



NYS Kinship Navigator

CUSTODY DISPUTES BETWEEN NON-PARENTS AND PARENTS

Non-parents who are caring for children often need to seek custody or guardianship of children. If the parents consent, and the caregiver is suitable, there should be no problem in getting a court order granting legal custody or guardianship.

If the parent objects, then the court must hold a trial. Trials involving a parent and a non-parent caregiver happen frequently, and there is a large number of cases that supply precedents for these proceedings. Of these, one of the most important is *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976). In *Bennett*, the New York State Court of Appeals expanded the circumstances whereupon a trial court must decide custody based upon the best interests of children in a custodial dispute involving a parent and a non-parent. The Court's decision in *Bennett* specifically added a new threshold circumstance – “an extended disruption of custody.” Since then, numerous courts have decided such circumstance exist in fact finding hearings responsive to the prima facie facts alleged in the non-parent's petition for custody. See for instances, *Tyrell v. Tyrell*, 67 A.D.2d 247, *Matter of Gray v. Chambers*, 222 A. D.2d 753 (1995).

Importantly, courts consistently find that an extended disruption of custody, when accompanied by evidence that the non-parent had a close relationship with the children and the failure of the parent to make efforts to resume their parental role, is an extraordinary circumstance. *Matter of McDevitt v. Stimpson*, 281 A.D.2d 860, 862 (2001); *Cote v. Brown*, 299 A.D.2d 876, 2002.

Often petitions for custody by third parties are filed after the parents have regained informal custody. Such circumstances do not necessarily stop courts from finding that an extended disruption of custody is an extraordinary circumstance. *Bevins v. Witherbee*, 20 A.D.3d 718, 798 N.Y.S.2d 245 (2005).

A finding of extraordinary circumstances does not end the inquiry. An inquiry into what custodial arrangement is in the best interests of children must still be made. *Doe v. Doe*, 399 N.Y.S.2d 977 (1977).

Grandparents have some special statutory protections in disputes with absent parents. Domestic Relations Law Section 72(2), specifically states that an extended disruption of custody for twenty-four months or more is an extraordinary circumstance in a custodial contest with an “absent” parent. See also *Tolbert v. Scott*, 15 AD3d 493, (2004).

It is fundamental case and statutory law that when children reside with a grandparent for an extended period of time, the court must hold a fact finding hearing to ascertain the

existence of an extraordinary circumstance and then base the future custody of the children on its determination of their best interests.

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