

2010 Edition

# Grandparents' Rights in Connecticut

*A Guide to Resources in the Law Library*

- **GRANDPARENTS:** “We know . . . that [CONN. GEN. STATS.]§ 46b-59, as initially enacted . . . permitted only grandparents to petition for visitation. *Castagno v. Wholean*, supra, 239 Conn. [336, ]347-48 [684 A.2d 1181 (1996)].
- **ANY PERSON:** “In 1983, however, § 46b-59 was amended to its current form to allow ‘any person’ to petition for visitation, like the Washington statute at issue in *Troxel*. [*Troxel v. Granville*, 530 U.S. 57] See Public Acts 1983, No. 83-95. We view the 1983 amendment that extended standing to any third person as a reflection of the legislature’s recognition that persons other than parents may have substantial relationships with children that warrant preservation.” [Roth v. Weston](#), 259 Conn. 202, 219-220 (2002).
- “In an ideal world, parents might always seek to cultivate the bonds between grandparents and their grandchildren. Needless to say, however, our world is far from perfect, and in it the decision whether such an intergenerational relationship would be beneficial in any specific case is for the parent to make in the first instance. And, if a fit parent’s decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent’s own determination.” (p. 2062) [Troxel v. Granville](#), 530 U.S. 57, 120 S.Ct. 2054, 2062, 147 L.Ed. 2d 49 (2000).
- **THIRD PARTY:** “When construing similarly broad language concerning third party visitation in *Roth*, [[Roth v. Weston](#), 259 Conn. 202, 789 A.2d 431 (2002)] we noted that the 1983 amendment to the visitation statute extending standing to ‘any person’; Public Acts 1983, No. 83-95; reflected ‘the legislature’s recognition that persons other than parents may have substantial relationships with children that warrant preservation.’ *Roth v. Weston*, supra, 259 Conn. 220. We also recognized that, ‘in many households, grandparents, as well as people who have no biological relationship with a child, undertake duties of a parental nature and that states have sought to ensure the welfare of children by protecting those relationships. Some states have done this expressly . . . while others have done so by judicial gloss. . . .’ [Fish v. Fish](#), 285 Conn. 24, 43 (2008). (emphasis added)
- **PARENT vs. THIRD PARTY:** “Where the dispute is between a fit parent and a private third party [such as a grandparent], however, both parties do not begin on equal footing in respect to rights to ‘care, custody, and control’ of the children. The parent is asserting a fundamental constitutional right. The third party is not. A private third party has no fundamental constitutional right to raise the children of others. Generally, absent a constitutional statute, the non-governmental third party has no rights, constitutional or otherwise, to raise someone else’s child.” [McDermott v. Dougherty](#), 385 Md. 320, 353, 869 A.2d 751 (2005) cited in [Fish v. Fish](#), 285 Conn. 24, 45-46 (2008).

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## See Also

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- [Child Custody Actions in Connecticut](#)
- [Child Visitation in Connecticut](#)

*For Child Abuse and Neglect and Termination of Parental Rights matters, see the following research guides:*

- [Termination of Parental Rights in Connecticut](#)
- [Child Abuse and Neglect in Connecticut](#)
- [Child Protection](#)

**These guides are provided with the understanding that they represent only a beginning to research.**

View our other pathfinders at <http://www.jud.ct.gov/lawlib/selfguides.htm#Pathfinders>.

**The links to Connecticut cases in this guide are to advance release slip opinions and are for informational purposes only.**

# Section 1: Visitation with Grandchildren

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the rights of grandparents to visitation with their grandchildren in family matters.
- CURRENCY:**
- 2010 Edition
- SEE ALSO:**
- [Child Visitation Actions in Connecticut](#)  
§ 2. Third party custody actions
  - [Child Custody Actions in Connecticut](#)  
§ 2. Third party custody actions
  - [Best Interest of the Child Standard in Connecticut](#)
- DEFINITIONS:**
- **CUSTODY vs. VISITATION PETITION:** “In summary, we conclude that third party custody petitions challenge the liberty interest of a parent in a way that is fundamentally different from visitation petitions . . . .” [Fish v. Fish](#), 285 Conn. 24, 55-56 (2008).
  - **RIGHT TO VISITATION:** “The Superior Court may grant the right of visitation with respect to any minor child or children to any person, upon an application of such person. Such order shall be according to the court’s best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable, provided the grant of such visitation rights shall not be contingent upon any order of financial support by the court.” CONN. GEN. STATS. § 46b-59 (2009).
  - **BEST INTEREST OF THE CHILD:** “In making, modifying or terminating such an order, the court shall be guided by the best interest of the child, giving consideration to the wishes of such child if he is of sufficient age and capable of forming an intelligent opinion. Visitation rights granted in accordance with this section shall not be deemed to have created parental rights in the person or persons to whom such visitation rights are granted. The grant of such visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon the custody of such child, the parental rights with respect to such child or the adoption of such child and any such court may include in its decree an order terminating such visitation rights.” *Ibid.*
  - **CONSTITUTIONAL RIGHTS:** “we concluded in *Roth* that Connecticut's third party visitation statute, without a judicial gloss, was unconstitutional and interfered with the fundamental right of parents to raise and care for their children because it was too broadly written and provided no standard to guide the court in making a visitation decision, other than the best interests of the child. *Roth v. Weston*, supra, 259 Conn. 222-23.” [Fish v. Fish](#), 285 Conn. 24, 46 (2008).
  - **PARENT-LIKE RELATIONSHIP:** “any third party, including a grandparent or a great-grandparent, seeking visitation must allege and

establish a parent-like relationship as a jurisdictional threshold in order both to pass constitutional muster and to be consistent with the legislative intent.” [Roth v. Weston](#), 202, 221-222, 789 A.2d 431 (2002).

- **HARM:** “The harm alleged in a **visitation petition** results from the child's lack of access to the petitioner rather than from the parent-child relationship, which is deemed to be beneficial . . . . In contrast, the harm alleged in a **third party custody petition** arises from the fundamental nature of the parent-child relationship, which may be emotionally, psychologically or physically damaging to the child. Consequently, in light of the fact that a third party custody petition directly challenges the overall competence of the parent to care for the child, the standard employed to protect the liberty interest of the parent must be more flexible and responsive to the child's welfare than the standard applied in visitation cases, in which the underlying parent-child relationship is not contested.” [Fish v. Fish](#), 285 Conn. 24, 47-48 (2008) (emphasis added).

### STATUTES:

CONN. GEN. STAT. (2009)

- [§ 46b-56](#). Orders re custody, care, education, visitation and support of children
- [§ 46b-56b](#). Presumption re best interest of child to be in custody of parent
- [§ 46b-59](#). Court may grant right of visitation to any person.

### LEGISLATIVE:

- Soncia Coleman, [GRANDPARENTS' RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2009-R-0439 (Dec. 30, 2009).  
*“You asked several questions regarding grandparents' rights to petition the court for visitation with their grandchildren.”*
- Susan Price, [GRANDPARENTS' RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2006-R-0383 (Sept. 18, 2006).  
*“You asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren.”*
- Susan Price, [GRANDPARENTS' RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2005-R-0832 (Nov. 9, 2005).  
*“You asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren.”*
- Saul Spigel, [GRANDPARENTS' CUSTODY OF GRANDCHILDREN](#), Connecticut General Assembly, Office of Legislative Research Report No. 2003-R-0596 (Sept. 22, 2003).  
*“You asked for an explanation of (1) Connecticut law on grandparents' custody of, and visitation with, their grandchildren and (2) “de facto” custody laws in other states.”*

### COURT RULES:

CONNECTICUT PRACTICE BOOK (2010)

#### [Chapter 25: Superior Court - Procedure in Family Matters](#)

- § 25-3 Action for Custody of Minor Child
- § 25-4 Action for Visitation of Minor Child
- § 25-5 Automatic Orders Upon Service of Complaint
- § 25-57 Affidavit Concerning Children
- § 25-59 Closed Hearings and Records
- § 25-62 Appointment of Guardian Ad Litem

### FORMS:

#### [Official Forms](#)

- JD-CL-12 Appearance
- JD-FM-75 Application for Waiver of Fees
- **JD-FM-161 Custody / Visitation Application**
- JD-FM-162 Order to Attend Hearing and Notice to the Defendant

- JD-FM-158 Notice of Automatic Orders
- JD-FM-164 Affidavit Concerning Children
- JD-FM-164A Addendum to Affidavit Concerning Children
- JD-FM-6 Financial Affidavit
- JD FM-183 Custody/Visitation Agreement

**CASES:**

- [Carrier v. King](#), 105 Conn. App. 391 (2008). “In *Roth*, our Supreme Court stated that the issue was not whether a child should have the benefit of relationships with persons other than their parents, but whether there was sufficient reason for the state to interfere with the constitutional right of parents to raise their children free from state interference. [Roth v. Weston](#), supra, 223. The Supreme Court held that “[t]he petition [for visitation] must ... contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. . . . [T]he petitioner must prove these allegations by **clear and convincing evidence**. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation.” (emphasis added)
- [Fish v. Fish](#), 285 Conn. 24, 44 (2008). “The relevant statutes concerning visitation and custody are overly broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. For this reason, as in the case of visitation, a literal application of the custody statutes could place them in ‘constitutional jeopardy.’ *Castagno v. Wholean*, supra, 239 Conn. 345. Accordingly, we conclude that, to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in *Roth* to third party custody awards and to third parties seeking intervention in existing custody proceedings.”
- [Fennelly v. Norton](#), 103 Conn. App. 125 (2007). “The plaintiffs’ application for visitation contained not a single specific allegation of either the requisite relationship or harm. The mere act of checking a box on the application for visitation form that provides that “[t]he applicant has/had a relationship with the child(ren) that is similar in nature to a parent-child relationship and denial of visitation would cause real and significant harm to the child(ren)” does not suffice for the specific, good faith allegations required by *Roth*. The plaintiffs did not attach an affidavit to their application for visitation...It therefore was incumbent on the plaintiffs to state, in their application for visitation, the facts that supported the conclusion that they possessed a relationship with the children that is similar in nature to a parent-child relationship and that denial of the visitation would cause real and significant harm to the children. Without such factual specificity, subjecting a fit parent to unwanted litigation is unwarranted.”
- [Denardo v. Bergamo](#), 272 Conn. 500, 514 (2005). “Our conclusion that *Roth* applies retrospectively leads to the further conclusion that the trial court was compelled to grant the defendant’s motion to terminate visitation. The plaintiffs failed to allege or attempt to prove that their relationship with the child was similar to a parent-child relationship and that denial of visitation would cause real and significant harm to the child. Without those specific, good faith allegations or such proof, either at the time of the filing of their petition or at the time of the hearing on the defendant’s motion, the trial court’s prior order of visitation was rendered without subject matter jurisdiction.”
- [Roth v. Weston](#), 259 Conn. 202, 221, 789 A.2d 431(2002). “Therefore, we acknowledge that a person other than a blood relation may have established a more significant connection with a child than the one established with a grandparent or some other relative. Conversely, we recognize that being a

**CASES (Continued):**

blood relation of a child does not always translate into that relative having significant emotional ties with that child. Indeed, as § 46b-59 implicitly recognizes, it is not necessarily the biological aspect of the relationship that provides the basis for a legally cognizable interest. Rather, it is the nature of the relationship that determines standing.”

- [Clements v. Jones](#), 71 Conn. App. 688, 696, 803 A. 2d 378 (2002) "We conclude in the present case, as the Supreme Court did in *Roth*, that there is an 'absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the [plaintiff] and the defendant's minor [child] as well as the harm that the [child] might suffer were visitation denied..."
- [Roth v. Weston](#), 259 Conn. 202, 205, 789 A. 2d 431 (2002). “We conclude that the statute is unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation.”  
“...interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm.” (229)
- [Crockett v. Pastore](#), 259 Conn. 240, 250, 789 A.2d 453 (2002). *Maternal grandmother’s petition for visitation; defendant father has sole custody; defendant father and child’s mother were never married and mother’s parental rights were terminated.* “Because the plaintiff failed to meet the requirements under § 46b-59 that she allege and prove that she has a parent-like relationship with the child and that the trial court’s failure to grant visitation with her would cause the child to suffer serious, real and significant harm, we conclude that the trial court did not have jurisdiction over the plaintiff’s petition for visitation.”
- [Greene v. Thornton](#), No. FA03 0069920 (Conn. Super. Ct., Putnam, Jan. 13, 2004), 2004 Conn. Super. Lexis 117. “Therefore, in *Roth*, we brought these principles to bear, applying a judicial gloss to § 46b-59. We concluded that a trial court is without jurisdiction to consider a petition for visitation pursuant to that statute in the absence of specific, good faith allegations that: (1) the petitioner was someone with whom the child had a parent-like relationship; and (2) the child would suffer real and significant harm if deprived of the visitation. *Id.* Specifically, the degree of harm must be "analogous to the kind of harm contemplated by [General Statutes] §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.*Id.*”
- [Pivnick v. Lasky](#), 34 Conn. L. Rptr. 426 (Conn. Super., Hartford, Mar. 24, 2003). “The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties against the wishes of a fit custodial parent.”
- [Foster v. Foster](#), 33 Conn. L. Rptr. 24 (Conn. Super., New London, Aug. 19, 2002), 2002 Conn. Super. Lexis 2791, *aff’d in part and rev’d in part by Foster v. Foster*, 84 Conn. App. 311 (2004). “The court concurs ... that the constitutional protection afforded by *Roth v. Weston* to a parent-child relationship applies equally to custody actions under General Statutes §§ 46b-56 and 46b-57... What the plaintiff fails to point out in the present case is that the underpinning of both *Roth v. Weston* and ... *Troxel v. Granville*, 530 U.S. 57 (2000), was the presumption of parental fitness...”
- [In Re Kristy L. v. Ragaglia](#), 47 Conn. Supp. 273, 284, 787 A.2d 679 (2001). “So, even though courts have been more cognizant of the ever changing

**CASES (Continued):**

family unit, [it] is imperative for this court to place strong emphasis on the fact that the parental rights of the petitioner's have been terminated and to find the grandparents no longer possess a legally protected right and, therefore, they lack standing to bring a habeas corpus action."

"... the grandparents' rights are derivative of the parent's rights, and when the parent's rights are terminated, the grandparents no longer have a legally protected interest." (286)

- Castagno v. Wholean, 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled* by Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002). "... the legislature intended §46b-59 to afford the trial court jurisdiction to entertain a petition for visitation only when the minor child's family life has been disrupted in a manner analogous to the situations addressed by §§ 46b-56 and 46b-57... Although the death of a parent or the de facto separation of the parents may allow an action, there may be other times when an action is also warranted..."

**WEST KEY NUMBERS:**

- CHILD CUSTODY #175. Visitation in general
- CHILD CUSTODY #182. Person entitled in general
- CHILD CUSTODY # 183. Custody of siblings

**TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS (2000).
  - § 42.11. Custody claims by third parties
  - § 42.45. Visitation—With third parties
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2006).
  - Chapter 11. Disputes Between Parents and Third Parties
    - § 11.01. Introduction
    - § 11.02. The constitutional basis of parental rights
    - § 11.03. The parental preference standard
    - § 11.04. Determination of parental fitness: Factors to be considered
    - § 11.05. The best interests standard
    - § 11.06. Standing
    - § 11.07. Role of expert witness
    - § 11.08. Bibliography
- 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1983, 2004 supp.)
  - Chapter 10 (1993). Third Party Custody and Visitation
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (Rev. 2d ed., 2005).
  - § 2:19. Preference of natural parent(s) over others; Generally—preference of natural parent(s) over grandparent(s)
  - § 2:20. Preference of the natural parent(s) over others; Generally—Preference of natural parent(s) over adult siblings or other relative
  - § 3:5. Visitation rights; Generally—Grandparents, generally
  - § 3:6. Visitation rights; Generally—Natural grandparents of adopted grandchildren
  - § 3:7. Visitation rights; Generally—Siblings and other family members
  - § 3:8. Other third parties

**ENCYCLOPEDIAS:**

- 67A C.J.S. Parent and Child (2002)
  - § 54. Access or Visitation – Persons Other Than Parent
  - § 134. Visitation—Rights of Persons Other Than Parent
- Alice Wright Cain, Annotation, *Right To Credit Against Child Support Arrearages For Time Children Spent In Custody Of Noncustodial Parent*

- Pursuant To Visitation Or Court Order, 118 ALR5th 385 (2004).
- George L. Blum, Annotation, *Grandparents' Visitation Rights Where Child's Parents are Living*, 71 ALR5th 99 (1999).
- Annotation, *Grandparent Visitation Rights*, 90 ALR3d 222 (1979)
- Carol A. Crocca, Annotation, *Continuity of Residence as Factor in Contest Between Parent and Nonparent for Custody of Child Who has been Residing with Nonparent—Modern Status*, 15 ALR5th 692 (1993).
- *Grandparent Visitation and Custody Awards*, 69 POF3d 281 (2002).
  - I. Background
  - II. Elements of proof
  - III. Proof of grandparent visitation award
  - IV. Proof of grandparent custody award

**LAW REVIEWS:**

- Sonya C. Garza, [\*The Troxel Aftermath: A Proposed Solution for State Courts and Legislatures\*](#), 69 Louisiana Law Review 927 (2009).
- Lindsay J. Rohlf, [\*The Psychological-Parent and De Facto-Parent Doctrines: How Should the Uniform Parentage Act Define "Parent"?\*](#), 94 Iowa Law Review 691 (2009).
- Lauren F. Cowan, [\*There's No Place Like Home: Why the Harm Standard in Grandparent Visitation Disputes Is In The Child's Best Interests\*](#), 75 Fordham Law Review 3137 (2006).
- John R. Logan, *Connecticut's Visitation Statute After 'Troxel v. Granville,'* CONN. LAWYER (Nov. 2000, at 4).
- Koreen Labrecque, Note, *Grandparent Visitation After Stepparent Adoption*, 6 CONN. PROB. L. J. 61 (1991).
- Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Court's Reluctance to Declare Grandparent Visitation Statutes Unconstitutional* (Troxel v. Granville and its Implications for Families and Practice: A Multidisciplinary Symposium), 41 FAM. CT. REV. 14 (2003).
- Laurence C. Nolan, *Beyond Troxel: the Pragmatic Challenges of Grandparent Visitation Continue*, 50 DRAKE L. REV. 267 (2002).
- Linda Quinton Burr, *Selecting and Questioning Expert Witnesses When Grandparents Want the Kids*, in 2001 FAMILY LAW UPDATE, ch. 6 (2001).
- David G. Savage, *Parents First: Supreme Court Warns Judges to be Cautious When Granting Visitation Rights to Grandparents*, 86 ABA J., August 2000, at 38.
- Beatrice Yorker, et seq., *Custodial Relationships of Grandparents Raising Grandchildren: Results of a Home-based Intervention Study*, 49 Juv. & Fam. Ct. J., no. 2 (Spring 1998), p. 15.
- J.C. Bohl, *Brave New Statutes: Grandparent Visitation Statutes as Unconstitutional Invasions of Family Life and Invalid Exercises of State Power*, 3 Geo. Mason U. Civil Rights L. J. 271 (1993).

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**Table 1: Troxel vs. Granville**

<h1 style="margin: 0;">Troxel v. Granville</h1> <h2 style="margin: 0;">530 U.S. 57</h2>	
EXCERPTS FROM TEXT OF THE OPINION	
<a href="#">Page 65</a>	<p>“The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.”</p>
<a href="#">Pages 68-69</a>	<p>“Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.”</p>
<a href="#">Pages 72-73</a>	<p>“Considered together with the Superior Court's reasons for awarding visitation to the Troxels, the combination of these factors demonstrates that the visitation order in this case was an <i>unconstitutional infringement on Granville's fundamental right to make decisions concerning the care, custody, and control of her two daughters</i>. The Washington Superior Court failed to accord the determination of Granville, a fit custodial parent, any material weight. In fact, the Superior Court made only two formal findings in support of its visitation order. First, the Troxels "are part of a large, central, loving family, all located in this area, and the [Troxels] can provide opportunities for the children in the areas of cousins and music." App. 70a. Second, "[t]he children would be benefitted from spending quality time with the [Troxels], provided that that time is balanced with time with the childrens' [sic] nuclear family." Ibid. These slender findings, in combination with the court's announced presumption in favor of grandparent visitation and its failure to accord significant weight to Granville's already having offered meaningful visitation to the Troxels, show that this case involves nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests. The Superior Court's announced reason for ordering one week of visitation in the summer demonstrates our conclusion well: ‘I look back on some personal experiences . . . We always spen[t] as kids a week with one set of grandparents and another set of grandparents, [and] it happened to work out in our family that [it] turned out to be an enjoyable experience. Maybe that can, in this family, if that is how it works out.’ Verbatim Report 220-221. As we have explained, <i>the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made. Neither the Washington nonparental visitation statute generally — which places no limits on either the persons who may petition for visitation or the circumstances in which such a petition may be granted — nor the Superior Court in this specific case required anything more. Accordingly, we hold that § 26.10.160(3), as applied in this case, is unconstitutional.</i>” [Emphasis added]</p>
Connecticut General Assembly OLR Research Report	
	<p>Sandra Norman-Eady, Senior Attorney, Office of Legislative Research Report No. 2000-R-0644 (June 27, 2000). <a href="#">Grandparent Rights</a>.                      “You wanted a summary of the recent U.S. Supreme Court decision in <i>Troxel v. Granville</i> on grandparents’ rights. You also wanted to know if any bills were introduced during the 2000 legislative session regarding such rights.”</p>

**Table 2: Roth v. Weston**

<h1 style="margin: 0;">Roth vs. Weston</h1> <p style="margin: 0;"><b>259 Conn. 202, 789 A.2d 431 (2002)</b></p>	
pp. 209-210	<p>The dispositive issue on appeal is whether, in light of the United States Supreme Court decision in <i>Troxel</i>, § 46b-59, as interpreted by this court in <i>Castagno v. Wholean</i>, 239 Conn. 336, 339-52, 684 A.2d 1181 (1996), is unconstitutional, either facially or as applied in this case. Specifically, the defendant claims that, despite the judicial gloss we placed upon § 46b-59 in <i>Castagno</i>, the statute nevertheless violates the rights of parents to rear their children under the due process clause of the fourteenth amendment to the federal constitution and article first, § 8, of the Connecticut constitution. He further claims that even if the statute survives his facial attack, it is unconstitutional as applied by the trial court to the extent that it permits third party visitation contrary to the desires of a fit parent. Tied to this challenge is the threshold issue of jurisdiction. Accordingly, we resolve the claims together.</p>
pp. 216-217	<p>Building on a long line of cases acknowledging the fundamental right of parents to raise their children as they see fit, <i>Troxel</i> teaches that courts must presume that "fit parents act in the best interests of their children," and that "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." <i>Id.</i>, 68-69. Moreover, <i>Troxel</i> confirms that among those interests lying at the core of a parent's right to care for his or her own children is the right to control their associations. <i>Id.</i> The essence of parenthood is the companionship of the child and the right to make decisions regarding his or her care, control, education, health, religion and association. <i>Pierce v. Society of Sisters</i>, 268 U.S. 510, 534-35, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); <i>Meyer v. Nebraska</i>, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (noting that liberty interest includes rights of parents to establish home, bring up children and control education). Furthermore, <i>Troxel</i> confirms that the family integrity is the core element upon which modern civilization is founded and that the safeguarding of familial bonds is an innate concomitant of the protective status accorded the family as a societal institution. <i>Troxel v. Granville</i>, <i>supra</i>, 65-66.</p>
p. 240	<p>In the absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the plaintiffs and the defendant's minor children as well as the harm that the children would suffer were visitation denied, the trial court did not have jurisdiction over the petition for visitation.</p>

# Section 2: Custody of Grandchildren

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the rights of grandparents to seek custody of their grandchildren in family matters.
- CURRENCY:**
- 2010 Edition
- SEE ALSO:**
- [Child Custody Actions in Connecticut](#)
    - § 2. Third party custody actions
  - [Child Visitation in Connecticut](#)
    - § 2. Third Party Visitation Actions
  - [Best Interest of the Child Standard in Connecticut](#)
- DEFINITIONS:**
- **Standing:** “Therefore, we acknowledge that a person other than a blood relation may have established a more significant connection with a child than the one established with a grandparent or some other relative. Conversely, we recognize that being a blood relation of a child does not always translate into that relative having significant emotional ties with that child. Indeed, as § 46b-59 implicitly recognizes, it is not necessarily the biological aspect of the relationship that provides the basis for a legally cognizable interest. Rather, it is the nature of the relationship that determines standing.” [Roth v. Weston](#), 259 Conn. 202, 221, 789 A.2d 431 (2002).
  - **Presumption:** “...we conclude that the statutory presumption in favor of parental custody may be rebutted only in exceptional circumstances and only upon a showing that it would be clearly damaging, injurious or harmful for the child to remain in the parent's custody.” [Fish v. Fish](#), 285 Conn. 24, 45 (2008)..
  - **Harm:** “the harm alleged in a third party **custody** petition arises from the fundamental nature of the parent-child relationship, which may be emotionally, psychologically or physically damaging to the child.” *Ibid.*, p.47 (emphasis added)
- STATUTES:**
- CONN. GEN. STAT. (2009)
- [§ 46b-56](#). Orders re custody, care, education, visitation and support of children
  - [§ 46b-56b](#). Presumption re best interest of child to be in custody of parent
  - [§ 46b-57](#). Third party intervention re custody of minor children. Preference of child.
  - [§ 46b-59](#). Court may grant right of visitation to any person.
- LEGISLATIVE:**
- Gerald Barrett, [GRANDPARENTS RAISING GRANDCHILDREN](#), Connecticut General Assembly, Office of Legislative Research Report No. 2008-R-0048 (Jan. 31, 2008).

*“You asked us to give an overview of the financial assistance programs the state provides to grandparents raising their grandchildren. Specifically you wanted to know (1) how much the cash benefit is under these programs and (2) if the gap between benefit amount has increased or decreased.”*

- SUSAN PRICE, [GRANDPARENTS’ RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2006-R-0383 (Sept. 18, 2006). *“You asked for an explanation of Connecticut law on grandparents’ custody of, and visitation with, their grandchildren.”*
- SUSAN PRICE, [GRANDPARENTS’ RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2005-R-0832 (Nov. 9, 2005). *“You asked for an explanation of Connecticut law on grandparents’ custody of, and visitation with, their grandchildren.”*
- SAUL SPIGEL, [GRANDPARENTS’ CUSTODY OF GRANDCHILDREN](#), Connecticut General Assembly, Office of Legislative Research Report No. 2003-R-0596 (Sept. 22, 2003).

## **COURT RULES**

CONNECTICUT PRACTICE BOOK (2010)

### [Chapter 25: Superior Court - Procedure in Family Matters](#)

- § 25-3 Action for Custody of Minor Child
- § 25-4 Action for Visitation of Minor Child
- § 25-5 Automatic Orders Upon Service of Complaint
- § 25-57 Affidavit Concerning Children
- § 25-59 Closed Hearings and Records
- § 25-62 Appointment of Guardian Ad Litem

## **FORMS:**

### [Official Forms](#)

- JD-CL-12 Appearance
- JD-FM-75 Application for Waiver of Fees
- **JD-FM-161 Custody / Visitation Application**
- JD-FM-162 Order to Attend Hearing and Notice to the Defendant
- JD-FM-158 Notice of Automatic Orders
- JD-FM-164 Affidavit Concerning Children
- JD-FM-164A Addendum to Affidavit Concerning Children
- JD-FM-6 Financial Affidavit
- JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
- JD FM-183 Custody/Visitation Agreement

## **CASES:**

- [Fish v. Fish](#), 285 Conn. 24, 44 (2008). “The relevant statutes concerning visitation and custody are overly broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. For this reason, as in the case of visitation, a literal application of the custody statutes could place them in ‘constitutional jeopardy.’ *Castagno v. Wholean*, supra, 239 Conn. 345. Accordingly, we conclude that, to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in *Roth* to third party custody awards and to third parties seeking intervention in existing custody proceedings.”
- [Denardo v. Bergamo](#), 272 Conn. 500 (2005). “The dispositive issue in this appeal is whether grandparents, who were granted the right of visitation with respect to a minor child pursuant to General Statute § 46b-59 prior to this court’s decision in *Roth v. Weston*,... must satisfy the jurisdictional and substantive requirements set forth in *Roth* when a custodial parent has moved to modify or terminate the visitation order.” Applying the *Roth* criteria retrospectively, the Connecticut Supreme Court affirmed the trial court’s order terminating the grandparents’ visitation rights.

**CASES (Continued):**

- [Clements v. Jones](#), 71 Conn. App. 688, 696, 803 A. 2d 378 (2002) "We conclude in the present case, as the Supreme Court did in *Roth*, that there is an 'absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the [plaintiff] and the defendant's minor [child] as well as the harm that the [child] might suffer were visitation denied..."
- [Roth v. Weston](#), 259 Conn. 202, 205, 789 A. 2d 431 (2002). "We conclude that the statute is unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation."  
"...interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm." (229)
- [Crockett v. Pastore](#), 259 Conn. 240, 250, 789 A.2d 453 (2002). *Maternal grandmother's petition for visitation; defendant father has sole custody; defendant father and child's mother were never married and mother's parental rights were terminated.* "Because the plaintiff failed to meet the requirements under § 46b-59 that she allege and prove that she has a parent-like relationship with the child and that the trial court's failure to grant visitation with her would cause the child to suffer serious, real and significant harm, we conclude that the trial court did not have jurisdiction over the plaintiff's petition for visitation."
- [Greene v. Thornton](#), No. FA03 0069920 (Conn. Super. Ct., Putnam, Jan. 13, 2004), 2004 Conn. Super. Lexis 117. "Therefore, in *Roth*, we brought these principles to bear, applying a judicial gloss to § 46b-59. We concluded that a trial court is without jurisdiction to consider a petition for visitation pursuant to that statute in the absence of specific, good faith allegations that: (1) the petitioner was someone with whom the child had a parent-like relationship; and (2) the child would suffer real and significant harm if deprived of the visitation. *Id.* Specifically, the degree of harm must be "analogous to the kind of harm contemplated by [General Statutes] §§ 46b-120 and 46b-129, namely, that the child is `neglected, uncared-for or dependent.*Id.*"
- [Pivnick v. Lasky](#), 34 Conn. L. Rptr. 426 (Conn. Super., Hartford, Mar. 24, 2003). "The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties against the wishes of a fit custodial parent."
- [Foster v. Foster](#), 33 Conn. L. Rptr. 24 (Conn. Super., New London, Aug. 19, 2002), 2002 Conn. Super. Lexis 2791, *aff'd in part and rev'd in part by* Foster v. Foster, 84 Conn. App. 311 (2004). "The court concurs ... that the constitutional protection afforded by *Roth v. Weston* to a parent-child relationship applies equally to custody actions under General Statutes §§ 46b-56 and 46b-57... What the plaintiff fails to point out in the present case is that the underpinning of both *Roth v. Weston* and ... *Troxel v. Granville*, 530 U.S. 57 (2000), was the presumption of parental fitness..."
- [In Re Kristy L. v. Ragaglia](#), 47 Conn. Supp. 273, 284, 787 A.2d 679 (2001). "So, even though courts have been more cognizant of the ever changing family unit, [it] is imperative for this court to place strong emphasis on the fact that the parental rights of the petitioner's have been terminated and to find the grandparents no longer possess a legally protected right and, therefore, they lack standing to bring a habeas corpus action."  
"... the grandparents' rights are derivative of the parent's rights, and when the

**CASES (Continued):**

parent’s rights are terminated, the grandparents no longer have a legally protected interest.”

- Castagno v. Wholean, 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled* by Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002). “... the legislature intended §46b-59 to afford the trial court jurisdiction to entertain a petition for visitation only when the minor child’s family life has been disrupted in a manner analogous to the situations addressed by §§ 46b-56 and 46b-57... Although the death of a parent or the de facto separation of the parents may allow an action, there may be other times when an action is also warranted...”

**WEST KEY NUMBERS:**

- CHILD CUSTODY #175. Visitation in general
- CHILD CUSTODY #182. Person entitled in general
- CHILD CUSTODY # 183. Custody of siblings

**TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS (2000).
  - § 42.11. Custody claims by third parties
  - § 42.45. Visitation—With third parties
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2006).
  - Chapter 11. Disputes Between Parents and Third Parties
    - § 11.01. Introduction
    - § 11.02. The constitutional basis of parental rights
    - § 11.03. The parental preference standard
    - § 11.04. Determination of parental fitness: Factors to be considered
    - § 11.05. The best interests standard
    - § 11.06. Standing
    - § 11.07. Role of expert witness
    - § 11.08. Bibliography
- 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1983, 2004 supp.)
  - Chapter 10 (1993). Third Party Custody and Visitation
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (Rev. 2d ed., 2005).
  - § 2:19. Preference of natural parent(s) over others; Generally— preference of natural parent(s) over grandparent(s)
  - § 2:20. Preference of the natural parent(s) over others; Generally— Preference of natural parent(s) over adult siblings or other relative
  - § 3:5. Visitation rights; Generally—Grandparents, generally
  - § 3:6. Visitation rights; Generally—Natural grandparents of adopted grandchildren
  - § 3:7. Visitation rights; Generally—Siblings and other family members
  - § 3:8. Other third parties

**ENCYCLOPEDIAS:**

- Alice Wright Cain, Annotation, *Right To Credit Against Child Support Arrearages For Time Children Spent In Custody Of Noncustodial Parent Pursuant To Visitation Or Court Order*, 118 ALR5th 385 (2004).
- George L. Blum, Annotation, *Grandparents’ Visitation Rights Where Child’s Parents are Living*, 71 ALR5th 99 (1999).
- Annotation, *Grandparent Visitation Rights*, 90 ALR3d 222 (1979)
- Carol A. Crocca, Annotation, *Continuity of Residence as Factor in Contest Between Parent and Nonparent for Custody of Child Who has been Residing with Nonparent—Modern Status*, 15 ALR5th 692 (1993).
- *Grandparent Visitation and Custody Awards*, 69 POF3d 281 (2002).

- V. Background
- VI. Elements of proof
- VII. Proof of grandparent visitation award
- VIII. Proof of grandparent custody award

**LAW REVIEWS:**

- John R. Logan, *Connecticut's Visitation Statute after 'Troxel v. Granville,'* CONN. LAWYER (Nov. 2000, at 4).
- Koreen Labrecque, Note, *Grandparent Visitation after Stepparent Adoption*, 6 CONN. PROB. L. J. 61 (1991).
- Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Court's Reluctance to Declare Grandparent Visitation Statutes Unconstitutional* (Troxel v. Granville and its Implications for Families and Practice: A Multidisciplinary Symposium), 41 FAM. CT. REV. 14 (2003).
- Laurence C. Nolan, *Beyond Troxel: the Pragmatic Challenges of Grandparent Visitation Continue*, 50 DRAKE L. REV. 267 (2002).
- Linda Quinton Burr, *Selecting and Questioning Expert Witnesses When Grandparents Want the Kids*, in 2001 FAMILY LAW UPDATE, ch. 6 (2001).
- David G. Savage, *Parents First: Supreme Court Warns Judges to be Cautious When Granting Visitation Rights to Grandparents*, 86 ABA J., August 2000, at 38.
- Beatrice Yorker, et seq., *Custodial Relationships of Grandparents Raising Grandchildren: Results of a Home-based Intervention Study*, 49 Juv. & Fam. Ct. J., no. 2 (Spring 1998), p. 15.
- J.C. Bohl, *Brave New Statutes: Grandparent Visitation Statutes as Unconstitutional Invasions of Family Life and Invalid Exercises of State Power*, 3 Geo. Mason U. Civil Rights L. J. 271 (1993).

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**Table 3: Third Party Custody Statutes**

Section No.	Text of Statute	Requirements
<a href="#">§ 46b-56(a)</a>	<p>“In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party to the action, including, but not limited to, grandparents.”</p>	<p>“the party must prove by a fair preponderance of the evidence facts demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest.” <a href="#">Fish v. Fish</a>, 285 Conn. 24, 89 (2008).</p>
<a href="#">§ 46b-57</a>	<p>“In any controversy before the Superior Court as to the custody of minor children, and on any complaint under this chapter or section 46b-1 or 51-348a, if there is any minor child of either or both parties, the court, if it has jurisdiction under the provisions of chapter 815p, may allow any interested third party or parties to intervene upon motion. The court may award full or partial custody, care, education and visitation rights of such child to any such third party upon such conditions and limitations as it deems equitable. Before allowing any such intervention, the court may appoint counsel for the child or children pursuant to the provisions of section 46b-54. In making any order under this section, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference.”</p>	<p>“In cases in which the trial court considers awarding custody to a third party who has not intervened pursuant to § 46b-57, the court may award custody to the third party provided that the record contains proof of . . . facts by a fair preponderance of the evidence . . . demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest.” Ibid.</p>
<a href="#">§ 46b-56b</a>	<p>“In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody.”</p>	<p>“the statute is facially constitutional.” Ibid. 46-47.</p>