Grandparent Visitation in Pennsylvania

In *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court considered a Washington state statute that permitted "[a]ny person" to petition a superior court for visitation rights "at any time" and authorized that court to grant such visitation rights whenever "visitation may serve the best interest of the child." Wash. Rev. Code § 26.10.160(3).

The petitioners in that case, the Troxels, were the grandparents of two children. The son of the petitioners, who was the father of the two children, had died in May 1993.

In October 1993, the mother of the children, Tommie Granville, told the Troxels that she wished to limit their visitation with her daughters to one day per month. The Troxels filed suit and asked for two weekends of overnight visitation per month and two weeks of visitation each summer. In 1995, the trial court entered a visitation decree ordering visitation one weekend per month, one week during the summer, and four hours on the petitioning grandparents' birthdays.

The U.S. Supreme Court ultimately reversed the trial court, holding that the Washington state statute, as applied to Granville and her family, unconstitutionally infringed on Granville's fundamental right to make decisions concerning the care, custody, and control of her children.

The Court held that the very broad language of the statute failed to give deference to the wishes of the parents. "Instead, the Washington statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent's estimation of the child's best interests, the judge's view necessarily prevails." 530 U.S. at 67.

The Court noted that the Troxels did not allege, and no court had found, that Granville was an unfit parent. This was important, because "there is a presumption that fit parents act in the best interests of their children." *Id.* at 68. The Court continued: "In effect, the judge placed on Granville, the fit custodial parent, the burden of *disproving* that visitation would be in the best interest of her daughters. The judge reiterated moments later: 'I think [visitation with the Troxels] would be in the best interest of the children and I haven't been shown it is not in [the] best interest of the children.'" *Id.* at 69.

The U.S. Supreme Court stated what it was *not* deciding: "[W]e do not consider the primary constitutional question passed on by the Washington Supreme Court—whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation." *Id.* at 73.

In an ongoing refinement of the principles laid down in *Troxel*, the U.S Supreme Court in 2006 denied certiorari in *Hiller v. Fausey*, 588 Pa. 342, 904 A.2d 875 (2006), *cert. denied*, 549 U.S. 1304 (2007).

That case involved a challenge to a Pennsylvania statute that predated *Troxel* but lacked the extreme breadth of the Washington statute challenged there. The Pennsylvania statute provided that if a parent of a child was deceased, the court could grant the parents or grandparents of the deceased parent "reasonable partial custody or visitation rights, or both," on a finding that "partial custody or visitation rights, or both, would be in the best interest of the child and would not interfere with the parent-child relationship." 23 Pa. Cons. Stat. § 5311. The court was also required to consider the amount of personal contact between the applicant and the child prior to the application.

In *Hiller*, the child had lived with his parents from his birth in 1994 until the death of his mother from cancer in 2002. During the final two years of the mother's life, the child and his maternal grandmother saw a lot of each other, and there was testimony that he and she were close. Following the mother's death, the father stopped contact between the child and the maternal grandmother, and litigation followed. Following a two-day hearing, the court granted the grandmother partial custody one weekend per month and one week each summer. The father appealed.

Although the trial court applied the presumption, articulated in *Troxel*, that a fit parent acts in the child's best interests, and further noted that a grandparent seeking to compel partial custody carries the burden of proof, the court nonetheless found that the grandmother was entitled to visitation. As summarized by the Pennsylvania Supreme Court, the appellate court had concluded that the trial court had "properly applied the statute with the necessary presumption that Father's decisions were in the best interests of the Child." The court also had found that "the record supported the trial court's conclusions that Grandmother overcame the presumption by demonstrating that partial custody was in Child's best interests and that it would not interfere with Father's relationship with Child." The appellate court affirmed the trial court's decision, finding the application of section 5311 constitutional. 588 Pa. at 350, 904 A.2d at 880.

Thus, as set forth in the Pennsylvania Supreme Court's report of the trial court decision, the presumption that the father's decisions were in the child's best interests was overcome by the grandmother's demonstration that partial custody to her was in the child's best interests.

The Pennsylvania Supreme Court concluded that there was no need for the grandparents to show, as a prerequisite to receiving court-ordered visitation, that denial of visitation would result in harm to the child. The court concluded instead that the "stringent" requirements of the statute, combined with the presumption that a parent acts in a child's best interests, "sufficiently protect the fundamental right of parents without requiring any additional demonstration of unfitness or specific requirement of harm or potential harm." *Id.* at 365–66, 904 A.2d at 890.