Grandparents' right to a relationship with their grandchildren

1. In the case of divorce, death or other relationship breakdown, grandparents don't have automatic rights to their children.

2. However in terms of sections 23 and 24 of The Children's Act 38 of 2005, they may approach a court having jurisdiction and request contact with their grandchild – or to have more extensive rights, as the case may be. The court will then make a decision about grandparents' rights that it considers to be in the best interests of the child in question.

3. In the 2004 case of Townsend-Turner, the mother of a young boy had died of cancer and the father had entered into a relationship with another woman who the little boy considered to be his mother. The relationship between the father of the child and his late wife's parents had deteriorated and so the father hadn't been allowing them regular contact with the child.

4. As a result of this, the boy's grandparents applied for access to the child (now referred to as "contact" in terms of The Children's Act, 38 of 2005). In reaching its decision, the court confirmed that South African law doesn't automatically entitle anyone other than the legitimate parents to have access to the children concerned. This decision touched on the fact that that our courts have always been reluctant to interfere with parental authority, except in special circumstances. An example of this is where a family intervention may have unsettling effects on the dynamics of that family and could affect the child's best interests.

5. In the example above, the grandparents were denied access to the child on the basis that it would not be in the best interests of the child because of conflict within the family, and the difficult relationships that were already in existence.

6. In a more recent decision in 2008, a Mpumalanga couple applied to be co-caregivers of their grandchild. Their son – the father of the child – had been killed in an accident. The mother of the child opposed this application. The court

reaffirmed that in cases such as spousal death or divorce, grandparents' rights to grandchildren are not automatic. However, the court also ruled that it would be in the best interests of the child that the grandparents visit her at least once a week. So, while the court didn't grant the grandparents the extensive rights and responsibilities of a caregiver, it did consider that contact with her paternal grandparents was in her best interests.

7. In a recent 2012 decision in the Eastern Cape Courts, a child's father was killed in a car accident shortly before he was born. Following the mother's remarriage, her relationship with the paternal grandparents of her child soured and all contact ended. The grandparents then brought an application for contact with the child. In this instance, the judge stated that it is usually in a child's best interests to maintain a close relationship with his grandparents. Based on this, the judge granted the application but on a limited basis so as not to interfere with the parental rights and responsibilities of the child's mother and her second husband.

8. The message the courts are sending out is that anyone other than parents who wish to play a pivotal role in children's lives must represent a positive influence in the child's life. In addition, they must not create conflict and dissension in their environment and above all, they must respect the rights and responsibilities of the child's parent or parents.

9. When considering such application the Court is required in terms of Section 23 and 24 of the Children's Act to have regard to the following:

9.1. The best interests of the minor child/children.

9.2. The relationship between the Applicant and the minor child/children and any other relevant person and the child/children.

9.3. The degree of commitment that the Applicant has shown towards the child/children.

9.4. The extent to which the Applicant has contributed towards the child/children's financial / maintenance requirements.

9.5. Any other factor which in the opinion of the Court ought to be taken into consideration.