Where Are The Grandparents? Raising Their Grandchildren!

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The number of grandparents raising their grandchildren has continued to rise over the past decade as a result of children being abandoned by their parents because of drug addiction. In 2015, the number of grandparents caring for their grandchildren was 2.9 million, up from 2.5 million in 2005.

Federal law requires that relatives be considered first when child protective agencies (DCPP in New Jersey) are trying to place children. Certainly, the nuclear family is the first place agencies look to find people who will step in to care for the children. The difficulty of this solution may be that grandparents who are living on fixed incomes (usually Social Security, which does not increase with the addition of family members) cannot afford to bring grandchildren into their home. Many grandparents live below the poverty line, making it virtually impossible for them to care for children.

This difficult situation lies in contrast to grandparents who want to have a relationship with their grandchildren, but are denied that opportunity by a natural, fit parent.

In 2000, the U.S. Supreme Court decided a case, Troxel v. Granville, out of Washington State, which reaffirmed the fundamental rights of fit parents to raise their children without interference from the state or third parties. The Supreme Court reinforced the need to preserve family integrity by not forcing the wishes of grandparents for visitation over those of a fit parent. Of course, if a parent is not fit, then the state will step in to protect the child from serious emotional or physical harm.

New Jersey has a grandparents' visitation statute that has passed constitutional muster and does provide grandparents the opportunity to maintain contact with their grandchildren under certain

circumstances. In the case of Moriarity v. Bradt, after the parents divorced, the grandparents continued to have frequent contact with their grandchildren. After the mother died of an overdose, however, the father decided to limit the grandparents' contact with the children, blaming the grandparents for the mother's drug addiction. One can see this potential scenario occurring throughout the state, with the increase of opioid addiction being found in almost every town.

In that case, the court decided it first had to determine whether the children would be harmed if they did not have contact with their grandparents. In order to demonstrate harm, the grandparents had to show that a significant relationship with the children had existed. Once that preexisting relationship was proven, the court could assess whether it was in the best interest of the children to spend time with their grandparents.

Grandparents may ask, "How do I prove this preexisting relationship?" Every case turns on its individual facts and the proof that can be presented. Is the proof testimonial? If so, are the witnesses credible? Do they testify to long-standing contact with the children, and can they offer examples? Is the proof demonstrative, e.g., photos etc.? Is there an expert witness to testify that the children will suffer emotional harm without contact with their grandparents? How is harm defined? Harm could mean that children will lose the connection they had with their deceased parent without contact with their grandparents. Of course, this would also depend on the closeness the children had with the deceased parent.

It is painful for grandparents who have regularly been involved in the lives of their grandchildren to be denied contact with them. The law, first and foremost, will protect family autonomy, but if the grandparents have had a continuing relationship with their grandchildren, all is not lost in New Jersey.

If you have been prohibited from contact with your grandchildren, it is best to contact an attorney at Einhorn, Barbarito, Frost & Botwinick, who can give you advice as to your chances of seeing your grandchildren again.