

## *In re Marriage of Friedman and Roels*

**Full Citation:** *In re Marriage of Friedman and Roels*, 418 P.3d 884 (Ariz. 2018).

**Date Filed:** June 8, 2018

**Opinion's Author:** Justice Pelander

**Joined By:** Chief Justice Bales, Vice Chief Justice Brutinel, Justices Timmer, Bolick, Gould, and Lopez.

*Practitioners: For quick reference, please see the "Issues" and "Holdings" sections.*

**Facts:** Mother and Father married in 2001. Their children were born in 2003 and 2005. In 2010, Mother and Father separated, officially divorcing in 2011. Mother was granted sole custody, with Father being granted two four-hour supervised parenting periods per week, due to his mental health and history of abusing the children.

Prior to the divorce, paternal Grandparents were involved in the children's lives. After the divorce, Mother blocked all communication between Grandparents and the children. In April 2014, Grandparents filed for visitation rights. They were temporarily granted one hour of visitation per month that aligned with Father's visitation. Reports show that Grandparent's presence was "well received"<sup>1</sup> by the children.

At Grandparent's visitation trial in April 2015, Mother and Father stipulated to a parenting agreement that granted joint decision-making power, with Mother having ultimate power in a disagreement. Moreover, the parenting agreement did not discuss whether Grandparents could be present during Father's parenting time.

Mother introduced testimony from two therapists that visitation of Grandparent's increased the children's PTSD and anxiety, but later admitted that the children had PTSD and anxiety prior to Grandparent's visitation. Father and Grandparents introduced testimony from parental visit supervisory staff that Grandparents were "positive and warm"<sup>2</sup> and seemed to improve the relationship between children and Father.

**Procedural History:** Paternal grandparents filed petition to obtain court-ordered visitation. The family court granted visitation rights to paternal grandparents. Mother appealed, and the court of appeals affirmed. The Arizona Supreme Court granted review.

### **Issues:**

1. The issue of conflict between nonparent visitation wishes and a parent's visitation opinion is one of first impression. Is a nonparent required to prove that a parent's visitation opinion would cause substantial harm to the children's best interests to overcome "special weight" afforded to a parent's opinion?

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<sup>1</sup> *In re The Marriage of Lisa J. Freidman*, 418 P.3d 884, 886 (Ariz. 2018).

<sup>2</sup> *Id.* at 887.

2. Visitation opinions of legal parents are granted “special weight.” Does one parent’s visitation opinion outweigh the other parent’s visitation opinion when neither’s parental rights have been terminated?
3. A court may grant one parent ultimate power for parental decision-making. Does a court-approved parenting plan granting one parent final decision-making powers overcome a court’s opinion on what is in the children’s best interests?
4. There are a number of factors that lead to a determination of what is in a child’s best interest. Are parental grandparent visitation rights in the children’s best interests?

**Holdings:**

1. No, the grandparents are not required to show that the parent's visitation opinion would cause substantial harm to the children's best interests to rebut “special weight” afforded to parent's opinion.
2. No, special weight afforded to Mother's opinion was cancelled by special weight afforded to Father's contrary opinion such that the court was governed by the children's best interest.
3. No, Mother could not rely on parenting plan to refute the court's decision to use best interests of the child standard.
4. Yes, the evidence was sufficient to support finding that third-party visitation with paternal grandparents was in the children's best interests.

**Disposition:** The Arizona Supreme Court affirmed the family court's visitation order and vacated the court of appeal's opinion.

**Rules:**

1. Nonparents need not show that the parent's visitation opinion would cause substantial harm to a child's best interests to rebut “special weight” afforded to parent's opinion.
2. A parent is presumed fit (with parental rights) unless expressly deemed unfit; therefore, special weight afforded to both parents, if contradictory, cancel out, limiting a court’s visitation decision to solely what is in a child’s best interest.
3. A court must consider all relevant factors including those in A.R.S. § 25–409 (and “special weight,” if relevant) when determining what is in a child’s best interest.

**Reasoning:**

- A.R.S. § 25–409(F) states that “[i]f logistically possible and appropriate, the court shall order visitation by a grandparent or great-grandparent if the child is residing or spending time with the parent through whom the grandparent or great-grandparent claims a right of access to the child.”<sup>3</sup>

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<sup>3</sup> A.R.S. § 25–409(F) (effective Jan. 1, 2013).

- The United States Supreme Court coined the term “special weight” in *Troxel v. Granville*, 530 U.S. 57 (2000) to determine the level of deference a court must show to a parent’s visitation opinion.<sup>4</sup> The holding in *Troxel* assumes “that a fit parent will act in the best interest of his or her child.”<sup>5</sup> “Special weight” is not defined in Arizona statutes, but the legislature’s intent was to align with the language in *Troxel*.<sup>6</sup>
- Father was not expressed deemed an “unfit” parent; therefore, he is a fit parent whose opinion is also given special weight.<sup>7</sup> Because Father and Mother’s opinions are contradictory, the special weight of each’s opinion is cancelled out.<sup>8</sup> In this instance, “[t]he superior court may grant visitation rights . . . on a finding that the visitation is in the child’s best interests.”<sup>9</sup>
- A legal parent is granted special weight.<sup>10</sup> Mother’s ultimate decision-making authority is independent from the special weight of visitation opinions.<sup>11</sup> This is proven by the distinct definitions of “[l]egal decision-making” and “[l]egal parent.”<sup>12</sup> Therefore, the mother’s decision-making power from the parenting agreement is not determinative for Grandparent’s visitation rights.<sup>13</sup>
- Because deference can be shown to neither parent, the court’s decision must rest solely on what is in the children’s best interests, governed by the factors in A.R.S. § 25-409(E) (and all other relevant factors).<sup>14</sup> Mother’s arguments that Grandparent’s visits were detrimental to the children were unsupported.<sup>15</sup> Analysis of all factors shows that granting visitation rights to Grandparents is in the children’s best interest.<sup>16</sup>

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<sup>4</sup> *Troxel v. Granville*, 530 U.S. 57 (2000).

<sup>5</sup> *Id.* at 69.

<sup>6</sup> *Friedman*, 418 P.3d at 889-90.

<sup>7</sup> *Id.* at 892 (referencing *Ward v. Ward*, 88 Ariz. 130, 139, 353 P.2d 895 (1960)).

<sup>8</sup> *Id.*

<sup>9</sup> A.R.S. § 25-409(C)

<sup>10</sup> *Friedman*, 418 P.3d at 892.

<sup>11</sup> *Id.*

<sup>12</sup> A.R.S. §§ 25-401(3)-(4).

<sup>13</sup> *Friedman*, 418 P.3d at 888.

<sup>14</sup> A.R.S. § 25-409(E).

<sup>15</sup> *Friedman*, 418 P.3d at 893.

<sup>16</sup> *Id.*