

2001

## Geri Pasquin v. Candice M. Switter : Guardian Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Brian W. Steffensen, William J. Middleton, Robert Copier; attorney for appellant.

Martha Pierce; attorney for appellee.

---

### Recommended Citation

Legal Brief, *Pasquin v. Switter*, No. 20010717 (Utah Court of Appeals, 2001).

[https://digitalcommons.law.byu.edu/byu\\_ca2/3439](https://digitalcommons.law.byu.edu/byu_ca2/3439)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

IN THE UTAH COURT OF APPEALS

---

Geri Pasquin,	:	
Petitioner/Appellant,	:	Case No. <b>20010717-CA</b>
vs.	:	Priority No. 4
Candice M. Suitter,	:	
Respondent/Appellee.	:	

---

---

GUARDIAN ad LITEM's BRIEF  
APPEAL FROM A VISITATION ORDER  
OF THE THIRD DISTRICT COURT  
HONORABLE RONALD E. NEHRING, PRESIDING.

---

Martha Pierce, #4900  
Guardian ad Litem  
450 South State, Second Floor  
P.O. Box 140403  
Salt Lake City, UT 84114-0403  
(801) 578-3962

Brian W. Steffensen  
William J. Middleton  
2159 South 700 East, Suite 100  
Salt Lake City, UT 84106

Robert Copier  
243 East 400 South, Suite 200  
Salt Lake City, UT 84111-2803

ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

**FILED**  
Utah Court of Appeals

JAN - 7 2002

**Paulette Stagg**  
Clerk of the Court

IN THE UTAH COURT OF APPEALS

---

Geri Pasquin,	:	
Petitioner/Appellant,	:	Case No. <b>20010717-CA</b>
vs.	:	Priority No. 4
Candice M. Sutter,	:	
Respondent/Appellee.	:	

---

GUARDIAN ad LITEM's BRIEF

APPEAL FROM A VISITATION ORDER

OF THE THIRD DISTRICT COURT

HONORABLE RONALD E. NEHRING, PRESIDING.

---

Martha Pierce, #4900  
Guardian ad Litem  
450 South State, Second Floor  
P.O. Box 140403  
Salt Lake City, UT 84114-0403  
(801) 578-3962

Brian W. Steffensen  
William J. Middleton  
2159 South 700 East, Suite 100  
Salt Lake City, UT 84106

Robert Copier  
243 East 400 South, Suite 200  
Salt Lake City, UT 84111-2803

ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

## **PARTIES**

### **The Child:**

**T.L.P.** born February 20, 1994. Her father is deceased. Her mother is the respondent/appellee. The court appointed the Office of the Guardian ad Litem, “the Guardian” to represent the Child’s best interests.

### **The Parents:**

**Candice M. Sutter, “the Mother.”** She is the Child’s mother. She is the respondent/appellee.

**Kory Pasquin, “the Father.”** He is the Child’s father. He is deceased.

### **The Grandmother:**

**Geri Pasquin, “the Grandmother.”** She is the Child’s paternal grandmother. She is appealing the denial of her petition for grandparent visitation.

## TABLE OF CONTENTS

JURISDICTION .....	<u>1</u>
ISSUES FOR REVIEW .....	<u>1</u>
1. Whether the district court relied on insufficient evidence to support its findings, which in turn supported its denial of the grandmother's petition. ....	<u>1</u>
2. Whether the quality of the Guardian ad litem's representation is an issue the Grandmother may raise on appeal when she has not first raised it to the trial court. ....	<u>1</u>
STATUTES, RULES, CONSTITUTIONAL PROVISIONS .....	<u>2</u>
STATEMENT OF THE CASE .....	<u>2</u>
Nature of the Case .....	<u>2</u>
Course of the Proceedings .....	<u>2</u>
Disposition at Trial Court .....	<u>2</u>
STATEMENT OF THE FACTS .....	<u>3</u>
SUMMARY OF ARGUMENT .....	<u>7</u>
ARGUMENT .....	<u>7</u>
1. <u>THE GRANDMOTHER RAISES NO APPELLATE CLAIM.</u> ....	<u>7</u>
2. <u>THE GRANDMOTHER'S CLAIMS REGARDING</u> <u>THE GUARDIAN AD LITEM ARE NOT TRUE AND ARE NOT</u> <u>APPROPRIATE APPELLATE CLAIMS.</u> ....	<u>10</u>
ORAL ARGUMENT; PUBLICATION OF OPINION .....	<u>14</u>
CONCLUSION .....	<u>14</u>
CERTIFICATE OF MAILING .....	<u>15</u>
ADDENDA	
1. Memorandum Decision entered July 9, 2001. R.541-47. ....	<u>15</u>

## **TABLE OF AUTHORITIES**

### **CASE LAW**

<u>Campbell v. Campbell</u> , 896 P.2d 635 (Utah Ct. App. 1995) . . . . .	<u>1</u> , <u>2</u> , <u>6</u> , <u>8</u> , <u>11</u>
<u>Hart v. Salt Lake Co. Comm’n</u> , 945 P.2d 125 (Utah App. 1997) . . . . .	<u>10</u> , <u>12</u>
<u>In re J.W.F. v. Schoolcraft</u> , 763 P.2d 1217 (Utah Ct. App. 1988), rev’d on other grounds, 799 P.2d 710 (1990) . . . . .	<u>12</u>
<u>State v. Harrison</u> 2001 UT 33 . . . . .	<u>12</u>
<u>State v. Holgate</u> , 2000 UT 74 . . . . .	<u>1</u> , <u>10</u> , <u>12</u>
<u>Tucker v. Tucker</u> , 910 P.2d 1209 (Utah 1996) . . . . .	<u>3</u>

### **STATUTES**

Utah Code Ann. § 30-5-2(2) . . . . .	<u>2</u> , <u>8</u>
Utah Code Ann. § 78-3a-911 . . . . .	<u>10</u>

### **RULES**

Utah R. App. P. 4(a) . . . . .	<u>1</u>
--------------------------------	----------

IN THE UTAH COURT OF APPEALS

---

Geri Pasquin,	:	
Petitioner/Appellant,	:	Case No. <b>20010717-CA</b>
vs.	:	Priority No. 4
Candice M. Suitter,	:	
Respondent/Appellee.	:	

---

GUARDIAN ad LITEM's BRIEF

---

**JURISDICTION**

The Utah Court of Appeals has jurisdiction to hear this case pursuant to Utah R. App. P. 4(a) because this is an appeal from a final order regarding visitation effectively dismissing the Grandmother's visitation petition.

**ISSUES FOR REVIEW**

1. Whether the district court relied on insufficient evidence to support its findings, which in turn supported its denial of the grandmother's petition. To raise an insufficiency-of-evidence claim, the Grandmother must marshal all evidence supporting the challenged findings and then demonstrate how the marshaled evidence is legally insufficient to support those findings. Campbell v. Campbell, 896 P.2d 635, 638 (Utah Ct. App. 1995).

2. Whether the quality of the Guardian ad litem's representation is an issue the Grandmother may raise on appeal when she has not first raised it to the trial court. State v. Holgate, 2000 UT 74 ¶ 11. To the extent the claim goes to sufficiency of evidence, the

Grandmother bears the burden of marshaling the evidence. Campbell v. Campbell, 896 P.2d 635, 638 (Utah Ct. App. 1995). Moreover, the claim may be one of invited error given that it was the Grandmother's petition and she had the burden of producing evidence to support it. Utah Code Ann. § 30-5-2(2).

### **STATUTES, RULES, CONSTITUTIONAL PROVISIONS**

Utah Code Ann. § 30-5-2(2).

### **STATEMENT OF THE CASE**

Nature of the Case: The Grandmother appeals a district court order denying her petition for visitation. R.548.

Course of the Proceedings: In December 1997, the Grandmother petitioned the district court for visitation to her three year-old granddaughter. R.1-3.

Disposition at Trial Court: In April 2000 and May 2001, the court convened an evidentiary hearing and entered a written decision in July 2001 denying the petition and leaving visitation to the discretion of the Child's Mother. R.541-47. The Grandmother appeals. R.548.



## **STATEMENT OF THE FACTS**

Because the Appellant (the child's paternal grandmother, hereinafter referred to as "the Grandmother") challenges the sufficiency of the evidence, the facts are presented in the light most favorable to those found by the trier of fact. Tucker v. Tucker, 910 P.2d 1209, 1216 (Utah 1996).

The Grandmother's son, Kory Pasquin, died in a boating accident in December 1996 when the Child was two years old. R.223. After the Father's death, the Mother and Grandmother became embroiled in litigation involving a family business. In May of 1997, less than a year after the Father's death, the Grandmother terminated contact with the Child. R.541-47. Six months later, in December 1997, the Grandmother petitioned for grandparent visitation. R.1-3.

The domestic relations commissioner recommended that a guardian ad litem be appointed to represent the best interests of the minor Child. The Mother objected to the appointment of any guardian ad litem. R.23; 43-45.

At a hearing on the Mother's objection, the judge was emphatic that the matter not proceed without the assistance of a guardian ad litem: "We aren't doing anything till we have a guardian ad litem. . . . We need a guardian ad litem appointed. Now, what's standing between the people in this room sitting in front of the bar there and getting a

guardian ad litem appointed?” R.555 at 23-25; R.160. The Office of the Guardian ad Litem was notified and the Guardian soon entered her notice of appearance. R.184. Again, the Mother’s attorney objected to the appointment and urged the Guardian to stipulate to a vacation of her appointment. R.193; 210-13. The Guardian set up a time for the Mother to bring the Child in for an interview. The Mother did not show, did not call to cancel and did not call to reschedule. R.308-10.

The Guardian, in her report to the court, urged the court to order the Mother to cooperate and to allow her access to the Child. R.308-10.

The Guardian appeared at what was to be the evidentiary hearing. R.319. The court was not happy to learn she had been denied access to the Child: “We’re not going to have an evidentiary hearing because the reality is the guardian ad litem is going to be on board. And I’m going to order cooperation with the guardian ad litem. . . I will now repeat, the guardian ad litem is now assigned the responsibility of giving me advice concerning the best interests of the child.” R.555 at 38-39.

Finally, the Guardian ad litem, along with a clinical consultant, was able to meet with the Child. By the time of the evidentiary hearing, a different guardian ad litem had taken over the case load of the first. The new guardian prepared a report for the court after consulting with the first guardian, the clinical consultant and after reading all the

documents the first guardian had amassed, including her interview notes. R.520-22. This report detailed how the relationship between the Mother and the Grandmother had deteriorated, how the business litigation fueled this deterioration and how the Child had no memory of the Grandmother. R.520-22. The Guardian concluded that the Mother appeared competent to make best interests decision regarding the Child, including who the Child should meet with or visit. The Guardian recommended against court-ordered visitation so long as the parties' animosity was heightened. R.522.

The matter was heard in May 2001. R.524. The court heard live testimony, deposition testimony and received exhibits including the Guardian's report. R.524-25. The Guardian was unable to attend the hearing because she was in another courtroom at the time. However, she left word that she could be reached if necessary and agreed that the matter could proceed so long as her report was submitted. R.555 at 55.

In its memorandum decision, the court denied the petition finding that visitation was not in the child's best interests. R.541-47. "In this case, the record contains facts sufficient for me to conclude that the best interests of [the Child] are best served by deferring to decisions made by her mother concerning visitation with the petitioner." Some of the reasons for denying visitation included the following: the Mother was capable of making best interests decisions; the relationship between the two women had deteriorated; there was no immediate prospect of things getting better; the Grandmother

wanted to introduce the Child to her two half-siblings against the wishes of the Mother; the Grandmother was responsible for the break down of her relationship with the Child; and the Child had no memory of the Grandmother.

In discussing the relationship between the two women, the court noted,

I agree with the guardian's conclusions, as I simply do not believe that [the Child] will be the beneficiary of court-ordered visitation in the current climate of conflict and acrimony. I hasten to note that the conflict at issue here is not of the type addressed by the Court of Appeals in Campbell.<sup>1</sup> There, the court rejected the claims of stress and trauma associated with the grandparent visitation litigation as a basis for denying visitation, observing that the stress of the litigation would likely end when the litigation terminated. Here, the litigation creating the conflict between petitioner and Ms. Sutter is separate from and predated this action and may well survive it.

Accordingly, based on Ms. Sutter's legitimate interests in defining [the Child's] relationship with her step-siblings, Ms. Sutter's reasonable decision not to reintegrate the petitioner into her life or the life of [the Child] so long as animosity lingered over the business-related litigation, and petitioner's token efforts to maintain ties with [the Child], I conclude that [the Child's] best interests will not be served by granting grandparent visitation.

The Grandmother appeals the denial of the visitation petition. R.548.

---

<sup>1</sup>Campbell v. Campbell, 896 P.2d 635 (Utah Ct. App. 1995).

## **SUMMARY OF ARGUMENT**

The Grandmother seeks to retry the case by rearguing the evidence in her favor. She fails to marshal the evidence, state a standard of review, demonstrate whether the claim was preserved and state an appropriate appellate claim. The Grandmother faults the court for relying on insufficient evidence in denying the petition when it was she who had the burden of producing evidence. Finally, the Grandmother's claim regarding the role of the Guardian ad litem is without merit because (1) it is not an appellate claim; (2) it misstates the record and the law; and (3) it goes to sufficiency of the evidence. This Court should therefore affirm the denial of the visitation petition.

## **ARGUMENT**

### **1. THE GRANDMOTHER RAISES NO APPELLATE CLAIM.**

The Grandmother claims the trial court relied on insufficient evidence to support its denial of the visitation petition. Without citing to the record, or to any case law, she reargues the facts in the light most favorable to her to establish her point. Grandmother's Brief at 11-14. In a related claim, the Grandmother claims the evidence was insufficient to support the court's finding that she made only token efforts to stay in contact with the Child. Grandmother's Brief at 14-15.

Utah law allows that a district court “may grant grandparents reasonable rights of visitation, if it is in the best interest of the grandchildren, in cases where a grandparent’s child has died or has become a noncustodial parent through divorce or legal separation.” Utah Code Ann. § 30-5-2(2). The subsection of the statute applies because the Grandmother’s child has died and she was seeking visitation from the child’s mother.

The Grandmother does not challenge the application of the statute. She challenges the sufficiency of the evidence. To raise an insufficiency claim, the Grandmother must marshal all evidence supporting the challenged findings and then demonstrate how the marshaled evidence is legally insufficient to support the challenged findings. Campbell v. Campbell, 896 P.2d 635, 638 (Utah Ct. App. 1995).

Here, the Grandmother challenges the visitation order. Thus she challenges virtually all the findings including:

- The Mother should be the one to tell the Child about her father’s history.
- The Mother had a “strained” relationship with the Father’s other children.
- The Grandmother was likely to inform the Child of the existence of her half siblings and to encourage a relationship with them against the Mother’s wishes.

- The relationship between the Mother and the Grandmother deteriorated after the death of the Father due to litigation involving the Mother's claims to an interest in a business owned by the Father's family.

- The Grandmother "made little effort to reach out to [the Child] or [the Mother]. She made no meaningful attempts to send gifts to [the Child] or otherwise make contact with her."

- The Child had no memory of the Grandmother.

R.541-47.

In adding up these findings, the court determined that the Child would not benefit from being required to visit the Grandmother "in the current climate of conflict and acrimony" which went beyond the visitation litigation and included the business litigation.

Here, the Grandmother has not marshaled the evidence. Instead, she reargues the facts (without citing to the record) in the light most favorable to her position and asks this Court for a second opinion. That is not an appellate claim.

First, the Grandmother had the burden to produce, given that it was her petition. So any insufficiency argument becomes one of invited error. Moreover, the district court had evidence to support its denial of the petition. It heard live testimony and deposition testimony, it had the guardian's report and other exhibits. It also had the benefit of proffered evidence from prior hearings. The Grandmother has not marshaled any of this. This Court should decline to consider her claim and should defer to the district court in making this fact-intensive determination.

**2. THE GRANDMOTHER'S CLAIMS REGARDING  
THE GUARDIAN AD LITEM ARE NOT TRUE  
AND ARE NOT APPROPRIATE APPELLATE CLAIMS.**

The Grandmother claims the Guardian ad Litem did not provide appropriate representation. She does not frame this claim as an appellate claim, nor does she mention a standard of appellate review.

First, problems with one's representation of a client are raised before the Utah State Bar, before the Director of the Office of the Guardian ad Litem, or they are raised as ineffectiveness of counsel claims. Utah Code Ann. § 78-3a-911. Second, the claim was not raised to the trial court and thus was not preserved for appeal. State v. Holgate, 2000 UT 74 ¶ 11-14; Hart v. Salt Lake Co. Comm'n, 945 P.2d 125, 130 (Utah App. 1997).



If one were to read an appellate claim into this issue, perhaps a case could be made for the Grandmother making a sufficiency-of-the-evidence claim.<sup>2</sup> That is, the Grandmother is claiming that the court relied on insufficient evidence to make the best interest finding because the Guardian ad litem should have provided more evidence. If this is her claim, the Grandmother needs to marshal all the evidence supporting the challenged best interest finding and then demonstrate how the marshaled evidence is legally insufficient to support the finding. Campbell v. Campbell, 896 P.2d 635, 638 (Utah Ct. App. 1995).

Here, the Grandmother has not met the marshaling burden. The previous section marshals a portion of the evidence, which, in itself, is sufficient to support the district court's best interest finding. Accordingly, this Court should deem the evidence legally sufficient and should affirm the visitation order.

A second reason to decline to consider the claim is the fact that the Grandmother has not preserved the issue of insufficiency of evidence. "As a general rule, to ensure that the trial court addresses the sufficiency of the evidence, a defendant must request that the court do so." Where the claim is sufficiency of the evidence, the appellant must first

---

<sup>2</sup>This is an interesting claim given that the Grandmother had the burden of producing evidence to support her petition. If she is now claiming insufficient evidence, she is essentially conceding her point, or perhaps she is inviting error or both.

preserve it for review. Holgate, 2000 UT 74 ¶ 14<sup>3</sup>. Here, the Grandmother did not preserve the claim that the court relied on insufficient evidence to support its best interests findings, nor did the Grandmother preserve the claim that the Guardian relied on insufficient information in preparing her report. Accordingly, the Grandmother has waived any claim going to insufficient evidence. Hart, 945 P.2d at 130.

The following is offered in the event this Court chooses to consider the role of the Guardian ad litem in district court civil cases.

Recent case law has put in question the exact duties and responsibilities of the guardian ad litem in civil matters in district court cases. State v. Harrison 2001 UT 33. While Harrison dealt with the guardian's role in criminal cases, the guardian's role in civil cases remains governed by case law and by statute, which establish that where there are allegations of abuse and neglect, the guardian's duties and responsibilities shall be that of counsel for a party. In re J.W.F. v. Schoolcraft, 763 P.2d 1217, 1220-1221 (Utah Ct. App. 1988), rev'd on other grounds, 799 P.2d 710 (1990). In the present case, the district court appointed an attorney guardian ad litem to determine whether court-

---

<sup>3</sup>While the Holgate decision relies on Utah R. Crim. P. 17(o) regarding mandatory arrest of judgment for insufficiency of the evidence, the civil analogy would be Utah Code Ann. § 77-17-3 and Utah R. Civ. P. 59(a) regarding discretionary remedies for claims of insufficient evidence.

enforced visitation would be in the child's best interests or whether such visitation would be potentially abusive or negligent.

In this case, the district court was emphatic that the case not proceed without the participation of a guardian ad litem. As early as January of 2000, the judge said "We aren't doing anything till we have a guardian ad litem." R.555 at 23-24. When in April 2000, the judge learned that the Mother was not allowing the Guardian access to the Child, he continued the evidentiary hearing: "We're not going to have an evidentiary hearing (today) because the reality is the guardian ad litem is going to be on board. And I'm going to order cooperation with the guardian ad litem . . . the guardian ad litem . . . is now assigned the responsibility of giving me advice concerning the best interests of the child." R.555 at 38-39.

The Guardian complied with her duties to the Child and to the court. That is, she researched available data bases for child abuse allegations against the petitioner. She interviewed the petitioner and the Child. She elicited the help of a clinical consultant. She familiarized herself with the case and with case law and she appeared at most of the hearings. R.520-22. While she did not appear at the evidentiary hearing, she had already submitted her report and she let the parties and the court know how she could be reached. R.555 at 55-56. If the Grandmother truly believed that the Guardian had not done her

duty she could have raised the matter to the trial court, with the Guardian herself, with the director of the Office of the Guardian ad Litem or with the Utah State Bar.

It was the Grandmother who produced insufficient evidence to support her petition. When her petition failed, she chose to blame the Guardian for not siding with her. For these reasons, this Court should decline to consider her claim and should affirm the visitation order.


#### **ORAL ARGUMENT; PUBLICATION OF OPINION**

The Guardian ad Litem does not request oral argument or a published opinion because the Grandmother raises only factual issues and states no appellate claims.

#### **CONCLUSION**

For the reasons stated above, the Guardian moves this court to affirm the district court's visitation order.

DATED this 7<sup>th</sup> day of January 2002.

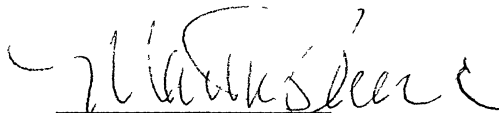
  
MARTHA PIERCE  
Guardian ad Litem

**CERTIFICATE OF MAILING**

I hereby certify that on the 7<sup>th</sup> day of January 2002, I caused to be mailed, postage prepaid, two true and exact copies of the Guardian ad Litem's Brief to:

Brian W. Steffensen  
William J. Middleton  
2159 South 700 East, Suite 100  
Salt Lake City, UT 84106

Robert Copier  
243 East 400 South, Suite 200  
Salt Lake City, UT 84111-2803

  
\_\_\_\_\_  
MARTHA PIERCE  
Guardian ad Litem

**ADDENDA**

1. Memorandum Decision entered July 9, 2001. R.541-47.

Third Judicial District  
JUL 8 - 2001  
SALT LAKE COUNTY  
By \_\_\_\_\_ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----

GERI PASQUIN	:	MEMORANDUM DECISION
Petitioner,	:	CASE NO. 970910481
vs.	:	
KORY PASQUIN, deceased, and	:	
CANDICE M. SOUTER,	:	
Respondents.	:	

-----

Petitioner is the grandmother of Tori Lynn Pasquin, who was born in February, 1994, to the petitioner's son, Kory Pasquin, and Candice M. Souter. Kory Pasquin died in October, 2000. Petitioner brought this action to gain visitation rights with Tori Lynn pursuant to Section 30-5-2, Utah Code Ann. (1998).

A hearing was held in this action on May 31, 2001. Having considered the evidence received at that hearing, together with the relevant law, I render the following Memorandum Decision which incorporates my findings of fact and conclusions of law.

Utah's grandparent visitation statute creates two classifications of grandparents. The first comprises grandparents whose child has died or has become a non-custodial parent through

divorce or legal separation. The second includes all other grandparents. Where, as here, the grandparent's child is deceased, the grandparent may exercise reasonable rights of visitation based on a showing that visitation is in the best interests of the grandchild. Grandparents who fall in the second statutory category must overcome more rigorous requirements to obtain court ordered visitation. In addition to demonstrating that visitation is in the best interests of the grandchild, the grandparent must, among other things, overcome by clear and convincing evidence a presumption that the parents' decision concerning visitation is reasonable.

Although explicit deference to a parent's decision appears only in Section 30-5-2(2), governing grandparent visitation outside the context of death, divorce or legal separation, it is impossible, in my view, to disregard parental decision making as an element of a best interest analysis applied under Section 30-5-2(1). Put another way, it is difficult to image a situation in which a parent's reasonable decision to deny a grandparent visitation with a child would be contrary to the child's best interests. That is that case here.

The importance of the parent-child relationship has been recognized by the Utah Court of Appeals in interpreting the

predecessor to the current grandparent visitation statute. Campbell v. Campbell, 986 P.2d 635 (Utah App. 1995). In this case, the record contains facts sufficient for me to conclude that the best interests of Tori Lynn are best served by deferring to decisions made by her mother concerning visitation with the petitioner.

Petitioner urges me to recognize that it is in Tori Lynn's best interest to learn about her father's life and to preserve his memory. Petitioner contends that she is best-equipped to accomplish this and eager to start. I agree, however, with respondent that Tori Lynn's father's history is best left to be communicated by her mother. Kori Pasquin fathered two other children with other women. The relationship between Ms. Souter and Kory Pasquin's other children, particularly Karly, is strained. On the other hand, the testimony strongly suggests that the petitioner would encourage the development of a relationship between Tori Lynn and her step-siblings. In my view, the questions of whether, when and how to inform Tori Lynn that she has step-siblings and of what, if any, relationship Tori Lynn should have with them is best left to Ms. Souter.

It is also significant that following the death of Kory



Pasquin, the relationship between the Souters and the petitioner deteriorated in the face of litigation involving claims made by Ms. Souter to an interest in a business owned by the Pasquins. That litigation has not prevented Ms. Souter from maintaining a relationship with the petitioner's divorced husband who regularly visits Tori Lynn with Ms. Souter's consent.

It is undisputed that petitioner had developed a friendship with Ms. Souter before the birth of Tori Lynn which continued through Mother's Day 1997. Ms. Souter would frequently visit petitioner at petitioner's place of work with Tori Lynn.

After Mother's Day 1997, Ms. Souter ended the relationship. Irrespective of who might be at fault for ending the friendship, petitioner made little effort to reach out to Tori Lynn or Ms. Souter. She made no meaningful attempts to send gifts to Tori Lynn or otherwise make contact with her.


Penny H. Breiman was appointed as guardian ad litem to represent the interests of Tori Lynn. Her successor, Robin Ravert, prepared a report and recommendations which was received in evidence at the hearing. According to the report, Ms. Breiman, together with Katina Temme, the clinical consultant to the guardian ad litem, interviewed Tori Lynn in June, 2000. At that time, Tori

Lynn had no memory of the petitioner, but it appeared that she had overheard disparaging remarks about her. The guardian ad litem recommended that visitation not be ordered with the petitioner based in part on the conflict between the parties which could be traced to the prior litigation involving the petitioner and Ms. Souter. I agree with the guardian's conclusions, as I simply do not believe that Tori Lynn will be the beneficiary of court-ordered visitation in the current climate of conflict and acrimony. I hasten to note that the conflict at issue here is not of the type addressed by the Court of Appeals in Campbell. There, the court rejected the claims of stress and trauma associated with the grandparent visitation litigation as a basis for denying visitation, observing that the stress of the litigation would likely end when the litigation terminated. Here, the litigation creating the conflict between petitioner and Ms. Souter is separate from and predated this action and may well survive it.

Accordingly, based on Ms. Souter's legitimate interests in defining Tori Lynn's relationship with her step-siblings, Ms. Souter's reasonable decision not to reintegrate the petitioner into her life or the life of Tori Lynn so long as animosity lingered over the business-related litigation, and petitioner's token

efforts to maintain ties with Tori Lynn, I conclude that Tori Lynn's best interests will not be served by granting grandparent visitation.

Dated this 4 day of July, 2001.

  
RONALD E. NEHRING  
DISTRICT COURT JUDGE

