

Third Party Visitation with Children

By Richard S. Victor, Esq.

Law Offices of Richard S. Victor, PLLC, Of Counsel Hertz Schram PC

Moms, dads, grandparents, siblings, stepsiblings, aunts, uncles, significant others', as well as kids often find their family who are embroiled in divorce and legal separation cases, going through dysfunction. This has the unfortunate consequence of causing families, once close, to be pulled apart and sometimes even amputated from each other. People going through this emotional rollercoaster find that they act emotionally and not logically. The result of these feelings may often times ignore children's extended family, which may also include same sex partners who have maintained relationships with children. Children bond with adults who care for and about them, especially adults who are put in caretaking roles within familial units.

Children love and trust who they know they can count on to provide them parental love, affection and guidance and the necessities of life. They trust adults who give them unconditional love and support. When those adults are removed from them because of adult breakups, the children are the victims of the decision.

In 2000, the US Supreme Court heard the landmark case of *Troxel v. Granville* (120 S. Ct. 2054), which dealt with the fundamental right of a parent to make decisions concerning the care, custody, and control of her children in denying a request of their children's grandparents to have more visitation of her children born out of wedlock than their mother was willing to give to them. In affirming the Washington state Supreme Court's decision denying the grandparent's request and holding the Washington nonparental visitation statute "breathtakingly broad," which stated "*any person my*

petition the court for visitation rights at any time". The US Supreme Court ruled that law to be an unconstitutional violation of the parents Fourteenth Amendment due process right.

The Troxel decision went on to further rule that state laws must give "special weight" to a fit parents determination as to what they believe is in their child's best interests when there is a dispute for visitation between a parent and a third party. In addition, the court held that in such disputes the third party has the burden to prove that the request for visitation is in the child's best interest (not the parent's burden of disproving that the visitation would be in the child's best interests). In addition, each state must set forth a set of factors or guidelines for the court to use in making decisions on the best interests question if a dispute is brought before the court. Although these were the only requirements the US Supreme Court held were necessary, the individual states were left to decide what requirements they would initiate for their own state laws.

Today most states recognize the rights of some third parties to be able to maintain contact with children in specific circumstances, such as death, divorce or when children are born out of wedlock. Some states do not. There are no Uniform laws, which govern this area of law. They are all decided on a state-by-state basis. Each individual state legislature decides what laws will apply to the citizens of their own individual state. Within some of the state laws, most will favor the decisions made by fit parents to decide whether any third party, grandparents, step-parents, siblings and significant others, will be allowed to see their children. Many states do, however, have specific state laws addressing the request of grandparents, who have been denied access to their grandchild. Those state laws set forth specific requirements, which must be followed and standards

for the court to decide, as well as the burden of proof that a grandparent is required to prove to the court, in order to overcome a fit parent's decision to deny contact. But, most state laws still do not address the concerns of stepparents, siblings, significant others or same sex partners. To do so will require new laws to be enacted.

Where laws do exist, or in the absence of such laws and in the hope of trying to avoid the necessity of litigation, we can help to resolve some of these disputes before they get so out of hand so that lawyers and the court system need to become involved?

First, attempt to diffuse problems between family members before consulting an attorney to file a legal action, if at all possible. This can be done through telephone or written communication between the family members involved. Face to face meetings are also very helpful. Confrontational and accusatory statements should be avoided by all of the adults. Remember, when accusations are involved in the communication, the listener is going to be very busy thinking of how they are going to respond and defend, not in what you have to say.

Second, respect each other's right to think and feel in their own way. Do not think that you are going to change the other person's beliefs. Recognize that a person may have feelings that you may not understand or agree with, but, acknowledge their feelings and let them know that you understand how they feel. You may even want to come to an understanding that you may never always agree, but that you can resolve your dispute by agreeing to disagree. It is important to always acknowledge what the other person feels, thinks and believes so they know you hear them and that you care how they feel, even if you disagree with them and or their position.

Third, try to find a common thread that you have with the other. Often times this recognition may be the reality that you both have the love for and of the child or grandchild. It is imperative to remember that the best interests of the child, not necessarily the interests of the adults, should control. This will require adults to sometimes put themselves second to the needs of their children/grandchildren. For grandparents, this means that they must remember they are the grandparents, not the parents. Their role is different and their rights and responsibilities are not the same. Grandparents must not allow children to be placed in a conflict of interest between themselves and the children's parents. If that occurs, most Judges will choose the parents, even if the grandparents are right. Never lose sight of what is to be accomplished and what the goal is to be achieved.

Fourth, the use of behavioral science specialists or trained family counselors (i.e. social workers, psychologists, psychiatrists and religious clergy) may be suggested as neutral moderators of meetings between the adults to attempt to talk-out and resolve family problems that brought about the break-up between family members and or significant others. Resolution, possible through these efforts, may help reunite families in dysfunction, or at least avoid and minimize battles that scar everyone.

Fifth, try to think what it must feel like to be the opposite party in your dispute. If you are a custodial parent, how do you think your former spouse, a grandparent, or significant other must feel when they are separated from the child or the children that they have had a close and loving relationship? Think about it: if you are not allowing your children to see or visit with those who once were very close and special people in your life and the life of your child/children, what pain do you think that loss feels like to

them? What if it was all reversed and you were the one being denied? What would you want to happen? What would you think would be best to occur?

Sixth, if you find that you are not able to resolve your dispute and or legal counsel will be required to help you, see an attorney who has a background and experience in family law. Family law is a unique and very difficult specialty within the practice of law. Attorneys who handle personal injury, criminal, real estate, business/corporate or probate matters are very important and will have an impact on their clients' case and in their business. They may also have a lasting impact on their client's lives, but, attorneys who practice family law not only will have the capacity to affect those same things, but when children are involved, they have the ability to impact and affect generations of their clients family.

Attorneys who belong to their State Bar's Family Law Section, or the American Bar Association Family Law Section, or are members of the American Academy of Matrimonial Lawyers (AAML), or Diplomates of The American College of Family Trial Lawyers, attend special continuing legal education classes and receive publications and are best able to keep up to date with areas of family law.

How children come through loss, divorce and the separation from the most important people in their lives is measured by how the adults closest to the children handle this deeply difficult and emotional time. Remember, children learn not only from what we tell them, but more importantly from what they see, feel and experience.



Biography of Richard S. Victor

Richard S. Victor is the founding partner of Richard S. Victor, PLLC, and is Of Counsel to Hertz Schram, PC in Bloomfield Hills, Michigan. He has authored many nationally published articles on Family Law, as well as co-authoring two books: *Michigan Family Law and Practice*, and *You and Me Make Three*, which was the recipient of several national book awards. He has been a faculty member or guest lecturer at Colleges, Universities, Symposiums, Law Schools, and Bar Associations around the United States and Canada.

He is a Diplomate of the American College of Family Trial Lawyers and listed in Best Lawyers in American and Super Lawyers. He has served as President of the Michigan chapter of the American Academy of Matrimonial Lawyers and was elected to the National Board of Governors of the Academy, receiving its national Fellow of the Year award. He was elected Chairperson of the Family Law Section of the State Bar of Michigan and received the Lifetime Achievement Award. He is the national founder of the nonprofit Grandparents Rights Organization and is Co-creator of the national parent education program SMILE.

Richard and the work he has done have been featured on numerous state and national television and radio programs throughout the country, as well as three movies during his career.