by Ronald H. Kauffman

Bleeding Grandparent Visitation Rights

There are 21 military bases in Florida with over 70,000 active duty, Reserve, and National Guard personnel.[1] If you count smaller installations and camps, without counting Floridians serving in the armed forces worldwide, there are even more military personnel in this state. When battalions of voting grandparents are added to that military presence, politicians take notice.[2]

Grandparent rights to visit their grandchildren over the objections of fit parents do not exist in Florida . . . or so we thought.[3] In the latest clash over grandparent visitation rights, Floridians who are activated, deployed, or temporarily assigned to military service can now designate to grandparents their timesharing rights over the objections of a fit parent. This article briefly examines the history of grandparent visitation rights, the recently enacted F.S. §61.13002(2), and its place in this long war.

A Bridge Too Far

Ironically, grandparent visitation has faced a long, hard slog in Florida. Florida is unique; it has one of the largest populations of the elderly and has by far the highest proportion of elderly, almost 19 percent of the state's total population.[4] Nationwide, about 75 percent of the elderly are grandparents.[5] Increasingly, grandparents are living with their grandchildren.[6] Not surprisingly, legislators have sought to serve elderly voters by providing rights of visitation — even over the objections of fit parents. However, this legislation has traditionally been in conflict with common law, in which there was never a legal right to nonparent visitation.[7] More recently, grandparent visitation statutes have been held to violate both the U.S. and Florida constitutions.[8]

The battle erupted in 1978 when the legislature made two changes to the Florida Statutes, giving grandparents visitation rights. First, F.S. §61.13(2)(b) was added:

> The court may award the grandparents visitation rights of a minor children [sic] if it is deemed by the court to be in the child's best interest. Nothing in this section shall be construed to require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor shall such grandparents have legal standing as "contestants" as defined in s. 61.1306.[9]

Second, F.S. §61.08 was amended to add:

> Any court of this state which is competent to decide child custody matters shall have jurisdiction to award the grandparents of a minor child or minor children visitation rights of the minor child or children upon the death of or desertion by one of the minor child's parents if it is deemed by the court to be in the minor child's best interest.[10]

In 1984, the legislature pressed its offensive by launching Ch. 752, titled "Grandparental Visitation Rights." Ch. 752 included a procedure for granting visitation rights to grandparents in three situations: 1) when one or both parents of the child are deceased; 2) when the marriage of the child's parents has been dissolved; or 3) when a parent of the child has deserted the child.[11]

In 1990, the constitutionality of Ch. 752 was challenged in *Sketo v. Brown*, 559 So. 2d 381 (Fla. 1st DCA 1990). In *Sketo*, a parent argued F.S. §752.01 violated her constitutional right to privacy.[12] The First District upheld the statute, finding that Florida has a sufficiently compelling interest in the welfare of children in a family in which a parent died, and it can provide for the continuation of relations between children and their grandparents so long as it is in the children's interest.[13] Grandparent visitation had won its first major battle.[14]

In 1993, the legislature completed its campaign for grandparent visitation rights by adding F.S. §752.01(1)(e):

> (1) The court shall, upon petition filed by a grandparent of a minor child, award reasonable visitation rights of visitation to the grandparent with respect to the child when it is in the best interest of the minor child if:
>
> . . .
>
> (e) The minor is living with both natural parents who are still married to each other whether or not there is a broken relationship between either or both parents of the minor child and the grandparents, and either or both parents have used their parental authority to prohibit a relationship between the minor child and the grandparents.[15]

With the 1993 amendment, grandparent visitation rights had spilled into practically every living arrangement, even when a child lives within an intact family with two fit parents.[16]

The Decline and Fall of Grandparent Visitation Rights

The Florida Supreme Court built a fortification on the road to grandparent visitation rights in *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996). The facts in *Beagle* are simple. The grandparents, relying on the new F.S. §752.01(1)(e), filed an action for visi-

tation with their granddaughter. The parents moved to dismiss the petition. At the time of the filing of the petition, the parents were living together with the child as an intact family. The trial court dismissed the grandparents' petition, finding the statute violated the parents' right to privacy, and the grandparents appealed.

The First District, which six years earlier had decided *Sketo*, reversed.[17] In *Sketo*, the panel found the statute constitutional to the extent it provided grandparent visitation rights in the event of a death of a parent, based on a best interest of the child test.[18] In *Beagle,* the First District applied the same "best interest" analysis to the new F.S. §752.01(1)(e), and upheld the statute.

The Florida Supreme Court quashed the First District's *Beagle* opinion and remanded with directions to affirm the trial court. The Florida Supreme Court explained that parenting is protected by the right to privacy, a fundamental right, and any intrusion upon that right must be justified by a compelling state interest:

> The challenged paragraph does not require the [s]tate to *demonstrate a harm to the child* prior to the award of grandparental visitation rights. Based upon the privacy provision in the Florida Constitution, we hold that the [s]tate may not intrude upon the parents' fundamental right to raise their children except in cases where the child is threatened with harm . . . . Without a finding of harm, we are unable to conclude that the [s]tate demonstrates a compelling interest. We hold that, in the absence of an explicit requirement of harm or detriment, the challenged paragraph is facially flawed.[19]

However, the *Beagle* court did not render grandparent visitation unconstitutional. The Florida Supreme Court only answered the narrow question of whether the state had shown a compelling state interest in imposing grandparental visitation rights on an intact family over the objection of a parent. The *Beagle* court concluded there was no compelling state interest, unless the state is acting to prevent demonstrable harm to a child.[20]

Two years after *Beagle*, the Florida Supreme Court shot down F.S. §752.01(1)(a), which provided for grandparent visitation rights when one or both parents of a child are deceased.[21] In *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998), the Florida Supreme Court, relying on the Florida Constitution's explicit right of privacy, ruled that the statute infringed on this fundamental right and had to survive the highest level of scrutiny.[22]

The Supreme Court held:

> In *Beagle*, we unequivocally announced that "the imposition, by the [s]tate, of grandparental visitation rights implicates the privacy rights of the Florida Constitution." Based on our [s]tate's constitutional privacy right, this [c]ourt then held that "the [s]tate may not intrude upon the parents' fundamental right to raise their children except in cases where the child *is threatened with harm*." We determined that subsection (1)(e) did not survive the stringent standard of the compelling state interest test because it did not require a showing of demonstrable harm to the child before the [s]tate's intrusion upon the parent's fundamental rights."[23]

Finally, the Florida Supreme Court struck F.S. §61.13(7), which authorized custody — as opposed to visitation — for grandparents if a child is "actually residing with a grandparent in a stable relationship." In *Richardson v. Richardson*, 766 So. 2d 1036

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(Fla. 2000), the court reaffirmed that in a dispute between a fit parent and a third party, there must be a showing of detrimental harm to the child in order for custody to be denied to the parent. The court found F.S. §61.13(7) unconstitutional on its face because it equated grandparents with natural parents and permitted courts to determine custody between the two using only a "best interest of the child" test.[24] Without evidence of demonstrable harm to the child as a basis for awarding grandparent visitation, no statute could pass *Beagle*'s defensive wall.[25]

Americans at War

In another area of operations, the state of Washington launched an incredibly broad third party visitation statute: "*Any person* may petition the court for visitation rights *at any time* including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances."[26]

In *Troxel v. Granville*, 530 U.S. 57, 97 (2000), the grandparents petitioned to expand their visitation rights with their deceased son's daughters. The children's mother had reduced the grandparents' visitation to one afternoon a month, after years in which the children's father brought them alternating weekends. The trial judge, after waxing nostalgically about his own childhood visits to his grandparents, not surprisingly ordered increased visitation.[27] The Washington Supreme Court held that the statute unconstitutionally interfered with the fundamental right of parents, finding: "[s]hort of preventing harm to the child, the standard of 'best interest of the child' is insufficient to serve as a compelling state interest overruling a parent's fundamental rights."[28]

The U.S. Supreme Court, in a plurality decision, affirmed.[29] The Supreme Court began by identifying the fundamental liberty interest parents have.[30] The Court reasoned that the 14th Amendment's Due Process Clause protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.[31] So long as a parent adequately cares for his or her children, there will normally be no reason for the state to inject itself into the private realm of the family.[32]

The U.S. Supreme Court reaffirmed the presumption that fit parents act in the best interests of their children.[33] Accordingly, the Washington statute was held unconstitutional because the statute turned that presumption on its head:

> The decisional framework employed by the Superior Court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child. In effect, the judge placed on . . . the fit custodial parent, the burden of disproving that visitation would be in the best interest of her daughters. In that respect, the court's presumption failed to provide any protection for the parent's fundamental constitutional right to make decisions concerning the rearing of her own daughters.[34]

The majority also adopted a part of Justice Kennedy's dissent, which recognized that merely litigating grandparent visitation is disruptive enough of a parent-child relationship that the constitutional right of a parent is implicated: "If a single parent who is struggling to raise a child is faced with visitation demands from a third party, the attorneys' fees alone might destroy her hopes and plans for the child's future."[35]

However, the *Troxel* court did not hold that the Due Process Clause requires a showing of harm or potential harm to the child as a condition precedent to granting visitation. Instead, the U.S. Supreme Court left those decisions for the states to decide on a case-by-case basis:

> Because we rest our decision on the sweeping breadth of §26.10.160(3) ... we do not consider the primary constitutional question passed on by the Washington Supreme Court — *whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation.* We do not, and need not, define today the precise scope of the parental due process right in the visitation context.... Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental

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visitation statutes violate the Due Process Clause as a per se matter.[36]

Troxel established a statute that places the burden of proof on a fit parent to show that grandparent visitation would not be in the best interest of the children violates the U.S. Constitution. Florida, however, is governed by its own constitution. The Florida Constitution contains an express right of privacy written into it: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."[37]

The Florida Supreme Court has concluded that the express privacy right in Florida's Constitution is much broader in scope than that of the U.S. Constitution.[38] Accordingly, the Florida Supreme Court has determined that the state may not intrude upon a parent's right to raise his or her children unless the child is threatened with harm.[39]

The Odyssey of F.S. §61.13002(2)

In 2008, Governor Crist signed House Bill 435, launching the new F.S. §61.13002. In short, the statute prohibits a court from modifying a custody order as it existed at the time a parent was activated to military service, unless there is clear and convincing evidence the modification is in the best interest of the child.[40]

The legislature unanimously added F.S. §61.13002(2) in 2010. This new amendment to the statute reignites the battle for grandparent visitation, at least for military families. F.S. §61.13002(2) provides:

> If a parent is activated, deployed, or temporarily assigned to military service on orders in excess of 90 days and the parent's ability to comply with time-sharing is materially affected as a result, *the parent may designate a person or persons to exercise time-sharing with the child on the parent's behalf.* The designation shall be limited to a family member, a stepparent, or a relative of the child by marriage. The designation shall be made in writing and provided to the other parent at least 10 working days before the court-ordered period of time-sharing commences. The other parent may only object to the appointment of the designee on the basis that the designee's time-sharing visitation is *not in the best interests of the child.* When unable to reach agreement on the delegation, either parent may request an expedited court hearing for a determination on the designation. (Emphasis added.)

The 2010 amendment bleeds grandparent visitation rights back into Ch. 61, as it authorizes a military parent to designate his or her grandparent the right to exercise timesharing, unless the civilian parent can show that the visitation is not in the best interest of the child.

Where did the bill come from? Patriotism? Maybe, but using the bill's staff analysis as a cypher, we can decrypt the legislative intent.[41] According to the background information, the staff analysis identified the following concerns justifying the 2010 amendment: "[M]ore than six million children — approximately [one] in

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12 — are living in households headed by *grandparents*...."[42] "In many of these homes, *grandparents* . . . are taking on the primary responsibility for the child's needs."[43] "In Florida, approximately 258,952 children in Florida live in *grandparent*-headed households, which accounts for 7.1 percent of all the children in the state."[44] Although many children reside with *grandparents* pursuant to a dependency adjudication under Ch. 39, far more are living with relatives in informal arrangements, "often because their parents are incarcerated or addicted to drugs."[45]

The staff analysis may have identified reasons to protect the increased childrearing role of grandparents, but it is devoid of any mention of how this relates to the military. The statute's language is so divorced from the rationale in the staff analysis, a cynic might conclude F.S. §61.13002(2) is really a wooden horse hiding legions of grandparents.

We should be wary of legislators bearing such gifts because the rationale for enacting F.S. §61.13002(2) could easily spill into nonmilitary families. The rationale for encroaching into the privacy of military parents is justified because of the increasingly large percentage of grandparent-headed homes. However, that's true of an increasing number of nonmilitary families in Florida. The staff analysis made no effort to distinguish between military and nonmilitary families. The statutory language does refer to deployment orders over 90 days; however, long trips away from home are the norm in many nonmilitary families, including civilian contractors, sales representatives, cruise ship employees, and consultants.

We should also worry about "unknown unknowns" from the application of F.S. §61.13002(2) in the trenches of our courtrooms. Judges can sometimes be the guardians of the constitution, but, in the fog of litigation, can also be collaborators against it. For example, *Spence v. Stewart*, 705 So. 2d 996 (Fla. 4th DCA 1998), started as a simple paternity action filed by a mother seeking child support. After the father answered, the paternal grandmother intervened to assert visitation rights. Although the grandmother did not rely on any statutory authority, the trial court sua sponte denied her motion for visitation as unconstitutional.[46] On appeal, the Fourth District reversed and remanded to the trial court to consider grandparent visitation rights under the best interests test of F.S. §61.13(2)(b)(2)(c).[47]

The *Spence* panel's rationale for concluding that grandparent visitation did not violate a parent's right to privacy is more troubling than its disregard of Florida Supreme Court precedent. The *Spence* court authorized the use of a best interest analysis because the mother waived her right of privacy by filing for paternity: "Because the parents have already abandoned their right of familial privacy by bringing their dispute before the court, the court's further consideration of whether grandparent visitation is in the best interest of the child is not violative of the right of privacy."[48]

Put another way, parents waive their constitutional rights of privacy by exercising their constitutional right of access to courts.[49] By holding that the filing of a lawsuit constitutes a waiver of parental rights of privacy, the *Spence* panel handed the legislature a pass through *Beagle's* wall.

The *Spence* court's efforts to enforce grandparent visitation rights over the objections of fit parents without showing harm to the child would continue for another six years until stopped in the unrelated case of *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). The Florida Supreme Court struck F.S. §61.13(2)(b)(2)(c) as unconstitutional, holding: "[The statute], which fails to require a showing of harm to the affected child, does not further a compelling state interest, and, therefore, it is facially unconstitutional as violative of a parent's fundamental right of privacy."[50]

The Illusion of Victory

If all warfare is based on deception, the recent enactment of F.S. §61.13002(2) is not a new battle in Florida's long war. Instead, the statute represents another attempt to infiltrate grandparent visitation past the constitution, only this time using an ancient equine trick. There are no real victors. Grandparents feel powerless, having nothing to show for their efforts but the defunct Ch. 752, which still haunts the Florida statutes.[51] Parents cannot afford another opinion authorizing the "Hobson's choice" of either losing support or losing constitutional rights if they ask for support. We should all be concerned about "known unknowns," which can hemorrhage from F.S. §61.13002(2).

A former secretary of defense might say, "You go to court with the statute you have, not the statute you wish you had." If so, Florida may have found constitutional ways to foster grandparent visitation. For example, the legislature amended Ch. 751, which authorizes a court to order concurrent custody to extended family members who have physical custody, but lack documentation necessary to consent to a child's medical treatment, or to enroll a child in school.[52] However, the statute provides that concurrent custody may not diminish a parent's custodial rights, and the court must terminate an order for concurrent custody if one of the parents objects.[53]

Additionally, voters adopted the "Granny Flats" amendment to the Florida Constitution, which provides tax incentives for constructing living quarters for grandparents.[54] Perhaps further economic incentives and disincentives, which have organically increased grandparent involvement in childrearing, will lead to an armistice.[55]❑

[1] *See* U.S. Census Bureau, *Military and Civilian Personnel in Installations: (2009)*, http://www.census.gov/compendia/statab/2012/tables/12s0508.pdf.

[2] As one congressman put it: "It is a well known fact that seniors are the most active lobby in this country, and when it comes to grandparents there is no one group more united in their purpose." *See* Maegen E. Peek, *Grandparent Visitation Statutes: Do Legislatures Know the Way to Carry the Sleigh Through the Wide and Drifting Law?*, 53 Fla. L. Rev. 321 (2001).

[3] The limited grandparent visitation rights available when children have been adjudicated dependent, and taken from the physical custody of the parents, is beyond the scope of this article. *See, e.g.*, Fla. Stat. §39.509 (2011).

[4] *See* U.S. Census Bureau, Frank B.

Hobbs, *The Elderly Population, available at* http://www.census.gov/population/www/pop-profile/elderpop.html. The number of elderly is expected to increase as the first members of the Baby Boom reached aged 65 last year. *See* U.S. Census Bureau, *We, The American Elderly,* http://www.census.gov/apsd/wepeople/we-9.pdf.

[5] *See* Peek, *Grandparent Visitation Statutes: Do Legislatures Know the Way to Carry the Sleigh Through the Wide and Drifting Law?*, 53 FLA. L. REV. at 321 (2001).

[6] Grandparents are playing an increasing role in child rearing. In 2011, 10 percent of children under 18 lived with at least one grandparent. *See* U.S. Census Bureau, Press Release, *More Young Adults are Living in Their Parents' Home, Census Bureau Reports* (Nov. 10, 2011) *available at* http://www.census.gov/newsroom/releases/archives/families_households/cb11-183.html.

[7] *See Troxel v. Granville*, 530 U.S. 57, 97 (2000) (quoting *Succession of Reiss*, "[T]he obligation ordinarily to visit grandparents is moral and not legal") (internal citations omitted).

[8] *See* Florida Senate, Judiciary Committee Interim Report 2009-120, *Grandparent Visitation Rights* (Oct. 2008), *available at* http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf.

[9] *See* FLA. STAT. §61.13(2)(b) (1978).

[10] *See* FLA. STAT. §61.08 (1978).

[11] *See* FLA.STAT. §752.01(1), (1984).

[12] *See* FLA. CONST. art. I, §23 ("Every natural person has the right to be let alone and free from government intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.").

[13] *See Sketo,* 559 So. 2d at 382.

[14] *See* Jorge M. Cesteros, *Happiness Is Being a Grandparent? The Evolution of Grandparent Visitation in Florida,* 71 FLA. B. J. 51 (Nov. 1997) (provides an excellent analysis of the then current state of grandparent visitation rights through the *Beagle* decision, some rulings following *Beagle*, and briefly surveys the development of grandparent rights in other state courts).

[15] *See* FLA. STAT. §752.01(1) (1995).

[16] The legislature also granted grandparents the same standing as parents for evaluating custody arrangements for a child in cases in which the child had resided with the grandparent in a stable relationship. *See* FLA. STAT. §61.13(7) (1993).

[17] *Beagle*, 678 So. 2d at 1273-1274.

[18] *See Sketo*, 559 So. 2d at 382.

[19] *See Beagle*, 678 So. 2d at 1276-1277 (emphasis added).

[20] *Id.* at 1276.

[21] *See Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998).

[22] *See id.* at 514.

[23] *Id.* (emphasis original) (internal citations omitted).

[24] *Richardson*, 766 So. 2d at 1038-1038.

[25] *Id.* at 1039.

[26] *See* WASH. REV. CODE §26.10.160(3) (1994) (emphasis added).

[27] *Troxel*, 530 U.S. at 72 ("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.").

[28] *See In re: Smith*, 137 Wash. 2d 1, 969 P.2d 21, 30 (1998).

[29] It is instructive to read all the opinions of the justices due to the "*Marks* Rule," and the fact that the justices discuss domestic relations issues beyond the federal question. Generally, it takes five votes to become a binding opinion of the court. The "*Marks* Rule" provides that if there is no one majority opinion for the court, the holding is the narrowest decision in favor of the winning side. *See Marks v. United States,* 430 U.S. 188 (1977).

[30] *Troxel*, 530 U.S. at 65. Justice Souter suggested the statute was per se unconstitutional because it permitted judges to supplant parents in deciding what is best for children. *See id.* at 75-78 (Souter, J., concurring). Justice Thomas would have applied the highest level of "strict scrutiny" to infringements of the parent's constitutional childrearing right. *See id.* at 80 (Thomas, J., concurring). Conversely, Justice Scalia viewed parental rights as unalienable rights derived from the Declaration of Independence, not the Constitution — which does not mention it. Justice Scalia worried:"If we embrace this unenumerated right, I think it obvious . . . that we will be ushering in a new regime of judicially prescribed, and federally prescribed, family law." *Id.* at 62-63 (Scalia, J., dissenting).

[31] *Id.* at 65.

[32] *Id.* at 68-69 (quoting *Reno v. Flores,* 507 U.S. 292, 304 (1993)).

[33] *Id.* at 68.

[34] *Id.* at 69-70.

[35] *Id.* at 75 (quoting Kennedy, J., dissent at 80).

[36] *Id.* at 73.

[37] *See* FLA. CONST. art. I, §23.

[38] *See Winfield v. Div. of Pari-Mutuel Wagering, Dept. of Business Regulation,* 477 So. 2d 544 (Fla. 1985); *accord Von Eiff*, 720 So. 2d at 514 (finding the state constitutional right to privacy is much broader in scope, embraces more privacy interests, and extends more protection to those interests than its federal counterpart).

[39] *See Beagle*, 678 So. 2d at 1273.

[40] *See* FLA. STAT. §61.13002(1) (2008).

[41] *See* Staff Analysis on CS/HB 25 (March 2, 2010) (The bill also amended F.S. Ch. 75, authorizing concurrent custody of minor children to extended family members under certain circumstances.).

[42] *Id.* at 2 (emphasis added).

[43] *Id.* (emphasis added).

[44] *Id.* at 3 (emphasis added).

[45] *Id.* (emphasis added).

[46] *Spence*, 705 So. 2d at 997.

[47] *Id.* at 998. Under former FLA. STAT. §61.13(2)(b)(2)(c) (1995), a court may award grandparental visitation rights in a dissolution proceeding if the court deems that such visitation is in the child's best interest.

[48] *Id.*

[49] *Spence* has received criticism. *See, e.g., Sullivan v. Sapp,* 866 So. 2d 28, 38 (Fla. 2004) ("*Spence* is an anomaly among decisions from Florida courts...."); *accord S.G. v. C.S.G.,* 726 So. 2d 806 (Fla. 1st DCA 1999) ("With respect, we are not persuaded that the analysis in Spence should apply...."); *Brunetti v. Saul* 724 So. 2d 142, 144 (Fla. 4th DCA 1998) ("There is something essentially unfair ... in holding that an unwed mother who is economically compelled to bring a paternity action gives up her constitutional right of privacy....) (Klein, J., concurring).

[50] *Sullivan,* 866 So. 2d at 38.

[51] Ch. 752 still exists in the Florida statutes despite the fact it was found unconstitutional. Florida follows a continuous revision system, whereby the legislature adopts a bill that repeals all of the prior year's statutes, and reenacts all of the existing statutes as revised by that year's laws. *See generally* Brandon R. Christian & Kristin A. Norse, *Time Is On My Side: Four Steps to Applying the Correct Law,* 83 FLA. B. J. 44 (July/Aug. 2009).

[52] *See* FLA. STAT. §751.01 (2011).

[53] *But see* FLA. STAT. §751.05(3)(b) (2011) (Provides that even if a parent objects to concurrent custody, the court may still grant the petition by finding through clear and convincing evidence that the parent had abused, abandoned, or neglected her child, as defined in Ch. 39.).

[54] *See* FLA. CONST. art. VII, §4(f). The enabling statute is found at FLA. STAT. §193.703 (2011) (Allowing homestead property owners who add living quarters for a parent or grandparent to have all or part of the value of the new construction deducted from their assessment.).

[55] The great recession has increased multigenerational households as adult children move in with their grandparents. *See* Sharon Jayson, *More Children Live with Grandpa, Grandma,* USA TODAY (June 29, 2011), *available at* http://www.usatoday.com/LIFE/usaedition/2011-06-30-Census-grandparents-30_ST_U.htm.

***Ronald H. Kauffman** is board certified in marital and family law and practices in Miami.*

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