

Supreme Court of Wisconsin

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OF WISCONSIN

IN THE MATTER OF THE GRANDPARENTAL VISITATION A.A.L.:
IN RE THE PATERNITY OF A.A.L.

CACIE M. MICHELS,

Petitioner-Appellant,

v.

Case No. 17-AP-1142

KEATON L. LYONS,

Respondent-Appellant,

JILL R. KELSEY,

Petitioner-Respondent.

Appeal from the Circuit Court for Chippewa County
The Honorable James M. Isaacson, Presiding

BRIEF OF AMICUS CURIAE GRANDPARENTS ADVOCATE OF AMERICA, INC. AND ALIENATED GRANDPARENTS ANONYMOUS, INCORPORATED

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INTRODUCTION

Grandparents Advocate of America, Inc. (“GAA”) and Alienated Grandparents Anonymous, Incorporated (“AGA”) are organizations dedicated to supporting the rights of grandparents. Both organizations believe in the value of a strong connection between grandparents and grandchildren, and advocate on behalf of grandparents to promote—through legislation and otherwise—grandparental visitation. Moreover, the AGA in particular, has a strong focus on supporting research related to relationships between grandparents and grandchildren.

The GAA and AGA submit this brief of Amicus Curiae to provide the Court with an understanding of the importance of the grandparent-grandchild relationship, which is sometimes underappreciated. While the GAA and AGA do not take a position on the facts of this case or the proper “standard of proof required for a grandparent to overcome the presumption that parents’ decisions regarding the scope and extent of their child’s visitation with the grandparent is in the child’s best interest,” they do want to make sure this Court is aware of the potential harm that will occur to grandparents and grandchildren alike if this Court does not uphold Wis. Stat. § 767.43(3) as constitutional.

The importance of intergenerational connections between grandparents and grandchildren is based on academic research. As discussed below not only is this relationship valuable to both grandparents and grandchildren, but it can be harmful to the grandchild if an established relationship is unexpectedly severed. Further, the changing demographics of America make the relationship more important than ever.

STATEMENT OF INTEREST

As detailed above, the GAA and AGA are organizations that work to support and further grandparents' rights. Both groups work to further strong connections between grandparents and grandchildren and educate the public, legislatures, and courts regarding the importance of grandparents in the lives of their grandchildren, and about the importance of the relationship to the grandchildren's well-being.

ARGUMENT

I. THE INTERGENERATIONAL CONNECTION BETWEEN GRANDPARENT AND GRANDCHILD CAN BE VITAL TO BOTH

It is well understood that the connection between grandparent and grandchild is a unique relationship. *Grandparents: The Other Victims of Divorce and Custody Disputes: Hearing Before the Subcomm. on Human Servs. of the Select Comm. on Aging, 97th*

Cong. 18 (1982) [hereinafter *Hearing*] (statement of Max Chesens).¹ Unfortunately, society does not always recognize the importance of that relationship to both grandparent and grandchild. *Id.* at 55 (statement of Dr. Arthur Kornhaber). In particular, there are significant benefits to the happiness of grandchildren and grandparents that come from fostering the emotional attachment between them. *Id.* at 55-56.

Dr. Arthur Kornhaber, who has extensively studied the relationships between grandparents and grandchildren, found that “not only are grandparents and grandchildren important to one another they are indispensable for one another’s emotional well-being.” *Id.* at 56. Further, Dr. Kornhaber’s research has shown that “[t]he grandparent-grandchild bond is second only in emotional importance to the bond between parents and children.” *Id.* The overall consensus is that grandparents and grandchildren have “emotionally close” and “mutually satisfying relationships.” Carol Hosmer Golly, *Pruning the Family Tree: The Plight of Grandparents who are Alienated from Their Grandchildren*, 7(2) INT’L J. AGING AND SOCIETY 21 (2016) [hereinafter Golly].

A long-term relationship between grandchild and grandparent is especially beneficial to the grandchild because the relationship can

¹ <https://files.eric.ed.gov/fulltext/ED236515.pdf>

meet the needs of the developing grandchild. Boaz Kahana & Eva Kahana, *Grandparenthood from the Perspective of the Developing Grandchild*, 3(1) DEV. PSYCHOL. 98, 104 (1970); Eva Kahana & Boaz Kahana, *Theoretical and Research Perspectives on Grandparenthood*, 2 AGING HUM. DEV. 261, 266 (1971) [hereinafter Kahana]. Grandparents can, for example “provide a sense of history and family continuity that encourages a child’s sense of belonging and security.” Jennifer Wilson, *A Family Unfriendly Plan*, ABC NEWS (June 21, 2011).² Indeed, the “love of grandparents is unique, and the life of a child bereft of this love is the poorer for it.” *Id.* For instance, while the very young child may enjoy receiving gifts and indulgences from the grandparent, as the child gets older, the child may enjoy sharing activities with a grandparent. Kahana at 266. As discussed in Part III, the shifting demographics of America may allow more of this extremely beneficial long-term connection between grandchildren and grandparents.

Researchers have recognized that grandchildren who have a close relationship to their grandparents see specific benefits. First, such children grow up with a deeper understanding of, and respect for, older adults. *Hearing* at 57 (statement of Dr. Arthur Kornhaber). Second, because grandmothers and grandfathers often serve similar

² <http://www.abc.net.au/news/2011-06-22/wilsongrandparents/2765218>

roles in a grandchild's life, such children are less sexist. *Id.* Third, and perhaps most importantly, the relationship with a grandparent can provide a "sense of social immunity" or an "emotional sanctuary," "a place to go apart from their parents and the peer group when they have problems." *Id.* In this way, grandparents "may serve as valuable sources of social support for children during times of family stress." Golly at 22. "Continuity of the grandparent-grandchild relationship may provide a vital connection for a child when other family relationships undergo dissolution." *Id.*

Of course, the relationship between the parents and grandparents can affect the relationship between the grandchild and grandparents. Notably, however, there can be a beneficial grandparent-grandchild relationship in spite of a less-than-perfect grandparent-parent relationship. Grandchildren can sometimes "mirror[]" their parents' perception of their grandparents. *Hearing at* 58 (statement of Dr. Arthur Kornhaber). But, "[l]eft alone with their grandparents [the grandchildren] were quite happy, although they were hesitant to report this to their parents." *Id.* Grandchildren can even be used "as pawns by adult children to 'punish' grandparents for perceived wrongs." Golly at 22. Therefore, while the law recognizes the importance of parents' view of what is best for their children, those parents' view of the relationship between their children and the

grandparents may be biased. This is true even if that view is based on what their children tell them about the relationship, as the children may be hesitant to tell their parents they have a good relationship with their grandparents. In sum, the grandparent-grandchild relationship is vital to both, even if a child's parent has a difficult relationship with the child's grandparent.

II. SEVERING THE CONNECTION BETWEEN GRANDPARENT AND GRANDCHILD CAN CAUSE SIGNIFICANT HARM TO THE GRANDCHILD

Relatedly, once a connection between a grandparent and grandchild has been established, severing that vital relationship can cause harm to the grandchild. As detailed below, when children have an established relationship and are “suddenly uprooted,” and have a relationship with a grandparent severed, it is often “unexpected, unexplained, and indefensible.” *Hearing* at 20-21 (statement of Lee Sumpter, founder Grandparents/Children's Rights, Inc.) (Grandparents—Children's Rights, Inc. which “gathers information to share with concerned grandparents and others in the 50 states”). “The children are often confused because they do not understand why they cannot see or talk to their grandparents.” *Id.* at 21. Moreover, they “develop mental and emotional problems because they cannot fight back, and they have no one to defend them.” *Id.*

As detailed above, “[c]lose relationships with grandparents have been shown to be influential factors in the development of beliefs and values of grandchildren.” Jordan Soliz and Jake Harwood, *Shared Family Identity, Age Salience, and Intergroup Contact: Investigation of the Grandparent-Grandchild Relationship*, 73(1) COMM’N MONOGRAPHS 87, 89 (2006).³ Such relationships moreover “provides grandchildren with their first and most frequent contact with older adults.” *Id.* This vital connection causes children with such a relationship to “[be] deeply rooted in the family and the culture, more patriotic, do better in school, . . . [and be] emotionally secure in the knowledge that there are many people who care for them.” *Hearing* at 52 (statement of Dr. Arthur Kornhaber). Moreover, children who maintain this connection “have a role model for the future and do not fear old age.” *Id.* Children who do maintain this vital connection maintain “[c]ontinuity . . . when other family relationships undergo dissolution.” Golly at 22. Given the significance of grandparent-grandchild relationships, severing the relationship can cause emotional trauma for the grandchild.

For example, the AGA has found that grandchildren may suffer from depression, helplessness, confusion, tension, pessimism, guilt,

³ <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1008&context=commstudiespapers>

and ambivalence when alienated from a grandparent. *Feelings of the Alienated Children*, AGA-FL.ORG.⁴ Indeed, leading expert Dr. Glenn Ross Caddy has noted that “[t]he children who suffer this alienation have no context of cohesiveness or normalcy in . . . extended family life.” *This is Abuse*, AGA-FL.ORG.⁵ Moreover, Dr. Caddy has noted that children therefore “suffer profound emotional consequences.” *Id.*

Children who have had these meaningful and close relationships severed “learn not to trust those close to them.” *Id.* In some situations, grandparent alienation is considered to be a form of child abuse. *Id.* These children are also then often “forced into a severely shrunken circle of family to whom they can turn to for support when the inevitable conflicts arise with parents.” Wilson, *supra*.

Moreover, while experts agree that maintaining ties with abusive grandparents is not reasonable, that is often not the case. To the contrary, Dr. Coleman has noted that his clinical experience shows “that most grandparents are denied contact, not because of [any] abusive behavior, but because of a recent or longstanding conflict between the parent and adult child or the adult child’s spouse.” *This*

⁴ http://www.aga-fl.org/feelings_of_the_alienated_children (last visited Oct. 3, 2018)

⁵ http://www.aga-fl.org/this_is_abuse (last visited Oct. 3, 2018)

is *Abuse, supra*. Indeed, the severing of ties is often the result of divorce and family feuding. Golly at 22-23.

While recognizing that this Court must work within the framework of the U.S. Constitution and the precedent of the Supreme Court of the United States, it is proper to consider the motivation of parents who seek to prevent their children from enjoying a relationship with their grandparents. As discussed above, the bond between grandparents and grandchildren is a unique and special one. And once that bond is established, there can be harm to the grandchild when it is broken. While the view of parents must be given special weight, the finder of fact should consider whether the parents' desire to separate grandchildren from grandparents is based on the best interests of the child, or is instead the result of unrelated animosity between the parent and grandparent. Certainly, however, severing ties between grandparents and grandchildren, in particular when a relationship has been established, harms grandchildren.

III. CHANGING DEMOGRAPHICS ARE AFFECTING THE ROLE OF GRANDPARENTS, MAKING THE INTERGENERATIONAL CONNECTION MORE IMPORTANT THAN EVER

Moreover, in light of changing demographics in America, the role of the grandparent is changing. In particular, there are two significant demographic changes that make the grandparent-

grandchild connection more important than ever. First, the rise of the non-traditional nuclear family makes the grandparental connection more valuable. Second, the fact that Americans are living longer allows for a deeper and longer-lasting relationship between grandparents and grandchildren.

The rising rate of divorce and remarriage means that many children are living with a stepparent. *Hearing* at 2 (statement of Mario Biaggi). And nearly nine percent of grandparents with grandchildren under five years old provide “extensive childcare of at least thirty hours per week.” Golly at 22. In 2016 in Wisconsin, 32% of children were living in single-parent families. *Children in Single-Parent Families*, DATACENTER.KIDSCOUNT.ORG.⁶ And another 4% of children were living with neither parent and 2% were living with a grandparent as the primary caregiver. *Children Living with Neither Parent*, DATACENTER.KIDSCOUNT.ORG;⁷ *Children in the Care of Grandparents*, DATACENTER.KIDSCOUNT.ORG.⁸

⁶ <https://datacenter.kidscount.org/data/tables/106-children-in-single-parent-families?loc=51&loct=2#detailed/2/51/false/870,573,869,36,868,867,133,38,35,18/any/429,430> (last visited Oct. 3, 2018)

⁷ <https://datacenter.kidscount.org/data/tables/111-children-living-with-neither-parent?loc=51&loct=2#detailed/2/51/false/870,573,869,36,868,867,133,38,35,18/any/439,440> (last visited Oct. 3, 2018)

⁸ <https://datacenter.kidscount.org/data/tables/108-children-in-the-care-of-grandparents?loc=51&loct=2#detailed/2/51/false/870,573,869,36,868,867,133,38,35,18/any/433,434> (last visited Oct. 3, 2018)

As noted above, one of the benefits to the grandchild of the grandparent-grandchild relationship is the “emotional sanctuary” that a grandparent can provide. This is especially important in situations where a child’s parents are not behaving amicably towards each other. In such situations, a grandchild can look to a grandparent for support and to discuss problems they are having with their parents. As Wisconsin’s opioid crisis continues, more children will need emotional and financial support beyond their parents. *Opioids*, DHS.WISCONSIN.GOV;⁹ *See also Report Reveals that about 1 in 8 Children Lived with at Least One Parent who had a Past Year Substance Use Disorder*, SAMHSA.GOV (Aug. 24, 2017).¹⁰ Grandparents are uniquely qualified to provide such assistance, and do so not just willingly, but with love and passion.

The fact that Americans are living longer means that the grandparent-grandchild relationship may last longer, and be more meaningful, than before. Golly at 21 (“Life expectancy has increased threefold in the past two-hundred years, allowing the possibility of lengthy familial multigenerational connections between children, parents, and grandparents.”) Not only are Americans living longer, but they are remaining active longer. As discussed above, as children

⁹ <https://www.dhs.wisconsin.gov/opioids/index.htm> (last visited Oct. 3, 2018)

¹⁰ <https://www.samhsa.gov/newsroom/press-announcements/201708241000>

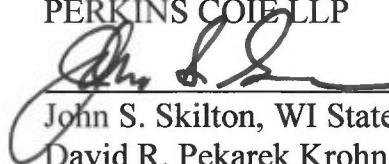
get older, they value sharing experiences with their grandparents over simple indulgences. As one researcher has noted, “[a]s secular changes point to the younger grandparent, the potential of sharing activities in a one-to-one relationship with their grandparent should increase.” Kahana at 266. When they have seen a need, Grandparents have often stepped up, not stepped out, and that additional support has been a great benefit to their grandchildren.

CONCLUSION

As this Court considers this case, both the necessary standard of proof and the particular facts of the relationship between Ms. Kelsey and her granddaughter, the GAA and AGA implore this Court not to forget the unique and special bond between a grandparent and grandchild.

Dated this 5th day of October, 2018.

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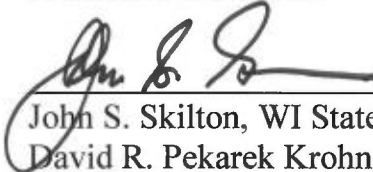
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a non-party brief produced with a proportional serif font. The length of this brief is 2,211 words.

Dated this 5th day of October, 2018.

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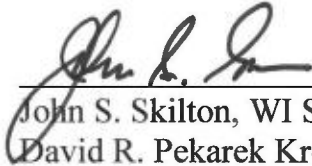
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**CERTIFICATION REGARDING COMPLIANCE
WITH RULE § 809.19 (12)**

I hereby certify that I have submitted an electronic copy of this brief which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that the text of the electronic copy of this brief is identical to the text of the paper copy of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

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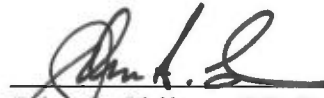
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