



# Grandparents' Custody Rights & the haunts of past lost custody.



Dear Steve:

We have been raising my daughter's two children since they were both infants. Now she wants them back after 5 years. We love them as our own. He says if they go back to their mother, he will leave me. This will be the third family he has lost.

I am not ready to give up on a 17-year marriage, but he doesn't want to be around anyone who will remind him of the kids. Should I accept this and move on or fight for my marriage?

Mom-maw

*(F) 44 Rushville, IN*

*Married 17 years, daughter 22: granddaughters 5 years of age.*

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Dear Mom-maw:

Your problem is not unique to you and your husband of 17 years. The issue of grandparent rights has become more important as societal norms have changed and more grandchildren are being raised by their grandparents. Unfortunately, current law in most states does not recognize grandparent rights, even when the children are clearly emotionally bonded to the grandparents, and even when the grandparents are significantly better parents than the biological parents of the children.

Your situation clearly demonstrates the old adage that "no good deed ever goes unpunished". It is obvious that you and your husband have done a spectacular job in filling in for your daughter and the father of her children who have been unable to care for the children since their infancy.

Many states have recently attempted to establish grandparents rights, but have been overruled by the Federal courts which have routinely sided with the biological parents in spite of close emotional bonds between the grandparents and the children. This issue is often seen where the grandparents are given temporary custody of the children due to abuse or drug usage by the biological parents. In many instances, years pass before the biological parents are found to be fit enough to parent their children. In these instances, the disruption to the children's lives is often dramatic with the obvious results that the children's academic performance suffers, and children which were previously not disciplinary problems, suddenly become disciplinary problems. In spite of the obvious and apparent disruption to the children's lives, the courts have routinely ruled in favor of returning the children to the biological parents.

My experience in working with grandparents who have been raising their grandchildren, is that the courts are often sympathetic to the children's needs, and the grandparent's dilemma. As a result, the courts will push the attorneys hard to attempt to reach a settlement whereby the grandparents continue to provide a significant influence in the children's lives. In your particular case, it would be wise to sit down with a Certified Family Law Specialist in your area who can discuss with you his or her experience with the local Judges on the issue of grandparent's rights.

At a minimum, I would recommend speaking with you daughter about attending counseling to attempt to work out a mediated agreement whereby your and your husband's role in the children's lives is still significant, but allows your daughter to develop her own parenting skills and raise her children. Given the fact that the law is clearly not on the side of grandparent rights, your best alternative is to attempt to reach a mediated settlement with the use of a trained mental health professional who will clearly recognize the importance of the children's grandparents in their lives. Hopefully, a result can be reached whereby the children will be allowed to spend an appropriate amount of time with both their biological parents, as well as with you and your husband.

The trained mental health professional will also be able to assist you and your husband with regard to your own issues concerning his feelings of loss and abandonment when the children are not with you. You should be commended for your efforts in maintaining your solid 17 year marriage.

The short answer to your question is that I would not abandon your 17 year marriage, but I would work with a trained mental health professional to assist your family in maintaining all of the relationships, including your relationship with your husband.

Steve Mindel  
Certified Family Law Specialist, California Bar  
Feinberg, Mindel & Klein LLP

NOTE: Custody and Marital Laws vary from State to State, and situations are unique to each person. Please use Couples Company legal advice only as a guide to questions you should be asking your own legal counsel if you are engaged in a similar situation.

