

# THE BATTLE FOR GRANDPARENT VISITATION CONTINUES

*While legislation stalls, lawyers see potential opening in recent Court of Appeals case*

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**N**avigating the rights of grandparents to see their grandchildren has been a tightrope walk that has long perplexed family law attorneys. Several state leg-

islators have spent years trying to pass a bill in the General Assembly that would give grandparents the ability to independently go to court to get access to their grandchildren, only to come up against the constitutional right of biological parents to make decisions for their children.

When Maryland first passed a Grandparent Visitation Statute in 1993, Jeffrey N. Greenblatt received lots of calls from grandparents looking to get visitation and were successful in doing so. Then, in 2007, the Court of Appeals adopted a new standard in *Koshko v. Haining*,

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# Grandparents >> Lawyers want to see some rights in visitation statute

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holding that a grandparent must show the parent is unfit or there are exceptional circumstances under which the child could be harmed if visitation is not granted. If that hurdle is passed, courts will look at whether visitation is in the best interest of the child.

But the unfitness or exceptional circumstances standard is extremely difficult to prove, Greenblatt said, describing *Kos- hko* as “a dagger in the heart of grandparent visitation.”

“Since 2007, I think I’ve gotten one call,” from grandparents seeking visitation, said Greenblatt, a principal at Joseph, Greenwald & Laake P.A. in Rockville. “They scratch their heads and walk away.”

Disputes over grandparent- or other third-party visitation usually revolve around a specific set of circumstances, most commonly when one parent dies and the living parent does not want the grandparents to see their grandchildren. In cases where the parents are divorced, normally the grandparents on the visiting parent’s side see the grandchildren when they are with the visiting parent. But many visitation cases are factually complex. In *Burak v. Burak*, for example, the Court of Special Appeals last year found exceptional circumstances and granted visitation to the grandparents who looked after a child while his parents used drugs and engaged in a polyamorous relationship. The Court of Appeals granted a petition for writ of certiorari in the case in March.

“These cases are very difficult to prevail on because the parent is exercising their constitutional right on who gets to see their kid,” said Laurie M. Wasserman, a principal at Offit Kurman’s Baltimore office.

## Looking to *Conover*

But the Court of Appeals’ decision last year in *Conover v. Conover* may open doors for grandparents and other

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DEL KATHLEEN M. DUMAIS,  
D-MONTGOMERY

third parties trying to get visitation. The high court acknowledged “a legal parent does not have a right to voluntarily cultivate their child’s parental-type relationship with a third party and then seek to extinguish it” while still preserving the right of parents “to direct and govern the care, custody and control of their children,” a constitutional right articulated by the Supreme Court in 2000’s *Troxel v. Granville*.

“It indicates that parent has the absolute authority about who their child should see,” said Del. Kathleen M. Dumais, D-Montgomery and a family law attorney. “Which is probably the correct reading of the constitution and parents’ rights and privileges but it doesn’t help in reality and in real life cases.”

Still, the Court of Appeals has yet to clarify whether that “third party” can apply to grandparents and other relatives or friends who may have a close relationship with the child.

“We think it does open a door for grandparents, aunts...to be able to make a case regarding exceptional circumstances,” said Dumais, who sponsored a grandparent visitation bill in 2011.

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## Need for clarity

The bill, which has died in committee several times since then, would allow a court to grant grandparents visitation with parental consent. If one or both parents do not consent, the court may grant visitation if there are exceptional circumstances, visitation rights would not interfere with the parent-child relationship and visitation would be in the best interest of the child.

“It’s saying grandparents should have a legal standing in a court of law,” said Del. Jay Jalisi, D-Baltimore County, the bill’s House sponsor earlier this year.

The bill has received a negative report from the House Judiciary Committee every time it has been introduced, however, which Dumais attributes to potential conflicts with a parent’s Fourteenth Amendment right to make decisions about the care, custody and control of his or her children.

“There is a way to craft a statute that is not in violation of *Troxel* and *Koshko*, and I don’t think we’ve necessarily gotten right,” Dumais said.

Despite the challenges, practitioners would like to see some rights for grandparents in the visitation statute.

“I don’t think the statute in the family law article is very clear as to what (grandparents) need to prove,” Wasserman said. “I see why (the legislature) wanted to codify it.”

Greenblatt acknowledges that family relationships are complicated and there are situations where a parent could be justified to not want to grant visitation to grandparents. But he still would like grandparents to be able to go to court.

“I think there are no relationships that are better for children than a grandparent’s love,” he said. “Grandparents, in my world, adore their grandchildren.”