

The Thirty-First Annual  
DOMENICK L. GABRIELLI  
**NATIONAL FAMILY LAW**  
MOOT COURT COMPETITION



**Bench Brief and Competition Problem**

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# *Court of Appeals*

STATE OF NEW SCOTLAND



Joey and Phoebe Tribbiani,

*Plaintiffs–Appellants,*

– against –

Monica and Chandler Bing,

*Respondent–Appellees.*

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BENCH BRIEF

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## TABLE OF CONTENTS

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FOREWARD.....	1
PARTY DESIGNATIONS.....	1
PROCEDURAL BACKGROUND.....	2
ISSUES ON APPEAL.....	3
FACTUAL BACKGROUND.....	3
SUMMARY OF THE ARGUMENTS .....	6
ISSUE ONE: MEDICAL NEGLIGENCE.....	6
<i>Summary of Grandparents' Argument</i> .....	7
<i>Selected Relevant Case Law</i> .....	8
<i>Summary of Parents' Argument</i> .....	10
<i>Selected Relevant Case Law</i> .....	11
ISSUE TWO: GRANDPARENT VISITATION.....	12
<i>Summary of Grandparents' Argument</i> .....	13
<i>Selected Relevant Case Law</i> .....	14
<i>Summary of Parents' Argument</i> .....	16
<i>Selected Relevant Case Law</i> .....	16
STATUTES.....	18
NEW SCOTLAND DOMESTIC RELATIONS LAW § 2700.....	18
NEW SCOTLAND FAMILY COURT ACT § 1900.....	18
NEW SCOTLAND FAMILY COURT ACT § 7475.....	18



## **I. FOREWARD**

The events and legal proceedings depicted in the 31st Annual Gabrielli Family Law Bench Brief and Problem take place in the fictional State of New Scotland, located in the territorial United States of America. The facts set forth in the New Scotland Supreme Court Decision (2018 NS Slip Op. No. 2070) are the official record and may not be modified. No other facts may be added.

The State of New Scotland has a three-tiered judicial system. The “Supreme Court” is the trial court, the “Third Appellate Division” is the first level of appellate review, and the “New Scotland Court of Appeals” is the highest court. Under New Scotland R. Civ. P. 10(b), the parties can appeal as of right to the New Scotland Court of Appeals from a final or non-final decision and order if the Third Appellate Division certifies the questions to be heard on appeal. The constitutionality—under both the state and federal constitutions—of each of the relevant statutes has been upheld by the New Scotland Court of Appeals and is not at issue in this appeal.

## **II. PARTY DESIGNATIONS**

The following is an overview of the party designations at each stage of the problem:

In the State of New Scotland, Supreme Court, Joey and Phoebe Tribbiani are the Petitioners, and Monica and Chandler Bing are the Respondents.

In the State of New Scotland, Third Appellate Division, Joey and Phoebe Tribbiani are the Petitioners-Appellees, and Monica and Chandler Bing are the Respondents-Appellants.

In the State of New Scotland Court of Appeals, Joey and Phoebe Tribbiani are the Petitioners-Appellants, and Monica and Chandler Bing are the Respondents-Appellees.

Petitioners-Appellants Joey and Phoebe Tribbiani (“the Grandparents”) brought this proceeding in Supreme Court requesting the Court declare that Respondents-Appellees Monica and Chandler Bing (“the Parents”) medically neglected their fourteen-year-old child Frannie by failing to provide Puberty

Blocking Treatment (PBT), as recommended by Dr. Green, a psychiatric gender therapist, and order that PBT be provided to Frannie under the supervision of Dr. Green. The Grandparents also requested that the Supreme Court grant an Order of Visitation allowing them to have regular visitation with Frannie. The Grandparents alleged that it would be in Frannie's best interests to spend time with them because they provide Frannie with physical and emotional support and a loving, welcoming environment, while the Parents have created a hostile home environment for Frannie.

### **III. PROCEDURAL BACKGROUND**

The Grandparents brought this action in the New Scotland Supreme Court pursuant to New Scotland Family Court Act § 7475 claiming that the Parents have medically neglected their fourteen-year-old child Frannie by refusing to provide Puberty Blocking Treatment (PBT) as recommended by Frannie's psychiatrist. The Grandparents also sought an Order of Visitation pursuant to New Scotland Domestic Relations Law § 2700 because the Parents have refused to allow Frannie to visit her Grandparents.

The Supreme Court held, pursuant to New Scotland Family Court Act § 1900, that the Parents medically neglected Frannie, and directed the Parents to provide PBT under the supervision of Frannie's psychiatrist, Dr. Green. The Supreme Court also held, pursuant to New Scotland Domestic Relations Law § 2700, that the relationship between Frannie and the Grandparents amounts to equitable circumstances warranting an Order of Visitation.

The Third Appellate Division reversed the Supreme Court's determinations and held that the Parents' failure to provide PBT did not amount to medical neglect pursuant to New Scotland Family Court Act § 1900, and that although there are equitable circumstances weighing in favor of allowing grandparent visitation, the Grandparents were interfering with the Parents' parenting of Frannie, which was not in her best interests. Based on this determination, the court reversed the Supreme Court order granting visitation. The Grandparents appeal to the New Scotland Court of Appeals on both of these issues.

#### **IV. ISSUES ON APPEAL**

The two questions the State of New Scotland, Third Appellate Division, certified on appeal are:

1. **WHETHER:** The State of New Scotland, Third Appellate Division, correctly determined that the Parents' failure to provide Puberty Blocking Treatment for their child, who identifies as transgender, does not constitute medical neglect; and
2. **WHETHER:** The State of New Scotland, Third Appellate Division, correctly determined that it is not in the child's best interests to grant an Order of Visitation to the Grandparents because the Grandparents support the child's transgender identity, while the Parents do not, which results in family tension and dysfunction.

#### **V. FACTUAL BACKGROUND**

The Parents, Monica and Chandler Bing, have one child, Francis "Frannie" Bing. Francis was born on April 11, 2004, and the birth certificate designates "male" as Frannie's sex. However, beginning around the age of four (4) and persisting to her current age of fourteen (14), Francis has identified as female. During these ten years, the Parents encouraged Francis to focus on "boy things," such as spending time with male friends, playing sports, and staying active, and to avoid "girl things" such as makeup, nail polish, stuffed animals, and dolls.

The Grandparents, Joey and Phoebe Tribbiani, played a significant role in Francis' life. The Parents decided that although they were wealthy and could easily afford preschool and daycare, it would be better for Francis to be in the care of the Grandparents while the Parents were at work. The Grandparents also noticed Francis's "girlish tendencies," especially when Francis would play with Monica's childhood toys, including her dress-up closet, makeup, kitchen sets, and dolls. Neither Joey nor Phoebe thought much about Francis's tendencies. They were just happy that Francis was having fun, and they even enjoyed attending Francis's pretend "tea parties."

Shortly before beginning kindergarten, Francis demanded to be called Frannie, and would refuse to respond to Francis. When questioned by the Parents, Francis indicated that Frannie "was prettier and

more suiting.” Chandler and Monica did not like this new name, and their failure to use “Frannie” instead of “Francis” resulted in significant stress for all involved. This stress escalated while shopping for back-to-school clothes for the new year, when Frannie requested and was denied “pretty dresses like the others.” Her Parents insisted, due to the school dress code for boys, that Frannie select the prescribed Khakis and Polos. Frannie responded through tears, “well then, I want to be a girl!”

As Frannie’s female identity progressed, the Parents sought the advice of Dr. Geller, their family doctor. Dr. Geller and has been successfully treating Chandler and Monica over an extended period of time, for their anxiety and depression, so that typically, neither experiences any symptoms. After hearing Chandler’s and Monica’s concerns about Frannie’s psychological wellbeing, and assessing Frannie, Dr. Geller diagnosed Frannie (at age 5) with anxiety and depression. He prescribed a low dose of Prozac, a selective serotonin reuptake inhibitor (SSRI) commonly used to treat anxiety and depression, and Frannie has been taking Prozac since then. Dr. Geller also recommended that Frannie begin seeing a therapist regularly, so the Parents enrolled Frannie in therapy with Dr. Gunther.

After repeated encouragement from Dr. Gunther and the Grandparents, the Parents finally brought Frannie to see Dr. Green, a psychiatrist and gender expert. Dr. Green diagnosed Frannie as transgender and suffering from gender dysphoria. She explained the potentially grave effects of gender dysphoria, which include diminished psychological wellbeing, and a more than 13-fold increase in the likelihood of committing suicide over her cisgender peers. She also recommended the Parents begin giving Frannie (PBT), which essentially pauses the child’s gender development. The Parents refused.

The Parents stopped bringing Frannie to Dr. Green because they believed she had radical views. Additionally, the Parents firmly believed Frannie should wait until an older, more mature age, to begin meddling with hormones. Frannie always tended to run through phases, such as wanting to be a superhero until beginning school, when Frannie decided to be a teacher. Frannie wanted to be a teacher until meeting Dr. Geller, at which point Frannie wanted to be a doctor. Then Frannie met Dr. Gunther, and the new goal was to be a therapist. Most recently, Frannie wanted to be a news anchor. Because Frannie’s phases always come to an end, the Parents are convinced Frannie’s transgender identity is just another one of those phases. However, the Parents’ recognized that Frannie needed medical attention for anxiety and depression and continued to take Frannie for treatment and therapy under the supervision of Dr. Geller and Dr. Gunther.

When Frannie reached age 10, she began spending more and more time with the Grandparents, who allowed Frannie to engage in the activities she desired, such as hosting tea parties and playing

dress-up, with makeup, and with kitchen sets. Allowing Frannie to engage in these activities was contrary to the Parents' request that the Grandparents forbid Frannie from pursuing feminine activities. At age 11, Frannie told Dr. Gunther, her therapist, that she preferred spending time with the Grandparents over the Parents. Frannie referred to the Grandparents' home as "a safe haven, where everyone is free to be themselves."

The Grandparents were delighted to be such a positive part of Frannie's life. They understood not only that Frannie enjoys "feminine activities" but also that Frannie wanted to be recognized as a girl. They wanted nothing but to support and provide for Frannie's happiness, so they began using feminine pronouns. The Grandparents knew this would cause tension between Parents and them, but they were concerned about Frannie's wellbeing.

The Parents found out that the Grandparents were supporting Frannie's feminine tendencies on Frannie's twelfth birthday and forbade Frannie from seeing the Grandparents anymore. The Parents were distraught for days after this occurrence, took personal days off from work, and had many heated discussions between themselves about the Grandparents' outright disrespect for their parenting decisions. Frannie could not understand why they were so upset and angry. Frannie was happy with the Grandparents.

The following year, when Frannie turned 13, Dr. Geller found that her mental health had reached an all-time low. In addition to being unable to visit with her Grandparents, which had worsened her depression, all the girls in Frannie's class were developing into women, while Frannie was developing into a man. Frannie began to grow facial hair and kept getting taller. Frannie tried to shave the hair to look more feminine and finished with several cuts on her face. Frannie stopped socializing, so she could avoid others seeing what Frannie was becoming. After Frannie told Joey and Phoebe during a secret visit that life "is not worth it," the Grandparents filed this petition, seeking an Order of Visitation, a finding of medical neglect, and an order mandating that Frannie's parents provide Frannie PBT under the supervision of Dr. Green.

## VI. SUMMARY OF THE ARGUMENTS

**Issue 1: WHETHER: The State of New Scotland, Third Appellate Division, correctly determined that the Parents' failure to provide Puberty Blocking Treatment for their child, who identifies as transgender, does not constitute medical neglect.**

Parents have an affirmative duty to provide their child with adequate medical care, which is the degree of care exercised by ordinarily prudent and loving parents, who have the best interests of the child in mind. Matter of Faridah W., 180 A.D.2d 451, 452 (1st Dep't 1992). This duty is not limited to a child's physical health, but may "include psychiatric medical care . . ." In re Dustin P., 57 A.D.3d 1480, 1481 (4th Dep't 2008), *citing* Matter of Felicia D., 263 A.D.2d 399, 399 (1st Dep't 1999). Medical neglect may be found when a child's "physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired." New Scotland Family Court Act (NSFCA) § 1900(a)(i). For example, "[i]mpairment of a child's emotional or mental condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, depressive episodes, thoughts or attempts of suicide, or general misbehavior . . . ." NSFCA § 1900(b). For a finding of neglect, the court must not only find that the impairment exists, but also that it is "attributable to the unwillingness or inability of the caretaker to exercise a minimum degree of care toward the child." NSFCA § 1900(b). Failure to follow a recommended course of psychiatric treatment may be sufficient to support a finding that the parents are unwilling or unable to provide the child with adequate medical care. *See* Matter of Maurice R., 157 A.D.3d 798, 799 (2d Dep't 2018), *citing* Matter of Jaelin L. (Kimrenee C.), 126 A.D.3d 795, 796 (2d Dep't 2015). Parents are required to provide "an acceptable course of medical treatment for their child in light of all the surrounding circumstances" Maurice R., 157 A.D.3d at 799, *citing* Matter of Mia G. (William B.), 146 A.D.3d 882, 883 (2d Dep't 2017).

**SUMMARY OF GRANDPARENTS ARGUMENTS**  
**(MEDICAL NEGLECT ISSUE)<sup>1</sup>**

- Psychological harm is just as serious as physical harm.
  - Frannie suffers from severe depressive episodes.
  - Frannie’s substantially diminished psychological functioning is clearly attributable to the Parents’ refusal to provide her with PBT.
  
- Frannie is transgender and suffers from gender dysphoria.
  - Gender Dysphoria refers to discomfort or distress that is caused by discrepancies between a person’s gender identity and that person’s natal sex.
  - Frannie has consistently identified as a female from as young as 4 years old.
  - Frannie experiences severe anxiety when referred to as a boy, and the anxiety heightens when forced to engage in “masculine activities” and when denied “feminine activities.”
  - Frannie’s depression worsened after puberty began and caused masculine development.
  
- Suicide is more prevalent in youths who suffer from gender dysphoria.
  - Frannie already is suffering from depression and anxiety.
  - Frannie began displaying signs of suicidal ideation at a young age.
  - A child is 13x more likely to commit suicide if a parent rejects their transgender identity.
  
- PBT is the recommended standard of care for transgender youths that suffer from gender dysphoria.
  - The World Professional Association for Transgender Health (WPATH) recommends PBT for adolescents beginning puberty up until age 16.
  - The Selective Serotonin Reuptake Inhibitor (SSRI) prescribed to treat Frannie’s depression is ineffective.
  - Refusing timely medical interventions would likely increase the severity and length of Frannie’s dysphoria.

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<sup>1</sup> NOTE: Competitors are NOT to argue Constitutional issues.

- The effects of PBT are reversible.
  - PBT has minimal long-term consequences, and essentially freezes the child in time physiologically, halting natural sex development.
  - PBT allows Frannie time to make the decision to either discontinue treatment or transition to a feminizing treatment: Hormone Replacement Therapy (HRT).
  - If Frannie changes her mind at a later date and identifies as male, she can cease PBT and develop naturally as a man, albeit at a later age.
  - The longer Frannie waits to take PBT, the more invasive and expensive it will be to transition to female. Reversing the physical effects of puberty is invasive and expensive.
  - Failure to take PBT if Frannie decides to transition will require undergoing puberty twice: once as a teen and again as an adult due to HRT.
  
- Frannie may seek unregulated, harmful drugs if not provided with PBT.
  - Puberty blockers that are not FDA approved can be found “on the streets.”
  - These unprescribed medications may not be PBT at all or may be mixed with dangerous, cheap substances. “PBTs” of this sort may lead to death.
  - Children are capable of, and commonly seek out, such unregulated treatments as an act of desperation.
  
- The parents failed to provide an acceptable alternative form of treatment for Frannie’s gender dysphoria not only by refusing PBT, but also by taking Frannie out of regular meetings with the gender therapist.

**SELECTED RELEVANT CASE LAW<sup>2</sup>**

- **\*\*Matter of Faridah W., 180 A.D.2d 451, 452 (1st Dep’t 1992).**
  - Adequate medical care is the degree of care exercised by ordinarily prudent and loving parents, who have the best interests of the child in mind.
  
- **\*\*Matter of Felicia D., 263 A.D.2d 399, 399 (1st Dep’t 1999).**

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<sup>2</sup> **\*\*If a case is starred, it was mentioned in the Family Law Competition Problem\*\***

- Where a child’s emotional health is impaired by parents’ unwillingness to pursue recommended course of psychiatric therapy, the court may find neglect.
- \*\*Matter of Maurice R., 157 A.D.3d 798 (2d Dep’t 2018).
- \*\*Matter of Jaelin L. [Kimrenee C.], 126 A.D.3d 795, 796 (2d Dep’t 2015).
  - Failure to follow a recommended course of psychiatric treatment may support a finding that the parents are unwilling or unable to provide the child with adequate medical care.
- In re J.N.S., No. F17-334 X (Ohio Juv. Ct. Feb. 16, 2018).
  - The child’s mental state continued to diminish, and he began contemplating suicide because of the Parents’ refusal to provide adequate hormone treatment.
  - Parents’ failure to provide their transgender son with hormone therapy constitutes medical neglect.
- In re Eli H., 22 Misc.3d 965 (N.Y. Fam. Ct. 2008).
  - Refusing to provide a recommended treatment constitutes a failure to provide adequate medical care if no alternative is provided.
  - The parents refused recommended surgery for their child. Without the surgery, there was, “up to seventy percent chance [the child would] die.” Delaying the surgery would increase the likelihood of adverse effects that could also lead to the child’s death.

**SUMMARY OF PARENTS' ARGUMENTS**  
**(MEDICAL NEGLECT ISSUE)<sup>3</sup>**

- Parents have the right to make medical decisions regarding their child's health care.
  - Parents know their child better than anyone.
  - Frannie can make her own medical decisions when she either turns 18 or moves out of the Parents' home, because HRT can be taken at any time to transition to female.
  
- Some transgender youths do not become transgender adults.
  - Studies show some young transgenders "desist" rather than "persist" in their transgender identity.
  - Frannie has a history of phases which ultimately came to an end, including her desire to be a superhero, teacher, doctor, therapist and news anchor. The Parents' believe Frannie's transgender identity is another phase.
  
- A transgender life is not an easy one.
  - Transgenders are subjected to violence and ridicule more than cisgenders.
  - Transgenders are ten times as likely to attempt suicide than cisgenders.
  
- PBT is not truly reversible, and its effects may cause Frannie more harm than good.
  - Frannie would be physically inferior to her peers when taking PBT because it would halt development.
  - This asynchronous development with peers may cause significant emotional concerns, especially for Frannie who is already prone to depression.
  - If Frannie later decides to discontinue treatment, she will be subjected to the stresses of puberty at an advanced age.
  
- Both of Frannie's parents suffer from depression, which is what Frannie is suffering from.
  - The parents had to go through the process of trying different prescriptions and dosages before finding a good balance of medications, and the same is likely true for Frannie.

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<sup>3</sup> NOTE: Competitors are not to argue Constitutional issues.

- The Parents provided Frannie with acceptable alternative treatment.
  - As soon as they recognized Frannie was experiencing anxiety and depression, the Parents brought Frannie to their family doctor, Dr. Geller, and followed his recommendations to enroll Frannie in therapy and provide her with Prozac to treat her.
  - The Parents met with the gender expert, Dr. Green, to learn more about a condition Frannie may have, and made the informed decision to pursue Dr. Geller’s recommendations instead.
  - Courts should be hesitant to make judicial determinations regarding controversial pharmaceutical treatments.

#### **SELECTED RELEVANT CASE LAW<sup>4</sup>**

- **\*\*Matter of Hofbauer, 47 N.Y.2d 648, 656 (1979).**
  - Parents have an obligation to “provide[ ] an acceptable course of medical treatment for their child in light of all the surrounding circumstances.” This is met by providing treatment “recommended by their physician and which has not been totally rejected by all responsible medical authority.”
  
- **\*\*Matter of Felicia D., 263 A.D.2d 399, 399 (1st Dep’t 1999).**
  - Although the mother did not follow recommendation to place a child in a residential mental health center, her care did not constitute neglect because she was providing the child with outpatient care, counseling, and therapy, and the child was residing in a supportive loving environment with her sisters.

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<sup>4</sup> **\*\*If a case is starred, it was mentioned in the Family Law Competition Problem\*\***

**Issue 2: WHETHER: The State of New Scotland, Third Appellate Division, correctly determined that it is not in the child’s best interests to grant an Order of Visitation to the Grandparents because the Grandparents support the child’s transgender identity, while the parents do not, which results in family tension and dysfunction.**

Parents have a fundamental right to make decisions concerning the care, custody, and control of their children, including whether to expose their children to certain people or ideas. Troxel v. Granville, 530 U.S. 57, 57 (2000).<sup>5</sup> For this reason, courts must give deference to the parents’ determinations regarding the care, custody, and control of their children. Id., at 57. Parents have a fundamental right to make decisions concerning the care, custody, and control of their children, including whether to expose their children to certain people or ideas. Under Domestic Relations Law § 2700 (1980), New Scotland’s visitation statute, grandparents have standing to seek child visitation where the parents of the child are deceased, or “where equity would see fit to intervene.” Once standing is established, courts may make an order pursuant to the best interests of the child.

Where standing is sought on equitable circumstances, “the issues of standing and best interests are usually so intertwined . . . as to make it difficult, if not impossible, to make a clear distinction.” Scheinkman, Practice Commentary, McKinney’s Cons Laws of NY, 2013 Electronic Update, Domestic Relations Law § 72. “[I]t is generally preferable not to bifurcate” these issues, and courts generally merge the determinations of equitable circumstances and best interests by considering the same three factors: give deference to the nature and basis of the parents’ objection to visitation; consider the grandparents’ attitudes toward the parents; and evaluate the nature and extent of the grandparent-grandchild relationship. Id.; Troxel v. Granville, 530 U.S. 57; Emanuel S. v. Joseph E., 78 N.Y.2d at 182.

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<sup>5</sup> See Also; Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Soc. of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925); Prince v. Massachusetts, 321 U.S. 158 (1944); Wisconsin v. Yoder, 406 U.S. 205 (1972); Stanley v. Illinois, 405 U.S. 645 (1972); Parham v. J.R., 442 U.S. 584 (1979); Bellotti v. Baird, 443 U.S. 622 (1979).

**SUMMARY OF GRANDPARENTS' ARGUMENTS**  
**(VISITATION ISSUE)<sup>6</sup>**

- Parental objection and deference: The Parents' objections to visitation are unreasonable.
  - The objections are based solely on a disagreement about Frannie's gender identity, not about whether the Grandparents are loving, supportive, of fit caretakers.
  
- Parent-Grandparent relationship: The relationship between the Parents and Grandparents does not threaten family function because the Grandparents have taken care of Frannie over a long period of time without incident.
  - Although the parties have a disagreement regarding Frannie's gender expression, there is no evidence that continuing to visit the Grandparents would be contrary to Frannie's best interests. In fact, visiting the Grandparents reduces her anxiety and depression.
  
- Grandparent-Grandchild relationship: Frannie's relationship with the Grandparents is one that is extraordinarily close.
  - Frannie prefers to spend time with the Grandparents over the Parents.
  - The Grandparents' home is the only place Frannie feels safe and welcome.
  
- Frannie's mental health is benefitted by visitation with her Grandparents
  - Transgender youth need strong support systems more than their cisgender peers.
    - Without support, transgender youths are 10 times more likely to commit suicide than their cisgender peers.
  - Frannie receives the necessary support from her Grandparents. She is happier there.

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<sup>6</sup> Competitors should not argue any constitutional issues

## SELECTED RELEVANT CASE LAW<sup>7</sup>

- **\*\*Emanuel S. v. Joseph E.**, 78 N.Y.2d 178, 182 (1991).
  - While there is no list of “equitable circumstances,” they are understood to be situations where visitation would be of invaluable consequence to the children.
  
- **\*\*Morgan v. Grezesik**, 287 A.D.2d 150, 156 (4th Dep’t 2001).
  - Troxel only requires courts to give “some presumptive or ‘special’ weight to the parents’ determinations, but their decisions are not controlling.
  
- **Matter of David M. v. Lisa M.**, 207 A.D.2d 623 (N.Y. App. Div. 1994).
  - Interference with a parent’s right to limit those with whom the child associates may be justified if there is “some *compelling* purpose which furthers the child’s best interests.” (emphasis added).
  
- **\*\*B. S. v. B. T.**, 148 A.D.3d 1029, 1031 (2d Dep’t 2017).
  - The court must consider the grandparents’ attitudes toward the parents. “Mere animosity between a parent and grandparent is not enough to deny visitation privileges to a grandparent.”
  
- **Walley v. Pierce**, 86 So.3d 918 (Miss. 2012).
  - Although the grandmother exhibited tendencies to interfere with the parents’ child-rearing methods, visitation was in the children’s best interests. The father’s objection to visitation was ultimately rooted in spite resulting from tensions between the father’s family and the grandmother.
  
- **\*\*Matter of Seddio v. Artura**, 139 A.D.3d 1075 (2d Dep’t 2016).
  - The father denied the grandmother visitation due to a dispute that led to their estrangement. Because the dispute had no effect on the child’s relationship with either the father or grandmother, the court granted visitation.

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<sup>7</sup> **\*\*If a case is starred, it was mentioned in the Family Law Competition Problem\*\***

- **\*\*E.S. v. P.D., 27 A.D.3d 757, 759 (2d Dep’t 2007).**
  - Visitation is often granted when an extraordinarily close relationship exists, and where the relationship is central to the child’s wellbeing.
  
- **\*\*Matter of LoPresti v. LoPresti, 40 N.Y.2d 522 (1976).**
  - \*\*Layton v. Foster, 95 A.D.2d 77 (3d Dep’t 1983).**
  - \*\*Gloria R. v. Alfred R., 209 A.D.2d 179 (1st Dep’t 1994).**
    - Visitation should only be denied where that visitation would be harmful to the child or where it rises to the level of family dysfunction or causes an emotionally traumatic effect on the child.
  
- **In re J.N.S., No. F17-334 X (Ohio Juv. Ct. Feb. 16, 2018).**
  - The child’s mental state continued to diminish to the point of contemplating suicide because of the parents’ refusal to provide adequate support for the child’s gender expression. He experienced relief from his mental anguish when in the company of his Grandparents.
  - Although the parents continued financially supporting their gender dysphoric child with therapy sessions, the court awarded custody to the grandparents, reasoning that the child’s suicide ideation required the court to act expeditiously.

**SUMMARY OF PARENTS' ARGUMENTS**  
**(VISITATION ISSUE)**

- Parental deference: The Parents' objection to visitation is reasonable.
  - Parents have a fundamental right to make decisions concerning the care, custody, and control of their children, and their decisions must therefore be given considerable weight.
  
- The Grandparents undermined the Parents' child rearing efforts.
  - Although the Parents made clear their desire to steer Frannie away from "feminine" activities, the Grandparents continued to support Frannie's preferences.
  - With the Grandparents' knowledge, Frannie would sneak out of the Parents' home to visit the Grandparents.
  
- The Parent-Grandparent relationship has deteriorated to a level that causes family dysfunction.
  - After the Parents' last exchange with the Grandparents around Frannie's 12th birthday, they were distraught, missed work, and argued, behaviors contrary to Frannie's best interests.
  - Visitation may increase hostility due to child-rearing differences, which is contrary to Frannie's best interests.
  
- The grandparent-grandchild relationship is not central enough to Frannie's well-being to outweigh parental deference and Frannie's best interests.
  - While the Grandparents have a supportive and loving relationship with Frannie, there is nothing the Grandparents provide that is essential to her well-being.

**SELECTED RELEVANT CASE LAW<sup>8</sup>**

- **\*\*Troxel v. Granville, 530 U.S. 57, (2000).**
  - Parental determinations concerning visitation are entitled to deference.

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<sup>8</sup> **\*\*If a case is starred, it was mentioned in the Family Law Competition Problem\*\***

- **\*\*Emanuel S. v. Joseph E., 78 N.Y.2d 178, (1991).**
  - While there is no list of “equitable circumstances,” they are understood to be situations where visitation would be of invaluable consequence to the children.
  
- **\*\*Matter of LoPresti v. LoPresti, 40 N.Y.2d 522 (1976).**
  - **\*\*Layton v. Foster, 95 A.D.2d 77 (3d Dep’t. 1983).**
  - **\*\*Gloria R. v. Alfred R., 209 A.D.2d 179 (1st Dep’t 1994).**
    - Visitation should be denied where it would be harmful to the child or where it rises to the level of family dysfunction or causes an emotionally traumatic effect on the child.
  
- **DiBerardino v. DiBerardino, 229 A.D.2d 539 (2d Dep’t 1996).**
  - Finding that a deep-rooted animosity between the parties coupled with significant dysfunction warranted the termination of visitation.
  
- **Wilson v. McGlinchey, 2 N.Y.3d 375 (2004).**
  - Courts must consider the effect that grandparent visitation will have on the parent-child relationship.
  - Visitation was denied because the mother’s post-traumatic stress surrounding grandparent visitation disturbed and negatively impacted the child.
  - Grandparents’ interest must yield even where equitable circumstances exist, but where the family experiences a worsening of inter-familial relationships.
  
- **Kenyon v. Kenyon, 251 A.D.2d 763 (1998).**
  - For grandparents to have standing where the biological parents of a child are living, equitable circumstances must exist to justify such intervention.
  - Equitable circumstances were found where the grandparents had a substantial ongoing relationship with their grandchild from his birth until the parents denied visitation.
  
- **Coulter v. Barber, 251 A.D.2d 763 (3d Dep’t 1995).**
  - Family gatherings were always subject to undercurrents of stress, tension and uncertainty caused by the grandfather’s efforts to control, criticize, and demean family members.
  - The parents’ objection to visitation is reasonable where it is based on “legitimate concerns for the welfare of their family.”

## VII. NEW SCOTLAND STATUTES

### New Scotland Domestic Relations Law § 2700 (Effective June 30, 1980)

Where the parents of a minor child are deceased, or where circumstances show that conditions exist which equity would see fit to intervene, a grandparent or the grandparents of such child may petition the Supreme Court; and the court, by order, may make such directions as the best interest of the child may require, for visitation rights for such grandparent or grandparents in respect to such child.<sup>9</sup>

### New Scotland Family Court Act § 1900 (Effective April 20, 1970)

(a) A “medically neglected child” means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care.

(b) Impairment of a child’s emotional or mental condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, depressive episodes, thoughts or attempts of suicide, or general misbehavior; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the caretaker to exercise a minimum degree of care toward the child.<sup>10</sup>

(c) Upon a finding of medical neglect, the court, by order, may make such directions for medical treatment as the court deems necessary.

### New Scotland Family Court Act § 7475 (Effective January 18, 1994)

(a) Where a grandparent or grandparents of a minor child have reason to believe such child has been, or is being, medically neglected by the child’s parents or guardians pursuant to § 1900 of this Act, the grandparent or grandparents of such child may petition the Supreme Court for an order directing appropriate medical treatment and for such other and further relief as the court may deem appropriate.

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<sup>9</sup>This statute is nearly identical to New York State Domestic Relations Law § 72.

<sup>10</sup>This statute is nearly identical to New York State Family Court Act § 1012(f)(i) and § 1012(h).

The Thirty-First Annual  
DOMENICK L. GABRIELLI  
**NATIONAL FAMILY LAW**  
MOOT COURT COMPETITION



**Competition Problem**

*Prepared By:*

**Elizabeth A. Murad, Chair**

*Faculty Advisor:*

**Professor Evelyn M. Tenenbaum**



## TABLE OF CONTENTS

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FOREWARD.....	1
NOTICE OF APPEAL.....	2
NOTICE OF APPEAL TO COURT OF APPEALS.....	3
SUPREME COURT DECISION AND ORDER.....	4
APPELLATE DIVISION DECISION AND ORDER.....	24
NEW SCOTLAND STATUTES .....	31



## **FOREWARD**

The events and legal proceedings depicted in the 31st Annual Gabrielli Family Law Problem take place in the fictional State of New Scotland, located in the territorial United States of America. The facts set forth are the official record and may not be modified. No other facts may be added.

The State of New Scotland has a three-tiered judicial system. The “Supreme Court” is the trial court, the “Third Appellate Division” is the first level of appellate review, and the “New Scotland Court of Appeals” is the highest court. Under New Scotland R. Civ. P. 10(b), the parties can appeal as of right to the New Scotland Court of Appeals from a final or non-final decision and order, if the Third Appellate Division certifies the questions to be heard on appeal. The parties can also appeal as of right to the Third Appellate Division from a final or non-final decision and order of the Supreme Court. The constitutionality—under both the state and federal constitutions—of each of the relevant statutes has been upheld by the New Scotland Court of Appeals.

NOTE: The events and decisions are fictional and while the courts might not hear and decide these issues as expeditiously as in the fact pattern, please assume have they done so for purposes of the competition. Also assume that there are no transcripts available from any of the relevant Proceedings.

NOTE: The parties should ONLY address the issues certified on appeal to the Court of Appeals.

NOTE: The Laws of the State of New Scotland are substantially similar to those of the State of New York, so we rely upon New York precedent, but the parties are free to rely on case law from any jurisdiction.



**STATE OF NEW SCOTLAND  
SUPREME COURT**

=====  
**JOEY and PHOEBE TRIBBIANI,**

Petitioners-Appellees,

-against-

**NOTICE OF APPEAL**

Index No.: 2018-2070

**MONICA and CHANDLER BING,**

Respondents-Appellants.

=====

PLEASE TAKE NOTICE that the above-named Respondents-Appellants, Monica and Chandler Bing (Parents), hereby appeal to the New Scotland, Third Appellate Division, from the New Scotland Supreme Court Decision and Order dated July 17, 2018, which found that the Parents' failure to provide Puberty Blocking Treatment (PBT) for their child Frannie, who identifies as transgender, constituted medical neglect, ordered they provide Frannie with PBT under the supervision of Dr. Green, and granted an order of visitation to the Grandparents because it is in Frannie's best interests.

Respondents respectfully appeal from the entire Decision and Order and from each and every part thereof.

Dated: July 20, 2018

*Diane Lockheart*

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Diane Lockheart, Esq.  
Attorney for the Respondents



**STATE OF NEW SCOTLAND  
THIRD APPELLATE DIVISION**

=====

**JOEY and PHOEBE TRIBBIANI,**

Petitioners-Appellants,

-against-

**NOTICE OF APPEAL**

Index No.: 2018-2070

**MONICA and CHANDLER BING,**

Respondents-Appellees.

=====

PLEASE TAKE NOTICE that the above-named Petitioners-Appellants, Joey and Phoebe Tribbiani, hereby appeal to The New Scotland Court of Appeals on the questions certified by the New Scotland, Third Appellate Division, in its Decision and Order dated November 28, 2018. The certified questions for review are:

WHETHER: The State of New Scotland, Third Appellate Division, correctly determined that the Parents' failure to provide Puberty Blocking Treatment for their child, who identifies as transgender, does not constitute medical neglect; and

WHETHER: The State of New Scotland, Third Appellate Division, correctly determined that it is not in the child's best interests to grant an order of visitation to the Grandparents because the Grandparents support the child's transgender identity, while the Parents do not, which results in family tension and dysfunction.

Dated: November 30, 2018

*Will Gardner*

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William Gardner, Esq.  
Attorney for the Petitioners



**STATE OF NEW SCOTLAND  
SUPREME COURT**

=====

**JOEY and PHOEBE TRIBBIANI,**

Petitioners,

-against-

**DECISION AND ORDER**

Index No.: 2018-2070

**MONICA and CHANDLER BING,**

Respondents.

=====

Alicia Florrick, J.S.C.

Decided: July 17, 2018

This matter comes to the Supreme Court by a petition submitted by Petitioners Joey and Phoebe Tribbiani (Grandparents), through their attorney, William Gardner, Esq. In the petition, the Grandparents request that this court declare that Respondents Monica and Chandler Bing (Parents) medically neglected their fourteen-year-old child Frannie by failing to provide Puberty Blocking Treatment (PBT), as recommended by Dr. Green, a psychiatric gender therapist, and order that PBT be provided to Frannie under the supervision of Dr. Green. Petitioners also request that this court grant an Order of Visitation allowing them to have regular visitation with Frannie. Petitioners allege equitable circumstances exist, and that it would be in Frannie’s best interests to spend time with the Grandparents. They allege that they provide Frannie with physical and emotional support, and a loving, welcoming environment, while the Parents have created a hostile home environment for Frannie.

The Parents contend that PBT is not an appropriate treatment for Frannie at this time and that it is not in Frannie’s best interests to allow visitation with the Grandparents because the visitation would create conflict within the home and undermine the Parents’ child rearing decisions.

After a fact-finding hearing, and for the reasons set forth below, this Court grants the relief requested by Petitioners.

## **I. INTRODUCTION**

The parties have engaged in discovery and submitted an extensive record to this Court. No material facts are in dispute.

## **II. FACTUAL BACKGROUND**

### **A. Frannie's Childhood**

The Parents, Monica and Chandler Bing, have one child, Francis “Frannie” Bing. Francis was born on April 11, 2004, and the birth certificate designates “male” as Francis's sex. However, at the early age of four (4) years, Francis began exhibiting “female tendencies,” including a preference for spending time with female friends over male friends. Francis also gravitated toward female clothing, makeup, nail polish, stuffed animals, and dolls. At this early age, the Parents would simply encourage Francis to focus on “boy things” like spending time with male friends, playing sports, and staying active.

Also, at this age, Francis returned from a T-Ball team party exclaiming that a few teammates were playing dolls, and Francis asked the Parents for one to bring to the next party. Without fighting, but trying to direct Francis to “boy things,” the Parents purchased G.I. Joe figures, although they were not to Francis's liking. Francis explained that these figures were “not pretty like the other dolls,” and that Francis needed “a pretty dollie to fit in with the girls.” These comments began to worry the Parents, so they started pushing harder for Francis to redirect all attention toward “boy things,” including telling Francis not to play with the girls, but instead to focus on baseball with the boys. Francis was distraught without the girls and would cry and beg the Parents to let Francis attend parties with the girls, but instead they would only allow Francis to attend events with other boys.

The Grandparents, Joey and Phoebe Tribbiani, played a significant role in Francis's life. Until Francis started school, Francis would stay with the Grandparents while the Parents were at work. The

Parents decided that although they were wealthy and could easily afford preschool and daycare, it would be better for Francis to be in the care of the Grandparents. Francis also spent time with the Grandparents when the Parents went out. Joey and Phoebe enjoyed spending time with Francis just as much as Francis enjoyed being with them. All three would go on daily adventures to the zoo, park, mall, or wherever their imaginations took them on any particular day. The Grandparents also noticed Francis's "girlish tendencies," especially when Francis would play with Monica's childhood toys, including her dress-up closet, makeup, kitchen sets, and dolls. Neither Joey nor Phoebe thought much about Francis's tendencies. They were just happy that Francis was having fun, and they even enjoyed attending Francis's pretend "tea parties."

While Francis enjoyed dolls and tea parties, the camaraderie and competition with the boys on the T-Ball team was an equal source of enjoyment. Francis quickly realized the boys were often faster and stronger than the girls, and preferred playing with the boys on the field. Because Francis was finally enjoying boys' sports, the Parents strongly encouraged Francis to keep playing and competing and hanging out with the boys after practice and games. As soon as Francis was off the field, however, it was straight to playing house with the girls.

Shortly before beginning kindergarten, Francis demanded to be called Frannie, and would refuse to respond to Francis. When questioned by the Parents, Francis indicated that Frannie "was prettier and more suiting." Chandler and Monica did not like this new name, and their failure to use "Frannie" instead of "Francis" resulted in significant stress for all involved. This stress escalated while shopping for back-to-school clothes for the new year, when Frannie asked for "pretty dresses like the others." Fed-up with this behavior, the Parents began scolding Frannie in the store, which resulted in Frannie having a breakdown. Recognizing that scolding would not work, the Parents attempted to explain to Frannie that the school had a dress code, and that girls wear dresses and boys wear khakis and polos. Frannie

responded through tears, “well then, I want to be a girl!” In an attempt to compromise with Frannie, the Parents purchased polos in Frannie’s favorite colors, pink and purple, instead of the traditional red and blue.

### **B. The Opinions of Frannie’s Medical Care Team <sup>11</sup>**

The comment that “I want to be a girl” motivated the Parents to seek advice from Dr. Geller, who had been their family physician since Frannie’s birth. Dr. Geller is familiar with Chandler’s and Monica’s extensive history of depression and anxiety, and has been successfully treating them so that typically, neither experiences any symptoms. After hearing Chandler’s and Monica’s concerns, and assessing Frannie, Dr. Geller diagnosed Frannie with anxiety and depression, and prescribed a low dose of Prozac, a selective serotonin reuptake inhibitor (SSRI) commonly used to treat anxiety and depression. He informed the Parents that Frannie’s “feminine behaviors” may be early symptoms of bipolar disorder that he would monitor over time. Dr. Geller also recommended that Frannie begin counseling to supplement the medication he prescribed.

Following Dr. Geller’s recommendations, the Parents enrolled Frannie in pediatric psychological counseling with Dr. Gunther. The Parents were hopeful therapy would help Frannie cope with anxiety and depression in a healthy way, and also help Frannie understand that “boys are boys and girls are girls.” Early in Frannie’s treatment, it appeared as though the medication was alleviating symptoms of depression. After months of regular appointments with Dr. Gunther, however, Frannie began to exhibit signs of early suicidal ideation, and Dr. Gunther worried about Frannie’s deepening depression. Dr. Gunther increased Frannie’s SSRI dosage to combat the depression, but after this failed to result in any improvement, he recommended the Parents take Frannie to a gender therapist to “assess deeper rooted issues.”

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<sup>11</sup> The facts in this section are based, in large part, on the testimony of Dr. Geller, Dr. Gunther, and Dr. Green.

Unsure about the validity of gender psychology, the Parents sought advice from the Grandparents. At this time, Phoebe disclosed that when Frannie came to visit, they often played pretend with dolls, dress-up, house, and tea parties. Phoebe told the Parents that during this make-believe play, Frannie often played the “mommy,” taking care of the make-believe family. Phoebe ultimately agreed with Dr. Gunther, that Frannie should see a gender therapist.

Shocked about Frannie’s behaviors and tendencies, the Parents begrudgingly took Frannie to Dr. Green, the only gender expert they consulted. After a few sessions with Frannie, Dr. Green diagnosed Frannie with gender dysphoria and explained that because Frannie’s biological sex is male, but Frannie identifies as female, Frannie is transgender. Gender dysphoria refers to discomfort or distress that is caused by discrepancies between a person’s gender identity and that person’s natal sex. (Eli Coleman et al., *Standards of Care For the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 13 *International Journal of Transgenderism*, 165-232 (2012)). Not everyone who is transgender automatically suffers gender dysphoria. While there are multiple sources of gender dysphoria, it typically develops if the transgender individual lacks a meaningful support system, or experiences opposition to the desired gender identification. Transgender youths without supportive parents or caretakers experience more dysphoria than those with support. (Kristina Olsen et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* (2016); Audry Gorin-Lazard et al., *Is Hormonal Therapy Associated with Better Quality of Life in Transsexuals? A Cross-Sectional Study*, 9(2) *The Journal of Sexual Medicine* 531-541 (2012)). Significantly, those suffering gender dysphoria are ten times more likely to attempt suicide than their cisgender counterparts. (Ann P. Haas et al., *Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations*, 58(1) *Journal of Homosexuality* 10-51 (2010)).

Dr. Green explained that Frannie experiences severe anxiety when referred to as a boy, and that her anxiety is amplified when she is forced to engage in activities she doesn't prefer, and forbidden from engaging in those she does. For transgender children to maintain a healthy psychological state, it is important that their parents are supportive and non-judgmental with respect to their gender expression. One study highlights that transgender youth whose parents reject their identity are 13 times more likely to attempt suicide than those who are supported by their parents, and those with a strong support system are 82% less likely to attempt suicide. (Brynn Tannehill, *The Truth About Transgender Suicide*, The Huffington Post, Nov. 14, 2015, [https://www.huffingtonpost.com/brynn-tannehill/the-truth-about-transgend\\_b\\_8564834.html](https://www.huffingtonpost.com/brynn-tannehill/the-truth-about-transgend_b_8564834.html), 2016)). Because Frannie was exhibiting an unhealthy psychological state, Dr. Green recommended that Frannie remain in therapy to ensure that she had the necessary support she needed, and a safe place to explore her identity and the transitioning experience. (David A. Levine, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132(1) *Pediatrics* 297-313 (2013)).

While psychological support is important, Dr. Green also believes Frannie should now receive medication to help with her gender dysphoria. The physiological aspects of puberty also play a significant role in the well-being of transgender youth. Dr. Green testified that as Frannie approached puberty, she would be likely to experience even greater anxiety and depression related to her gender dysphoria. As Frannie's body develops, it will begin to betray her. She will develop physical characteristics that are typical of the male biological sex, characteristics that are not in accord with Frannie's deeply felt female gender. As puberty progresses, she may also begin to feel hopeless about her future (Irwan Krieger, *Helping Your Transgender Teen: A Guide for Parents*, (2011)). Refusing timely medical interventions would likely increase the severity and length of her dysphoria. (Eli

Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 165-232).

Dr. Green further explained that to combat undesired development, many transgender youths begin Puberty Blocking Treatment (PBT) before puberty. PBT has minimal long-term consequences, and essentially freezes the child in time physiologically and halts natural sex development. (Peggy T. Cohen-Kettenis et al., *Puberty Suppression in A Gender-Dysphoric Adolescent: A 22-Year Follow-Up*, 40(4) *Archives of sexual behavior*, 843-847 (2011)). A major benefit of PBT is that it is completely reversible. PBT gives individuals more time to explore their gender identity, before undergoing treatments such as cross-hormonal treatments, with permanent effects. Frannie may undergo PBT for a few years until she makes the decision to either discontinue treatment or transition to a feminizing hormone regime known as Hormone Replacement Therapy (HRT). (Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 165-232). If Frannie changes her mind at a later date and identifies as male, she can cease PBT and develop naturally as a man, the same as other males, albeit at a later age. (Peggy T. Cohen-Kettenis et al., *Puberty Suppression in A Gender-Dysphoric Adolescent: A 22-Year Follow-Up*, 843-847).

According to Dr. Green, while the risks of taking PBT are minimal, the risks of not beginning PBT are serious. If Frannie decides to transition to female and does not take PBT before her natural hormones cause masculine development, she will need extensive and potentially dangerous surgery to obtain the desired female physical features, and some of these desired characteristics, such as height, might be impossible to change. These later surgeries will also be more expensive than simply taking PBT during puberty. (Chris Taylor, *Doing the Transgender Math: The Costs of Transition*, Reuters, (Oct. 29, 2015). <https://www.reuters.com/article/us-transgender-costs/doing-the-transgender-math-the-costs-of-transition-idUSKCN0SN1UA20151029> 2015). Moreover, if Frannie continues to experience

gender dysphoria and goes through puberty due to not taking PBT, she may attempt suicide or suffer serious psychological harm that is long-term and irreversible. Another concern is that Frannie may become desperate and access puberty-blockers that are not FDA approved. These drugs can be found “on the streets” or through questionable websites. These unprescribed medications may not be PBT at all or may be mixed with dangerous, cheap substances. “PBTs” of this sort may lead to death. (Richard F. Clark et al, *Subcutaneous Silicone Injection Leading to Multi-System Organ Failure*, 46(9) *Clinical Toxicology* 834-837 (2008)). Children desperate to have a body that conforms to their identity are capable of finding these drugs and, unfortunately, of harming themselves.

Dr. Green believes Frannie is a good candidate for PBT as she is transgender and suffers from gender dysphoria. In fact, when she was 10 years old, Frannie discovered PBT herself by researching gender dysphoria on the Internet. Frannie requested that Dr. Green prescribe PBT for her. At that time, Dr. Green told Frannie’s parents that they should begin PBT within the next two years. Dr. Green based her prescription on her past observations and the recommendations from the World Professional Association for Transgender Health (WPATH), which recommends PBT for adolescents beginning puberty up until age 16, and on the fact that Frannie, herself, requested PBT. (Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 165-232). After age 16, Dr. Green indicated that they could discuss other and further treatments, such as HRT, which blocks the natural sex hormones, while simultaneously administering cross-sex hormones, so Frannie can develop into the woman she is. In the meantime, Dr. Green recommended that the Parents allow Frannie’s identity to flourish, and that she be encouraged to express herself any way she wishes. Although at the time of the hearing Frannie had already begun to develop, Dr. Green continues to recommend that Frannie begin PBT to prevent any further masculine development.

The Parents left Dr. Green, the gender expert's office outraged. They listened to and understood everything Dr. Green said, but firmly believed Frannie should wait until an older, more mature age, to begin meddling with hormones. Frannie always tended to run through phases which ultimately came to an end. Frannie wanted to be a superhero until beginning school, when Frannie decided to be a teacher. Frannie wanted to be a teacher until meeting Dr. Geller, at which point Frannie wanted to be a doctor. Then Frannie met Dr. Gunther, and the new goal was to be a therapist. Most recently, Frannie wanted to be a news anchor. Because Frannie was only 10 years old, and had tendency to become fixated on new ideas and change her mind later, the Parents thought Frannie should wait until 18 to make any decisions concerning PBT or other hormonal interventions, at which time they would reconsider their position.

The Parents stopped bringing Frannie to Dr. Green because they believed she had radical views. Nonetheless, they wanted to continue treating Frannie's anxiety and depression through medication and counseling, so they brought Frannie back to both Dr. Geller and Dr. Gunther for treatment and therapy. Dr. Geller explained that Frannie's worsening depression was not unusual, because as children become adolescents, their minds become more complicated, and their receptivity to SSRI's change. Dr. Geller noted in their medical histories that both Monica and Chandler also experienced a worsening of their depression during their adolescence, making Frannie's situation understandable. He testified that it is often difficult to find the appropriate dosages of anti-depressants for children of Frannie's age but believes that a balance can be found. Dr. Geller did not recommend PBT when Frannie was 10 years old or at her current age because studies suggest that some transgender children do not become transgender adults. (Thomas D. Steensma et al., *Desisting and Persisting Gender Dysphoria After Childhood: A Qualitative Follow-Up Study*, 16 (4), *Clinical child psychology and psychiatry*, 499-516, (2011)). Further, because of the very nature of PBT to pause puberty until a later date, Dr. Geller believes that

Frannie may experience a decline in her mental condition from taking PBT because she will not progress through puberty with her peers.

### **C. Frannie's Adolescence**

When she reached age 10, Frannie began spending more and more time with the Grandparents. The Grandparents allowed Frannie to engage in preferred activities and feel safe. When Frannie turned 11, she told Dr. Gunther that she preferred spending time with the Grandparents over the Parents. Frannie referred to the Grandparents' home as "a safe haven, where everyone is free to be themselves." Joey and Phoebe were delighted to be such a positive part of Frannie's life. They understood that not only did Frannie enjoy "girl activities" but also wanted to be recognized as a girl. Wanting nothing but to support and provide for Frannie's happiness, Joey and Phoebe began using feminine pronouns. The Grandparents knew this would cause tensions between them and the Parents, but they were concerned about Frannie's wellbeing and disagreed with the Parents' decisions concerning Frannie.

For Frannie's 12th birthday, Chandler and Monica planned a surprise dinner at Frannie's favorite restaurant. They picked Frannie up from Joey's and Phoebe's earlier than usual. When they arrived, Monica and Chandler found Frannie dressed in an apron serving Joey, Phoebe, and a few stuffed animals, tea and cookies. Before anyone could speak, the Parents scooped Frannie up and went to dinner, leaving the Grandparents behind. No one spoke at dinner. The following day, Chandler and Monica explained to Joey and Phoebe that they would limit the Grandparents' visits with Frannie to one weekend day visit per week. The Parents wanted Frannie to have a normal life and believed that having the Grandparents not only allow, but also encourage, behaviors they explicitly forbid, undermined their parenting efforts. The Parents were distraught for days after this occurrence, took personal days off from work, and had many heated discussions between themselves about the Grandparents' outright disrespect

for their parenting decisions. Frannie could not understand why they were so upset and angry. Frannie was happy with the Grandparents.

After a few months of limited visitation, Frannie began sneaking visits to the Grandparents and lying to the Parents. The Parents believed Frannie was at after school activities and study groups while she visited with the Grandparents. After a while, Frannie was sneaking over to the Grandparents' home every day after school. At the family's holiday party that year, Phoebe slipped and used a feminine pronoun when addressing Frannie. The Parents could not believe the Grandparents continued to disrespect their wishes to such an extent. The Parents made clear that they did not want to bolster Frannie's "phase." Because of their continuing disrespect for the Parents' wishes, the Parents forbade visitation between Frannie and the Grandparents altogether.

The following year, when Frannie turned 13, Dr. Geller found that her mental health had reached an all-time low. In addition to the lack of visitation with her Grandparents that had worsened her depression, all the girls in Frannie's class were developing into women, while Frannie was developing into a man. Frannie began to grow facial hair and kept getting taller. Frannie tried to shave the hair to look more feminine and finished with several cuts on her face. Frannie stopped socializing, avoiding others seeing what Frannie was becoming. After Frannie told Joey and Phoebe during a secret visit that life "is not worth it," the Grandparents filed this petition, seeking an Order of Visitation, a finding of medical neglect and an order mandating that Frannie's parents provide Frannie PBT under the supervision of Dr. Green.

### **III. DISCUSSION**

This case raises two issues with respect to Frannie: First, whether the Parents have medically neglected Frannie by refusing to provide PBT. Second, whether it is in Frannie's best interests to allow visitation with the Grandparents.

**A. The Parents have medically neglected Frannie by refusing to provide PBT**

Parents have an affirmative duty to provide their child with adequate medical care, which is the degree of care exercised by ordinarily prudent and loving parents, who have the best interests of the child in mind. Matter of Faridah W., 180 A.D.2d 451, 452 (1st Dep’t 1992). This duty is not limited to a child’s physical health, but may “include psychiatric medical care . . .” In re Dustin P., 57 A.D.3d 1480, 1481 (4th Dep’t 2008) *citing* Matter of Felicia D., 263 A.D.2d 399, 399 (1st Dep’t 1999). Medical neglect may be found when a child’s “physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired.” New Scotland Family Court Act (NSFCA) § 1900(a)(i). For example, “[i]mpairment of a child’s emotional or mental condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, depressive episodes, thoughts or attempts of suicide, or general misbehavior . . . .” NSFCA § 1900(b). For a finding of neglect, the court must not only find that the impairment exists, but also that it is “attributable to the unwillingness or inability of the caretaker to exercise a minimum degree of care toward the child.” NSFCA § 1900(b). Failure to follow a recommended course of psychiatric treatment may be sufficient to support a finding that the parents are unwilling or unable to provide the child with adequate medical care. *See* Matter of Maurice R., 157 A.D.3d 798, 799 (2d Dep’t 2018) *citing* Matter of Jaelin L. (Kimrenee C.), 126 A.D.3d 795, 796 (2d Dep’t 2015). Parents are required to provide “an acceptable course of medical treatment for their child in light of all the surrounding circumstances” Maurice R., 157 A.D.3d at 799, *citing* Matter of Mia G. (William B.), 146 A.D.3d 882, 883 (2d Dep’t 2017).

Petitioners bring this proceeding pursuant to NSFCA § 7475, which provides standing for “a grandparent or grandparents,” to bring a medical neglect proceeding if they “believe [their grandchild] has been, or is being, medically neglected pursuant to § 1900 of this act.” NSFCA § 7475. Petitioners claim that the Parents medically neglected Frannie by refusing to provide PBT to halt Frannie’s natural

masculine development. Petitioners allege that providing PBT is the standard of care for adolescents with gender dysphoria and that the failure to provide PBT has resulted in an impairment of Frannie's emotional and mental condition. Petitioners request, pursuant to NSFCFA §§ 1900(c) and 7475, that this court order the Parents to provide Frannie with PBT under the supervision of Dr. Green.

Dr. Green, the only gender psychiatrist the Parents consulted, testified that Frannie is transgender because she identifies as female although born male, and that she suffers from gender dysphoria because her atypical identification is causing her distress and discomfort. Frannie's gender dysphoria manifests in episodes of anxiety, severe depression, and suicidal thoughts. Dr. Green prescribed PBT for Frannie at age 10 and continues to describe Frannie as a "perfect candidate" for this medication.

Every child has the right to live a life true to themselves, and so far as is possible, to pursue that which makes them feel happy and well. If a parent or caretaker, through viciousness or ignorance, stands in the way of a child's well-being, the courts should intervene on behalf of that child. Such is the present case. The Parents, although well-intentioned, have limited Frannie's ability to feel happy and well through failing to provide her with PBT.

The medical neglect in this case is egregious. Prudent and loving parents of transgender children have a duty to provide their child with appropriate medical care. PBT is the standard of care for transgender children who suffer from gender dysphoria. (Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 165-232). The longer Frannie goes without PBT, the more damage there will be to Frannie's mental condition.

The testimony of Dr. Green and studies of transgender youth demonstrate the importance of following the standard of care and allowing Frannie access to PBT. Without PBT, Frannie is more likely to suffer physical harm as her chances of attempting suicide are greatly increased. (Ann P. Haas et al., *Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and*

*Recommendations*, 10-51). She will continue to develop into a man, growing facial hair, growing much taller than her female peers, and developing more muscle tissue and a deeper voice. These masculine characteristics will exacerbate her gender dysphoria. (Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 165-232). She is also at risk of physical harm if denied PBT because she may instead seek street drugs that are dangerous. (Richard F. Clark et al., *Subcutaneous Silicone Injection Leading to Multi-System Organ Failure*, 46(9) *Clinical Toxicology* 834-837 (2008)).

The parents argue that PBT can wait, but putting off PBT will result in significant future harm if Frannie decides to transition to female. Not only will Frannie be more likely to attempt suicide and suffer significant depression, but the masculine characteristics she develops during puberty will have to be reversed for her to embody her female identity. This may require extensive and expensive surgeries. (Chris Taylor, *Doing The Transgender Math: The Costs of Transition*, Reuters (Oct. 29, 2015). <https://www.reuters.com/article/us-transgender-costs/doing-the-transgender-math-the-costs-of-transition-idUSKCN0SN1UA20151029> 2015). On the other hand, the effects of PBT are completely reversible. (Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 165-232). On balance, the risks of taking PBT are far outweighed by the risks to Frannie of not taking it.

Indeed, according to the testimony of her therapist, Dr. Gunther, Frannie already displays three of the four factors indicating an impaired emotional or mental condition. See NSFCA §1900(b). Frannie has severe depressive episodes, displays general misbehavior by sneaking out and lying to her parents and, recently, has had thoughts of suicide. Based on this behavior, Frannie's mental and emotional condition has already been impaired.

The Parents argue that they are providing Frannie with an acceptable alternate course of treatment. The Parents have been treating Frannie's anxiety and depression with medication and counseling, and relying on Dr. Geller's advice that a balance of the proper medications with the proper amount of counseling will improve Frannie's mental condition. The Parents are also relying on Dr. Geller's opinion that taking PBT may be a mistake because some transgender children do not become transgender adults. (Thomas D. Steensma et al., *Desisting and Persisting Gender Dysphoria After Childhood: A Qualitative Follow-Up Study*, 499-516).

The Parents' arguments are flawed because, even if some transgender children do not become transgender adults, the effects of PBT are not permanent. Frannie has consistently demonstrated the importance to her of her female identity. In the unlikely event she decides not to transition, she can stop taking PBT with no permanent effects. (Peggy T. Cohen-Kettenis et al., *Puberty Suppression in A Gender-Dysphoric Adolescent*: 843-847). The risks of not allowing Frannie to take PBT are simply much greater. This is especially true given Frannie's statement to her Grandparents that "life isn't worth it" and her worsening depression. See In Re Dustin 57 A.D.3d 1480 (4th Dep't 2008), (Court found medical neglect where father failed to treat his son's depression which included suicidal and homicidal ideations).

This Court finds that the Parents neglected Frannie by failing to provide her with PBT. Although the Parents may be well-intentioned, their failure is far worse than inflicting physical pain. Without support and proper treatment, Frannie is likely to suffer both irreparable emotional and physical harm. Pursuant to the NSFCA § 1900(c), it is ordered that the Parents provide PBT under the supervision of Dr. Green. The Parents should have no financial difficulty providing Frannie with this medication.

## **B. The Grandparents are entitled to visitation with Frannie.**

It is well settled that parents have a fundamental right to make decisions concerning the care, custody, and control of their children. Troxel v. Granville, 530 U.S. 57 (2000); Stanley v. Illinois, 405 U.S. 645, 651 (1972). This right is superior to the rights of all others and is protected against government interference, absent extraordinary circumstances. Meyer v. Nebraska, 262 U.S. 390 (1923); Stanley v. Illinois, 405 U.S. at 651. The parents' fundamental right includes the "[r]ight to limit visitation of their children with third persons. . . . [P]arents should be the ones to choose whether to expose their children to certain people or ideas." Troxel v. Granville, 530 U.S. at 63 *citing* In re Custody of Smith, 137 Wash.2d 1, 21 (1998).

Several states, including New Scotland, have enacted visitation statutes giving grandparents standing to petition the court for visitation with a minor child. This "independent third-party interest in a child can place a substantial burden on the traditional parent-child relationship." Troxel v. Granville, 530 U.S. at 64. Therefore, the court must give deference to the Parents' decisions concerning visitation when determining whether to grant the grandparents standing and when considering whether visitation will be in the child's best interests.

New Scotland's grandparent visitation statute provides that grandparents may petition the court for visitation with a minor child where the parents of the minor child are deceased or where equitable considerations favor allowing a grandparent to intervene. New Scotland Domestic Relations Law (NSDRL) § 2700. By requiring the grandparents to establish standing based on equitable considerations, New Scotland's statute gives the parents' decision "some presumptive or 'special' weight, which is all that Troxel requires." Morgan v. Grzesik, 287 A.D.2d 150, 156 (4th Dep't 2001).

In this case, Frannie's parents are alive and, therefore, Petitioners seek standing under the equitable circumstances clause. While courts have never defined "circumstances in which equity would

see fit to intervene,” it is understood to apply in situations where such visitation would be of invaluable consequence to the children. Emanuel S. v. Joseph E., 78 N.Y.2d 178, 182 (1991).

Where standing is sought on equitable circumstances, “the issues of standing and best interests are usually so intertwined . . . as to make it difficult, if not impossible, to make a clear distinction.”Scheinkman, Practice Commentary, McKinney’s Cons Laws of NY, 2013 Electronic Update, Domestic Relations Law § 72.<sup>12</sup> “[I]t is generally preferable not to bifurcate” Id. these issues, and courts generally merge the determinations of equitable circumstances and best interests by considering the same three factors: (1) give deference to the nature and basis of the parents’ objection to visitation; (2) consider the grandparents’ attitudes toward the parents; and (3) evaluate the nature and extent of the grandparent-grandchild relationship. Troxel v. Granville, 530 U.S. 57; Emanuel S. v. Joseph E., 78 N.Y.2d at 182.

First, because parents have a fundamental right to make decisions concerning the care, custody, and control of their children, courts must “accord at least some special weight to the parent’s own determination” in assessing the reasonableness of their objections. It is presumed that fit parents act in the best interests of their children. Troxel v. Granville, 530 U.S. at 70. The courts must consider all relevant facts, including “the nature and basis of the parents’ objection to visitation.” Emmanuel S. v. Joseph E., 78 N.Y.2d at 182; *See also* Morgan v. Grzesik, 287 A.D.2d at 155. (“[I]n deciding [standing] the court is required to examine all the relevant facts, including ‘the nature and basis of the parents’ objection to visitation’ . . . .”); Kenyan v. Kenyan, 251 A.D.2d 763, 763 (3d Dep’t 1998) (in determining standing of a child’s grandparents to seek visitation, Family Court must consider the basis for the parents’ objection to visitation.)

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<sup>12</sup> This statute is nearly identical to New York State Domestic Relations Law § 72

In Morgan v. Grzesik, the parents objected to any visitation by the grandmother because they feared the grandmother would express her negative feelings about the parents to the children. After considering the parents' objection, the court allowed visitation because the parents' opposition was not based on the welfare of the children and the grandparents had protected the children in the past by reporting possible abuse to Child Protective Services. 287 A.D.2d at 152.

In this case, the Court finds that the Parents' objection to visitation by the Grandparents is unreasonable. The Parents wish to cut off all visitation between Frannie and the Grandparents based on their belief that the Grandparents are intruding upon their autonomy and undercutting their parental control over Frannie. The Parents contend that they have consistently attempted to steer Frannie toward a "normal life." But in these circumstances, the Grandparents are performing an essential function by providing Frannie with the love and support she needs. Without strong support for Frannie as she expresses her chosen gender identity, Frannie is much more likely to suffer severe depression and attempt suicide. (Kristina Olsen et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*); (Audry Gorin-Lazard et al., *Is Hormonal Therapy Associated with Better Quality of Life in Transsexuals? A Cross-Sectional Study*, 531-541, (2012)).

Second, the court must consider the Grandparents' attitudes toward the Parents. "Mere animosity between a parent and grandparent is not enough to deny visitation privileges to a grandparent." B. S. v. B. T., 148 A.D.3d 1029, 1031, (2d Dep't 2017), *citing* E.S. v. P.D., 27 A.D.3d 757, 759 (2d Dep't 2007). Visitation should only be denied where that visitation would be harmful to the child or where it rises to the level of family dysfunction. Matter of LoPresti v. LoPresti, 40 N.Y.2d 522, 525 (1976); Gloria R. v. Alfred R., 209 A.D.2d 179 179 (1st Dep't 1994); *see also* Layton v. Foster, 95 A.D.2d 77, 78 (3d Dep't. 1983) (the Family Court granted visitation where nothing suggested the grandparents would disrupt the relationship between the child and his parents).

In Matter of LoPresti, *supra*, friction and resentment developed between the mother and paternal grandparents over the mother's decision to keep her child, who suffered from a nervous condition, from seeing his terminally ill father. The Family Court noted the animosity between the grandparents and the mother, but based the denial of visitation on the child's "keyed up and hyperactive" behavior after visits with the grandparents, rather than on the friction between the mother and grandparents. 40 N.Y.2d at 525. In Matter of Seddio v. Artura, 139 A.D.3d. 1075 (2d Dep't 2016), the parents, child and grandmother had regular contact and a close relationship before a dispute between the grandmother and the father led to an estrangement in the family. Because the denial of visitation had its origins in that dispute, the court awarded visitation to the grandmother. *Id.* at 1077.

There clearly is animosity between the Parents and the Grandparents in this case. This is generally true in cases in which grandparents must resort to judicial intervention to visit with their grandchild(ren). The Court does not find that the animosity between the parties has had a harmful effect on Frannie. Instead, this Court finds that the relationship between Frannie and her Grandparents is integral to her well-being. Frannie has consistently made clear that she treasures her time with her Grandparents and experiences an improved mental and emotional condition after visits with them. Without this relationship, Frannie would likely suffer a worsening of her depression.

Third, with respect to the nature and extent of the grandparent-grandchild relationship, visitation is often granted when "an extraordinarily close relationship" exists, and the "relationship with the grand[parent] [is] central to the child's wellbeing." E.S. v. P.D., 8 N.Y.3d 150, 157-8 (2d Dep't 2007). In the present case, Frannie has an extraordinarily close relationship with the Grandparents that is central to her well-being. The record reflects that the Grandparents have been substantially present in Frannie's life and that they supported and cared for her in many ways over the years. They have provided Frannie with a welcoming home environment and ensured all her needs were met. The Grandparents have also

always provided support for all Frannie’s endeavors, including her gender identity. Significantly, Frannie has repeatedly expressed her preference to spend time with her Grandparents and has referred to their home as a “safe haven.” Meanwhile, Frannie’s parents do not support her identity. Every child should be loved and supported by their parents unconditionally. The failure to support Frannie for who she is, has contributed to gender dysphoria and an inability to thrive. Without the relationship with her Grandparents, Frannie would not have the necessary support to develop a sense of self-worth and combat the symptoms of gender dysphoria. (David A. Levine, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 297-313). Based on the foregoing, this Court finds that it is in Frannie’s best interests to grant visitation to the Grandparents.

#### **IV. CONCLUSION**

Based on the foregoing, this Court finds that pursuant to the NSFCA § 1900, the Parents have neglected Frannie by failing to provide her with PBT, the standard of care for transgender youths. Without PBT, Frannie is likely to suffer irreparable harm. This Court orders that the Parents provide PBT for Frannie under the supervision of Dr. Green.

Additionally, this Court finds that the Grandparents have demonstrated equitable circumstances warranting an order of visitation based on the vital role they play in Frannie’s life. It is in Frannie’s best interests to grant an order of visitation.

**STATE OF NEW SCOTLAND  
THIRD APPELLATE DIVISION**

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**JOEY and PHOEBE TRIBBIANI,**  
Petitioners-Appellees,

-against-

**DECISION AND ORDER**  
Index No.: 2018-2070

**MONICA and CHANDLER BING,**  
  
Respondents-Appellants.

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**Justices: Cary Agos, Kalinda Sharma, Eli Gold.**  
**Decided: November 28, 2018**

**I. PROCEEDINGS BELOW**

Petitioners-Appellees Joey and Phoebe Tribbiani, the Grandparents, brought this proceeding in The New Scotland Supreme Court requesting a determination that Respondents-Appellants Monica and Chandler Bing, the Parents, medically neglected their 14 year old child Frannie by failing to provide Puberty Blocking Treatment (PBT) and an order that the Parents provide Frannie with PBT under the supervision of Dr. Green, a gender psychiatrist. The Grandparents also requested that the court grant an order of visitation allowing them regular visits with Frannie. The Supreme Court granted the Grandparents’ requests for relief.

For the following reasons, this Court reverses the decision and order below.

**II. DISCUSSION**

**A. The Supreme Court improperly determined that the Parents’ failure to provide Frannie with PBT constituted medical neglect.**

Parents have an affirmative duty to provide their child with adequate medical care, which is the degree of care exercised by ordinarily prudent and loving parents who have the best interests of the child in mind. It is not the role of the courts to determine whether the parents’ decisions concerning medical care are right or wrong, rather, the parents simply have an obligation to “provide[ ] an acceptable course

of medical treatment for their child in light of all the surrounding circumstances.” Matter of Hofbauer, 47 N.Y.2d 648, 656 (1979). This only requires providing treatment “recommended by their physician and which has not been totally rejected by all responsible medical authority.” Id., at 656 *see also* Matter of Maurice R., 157 A.D.3d 798, 799 (2d Dep’t 2018); In Re Felicia D., 263 A.D.2d 399, 399 (1st Dep’t 1999) (finding that a mother’s refusal to place a child in a residential mental health center did not constitute neglect because she was providing the child with outpatient care, counseling, and therapy, and the child was residing in a supportive loving environment with her sisters.)

In the present case, the Parents were confronted with whether to provide Frannie with PBT, a relatively new medical treatment. While the Parents ultimately decided not to provide Frannie with PBT, they did provide her with needed medical care. As soon as it was apparent that Frannie needed medical attention, the Parents brought her to Dr. Geller, their family doctor, and a doctor who had already provided the parents with successful treatment for their depression. The Parents consistently complied with Dr. Geller’s recommendations, including providing Frannie with the Prozac he prescribed and enrolling Frannie in counseling. As the Parents, Monica and Chandler have a fundamental right to make decisions concerning the care of Frannie, and their determination, to follow Dr. Geller’s recommendations, is entitled to deference. *See* Troxel v. Granville, 530 U.S. 57 (2000); Stanley v. Illinois, 405 U.S. 645 (1972).

The Parents chose to follow Dr. Geller’s recommendations instead of Dr. Green’s for several reasons. The Parents know Frannie better than anyone, and are familiar with Frannie’s ever-changing phases, such as her career desires. Monica and Chandler believe Frannie’s feminine identity may be a phase she will grow out of. This belief is bolstered by Dr. Geller’s testimony that a number of studies suggest that some transgender adolescents do not become transgender adults. (*See* Thomas D. Steensma et al., *Desisting and Persisting Gender Dysphoria After Childhood: A Qualitative Follow-Up Study*,

499-516.) The Parents also agree with Dr. Geller that Frannie’s depression is not due to gender dysphoria, and that, with proper treatment, her depression will abate.

In addition, the Parents understand that living as a transgender female is not an easy life. Not only do transgender individuals face violence from society, transgender youths are ten times as likely to attempt suicide than their cisgender peers. (Ann P. Haas et al., *Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations*, 10-51.) The Parents want Frannie to live a long, happy, healthy, life, and therefore prefer postponing interference with her hormones as long as possible. They want Frannie to wait until she either turns 18 or moves out of their home before she begins altering her natural hormones. If Frannie persists in her feminine identity, she can still fulfill her desire to transition at a later age.

The Parents and this Court are not convinced that PBT is truly reversible. If Frannie were to take PBT, her body would stop developing and Frannie would be physically behind her peers, who would progress into puberty. If Frannie starts PBT now and decides to stop treatment at a later date, Frannie would be subjected to the stresses of puberty at an advanced age. (Peggy T. Cohen-Kettenis et al., *Puberty Suppression in A Gender-Dysphoric Adolescent*: 843-847.) This asynchronous development may cause significant emotional concerns, especially for Frannie who is already prone to depression.

While the standard of care for transgender youths may be to provide PBT, the parents have nonetheless provided acceptable medical treatment recommended by Frannie’s physician and there is no indication that this course of treatment would be “totally rejected by all responsible medical authority.” See Matter of Hofbauer, supra, 487 N.Y.2d at 656. By complying with the recommendations of a duly licensed physician, we find that the Parents have provided an acceptable course of medical treatment for Frannie in light of the surrounding circumstances.

**B. The Supreme Court improperly determined that it is in Frannie’s best interests to order visitation**

It is well settled that parents have a fundamental right to make decisions concerning the care, custody, and control of their children. Troxel v. Granville, 530 U.S. 57 (2000); Stanley v. Illinois, 405 U.S. 645, 651 (1972). Specifically, “[p]arents have a right to limit visitation of their children with third persons,’ and [ ] between parents and judges ‘parents should be the ones to choose whether to expose their children to certain people or ideas.’” Troxel v. Granville, *supra*, 530 U.S. at 63, *citing In re Custody of Smith*, 137 Wash.2d 1, 21 (1998).

In New Scotland, pursuant to New Scotland Domestic Relations Law (NSDRL) § 2700, grandparents may petition the court for visitation with a minor child where the parents of the minor child are deceased or where equitable circumstances exist. When determining grandparent visitation petitions based on equitable circumstances, courts generally merge standing and best interests determinations by considering the same three factors: (1) the nature and basis of the parents’ objection to visitation; (2) the grandparents’ attitudes toward the parents; and (3) the nature and extent of the grandparent-grandchild relationship. Troxel v. Granville, *supra*, 530 U.S. 57 (2000).

In this case, the Grandparents are seeking visitation under the equitable circumstances clause because the Parents have refused all visitation with Frannie. We do not disagree with the Supreme Court’s finding that Joey and Phoebe Tribbiani have an extraordinarily close relationship with Frannie, but we disagree with how the lower court weighed this factor in the totality of circumstances.

First, courts must give deference to the Parents’ decisions, and also consider “the nature and basis of the parents’ objection to visitation.” Troxel at 64; Emmanuel S. v. Joseph E., 78 N.Y.2d 178, 182 (1991); *see also Kenyan v. Kenyan*, 251 A.D.2d 763, 763 (3d Dep’t 1998) (in determining standing

of a child's grandparents to seek visitation, Family Court must consider the basis for the parents' objection to visitation.)

In the present case, the Supreme Court failed to accord proper weight and deference to the Parents' decision not to allow the Grandparents visitation, and instead, merely dismissed their reasoning. The Parents object to visitation because the Grandparents continuously stepped outside the line of what was appropriate by ignoring the Parents' wishes and instructions. The Parents made clear that they wanted nothing but the best for Frannie, including that she live a long, healthy, happy, and normal life. The Grandparents, however, fostered Frannie's feminine activities and referred to Fannie as female countermanding the Parents' directions. Any reasonable parent would be upset if anyone, but especially a grandparent, undermines their parenting efforts.

Second, the court must consider the relationship between the grandparents and the parents. The court gives deference to the parents' objections to visitation when they are found to be reasonable, and not the product of mere animosity. *See Matter of C.M. v. M.M.*, 672 N.Y.S.2d 1012, 1017 (Fam. Ct. Westchester Cnty. 1998); *E.S. v. B. T.*, 148 A.D.3d 1029, 1031 (2d Dep't 2017). However, if the animosity causes family dysfunction, or would be harmful to the child, visitation should be denied. *Gloria R. v. Alfred R.*, 209 A.D.2d 179, 179 (1st Dep't 1994). In *Gloria R.*, the grandparents and the parents displayed a significant degree of animosity to the point where they "would be incapable of preventing their feelings toward one another from infecting any visitation between the grandchildren and [the grandmother.]" *Gloria R. v. Alfred R.*, 209 A.D.2d 179, 179 (1st Dep't 1994); *see also Matter of Layton v. Foster*, 95 A.D.2d 77, 78 (3d Dep't 1983) (visitation would have been denied if it would have interfered with the child's relationship with the parents).

In this case, the Grandparents allege the sole reason the Parents are denying visitation is because of their disagreements regarding Frannie's socialization and medical treatments. While it is true that the

Parties once had a close and loving relationship, the record clearly establishes fundamental child rearing differences which cannot be reconciled. The Grandparents have intruded upon the Parents' rights to determine the care of their child and created a major disruption in their home. The conflict between the Parents and Grandparents has resulted in an irretrievable breakdown of their relationship. After the most recent altercation with the Grandparents on Frannie's 12th birthday, the Parents were distracted and unable to perform their routine daily tasks. This disruption to the home life is harmful to Frannie's well-being, especially because Frannie is already in need of extra support due to her severe depression.

Third, in reference to the grandparent-grandchild relationship, while courts generally grant visitation when there is "an extraordinarily close relationship," which is "central to the child's wellbeing," this is but one factor to be considered in the totality of circumstances. E.S. v. P.D., 8 N.Y.3d 150, 157-8 (2d Dep't 2007).

In the present case, the record establishes a close and affectionate relationship between the petitioners and the child and consistent efforts by the Grandparents to establish and maintain a relationship with Frannie, but this truth must be balanced by the totality of circumstances. The relationship between the parties has irretrievably broken down and caused family dysfunction. It would be more harmful to Frannie to continue visiting with her Grandparents because of the adverse effects it would have on the relationship between Frannie and her Parents. Considering the totality of circumstances, the Parents' determinations are reasonable and should be given deference.

### **III. CONCLUSION**

Accordingly, this Court REVERSES each and every part of the decision and order of the Supreme Court and holds that although the Parents refused to provide Frannie with PBT as recommended by the psychiatrist, Dr. Green, they have not medically neglected Frannie pursuant to NSFCA § 1900. Additionally, this Court holds that it is not in Frannie's best interests to grant an order of visitation to the Grandparents.

If either party chooses to challenge the legal determinations of this Court, this Court certifies the following questions to the New Scotland Court of Appeals:

WHETHER: The State of New Scotland, Third Appellate Division, correctly determined that the Parents' failure to provide Puberty Blocking Treatment for their child, who identifies as transgender, does not constitute medical neglect; and

WHETHER: The State of New Scotland, Third Appellate Division, correctly determined that it is not in the child's best interests to grant an order of visitation to the Grandparents because the Grandparents support the child's transgender identity, while the Parents do not, which results in family tension and dysfunction.



## NEW SCOTLAND STATUTES

### New Scotland Domestic Relations Law § 2700 (Effective June 30, 1980)

Where the parents of a minor child are deceased, or where circumstances show that conditions exist which equity would see fit to intervene, a grandparent or the grandparents of such child may petition the Supreme Court; and the court, by order, may make such directions as the best interest of the child may require, for visitation rights for such grandparent or grandparents in respect to such child.<sup>13</sup>

### New Scotland Family Court Act § 1900 (Effective April 20, 1970)

- (a) A “medically neglected child” means a child less than eighteen years of age
  - (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care.
- (b) Impairment of a child’s emotional or mental condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, depressive episodes, thoughts or attempts of suicide, or general misbehavior; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the caretaker to exercise a minimum degree of care toward the child.<sup>14</sup>
- (c) Upon a finding of medical neglect, the court, by order, may make such directions for medical treatment as the court deems necessary.

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<sup>13</sup> This statute is nearly identical to New York State Domestic Relations Law § 72(1).

<sup>14</sup> This statute is nearly identical to New York State Family Court Act § 1012(f)(i) and § 1012(h).

**New Scotland Family Court Act § 7475** (Effective January 18, 1994)

- (a) Where a grandparent or grandparents of a minor child have reason to believe such child has been, or is being, medically neglected by the child's parents or guardians pursuant to § 1900 of this Act, the grandparent or grandparents of such child may petition the Supreme Court for an order directing appropriate medical treatment and for such other and further relief as the court may deem appropriate.