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NEWS

■ FAMILY LAW

Parental rights getting a boost from courts

Raising the bar on third-party claims for custody and visitation.

By Tresa Baldas
STAFF REPORTER

IN A BOOST to the rights of parents, the courts are becoming less willing to hand over children to third parties seeking visitation or custody, ruling that they need more proof of bad parenting before granting access, according to family law attorneys.

Lawyers say that, in recent years, third parties—including stepparents and grandparents—have had a tougher time convincing courts that they should be allowed to raise or visit a child. In the past, they say, the standards for proving a parent unfit were lower, making it easier for third parties to win custody disputes.

But courts are now demanding more proof of unfit parenting or harm to a child before allowing access.

“Third-party rights to gain access to a child that’s not their biological or adoptive child are diminishing,” said Nancy Chemtob of New York’s Chemtob Moss Forman & Talbert. “These third parties in the past have had a lower threshold for winning custody. They’re finding that there’s a higher threshold now.”

Proving ‘actual harm’

It’s not just about the best interest of the child anymore, Chemtob said, but about proving actual harm, a standard set by the U.S. Supreme Court in *Troxel*

v. Granville, 530 U.S. 57 (2000). There the high court held that, unless a parent is deemed to be unfit, the parent’s decision regarding custody or visitation trumps virtually anyone else’s decision.

Attorneys say *Troxel* has slowly trickled its way into state supreme and appellate courts, where parents have sought to have lower-court rulings favoring third parties overturned. The past year produced a series of parental-rights victories.

Last month, the West Virginia Supreme Court of Appeals reversed a lower-court ruling that granted temporary custody to a babysitter, holding there was “complete and utter disregard” for the mother’s parental rights. The court also urged family and circuit courts to “be ever vigilant” in protecting parental rights. *Van Hoose v. Sragg*, No. 33334 (W.Va.).

Also last month, the Michigan Court of Appeals upheld the rights of a divorced couple to refuse maternal grandparents visitation time with their grandchildren. Despite the grandparents’ claims that it was in the best interest of the children to maintain a relationship with them, the court held that, because both parents were fit, it had to honor their wishes. *Brinkley v. Brinkley*, No. 269725 (Mich. Ct. App.).

In July, an 8-year-old girl, Anna Mae, who had lived with foster parents for seven years, returned to live with her biological parents after the Tennessee Supreme Court ruled that the couple had been deprived of the right to raise their daughter. Foster parents had argued that the best interest of the

child was to stay with the family that had raised her, but the court said the girl belonged with her natural parents, Shaoqiang He and Qin Luo He. *In re Adoption of A.M.H.*, No. W2004-01225-SC-R11-PT (Tenn.).

“It seems these days we’re much more sensitive to taking away a parent’s right to raise their child,” said family law attorney Andrew Ayers of the Law Offices of Howard B. Felcher in New York.

Ayers believes parental rights are getting more attention in the courts because of increased media attention to custody issues. “Back in the day, these files were all closed. You lost your kid, nobody in town knew why. Now we all know about them,” he said. “The issue is more in the news and everyone is more sensitive.”

Meanwhile, child advocates are cautioning about the dangers of putting children in harm’s way by giving parental rights too much weight.

“It’s tough to decide if a parent can abuse or neglect a child when very serious abusers appear to be quite loving,” said Howard Talenfeld, a children’s rights attorney at Colodny, Fass, Talenfeld, Karlinsky & Abate in Fort Lauderdale, Fla.

“Sometimes you’re thoroughly deceived.”