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Third Party Child Custody in New Mexico

In the recent case of *Vescio v. Wolf*, the New Mexico Court of Appeals discussed the issue of third-party child custody, which refers to a situation in which a person other than a child's mother or father seeks custody of that child. In *Vescio*, a child's aunt filed a petition for custody and timesharing against the child's mother and grandmother, who had been appointed the kinship guardian of the child (the child's father was not involved with the child's life or this case).

The aunt initially based her petition on alleged abuse of the child by the mother and grandmother, however, the New Mexico Children Youth and Families Department (CYFD) found the allegations of abuse to be unsubstantiated. The district court dismissed the aunt's petition because she lacked standing to seek custody under the regular child custody statutes.

In the *Vescio* opinion, the Court of Appeals listed five primary situations in which a third-party may be awarded child custody in New Mexico: 1) when extraordinary circumstances exist and there is no other adequate remedy available; 2) during an action for dissolution of marriage; 3) when a parent or guardian for the child dies, the court can award custody to a third-party under the Probate Code; 4) when there has been a finding of abuse and neglect by CYFD; and 5) when a third-party files a petition for custody under the Kinship Guardianship Act.

The Court of Appeals upheld the dismissal of the aunt's petition because it did not properly fall within any of the situations listed above. However, the Court ruled that the aunt would have standing to file a motion to revoke the grandmother's guardianship under the Kinship Guardianship Act.

If you are a third-party thinking about seeking custody of a child, this case illustrates that importance of consulting with an attorney in order to ensure that you use the proper body of law as a basis for your claim.

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