

ALBUQUERQUE DIVORCE LAWYER BLOG

PUBLISHED BY

COLLINS & COLLINS, P.C.

ATTORNEYS AT LAW

June 7, 2011

Kinship Guardianship and Custody Disputes

While the state of New Mexico considers it in the best interest of children to be raised by their parents, a kinship guardianship can be granted to caregivers if parents are unwilling, or unable to give a child the proper supervision, care and guidance needed. A kinship caregiver can be a family member, or other person, who has formed a bond with the child and who is willing, and able to care for the child.

The Kinship Guardianship Act creates a legal process that temporarily suspends parental rights and essentially transfers these rights and responsibilities to the kinship caregiver. Because of the serious nature of this process, some parents may not agree to the appointment of a kinship guardian. If the parents do not consent, a kinship guardian must prove to the Court that the child has been living with the kinship caregiver for at least 90 days, that the parents are unwilling or unfit to care for the child or that some other extraordinary circumstances exist such that appointment of a kinship guardian is in the child's best interest.

This type of guardianship is not appropriate in child custody disputes between parents. A New Mexico Court of Appeals case further clarified the role of the Kinship Guardianship Act ("the Act") with respect to parental rights in *Freedom C. v. Julie Ann D., et al.* In that case, the father of the child appealed the district court's decision to grant the child's grandparents kinship guardianship. While the child's mother had agreed to the guardianship, he claimed that he never gave his consent, and that he was very much involved in the life of his child.

He also claimed that the 90-day residency provision of the Act was not met because the child still resided with the mother, as well as with the grandparents. The Act applies when the child is living away from both parents. The father argued that the mother and grandparents were using the Act to create an environment that allowed the mother to more successfully fulfill her parental role, while depriving the father of custody and parental rights.

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The Appeals Court agreed with the father and found that the Act requires that both parents consent to the appointment of a kinship guardian, or be given a meaningful opportunity to do so. Further, the Court stated that kinship guardianship could not be used to allow one parent to unfairly exclude the other parent from the child's life, particularly where one parent still resides in the home with the child.

Custody disputes can be difficult. The Kinship Guardianship Act is not appropriate for the resolution of contested child custody. It is particularly unsuitable in situations where one parent is still residing with the child, or where one parent is attempting to limit the rights of the other parent.

If you are facing a difficult child custody situation, contact an experienced [family law attorney](#) to discuss your options. Applying the proper legal remedies can save both time and money, while protecting the best interest of the child.

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