

RECENT CASES: GRANDPARENT CUSTODY**IN THE MATTER OF HYDE V. HYDE**

2008 WL 193197 (2nd Dept 2008)

The paternal grandmother petitioned for custody of her grandchild. The trial court awarded her custody of the child with visitation to the child's mother. The mother appealed. The Appellate Division reversed the trial court's decision, indicating that the grandmother failed to establish extraordinary circumstances through an "unfortunate or involuntary disruption of custody." Although the child resided with the grandmother during the summers of 2003 and 2004, it was undisputed that the child's stay was merely a visit and was returned thereafter to the care and control of the mother and father. Then in October 2004, the mother and father separated and the child remained with the mother. Several weeks later, the mother asked the grandmother to care for the child while she "got back on her feet." While the child resided with the grandmother, the mother spoke with the child on the telephone several times, visited her twice, and gave her a Christmas present. On April 2005, the mother made arrangements to pick up the child, but did not do so apparently because she was threatened by the father. In June 2005, the grandmother filed her petition for custody. The Appellate Court reasoned that the parties understood that the child was only to reside with the grandmother until the mother "got back on her feet." The Court concluded that it was in the best interest for the mother to have custody because she resolved the instabilities in her life. ∞

**IN THE MATTER OF COURTNEY B.**

849 N.Y. S 2nd 179, 849 N.Y.S. 2d 179 (2nd Dept. 2008)

A neglect proceeding was brought against both parents of the child. They both admitted to neglecting the child through their substance abuse. The child was then placed with the paternal grandparents pending the neglect case. The mother successfully completed an inpatient substance abuse treatment program and parenting program and requested that the child be returned to her. The trial court granted her request and custody was granted to the mother. The father and grandmother appealed. The Appellate Court held that the mother's claim to custody preempts the grandmother even though the grandmother had temporary custody of the child with the mother's consent. The court concluded that once the mother addressed the issues leading to the removal of the child to the satisfaction of the DSS, the Court properly returned custody of the child to her. [Note: In this matter, the grandmother did not file her own separate custody petition, which *may* have produced a different result] ∞

RECENT CASE: GRANDPARENT VISITATION

A grandmother who lived in the Bronx, NY filed a petition for visitation of her grandchildren, who lived in Dutchess County, NY. In that proceeding, the parties entered into a stipulation in which the grandmother would have five visits per year in Dutchess County. After the first visit, the grandmother filed a new petition requesting unsupervised visitation in her home in the Bronx because of a deterioration in her health that made it difficult for her to travel to Dutchess County.

The Family Court denied the petition without a hearing. The Appellate Division held that since the grandmother made a voluntary agreement defining the terms of her visitation with the grandchildren, she failed to make a sufficient evidentiary showing that there had been a material change of circumstances since that agreement which would entitle her to a hearing on the issue of modification. ∞

In the matter of *Gold v. Gold*, 848 NYS 2d 892, 848 NYS 2d 892 (2nd Dept. 2008)

WISSELMAN, HAROUNIAN & ASSOCIATES, ranked as one of the three top matrimonial and family law firms on Long Island*, handles all family law matters, including:

**DIVORCE ♦ CUSTODY & VISITATION ♦ CHILD SUPPORT ♦ GRANDPARENTAL RIGHTS
DOMESTIC ABUSE ♦ WILLS, TRUSTS, ESTATES & ELDER LAW PLANNING**

LEGISLATIVE UPDATE

On January 9, 2008, Bill A 9372 has been reintroduced into the NY State Assembly for the purposes of amending the Domestic Relations Law in terms of custody. This bill proposes to add "adult siblings, aunts and uncles" to the statutes authorizing grandparents to petition for custody of children. However, this aspect of the bill is really not a new practice. The case law always permitted "adult siblings, aunts, uncles" and any other adult with a significant relationship to the child to petition the court for custody so long as such person could establish "extraordinary circumstances" and that it is in the best interest of the child. Nevertheless, this bill does propose a significant change to the current statutes, which would have an enormous impact on future custody practices involving nonparents. The bill proposes to allow the courts to award grandparents and other nonparents attorneys fees in matters concerning custody, visitation and maintenance [child support]. Currently, there is no statutory authority permitting the courts to award attorneys fees to grandparents or nonparents in these matters, and the courts routinely deny such applications. It should be noted that the bill does not conversely provide courts with the authority to award the parents attorneys fees against grandparents or any other nonparents. ∞

Spotlight on our Attorneys:

JOHN VIRDONE



John is in the process of handling a grandparent custody dispute over two sisters, ages 5 and 4. The eldest child is severely disabled. The father of the two children has severe psychological issues and was admitted to psychiatric hospitals on four occasions

in a one year period. The mother is also unfit and was diagnosed with depression. She attempted suicide on two occasions. In addition, the mother had neglected the children by not providing them with adequate care. John represented the paternal grandparents who filed for custody of the children, and in the alternative for visitation, due to the fact that the mother prevented them from seeing the children. The grandparents knew that the mother was preparing to leave New York for a rural section of Texas. With John's help, they were granted an Order preventing the mother from removing the children out of the State. After the mother was served with the custody papers, she failed to appear in court on the return date. The father, who was living with his parents, appeared in court. The grandparents were informed that the mother was on her way to abscond with the children despite the

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. ∞

Court's previous order. With John's assistance, the Court was persuaded to grant the grandparents temporary joint custody with the father and directed an immediate transfer of custody accordingly. In a mad dash from the courthouse to the airport with the freshly printed Temporary Custody Order in hand, the grandparents and father were successful in stopping the mother and children from boarding a plane to Texas. The Port Authority Police removed the children from the mother and transferred the children to the grandparents and father. On the next court date, the mother was given only supervised visitation because she was deemed a flight risk. In addition, the Court ordered psychological evaluations of both parents, and a hearing date was scheduled to determine final custody. ∞

John Virdone, An Associate of the firm, is admitted to 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 support and family offense disputes. For any questions about any family law issues, or wills, trusts, estates and elder law planning, 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.