

WHEN A PARENT DIES, SHOULD A CHILD LOSE AN ENTIRE SIDE OF THEIR FAMILY?

In *Troxel v. Granville*, the U.S. Supreme Court confirmed fit parents' constitutional right to make decisions concerning the care, custody, and control of their children. That authority can coexist with limited communication that preserves a child's bond with a deceased parent.

1. CAN A CHILD STAY CONNECTED TO A DECEASED PARENT'S FAMILY?

THE 1984 STATUTE

GRANDPARENTS MAY PETITION

When a child's parent has died, cannot make a decision, or has abandoned the child, a grandparent may bring an action seeking visitation or access. The statute directs reasonable access when the court finds that it serves the child's best interests.

15 V.S.A. §§ 1012-1013

CASE LAW AFTER TROXEL

COURT-ORDERED VISITATION MUST RESPECT PARENTAL AUTHORITY.

Troxel held that court-ordered grandparent visitation can interfere with a fit parent's right to decide the child's care, custody, and control. The parent's visitation decision must receive special weight; a court cannot override it merely because it prefers a different schedule. Troxel involved competing proposals, not a total cutoff.

Troxel 2000; Glidden 2003; Craven 2005

2. VERMONT LINKS PARENTAL BONDS TO A CHILD'S BEST INTERESTS

Vermont public policy favors maximum continuing physical and emotional contact with both parents unless harm is likely. Best interests also include each parent's ability and disposition to foster the child's positive relationship and frequent, continuing contact with the other parent.

VERMONT TREATS CONTINUITY WITH EACH PARENT AS ESSENTIAL TO THE CHILD'S BEST INTERESTS.

15 V.S.A. §§ 650, 665(b)(5); Renaud v. Renaud (1998)

3. THAT PARENTAL BOND CAN CONTINUE AFTER DEATH

Death does not erase the parent-child relationship. Bereaved children sustain it through memories, stories, traditions, and safe relationships. Relatives carry family history that helps children understand where they come from and form their identity. Research finds that a surviving parent's facilitation promotes a positive continuing bond; a total family cutoff removes independent people who can help sustain it.

A CHILD IS HARMED A SECOND TIME WHEN THEIR CONTINUING BOND WITH A DECEASED PARENT IS BROKEN.

Clabburn 2021; Hansen 2016; Karydi 2018

4. WAYS TO MAINTAIN THE CHILD'S BOND WITH A DECEASED PARENT

COMMUNICATION

Cards, letters, photos, recorded memories, family history, calls, and video that preserve the bond without displacing parenting time.

SCHEDULED VISITATION

Scheduled in-person contact that may affect the parent's schedule; it can be gradual, supervised, or otherwise reasonably conditioned.

Neither confers decision-making authority nor overrides the parent's rules.

5. A PATH FORWARD

● EXTEND THE CONTINUITY POLICY

Apply Vermont's parent-child principle beyond death.

● PRESUME SIGNIFICANT HARM

when a complete cutoff forecloses every safe, independent channel to the deceased parent.

● ALLOW REBUTTAL AND TAILOR THE ORDER

using child-specific safety evidence and the least intrusive means, while preserving the surviving parent's authority.

**A CHILD SHOULD NOT LOSE A PARENT TWICE.
GRANDPARENT COMMUNICATION CAN HELP PRESERVE THE BOND.**

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