

Transformative term Landmark Court of Appeals decisions reflect state of modern families, attorneys say

By STEVE LASH
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Maryland's top court got with the times during its 2015-2016 term, said family-law attorneys.

The Court of Appeals ruled this session, which ends Aug. 31, that an unrelated adult can be so involved in a child's life that he or she has a claim for custody and visitation as a "de facto parent." The high court also held that ex-spouses who cannot share a civil word should still be awarded joint custody of their children, provided each has tie-breaking authority on specific childcare and raising decisions.

These two rulings signify the high court's recognition that family law no longer fits in the convenient "Leave it to Beaver" fantasy world of households led by two biological or adoptive parents and of divorced couples peacefully sharing custody of their children, said attorney Ferrer R. Stillman.

"This year the Court of Appeals was on par with society in a way that courts usually aren't," added Stillman, a partner at Tydings & Rosenberg LLP in Baltimore. "Courts are usually behind societal and technological changes. This year, the Court of Appeals seems to be on top of all that."

Stillman pointed specifically to the court's de facto parenting decision, in which the judges permitted a transgender man to pursue his claims for custody or visitation of the child he shared — but never adopted — with the boy's biological mother, the man's ex-spouse. The high court ruled that "a legal parent does not have a right to voluntarily cultivate their child's parental-type relationship with a third party and then seek to extinguish it."

The court rendered its decision in *Mi-*

chelle L. Conover v. Brittany D. Conover, No. 79, September Term 2015.

In *Conover*, "the court is recognizing and affirming that many children are born in non-traditional families," Stillman said. "Those children deserve their best interest put forward just as much as [in] traditional families," she added. "*Conover* absolutely does that."

Such instances of grandparents becoming "the outlaws instead of the in-laws" have been approved by U.S. Supreme Court and other Maryland Court of Appeals decisions holding that parents have the right to deny visitation to whom they choose, except in extraordinary circumstances, said Greenblatt, a principal at Joseph, Greenwald & Laake P.A. in Rockville.

But the *Conover* decision now says that visitation, once permitted by the parents, cannot be taken away "with the wave of a hand" if a strong loving bond is formed between the visitor and the child, he added.

Conover can help grandparents "who have had incredibly close relationships with their grandchildren," he said. The decision might end the days when these grandparents "could be tossed out with the dishwasher," he added.

Issue by issue

With regard to warring parents, the Court of Appeals held that awards of joint legal custody remain possible so long as one parent has the tiebreaking authority when they inevitably and intractably disagree on such issues as medical care and education.

The tiebreakers need not rest solely with one parent but can be divided by the court on an issue-by-issue basis, such as by letting one parent have final say on medical care and the other on schooling, but only after they try to reach an agreement.

"We require that the tie-breaker parent cannot make the final call until after weighing in good faith the ideas the other parent has expressed regarding their children," the court said. "Such an award has the salutary effect of empowering both parents to participate in significant matters affecting their children. Because this arrangement requires both parties to attempt to make decisions together, it is a form of joint custody."

The case is *Adam Santo v. Grace Santo*, No. 59, September Term 2015.

The court's *Santo* decision represents "the law itself trying to reflect what the lawyers have been experiencing as a reality," Howanski said.

She added she has had many family-law cases in which the parents did not



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Help for grandparents

Attorney Kristine K. Howanski said

the court's affirmation of de facto parents "was a long time coming."

The decision "comports with the reality of a lot of children" who identify a "third-party" adult as providing the parental guidance, said Howanski, who chairs the Maryland State Bar Association's Family and Juvenile Law Section.

"Many times, de facto parents fit the bill better than biological parents," added Howanski, of Howanski, Meadows & Erdman LLC in Towson. "It's a very good de-



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communicate or where one parent marginalized the other by refusing to consult on matters concerning their children.

Tiebreaking authority gives the marginalized parent "some degree of power" by ensuring he or she has the final say on some matters, Howanski said.

The *Santo* ruling affirms that giving each parent tiebreaking authority "may be appropriate even in situations where parties do not communicate as well," she added. "That has been the shift."

Greenblatt hailed *Santo* for ensuring

that each decision regarding the child's welfare ultimately remains with the parents, even if it must come down to a tiebreaker between them cause they cannot communicate.

He said he is familiar with family-law cases in which a health care decision had to be ceded to a third party because the parents were always at an impasse.

"It [*Santo*] keeps the decisions within the family," Greenblatt said. "Nobody knows these kids better than their parents. It [the tiebreaker] unblocks the decision-making path."



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MARYLAND COURT OF APPEALS