

The U.S. Supreme Court Rules in Grandparent Access Case

In June, 2000, the U.S. Supreme Court in *Troxel v. Granville*, in one of its rare decisions in the Family Law area, reshaped the definition of family by determining who has the power to control possession of minor children. The decision has been hailed as a victory for parents rights and a defeat for grandparents rights. However, the decision should not have a tremendous effect in Texas for reasons hereafter stated.

In *Troxel*, the surviving parent of a child objected, not to the parental grandparents having possession of the grandkids, but to the amount of time of possession. The case, procedurally, affirmed the Washington Supreme Court's overturning of its non-parent possession statute, which was called "breathtakingly broad", by the U.S. Supreme Court. In essence, the U.S. Supreme Court indicated that it disapproves of an extremely broad statute that allows any person-including any person from off the street-from being able to have standing to come into Court and force a parent to show a judge that it is not in the child's best interest for this third party to have possession rights. The U.S. Supreme Court noted that all fifty states have grandparent possession statutes and was unwilling to extend this *Troxel* ruling beyond the, again, "breathtakingly broad" Washington statute.

The Texas Family Code provisions for third party access are narrow, and therefore should not suffer the same sweeping judgment as the Washington statute. Challenges to existing Orders will most likely continue to be on a material change of condition standard with the Court, once it is satisfied that there is standing for the suit to proceed. The Question for the Court to answer: "Is it in the best interest of the child for 'X' to have possession time of the child?" (Where 'X' being the third party, generally a grandparent, but could be another person with whom the child is actually resided for an extended period of time). As in common law marriage cases, look for a two step procedure to develop to more efficiently handle the ramifications of *Troxel*.

For the full text of the *Troxel* decision, please see: <http://supct.law.cornell.edu/supct/html/99-138.ZS.html>