 P.2d 21 (Wash. 1998), Cert. granted, 120 S. Ct. 11 (1999).

Dr. Schowalter is the Albert Solnit Professor at the Child Study Center, Yale University School of Medicine. Address correspondence to: John E. Schowalter, MD, Yale University Child Study Center, 230 South Frontage Rd., New Haven, CT 06510.

come their grandchildren's custodians are plentiful and show that these arrangements are usually quite satisfactory, particularly if compared with the alternatives. Anecdotal, our culture, and I believe all other cultures, has as part of its belief fabric that kindly grandparents are a help both as a support to the parents and as a source for broadening the grandchildren's understanding of the past and of the circle of life to come. The literature that is available on the impact of grandparents on grandchildren is most often published in gerontologic journals. Typically presented through surveys, it is detailed that grandchildren are usually happy with their contact with grandparents, particularly with the grandmothers, although teenage boys tend to favor their grandfathers. The positive aspects of these contacts for the grandparents' sense of purpose, importance, and self-esteem are also well documented. In summary, there seems little dispute with the assumption that grandparents may be very helpful to the well-being of children in their custody or when, at the parent's request, the grandparents help out during times of acute or chronic crisis. It is also undisputed that, in well functioning families where parents and grandparents are mutually sympathetic, grandparents can be important sources of personal enrichment for their grandchildren.

We now enter the area of dispute. What if the grandparents' involvement is not wanted by the custodial parent? This dissonance most commonly occurs in three situations: following conflict between parents and grandparents; following parental divorce with custody going to the in-law; or following remarriage after the child is adopted by the new stepfather. In all of these cases, the grandparents become symbols of a past that the custodial parent wishes to expunge.

The Court has approved state-decreed granting of grandparent visitation rights against the custodial parent's wishes if this visiting will prevent harm to the child. It is difficult to imagine the circumstances under which this would occur. One example might be, depending on the accepted definition of harm, the severe emotional wrenching caused by "cold turkey" exclusion of grandparents who had lived in the home and had provided major care to the child. Another possible example might be shown after the fact. In such a case, major emotional symptoms would need to be linked to the forced separation. To be realistic, however, such emotional upset is unlikely to be brought to a professional's attention by the parent, and for evaluation to be mandated, harm would need to be severe enough to be picked up by teachers or others and be reported and confirmed as neglect. Obviously, any parental abuse or ne-

glect that led to removal of custodial rights would also make moot the *Troxel* ruling.

I agree with *Troxel*. This decision may not be agreeable to grandparents, but nature seems to have it right, that each generation has its own layer of parents. Sometimes children are forced to be "parentified" before their time, and, as noted above, sometimes grandparents are forced to be parent surrogates; but these situations are seldom optimal. Philosophy aside, and more importantly, the *Troxel* ruling is right because it is "bottom-line" realistic. If the custodial parent refuses grandparent visitation and is overruled by the court, the child will be placed in an untenable situation. We can infer that the parent dislikes the grandparents, and reciprocity is likely. The child clearly knows that the contact is against parental wishes and is not supposed to be found pleasurable. During visitation, the grandparents may make negative remarks against the parent. This arrangement is like an extremely acrimonious custody arrangement between parents, except it adds the complexity of being both familial and intergenerational. It seems to me that the two-sided animosity and built-in loyalty conflicts are likely to undo any best-interests-of-the-child engendered by the forced visits.

The influence of the child in these conflicts is left unclear, informally or formally. Remaining steadfast to the virtue of practicality, a custodial parent has more to be concerned about from child disgruntlement than from grandparent disgruntlement following severance of a popular grandchild-grandparent tradition of contact. If the custodial parent's decision is viewed as hurtful or unfair, children are likely to resent the parent and idolize the grandparents as heroes whose proffered affection has become forbidden. Almost as in a fairy tale, the parent might become the "bad" day-to-day rule-giver, while the grandparents' reputation, unsullied through lack of conflict, can be burnished into an even purer good. Finally, one assumes that for children in their teens there is the possibility to petition the court for visitation rights with grandparents. Adolescence is the stage of development when alternatives to parents are sought. Banished grandparents, seen by the grandchild as parentally undervalued and misunderstood as they are themselves, make it seem likely that many disgruntled teenagers will be lured to set a course back to the future. A wise parent might volunteer visitations rather than force the adolescent to approach the court.