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GRANDPARENTS' VISITATION RIGHTS

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Executive Summary

A recent amendment to Israel's Capacity and Guardianship Law authorizes courts to entertain requests for maintaining contact with grandchildren that are filed by grandparents. The authorization reflects the focus on the best interests of the child and not on the rights of the grandparents to contact with the child. The amendment further emphasizes the preference expressed by the legislature for therapeutic rather than compulsory legal resolution of family conflicts of this nature.

I. Introduction

On July 10, 2012, the Knesset (Israel's Parliament) passed the Capacity and Guardianship Law (Amendment No. 17) 5772-2012 (the 2012 Amendment), which regulates the relationships between minors and their grandparents.¹ The Amendment authorizes courts to hear and make decisions in requests submitted by grandparents regarding contact with their grandchildren. According to the 2012 Amendment, in deciding on such requests the court must consider the best interests of the child.² The 2012 Amendment further provides that requests regarding contact between a minor and his/her grandparents must be submitted to the court by way of a request for conflict resolution and will be forwarded to a special assistance unit at the court. The Amendment authorizes the Minister of Justice to adopt regulations regarding the procedures to be followed for both filing and hearings such requests.³

II. Legislative History

Prior to the passage of the 2012 Amendment, the Capacity and Guardianship Law, 5722-1962, as amended (the Law), already established the "status of relatives," not only grandparents, by authorizing courts to "hear the relatives of the minor, legally incompetent person or ward, whenever the Court thinks fit to do so."⁴

¹ Capacity and Guardianship Law (Amendment No. 17) 5772-2012, http://www.knesset.gov.il/privatelaw/data/18/3/450_3_2.rtf (in Hebrew; last visited July 26, 2012).

² *Id.* § 1.

³ *Id.* § 2.

⁴ Capacity and Guardianship Law, 5722-1962, § 72, 16 LAWS OF THE STATE OF ISRAEL [LSI] 106 (5722-1961/62).

Based on a 1976 amendment to the Law, a special provision titled “the rights of parents of the deceased” was added as section 28a of the Law. This provision authorized a court “to provide instructions” regarding the contact between the parents of a deceased and his minor child.⁵ According to explanatory notes to the bills of both the 1976 and the 2012 Amendments, the provision was added after the 1973 Yom Kippur War to address situations where widows of veterans severed relations with their deceased husbands’ parents and did not allow their children to meet with them.⁶

Some grandparents utilized the permission extended under section 68 of the Law to request the court to order temporary or permanent measures as it sees appropriate to protect the interests of a minor. Such determinations have usually been made by Israeli courts by directing parents and grandparents to resort to the services of special assistance units available in Israeli courts for diagnosis, consultation, and treatment in family matters. In 2007, this practice was incorporated into Regulation 258V1 of the Civil Procedure Regulations, 5744-1984, which regulates the filing of requests for resolution of conflicts between the parents and grandparents of minors.⁷

III. Case Law on Grandparents’ Rights to Contact with Grandchildren

A search for court decisions involving grandparents’ requests for contact rights with their grandchildren has identified various cases where Israeli courts reached decisions based on the Law that applied prior to the passage of the 2012 Amendment.

In a decision rendered in 2008 by the Beer Sheva family court, the court rejected a request by grandparents for an order requiring the parents to allow contact with their minor child based on section 68 of the Law, which authorizes a court to order temporary or permanent measures as it deems appropriate to protect the interests of a minor. The court held that, in the circumstances of that case where the parents, who were jointly raising the child, prevented the child from having contact with the paternal grandparents for reasons of a long-held dispute (the father had severed his relationship with his parents at age seventeen, and served and was recognized by the Israeli Defense Forces as a “lone soldier”), the court would not force visitation rights by the grandparents.

The court held that, although research has shown that a good and nurturing relationship between a minor and grandparents usually contributes to a minor’s development of a sense of emotional safety, in the circumstances of that case any forceful interference by ordering the parents to produce their minor child to the grandparents for visitation may harm the minor’s sense of emotional safety. The court held that

⁵ Capacity and Guardianship Law (Amendment No. 4) 5736-1975, SEFER HAHUKIM [SH] [BOOK OF LAWS (Official Gazette)] No. 790 p. 49 (1976) (translation by author, R.L.)

⁶ Draft Capacity and Guardianship Law Bill (Amendment No. 4) 5735-1975, HATZA’OT HOK [HH] [Bills] 1202 p. 434, explanatory notes; *see also*, Draft Capacity and Guardianship Law Bill (Amendment No. 17) (Concerning Contact Between a Minor and the Parents of His Parents) 5772-2012, HH 450 p. 128, explanatory notes, <http://knesset.gov.il/Laws/Data/BillKnesset/450/450.pdf>.

⁷ Civil Procedure Regulations, 5744-1984, KOVETZ HATAKANOT [KT] [SUBSIDIARY REGULATIONS] 5744, p. 2220.

[a] resolution of the years-long rupture in the relationship between the plaintiffs to the father of the minor child will not be achieved through a contact with the minor and [the court] cannot impose on the meager shoulders of the minor a resolution of this conflict. The parties would better find their way through the receipt of professional advice.⁸

IV. Objectives of the 2012 Amendment

The objective of the 2012 Amendment was to recognize the authority of courts to make decisions (rather than “provide instructions,” as previously provided) regarding contacts between the parents of a deceased parent and his/her child in accordance with the best interests of the child, and to further expand the authority of courts to issue orders regarding such matters to circumstances that do not involve a deceased parent.⁹

Explanatory notes to the 2012 Amendment recognize the significance of an ongoing relationship between minors and their grandparents and the importance of grandparents' involvement in the life of minors, particularly in situations of conflict between the minor's parents. The contact between minors and grandparents, according to the notes, is especially important in light of the increase in life expectancy and the rate of divorce.¹⁰

Proponents of the bill noted that the right of a minor to family contact was guaranteed in the UN Convention on the Rights of the Child,¹¹ which was signed by Israel on July 3, 1990, and ratified on October 3, 1991.¹² Referring to the recently published recommendations of the Israeli Public Committee for Evaluation of the Legal Aspects of the Parental Responsibility in Divorce (the Shnit Committee),¹³ the Bill's proponents suggested that the 2012 Amendment reflected the Committee's recognition of a “deep conceptual change” in focusing on the child's rights towards the parents and the state.¹⁴

⁸ Case No. 004460 (Family Court Beer-Sheva), *Anonymous v. Anonymous* (June 25, 2008), available at NEVO LEGAL DATABASE, <http://www.nevo.co.il> (by subscription) (translation by author, R.L.).

⁹ Draft Capacity and Guardianship Law Bill (Amendment No. 17), p. 128, explanatory notes.

¹⁰ *Id.*

¹¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, <http://treaties.un.org/doc/publication/UNTS/Volume%201577/v1577.pdf>.

¹² For information on dates of acceptance and ratification, see UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited July 30, 2012).

¹³ MINISTRY OF JUSTICE, REPORT OF THE PUBLIC COMMITTEE FOR EVALUATION OF THE LEGAL ASPECTS OF PARENTAL RESPONSIBILITY IN DIVORCE (SHNIT COMMITTEE REPORT), <http://www.justice.gov.il/NR/rdonlyres/5772B626-A9B5-4E1E-B270-41D1BA9195FB/33182/DochSofi.pdf> (in Hebrew; last visited July 30, 2012).

¹⁴ *Background for Establishment of the Shnit Committee*, MINISTRY OF JUSTICE, <http://www.justice.gov.il/MOJHeb/YeutzVehakika/NosimMishpatim/VaadatSnit.htm> (in Hebrew, last visited July 27, 2012).

V. Shnit Committee Recommendations and Impact on Grandparents' Rights

The Shnit Committee was established in order to regulate parental responsibility in accordance with the UN Convention on the Rights of the Child,¹⁵ to which Israel is a signatory. The Committee's recommendations were submitted to the Minister of Justice who forwarded them to the Attorney General for preparation of a draft bill implementing the recommendations.

According to background information on the establishment of the Committee provided by Israel's Ministry of Justice,

[t]he Convention is based on the notion that has developed in the last two decades, according to which children have rights vis-à-vis their parents and the state. Accordingly, the parents are jointly responsible for guaranteeing the best interests of the child as the supreme first consideration, and to realize their child's independent rights that are listed in the Convention. The role of the state under the Convention is to guarantee the realization of children's rights by parents and by society. In this the Convention reflects deep conceptual change that occurred in the moral, social, and legal recognition in the responsibility of the family, the society, and the state for guaranteeing the best interests and the rights of children.¹⁶

Based on the recognition of the independence of the rights of children from those of others, the Committee recommended far-reaching changes in custodial arrangements, which currently favor mothers with regard to children under six years old, and the express recognition of the legal rights of a child to contact with his extended family, including his/her siblings and grandparents.¹⁷

Although the Shnit Committee focused on legal aspects of parental responsibility in cases of divorce, the principles laid down by the Committee are applicable to all other situations where children are prevented from having contact with their parents, according to the explanatory notes of the 2012 Amendment.¹⁸

VI. Concluding Remarks

Drafters of the 2012 Amendment Bill recognized the concerns that had been expressed regarding the possible negative impact that the Amendment might have on the increase in the number of court cases among family members, and in escalating conflicts and creating new ones,¹⁹ and the argument that the "resolution of such complicated issues belongs in the

¹⁵ SHNIT COMMITTEE REPORT, *supra* note 13 (translation by author, R.L.).

¹⁶ *Id.*

¹⁷ *Background for Establishment of the Shnit Committee*, MINISTRY OF JUSTICE, *supra* note 14.

¹⁸ Draft Capacity and Guardianship Law Bill (Amendment No. 17), p. 128, explanatory notes.

¹⁹ *Id.*

therapeutic rather than the legal setting.”²⁰ By providing that any request for contact between a minor and grandparents “should be filed by way of a request for mediation of a conflict and should be transferred to the assistance unit of the court,”²¹ the 2012 Amendment complies with this therapeutic approach to the resolution of family disputes regarding minors’ contacts with grandparents. Time will tell whether the concerns expressed in connection with the 2012 Amendment regarding the possible increase in litigation materialize.

Clearly, contrary to the claim that the 2012 Amendment “makes seeing your grandchild a legal right,”²² the general authorization that the Amendment provides to Israeli courts to entertain grandparents’ requests for contact with their grandchildren does not recognize grandparents’ rights as such to have contact; rather, it merely provides a venue for dispute resolution in such matters based on the best interests of the child.

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²⁰ *Id.*; see also Limor Gal, *New Israeli Law Makes Seeing Your Grandchild a Legal Right*, HAARETZ.COM (July 26, 2012), <http://www.haaretz.com/news/features/new-israeli-law-makes-seeing-your-grandchild-a-legal-right.premium-1.453681>.

²¹ Capacity and Guardianship Law (Amendment No. 17) 5772-2012, inserting § 28b(b) to the Law.

²² See Gal, *supra* note 20.