



NYS Kinship Navigator

GRANDPARENTS HAVE A STATUTORY RIGHT TO SEEK VISITATION

N. Y. Domestic Relation Law § 72 permits grandparents to seek visitation **when one or both of the parents has died or when "equity would see fit to intervene."** Courts have interpreted "equity" to give standing to grandparents who have had a relationship with their grandchildren or been thwarted by the parents from having such a relationship. Grandparents may seek visitation via DRL § 72 even when both parents are united in opposition.¹

TWO TIERED TEST

Emmanuel sets out the standards for court analysis when assessing whether an equitable situation exists that would justify state intervention: (1) the strength of the family and the nature and bias of the parents' objection to visitation, (2) the nature and extent of the grandparent-grandchild relationship, (3) whether the grandparents have a "sufficient existing relationship with the child or have at least made a sufficient effort to establish one).²

Animosity is not enough, must be coupled with "family dysfunction."³ In other words, just because the parents don't like the grandparent, doesn't mean they can succeed in winning in court. The statute exists because of animosity between parents and grandparents, and more must be shown in order to justify the denial of visitation.

Termination of parental rights of a grandparent to her child does not act as an absolute bar to seeking visitation with a grandchild.⁴

TROXEL V. GRANVILLE DID NOT END RIGHT TO PETITION

In *Troxel*,⁵ the U. S. Supreme Court declared that trial courts must apply some "**special weight**" to the parent's interest in denying visitation.

Use of a rebuttable presumption that presumes that a parent's denial of visitation is in the children's best interest provides enough "weight." New York's highest court, the Court of Appeals, has found **DRL§ 72 constitutional**,⁶ finding that the statute is valid both on its face and "as applied" by trial courts, because it provides enough preference for parental decisions denying visitation.

* The above information is not legal advice. It is not a substitute for consulting an attorney. Up to date legal advice and legal information can only be obtained by consulting with an attorney.

This fact sheet was revised on December 4, 2006.

NYS Kinship Navigator is a Catholic Family Center program, funded by the New York State Office of Children and Family Services. Catholic Family Center is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein was distributed to the NYS Kinship Navigator by the Kincare Support Project at Albany Law School. The Kincare Support Project is administered jointly by the Government Law Center and AARP NY and is funded by New York Life Foundation and AARP Foundation.

¹ *Emmanuel S. v. Joseph E.*, 78 N.Y.2d 178 (1991).

² *Emmanuel S. v. Joseph E.*, 78 N.Y.2d 178 (1991).

³ *Gloria R. v. Alfred R.* 618 N.Y.S.2d 24 (App. Div. 1994). See also *Coulter v. Barbara*, 632 N.Y.S.2d 270 (App. Div. 3rd Dep't) 1995).

⁴ *Ann M.C. v. Orange County Department of Social Services*, 682 N.Y.S.2d 62 (App. Div. 2d Dep't 1998).

⁵ *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 146 L.Ed.2d 49 (2000).

⁶ *E.S. v. P.D.*, 8 N.Y.3^d 150 (207) ; *Morgan v. Grzesik*, 732 N.Y.S.2d (4th Dep't 2001); *Hertz v. Hertz*, 738 N.Y.S.2d 62 (2nd Dept. 2002

A Program of Catholic Family Center

30 N. Clinton Ave ~ Rochester, NY 14604

(Phone) 877-4KinInfo (877-454-6463) ~ (Fax) 585-454-6286 www.nysnavigator.org

