

 KeyCite Yellow Flag - Negative Treatment
Disagreement Recognized by [Matter of Adoption of Francisco A.](#),
N.M.App., November 29, 1993

61 N.Y.2d 747, 460 N.E.2d 1351, 472 N.Y.S.2d 916

In the Matter of George L.
Layton et al., Respondents,
v.
Roger Foster et al., Appellants.

Court of Appeals of New York
Argued January 11, 1984;
decided January 17, 1984

CITE TITLE AS: Matter of Layton v Foster

SUMMARY

Appeal from a judgment of the Family Court, Broome County (Daniel S. Dickinson, Jr., J.), entered December 9, 1983, bringing up for review an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered August 2, 1983, which (1) reversed, on the law and the facts, an order of said Family Court, entered January 3, 1983, dismissing a petition to obtain visitation, and (2) remitted the matter to said Family Court for determination of a schedule and conditions of visitation.

Petitioners were the paternal grandparents of an infant born in 1977, whose mother was divorced from petitioners' son in 1978. The following year she married Roger Foster, appellant herein, who adopted the child in 1981. Prior to the divorce, petitioners saw the child on a biweekly basis, and, after the divorce, they continued to have regular contact with the child when his father would bring him to petitioners' home during his regular visitation periods. *748 Following the adoption, the child's parents prevented petitioners from seeing the child, claiming that such visitation would harm the child because he would become aware that Roger Foster was not his biological father.

The Family Court concluded that "it would be an invasion of the natural and adoptive parents privacy and embarrassment to the natural parent as well as the adoptive parent" to permit visitation by petitioners; that "the natural father did knowingly and overtly terminate

his parents rights", and "that it would be in the best interest of the child * * * to cancel any visitations". The Appellate Division concluded that [section 72 of the Domestic Relations Law](#) favored access by grandparents when the visitation would contribute to the overarching goal of promoting the child's best interests; that there was nothing in the record to suggest that petitioners would disrupt the relationship between the child and his parents; that petitioners' agreement that the child should have no contact with his biological father was a prudent condition and adequately ensured that the child's relationship with his adoptive father would not be undermined; that the statute was intended to apply in the adoption setting, and that contact with natural relatives would probably lead to discussion of the adoptive relationship, a fact not necessarily harmful to the child's psychological development.

Matter of [Layton v Foster](#), 95 AD2d 77, affirmed.

HEADNOTES

[Parent, Child and Family](#)
[Visitation Rights of Grandparents](#)
Adoption

([1]) In a proceeding brought by paternal grandparents seeking visitation of their grandchild after being denied access by the child's natural mother and her present husband, who adopted the child when the infant was four years old, a judgment of the Family Court and an order of the Appellate Division brought up for review, which reversed a prior order of the Family Court dismissing the petition and remitted the matter for determination of visitation schedules, should be affirmed. The Family Court erred, on the law, when it suggested that the natural father's consent to adoption by the mother's present husband terminated the rights of the natural father's parents, since section 72 of the Domestic Relations Law evidences a legislative intent to continue the familial relationship between grandparents of an adopted child and the child, provided that doing so is not contrary to the best interests of the child. The problem that the child will be faced with three sets of grandparents and thus possibly have brought home to him his adoptive status is a problem inherent in the legislative policy, and absent a showing of exacerbation of the problem by the grandparents, furnishes no basis for denial of visitation;

the conclusion of the Appellate Division that contact of the child with his grandparents will not harm the child's emotional or physical well-being more nearly conforms with the weight of the evidence. *749

APPEARANCES OF COUNSEL

Philip E. VanRiper for appellants.

Bruno Colapietro for respondents.

OPINION OF THE COURT

The judgment appealed from and the order of the Appellate Division should be affirmed, with costs.

Section 72 of the Domestic Relations Law evidences a legislative intent to continue the familial relationship between grandparents of an adopted child and the child, provided that doing so is not contrary to the best interests of the child (*Lo Presti v Lo Presti*, 40 NY2d 522, 527). The Family Court Judge erred on the law, therefore, in suggesting that the natural father's consent to adoption by the stepfather terminated the rights of the natural father's parents.

The Appellate Division held that he had erred on the facts as well in finding it in the best interests of the child to cancel any visitation with the grandparents. The question being a factual one, our function when the Appellate Division and the Family Court reach different conclusions on the issue, is to determine where the weight of the evidence lies, taking into consideration the fact that the Family Court Judge had the better opportunity to assess credibility (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492) and bearing in mind that the particular issue involves "as a primary consideration the avoidance of hindering the

adoptive relationship" (*People ex rel. Sibley v Sheppard*, 54 NY2d 320, 329).

There is here little dispute concerning the facts and nothing to suggest that visitation with petitioners will hinder the child's adoptive relationship, the grandparents having made clear their willingness not to involve the natural father in their visitation, or interfere with the relationship between the child and his mother and adoptive father, or make known to the child his adoption until the mother and adoptive father are prepared to do so. Essentially, the problem arises out of the desire of the mother and adoptive father that the child not be faced with the fact that he has three sets of grandparents and thus *750 possibly have brought home to him his adoptive status. That, however, is a problem inherent in the legislative policy itself and absent evidence of exacerbation of the problem by the grandparents, furnishes no basis for denial of visitation by them with the child (cf. *Lo Presti v Lo Presti*, supra).

The only other basis for terminating visitation suggested by the Family Court Judge was conflict between petitioners and respondents. In our view, however, the conclusion of the Appellate Division that contact of the child with his grandparents will not harm the child's emotional or physical well-being more nearly conforms with the weight of the evidence.

Chief Judge Cooke and Judges Jasen, Jones, Wachtler, Meyer and Kaye concur; Judge Simons taking no part. Judgment appealed from and order of the Appellate Division brought up for review affirmed, with costs, in a memorandum.

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