IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

C.H.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-20,361
	:	
S.F.,	:	
Defendant	:	

O P I N I O N

Issued Pursuant to Pa. R.A.P. 1925(a)

S.F. has appealed this court's order of August 1, 2003, granting partial physical custody of K.F. to C.H. S.F. is the father of K.F., who was born on October 5, 1994. S.F. is the child's maternal grandmother. The mother, S.F., died of cancer on May 25, 2002.

A two-day trial was held, during which Father hotly contested Grandmother's request for one weekend of custody each month, and especially overnights. Father raised several specific concerns regarding Grandmother, all of which the court found to be without merit. On the contrary, the court finds that Grandmother is a loving grandmother, who merely wants to continue the close relationship she developed with Child before the mother's death, and that it is in Child's best interest to continue this relationship.

Father claims the statute permitting grandparent visitation, 23 P.S.A. §5311, is unconstitutional. The court finds no merit in his arguments. The statute violates neither the Due Process Clause nor the Equal Protection Clause. Instead, it is a carefully drafted statute which perfectly balances the rights of parents against the compelling state interest to ensure the welfare of children.

Findings of Fact

At the conclusion of the two-day custody trial, this court granted Grandmother one weekend of partial physical custody each month, from 9:00 a.m. on Saturday until 7:00 p.m. on Sunday, and one week each summer. This decision was made after close consideration of the statute at issue, 23 Pa.C.S.A. §5311, which states as follows:

> If a parent of an unmarried child is deceased, the parents or grandparents of the deceased parent may be granted reasonable partial custody or visitation rights, or both, to the unmarried child by the court upon a finding that partial custody or visitation rights, or both, would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

The burden is on the grandparent to prove that partial custody or visitation is in the child's best interest and will not interfere with the parent-child relationship. Douglas v. Douglas, 801 A.2d 586 (Pa. Super. 2002). Additionally, a fit parent's decision regarding visitation or partial custody is presumed to be in the best interest of the child. Troxel v. Granville, 530 U.S. 57, 69, 147 L. Ed. 2d 49, 120 S.Ct. 2054 (2000). Thus a grandparent seeking visitation or partial custody has the burden of rebutting the presumption that a decision made by a fit parent to deny or limit visitation was made in the child's best interest.

Regarding contact before Grandmother's petition was filed, the court found that Child and Grandmother had a great deal of contact before the mother's death. This contact intensified in the last two years before Mother's death, with Child visiting Grandmother on an almost daily basis. This was established by the testimony of Grandmother, whom the court found very credible, as well as the testimony of several neighbors and family members who saw Child at Grandmother's home almost daily, and whom the court found credible on this issue. Grandmother and other members of

her family made themselves available for Mother throughout her prolonged illness, especially during the year prior to her death, when they supported her in numerous ways. Mother and her father, J.B., transported Child to and from school, babysat him when Mother was too ill to care for him or was obtaining medical treatment, and took her to medical appointments. The testimony also established that Grandmother and Child had an extremely close relationship. Grandmother helped prepare Child emotionally for his mother's death. N.T., p. 140. Child loved being with Grandmother, and the two showed a great deal of affection toward one another.

The frequent contact between them stopped abruptly after Mother's death. From the time of her death until the court-ordered visits began, Grandmother saw Child only three times: Once by accident, when Child was visiting J.B., his maternal great-grandfather, and Grandmother happened to stop by. The second time was when she attended Child's birthday party at J.B.'s residence. The third time was on Christmas 2002, when the child was brought to the home of M.D., a relative. None of the instances were at Grandmother's home. The court finds the testimony of Grandmother credible regarding her numerous attempts to have Child come to her home for a visit. Grandmother testified that when she left messages on Father's answering machine, they were not returned. When she reached Father by telephone he denied her requests, stating that he had plans. In light of Father's serious concerns about Grandmother which he expressed at the hearing, the court has no difficulty believing he did not permit Child to go to Grandmother's residence for visits, and would not permit it now without a court order.

The Troxel case requires a court to give some weight to the fact that a parent has permitted some visitation or partial custody. Troxel, 530 U.S. at 71. The significance of this factor is that once a parent agrees to some contact, the dispute is no longer over whether the grandparent will have any access to the child, but merely over how much contact will occur.

It is difficult to determine exactly how much contact Father agrees to at this point. Throughout the history of this case, Father's position has vacillated considerably regarding the nature and amount of contact which should be permitted between Grandmother and Child. After a custody conference held on April 10, 2003, the Custody Conference Officer entered an order indicating the parties had agreed to all provisions of the order except overnight visitation. A hearing was scheduled before this court for the sole purpose of determining whether overnight custody should be granted. However, over a month after the conference was held, Father filed a Petition for Modification of Custody, maintaining that he did not agree to any of the provisions of the order, and asking the court to deny any court ordered visitation.[1] In his custody pre-trial memorandum, Father stated his position as, "There should be no court ordered visitation for Plaintiff." At the trial, Father testified that he would allow Grandmother to have one day per month with Child, with no overnight stays.

It appears, although it is not clear to this court, that Father opposes any court ordered visitation. He wants the decision regarding whether and when Child visits Grandmother to be entirely at his discretion. The court believes, however, that without a court order, Child would have little if any contact with Grandmother. Our conclusion on this issue is based upon five findings. First is Father's past conduct. As discussed above, Father did not permit Child to visit Grandmother at her residence before Grandmother filed the custody petition. Second, also as discussed above, Father has been dishonest—or, at the very least, highly inconsistent—about his position with regard to grandparent contact throughout the proceedings.

Third, Father has extremely negative feelings toward Grandmother, which the court believes interferes with his ability to make good decisions regarding Child's contact with her. Father's own testimony demonstrated that he allows his personal

[1] The petition was filed by an attorney different from the attorney who was present at the custody conference.

feelings to cloud over his judgment regarding Child's contact with his family. For instance, all parties agreed that Child and J.B., the maternal great-grandfather, have an extremely close relationship, and in fact Father ensured the two remained in frequent contact after Mother's death. However, Father became perturbed at J.B. throughout the course of the custody proceedings, and testified that he no longer trusted him. Upon being questioned by the court, it was clear that Father's mistrust of J.B. involved only the personal relationship between the two men, and had nothing to do with the relationship between Child and J.B. However, Father clearly was allowing his anger toward J.B. to interfere with Child's relationship with J.B. N.T., p. 32-34.

Fourth, Father has attempted to convince the court that Grandmother is a threat to Child's safety, despite overwhelming evidence to the contrary. Father raised several concerns about Grandmother in a futile attempt to convince the court Child would be in danger if left in her care. Father doggedly insisted that Grandmother has a history of severe alcohol abuse, provides inadequate supervision resulting in serious risk of injury for the child, has a significant history of domestic violence in her household, and that her husband's Hepatitis C could be harmful to the child's health. The court found no credible evidence to support any of these claims. All of them were completely without merit, and are discussed in the court's statement to the parties, N.T. p. 311. Given the fact that none of these concerns have any merit whatsoever, the court must conclude that either Father is grasping at straws and inventing reasons to keep Child away from his grandmother, or he actually believes the allegations, which shows he is under serious delusions concerning Grandmother and his judgment regarding her is polluted. Under either scenario, the result is the same: Father would not permit this grandmother and grandchild to continue the close relationship they have developed.

The court firmly believes that granting Grandmother partial custody rights is in Child's best interest. One day per month, from 10:00 a.m. until 6:00 p.m., as Father has recently stated would be acceptable, is not enough time to maintain the bond Child has

established with his grandmother and her side of the family, especially given the extensive contact in the past. Child has a long-standing, very close relationship with Grandmother. He enjoys being at her home, and often does not want to leave when the visits are over. Grandmother is a warm, loving grandmother who spends her time with Child doing things such as having picnics, gardening, swimming, playing games, and Child's all-time favorite activity: going to the car races to see his uncle race. She also has family get-togethers on one or both days of her visit each month, which gives Child the opportunity to play with his numerous cousins, second cousins, and other members of the maternal side of his family. Child also is able to spend a significant amount of time with his great-grandfather, J.B., who has always been an important person in Child's life. And finally, when Child is with Grandmother, he seeks and receives emotional support regarding the death of his mother, as described by Grandmother:

> Well there are a lot of things. Like he will ask me different questions about his mom. We can visit the grave. Different things that I can help him, kind of comfort him with. And he will ask me, Meem do you remember when my mom used to—yes. And we just converse and, you know, things, bonding, you know, certain bonding with the family. And it makes him feel good, you know, when we talk about his mom. It is just like his little eyes light right up and different things. I just think it's wonderful thing, you know. It's bad, I lost my daughter. But I want to continue with him for him to understand, you know, where he comes from and family.

N.T. pp. 154-155. Father himself expressed concerns regarding Child's inability to express his emotions regarding his mother's death. N.T., p. 277. It appears that contact with his mother's side of the family is highly beneficial emotionally for Child in helping him deal with the loss of his mother.

Without a court order, Father could—and the court believes would—sever the close relationship Child has established with Grandmother and her family. This would certainly be detrimental emotionally to Child, who would have to bear the loss of his grandmother in addition to his mother.

Father also claimed that if Child spent time with his grandmother it would interfere with the parent-child relationship, due primarily to the animosity between himself and Grandmother. If the mere existence of animosity and dislike between parent and grandparent were enough to prevent grandparent custody, surely there would be very few court-ordered periods of grandparent custody. For after all, if the parties were able to get along together, they would not be in court to begin with. What must exist to prevent partial custody is evidence the hostility will somehow be detrimental to the child or interfere with the parent-child relationship.

In fact, the appellate courts have granted grandparent custody or visitation in cases where the animosity between the parties was much greater than that existing between Father and Grandmother. In Bucci v. Bucci, 506 A.2d 438 (Pa. Super. 1986), the Superior Court permitted the paternal grandparents to have partial physical custody despite bitterness, resentment, and hatred between the mother and the grandparents, and a long history of hostility. The trial court found that the parties' more temperate behavior would prevail during the visits, and the Superior Court affirmed the trial court's assessment. *See also* Douglas v. Wright, 801 A.2d 586 (Pa. Super. 2002). The resentment, hostility, and hatred exhibited by the parents and grandparents in the above-cited cases are far greater than that existing between Father and Grandmother.

Father points to the case of Rigler v. Treen, 660 A.2d 111 (Pa. Super. 1995), in which the court denied grandparent custody or visitation. In Rigler, however, the court found, based upon the testimony of the mother, the mother's husband, and the mother's expert psychological witness, that visits with the paternal grandparents interfered with the mother's parenting ability and caused distress to the child himself. This was due largely to the negative effects of the grandmother's domineering personality upon the mother. This was not a hypothetical fear. Rather, the evidence showed the visits had caused a present, actual effect upon the child's immediate family, as well as a negative effect on the mother's relationship with the child.

In the case before this court, there was no evidence Grandmother's partial custody would interfere with the parent-child relationship or be detrimental to Child in any manner. Grandmother's testimony demonstrated to this court's complete satisfaction that despite her hard feelings toward Father—understandably exasperated by the litigation and the thousands of dollars she was forced to spend in order to see her grandchild—she will not express any negative feelings about him in front of Child, nor will she create a situation which would have a negative emotional impact upon the child. Similarly, despite whatever harsh comments the court has for Father's conduct regarding Grandmother's partial custody, it is clear Father loves his son and is a capable father. The court rests assured Father will not let his hostility and dislike for Grandmother cause Child emotional harm. In short, the court finds that both parties will behave in a civil manner during the exchanges and will not put Child in the middle of a war zone. There have been no incidents of direct confrontations between Grandmother and Father in the past, and the court believes it will not happen in the future.

For all these reasons, the court found Grandmother met her burden of showing that partial custody would be in Child's best interest, and would not interfere with the parent-child relationship. As a fit parent, Father enjoys a presumption that his decision regarding Child's contact with Grandmother is in Child's best interest. However, the court finds that Grandmother has rebutted that presumption.

Constitutional Issues

Father next contends that §2511 violates the United States Constitution in two ways: (1) It violates the Due Process Clause of the Fourteenth Amendment, and (2) It violates the Equal Protection Clause of the Fourteenth Amendment.

We begin by recognizing that under both state and federal law there is a strong presumption that in enacting a statute, the legislature has acted within constitutional

bounds. Commonwealth v. Barud, 681 A.2d 162 (Pa. 1996); Harper v. Virginia, Bd. of Elections, 383 U.S. 663, 670 (1966). All doubts are to be resolved in favor of sustaining the constitutionality of the legislation. Commonwealth v. Blystone, 549 A.2d 81,87 (1998), *affirmed*, 494 U.S. 299, 108 L. Ed. 2d 255, 110 S. Ct. 1078 (1990). "Nothing but a clear violation of the Constitution—a clear usurpation of powers prohibited—will justify the judicial department in pronouncing an act of the legislative department unconstitutional and void." Glancey v. Casey, 288 A.2d 812, 817 (1972). Courts are "obliged to exercise every reasonable attempt to vindicate the constitutionality of a statute and uphold its provisions." Commonwealth v. Chilcote, 578 A.2d 429, 435 (Pa. Super. 1990). In short, the party challenging a statute has a very heavy burden in proving it unconstitutional. The challenging party must prove the act "clearly, palpably and plainly" violates the constitution. Barud, supra.

Due Process Clause

Father bases his argument chiefly on the United States Supreme Court case of Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). In Troxel, a divided Court struck down a Washington statute which provided that "any person may petition the court for visitation rights at any time" and that "the court may order visitation rights for any person when the visitation may serve the best interest of the child." Justice O'Connor, writing for four of the justices, declined to declare the statute unconstitutional on its face, and instead found the statute unconstitutional as applied.[2] The court held that the statute, as applied to the case at issue, violated the Due Process Clause of the Fourteenth Amendment because it improperly infringed upon the mother's fundamental right to make decisions concerning her children. The bases of the Court's decision was that the statute was "breathtakingly broad," that the state court

[2] Chief Justice Rehnquist, Justice Breyer, and Justice Ginsburg joined the opinion. Justices Souter and Thomas concurred, writing separate opinions. Justices Stevens, Scalia, and Kennedy dissented.

gave no deference to the mother's decision on the matter, and the state court's decision was based upon "slender findings".

The Supreme Court did not rule that *any* statute granting third-party visitation or custody is unconstitutional. Indeed, it did not even strike the Washington statute as unconstitutional on its face.[3] It merely declared the Washington statute unconstitutional as applied to the particular case. Also, the Court explicitly refused to establish standards to be applied to third-party visitation statutes; however, the Supreme Court opinion contrasts the Washington statute to the Minnesota grandparent visitation statute, which is similar to the Pennsylvania grandparent statute. That comparison indicates the Court would look favorably on a statute such as §2511.

In pointing out the flaws in the Washington statute and its application, Justice O'Connor wrote, "[T]he problem here is not that the Washington [trial court] intervened, but that when it did so, it gave no special weight at all to [the mother's] determination of her daughters' best interests." Troxel, 530 U.S. at 69. The Troxel court also noted that the Washington state courts could have given the broad language of the statute a "narrower reading" according special weight to decision-making by fit parents, but declined to do so. Id. at 67-69.

In summary, the Troxel court found three defects in the Washington statute and its application by the courts: The statute was "breathtakingly broad," a presumption was given in favor of the grandparents, and the trial court made slender findings in support of its decision.

By contrast, the Pennsylvania statute at issue and its application do not suffer from the defects contained in the Washington case. Section §2511 places limits on the persons who may petition: grandparents and great-grandparents. It also specifies under what circumstances the petition may be filed: a parent of the grandchild must be

[3] The Washington Supreme Court had declared the statute to be facially invalid, due to its breadth.

deceased. It also states when the petition may be granted: the partial custody or visitation must be in the best interest of the child, and the partial custody or visitation must not interfere with the parent-child relationship. Moreover, by placing the burden upon the petitioning grandparents to show that partial custody or visitation is in the best interest of the children and will not interfere with the parent-child relationship, Pennsylvania courts give deference to the parent's decision.

And finally, §2511 requires the court to consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the filing of the petition. Contact occurring before the filing of the petition most likely means that at least one parent permitted the contact, and also helps a court determine the best interest issue, since the court can examine whether or not that contact was beneficial to the child and what effect severing the existing emotional bond may have on the child.

We therefore agree with the Pennsylvania Superior Court's recent pronouncement on the matter:

> We recognize the relatively recent decision of the United States Supreme Court in Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000), and find it readily distinguishable. In Troxel the Supreme Court found the application of a Washington state statute permitting "any person" to petition for visitation impermissibly broad and found that, under the facts of that case, it unconstitutionally infringed on the fundamental right of the parent to make decisions concerning her child. However, the Troxel Court determined the trial court erred by placing the burden on the parent to disprove that the best interests of the child would be served by granting visitation with grandparents. Here, we emphasize it is the grandparents' burden to demonstrate partial custody or visitation is in the best interests of the children and will not interfere with the parent-child relationship.

Douglas, supra, at 590 n.1. We also acknowledge the recent case of K.B. II, K.B. and B.B. v. C.B.F., 2003 Pa. Super. 364, 2003 Pa. Super. LEXIS 3219. That case, which involved a dispute over primary custody, held that the trial court erred in granting the grandparents primary custody when the mother had adequately cared for the child. Although the case did not specifically involve a constitutional challenge, the court

found no problem with the statute (§5313), so long as courts applied a "weighted best interest" analysis in favor of the parent. Moreover, as that case involved primary physical custody, it stands for the proposition that it is very difficult indeed for a third party to gain primary physical custody over a parent. It does not speak to grandparent partial custody of the type at issue in this case, which is much less of an intrusion into the family unit.

Father has pointed to the case of Linder v. Linder, 72 S.W. 3d 841 (Ark. 2002), in which the Arkansas Supreme Court found the Arkansas Grandparental Visitation Act unconstitutional as applied. The decision was based first upon the court's conclusion that the statute incorporated a procedural preference for granting such rights, which in effect shifted the burden of proof to the parent. That is not the case in Pennsylvania. And second, the court held that the state could show a "compelling interest" warranting intrusion into the parent's decision-making right only if some "special factor" exists to justify state interference, such as an unfit parent or harm to the child. We do not believe Troxel mandates such a holding. The discussion of parental fitness in Troxel occurred in the context of explaining the presumption that fit parents act in the best interest of their children. Once the parent is fit, the presumption applies. Troxel does not stand for the proposition that the presumption cannot be overcome. A presumption, by definition, is a starting point from which to assess the evidence and reach a conclusion. It gives one party the upper hand; it does not conclusively decide the issue.

A review of other states' decisions indicates that some states have found their grandparent statutes constitutional, some have found their statutes unconstitutional as applied, and some have found their statutes unconstitutional on their face. Of course, each state statute is different, so analyzing these decisions is of limited value. It is important to note, however, that the Troxel court explicitly invited state courts to construe their statutes in a manner which would cure the constitutional deficiencies, and some states took the opportunity to do so. For instance, Wisconsin and Indiana merely

read into their statute a mandate to give presumptive weight to the parents' decision. See In re Paternity of Roger D.H., 641 N.W. 2d 440 (Wisc. 2002); Crafton v. Gibson, 752 N.E. 2d 78 (Ind. App. 2001). As noted above, Pennsylvania already places the burden on the grandparents, and this court has additionally accorded Father the presumption that his decision regarding contact with Grandmother is in Child's best interest.

Obviously, the Constitution does not prohibit all interferences with family autonomy. There are many circumstances in which state intervention is constitutional. Such interferences are usually permitted in order to promote the physical or emotional welfare of children. For instance, a state may require children to be vaccinated, educated, and restrained in a proper car seat while being transported. States also have laws prohibiting neglect and abuse. Even parents' rights to have contact with their own children may be curtailed when that contact harms the child physically or psychologically.

Laws interfering with fundamental rights, such as a parent's right to make decisions concerning his or her child, must be analyzed under the "strict scrutiny" standard: the statute must serve a compelling state interest and be narrowly tailored to serve that interest. Although the Troxel court did not mandate the application of the "strict scrutiny" standard,[4] even if that standard were applied, §2511 would pass the test. The government has a compelling interest in ensuring the emotional welfare of children. Children who have formed an emotional bond with their grandparents should not have to suffer the trauma of having that bond broken merely because a parent dies. Moreover, few would disagree that in most instances, children benefit in a variety of

[4] It is arguable that the "rational basis" standard might be more appropriate, because the statute contemplates occasional, temporary visitation or partial custody, and therefore is not a significant encroachment upon the parent's rights. The Indiana Court of Appeals ruled this way in Sightes v. Barker, 684 N.E. 3d 224 (Ind. Ct. App. 1997), and declined to change the ruling in Crafton v. Gibson, 752 N.E. 2d 78 (Ind. App. 2001).

ways from contact with grandparents and great-grandparents. Through their grandparents, children can acquire a sense of their family's history and can form a better understanding of themselves as a result. The ripened wisdom of a grandparent, gained through the passage of time, can have a profoundly beneficial impact upon children. Intergenerational contact is more important than ever in this unfortunate age of families broken by geographical distance, divorce, separation, imprisonment, and death.

The state also has a strong interest in preserving and strengthening, as much as possible, the family unit. Grandparents and great-grandparents are members of the extended family. They have long been recognized as playing an important role in their children's lives and states have a compelling interest in seeing that children already in broken families are not arbitrarily deprived of the benefit of a loving grandparent.

Pennsylvania has declared its policy of facilitating contact between children and their grandparents in the instances of divorce, separation, and death of the parents. This policy is clearly set forth at 23 Pa.C.S.A. §5301:

> The General Assembly declares that it is the public policy of the Commonwealth, when in the best interest of the child, to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and the sharing of the rights and responsibilities of child rearing by both parents *and continuing contact of the child or children with grandparents when a parent is deceased, divorced or separated.*

(Italics added.) This is obviously based upon the legislature's judgment that generally children benefit from contact with their grandparents.

In the case of a deceased parent the state has an increased interest in ensuring grandparent partial custody or visitation, because of the greater likelihood the living parent will cut off the parents of the deceased parent. Moreover, children who have recently suffered the loss of a parent should not have to experience the additional loss of a beloved grandparent. Section §2511 was enacted to allow courts in such cases to step

in and grant visitation or partial custody despite the opposition of the parent, when such contact is clearly in the best interest of the child.

The purpose behind §2511 is obvious, as is the need for such a statute. As we all know, it is common for parents to come into conflict with their in-laws and even their own parents. Unfortunately, that conflict and the emotions which result from it sometimes blinds a parent and as a result, he or she cannot see the true interests of his or her child. That is exactly what happened in this case. Father is simply unable to view the situation clearly, objectively, or reasonably, because of his dislike for Grandmother. If it were up to Father, Child would be prevented from maintaining the close relationship he has developed with his grandmother. Pennsylvania has a strong interest in protecting children like Child from bad decisions made by parents.

Section §2511 strikes a perfect balance between arbitrary interference with the rights of parents and the state's interest in promoting grandparent/grandchild contact. Before granting grandparent visitation, courts must carefully consider the best interest of the child, and must give a great deal of deference to the parent's opinion concerning the matter. That is why the Pennsylvania statute places the burden of proving the benefit of visitation upon the grandparents, and why the Troxel court mandates the presumption that a fit parent's decision is in the best interest of the child. It is only after the court finds the grandparents have rebutted that presumption that visitation or partial custody may be granted.

Given the strong state interest in the welfare of children, the limitations guiding the award of grandparent custody or visitation, the presumption in favor of the parent's decision, and the strong presumption of constitutionality of statutes, this court finds that §2511 does not violate the Due Process Clause on its face, or as applied.

Equal Protection

Father argues that §5311, §5312, and §5313 violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Section §5312 and §5312 are not before the court and therefore we cannot and will not address them. As to §5311, the court finds no violation of the Equal Protection Clause.

The Equal Protection Clause guarantees that like persons in like circumstances will be treated similarly. It does not require that all persons under all circumstances enjoy identical protection under the law. It does not require equal treatment of people having different needs. It does not prohibit a state from classifying individuals for the purpose of receiving different treatment. It only mandates that such classifications are reasonable rather than arbitrary, and bear a reasonable relationship to the object of the legislation. As summarized by the Pennsylvania Supreme Court, "[A] classification must rest upon some ground of difference which justifies the classification and have a fair and substantial relationship to the object of the legislation." Curtis v. Kline, 666 A.2d 265, 267-68 (Pa. 1995).

When the classification implicates a "suspect" class or a fundamental right, the statute must be strictly construed in light of a "compelling" governmental purpose. Id. at 268. If the classification implicates an important though not fundamental right or a sensitive classification, a heightened standard of scrutiny is applied to an important governmental purpose. If the classification involves none of these, the statute is upheld if there is any rational basis for the classification. Smith v. City of Philadelphia, 516 A.2d 306 (Pa. 1986) (citations omitted).

It is possible that §2511warrants only a rational basis review, since the statute classifies children by whether or not they are living in an intact family, which is not a suspect or sensitive classification. Moreover, it involves the children's opportunity to have contact with grandparents, which is not a fundamental or important right. It could be argued that this case is similar to that in Curtis, supra, where the Pennsylvania

Supreme Court applied a rational basis standard to a statute establishing an action for children from broken families to obtain court-ordered parental financial support for educational costs after the children have reached eighteen years of age. The court found the statute classified children according to the marital status of their parents, and did not involve a fundamental right because individuals were not entitled to financial assistance for college.

However, even under a strict scrutiny analysis, interpreting the statute to implicate the parents' fundamental right to make decisions regarding their children, §2511 would still pass muster. The compelling purpose behind §2511, as stated earlier, is to foster the emotional welfare of children. It is a remedy to protect children from an unwise decision by a parent to cut off meaningful and beneficial contact with a grandparent or great-grandparent. The statute treats children from intact families different from children who have experienced the death of a parent. That classification makes perfect sense because it is precisely in those cases where the danger of alienation from a grandparent is greatest. Children from intact families have two parents, either of which may promote grandparent contact. When one parent is deceased, the chance of the living parent cutting off contact with a grandparent—especially with a parent of the deceased parent—is heightened. Therefore, those children need greater protection.

Once again, this case is the perfect example of the statute in action. As long as Mother was alive, Child saw his grandmother on an almost daily basis. Without the existence of §2511, many children like Child would be forced to bear two losses simultaneously: the loss of a parent and the loss of a grandparent. Children in Child's situation are clearly disadvantaged by the death of a parent, and the statute merely attempts to compensate for this disadvantage.

We also note that regarding a parent's right to grant time with a grandparent, a parent of a child whose other parent is deceased is in an entirely different position than a parent of a child whose other parent is alive. Parents in the latter category cannot

make an arbitrary, unilateral decision to cut off contact with a grandparent; they must contend with the other parent, who may guarantee such contact despite the wishes of the opposing parent. Parents of children whose other parent is deceased have no other parent to contend with, and therefore have much greater decision-making power in the matter of grandparent contact. It is that difference which justifies treating the parents differently, as well as the children, in cases where one parent has died.

In summary, §2511 treats children who have suffered the death of one parent differently because they have different needs. This difference justifies the state treating the two classes differently, in order to further the end of promoting children's emotional well-being by ensuring the continuation of a grandparent relationship. Furthermore, §2511 is narrowly tailored to meet the state's goal. As thoroughly discussed in the prior section of this opinion, the statue and its interpretation guarantees that the state will be overriding the wishes of a parent only when it has been established that the parent's decision is contrary to the child's best interest, and only after applying to the parent the presumption that a parent's decision is in the child's best interest.

BY THE COURT,

Date: _____ _____

Clinton W. Smith, P.J.

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