

Blog

Are Grandparents' Custody Rights in Pennsylvania in Peril?

May 19th, 2016

by Williams Family Law, P.C.

In dealing with child custody matters in Pennsylvania, the law generally defers to the parents, allowing them the right to control access to their children. However, that deference yields when a grandparent seeks partial physical custody of their grandchildren. Courts in Pennsylvania, at both the county and appellate level, often have acknowledged the valued relationship that grandchildren may share with a grandparent.

The Pennsylvania Domestic Relations Code provides standing to non-parents and forms the basis for grandparent custody rights. More specifically, Section 5325 of the Pennsylvania Domestic Relations Code defines situations when a grandparent can file an action for partial custody. Generally, a grandparent can seek partial physical custody of their minor grandchildren in one of three circumstances:

- if either of the children's parents are deceased;
- if the parents have been separated for at least six months or have commenced divorce proceedings; or
- if the grandchildren have resided with the grandparent for more than 12 months and then were removed from the home.

Recently, however, there has been a push to abolish grandparent custody rights all together. The main argument against grandparent custody rights is that they violate the constitutional right to due process and equal protection that parents have over their children.

In *Ponko v. Ponko*, Judge Harry F. Smal, Jr. of the Court of Common Pleas of Westmoreland County **refused to grant grandparents partial physical custody of their grandchildren** despite the fact that they otherwise qualified for custodial time. The parents of the children mutually had agreed to exclude the paternal grandparents from their children's lives both during the marriage and after they were divorced.

Judge Smal ruled that although the parental grandparents had standing to seek partial physical custody, the parents of the minor children were "fit and able to effectively co-parent their children," and "had made a well-reasoned informed decision to exclude the parental grandparents from their lives." Judge Smal further held that "there is no constitutional basis justifying the implicit presumption of unfitness as between separated and other non-separated parents when the only concern is marital status." The judge went on to hold that Section 5325 of the Pennsylvania Domestic Relations Code dealing with grandparents' visitation and custody is unconstitutional.

Michael Ramey, director of communications for ParentalRights.org, a Virginia-based advocacy group that lobbies for a parental rights amendment to the U.S. Constitution, said grandparent laws such as Pennsylvania's are contested in courts throughout the country. Courts have upheld some grandparent custody and visitation laws, though others have been struck down as unconstitutional. According to Ramey, courts recognize the value of involving grandparents but also have a great responsibility to defend the fundamental right of parents.

Our Founder and Managing Partner Jeffrey M. Williams said the law should recognize that each family is different and should offer judges the discretion they need to evaluate a case and make a decision that is in the best interests of the child.

"Custody law is always subjective. Each case depends on the relationships between the children, the parents and the grandparents, as well as the facts of the situation," said Williams.

For now, grandparents in Pennsylvania are unaffected by the decision out of Westmoreland County. However, the matter currently is on appeal to the Pennsylvania Supreme Court, which **recently heard arguments in the case**.

If you have a question or concern about grandparent custody issues, contact the Bucks County child custody attorneys at Williams Family Law, P.C.



