

Findings

Parental Rights

Why They Matter and How They're Being Ignored

By Brooke Everley

In Kings Mountain, North Carolina, the Stumbo family began their day in much the same fashion as many other American families. While the four children were getting dressed the Stumbo's two-year-old daughter Joni chased the family kitten out the door of their rural Cleveland County home before putting her clothes on. Her older brother saw her and quickly managed to get her back inside. Mr. Stumbo headed to work, thinking no more of it. Two hours later, a child welfare investigator arrived at their home after receiving an anonymous tip that a young girl had been seen naked in the driveway. In spite of seeing the mother and four children sitting on the deck in good health, the social worker followed protocol and requested permission to enter and tour the home as well as to conduct private interviews with each child. When Mrs. Stumbo refused, the Department of Social Services filed a court petition seeking an order requiring the parents to cooperate with the investigation or be held in contempt of court. Without addressing the circumstances surrounding the case or the fact that only an anonymous tip had initiated the investigation, the trial court ruled, and the appellate court later agreed, that the parents had interfered by refusing to permit the interviews to take place.¹ However, in July of 2003, the North Carolina Supreme Court overturned the lower courts, saying that there was not sufficient evidence of neglect to trigger an investigation in this case.² Thus ended nearly four years of litigation, resolving a matter that the Supreme Court said should never have even reached the level of an investigation.

This situation reveals the difficult bal-

ance between the desire to help, especially when children are potentially in harm's way, and the intrusion of government into the private lives of families. Unfortunately, in a world where many look to our government to address many issues of social concern, this desire to help often results in the creation of government programs that generate new problems instead of solving existing ones. This expansion of government authority has resulted in a loss of personal liberty, greatly affecting the family as the government intrudes

It should be the priority of every government policy that affects children to respect and guard the fundamental rights of parents.

on existing parental rights and wrestles more control of children away from their parents.

Traditionally, there has been little doubt that the authority to determine what is in a child's best interests lies with the parents; however, recent events indicate that this is not always considered to be the case. In the clamor to create policies to protect children, the important role of the parents is often overlooked or minimized. It should be the priority of every government policy that affects children to respect and guard the fundamental rights of parents. Once this foundation is recognized then the work of creating policies beneficial to children can be more reasonably approached. This paper will explore the legal and natural history of parental rights, the current trend away from them, and ways to reverse this trend.

Constitutional Background

United States Supreme Court cases have long affirmed the fundamental nature of parental rights. Beginning with *Meyer v. Nebraska* (1923), the Court determined that the liberties protected by the Due Process Clause of the Constitution include the right of parents to "establish a home and bring up children" and to determine the direction of their education.³ Later, in *Prince v. Massachusetts* (1944) the Court declared: "it is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter."⁴ In fact, in *Wisconsin v. Yoder* (1972), the Court acknowledged the ancient roots of parental rights, stating that "the history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."⁵

Recent cases continue to recognize the crucial role that parents play in their children's lives. In *Troxel v. Granville* (2000), the Court confirmed that parents have a "fundamental right...to make decisions concerning the care, custody, and control of their children."⁶ The Court pointed out the need to be wary of state laws that could "place a substantial burden on the traditional parent-child relationship,"⁷ and stated that government would normally have no reason to interfere in the private family realm as long as a parent adequately cares for his or her child.⁸

North Carolina courts have echoed these sentiments, stating that parents have

a “constitutionally-protected paramount right to custody, care, and control of their child.”⁹ In the *Stumbo* case described in the introduction, the North Carolina Supreme Court addressed the complex balance between protecting children from abuse and protecting families from government interference:

*While acknowledging the extraordinary importance of protecting children from abuse, neglect, and dependency by prompt and thorough investigations, we likewise acknowledge the limits within which governmental agencies may interfere with or intervene in the parent-child relationship.*¹⁰

The Court continued by echoing the United States Supreme Court’s language in *Troxel* stating that only a parent’s unfitness will allow for State intrusion.¹¹

Natural Inclination

It does not require a Supreme Court decision to confirm the intuitive knowledge that Americans have about the fundamental right of parents to determine how their children should be reared. Parents have a vested interest in the success and good health of their offspring, and throughout history parents have been considered the best guardian of their child’s interests because of this natural bond between a parent and child. Children, too, have a natural desire for the security and comfort provided by boundaries set by their parents.¹²

Historically, the law has recognized that children are incapable of making many decisions and has sought to protect minors from the complex situations that adults face. For example, children are protected from entering legally binding contracts with adults; children are protected from harmful substances like tobacco, alcohol, and pornography; and children are protected from abuse, whether it occurs within or outside of the home. Even in less significant areas, children need parental guidance. Parents expect to be asked for permission before their children may take aspirin at school, go on field trips, or get their ears pierced. It would therefore seem logical to expect the same deference to parental judgment and discretion in other areas including education, medicine, and visitation rights.

Undermining of Parental Rights

In spite of the apparent consensus regarding the significance of parental rights, this basic principle is being simultaneously attacked and ignored on several fronts

in our society today, most often by those who claim to be acting “in the child’s best interests.” Consider how the de-emphasis of parental rights affects the following areas:

Education. One important area for parental rights in public schools is health and sex education. Too often parents are not informed or consulted when a sexual health curriculum is being created. A recent Zogby International poll asked questions using verbatim information contained in the Guidelines for Comprehensive Sexuality Education curricula (developed by the Sexuality Information and Education Council of the United States and the Centers for Disease Control and Prevention) and found that “parents overwhelmingly disapprove of the subject matter, termed ‘comprehensive sex education,’ that is currently used in schools. Comprehensive sex education contains information on how to obtain and use contraceptives such as condoms.”¹³ In spite of this strong preference for sex education that focuses more on abstinence and less on graphic how-to’s of contraception, Congress continues to fund comprehensive sex education while marginalizing abstinence programs.

In 2002, the Wake County Board of Education met to evaluate moving from the abstinence program implemented in 1997 to more of a comprehensive sex education program.¹⁴ In 7th–9th grades, the new program includes information on tolerance, diversity, and prejudice—with a reference to sexual orientation.¹⁵ Lessons discuss condom effectiveness and sexually transmitted diseases, relegating abstinence to a preferred option rather than an expected standard. New elective classes for 10th–12th graders have been interpreted by the school system to be exempt from the requirements of the North Carolina abstinence education law. While parents are allowed to review the (over 200 pages of) materials and have their children “opt-out” of the 7th–9th grade classes and choose not to take the elective 10th–12th grade classes, this program assumes that it is in the best interests of children to learn about sexual health at the hands of teachers instead of parents. One alternative would be for schools to offer sex education classes that parents could choose to place their children in rather than requiring parents to actively object to their child’s participation in the class. This would better enable parents to impart their own values to their children instead of the ones the state chooses to instill through the classroom.

Medicine. Two primary issues of controversy regarding parental involvement in the medical field are abortion and contraception. The pro-abortion movement has framed the question of parental notification and consent of a minor’s abortion as one of a limitation on a woman’s right to choose, but the real issue is parents’ involvement in a monumental decision affecting their daughter’s medical and psychological well-being.¹⁶ Not only are laws requiring parental notification or consent important for maintenance of parental rights and protection of children, but they also lead to a decrease in the abortion and birth rates for teenagers.¹⁷ Even with the passage of notification or consent laws in many states, there are difficulties in monitoring compliance and enforcing them. Abortion clinics have no incentive to confirm that a signature on a permission note is valid. A reasonable remedy is to require that parental consent be given in person at the clinic or that the note of parental consent be notarized, but few states, including North Carolina, have such safeguards.

A similar situation exists regarding access to contraceptives in schools and family planning clinics. North Carolina has a statewide ban against distribution of contraceptives in schools,¹⁸ but there are still numerous clinics providing services to teenagers without parental knowledge.¹⁹ Medical drugs and devices like Depo Provera and cervical caps are distributed to minors with the same level of confidentiality given to adults meeting in private with their doctors, even though these items can often have serious side effects. A Zogby International poll found that around 70 percent of parents disapprove of their children being able to obtain contraception without their knowledge or approval.²⁰ In spite of this, federally-funded family planning clinics are expressly prohibited from informing parents that their child is receiving any service.²¹ Here in North Carolina, a similar law states that a physician does not need parental consent for prevention or treatment of pregnancy or venereal disease or even substance abuse or emotional disturbance.²² According to a CDC report of family planning clinics during 1991, 27.3 percent of the more than 4 million women “served” were between 15 and 19 years old.²³ Denying parents the knowledge of such critical decisions leaves out those who care the most about their children’s health.

Visitation Rights. Third-party visitation rights have become a controversial

topic in the past decade, especially when the third party seeking visitation is a grandparent. In an ideal world there would never be a need to litigate over visitation rights, and all children would have good relationships with their grandparents. Any time that tensions within a family reach the point at which litigation is sought to obtain visitation rights, it is a tragic situation. However, such problems should be dealt with in a family counselor's office, not in a court of law.

Several states have passed legislation allowing grandparents to sue intact families for visitation rights, allowing courts to take over the evaluation of a child's best interest and even placing the burden of proof on the parents to prove that third-party visitation is not in the child's best interest. Several of these laws have been repealed by state legislatures and others have been struck down by state courts.²⁴ In fact, a recent United States Supreme Court decision invalidated a Washington state law allowing any person to sue for visitation at any time. The Court found that "the Due Process clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made."²⁵ While this decision is a victory for parents across the nation, visitation statutes with narrower language are still problematic because many do not require that the third party show that the child was being (or potentially being) harmed by the parents.²⁶ If courts are allowed to interfere with intact families in this manner, without proof of abuse or neglect, it raises the question of when they would be limited from interfering.

Here in North Carolina, the Supreme Court ruled in *McIntyre v. McIntyre* (1995) that current state law does not allow third parties to sue for visitation except in cases of abuse, neglect, or custody proceedings.²⁷ The court held that "parents have a 'paramount right ... to custody, care and nurture of their children' and that right includes the right to determine with whom their children shall associate."²⁸ A recent appellate court decision stated that "as between a parent and a non-parent, North Carolina courts cannot perform a 'best interest of the child' analysis to determine child custody until after the natural parents are judicially determined to be unfit."²⁹ Therefore, a judge's evaluation of what is best for a child will not be substituted for a parent's evaluation unless the judge finds the parent unfit overall. While there is no clear definition of "unfit" in any

North Carolina case, this judicial determination takes into consideration anything that could reveal a parent's "inability to adequately care for the child and to provide for the child's welfare."³⁰ Abuse and neglect are consistently considered to show unfitness; socioeconomic status is not considered relevant information.

A similar situation to third-party visitation rights is that of agreements pertaining to post-adoption privileges for birth relatives. When a child is adopted, a "decree of adoption effects a complete substitution of families for all legal purposes after the entry of the decree."³¹ This means that all legal ties with the birth family are severed and the parental rights of the birth parents are therefore terminated. However, some birth parents and relatives seek to stay in contact with the child through visitation and other means of communication and therefore enter into informal agreements with the adoptive parents.

In recent years, some birth relatives have sought court enforcement of these nonbinding agreements when the (adoptive) parents seek to limit or cut off the contact after determining that continued contact with the birth relatives is not in the best interests of the child and his or her (adoptive) family. While this desire to maintain contact is understandable, the problem is that we are again allowing the government to determine the best interests of the child rather than leaving that decision up to the parents. As with third-party visitation rights, the parents have not been declared unfit, yet the court is being asked to determine whether post-adoption privileges for a birth relative would be in the best interests of the child. Parents need the discretion to make choices that are in their child's best interests, and the state simply should not have the power to dictate how or with whom a child spends their time.

Effect on Child Abuse Investigations

Opponents of parental rights often suggest that buttressing parental authority with legislation will impede the government's ability to protect against child abuse. However, returning authority to the parents could actually make child abuse investigations more effective and efficient.

Currently, a large number of abuse investigations are initiated by anonymous tips. As opposed to information given by a known caller, anonymous complaints are more likely to be made out of spite rather than a legitimate concern that abuse may be occurring.³² According to the executive director of Prevent Child Abuse North Carolina, only around 30 percent of all

investigated abuse or neglect cases are substantiated.³³ This means that nearly 70 percent of reported cases are not validated. This pursuit of false complaints subjects innocent families to intrusive visits and children to interviews that are needless and upsetting, and wastes the time of social workers who could be working on legitimate tips instead.

If social services were required to respond only to callers who are willing to give their names, many innocent parents would avoid facing groundless accusations while abusive ones would be found out more quickly. The fact that reports are already kept confidential should ensure that sincere citizens are not deterred from reporting their concerns. As the Seventh Circuit stated in *Doe v. Heck*:

*There is, perhaps, no more worthy object of the public's concern than preventing the most vulnerable members of society, children of tender years, from being physically abused. This unquestionably compelling state interest, however, may not be used as a pretense for arbitrary governmental intrusion into the private affairs of its citizens.*³⁴

In the *Stumbo* case, three members of the North Carolina Supreme Court recognized that an "'anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity' absent suitable corroboration."³⁵ Their concurring opinion stated:

*Unfounded allegations of child abuse unfairly stigmatize individuals, clearly making them 'unpopular' within their local community. Thus, it is critical that the government bring forward particularized allegations supported by at least some evidence before carrying out the more intrusive aspects of its investigatory protocol.*³⁶

The majority agreed that the tip would have been responded to better with a simple phone call to the parents rather than a full-force investigation.³⁷ In fact, primarily in response to this case, the North Carolina General Assembly passed a law requiring that in order for local DSS directors or their representatives to enter a home, they must have at least one of the following: (1) parental permission, (2) a court order, (3) accompaniment of a police officer with legal authority to enter, or (4) "reasonable belief that a juvenile is in imminent danger of death or serious physical injury."³⁸

The fear that supporting parental rights may impair child abuse investigations is an understandable one, but appropri-

ate investigation protocol ensures that the proper balance can be maintained. In *Stumbo*, the concurring opinion clarified that social workers must have reasonable grounds for suspecting the existence of abuse or neglect before initiating a full-blown investigation.³⁹ The justices stated that this requirement, which leaves open the use of immediate action in exigent circumstances, “accommodates the government’s noble efforts to reduce the incidence of child abuse and neglect without wholly abrogating the constitutional rights of children and caregivers.”⁴⁰

Conclusion

With the innate sense of responsibility that parents have for their children and the consistent affirmation of this natural bond from both the Supreme Courts of the United States and of North Carolina, how have we reached this level of tension between the welfare of children and the rights of parents? Part of the problem is the deceptive nature of the debate, which has been framed in terms of what a child needs and wants, rather than who should be determining what a child needs and which wants should be fulfilled. However, this is not a tension between rights of parents and rights of children, but between government takeover and traditional family authority.

The Supreme Court has declared that the Constitution gives heightened protection to a parent’s right to direct a child’s upbringing. Therefore a state’s role is only to intervene in limited cases in which there is strong government interest such as a medical emergency, abuse, or neglect. As the Ninth Circuit stated in *Calabretta v. Floyd* (1999), “the government’s interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children’s interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents.”⁴¹

How can we guarantee that the government properly exercises its duty to protect parental rights? One possible solution is the passage of a parental rights amendment to the North Carolina Constitution, similar to what has been considered at the federal level.⁴² Such an amendment

would codify current language used by courts in relation to parents’ natural authority over their child(ren). An amendment could require that courts not interfere with a parent’s care for a child without showing that the state has a compelling interest in that particular case. This requirement would give parents an assurance that their decisions relating to the best interests of their child will not be questioned unless there is some proof that the state has a strong reason to intervene. At the same time, it would not limit a state’s ability to protect children from abuse or neglect, because these compelling interests would only require a showing of reasonable suspicion that abuse or neglect was occurring in order to continue an investigation.

Short of passing legislation of this type, it is important that parents consistently exercise their parental authority and be aware of attacks against it. We must ensure that government policies preserve the right of parents to determine what is in a child’s best interests in all aspects of life from education to medicine, to visitation. Not only is this a parent’s right, it is a responsibility, and if we neglect it, our children will be the ones who suffer.

Brooke Everley worked with the N.C. Family Policy Council as a legal intern from the Alliance Defense Fund’s Blackstone Fellowship during the summer of 2003.

Copyright © 2003. North Carolina Family Policy Council. All Rights Reserved.

Endnotes

1. Jim Mason, J.D. Interview for NCFPC broadcast of “Family Policy matters” radio program. July 21, 2003.
2. *In re Stumbo*, 582 S.E. 2d 255, 259 (N.C. 2003).
3. 262 U.S. 390, 399.
4. 321 U.S. 158, 166.
5. 406 U.S. 205, 232.
6. 530 U.S. 57, 66.
7. *Id* at 65.
8. *Id* at 68.
9. *Peterson v. Rogers*, 445 S.E.2d 901, 903 (NC 1994).
10. *Stumbo*, at 260.
11. *Id*.
12. Drescher, John M. *Seven Things Children Need*. Scottsdale, PA: Harold Press, 1988.
13. Zogby International Press Release. “Parents disapprove of current sex education

14. Hui, T. Keung. “Sex ed may get more detailed.” *Raleigh News and Observer*. November 4, 2002.
15. “Abstinence Until Marriage Unit for Grades 7-9: Healthful Living Education Standard Course of Study.” Wake County Public Schools. January, 2003.
16. See ElHage, Alysse and Edgar S. Douglas, M.D. “The After-effects of Abortion: the Physical and Psychological Impact on Women.” *Findings*. The North Carolina Family Policy Council. January 2003.
17. Hass-Wilson, Deborah. “The Impact of State Abortion Restrictions on Minors’ Demand for Abortion.” *Journal of Human Resources*. January 1999. Vol. 31, No. 1. p. 140; See also, Ellertson, Charlotte. “Mandatory Parental Involvement in Minor’s Abortions; Effects of Laws in Minnesota, Missouri, and Indiana.” *American Journal of Public Health*. August 1997. Vol. 87, No. 8. pp. 1367-1374.
18. N.C. Gen. Stat. §115C-81(e)(9).
19. See Planned Parenthood of North Carolina Health Services information. Available online at <http://www.plannedparenthood.org/affiliateinfo/stateinformation.asp?state=NC>
20. *Ibid* #13.
21. 42 CFR §59.
22. N.C. Gen. Stat. §90-21.5.
23. Centers for Disease Control and Prevention. “Surveillance of Family Planning Services at Title X Clinics and Characteristics of Women Receiving These Services, 1991.” May 05, 1995 / 44(SS-2);1-21.
24. See e.g., *Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993).
25. *Troxel* at 72-73.
26. *Id* at 73.
27. 461 S.E.2d 745, 749-50 (N.C. 1995).
28. *Id* at 748.
29. *Barger v. Barger*, 560 S.E.2d 194, 195 (N.C. App. 2002).
30. *Raynor v. Odom*, 478 S.E.2d 655, 659 (N.C. App. 1996).
31. N.C. Gen. Stat. §48-1-106(a).
32. Fagan, Patrick F. “CAPTA Successes and Failures at Preventing Child Abuse and Neglect.” The Heritage Foundation. Testimony. August 2, 2001.
33. Whitmire, Tim. “NC parents go public with fight to get children back.” *Raleigh News and Observer*. February 18, 2003.
34. *Doe v. Heck*, Seventh Circuit Court of Appeals, No. 01-3648 at 53.
35. *Stumbo*, at 268 (Martin, J. concurring).
36. *Id* at 265.
37. *Id* at 261.
38. Senate Bill 421 §4.1, amending N.C. Gen. Stat. §7B-302, ratified July 4, 2003.
39. *Stumbo*, at 268 (Martin, J. concurring)
40. *Id* at 266.
41. 189 F.3d 808, 820.
42. See, e.g., H.R. 1946 Parental Rights and Responsibilities Act of 1995.

Organized in 1992, the North Carolina Family Policy Council is a nonpartisan, nonprofit, research and education organization. Our goal is to serve as a voice for families and traditional family values in the public policy arena. We are supported solely by private contributions which are tax deductible as provided by law. Our mailing address is P.O. Box 20607, Raleigh, NC 27619. Phone: (919) 807-0800. Fax: (919) 807-0900. Findings is a publication of the North Carolina Family Policy Council which is intended to communicate research findings and perspectives on public policy issues that affect the family. Nothing written here should be construed as necessarily reflecting the views of the North Carolina Family Policy Council or as an attempt to aid or hinder the passage of any bill before Congress or the North Carolina General Assembly. Printed October 2003.