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WHO IS A GRANDPARENT?

A Defining Moment in Family Law

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It has been said that “just definitions either prevent or put an end to disputes.” Perhaps this saying exaggerates the point, but it does highlight the importance of understanding the precise meanings of words. In contemporary family law practice, however, many legal definitions are not precise. Instead, they often express the essential nature of terms and concepts, underscoring the dynamic nature of domestic relations law and the need to alter or expand the legal vocabulary in response to modern social reality. The definition of income for support purposes is one example. Family lawyers and family court judges frequently grapple over what constitutes income (much the same way as tax lawyers and accountants). Today, the greatest challenge involving definitions is over the word marriage. What is a marriage? Constitutionally speaking, who should be allowed to marry and who should not? A generation ago, this debate was not on the radar screen of most family lawyers, yet few practitioners doubt that the issue will come before the U.S. Supreme Court within the next few years, if not sooner.

‘Definition Mania’

On the child custody front, “definition mania” is commonly associated with the word parent. In many jurisdictions, parent is not defined in the statutory context. Nevertheless, family lawyers have developed their own lexicon for the word. A partial vocabulary list includes: co-parent, de facto parent; nonbiological parent, parent-like, psychological parent, second parent, and sociological parent.

Family lawyers face similar definitional challenges over the word family. In large measure, this is due to the dramatic demographic changes of the past century, which make it difficult to speak of an “average” American family. In the 1950s, married couples constituted 80% of all households in the United States. By the beginning of the 21st century, they were less than 51%. Married couples with children represent just 25% of all households today. For the first time ever, there are more single-parent households than those with a married couple and children. Put another way, an American household picked at random today is more likely to contain a single person raising children alone than the nuclear family of the 1950s.

Demographic changes are also responsible for the explosion in third-party custody litigation over the past generation. Biological parents no longer are the only parties who battle for child custody. Third parties have joined the fray in significant numbers, achieving standing because they are in loco parentis (ie, they assume the rights and responsibilities of parenthood). These third parties include former domestic partners, step-parents, aunts and uncles, and ex-boyfriends and girlfriends. Sometimes they include neighbors, friends and other nonrelatives.

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Grandparent Custody

In a state like Pennsylvania -- which has an enormous older population -- custody cases involving grandparents and great-grandparents are quite common. One out of every five Pennsylvanians is age 60 or older. Pennsylvania has the third highest percentage of "older" people in the United States, and the fifth largest population. By the year 2020, Pennsylvania's 60-and-older population is expected to represent 25% of the total population -- more than 3 million people. Philadelphia alone is home to the largest percentage of senior citizens among the 10 largest metropolitan areas in the country. Close to 195,000 grandparents in Pennsylvania have minor grandchildren living in their homes and 75,000-80,000 grandparents serve as primary care givers for children whose birth parents cannot raise their children, permanently or temporarily, due to illness, incarceration, substance abuse, poverty, neglect or death. This sociological context explains why so many domestic relations cases hinge on the definition of parent or family.

Peters v. Costello

On Dec. 30, 2005, the Pennsylvania Supreme Court decided such a case in *Peters v. Costello*, 2005 WL 3578115 (Pa. 2005). The issue was whether nonbiological grandparents have standing under Pennsylvania's Grandparent Visitation Act. In a very persuasive opinion, the Pennsylvania Supreme Court held that the nonbiological grandparents did have standing under the applicable state statute, thus affirming a partial custody order awarded in their favor at the trial court level.

The facts of the Peters case are not disputed. Francesca Szypula was born in 1979, and her mother died when she was less than a year old. The Costellos (Daniel and Maryann) began caring for Francesca after the tragic death of her mother. The couple never legally adopted Francesca, but they were responsible for her health, education and welfare, and they took all the steps necessary to provide for her physical and emotional needs. Francesca lived with the Costellos well into her adulthood, and while still residing with them, she gave birth to a child named Felicity in 1997. Francesca and Felicity lived with the Costellos for the first 4 years of Felicity's life, while Felicity's biological father, Teddy Peters, lived elsewhere.

In 2001, the father petitioned for and was awarded primary custody of Felicity, with Francesca receiving weekly supervised visits. In 2002, the Costellos filed an application under Pennsylvania's Grandparent Visitation Act, even though they were not biologically related to Francesca or her daughter. The Costellos characterized themselves as having a de facto grandparental relationship with Felicity. In other words, they regarded Felicity as their own grandchild, notwithstanding the lack of a biological tie.

At the trial, the biological father retained a clinical social worker to perform a custody evaluation, and this expert described the Costellos' relationship to Felicity as that of grandparents. In the expert's opinion, the Costellos should continue to maintain a grandparental relationship with Felicity, notwithstanding the fact that they were not biologically related to her. The biological father testified as well, acknowledging that he had treated the Costellos as Felicity's grandparents from the time of her birth, but arguing that they lacked standing under Pennsylvania's Grandparent Visitation Act because they neither were the biological nor the adoptive grandparents of Felicity.

The Decision

The trial court wrote a compelling opinion in which it found that the Costellos stood in loco parentis to Felicity's mother, and therefore had a common law cause of action to seek custody as an unrelated third party. In this case, however, the Costellos filed their application under the Grandparent Visitation Act, which forced the trial court to consider whether this statute was reserved for biological grandparents only. Because the word grandparent was not defined in the statute, the trial court needed to determine whether the statute was restricted to biological and adoptive grandparents. In determining that the statute was not restricted as such, the trial court held that the Costellos did have standing, and awarded them partial custody of Felicity on the fourth weekend of every month, some holiday time, and 7 days of vacation.

On appeal, the Pennsylvania Supreme Court held that the word grandparent was not restricted to biological and adoptive grandparents to the exclusion of others who may claim grandparental status. The court held that the Costellos in fact assumed the status of de facto grandparents when Francesca gave birth to Felicity while still living at home. To deny the Costellos the right to seek visitation under the Grandparent Visitation Act -- simply because they lacked a biological or formal adoptive connection to Francesca and Felicity -- "would artificially minimize [the Costellos'] actual and substantial relationship to Francesca and Felicity and their actual contributions to their well-being where [the Costellos] have, for more than two decades, assumed the responsibilities attendant upon parenting Francesca and serving as de facto grandparents to Felicity."

In the opinion of the court, the Costellos were not "officious intermeddlers" or mere "prior caretakers," as alleged by the biological father. To the contrary, their role in Felicity's life was "the equivalent of the child's maternal grandparents, and as such, [the Costellos] had standing to file a petition seeking visitation with their grandchild."

Conclusion

The Peters case is an excellent example of how family law definitions are altered and shaped in response to modern social reality. Here, the court could have decided this case in a restricted and technical manner, but chose instead to base its decision on the Costellos' status as nonbiological or de facto grandparents, a fact conceded by the biological father's own expert. The court's analytical framework is both progressive and child-centered. It represents a defining moment in family law.

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