JUVENILE LAW

GRANDPARENTS' RIGHT TO INTERVENE IN DEPENDENCY HEARINGS: A FURTHER ADVANCE OF THE BEST INTEREST OF THE CHILD DOCTRINE?

In *Bechtel v. Rose*,[1] the Arizona Supreme Court addressed for the first time the question of whether a grandmother had a right to intervene in her parentless grandchild's dependency hearing. The court held that while grandparents have no statutory standing to intervene, the tenor of Arizona's legislative and judicial decisions, as well as sound public policy, demands that they be allowed to do so unless it would not be in the best interest of the child.[2] The court additionally stated that the best interest of a parentless child is usually served by permitting his grandparents to intervene in his dependency hearing.[3] This decision essentially reversed the burden of proof required when deciding whether to allow intervention in a dependency hearing.[4]

This Comment will discuss the legal history of the "best interest" standard in Arizona. It will then examine Arizona's application of the standard to grandparents, and grandparents' rights to intervene in other jurisdictions. Finally, it will analyze the court's holding in *Bechtel* and suggest that the court's holding serves to cause the result it sought to avoid.

The infant boy at issue was born in March, 1985, and lost his mother[5] in an automobile accident in September, 1985.[6] Shortly thereafter, the Arizona Department of Economic Security[7] assumed care and custody of the child and a dependency hearing soon followed.[8] The petitioner, the child's

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1. 150 Ariz. 68, 722 P.2d 236 (1986).
2. *Id.* at 74, 722 P.2d at 242.
3. *Id.* at 73, 722 P.2d at 241.
4. *See infra* note 57 and accompanying text.
5. *Id.* at 70, 722 P.2d at 238. The child's mother was the daughter of the petitioner, Marlyn Bechtel.
6. *Id.* at 70, 722 P.2d at 238.
7. The Department of Economic Security is the state government agency responsible for child welfare. ARIZ. REV. STAT. ANN. § 8-503 (Supp. 1986).
8. *Id.* at 70, 722 P.2d at 238. The dependency hearing was held on October 6, 1985. ARIZ. REV. STAT. ANN. § 8-201(11)(a)(Supp. 1986), defines a dependent child as one "[i]n need of proper and effective parental care and control and has no parent or guardian, or one who has no parent or guardian willing to excercise or capable of exercising such care and control." The juvenile division of the superior court is the juvenile court in Arizona. ARIZ. REV. STAT. ANN. § 8-201(14)(Supp. 1986). It is empowered to award temporary custody. ARIZ. REV. STAT. ANN. § 8-223(A)(Supp. 1986). Maternal or paternal relatives are specified as possible candidates for temporary guardians of a dependent child. ARIZ. REV. STAT. ANN. § 8-241(A)(1)(g)(Supp. 1986). The focus of inquiry for the juvenile court is to determine what is in the best interest of the child. *Bechtel*, 150 Ariz. at 73 n.2, 722 P.2d 241 at n.2 (citing ARIZ. REV. STAT. ANN. § 14-5206(Supp. 1985), of the probate code, and ARIZ. REV. STAT. ANN. § 25-332(A)(Supp. 1985), of the domestic relations code, as legislative recognition of the "best interest of the child" doctrine, and *In re* Pima County Juvenile Action No.

maternal grandmother, moved first to intervene in the hearing, and second to be named guardian and conservator of her grandchild.[9] Both motions were denied by the juvenile court.[10] The Arizona Supreme Court granted the petition for special action and stayed the proceedings in the juvenile court.[11]

LEGAL HISTORY OF THE BEST INTEREST STANDARD IN ARIZONA

Before a court can award temporary custody of a child, it must first declare that the child is a dependent and determine that the award of custody will be in the child's best interest.[12] In determining the proper placement of a child, Arizona courts have long recognized the strong bond that exists between natural parent and child. As a result of this strong bond, it is usually in the best interest of the child to be with its natural parents unless there is strong evidence to the contrary.[13] In *Harper v. Tipple*,[14] the Arizona Supreme Court, citing the strong bond between a natural father and his child, overturned a lower court's award of custody to the child's grandparents.[15]

The right to the care and custody of one's child is fundamental in Arizona.[16] Before juvenile courts will take a child away from its natural parents, they require proof of a parent's conscious disregard of its obligation to the child, as well as a showing that the taking is in the child's best interest. In *Anonymous v. Anonymous*,[17] the Arizona Court of Appeals held that facts showing that a mother had left her son with his grandparents, had concealed

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J-31853, 18 Ariz. App. 219, 220, 501 P.2d 395,396 (1972), as judicial recognition of the doctrine). A dependency determination is required before a juvenile court can exercise ". . .subject matter jurisdiction over the permanent disposition of minors. . . ." *Bechtel*, 150 Ariz. at 73, 722 P.2d at 241.

9. *Id.* at 70, 722 P.2d at 238. The child's father formally relinquished his parental rights on November 21, 1985. On November 27, 1985, the petitioner moved to intervene pursuant to ARIZ. R. CIV. P. 24(b), and moved to be named guardian and conservator of the child.

10. 150 Ariz. at 70, 722 P.2d at 238. The motion to intervene was denied on December 5, 1985, and the petition for appointment as guardian was denied on January 15, 1986.

11. *Id.* at 70-71, 722 P.2d at 238. The Arizona Supreme Court recognized that an avenue of appeal existed for the petitioner pursuant to ARIZ. JUVENILE CT. RULES OF PROC. 25(a), and that ARIZ. JUVENILE CT. RULES OF PROC. 24(c), gave priority to juvenile appeals. 150 Ariz. at 71, 722 P.2d at 239. The court, however, felt that, merely because denial of permissive intervention is an appealable order, that does not mean that the appeal is an "equally plain, speedy, or adequate remedy" which would then make a special action inappropriate. *Id.* (citations omitted). Using the guiding principle that essential justice be done, the supreme court held that the potential detriment to the child due to the delay of the normal appeal process, and the statewide concern for the grandparent's role in the permanent placement of parentless children, justified its grant of extraordinary relief. *Bechtel*, 150 Ariz. at 70-72, 722 P.2d at 239-41 (citations omitted).

12. *See supra* note 8.

13. The court, in *Bechtel*, stated that "[i]t has been repeatedly emphasized that 'courts should bend over backwards, if possible, to maintain the natural ties of birth.' " 150 Ariz. at 73, 241 P.2d at 241.

14. 21 Ariz. 41, 184 P. 1005 (1919). This case involved a custody dispute between the child's natural father and maternal grandparents.

15. *Id.* at 42, 184 P. at 1006.

16. *In re* the Appeal in Cochise County Juvenile Action No. 5666-J, 133 Ariz. 157, 161, 650 P.2d 459, 463 (1982). The court of appeals had reversed the juvenile court and found the children dependent when their mother stated she was opposed to seeking medical care for them on religious grounds. The Arizona Supreme Court overruled the court of appeals and held the care and custody of one's children is a fundamental right.

17. 25 Ariz. App. 10, 540 P.2d 741 (1975). The court of appeals affirmed a superior court finding that the mother had abandoned her child and that it therefore should be put up for adoption.

her location, had made minimal efforts to contact the child for a year and had agreed to award custody to the child's father, were sufficient to show the mother's conscious disregard of her parental obligations.[18] The mother's conduct in *Anonymous*, combined with the availability of the child's father and grandparents, facilitated the court's decision. When the facts are not so compelling, however, Arizona courts will opt to uphold a natural parent's fundamental right to the care and custody of his child.[19]

ARIZONA'S APPLICATION OF THE BEST INTEREST STANDARD TO GRANDPARENTS

Arizona courts have historically recognized the role of grandparents in the natural family. In 1937, the Arizona Supreme Court, in *Dickason v. Sturdavan*, awarded grandparents custody of their grandchildren despite the father's opposition.[20] The *Dickason* court found that, due to the length of time the children and their grandparents had already spent together, the close attachment that had been formed, and the children's preference to remain with their maternal grandparents rather than live with their father and his parents, it was in the children's best interest to remain with their maternal grandparents.[21] In the more recent case of *Gowland v. Martin*, the Arizona Court of Appeals awarded grandparents temporary custody of their grandchild until the child's teenage parents attained sufficient maturity to assume their parental responsibilities.[22]

Arizona courts have placed great importance in maintaining the grand-

18. *Id.* at 12, 540 P.2d at 743. *But see supra* note 16, where a mother's religious opposition to seeking medical care for her children did not justify a dependency finding.

19. *See supra* note 16. *But see* Arias v. Abilez, 21 Ariz. App. 568, 521 P.2d 1146 (1974), where the Arizona Court of Appeals denied a natural father's petition to be named guardian of children he fathered out of wedlock and held that the best interest of the children would be served by allowing them to remain with their deceased mother's sister. The court considered the length of time the children had already spent with their aunt, the father's inattentiveness to his children, and the relative suitability of the two homes in deciding the proper placement for the children. *Id.* at 569, 521 P.2d at 1147. *See also* Clifford v. Woodford, 83 Ariz. 257, 263, 320 P.2d 452, 455-56 (1957), where the Arizona Supreme Court held the natural father's lack of attention to his children justified an award of custody to the children's stepfather. While recognizing the natural father may have had a technical legal right to custody, the court held the primary concern is determining the best interest and welfare of the children. *Id.* at 262, 320 P.2d at 455

20. 50 Ariz. 382, 72 P.2d 584 (1937). The children's parents were divorced in 1931 and custody of the three children was awarded to their mother. The children spent the majority of the time from the divorce in 1931 to their mother's death in 1937 living with their maternal grandparents. Upon the death of their mother, the children's father sought to gain custody of them and to have them live with him and his parents. The father argued that he was gainfully employed, his parents were good people, and that he had fairly complied with the support agreement. *Id.* at 385, 72 P.2d at 586. He also asserted that, because the children's mother had left no estate, and since he was willing and able to support the children and had prepared a suitable home, he should be awarded custody. *Id.* at 387, 72 P.2d at 587.

21. *Id.* at 387, 72 P.2d at 587.

22. 21 Ariz. App. 495, 520 P.2d 1172 (1974). The child's parents had married at age 14 and split up two years later. Although the natural father sought custody, the court felt an award of custody to the child's maternal grandparents was appropriate at least until one of the parents was sufficiently mature and financially capable of caring for the child. *Id.* at 498, 520 P.2d at 1175. *See also infra* notes 23 and 24 and accompanying text for a discussion of grandparent visitation rights.

The Arizona Legislature has recognized similar rights on the part of grandparents. The juvenile court may award a dependent child ". . . [t]o maternal or paternal relatives. . ." and this permits grandparents to be named guardians of their grandchildren. ARIZ. REV. STAT. ANN. § 8-241(A)(1)(g)(Supp. 1986). The award of visitation rights to grandparents in Arizona is authorized

parent-grandchild relationship, as evidenced by *Koehler v. Koehler*.[23] There, the court of appeals required a showing of a threat to the child's welfare before issuing an injunction restricting grandparent contact with their grandchild. The trial court had found that the desires of the parents presumptively authorized an injunction restricting contact between grandparents and child. The court of appeals, however, reversed and held the injunction was not appropriate without compelling circumstances showing the grandparent's conduct threatened the welfare of the child.[24]

GRANDPARENTS' RIGHT TO INTERVENE IN OTHER JURISDICTIONS

Not all jurisdictions are in agreement with Arizona as to the extent to which grandparents have the right to intervene in their grandchild's dependency hearing. In *P.W. v. A.W.*,[25] despite finding the grandparents to be excellent potential custodians, the Missouri Court of Appeals held that, where there is legitimate concern for the welfare of the child, and where the grandparents have had an opportunity to be heard, intervention should be denied. The court justified its action based upon the future risk of possible contact between the child and its abusive mother when she was released from a psychiatric hospital or jail.[26]

In Florida, grandparents are statutorily denied standing to intervene in their grandchild's dependency proceeding.[27] In *Hamel v. Seekell*, a Florida appellate court held that a grandmother had no right to intervene in her grandchild's dependency hearing and upheld the trial court's denial of her motion to intervene.[28] The *Hamel* court did note, however, that the trial court had adequately considered all the facts relevant to the inquiry.[29] The case of *Ruyle v. Murphy*,[30] which was cited by the *Hamel* court, held that, in

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by statute. The rights thereunder automatically terminate if the minor child has previously been adopted or placed for adoption. ARIZ. REV. STAT. ANN. § 25-337.01 (Supp. 1985).

23. 121 Ariz. 592, 592 P.2d at 788 (Ct. App. 1979). Grandparents appealed an order denying them the right to contact or communicate with their granddaughter. The court of appeals held the injunction was not appropriate.

24. 121 Ariz. at 593-96, 592 P.2d at 789-91.

25. 670 S.W.2d 563 (Mo. App. 1984). An unmarried mother suffered from psychiatric delusions about her child (she thought it was the devil) and exhibited bizarre behavior which eventually resulted in her stabbing the child.

26. *Id.* at 566. The court specified that its decision was limited to the facts of this case in which there was evidence the children might still be subject to parental abuse if they were placed with their grandparents. The Missouri Court of Appeals has held that grandparents do not have a right to intervene in their grandchild's adoption proceeding. Kambitch v. Ederle, 642 S.W.2d 690 (Mo. App. 1982). Given the decision in *P.W.*, it is arguable that they bear the burden of justifying their intervention in all dependency proceedings. Missouri still considers it important, however, that grandparents be heard. *P.W.*, 670 S.W.2d at 566.

27. Shuler v. Shuler, 371 So.2d 588, 589 (Fla.App. 1979). The Florida statute states: "[n]othing in this section shall be construed to require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor shall grandparents have legal standing as 'contestants' as defined in § 61.1306." FLA. STAT. ANN. § 61.13(2)(b)(Supp. 1978). Contestant is defined as ". . . a person, including a parent, who claims a right to custody or visitation rights with respect to a child." FLA. STAT. ANN. § 61.1306(1)(1977).

28. 404 So.2d 1144 (Fla.App. 1981). The court's opinion did not disclose the facts leading up to the dependency determination.

29. *Hamel*, 404 So.2d at 1146.

30. 422 So. 2d 318 (Fla. App. 1979). In this case the grandparents appealed the dismissal of their motion to intervene in their grandchild's custody modification proceeding. The child's parents were divorced in 1976 and the court awarded custody to the father. Shortly thereafter, the father left

Florida, consideration of the facts is not complete unless the grandparents have an opportunity to be heard.[31] The Florida appellate court found that, while the grandparents did not have legal standing in the proceeding, it was error for the trial court to deny them an opportunity to be heard.[32] Although the Florida cases are unique due to the statutory prohibition on standing for grandparents in dependency hearings,[33] it is interesting that the Florida courts still recognize that grandparents should have an opportunity to be heard.[34] Thus, despite the statutory impediments, Florida courts nonetheless manage to recognize the importance of the grandparent-grandchild relationship.

The Iowa Supreme Court, in contrast to Missouri and Florida, has held that grandparents have a statutory right to intervene in their grandchildren's dependency hearings. The case of *In re J.R.*,[35] involved the appeal of a trial court's ruling denying the grandparents standing to intervene in their grandchildren's dependency hearing and of the court's finding that an award of custody to an anonymous third party would be in the children's best interest. The Iowa Supreme Court held that, because grandparents have the legal right to be considered guardians of their grandchildren following a dependency determination, they also have a right to intervene in the dependency hearing.[36]

Recognition of the importance of the grandparent-grandchild relationship has also achieved growing approval from scholars from across the country.[37] In their writings, commentators support the view adopted by the Arizona courts and legislature that when parents are no longer able to maintain a home for their children it is natural that grandparents should be allowed to keep the family together and protect it from undue severance by the state.[38]

Analysis of Bechtel

In *Bechtel*, the Arizona Supreme Court dealt with circumstances similar to those faced by the Iowa court, but, unlike Iowa, held that the best

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the child with his parents (the Ruyles), who cared for the child for three years before initiating custody proceedings. In separate proceedings, the child's parents agreed to change custody to its mother who took custody of the child from the grandparents. The grandparents then sought to intervene in the parent's separate proceeding. *Id.* at 318-19.

31. *Id.* at 319.

32. *Id.*

33. *See supra* note 27 and accompanying text.

34. *Ruyle*, 422 So.2d at 319.

35. 315 N.W.2d 750 (Iowa 1982).

36. *In re* J.R., 315 N.W.2d at 752. In addition, the court found that "[w]hile there is concededly a risk in providing an opportunity for future neglect by their parents, the quality of the proposed home [grandparent's home] in this case and the desirability of maintaining an identity with the children's natural family outweigh the benefits of an anonymous adoption." *Id.* at 753. *See also In re* Chad, 318 N.W.2d 213 (Iowa 1982), for a similar holding.

37. *See generally* Brummer & Looney, *Grandparents Rights in Custody, Adoption and Visitation Hearings*, 39 ARK. L. REV. 259 (1985); Comment, *Grandparents Rights to Visitation and Custody: A Trend in the Right Direction*, 15 CUM. L. REV. 161 (1984/1985); Note, *Grandparents v. State: A Constitutional Right to Custody*, 13 HOFSTRA L. REV. 375 (1985).

38. Note, *supra* note 37, at 405. The author also contends that grandparents, due to their position in the family, should be given deference and should not have to meet the same standards applied to any stranger seeking custody of their grandchild. *Id.* at 405-06.

interest of the child was still to be considered in allowing intervention by the grandparents.[39] The *Bechtel* court found that intervention would enlighten the juvenile court as to the best placement for the child, and to the suitability of the grandparents as custodians.[40] While not going so far as to recognize a statutory right to intervene, the court did hold that the best interest of a parentless child is usually served by permitting his grandparents to intervene in his dependency hearing.[41] More importantly, the Arizona Supreme Court reversed the burden of proof in intervention proceedings by grandparents and now requires the state to prove that it is against the child's best interest before intervention will be denied.[42]

The court's decison in this case constitutes a significant development in the law. The *Bechtel* court, finding the lodestar of the juvenile court to be "to provide individualized justice for children. . .," held that grandparents should normally be allowed to intervene in their grandchildren's dependency hearing.[43] The court held that intervention is only inappropriate if it unduly delays the proceeding or prejudices the child's interests.[44] The court reasoned that the "best interest of the child" doctrine provides adequate protection for those cases when grandparent intervention is not appropriate.[45] In contrast, the Iowa Supreme Court held that grandparents have a statutory right to intervene. The court did not consider the child's best interest until the placement phase of the proceeding.[46]

The Arizona court found persuasive the arguments asserting the natural love of grandparents for their grandchildren,[47] public policy support for the integrity of the natural family,[48] and the fact that a third party adoption of their grandchild would sever the grandparent's visitation rights.[49] The underlying theme of the decision is captured in the court's statement "that 'courts should bend over backwards, if possible, to maintain the natural ties of birth.' "[50]

The *Bechtel* court found the juvenile court abused its discretion by failing to make an individualized determination of the propriety of the petitioner's motion to intervene.[51] This court was unwilling, however, to agree with Bechtel's claim that her petition for guardianship and conservatorship

39. After evaluating the opinion of the Iowa court in *In re J.R.*, *supra* note 36, the supreme court, in *Bechtel*, said, "[i]n Arizona grandparents are also eligible to be considered as guardians for their dependent grandchildren. A.R.S. § 8-241(a)(1)(g). However, we do not hold that mere eligibility for consideration automatically confers a right to intervene in dependency proceedings." *Bechtel*, 150 Ariz. at 74, 722 P.2d at 242.

40. *Bechtel*, 150 Ariz. at 73, 722 P.2d at 241.

41. *Id.* at 73, 722 P.2d at 241. *See infra* note 68 and accompanying text for a discussion of the situation where a child is not parentless, but is the victim of abusive parents.

42. *See infra* notes 57-59 and accompanying text.

43. *Bechtel*, 150 Ariz. at 73, 722 P.2d at 241, citing Application of Gault, 99 Ariz. 181, 188, 407 P.2d 760, 765, (1965), *rev'd on other grounds*, 387 U.S. 1 (1967).

44. *Bechtel*, 150 Ariz. at 73, 722 P.2d at 241. *See also* ARIZ. R. CIV. P. 24(b).

45. 150 Ariz. at 73, 722 P.2d at 241.

46. *In re* J.R., 315 N.W.2d at 752.

47. *Bechtel*, 150 Ariz. at 73, 722 P.2d at 241.

48. *Id.* at 73, 722 P.2d at 241, 242.

49. *Id.* at 73, 722 P.2d at 241, citing ARIZ. REV. STAT. ANN. § 25-337.01(D).

50. *Id.* at 73, 722 P.2d at 241, citing Anonymous v. Anonymous, 25 Ariz. App. 10, 11, 540 P.2d 741, 742 (1975).

51. *Bechtel*, 150 Ariz. at 74, 722 P.2d at 242.

should have been granted by the juvenile court.[52] The juvenile court was held to lack jurisdiction to consider any disposition of the child prior to an adjudication of dependency.[53]

On the other hand, the supreme court found that, because the juvenile court had authority to make temporary orders regarding a child awaiting a dependency determination,[54] Bechtel's petition for guardianship could have been considered one for temporary custody and could then have been addressed by the juvenile court.[55] The court felt this approach was appropriate since the determination for fitness as a temporary custodian would be similar to the determination required to grant or deny the petitioner's motion to intervene.[56]

Scope and Evaluation

Prior to *Bechtel*, intervention in dependency hearings was only allowed in the discretion of the court and upon a showing that it was in the child's best interest.[57] After *Bechtel*, intervention is appropriate unless the state shows it would not be in the child's best interest.[58] This decision reverses the burden of proof and could make it difficult for the state to prevent intervention by interested parties.[59]

In a footnote to its opinion, the court stated that other relatives besides grandparents might also be proper intervenors.[60] It is logical that if grandparents are allowed to intervene, then so should aunts, uncles, and brothers and sisters who are of majority age, etc. This position has some support in decisions from other jurisdictions.[61]

In *Rosson v. DeArman*,[62] a Texas appellate court held that an aunt and uncle who had been caring for the child were allowed to intervene in the hearing for modification of the child's custody agreement.[63] A Colorado

52. *Id.*

53. *Id.* (citing Caruso v. Superior Ct., 100 Ariz. at 173, 412 P.2d at 467; and ARIZ. REV. STAT. ANN. § 8-241(A)(1)(Supp. 1986)). *See also generally supra* note 6.

54. 150 Ariz. at 75, 722 P.2d at 243 (citing ARIZ. REV. STAT. ANN. § 8-233).

55. 150 Ariz. at 75, 722 P.2d at 243. The court reasoned that the juvenile court could then begin evaluating the grandparents for fitness as custodians. In fact, the court expected the juvenile court to do this, as it is necessary to a determination of whether the motion to intervene should be granted. However, this court held it was unable to find abuse of the juvenile court's discretion in denying the petition for guardianship since no investigation had been conducted.

56. *Id.*

57. ". . . [A] party to an action. . . means the child, parents, guardian, custodian or any other person whose presence in the action is required in the interests of justice or designated by the court as a party." ARIZ. JUVENILE CT. RULES OF PROC. 1. The Office of the Arizona State Attorney General has interpreted this statute to mean that only those parties specifically mentioned have a right to intervene and all other parties seeking to intervene have the burden of proving it is in the child's best interest. Conversation with Joan Mendelson, Asst. Arizona State Attorney General, Economic Security Division. (February 5, 1987).

58. *Bechtel*, 150 Ariz. at 73, 722 P.2d at 241.

59. Conversation with Joan Mendelson *supra* note 57.

60. 150 Ariz. at 73 n.3, 722 P.2d at 241 n.3. ". . . Nor do we necessarily limit our decision today solely to grandparents; other relatives might also be accorded intervention should the need and propriety of their intervention be demonstrated."

61. *See infra* notes 62-65 and accompanying text.

62. 323 S.W.2d 75 (Tex. App. 1959)

63. *Id.* at 76

appeals court in the case of *In re C.P.*,[64] held that, because a court may give custody to a relative following adjudication of dependency, it follows that a relative should be entitled to intervene at the dispositional stage of the proceeding.[65] In contrast, however, is a Georgia decision, *Dept. of Human Resources v. Ledbetter*,[66] where an aunt and uncle, who were considered "virtual grandparents" of the decedent's three children, were found not to have the right to intervene in the dependency proceeding.[67]

While the Arizona Supreme Court's rationale of protecting the integrity of the natural family may be compelling in the case of a parentless child, it loses some of its strength in the abused child situation.[68] It may not be in the child's best interest to be placed with the parents of a child abuser.[69] The Missouri case of *P.W. v. A.W.*, involved a mother whose bizarre behavior eventually led her to stab her child.[70] The Missouri Court of Appeals, while finding that the grandparents would be excellent custodians, held that "[o]f utmost concern is the welfare of the child" and ". . .the fact the grandparents would be good custodians is not the sole consideration."[71] Because Arizona courts also view the welfare of the child as the paramount concern,[72] they may similarly be reluctant to allow intervention by grandparents in the dependency stage where there is risk of harm to the child's welfare.

Although permanent custody was not an issue in the *Bechtel* case, it is arguable that an intervening relative who obtains temporary custody of a dependent child is in a strong position to receive permanent custody. And, while an award of temporary custody has not been held to give preference for an award of permanent custody, the Arizona Supreme Court, in *Dickason v. Sturdavan*, considered the length of time the children had spent with their grandparents as a factor to be considered in awarding permanent custody.[73] If a court finds the relative fit for temporary custody, then that rela-

64. 524 P.2d 316 (Colo. App. 1974).

65. *Id.* at 319.

66. 265 S.E.2d 337 (Ga. App. 1980).

67. *Id.* at 339. The court reasoned that because the children's welfare is the primary concern in termination proceedings, a more closely regulated custodian would be more appropriate for temporary custody.

68. The *Bechtel* court may have anticipated this problem by holding that intervention can be denied if there is a specific showing that it is not in the child's best interest. *Bechtel*, 150 Ariz. at 73, 722 P.2d at 241. Recent studies indicate that "[t]he abused child, if returned to his home before the family has received some form of help, has at least a 50 percent chance of being subjected to additional injuries. There is also evidence that child abuse passes from generation to generation either because it was learned or because the abuser was emotionally damaged by abuse in childhood." A. SUSSMAN & S. COHEN, REPORTING CHILD ABUSE AND NEGLECT—GUIDELINES FOR LEGISLATION 92 (1975). Another author contends that it is a "precondition for abuse" that the abuser have been neglected or abused in his own early life. C. KEMPE & R. HEIFER, THE BATTERED CHILD 58 (3d ed. 1980). Given the evidence in these studies, perhaps courts should be reluctant to place an abused child with its grandparents.

69. *See supra* notes 25-26 for discussion by the court in *P.W.*. *See also supra* note 68 and accompanying text.

70. *P.W.*, 670 S.W.2d at 564.

71. *Id.* at 567.

72. *In re* Pima County Juvenile Action No. J-31853, 18 Ariz. App. 219, 220, 501 P.2d 395, 396 (1972). "The welfare of the child is the prime consideration of a juvenile code." *Id.*

73. 50 Ariz. 382, 383, 72 P.2d 584, 585 (1937). *See generally supra* note 19 and accompanying text. *See also* Arias v. Abilez, 21 Ariz. App. 568, 521 P.2d 1146 (1974)(court considered the length of time the children had already spent with their aunt); Clifford v. Woodford, 83 Ariz. 257, 320 P.2d 452 (1957)(length of time the children had spent with their stepfather was considered by the court).

tive is probably fit for permanent custody. There may be cases, however, where a person is awarded temporary custody, but due to advanced age, illness, or economics he may not be suitable for permanent custody.[74]

CONCLUSION

Prior Arizona decisions recognized the integrity of the family as a significant value worth protecting. The best interest of the child is the established criteria upon which courts have based their decisions concerning child welfare. There has also existed statutory authority recognizing the right of family members to be considered guardians and custodians as well as authority recognizing visitation rights for grandparents. These facts telegraphed the idea that it was only a matter of time before a judicially recognized right to intervene in a related child's dependency hearing appeared. The *Bechtel* court's opinion encompassed not only grandparents, but also other relatives who can show the need and propriety of their intervention.

The real impact of this case is the fact it reversed the burden of proof for determining when intervention is appropriate in child dependency proceedings. After *Bechtel*, the state bears the burden of showing that intervention of a relative is not in the child's best interest. This change could lead to longer proceedings because intervention will be more frequently granted. Thus, ironically, the *Bechtel* opinion may serve to cause the "unconscionable delay" in dependency proceedings that the Arizona Supreme Court thought it was avoiding by hearing the appeal.[75]

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74. In *Dickason*, the advanced age of the paternal grandparents, in whose home the children would live, was considered in deciding whether to award custody to the children's father. *Dickason*, 50 Ariz. at 385, 72 P.2d at 587.

75. *See Bechtel*, 150 Ariz. at 71, 722 P.2d at 239.