ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

LISA J. FRIEDMAN v. DAVID C. ROELS, JR.,
242 Ariz. 463 (App. 2017)
Arizona Supreme Court No. CV-17-0225-PR

PARTIES:

Petitioner/Appellant: Lisa J. Friedman ("Mother")

Respondents/Intervenors/Appellees: Claudia Roels and David C. Roels, Sr. (paternal "Grandparents")

FACTUAL AND PROCEDURAL HISTORY:

Mother and David Roels, Jr. ("Father") married in 2001 and have two minor children: M., born in 2003, and R., born in 2005. The couple separated informally in March 2010, following an incident in which Father "went into a rage" and was admitted to a psychiatric facility with suicidal ideation. Mother petitioned for legal separation in September 2010, and for dissolution of the marriage in May 2011. She and Father signed a consent decree of dissolution in July 2011.

Father has had supervised parenting time since the separation. He had no legal decision-making authority over the children until August 2015, when he and Mother agreed that while Mother would retain "final decision-making authority," she would consult with Father on non-emergency matters.

In April 2014, Grandparents filed a petition pursuant to A.R.S. § 25-409 to obtain court-ordered visitation. The trial court entered a temporary order allowing them to participate in Father's supervised parenting time for a minimum of one hour per month. At that time, they had not spoken to the children in nearly four years, at Mother's insistence.

The trial court conducted a two-day hearing in August 2015. Grandparents testified that before the parents' separation, they had enjoyed a close relationship with the children. They had attended M.'s birth and met R. a week after hers and frequently travelled to Tucson to attend school and sports activities and spend time with the family. On two occasions, they had provided child care during the day for multiple-day periods and were a regular presence in the children's lives. After the separation, Mother cut off Grandparents' access to the children and insisted there be no contact between them. Grandparents, however, attempted to maintain contact by sending the children cards and gifts for their birthdays and holidays.

The children were initially averse to reuniting with their grandparents. Father testified that when he first had spoken to them about the visits, M. had stated he "d[id]n't want [Grandparents]

to come." After the first visit, however, "there just wasn't any apprehension or . . . tension." Delana Cota, a family support specialist who supervised the first visit, described the children's initial reaction to their grandparents as "quiet" and "awkward," but recognized that "the mood of the visit elevated . . . [and] [b]ecame more comfortable." When Grandparents left, Cota overheard M. and R. discussing the visit and heard R. ask M., "Do you agree with me, it was good with grandparents," to which M. said, "Pretty nervous about nothing." R. then responded, "You would be fine if they came again, are you with me . . . I like them coming."

Bethany Aaronson, another independent visit supervisor, testified that Grandparents planned extensively for their court-ordered visits and the children appeared to enjoy them. She characterized the visits as "very successful" and noted that when Grandparents were around, the activities were more structured and there was "more laughing, more kidding around" and everyone was "a little more involved and engaged." In contrast, Aaronson described visits with only Father as "unstructured" with "[t]he children often spen[ding] a lot of time looking at their devices." But when Grandparents were present, "the children engaged with the activities, and as a result . . . then began engaging with the adults." On one occasion, "the children spontaneously got up and hugged [Grandparents] a second time before they left."

Mother and two therapists testified the children had anxiety and PTSD symptoms both during and outside the supervised visits. Beth Winters, the children's former therapist who had never met or evaluated Grandparents, opined that the children "could have been" exhibiting behavior "indicat[iv]e . . . [of] trauma" due to Grandparents' visitation, but acknowledged that the children's awareness of their mother's feelings toward their grandparents could have influenced them. She also agreed that it is "important for children to have grandparents in their lives." Karen Morse, the children's other therapist, similarly testified they had been "trauma[tized]" in the past, but were improving as of October 2014. Morse, who also had never met or evaluated Grandparents, concluded that news of court-ordered grandparent visits had caused the children to become more anxious, and opined that they experienced trauma during Grandparents' visits.

The trial court found the expert opinions to be of limited usefulness, and in a detailed ruling, after considering all relevant evidence, "including the demeanor and credibility of the parties," determined it was in the children's best interests to have visitation with their grandparents. Specifically, the court found Grandparents had a "significant relationship [that] was very positive with the children" until the parents separated, and since the relationship resumed in 2015, it had been "progressing well." The court noted "[G]randparents ha[d] planned for weeks for each visit and ha[d] provided activities and structure to keep the children involved," which the children responded well to, offering "spontaneous hugs" at the end of some visits. It additionally considered the testimony of Bethany Aaronson that Father experienced quality parenting time when Grandparents were present; Aaronson observed "a lot of laughter and joking," but noted "the children's affect changed upon seeing Mother following the visits" immediately from a happy demeanor to a subdued one.

The trial court also found Grandparents were "motivated by love" of the children and a desire to influence them in a positive way, among other factors, and expressed its concern that Mother was motivated in part by a continued desire to exclude Grandparents because of her

relationship with them. The court was also concerned that some of the children's reported behaviors and reactions to Father and Grandparents were "due to Mother's own reactions" to them. The court further found that the visitation requested by Grandparents would not have "an adverse impact on the children's customary activities." Finally, the court noted that Father "wants his parents to continue to have a relationship with the children."

In the end, the trial court entered an order entitling Grandparents to video calls with the children every two weeks and allowing them to participate in portions of Father's supervised parenting time. Mother filed a timely motion for new trial, which the court denied. Mother timely appealed.

In an opinion filed June 19, 2017, a majority of the court of appeals' three-judge panel affirmed. Judge Staring dissented.

ISSUES FOR WHICH REVIEW WAS GRANTED:

1. There is no controlling Arizona opinion holding the special weight afforded the 'fit' custodial parent identified in *Troxell v. Granville* must be afforded the non-custodial parent. Did Division Two err in holding that because Father was not found to be "unfit" his determination regarding visitation was entitled the same special weight afforded Mother?

2. There is substantial evidence in the record that the children would be emotionally and mentally harmed by the visitation. Did Division Two and the trial court err by not considering the best interest of the children in light of their mental health first?

3. The standards in *Goodman v. Forsen* affirm for the first time the existing constitutional protection required by *Troxel* since ARS §§ 25-409 and [-]415 were combined in 2013. Did Division Two err in not applying *Goodman* retroactively and by declining to extend the constitutional protection to all third-parties equally?