

That's grand

Both a recent Supreme Court ruling and government green paper make good reading for grandparents, who give much to their grandchildren but have few rights, says **Frances Kelly**

GRANDPARENTS HAVE been the 'poor relations' for a long time regarding contact with their grandchildren when the children's parents split up. There are many heart-rending stories of children and their grandparents being kept apart as incidental victims in a divorce/separation and both miss out on the love that a special bond can bring.

Currently for a grandparent to apply for an order from the court for contact with their grandchild, they first have to ask for leave of the court to apply, unless the child has lived with them for three years prior to the application. If it is opposed, then their application can fall at the first hurdle; and even if they are granted leave, they can spend a great deal of money and need relentless determination to endure many months (sometimes years) of court proceedings which may or may not be successful.

No presumption

In a recent case in the Supreme Court – *Re B (A Child) (Residence Order)* [2009] UKSC 5 – a maternal grandmother succeeded in reversing the decision of the Court of Appeal to maintain residence of her grandson (now aged 4). The case started in 2006 and the final order was made in the Supreme Court in November 2009.

The facts were that the child had lived continuously since birth with his maternal grandmother. The father had parental responsibility and had regular contact until he was imprisoned. The child was taken by the maternal grandmother to visit his father in prison and contact was resumed upon the father's release. The father married and (supported by the child's mother) applied for a residence order. The justices in the family proceedings court found that the child's needs could be met by both the grandmother and the father.

The father asserted that *Re G (Children)* [2006] UKHL 43, [2006] 2 FLR 629 stated that a child should not be removed from the primary care of a biological parent, but it was distinguished on the basis that this child had never lived with his father. The justices found that there were no compelling reasons to disrupt the continuity of the child's care and a residence order was made in favour of the grandmother.

The father appealed. On appeal the judge referred to *Re G* and the finding that in the ordinary way the rearing of a child by his or her biological parents could be expected to be in a child's best interests and further stated that it was the right of a child to be brought up by a biological parent.

The judge in *Re B* concluded that since the father could meet the child's needs, the justices' decision had been plainly wrong and the father's appeal should be allowed. The Court of Appeal upheld the judge's decision that a residence order should be made in the father's favour on something approaching a presumption that a child should live with a biological parent. The Court of Appeal accepted the judge's conclusion that the justices' decision had been plainly wrong.

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The grandmother petitioned the Supreme Court. In a dispute about residence under section 8 of the Children Act 1989, there is no presumption in favour of a biological parent. The decision as to a child's residence was not decided with regard to a child's rights, but what was in the child's best interests.

When Lord Nicholls had said in *Re G* that the interests of a child would 'in the ordinary way' be best served by being reared by his or her biological parent, he had been reflecting common experience. The central point set out by the House of Lords in *Re G* was that consideration of the importance of parenthood in private law disputes about residence had to be firmly rooted in an examination of the child's best interests, which was the paramount consideration. Parenthood only assumed any significance as a contributor to a child's welfare and had to be carefully examined for its potential along with all other factors.

The Supreme Court found that the justices' original decision had not been plainly wrong. The justices had carefully considered the evidence and weighed up the competing factors involved in the case to determine the child's residence. Since the decision of the justices had not been plainly wrong, the basis upon which the Court of Appeal had upheld the justices' decision fell away.

Fluid families

The recent government green paper consultation on families, published on 20 January 2010, has recognised the role grandparents play in children's lives and amongst other things, it specifically states that it intends to improve the information for grandparents in seeking to maintain their relationships with their grandchildren after parental separation and divorce; and remove the requirement for grandparents to obtain the leave of the court before making an application for a contact order.

The green paper states there are 14 million grandparents in the UK, of whom 1.5 million are aged under 50 and seven million under 65. It goes on to say that 'one in four families has been found to receive some kind of childcare support from grandparents, and almost all families have been found to receive some kind of financial support from them'.

The structure of families in the UK is more fluid today as parents no longer feel pressured into marriage. Same-sex relationships, one-parent families and cohabitants no longer bear the stigma of previous generations and the law is changing to reflect this. For example, from 6 April 2010 the law in respect of surrogacy will extend to include cohabitants and same-sex relationships.

Whatever your views on families today, it seems the role of grandparents is more relevant now than ever. Will there be other decisions similar to *Re B*, or will future grandparents' contributions to their grandchildren's lives be given recognition and not need them to battle for the right to a relationship with their grandchildren?

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