

*By: Jeralyn L. Lawrence, Esq.*



Recently, a judge I appeared before summed up the status of grandparent visitation in New Jersey. He said if a grandparent wants visitation and the parent says "jump," the grandparents' response should be "how high?"

Sad, but true, this is the current sentiment of grandparent rights in our state. A fit parent has a fundamental due process right to the care and nurturance of his or her child. This right is guaranteed by the 14th Amendment of the United States Constitution. Therefore, if a fit parent decides that they do not want to afford a grandparent access to their child, that decision is given great weight and deference. However, in New Jersey, there is a grandparent visitation statute and a body of case law that seeks to balance a parent's discretion and the right of a grandparent to have a relationship with his or her grandchild.

The 2003 New Jersey Supreme Court case of Moriarty v. Bradt has set the legal standard upon which a grandparent visitation application is measured. The burden of proof is on the grandparent to show that by a preponderance of the evidence, grandparent visitation is necessary between the grandparent and the child to avoid harm to the child. If potential harm to the child can be demonstrated, the grandparent can overcome the presumption in favor of a parent's decision to disallow visitation. If a grandparent cannot overcome the avoidance of harm standard, the parent's decision will be afforded deference and the grandparent will not have access to their grandchild.

Subsequent cases interpreting Moriarty have held that a grandparent must prove that by denying visitation, a particular, identifiable harm will come to the child. A simple, conclusory statement or allegation of harm is not enough. An example of a particular identifiable harm is if one of the parents has died and the grandparent is the only remaining tie to the deceased parent. Other situations which may give rise to a successful application by the grandparent may include when the grandparent acted as a substitute parent for an extended period of time to the child or where both parents are found to be unfit.

In my practice, if I am representing a grandparent and a parent is denying access to a grandchild, I make every effort to take steps to repair the breach in the relationship between the grandparent and the parent. I do not threaten litigation until visitation has been denied with finality. I counsel the grandparent to make respectful and patient attempts with the parent to establish and agree upon a visitation schedule for the grandparent. Only when all else fails, do I resort to filing an application with the Court. However, based on the current status of the law, the outcome may not always be what the grandparent was hoping for.

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