

Chapter 8

RIGHTS OF RELATIVES AND GENERATIONS

The traditional extended family encompasses different generations (such as children, parents, grandparents), and different forms of kinship (such as children, parents, brothers, uncles, aunts, grandparents) and relations that are usually based on affection, love, support, and mutuality. However, relations even in the traditional family structure are not always typified by affection and love, but by exploitation, conflict, and hostility. In cases of a family unit gone awry, different members of the family may present conflicting claims for rights and the resolution of such conflicts may be left to the courts. Sometimes the disputes revolve around the right to keep contact with children, and frequently the children are the primary victims of the intrafamilial conflict. Sometimes the conflicts involve extended family members. This chapter examines cases of conflicts within the family, sometimes as a result of family crisis, and in other cases as the result of unusual circumstances that require creative and innovative solutions.

The traditional “nuclear” or “core” family is based on marriage between a male and a female. Today, although this is still the dominant form it is not the only one; in some countries, it is not even the most frequent or popular. David William Archard suggests a more updated concept that “a family is essentially a stable multigenerational association of adults and children serving the principal function of rearing its youthful members.”¹ The familial relations are still characterized by intimacy, affective closeness, and unconditional love, but it might include more than two generations, more than one habitation, and the parents might comprise less than two genders. The rise of reproductive technology enables us

¹ Archard David William. *Children, Family and the State*. Ashgate, Aldershot, 2003, p. 69.

to distinguish between “natural” and “custodial” parenthood, and made it much easier for same-sex couples to have children.²

Other important trends in the family are: the decline of marriage and the rise in divorce rates; the rise in number of children born to cohabiting couples and the number of dependent children cared for by single parents and by step-parents. David William Archard reveals that “over one-third of all marriage are remarriages, one in five of all dependent children live in lone parent families, and one in four of all women aged between 18 and 49 are cohabiting.”³ So it appears that in most modern Western societies there are a variety of familial forms. However, the new family structures mean that familial relations are more complex and need to be re-examined, as we shall see in the third example of this chapter.

Since children are usually the most vulnerable links in the family chain, the courts are often called upon to regulate or settle conflicting claims of other family members regarding the children. Sometimes the courts rule against the parents’ desires and sometime in favor of them. In any event, “it is a standard principle of child’s welfare law and policy that the ‘best interests’ of a child should be promoted.”⁴ This principle (Best Interest Principle, or BIP) has become a cornerstone of legislation and in decisions of the courts, but in many cases the decision regarding a child’s best interest is a matter of interpretation. The present chapter deals with some disputes and disagreements regarding the question of what is really the child’s best interest, and presents examples to reveal the complexity of the issue.

CASE 1

This case deals with verdicts handed down by American courts allowing grandparents to visit their grandchildren over the parents’ objection, such as *Blakely vs. Blakely* in Illinois. Today, “all 50 states currently have some type of ‘grandparent visitation’ statute through which grandparents and sometimes others (foster parents and stepparents, for example) can ask a court to grant them the legal right to maintain their relationships with loved children.”⁵ Even the US Supreme court decision in *Troxel vs. Granville*, which states that “parents have a fundamental right to make decisions about raising their children,” does not hold that the permissive visitation statute is unconstitutional or that allowing a non-parent to petition for visitation rights would amount to “an assault on the integrity of the family unit”⁶—thus acknowledging, in effect, the visitation rights of grandparents.

² *ibid.*, p. 71.

³ *ibid.*, p. 72.

⁴ *ibid.*, p. 38.

⁵ <http://www.nolo.com/article.cfm/ObjectID/1019223D-59A2-4A25-9B6DA99AD0406A0F/cat-ID/AC0903D2-C845-40E8-850E1DCEDDEA5778/118/246/236/ART/>

⁶ *ibid.*