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Grandparent adoption can leave other set of grandparents out

A recent study from The Pew Charitable Trusts found that 2.9 million children were living with their grandparents. This number is likely to increase as a consequence of the current opioid crisis.

As more parents become unable or unwilling to care for their children, grandparents are increasingly filling this void.

Grandparents also adopt their grandchildren to formalize this practical reality and to eliminate any custody disputes with the parents. But what rights do non-adoptive grandparents have to see their grandchildren? The answer is precious few, as will now be discussed.

In the case of *In re Visitation of K.M.*, 2017 IL App (3d) 150724-U, unpublished and nonprecedential under Supreme Court Rule 23, the maternal grandparents adopted their grandchild. The paternal grandparents had a history of regular contact with the grandchild, and the maternal grandparents assured the paternal grandparents that this contact would continue after the adoption.

Despite the assurances, the maternal grandparents eventually prevented all contact between the grandchild and the paternal grandparents. The paternal grandparents filed a petition for visitation and alleged they had an agreement with the maternal grandparents whereby the maternal grandparents would adopt the grandchild, and the paternal grandparents would not seek to adopt the grandchild, in exchange, the paternal grandparents could continue to have contact with the grandchild after the adoption.

The circuit court dismissed the petition, and the appellate court affirmed.

The appellate court noted that adoption is a statutory proceeding that “creates a nonbiological parent-child relationship through the severance of the biological parents’ legal and natural rights to a child.”

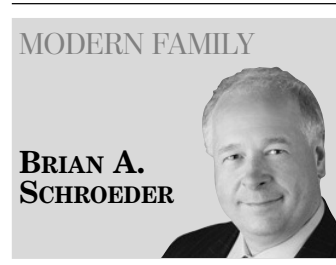
The court stated the severed rights of the biological parents “include the right to visitation,” and the court then stated that severing the rights of the biological parents “allows the adopted child to attain the status of a natural child of the adoptive parents, who are vested with care, custody and control of that child.” (Citing *In re M.M.D.*, 213 Ill.2d 105 (2004).)

The court next stated the adoption resulted in the paternal grandparents being legal strangers to their grandchild, because their rights were derivative of the rights of their son, and the adoption terminated his parental rights. (Citing *In re Adoption of Schumacher*, 120 Ill.App.3d 50, 53 (1983).)

The court stated the biological relation in and of itself does not entitle the nonadoptive grandparents to any visitation rights, and that the maternal grandparents, as the adoptive parents, had the right to deny visitation.

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The court refused to enforce the visitation agreement because of “an Illinois public policy that does not recognize agreements for post-adoption visitation.” The court concluded by stating the visitation agreement alternatively



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was an unenforceable personal services contract.

While *K.M.* is an unpublished decision that is not binding precedent, the fact remains that the paternal grandparents therein do not have any contact with their grandchild and can only hope to be able to resume contact when the grandchild turns 18.

More broadly, the *K.M.* decision analyzes and applies the adoption statute and related case law and it is reasonable to expect other

child is adopted by other grandparents?

The only recourse is to file a petition for grandparent visitation under Section 602.9 of the Marriage and Dissolution of Marriage Act, 750 ILCS 5/602.9.

While as discussed above adoption renders grandparents legal strangers to their grandchildren, the grandparent visitation statute specifically allows for grandparents whose grandchildren have been adopted to file for visitation.

However, it is very difficult for grandparents to obtain visitation because there is a presumption that the visitation decisions of the parents (who would be the adoptive grandparents) do not cause any harm to the child and the petitioning grandparents bear the burden of proving that the denial of visitation will result in harm to the grandchild.

In addition, under Section 602.9(c), the petitioning grandparents must also prove one of the following factual situations exist: (1) one of the parents is dead or has been missing for 90 days; (2) one of the parents is legally incompetent; (3) a parent has been incarcerated for 90 days; or (4) the parents are divorced, have filed for divorce or there is an adoption proceeding pending and at least one parent does not object to visitation.

In conclusion, grandparents can guarantee themselves of visitation rights with their grandchild only by adopting the grandchild.

It is unlikely under the present statutory scheme that nonadoptive grandparents will be able to enforce preadoption agreements for postadoption visitation.

Nonadoptive grandparents only have the limited visitation rights set forth in the marriage act and they bear the burden of proving why visitation should be allowed.