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# Recent Development: In Re Victoria C.: Children Are Third Parties for Purposes of Child Visitation; Siblings Must Make a Prima Facie Case of Parental Unfitness or Exceptional Circumstances Before Applying the Best Interest of Child Standard

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## RECENT DEVELOPMENT

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### ***IN RE VICTORIA C.: CHILDREN ARE THIRD PARTIES FOR PURPOSES OF CHILD VISITATION; SIBLINGS MUST MAKE A PRIMA FACIE CASE OF PARENTAL UNFITNESS OR EXCEPTIONAL CIRCUMSTANCES BEFORE APPLYING THE BEST INTEREST OF THE CHILD STANDARD.***

**By: Allyson Bloom**

The Court of Appeals of Maryland held that a child is considered a third party for purposes of sibling visitation rights. *In re Victoria C.*, 437 Md. 567, 591, 88 A.3d 749, 764(2014). The court further held that the sibling seeking visitation with a minor sibling must first make a *prima facie* case showing parental unfitness or exceptional circumstances before the court can apply the best interest of the child standard. *Id.* at 592, 88 A.3d at 765.

In 2009, the Department of Social Services found indications of physical abuse by George C. (“George”), against his sixteen-year-old daughter Victoria C. (“Victoria”). Consequently, George sent Victoria to live with her aunt in Texas. In 2010, Victoria's aunt sent her back to Maryland. Upon her arrival, George did not permit Victoria to stay with him, his wife Kieran C. (“Kieran”), and their two biological minor children, Lance and Evan. Victoria was ultimately declared a Child in Need of Assistance (“CINA”) after the court determined that it was contrary to Victoria's welfare to live with George at his house.

The Circuit Court of Carroll County sitting as a Juvenile Court conducted several periodic review hearings to evaluate George and Victoria's relationship. During the first hearing, Victoria requested to visit with Lance and Evan. The master recommended visitation only if, and when, “therapeutically indicated.” George objected to the request and a hearing was granted to address the issue of sibling visitation. Kieran moved to intervene as a party. The court denied George and Kieran’s request for judgment. The court found that Victoria would suffer a “significant deleterious effect” if she was unable to visit with her brothers, and therefore recommended supervised visitation.

George and Kieran then filed joint exceptions to the master's recommendation. The court held that a minor child in foster care can visit with her half-siblings if the foster child can show that she is harmed by the lack of visitation. The court found that Victoria met this burden and explained that exceptional circumstances existed based on testimony that Lance remembered Victoria and wished to visit with her. Based on these considerations, the court found in favor of Victoria and upheld the master's decision to permit visitation.

George and Kieran filed a timely notice of appeal. The Court of Special Appeals of Maryland reversed the decision and denied visitation. The Court of Appeals of Maryland granted Victoria’s petition for a writ of certiorari.

The court began its analysis by recognizing parents' constitutional right to control the upbringing of their children. *In re Victoria C.*, 437 Md. 567, 589, 88 A.3d 749, 762 (2014) (citing *In re Samone H.*, 385 Md. 282, 300, 869 A.2d 370, 380 (2005)). That right includes a parent's ability to deny visitation to their minor children. *In re Victoria C.*, 437 Md. at 589, 88 A.3d at 762 (citing *Koshko v. Haining*, 398 Md. 404, 430, 921 A.2d 171, 186 (2007)). The court held that this constitutional right, absent exceptional circumstances, will override a third party's request for visitation. *In re Victoria C.*, 437 Md. at 589, 88 A.3d at 763 (citing *McDermott v. Dougherty*, 385 Md. 320, 418, 869 A.2d 751, 808 (2005)). The court consequently affirmed the principle that a third party is *anyone* who is not a parent, including half-siblings. *In re Victoria C.*, 437 Md. at 589, 88 A.3d at 762 (emphasis added).

The court declared Victoria a third party, and considered the application of *Koshko* to the instant case. *In re Victoria C.*, 437 Md. at 592, 88 A.3d at 764. The court in *Koshko* held that grandparents, also considered third parties, petitioning for visitation are first required to make a *prima facie* case of parental unfitness or exceptional circumstances before the court can apply the best interest of the child standard. *Id.* at 589, 88 A.3d at 764 (citing *Koshko*, 398 Md. at 441, 921 A.2d at 193). In this case, the court reasoned that the George and Kieran's fundamental interest in the upbringing of their children must be considered when evaluating Victoria's visitation requests. *In re Victoria C.*, 437 Md. at 585, 88 A.3d at 760. More importantly, the court stated that the pivotal question was whether Lance or Evan would be harmed by their inability to visit with their sister and not whether Victoria was harmed. *Id.* at 586, 88 A.3d at 761.

The Court of Appeals of Maryland found that both the master and intermediate court examined the potential harm to Victoria, instead of considering how the lack of visitation would affect Lance and Evan. *In re Victoria C.*, 437 Md. at 592-593, 88 A.3d at 765. The court upheld the decision to deny visitation rights to Victoria, finding no evidence on record showing the boys would be harmed by a lack of visitation. *Id.* Also, the master and trial judge incorrectly relied on *In re Tamara R.*, which allowed a child in foster care to visit with her half-siblings if the child could show that she would be harmed by the lack of visitation. *In re Victoria C.*, 437 Md. at 567, 88 A.3d at 749 (citing *In re Tamara R.*, 136 Md.App. 236, 764 A.2d 844 (2000)). Accordingly, the court overruled *In re Tamara R.* to the extent that the case was inconsistent with the court's holding. *Id.* at 591, 88 A.3d at 764. The court found that the *Koshko* test was appropriate for the case *sub judice* and remanded to consider whether jurisdiction existed. *In re Victoria C.*, 437 Md. at 592, 88 A.3d at 765. If jurisdiction exists, the trial court must consider whether the lack of visitation would harm Lance or Evan. *Id.*

The dissent took issue with the majority equating grandparent visitation rights with that of siblings. *In re Victoria C.*, 437 Md. at 594, 88 A.3d at 767 (Adkins, J. and Greene, J., dissenting). In particular, the dissent argued that *Koshko* never addressed the classification of siblings in regard visitation

rights. *Id.* The dissent explained that grandparent-grandchild relationships are less significant than those between siblings because sibling relationships provide support and developmental opportunities. *Id.* at 595, 88 A.3d at 767. The dissent recognized parents' constitutional right to raise their children as they see fit, but suggested that the right is not absolute. *Id.* at 596, 88 A.3d at 767. Finally, the dissent feared that the majority's decision will force abused children to choose between reporting the abuse and risk losing a relationship with their siblings, or continuing to live with the abuse. *Id.* at 603, 88 A.3d at 771-772.

In *In re Victoria C.*, the Court of Appeals of Maryland held that siblings are considered third parties and must therefore make a *prima facie* case of parental unfitness or exceptional circumstances before the court can consider the best interest of the child. However, the court disregarded the indication of physical abuse in its analysis of parental unfitness or exceptional circumstances. Through its decision, the court puts children from abusive households in a precarious position. Maryland practitioners should be aware that courts will be reluctant to disturb the parents' right to determine visitation under the absolute right to raise their child. Accordingly, *In re Victoria C.* makes it increasingly unlikely that courts will make exceptions this rule.