Parental Rights v. Best Interest: A War Between Parents and Grandparents

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The U.S. Supreme Court's decision in Troxel v. Granville was a proper validation of the constitutional guarantee of parental rights; individual states need to reevaluate their statutes to ensure the parental rights delineated in the 14th Amendment.

Tommie Granville and Brad Troxel lived together in the state of Washington until 1991. Although never married, at the time of separation they had two daughters, Isabelle and Natalie. After the separation, Brad resumed living with his parents and often had his daughters over for the weekend with their paternal grandparents. In May of 1993, Brad committed suicide. Brad's parents, the Troxels, continued to see Isabelle and Natalie until October of 1993. At this time, Tommie informed the grandparents that she wished to limit the visitation to one visit per month. The Troxels brought a case in court based on a Washington state statute allowing "any person [to] petition the court for visitation rights at any time."¹ They requested visitation two weekends a month and two weeks during the summer. Tommie wanted to allow only one day of visitation per month, with no summer stay. The case finally reached the Washington Supreme Court, who ruled in favor of Tommie, stating that the state statute was unconstitutional. The Troxels brought the case before the U.S. Supreme Court in January of 2000; the court ruled last June. The U.S. Supreme Court upheld the Washington Supreme Court's decision that the statute was
unconstitutional, supporting Tommie in her choices for raising her children.

In Troxel v. Granville, the U.S. Supreme Court relied on the parental rights standard to rule the Washington State statute unconstitutional. The parental rights standard, by which parents are allowed to make decisions regarding their children, is one of two standards used by the Supreme Court in deciding visitation rights. The other standard is the best interest standard, which considers the children’s best interest. These standards can be synonymous or mutually exclusive. When these standards are not in harmony, the best interest standard is preferred only if parents are unfit to raise their children. However, when the parents are fit to raise their children, the best interest standard is unconstitutional. The U.S. Supreme Court’s decision in Troxel v. Granville was a proper validation of the constitutional guarantee of parental rights; therefore, individual states need to reevaluate their statutes to ensure the parental rights delineated in the 14th Amendment.

Best Interest Standard

When courts use the best interest standard, it is usually to go against something the parents have wished because “by the very nature of this ‘best interest of the child’ doctrine, custody decisions are not made from the parents’ perspective but rather the child’s.” This is one of the main arguments against using this standard. Essentially the best interest standard gives the courts, rather than parents, power to make family decisions such as visitation rights.

Courts award visitation rights based on the best interest standard according to three different justifications. The first justification concerns the obligations of the courts to protect the children in its jurisdiction. This obligation is rooted in the state’s parens patriae power designed to help state citizens that need special protection. This group usually includes racial minorities, gender minorities, and minor children. Thus, the state has an obligation to ensure that children in the state are provided for.

A Pennsylvania court utilized the parens patriae power in a concurring opinion for a 1995 case, Rowles v. Rowles. Leading up to the court proceedings, the parents moved in with the children’s grandparents.
Two months after the birth of the second child, the parents moved out, leaving the children behind. They were having marital problems and did not want to subject the children to unneeded contention. A year and a half later the parents divorced. The divorce proceedings involved granting legal guardianship of the two children to their grandparents. But six months later, the mother petitioned for custody of her children. The court questioned the “prima facie presumption that parents have a right to custody of their children as against third parties.” The Pennsylvania court argued that sometimes a biological relationship does not guarantee the best care possible for the child, and the court “should not be restrained solely by [this] presumption.” Unfortunately, this court’s decision does not emphasize the right that only parents, not third parties, have according to the Constitution.

Courts also use the *pars patriae* power to justify awarding custody or visitation to a third party who can better provide for the children. In the Troxel case, the first Washington State court found that the Troxels could “provide opportunities for the children in the areas of cousins and music and the children would be benefited from spending quality time with the [Troxels].” However, the Washington State Supreme Court, and subsequently the U.S. Supreme Court, overruled this lower court. In its ruling, the U.S. Supreme Court states: “The Due Process Clause [in the Constitution] does not permit a State to infringe on the fundamental right of parents to make child-rearing decisions simply because a state judge believes a ‘better’ decision could be made.” In Troxel v. Granville, the Supreme Court pronounced that because someone else can better care for a child, or because someone else can provide differently for a child, is not a good enough reason for taking that child away from his or her parents.

The second way to justify implementing the best interest standard concerns the fitness of the parent. A state may have a right to intervene and award visitation or custody to a third party if the third party can prove that a parent is unfit; however, proving that a parent is unfit is very difficult.

In a 1921 Minnesota case, the state Supreme Court laid out the requirements of proving unfitness. In this case, Ruth Platzer signed an agreement consenting to the adoption of her baby girls by R. W. Beardsley. On May 23, the Beardsleys filed a petition to adopt the
child. Ruth appeared and revoked her consent to the adoption, stating
that she wanted the child back. The Beardsley's arguments to Ruth
were based on two things: the agreement she had signed and their belief
that they could take better care of the child. Based on past state court
precedent, the court dismissed the Beardsley's first argument about the
agreement, stating that the agreement "created no binding obligations
respecting the custody of the child." The court then turned to the
Beardsley's second argument, their claim that they could better care for
the child than the child's mother. In deciding the case, the Minnesota
Supreme Court dispelled assumptions about unfitness:

The ties by which mother and child are bound together should not
be severed except for grave and weighty reasons. . . . The mere fact
that a mother is so destitute or impoverished that she cannot
adequately provide for the needs of her child and that someone else is
willing to take it and give it better educational and material
advantages does not justify the court in transferring its custody.

In a 1925 custody case, the same state court stated: "The natural
parents have the first right to the care and custody of the child. . . . Mere
poverty of the parents is seldom, if ever, a sufficient ground for depriving
them of the natural right of the custody of their child." In both of these
cases, custody of the child was awarded to the natural parents.

The third justification some courts use to support the best interest
standard is the harm done to children when deprived of their relation-
ship with their grandparents or a third party. Psychologists, behavioral
scientists, and legislators argue that children benefit from the inter-
generational relations children have with their grandparents. The
problem with this argument is that "little empirical data is available to
assess the merits of grandparent visitation." Family law practitioner,
David Walther states: "Courts and legislators are making a tenuous leap
of logic in finding court-ordered grandparent visitation is in the best
interest of the grandchildren. . . . We are left with only anecdotal
evidence and presumptions about whether court-ordered grandparent
visitation is in a child's best interests." Because of the lack of studies
to conclusively prove that court-ordered grandparent visitation helps
the relations and emotional well-being of the children involved, the
argument that these relationships are beneficial cannot be used to take rights away from parents.

Despite the lack of studies done on court-ordered grandparent child visitation, the best interest standard can and sometimes should be used when harm to a child is proven. The grandparents must prove that allowing visitation will remedy the harm caused; however, the courts have turned this argument around, assuming from the beginning that visitation is in the best interest of the child. This wrongly leaves the burden of proof on the parents. In her opinion of the Troxel v. Granville case, Justice Sandra Day O’Connor referred to this change. She explained, “In effect, [the Washington Supreme Court] placed on Granville the burden of disproving that visitation would be in her daughters’ best interest and thus failed to provide any protection of her fundamental right.” If courts place the burden of proof on parents, they are disrupting parents’ fundamental rights. Associate Professor of Law Laurence Nolan believes, “The courts have lost sight of the fact that it is the parent who has a right to uninterrupted custody.” It is the grandparents upon whom the burden of proof should lie, not the parents.

As we see from the three justifications previously mentioned, only if the unfitness of parents can be proved should the rights of the parents be overturned and the best interest standard used. In all other cases the court would have a hard time justifying its relevance on the best interest standard. The best interest standard does not have any set qualitative measures by which to judge. It is an unfair balancing test between two parties. Each party gives its reasons for the best interest of the children and the party with the best reasons usually wins. The problem with having a balancing test is judges are forced to rule solely by opinion because there are no guidelines on which to base their ruling. In the Troxel case, the first judge ruled completely differently than the second and subsequent judges. If judges have no qualitative measures in making their decisions, then they are free to make whatever decision they feel would be right. This results in widely differing opinions on the same issues, which only serves to compound the problem. On the other hand, the parental rights standard is not a balancing test that relies solely on a judge. It does have some qualitative and constitutional measures a judge can use in determining visitation.
This leads to less confusion, and serves to help solve the problem, instead of compounding it.

**Parental Rights Standard**

Originally, grandparents and others had no legal basis for requesting visitation. Parents allowed visitation based on a moral obligation, rather than a legal one. Early courts normally did not intervene in this area, believing that if they were to do so, it would just worsen relations between the parents and grandparents. The first case the Supreme Court used in deciding these issues and describing a parental right justification was Meyer v. Nebraska in 1923. In this case, Nebraska had a law forbidding the teaching of foreign languages in school to anyone who had not passed the eighth grade. Meyer was a teacher in a public school who was charged with teaching German to a ten-year-old child. In its ruling, the Court stated that parents had a fundamental right guaranteed by the Constitution to raise their children as they saw fit. The Court held that the state statute not to teach foreign language in the schools was a violation of liberty protected by the 14th Amendment. The 14th Amendment protects the right to "engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children." In many other cases the Supreme Court upholds constitutional rights of parents to raise their children as they see fit.

Another recent example of the parental rights standard taking priority over the best interest standard is the Elián Gonzalez situation of last year. Elián and his mother escaped Cuba without his father knowing. Elián's mother subsequently died en route to the U.S. Elián's father requested his son's return. The extended family in the United States wanted him to stay in the U.S. They argued that he would have a better life here and better chances in the future. The U.S. Justice Department might have used the court precedent in visitation standards to justify their actions in sending him back and upholding his biological father's wishes. Elián's father traveled to the United States and the Justice Department returned Elián to his father in Cuba against his relatives' wishes. Although the child, according to his relatives in the U.S., may have had more opportunities in the United States, the wishes of his father were upheld.
The parental rights standard has a strong constitutional background. When the U.S. Supreme Court decides on any statutes that may violate a constitutional right, in this case parental rights, the court applies the test of strict scrutiny. Strict scrutiny is the highest of three tests the Supreme Court uses in making rulings. If a case is based on rights defined in the Constitution, the strict scrutiny test requires that the state must have a solid reason for taking away that right. In applying this test, the Court must look at the state's justification for overruling the 14th Amendment liberty interest of the parents. If the state's justification is not a compelling state interest, one that the state can prove is required for the well-being of its citizens, then the Court will declare the statute unconstitutional. As shown before, there is only one valid justification for a state to overrule parental rights—when a parent is proven unfit. Indeed, in the Troxel case the Supreme Court states:

So long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.17

However, many states do not currently use this standard in their statutes. Even though this standard has the strongest court backing and constitutional protection, the states still base their statutes on the best interest standard. The current Utah law on visitation is a good example of such a state statute.

The Utah statute lists five reasons why the court may override a parent's decision and allow grandparent visitation: (1) it is in the best interest of the grandchild, (2) the petitioner is a fit and proper person to have rights of visitation with the grandchild, (3) the petitioner has repeatedly attempted to visit the grandchild and has not been allowed to visit the grandchild as a direct result of the actions of the parent or parents, (4) there is no other way for the petitioner to visit the grandchild without court intervention, and (5) the petitioner has rebutted the presumption that the parents' decision to refuse or limit visitation with the grandchild was reasonable.18 After looking at these reasons, we
see that numbers three, four, and five all are dependent on proving number one. As shown before, the grandparents must prove that the visitation is in the best interest of the child. If that cannot be proven, then the only reason for visitation that remains, under the Utah law, is the unfitness of the parents.

The Utah statute does not differ much from other states. If the parental rights standard is the standard with the strongest constitutional backing, why do the states have statutes like Utah's that support the best interest standard? Many legislatures do not seem to fully understand the best interest doctrine. The state legislators are doing what they think and feel is right based on the grandparents' perspective; yet it seems as if the legislatures do not fully understand the legal and constitutional issues involved in disregarding parents' rights to raise their children as they see fit.

Validation for the Supreme Court's Ruling

Which standard is better? Many would argue that the parental rights standard incorporates the best interest standard because parents are going to do what is in the best interest of their children. While this is often true, if a court intervenes to grant visitation to a party whom the parents do not want their child to see, then that court is undermining the parent's power to act in their child's best interest. The requirements of the best interest standard dictate that a petitioner must have been deprived of visitation in one form or another—otherwise they would not be petitioning for visitation. This means that if the court has used the best interest standard to award visitation to grandparents, it must be because the parents did not want their child to visit his or her grandparents. The court, by awarding visitation, is then interpreting the best interest of the children differently than do the parents of the child. Thus, the parental rights standard is in direct conflict with the best interest standard—the two cannot exist at the same time. Parents can act in the best interest of their children; however, when the court deliberates on a case using the best interest standard, it cannot be using the parental rights standard at the same time. The simple fact that the best interest standard is used means the court is going against what parents wish for their children, thereby discarding the parents' rights, and subsequently the standard connected with them. In Troxel v. Granville, however, the
Supreme Court validated the constitutional guarantee of parental rights and upheld the parental rights standard.

The parental rights standard has strong constitutional backing. The best interest standard does not. The courts have specifically found a fundamental right of parents to raise their children. Nowhere has a fundamental right of grandparents to visit their grandchildren been found. This would lend more credibility to the parental rights argument.

Conclusion

Every state has laws regarding visitation rights of third parties with children. How constitutional are these laws? The best interest standard is extremely fluid. It is often wrongly applied and misunderstood. There are no set regulations for applying it. The best interest standard is used when third parties wish to have visitation rights with a child against the wishes of the child’s parents. This negates the fundamental right of parents to raise their child. It is appalling that there are states with unconstitutional statutes regarding visitation. Legislators and politicians should reexamine their state’s statutes, making them constitutional.

The parental rights standard has a stronger constitutional basis and historically has been upheld by the Supreme Court more frequently than the best interest standard. Troxel v. Granville, consistent with the constitutional guarantee, shows that the parental rights standard should be the prevalent standard. Parents have a fundamental, constitutional right to raise their children how they see fit. The only reason that parents could lose that right is due to unfitness or a compelling state interest—one that would withstand the strictest scrutiny of the Supreme Court. The state cannot dictate to the parents how to raise their children, nor allow others to do it for them.

Notes


