



Grandparent Custody

Raising Our Children's Children

By Lisa H. Prezelski

Just as the seasons take turns blanketing Mother Earth with their splendor and displaying the cyclical beauty of new life, so it is that many of us will reach a point in our lives when we will be called upon to parent another. We then embrace the day-to-day nurturing responsibilities of raising a child. Like the seasons, there is a predictability to parenting. Parents survive on endless cups of coffee during the newborn phase, coo their way through the toddler stage, wrestle their way through middle school and endure endless angst throughout the high school years. We cry as we send our children off to college and jump for joy when we make our

last college payment. Later in life, like the changing leaves of autumn, we become grandparents, gleefully enjoying weekends of spoiling grandchildren before handing them back to their now-rested parents.

However, in recent years, it would seem that, from a seasonal perspective, Mother Earth has slipped off her axis a bit, as we are now seeing heat waves in December. From a familial perspective, the progression of parenting has also fallen a bit off of alignment and shifted in reverse.

Today, some grandparents are being called upon to shoulder the responsibilities of parenting their grandchildren because

their own children are unable or unwilling to do so. Some grandparents assume their children's parenting obligations voluntarily, others out of necessity. Furthermore, some parents opt to relinquish oversight of their children to grandparents under the mistaken impression that resuming primary physical custody in the future will be seamless. In the midst of all of this, what was once the defined "family unit" has a new meaning, and the landscape of the family structure is evolving.

According to studies by the U.S. Department of Labor and the Grandfamilies & Kinship Support Network, in 2024, approximately 3.2% of children in the U.S. — a figure that represents just over 2.3 million children — were being raised by their grandparents. While the figure historically can and will spike in response to national crises, such as the Great Recession or the pandemic, when families came together for financial or other reasons, in recent decades the number of "grandfamilies" continues to steadily grow. In Pennsylvania, over 259,000 children live in a home where a nonparent is the head of the household, and over 235,000 grandparents in the commonwealth are responsible for the care of grandchildren living with them ("Grandfacts," 2024 data, [grandfamilies.org](https://www.grandfamilies.org)).

Grandparents may be called in due to parental struggles with drug and alcohol abuse, mental health concerns, incarceration or economic hardship. In other instances, a grandparent may pursue custody where a parent has died; where the child's parents are separated, divorced or involved in custody litigation; or where the grandparent has been denied contact with a grandchild due to disagreements within a family and he or she opts to assert rights to have access to the child.

Regardless of the circumstances, given the paramount importance of a child's

well-being, there are a number of ways in which grandparents have the ability to gain custody in order to provide a stable and nurturing environment for their children's children.

Pursuant to the Child Custody Act, in Pennsylvania a grandparent may move to file for legal custody, visitation, partial, shared or primary physical custody of a grandchild (23 Pa.C.S. Section 5324). Its provisions allow a grandparent who is not in loco parentis to a child to bring an action for legal or physical custody if:

- His or her relationship with the child began either with the consent of one parent or under a court order,
- He or she is willing to assume responsibility for the child, and/or
- One of these factors is present:
 1. The child has been determined to be a dependent child by the juvenile court.
 2. The child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity.
 3. The child has, for a period of at least 12 consecutive months, resided with the grandparent, and was removed from the home by the parents.

In 2018, Act 21 amended that act, expanding the provisions where a grandparent (or a third party) would have the standing to seek legal and physical custody of minor children.

In many instances, a grandparent is often the logical and next best individual for courts to rely upon to provide a stable and safe environment for a child. However, courts do not grant grandparent petitions as a matter of course. Take, for example, *D.P. v. G.J.P.*, also known as the *Ponko* case. In this lawsuit, the maternal parent's



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parents sought partial custody of their grandchildren while the parents of the children were separated. The grandparents argued that they had automatic standing to pursue custody under 23 Pa.C.S. Section 5325(2), which permits grandparents to seek partial custody anytime parents have been separated for six months or more.

The Supreme Court of Pennsylvania, however, disagreed, ruling that the statute allowing grandparents to sue for custody solely based on the parents' six-month separation was, in this case, an unconstitutional violation of the parents' fundamental right to raise their children without governmental interference. The court noted that while the parents were, in fact, separated for six months and had not filed for divorce, they were also in full agreement on all custody issues. Furthermore, the parents were also united in their position that the grandparents should not be awarded partial physical custody. The court concluded that in a custody dispute between a fit parent and a nonparent, a court must apply the presumption that it is a parent's fundamental right to direct the upbringing of his or her child.

To successfully seek primary physical custody, a grandparent must establish that he or she has a beneficial relationship with the child, that the child has already lived with the grandparent for an extended period and that the grandparent has been significantly involved in the daily care of the grandchild. However, even when grandparents are awarded primary physical custody, they may still encounter difficulties. Enrolling a grandchild in school or attempting to obtain social and medical services for the child may be difficult if the grandparent does not also have legal custody, which is the right to make important decisions for the child.

To further protect the welfare of children and, in effect, bolster the custodial rights of grandparents, last year, the Pennsylvania General Assembly passed Act 8 of 2024, more commonly known as "Kayden's Law." Kayden's Law expanded the circumstances where a grandparent may pursue physical custody of a grandchild. Should a court find that a parent has a history of neglect or abuse or there are significant concerns regarding a child's safety while in his or her parents' care, a grandparent may be awarded primary physical custody.

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The standard that is paramount in all custody disputes is, quite simply, what is best for the child. If grandparents wish to prevail in seeking custody, in addition to the provisions mentioned earlier, they must establish by clear and convincing evidence that the children's best interests will be served by awarding them custody (23 Pa.C.S. Section 5327(b)). When making a custody determination, courts will examine which party is in the best position to provide for the emotional, physical and educational needs of a child. Although parents have a *prima facie* right to custody of their children, the child's best interests may in some instances require an award of primary physical custody to a grandparent.

Sometimes, however, there are issues that can complicate the transfer of custody from parent to grandparent, especially when it involves a parent who does not want that transfer ... or the grandparent won't take no for an answer.

Prior to entering private practice, I spent 16 years as a county custody conference officer. I witnessed discussions marred by tears, screaming, claims of betrayal, disappointment and an overall pall of sadness. While many custody cases are fraught with emotion, I saw how they can run much higher in cases involving grandparents. Custody matters are difficult, but when it comes to grandparents v. parents, decisions have an impact not only on the welfare of the child, but also on the present and future relationship (or discord) between parents and grandparents.

It is also my experience that grandparent custody cases are even more difficult to settle than others. Rare is the occasion where a parent and grandparent can seem to find common ground. Like a game of bocce at a family reunion, things soon turn vicious. Parties are not willing to give. They feel that "losing" is not an option. They place pride and the reluctance to relinquish control at the forefront of their goals, impeding the ability to reach a consensus.

Another stumbling block to settlement is the fickleness of relationships. Sometimes, a parent will initially agree that a grandparent should exercise physical custody of a grandchild only to change his or her mind after reuniting with an ex-spouse or partner/coparent. In other instances, when one parent has had little contact with a child's grandparents due to the brevity of his or her relationship with the other parent, he or she will often exhibit feelings of distrust. Sadly, in every one of these instances, the roller coaster of emotions, coupled with the shuffling between households and switching of caregivers is detrimental to children, who thrive on stability and consistency.

It is even worse for the child when custody is sought for the wrong reasons. One of the most difficult scenarios to mediate is where a grandparent wants custody of a grandchild in order to be given a second chance to parent successfully. Etched in my memory is a paternal grandmother who was insistent that the court award her custody of her granddaughter on Mother's Day because her son, the child's father, was incarcerated. She made this audacious





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request despite knowing the child's mother was an excellent and loving parent.

Still, I can recall the special conferences where families came determined to collectively act in a child's best interests. The few instances where a parent and grandparent found common ground were, frankly, when their lawyers, with Herculean effort, managed their expectations. The attorneys worked to impart one simple but important message to their clients: An award of custody today does not mean that you will enjoy a lifetime of custody, and what we are working toward is what is right for right now.

So, while we observe that Mother Nature remains off her axis a bit and the generational seasons and norms of childrearing aren't quite the same as in the past, those of us who practice family law have a tremendous opportunity in shepherding these kinds of cases: We should approach them with the utmost of sensitivity; be prepared

to identify what is truly in the best interest of the child, working — sometimes across adversarial lines — to achieve that end; and respect that, at the end of the day, while a grandparent-grandchild relationship is undoubtedly special, Pennsylvania courts should and will always strive to protect the parent-child relationship. ¶



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