

**GRANDPARENT VISITATION UNDER
NY DOMESTIC RELATIONS LAW (DRL 72)**

Section 72 of New York's Domestic Relations Law allows grandparents to seek visitation with a minor grandchild under two conditions.

- One is where one or both parents of the child have died;
- The other is "where circumstances show that conditions exist which equity would see fit to intervene."

This is the first stage of seeking visitation of a child by a grandparent, and such an application may be brought in either the Supreme Court or the Family Court. Circumstances where "equity sees fit to intervene" may include such situations as where a grandparent has had a history of regular visitation with a child, which, for no fault of the grandparent, has been cut off.

After this initial stage, if a court finds that the grandparent(s) *have* established standing, the court will proceed to the second stage, which is determining if visitation is in the "best interests of the grandchild", and if so, the extent of any visitation which would be in the best interests of the child. This usually requires a hearing. As part of such a "best interests" hearing, the court may sometimes appoint a forensic mental health professional to provide an opinion as to the effect of the visitation on the child. In the second stage, courts may find that, despite the grandparent's original standing to apply for visitation, visitation by the grandparent is not in the best interest of the child. Circumstances which can lead to such a finding include circumstances where the grandparent disparages the parent, or is otherwise undermining the relationship between the parents and their child. However, conversely, the courts have repeatedly found that parental hostility to visitation by grandparents is not by itself a sufficient reason to find such visits to *not* be in the child's best interests. ∞

**NEW YORK HIGH COURT UPHOLDS
GRANDMOTHER'S RIGHT TO VISITATION**

In this case, the maternal grandmother sued to obtain an order of visitation with her grandson. The mother of the child was deceased, and for over three years (since the child was four until seven), an arrangement existed where she lived with the child and his father, serving as surrogate mother.

After an argument with the father, the father asked her to leave, allowing her limited visitation with her grandchild. Soon her visitation was more limited, until finally, it was cut off completely by the father.

In response to the grandmother's request, the trial court granted her visitation, after which the father appealed. Doing so, he challenged the constitutionality of the grandparent statute DRL 72 (*see above*), claiming that as a fit parent, he was entitled to deny all visitation for the sake of the child's best interests. The Court of Appeals, New

York State's highest court, held that DRL 72 is constitutional on its face, and was appropriately applied in this case also held that there is a strong presumption that a fit parent's wishes denying all visitation represents the child's best interests.

However, it concluded that this presumption creates a high hurdle, and that in this case, the grandmother had successfully surmounted that hurdle. The court analyzed several factors to determine whether it was in the child's best interests for his relationship with his grandmother to continue, such as the reasonableness of the father's objections to the grandmother's access to the child, her care-giving skills and attitude towards the father, the law guardian's assessment, and the child's wishes. ∞

In the Matter of E.S. v. P.D., 8 NY 3d 150, 863 N.E. 2d 100, 831 N.Y.S. 2d 96 Court of Appeals, decided Feb. 15, 2007.

ABOUT OUR FIRM:

Wisselman, Harounian & Associates, P.C. is a full Service Matrimonial and Family Law Firm, handling all family law matters, from custody and visitation to grandparent's right and domestic abuse.

How Do We Protect You? Established in 1976, we've grown to become one of the leading family law firms on Long Island.* Our attorneys have dealt with all aspects of matrimonial and family law, and we know how to stand up for your legal rights, particularly to protect your financial security and your right to be with your children and grandchildren.

No Matter How Complex or sensitive the issue, you'll find us to be determined on your behalf, compassionate and always mindful of your current and future needs.

Our Team of Attorneys Appear in All New York Courts, including both Family and Supreme Courts of Long Island, five boroughs of New York, and Westchester County. We have over 100 years of collective experience in all types of matrimonial and family law matters, and with extensive experience in Grandparental issues.

* Ranked as one of the top 3 Matrimonial Law Firms on Long Island, L.I. Business News, 2007.

Spotlight on our Attorneys:



JOHN VIRDONE

John recently handled a grandparent custody dispute over a 4-year old girl. The girl's father was deceased and she lived with her mother and her mother's boyfriend. In November of 2004, CPS removed the child from her mother's custody after a police drug raid at the home in which cocaine was found. A formal neglect proceeding was brought against the mother and the child was placed with the paternal grandmother, who was represented by John. In Court, the mother admitted to having drugs in the house and to the neglect. She was Ordered to begin drug counseling, parenting classes, psychotherapy and supervised visitation within the Court-ordered goal of reunifying the mother and child. The grandmother then filed her own petition for custody, and encountered an uphill battle for custody of her granddaughter before an unsympathetic Family Court Judge. The mother repeatedly failed to comply with the Court mandates, yet the Court would not allow the grandmother to proceed to trial on her own custody case. The Court refused to give the grandmother a trial, indicating the grandmother's case for custody was inconsistent with the neglect proceeding Court-ordered goal of reunification and that the neglect case had precedence. With John's assistance, the grandmother

FINANCIAL SOLUTIONS FOR GRANDPARENTS SEEKING CUSTODY OR VISITATION

A grandparent faced with a custody or visitation issue may need additional resources to assist their efforts. One alternative is a **reverse mortgage**. This is a special type of home loan that lets a homeowner convert a portion of the equity in his or her home into cash. The equity built up over years of home mortgage payments can be paid directly to you. Unlike a traditional home equity loan or second mortgage, no repayment is required until the borrower no longer uses the home as their principal residence.

To be eligible for a reverse mortgage, the borrower must:

- be a homeowner 62 years of age or older;
- own your own home outright or have a low mortgage balance that can be paid off at the closing with proceeds from the reverse loan; and
- must live in the home.

Your home must be a single family dwelling or a two-to-four unit property that you own and occupy. Townhouses, detached homes, units in a condominium and some manufactured homes are eligible.

With a typical second mortgage or a home equity line of credit, you must have sufficient income-versus-debt ratio to qualify for the loan, and are required to make monthly mortgage payments. *The reverse mortgage is different in that it pays you, and is available regardless of your current income.* The amount you can borrow depends on your age, the current interest rate, and the appraised value of your home or FHA's mortgage limits for your area, whichever is less. Generally, the more valuable your home, the older you are, the lower the interest, the *more* you can borrow. You don't make payments, because the loan is not due as long as the house remains your principal residence. Like all homeowners, you are still required to pay your real estate taxes and other standard payments like utilities, but with a reverse mortgage, you cannot be foreclosed or forced to vacate your house because of a missed mortgage payment, as there are no mortgage payments. ∞

held her ground and steadily pushed for custody within the neglect proceeding. Using her technical position as "foster parent" in the neglect case, she asserted her right to be heard at every court appearance, giving testimony at trial and having John call witnesses and conduct cross-examination in that case. After nearly three years, the Court awarded the grandmother sole and exclusive custody of her granddaughter without any visitation to the mother. ∞

John Virdone, an Associate of the firm, is admitted to both the New York and New Jersey Bars. His multifaceted background in complex civil litigation, real estate and business law gives him a unique ability to manage intricate matrimonial and grandparental cases requiring the expertise of crossover disciplines. Mr. Virdone concentrates on parental and grandparental rights, child custody and visitation, child support matters and family defense disputes. If you have any questions about grandparental rights or any family law issues, please call John at **516-773-8300** or email him at info@lawjaw.com and he will be glad to discuss any of your concerns.

