Understanding Grandparents' Rights in New York State: An Overview for Legal, Mental Health, Financial and Real Estate Professionals

I. Introduction

Grandparents' rights have become an increasingly important and complex legal issue, and the number of grandparents who are raising children in the United States has spiked in recent years, with the opioid crisis and COVID-19 being two main reasons for this phenomenon. U.S. census data shows that 7.1 million American grandparents are living with their grandchildren under 18. Approximately 2.3 million of those grandparents are responsible for raising their grandchildren. About a third of grandchildren living with grandparents who are responsible for them are younger than 6 years of age. In New York State, understanding the rights of grandparents involves navigating a web of statutes, case law precedents, court procedures, financial considerations, educational systems, social services agencies, mental health systems and more. This guide aims to provide a brief overview of the relevant aspects of grandparents' rights in New York State, offering insights and guidance to professionals across different fields.

II. Legal Framework

A. Statutory Provisions

1. **Brief Overview of Grandparents' Rights Statutes**: New York State recognizes the importance of maintaining relationships between grandparents and their grandchildren where it is in a minor child's best interest to do so, or where familial caregivers are sought by child welfare agencies when the biological parents of minor children are unavailable or unfit to care for their minor child/ren. Professionals need to be familiar with the relevant statutes which addresses visitation and custody rights for grandparents.

2. **Grandparent Visitation**: New York Domestic Relations Law §72 (1) is the legal authority for grandparent visitation rights. This statute provides that "...***Where either or both of the parents of a minor child, residing within this state, is or are deceased***, **or** where circumstances show that ***conditions exist which equity would see fit to intervene***, a grandparent or the grandparents of such child may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to the family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, ***the court***, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, ***may make such directions as the best interest of the child may require, for visitation rights for such grandparent or grandparents in respect to such child.***

   a. **Best Interests Standard**: The legal standard established in New York DRL § 72 revolves around the best interests of the child. Courts must determine whether grandparent visitation is in the child's best interests, considering factors such as the child's emotional and physical well-being, the existing relationship between the child and the grandparents, and the impact of visitation on the child's overall stability.

   b. **Presumption of Parental Decision-Making Authority**: Section 72 respects the fundamental right of parents to make decisions concerning their child's upbringing. Courts will give great weight to a parent's decision about whether to allow grandparents to have contact and communications with grandchildren. However, it also recognizes that there are situations where court intervention is warranted where there is a pre-established good relationship and emotional bond between grandchild and grandparent such that overriding parental discretion to permit visitation over the objection of a parent is deemed to be in the child's best interest.

3. **Conditions for Awarding Custody of Minor Children to Grandparents**: In more extreme circumstances where parents of minor children are unavailable, unwilling or unfit to care for those children, grandparents may have legal standing to have a court award them legal and physical custody rights to their grandchild/ren. More specifically, New York Domestic Relations Law §72 (2) provides as follows:

   (a) Where a grandparent or the grandparents of a minor child, residing within this state, can demonstrate to the satisfaction of the court the

existence of extraordinary circumstances, such grandparent or grandparents of such child may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, ***may make such directions as the best interests of the child may require, for custody rights for such grandparent or grandparents in respect to such child***. ***An extended disruption of custody***, as such term is defined in this section, **shall** constitute an extraordinary circumstance.

(b) For the purposes of this section "extended disruption of custody" shall include, but not be limited to, a prolonged separation of the respondent parent and the child for at least twenty-four continuous months during which the parent voluntarily relinquished care and control of the child and the child resided in the household of the petitioner grandparent or grandparents, provided, however, that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for less than twenty-four months.

(c) Nothing in this section shall limit the ability of parties to enter into consensual custody agreements absent the existence of extraordinary circumstances.

B. Legal and Practical Considerations

1. **Initiating Proceedings under Section 72**: Lawyers play a crucial role in advising grandparents on initiating legal proceedings under New York DRL §72. Petitions for visitation or custody require that sufficient facts be alleged that would satisfy each distinct element of the relevant statutory criteria that would entitle a grandparent to be awarded visitation or custody rights of a grandchild. Failure to do so can result in a petition being summarily denied for facial insufficiency. While parents who seek assistance of the courts for visitation or custody of their child are entitled to receive free or reduced-cost legal representation if they income-qualify, grandparents generally are not entitled to free legal counsel when they are initially seeking visitation or custody of a

grandchild. Navigating the legal system which recognizes and supports the notion that natural parents have a superior right to raise their children over all other individuals is challenging even with experienced legal counsel; attempting to go it alone is foolhardy, and unlikely to be successful.

a. **Burden of Proof**: Lawyers should emphasize the burden of proof on grandparents to demonstrate that they have standing to seek court intervention AND that an order of visitation or custody is warranted. This involves presenting compelling evidence, such as sworn testimony, records, and expert opinions, to convince the court that denying visitation would be detrimental to the child or that the parents are unfit to have custody of their own child/ren. Grandparents must consider the quantity and quality of the admissible evidence, as the burden of proof – especially when asking a court to award custody of a grandchild – is exceptionally high. Grandparents risk irreparably damaging their relationship with their own child (and the other natural parent of their grandchildren) by commencing an adversarial proceeding against them.

b. **Parental Objections and Rebutting the Presumption that Natural Parents Have Superior Rights to Choose How to Raise Their Own Child/ren**: The valued right to raise one's own child is deep rooted in our law and culture. Courts will not infringe upon this protected right without just cause to do so.

c. **Non-Litigious Options:** The benefits of mediation and alternative dispute resolution (ADR) in grandparents' rights cases are substantial, offering a more collaborative and flexible approach to conflict resolution. Mediation provides a platform for open communication, allowing all parties, including grandparents, parents, and other relevant stakeholders, to express their concerns and preferences in a neutral setting. Through facilitated discussions, families can explore creative solutions that align with the best interests of the child, potentially avoiding the adversarial nature of courtroom proceedings. ADR processes, such as mediation, often result in more amicable and enduring resolutions, fostering improved relationships between family members. Additionally, these methods tend to be more time-efficient and cost-effective than traditional litigation, offering a quicker and less burdensome route to resolving grandparents' rights disputes. By emphasizing collaboration over confrontation, mediation and alternative dispute resolution contribute to outcomes that prioritize family harmony and the well-being of the children involved.

C. Child Protective Proceedings Under New York Family Act Article 10

1. **New York Family Court Act Article 10 Allows Designated Social Services Agencies To Initiate Court Proceedings Against Parents Who Are Abusive Or Neglectful.** In these cases, if the social services agency is seeking to remove children from their parents' care and place them into foster care – even temporarily – they have a duty to investigate whether there are suitable relatives with whom the child/ren can be placed. Even if a grandparent has not been contacted by the social services agency, the grandparent may initiate contact with the agency representatives and express interest in being a custodial resource for their grandchildren to avoid them being placed in foster care. Grandparents may also choose to petition for custody of grandchildren in the same court where the social services agency has commenced Article 10 proceedings, and the court will schedule and hear both matters on the same dates/times.

III. Mental Health Considerations

A. Child's Best Interests

1. **Psychological Impact on Children**: Mental health professionals can play an important role in assessing and communicating the psychological impact of grandparent visitation or custody on the child. Factors such as emotional well-being, stability, and the quality of relationships are crucial considerations aligned with the best interests standard.
    a. **Psychological Assessments and Expert Testimonies**: Mental health professionals may conduct psychological assessments and provide expert testimony to assist the court in understanding the child's perspective and needs. This evidence becomes instrumental in demonstrating how visitation or custody being granted to a grandparent contributes to the child's overall well-being.
2. **Parental Objections and Co-Parenting Dynamics**: Understanding the dynamics of co-parenting and the reasons behind parental objections to grandparent visitation is essential for mental health professionals. They can provide insights into how visitation or custody arrangements may impact the child's relationship with their parents and contribute to a comprehensive assessment of the child's best interests.
3. **Court Appointed Attorneys For Children (AFC)**: In every visitation or custody proceeding, minor children are appointed an AFC. In contrast to a Guardian Ad Litem who serves in a protective role for their child clients,

an Attorney For Child (AFC) is ethically obligated to advocate for their young client's wishes, even if the AFC believes the child's wishes are not necessarily in the child's own best interest. If the child is too young or immature to express a stated preference OR if the child's statement preference would put the child in imminent danger, the AFC may substitute his/her own judgment on what position to advocate on behalf of their child client.

B. Counseling and Support

1. **Counseling for Grandparents**: Mental health professionals can offer counseling and support services to grandparents navigating the legal process. Coping with family disputes and court proceedings can be emotionally challenging, and professionals should be prepared to address these issues while emphasizing the importance of maintaining a positive and stable environment for the child. In the event that grandparents will be raising grandchildren, mental health counselors can support grandparents and grandchildren in adjusting to the new roles and dynamics that are undeniably quite different for everyone involved.
    a. **Collaboration with Legal Team**: Grandparents would be wise to engage mental health professionals who would collaborate closely with the legal team to align counseling strategies with legal objectives. This includes preparing grandparents for court appearances, helping them articulate the positive aspects of their relationship with the child, and addressing potential concerns raised by the parents.
2. **Child Custody Evaluations**: In some cases, courts may order child custody forensic evaluations conducted by mental health professionals to inform decisions related to grandparent visitation or custody. The forensic evaluator typically prepares a comprehensive report of how their evaluation was conducted, explain any preliminary mental health diagnoses for any of the family members, offering insights into the child's emotional well-being and the potential impact of visitation or custody arrangements on their mental health. The forensic evaluator may also be called upon to testify as an expert witness in the event the matter goes to trial.

IV. Real Estate Implications

A. Residence and Custody Arrangements

1. **Impact of Custody Arrangements**: Real estate professionals should be aware that changes in custody arrangements, including the granting of

visitation rights to grandparents, may have housing implications for the grandparents. In instances where grandparents seek visitation or custody rights, residential professionals play a pivotal role in evaluating and shaping living arrangements that align with the best interests of the child. They must consider the suitability and stability of proposed environments, ensuring that the residential aspect of the case complements the legal framework surrounding grandparents' rights. Collaborative efforts between legal and residential professionals are imperative to create solutions that balance the legal requirements with practical considerations, fostering an environment that supports the child's well-being while recognizing the rights and responsibilities of all parties involved.

V. Financial Resources for Grandparents with Custody

A. Overview of Financial Challenges

1. **Financial Strain on Grandparents**: Grandparents who assume custody of their grandchildren often face significant financial challenges. In addition to the cost of legal representation, these challenges may arise due to the costs associated with providing for the child's basic needs, education, and healthcare
2. **Government Assistance Programs**: Understanding the available financial resources is crucial for lawyers, mental health professionals, and real estate professionals involved in cases where grandparents have custody. Several government assistance programs can provide support to alleviate financial burdens.

B. Public Assistance Programs

1. **Temporary Assistance for Needy Families (TANF)**
    a. **Financial Aid for Low-Income Families**: TANF is a federal program that provides financial assistance to low-income families, including those headed by grandparents with custody. Lawyers can assist grandparents in navigating the application process and ensuring they receive the benefits they are entitled to.
2. **Kinship Guardianship Assistance Program (KinGap)**
    a. Overview of KinGap and Its Key Features: KinGap offers financial support and services to grandparents and other kinship caregivers

who have assumed custody. Monthly subsidy payments and health insurance coverage are essential components of the program.

b. Eligibility Criteria and Application Process: Legal professionals play a pivotal role in helping grandparents establish their legal eligibility for KinGap. This involves meeting specific criteria related to the child's history, placement, and the kinship guardian's relationship with the child.

3. **Supplemental Nutrition Assistance Program (SNAP)**

a. **Food Assistance**: SNAP offers food assistance to eligible low-income individuals and families. Lawyers and mental health professionals can inform grandparents about SNAP benefits to help ensure the child's nutritional needs are met.

4. **Child Care and Development Fund (CCDF)**

a. **Assistance with Child Care Expenses**: CCDF provides assistance with child care expenses for eligible families. Lawyers and mental health professionals should be aware of this resource and guide grandparents on accessing support for child care needs.

C. Social Security Benefits

1. **Social Security Income (SSI)**

a. **Financial Support for Children with Disabilities**: Grandparents raising grandchildren with disabilities may be eligible for SSI benefits. Lawyers can assist in navigating the application process and advocating for the financial support necessary to meet the child's unique needs.

2. **Survivor Benefits**

a. **Financial Assistance in Case of Parental Death**: If the child's parent is deceased, lawyers can explore survivor benefits available through Social Security. This financial assistance can contribute to the child's overall well-being and stability.

D. Legal Aid and Nonprofit Organizations

1. **Legal Aid Services**

a. **Access to Legal Representation**: Once a grandparent has been granted legal custody of grandchildren, that grandparent will have access to affordable or free legal representation if they income-qualify. If the grandparent accepts placement of grandchildren at the request of the local social services agency, they may apply to be certified as foster parents and receive stipends and other financial benefits as a result of that status. If a social services agency pursues termination of the legal rights of

the natural parents, a grandparent can then adopt the grandchild and would receive financial assistance with counsel fees related to the adoption as well as financial subsidy for some costs of raising the child, including childcare and healthcare expenses.

2. **Nonprofit Organizations Supporting Grandparents**

   a. **Financial Assistance and Support Programs**: Numerous nonprofit organizations focus on providing financial assistance and support to grandparents raising grandchildren. Lawyers, financial advisors and mental health professionals should be aware of these organizations and connect grandparents with available resources.

E. Estate Planning and Financial Counseling

1. **Estate Planning Services**

   a. **Ensuring Financial Security for the Future**: Legal and financial professionals can collaborate to advise grandparents on estate planning. This includes considerations related to wills, trusts, and other financial instruments to secure the child's financial future.

2. **Financial Counseling Services**

   a. **Budgeting and Financial Planning**: Professionals working with grandparents should identify and recommend financial counseling services to help grandparents navigate budgeting and financial planning. This can be especially valuable in managing the financial aspects of raising grandchildren.

VII. Conclusion

In conclusion, grandparents' rights cases in New York State involve not only legal complexities but also significant emotional, residential and financial challenges. Lawyers, mental health professionals, real estate professionals and financial professionals must be familiar with the challenges and stressors facing grandparents who pursue legal custody of their grandchildren.

Understanding the intricacies of public assistance programs, Social Security benefits, legal aid services, nonprofit organizations, and estate planning is essential for providing comprehensive support to grandparents and ensuring the best interests of the child are met. By combining legal expertise with knowledge of available financial resources, professionals can contribute to a holistic approach that addresses the multifaceted needs of grandparents raising grandchildren in New York State.

Key Case Law:

GRANDPARENT CUSTODY CASES:

Matter of Bennett v Jeffreys, 40 NY2d 543 [1976]
Matter of Bennett v. Jeffreys involved a custody dispute over an eight-year-old girl named Gina Marie Bennett. The child had been entrusted to the respondent, who was a former schoolmate of the child's grandmother, shortly after birth. The natural mother sought custody of her daughter, but Family Court ruled in favor of the custodian. The Appellate Division later reversed the decision and awarded custody to the mother. The issue at hand was whether the natural mother, who had not surrendered, abandoned, or neglected the child, could be deprived of custody due to a prolonged separation from the child. The court held that extraordinary circumstances, such as the prolonged separation, warranted consideration of the best interest of the child. The case emphasized the rights of both the parent and the child and concluded that parental custody should not be displaced unless there was a significant cause or necessity. The court called for a new hearing to determine the best interest of the child, considering the qualifications and backgrounds of both the mother and the custodian. The case discussed the shift in emphasis from the absolute rights of parents to the best interest of the child, recognizing the child as a person with constitutional rights. The court highlighted that the child's welfare should be paramount and that decisions should be based on extraordinary circumstances and the child's best interest. The case referred to previous rulings and legislative changes that focused on the child's best interest in custody determinations.

Suarez v Williams, 44 NE3d 915 [2015]
In the custody dispute case of Matter of Suarez v. Williams, the Court of Appeals of New York interpreted and applied Domestic Relations Law § 72(2) and the precedent set in Matter of Bennett v. Jeffreys. The court ruled that grandparents can seek custody based on extraordinary circumstances when the child has lived with them for a prolonged period of time, even if the child had contact with a parent during that time. The case involved a child who lived with his paternal grandparents from infancy until almost 10 years old, while the parents had joint legal custody but the child primarily resided with the grandparents. The court found that the grandparents demonstrated extraordinary circumstances, and thus had standing to seek custody. The matter was reversed and remitted to the Appellate Division for further consideration. The court explained the requirements of extraordinary circumstances under the statute, which included a prolonged separation of at least 24 continuous months, voluntary relinquishment of care and control by the parent, and the child residing with the grandparents. The court rejected the mother's argument that regular contact and involvement with the child undermined the existence of extraordinary circumstances.

GRANDPARENT VISITATION CASES:

E.S. v. P.D., 8 N.Y.3d 150, 831 N.Y.S.2d 96 (2007 WL 470389)(2007 N.Y. Slip Op. 01336)(Feb. 15, 2007):
Mother and father married in 1992 and had subject child in 1993. Mother diagnosed with spine and breast cancer in 1997. Maternal grandmother was asked to move into marital home to care

for her terminally ill daughter and subject child. Maternal grandmother agreed with father and continued to stay on to help out with subject child care and household duties after her daughter's death in March 1998. Maternal grandmother lived in home for three and one-half years during which time she got child ready for school, put him to bed, read to him, helped with his homework, cooked his meals, laundered his clothes, and took him to doctor appointments and other activities such as soccer and karate class. Child and father spent entire summers at maternal grandmother's home in East Hampton, where other maternal family members were frequently present, from 1998 to 2001. Maternal grandmother's and father's relationship in fall 2001 began to sour concerning caring for subject child. February 2002 father demanded that maternal grandmother move out of marital home and forbid her to have contact with subject child. January 2003, maternal grandmother, who was 78 years old at the time, sought visitation with subject child pursuant to DRL § 72 and FCA § 651. Maternal grandmother had automatic standing pursuant to DRL § 72(1) because of her daughter's death. Record supports determination that visitation is in child's best interest as determined by courts below. DRL § 72(1) found to be constitutional both on its face and as applied in this case.

Wilson v. McGlinchey, 2 N.Y.2d 375, --- N.Y.S. --- (2004 WL 1064484)(2004 N.Y. Slip Op. 00390)(May 13, 2004):

Family Court ordered a third-party visitation order pursuant to a stipulation that the maternal grandparents would have 8 hours of visitation per month, and that the parties consented to therapeutic family counseling, which never occurred. Maternal grandparents have been estranged from their daughter since 1997, prior her marriage. After months of visitation, mother and father bring petition to terminate visitation between maternal grandparents and their daughter alleging that the visits were an "unmitigated disaster", which in one incident involved the police removing the grandparents from their home. Following a three-day hearing, Family Court dismissed the parents petition concluding that the parents failed to demonstrate a change in circumstances warranting termination of visitation between the grandparents and the older child but found that the younger child's best interests would not be served by the grandparent visitation. Appellate Division modified and vacated the Family Court visitation order concluding that the parents demonstrated a change in circumstances warranting the change in visitation where it was no longer in the child's best interests viewing the child as a "pawn" in their battle. Grandparent visitation is not an automatic right in NY, but it is acknowledged (See, DRL § 72; Lo Presti v. Lo Presti, 40 N.Y.2d 522, 526 [1976]). "When grandparents petition for visitation under section 72, the court undertakes a two-part inquiry: '[f]irst, it must find standing based on death or equitable circumstances which permit the court to entertain the petition. If it concludes that the grandparents have established the right to be heard, then it must determine if visitation is in the best interest of the grandchild' (Matter of Emanuel S. v. Joseph E., 78 N.Y.2d 178, 181 [1991])." Standing doesn't ensure visitation. A previous visitation order may be modified only upon a showing of a change in circumstances where modification is warranted to protect the child's best interests. See, FCA § 467[b][ii]; Friederwitzer v. Friederwitzer 55 N.Y.2d 89, 95 [1982]; see Matter of Krom v. Comerford, 57 N.Y.2d 704, 705 [1982]; Aberbach v. Aberbach, 33 N.Y.2d 592, 593 [1973]; Eschbach v. Eschbach, 56 N.Y.2d 167, 171 [1982].