

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2021-0587

**In the Matter of Brianna Kauble and William Kauble**

*Appeal pursuant to Rule 7 from a judgment of the 10<sup>th</sup> Circuit Court, Brentwood Family Division*

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**AMENDED BRIEF FOR BRIANNA KAUBLE**

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(15 minutes requested)

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All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

RSA 461-A:13..... *passim*

I. Grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child as provided in paragraph III. The provisions of this section shall not apply in cases where access by the grandparent or grandparents to the minor child has been restricted for any reason prior to or contemporaneous with the divorce, death, relinquishment or termination of parental rights, or other cause of the absence of a nuclear family.

II. The court shall consider the following criteria in making an order relative to a grandparent's visitation rights to the minor child:

- (a) Whether such visitation would be in the best interest of the child.
- (b) Whether such visitation would interfere with any parent-child relationship or with a parent's authority over the child.
- (c) The nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and length of time of such residence, and when there is no reasonable cause to believe that the child's physical and emotional health would be endangered by such visitation or lack of it.

- (d) The nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and the effect such friction would have on the child.
- (e) The circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause.
- (f) The recommendation regarding visitation made by any guardian ad litem appointed for the child pursuant to RSA 461-A:16.
- (g) Any preference or wishes expressed by the child.
- (h) Any such other factors as the court may find appropriate or relevant to the petition for visitation.

III. The petition for visitation shall be entered in the court which has jurisdiction over the divorce, legal separation, or a proceeding brought under this chapter. In the case of death of a parent, stepparent adoption, or unwed parents, subject to paragraph IV, the petition shall be entered in the court having jurisdiction to hear divorce cases from the town or city where the child resides.

IV. If the parent of the minor child is unwed, then any grandparent filing a petition under this section shall attach with the petition proof of legitimation by the parent pursuant to RSA 460:29 or establishment of paternity pursuant to RSA 168-A.

V. Upon the motion of any original party, the court may modify or terminate any order made pursuant to this section to reflect changed circumstances of the parties involved.

VI. Nothing contained in this section shall be construed to affect the rights of a child or natural parent or guardian under RSA 463 or adoptive parent under RSA 170-B:20.

## **ISSUES PRESENTED**

1. Whether the hearing court violated Brianna's right to autonomy in child-rearing by failing to honor the presumption that Brianna's judgment in keeping her children from her own father was sound? *Preserved by Request for Findings of Fact and Rulings of Law and Motion to Reconsider at Brief Addendum.*

2. Whether the hearing court violated Brianna's right to equal treatment by ordering her to allow grandparent visitation when it could not have done so had she stayed in an abusive relationship with her ex-husband? *Preserved by Request for Findings of Fact and Rulings of Law and Motion to Reconsider at Brief Addendum.*

3. Whether the hearing court improperly considered a hearsay statement from a GAL report that was never made part of the evidentiary record? *Preserved by Motion to Reconsider at Brief Addendum.*

4. Whether the hearing court properly applied the statutory factors in determining that grandparent visitation was appropriate? *Preserved by Request for Findings of Fact and Rulings of Law and Motion to Reconsider at Brief Addendum.*

## STATEMENT OF THE FACTS AND CASE

On June 7, 2019, Brianna filed her Petition for Divorce from her husband William Kauble with the 10<sup>th</sup> Circuit Court – Family Division – Brentwood. While the divorce proceeding was pending, on or about January 6, 2021, Herbert Novell, father of Brianna Kauble, filed a Motion to Intervene in the divorce matter. On or about February 20, 2021, Mr. Novell filed his Motion for Grandparent’s Visitation in the divorce matter. On May 18, 2021, Brianna filed her Motion to Dismiss Mr. Novell’s Motion for Grandparent’s Visitation Rights on the basis that Mr. Novell lacks standing to make such request pursuant to RSA 461-A:13, I. The court denied her motion.

On October 4, 2021, the 10<sup>th</sup> Circuit Court – Family Division – Brentwood (*Hall, J.*) held a final hearing on Intervenor Herbert Novell’s Petition for Grandparent’s Visitation. During the final hearing, Brianna Kauble testified that she moved from Arizona to New Hampshire to escape an abusive relationship with her husband William Kauble. Tr. 122. Upon arrival, Brianna and her children resided with Brianna’s father Herbert Novell for six months in East Kingston until she moved into her own residence in Exeter. Tr. 62. Prior to briefly residing with Mr. Novell, the children only saw their grandfather for one week, once or twice each year, for the 10 years that Brianna resided with the children in Arizona. Tr. 24-25. In the springtime of 2020, Brianna refused to allow her father to see her children due to the friction between them and his abuse of her in front of her children and his abuse of his grandchildren. Tr. 109-110.

Herbert Novell testified that Brianna and her children resided with him for six months beginning in May of 2018. Tr. 26. He testified as to the loving relationship that

he and his wife Lori had with the children and that while the children resided with him, they went to fairs, made snow cones, and went to the beach and hockey games. Tr. 27. He testified that he spent hours every day with the children and babysat them while their mother worked. Tr. 28. To the contrary, Brianna testified that her father “was absent” and “just hung out in his office.” She testified that her father would not watch her children while she worked, stating “I’m retired, I’ve raised my kids,” and “you’re a single mom, figure it the F out.” Tr. 125.

Herbert Novell also testified that he called Brianna a “bitch.” Tr. 79-80. Brianna testified that her father had been abusive to her all throughout childhood. He called her a “loser,” “stupid” and a “bitch.” He told her she would “never amount to anything,” and he physically abused her. Tr. 110. Brianna’s sister Kelly Cazaux testified, by offer of proof, that she recalls Herbert holding Brianna up on the wall. Ms. Cazaux testified she heard her father always make comments to Brianna that “she was going to be a garbage truck driver or that she wasn’t even smart enough to drive the truck because she would be the one on the back dumping the trash,” and that she “would never go to college or amount to anything.” Tr. 140-141.

Brianna’s live-in boyfriend Joshua Colwell testified that he heard Mr. Novell call Brianna a “bitch” multiple times. Tr. 94. Brianna testified that her father told her daughter Brylee “you’re going to be a loser just like your mom” and he called her daughter Lydia a “little bitch.” Tr. 112. Joshua Colwell also testified that Brylee told him Mr. Novell called her and her sister’s “little bitches,” and that Mr. Novell’s wife Lori told her she was “going to be a loser like her mom.” Tr. 96-97.

Herbert Novell testified that there was friction in his relationship with Brianna. Tr. 61. Brianna testified that there was friction between her and her father and that her father refused to work on their relationship. Tr. 121. She testified that while she lived with her father for six months, he had minimal interaction with her children. Tr. 125. She testified that she denied her father from seeing the children in the spring of 2020 at the beginning of the COVID pandemic. Tr. 109.

Brianna testified that she fears that her children are at risk of physical, emotional, and mental abuse if her father is granted visitation with them because they already were by him. Tr. 125-126. Brianna testified that she believes “100 percent” that the granting of her father grandparent’s time with her children would interfere with her ability to parent her children. Tr. 119-120.

The court also considered information contained in the GAL’s report which noted that one child’s therapist noted at one point that she was upset not seeing her grandfather. The GAL was appointed to investigate parenting issues related to the divorce and not the issue of Mr. Novell’s request for grandparent’s visitation. The GAL report was not offered as evidence nor supported by the testimony of either the GAL, the therapist, or the child.

On October 28, 2021, the court ordered that Mr. Novell shall have grandparent visitation with the children one day, every month from 9am to 7pm, and that in the absence of a different agreement between Ms. Kauble and Mr. Novell, that day shall be the first Sunday of every month with Mr. Novell responsible for transportation. The court ordered that Mr. Novell shall also have visits a day before or after each of the children’s



birthdays for a period of four (4) hours and a day near to the Christmas holiday, with the Christmas holiday visit from 9am to 7pm. The court also declined to rule on each of the individual Requests for Findings and Rulings submitted by the parties finding that its narrative Order contains sufficient findings of fact and rulings of law to support the court's conclusions.

Brianna Kauble filed her Motion to Reconsider Final Order on Grandparent Visitation on the basis that (1) the court's narrative order did not address the requested findings of fact and rulings of law, (2) the court did not address either the substantive due process or equal protection arguments, (3) the court overlooked the presumption afforded to parenting in considering the statutory factors in RSA 461-A:13, and (4) the court considered the GAL's report (which included noted statements from one child's therapist) when the GAL was not appointed to address the issue of grandparent's visitation and neither the GAL nor the child's therapist offered testimony at the hearing on the petition. The court denied Ms. Kauble's Motion to Reconsider.

This appeal followed.

## SUMMARY OF THE ARGUMENT

The evidence was insufficient to support the court's award of grandparent's visitation to Herbert Novell. Contemporaneous with Brianna's divorce proceeding, she denied her father access to his grandchildren due to friction between her and her father and the toxic relationship between her father and the children. The court erred when it denied Brianna's Motion to Dismiss because the triggering event of a "divorce" or "absence of a nuclear family" had not yet occurred when Brianna denied her father access to the children. See RSA 461-A:13. Even if this court were to find that Mr. Novell has standing to make such a request, the evidence does not support the court's award of grandparent's visitation to Mr. Novell.

Mr. Novell's testimony, contrasted by the testimony of Brianna and her sister Kelly Cazaux, show that Mr. Novell had limited contact with his grandchildren for most of their lives and that he was abusive to Brianna and his grandchildren. Additionally, the testimony of Brianna and her father show there is friction between them. These facts do not support an award of grandparent's visitation to Mr. Novell.

The court overlooked the presumption afforded to parents in considering the statutory factors in RSA 461-A:13. The court failed to consider the best interest of the children, whether grandparent visitation would interfere with Brianna's relationship with her children, and the friction between Brianna and her father. Instead, the court replaced its judgment in place of Brianna – a fit parent.

The court acknowledged that Brianna believes her children's interests are not served by having visitation with Herbert but afforded no "special weight" in balancing the statutory factors.

There was no finding that Brianna was not a fit parent, yet, the court makes no mention of what outweighs her parental autonomy. It only concluded, without further analysis, that Herbert had a "loving" relationship with his grandchildren and that visitation is in the best interests of the children. There was simply no analysis as to how the "loving" relationship could possibly overcome the presumption of parental autonomy.

Instead, the court accepted that a strained relationship existed between Herbert and Brianna, but "did not find" that the grandparent visits will interfere with Brianna's parent-child relationship or her authority with the children. However, the absence of such a finding does not obviate that Brianna is entitled to the presumption that she is acting in the best interests of the children. The court can only issue grandparent visitation where it finds that some interest outweighs Brianna's determination of the children's best interest.

The court's decision did not contain any consideration of the "circumstances which resulted in the absence of a nuclear family." Such circumstances did not exist when Brianna denied her father access to her children. The court's analysis sidesteps the impact of that circumstance, especially as it relates to Brianna's fundamental right to parent her children as she sees fit.

The court gave great weight to information contained in the GAL's report to support Mr. Novell's claim that he had a loving relationship with his granddaughter. The GAL's report should not have been considered because the GAL was appointed to

investigate issues pertaining to the divorce and not Mr. Novell's request for grandparent's visitation. The court afforded this factor the most weight of any, as it is the only factor that the court referenced beyond restating the statute. The information contained in the GAL's report was not to be considered on the issue of grandparent's visitation and was not offered as evidence nor supported by the testimony of either the GAL, the therapist, or the child.

For all these reasons, the circuit court's award of grandparent's visitation to Herbert Novell is contrary to RSA 461-A:13 and violates Brianna Kauble's right to substantive due process as to her fundamental liberty interest as a parent to the care and custody of her children.

## ARGUMENT

### **I. FUNDAMENTAL RIGHTS AND THE FIT PARENT PRESUMPTION**

The right of biological and adoptive parents to raise and care for their children is a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. These provisions have long confirmed “a constitutional dimension to the right of parents to direct the upbringing of their children.” *In re Rupa*, 161 N.H. 311, 318 (2010) citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

It is for this reason that natural and adoptive parents’ rights over their children “are not easily set aside.” *Id.* “Thus, while there are instances where parental rights must yield to the State’s *parens patriae* power in order to ensure the welfare of the child, a parent’s determination of what is in the child’s best interests must be given special consideration by the trial court.” *Id.*, citing *Troxel*, 530 U.S. at 69 (“The problem here is not that the [trial court] intervened, but that when it did so, it gave no special weight at all to [the mother’s] determination of her daughter’s best interests.”). Procedurally speaking, lower courts are required to presume that a fit parent’s judgment is sound. *Rupa*, 161 N.H. at 317.

In 1989, New Hampshire enacted RSA 461-A:13, which laid out certain criteria for the court to consider in determining whether a grandparent is entitled to visitation rights. 1989 HB 487. Apparent from the face of the law is a legislative concern for the rights of parents, such as those later described in *Rupa* and *Troxel*. Under this law, a court

hearing a petition for grandparent visitation must consider: (1) whether visitation would be in the best interests of the child, (2) whether visitation would interfere with the parent-child relationship or with a parent's authority over the child, (3) the nature of the relationship between the grandparent and the child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and the length of time of such residence, and when there is no reasonable cause to believe that the child's physical and emotional health would be endangered by such visitation or lack of it, (4) the nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and effect such friction would have on the child, and (5) circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause. RSA 461-A:13, II.

Here, the court failed to properly consider all the factors set forth in RSA 461-A:13 in awarding grandparent's visitation to Mr. Novell, nor did it give any deference to Brianna's judgment as to what is in the best interests of her children. Moreover, the court failed to consider whether grandparent visitation would interfere with Brianna's relationship with and authority over her children, the nature of the relationship of between Herbert and his grandchildren, and the friction between Brianna and her father.

The court found that there has been a continues to be a strained relationship between the children's mother and maternal grandfather but ignored that fact and simply concluded that the strained relationship would not interfere with Ms. Kauble's parent-child relationship or her authority over the children. Both Brianna and her father Herbert

Novell testified there is friction in their relationship. Tr. 61, 121. Brianna, and her sister Kelly Cazaux, testified that her father abused her verbally and physically since childhood and that there was friction in their relationship. Tr. 110, 140–41. Mr. Novell admitted that he verbally abused Brianna by calling her a “bitch” and that there was friction in their relationship. Tr. 79. This testimony supported Brianna’s conclusion that an award of grandparent’s visitation to her father would interfere with her relationship with and authority over her children. Tr. 119–20. Moreover, the evidence shows that Herbert called Brianna’s daughter Lydia a “little bitch” and told Brianna’s daughter Brylee “you’re going to be a loser just like your mom.”—lending further support to the conclusion Herbert’s visitation will likely interfere with Brianna’s relationship with and authority over her children. TR. 112. Yet, the court ignored the presumption without any countervailing evidence.

The court failed to weigh the first two statutory factors more heavily than the remaining listed factors in determining whether visitation is in the best interests of the children. Most importantly, the court failed to give any consideration as to Brianna’s judgment as to the best interests of her children. Instead, the court merely substituted its judgment for hers. The court overlooked the presumption afforded to Brianna in considering the statutory factors in RSA 461-A:13. There was no finding that Brianna was not a fit parent, yet the court makes no mention of what outweighs her parental autonomy. The court merely concluded that Mr. Novell credibly testified about the loving relationships he and his wife Lori share with the girls and concluded and that visitation is in the best interests of the children. There was simply no analysis as to how the “loving”

relationship could possibly overcome the presumption of parental autonomy. The court accepted that a strained relationship existed between Herbert and Brianna, but “did not find” that the grandparent visits will interfere with Brianna’s parent-child relationship or her authority with the children. However, the absence of such a finding does not obviate the presumption Brianna enjoys.

The court can only issue grandparent visitation where it finds that some interest outweighs Brianna’s determination of the children’s best interest. Without analysis, we are left to guess at what counseled in favor of granting visitation, save for the “loving relationship,” which is inadequate on its own. And this Court should be circumspect where the circumstances of the absence of the nuclear family play nothing more than a minor role in limiting grandparent’s access to the children. The law is plainly designed to assist grandparents who have lost access to grandchildren through no fault of their own. There is a patent unfairness in need of correction when a child dies or loses parental rights and the remaining son- or daughter-in-law absents the grandchildren from the grandparent’s life.

But here, the divorce itself only brought the children closer to Herbert. The consequence of the absence of the nuclear family was that Brianna needed to rely on Herbert for support. He had all the time he needed with his grandchildren, so long as he continued to earn it. He rightfully lost that time, however, by making his own conscious decision to continue his life-long pattern of demeaning Brianna (and now her daughters). There is nothing unfair in allowing Brianna to remove herself and her children from an environment that she deemed toxic. And the aftermath only proved it, as she and her



boyfriend testified that excising Herbert from her life opened a path toward managing her anxiety and curbing alcoholism.

In short, the hearing court impermissibly dispensed with the analytical framework developed in case law, leaving us with the unprincipled order it issued.

## **II. EVIDENCE OUTSIDE THE RECORD**

The hearing court found Mr. Novell's contention that he had a "loving" relationship with his grandchildren was supported by the fact that one child expressed to her therapist that she was upset about no longer seeing her grandfather. As the hearing court noted, this information came from a report issued by the GAL. The grandparent issue exceeded the scope of the GAL's appointment, the GAL's report was never entered into the record, and no party offered the testimony of the GAL or the therapist in question.

For centuries, it has been axiomatic that a trial court cannot go outside of the evidentiary record except as to matters judicially noticed." *See In re Rokowski*, 168 N.H. 57, 61 (2015) (citing *Morse v. Allen*, 45 N.H. 571, 572 (1864)). The GAL's report should not have been considered because the GAL was appointed to investigate issues pertaining to the divorce and not Mr. Novell's request for grandparent's visitation. The court afforded this factor the most weight of any, as it is the only factor that the court referenced beyond restating the statute.

It was error, therefore, for the hearing court to use this information in determining the appropriateness of Mr. Novell's petition.

### III. EQUAL TREATMENT OF DIVORCED PARENTS

In *LeClair v. LeClair*, 137 NH 21 (1993), this Court recognized that Part 1, Article 2 of the New Hampshire Constitution protected against arbitrary discriminatory treatment between divorced and married individuals. *Leclair* involved a mere “economic” interest, so the “rational basis” test was applied. Here, however, as described in Section I, *supra*, the right affected by the discriminatory treatment is fundamental; it is protected by both Part 1, Article 2 of the New Hampshire Constitution and the Due Process Clause of the United States Constitution, warranting a strict-scrutiny analysis.

The order in Herbert’s favor discriminates against Brianna for choosing to get divorced. Crucial to the analysis here is that Herbert is Brianna’s biological parent. This is dissimilar to the number of cases in which a grandparent seeks visitation over a non-biological parent’s objection after the last remaining ties between the two were severed by death, divorce, or loss of parental rights. Here, the decision affects whether Brianna is forced to acquaint herself and her children with her father, who she identifies as her abuser. The same connection that bound them before and during the marriage binds them to this day, even after the final decree of divorce. Thus, the distinction between a married-Brianna and a divorced-Brianna has no consequence whatsoever. Using that distinction as a basis to override her parental autonomy, then, is exactly the kind of arbitrariness the constitution seeks to prevent.

The hearing court completely ignored this argument. Had it chosen to engage, the conclusion is inexorable—strict scrutiny would be fatal to Herbert’s claim because the

court was not offered any interest in overriding Brianna’s decision to remove Herbert from her life and Herbert’s claim’s connection to the interests identified by the legislature in RSA 461-A:13 is so attenuated. *See Cheshire Med. Ctr. v. Holbrook*, 140 N.H. 187, 189–90 (1995) (requiring that the benefits or burdens on the protected right “be necessary to serve a compelling [s]tate interest.”). Therefore, the New Hampshire constitution demands that this Court to overturn the decision below.

#### **IV. STANDING**

The court did not properly apply New Hampshire law when it decided to afford Mr. Novell standing to request grandparent’s visitation. RSA 461-A:13, I provides that grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child. However, the provisions of RSA 461-A:13 *shall not apply in cases where access by a grandparent has been restricted for any reason prior to or contemporaneous with divorce*, death, relinquishment, or termination of parental rights, or other cause of the absence of a nuclear family. See RSA 461-A:13, I (emphasis added).

In this case, the court is precluded from entertaining Mr. Novell’s request for visitation because his access to the children was both denied contemporaneous with the divorce proceeding and restricted prior to the divorce. Prior to the divorce, Brianna and the children lived in Arizona, effectively restricting Herbert’s access to the children. Brianna later outright denied Herbert access to the children in the spring of 2020 while her divorce was pending, i.e., contemporaneous with the divorce. Mr. Novell filed his Motion to Intervene and request for grandparent’s visitation proceeding in February 2021

approximately one year after Brianna denied her father access to the children. Based on these facts, the statute does not afford Mr. Novell standing to request visitation because he was denied access to his grandchildren contemporaneous with Brianna's divorce which was pending when she denied her father access to the children. The court completely overlooked that the statute removes such situations from its reach. It was error, therefore, for the Court to permit the petition to proceed to its merits.

### **CONCLUSION**

For the foregoing reasons, the Appellant Brianna Kauble respectfully requests that this Honorable Court reverse the decision of the trial court to award Herbert Novell grandparent's visitation.

**RULE 16(3)(I) STATEMENT**

The lower court's order on grandparent visitation and its subsequent denial of reconsideration are addended to this brief.

**RULE 16(11) STATEMENT**

This brief contains approximately 4774 words, within the 9500 word limit.

Respectfully Submitted,

*Brianna Kauble*

By her attorney:

Date: November 10, 2022  
(as amended)

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**Certificate of Service**

I hereby certify that this Amended Brief been forwarded this day to Herbert Novell and William Kauble, who are both registered e-filers.

/s/ Jared Bedrick, Esq. #20438

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STATE OF NEW HAMPSHIRE  
10<sup>TH</sup> CIRCUIT COURT

BRENTWOOD FAMILY DIVISION

10th Circuit at Brentwood  
618-2019-DM-00217

*In the Matter of Brianna Kauble and William Kauble and  
Herbert Novell, Grandparent Intervenor*

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**MOTION TO RECONSIDER FINAL ORDER ON  
GRANDPARENT VISITATION**

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NOW COMES the Petitioner, Brianna Kauble, by and through counsel, and requests that this Honorable Court reconsider its final order granting Herbert Novell visitation rights to Brianna's minor children. In support thereof, she states as follows:

1. On October 4<sup>th</sup>, this Court held a final hearing on Intervenor Herbert Novell's petition for grandparent visitation rights to Petitioner Brianna Kauble's children.
2. After the hearing, Brianna filed a motion for findings of fact and rulings of law asking for, among other things, a ruling that ordering grandparent rights would violate Brianna's substantive due process and equal protection rights as guaranteed by the State and Federal Constitution.
3. This Court issued a narrative order without addressing the requested findings of fact and rulings of law. Rather, it noted that its narrative order addressed all that was requested, so it declined to make specific reference to the requests.
4. Brianna moves this Court to reconsider its decision. First, she asserts that this Court had not, in fact, addressed either the substantive due process or the equal protection arguments.

5. Second, this Court overlooked the presumption afforded to parents in considering the statutory factors in RSA 461-A:13. The analytical deficiency in each factor is examined below.

- (a) *Best interest of the children*
- (b) *Interference with parent-child relationship and*
- (d) *Friction between the parent and grandparent*

6. On page 3 of its Order, this Court acknowledges that Brianna believes her children's interests are not served by having visitation with Herbert. This determination is to be afforded "special weight" in balancing the statutory factors. *See In re Lundquist*, 168 N.H. 629, 632 (2016) (*citing Troxel v. Granville*, 530 U.S. 57, 70 (2000) (plurality opinion)); *see also In re Guardianship of Reena D.*, 163 N.H. 107, 111 (2011) (noting that New Hampshire has adopted the *Troxel* plurality's ruling that fit parents are presumed to act in the best interests of their children). This special weight results in a presumption in favor of the judgment of a fit parent. *In re Rupa*, 161 N.H. 311, 318 (2010).

7. There was no finding that Brianna was not a fit parent, yet, in its analysis this Court makes no mention of what outweighs her parental autonomy. Instead, it merely states that Herbert had a "loving" relationship with the children. It then concludes—with no further analysis—that visitation is in the best interests of the children. In doing so it ignored nearly the entirety of the uncontested testimony, including that Herbert punished the younger children for reasons related to their diagnosis (which he did not know), that he had called them derogatory names, that he had told one of them that she would be a "loser like her mother," or that Brianna put up with her father's derogatory comments about her aptitude throughout her childhood. There was simply no analysis as to how the "loving" relationship could possibly overcome the presumption of parental autonomy.

8. In an interesting observation, this Court accepted that a strained relationship existed between Herbert and Brianna, but “did not find” that the grandparent visits will interfere with Brianna’s parent-child relationship or her authority with the children. However, the absence of such a finding cannot carry the day for Herbert, either. Since Brianna is entitled to the presumption that she is acting in the best interests of the children, this Court can only issue grandparent visitation where it finds that some interest outweighs her determination of the children’s best interest. By finding *sub silentio* that Herbert and Brianna’s strained relationship’s failure to interfere with the parent-child relationship was sufficient to overcome the presumption, this Court functionally shifted the burden of proof from the Intervenor to Brianna.

*(e) Circumstances of the absence of a nuclear family*

9. This Court’s order did not contain any consideration of the “circumstances which resulted in the absence of a nuclear family.” If it did, it would have been forced to acknowledge that the divorce only gave Herbert more access to the children. By extension, this Court would have had to confront the idea that it was his conduct toward his daughter, and thus his daughter’s independent judgment, that resulted in him losing access to the children. The grandparent visitation statute was not designed to shove a grandparent back into the life of a parent desiring no contact. If it had, it would not have limited the standing for such a petition to circumstances that would result in the grandparent losing access to the grandchildren through unrelated circumstances. It would instead grant standing to grandparents of children with a nuclear family. This Court’s analysis appears to have sidestepped the impact of that circumstance, especially as it



relates to Brianna's fundamental right to parent her children as she sees fit and her right to be treated equally to married parents who can freely sever their ties with family they find toxic.

(f) *GAL recommendation and*  
(g) *Input from the children*

10. This Court determined that the GAL's report, which noted one child's therapist noted at one point that she was upset not seeing her grandfather at some undetermined time, supported Mr. Novell's claim that he had a loving relationship with her. This Court appears to have afforded this factor the most weight of any, as it is the only factor that discussed beyond restating the statute. Yet, this third-hand information comes only from the GAL's report—a report that was not offered as evidence nor supported by the testimony of either the GAL, the therapist, or the child. Brianna attempted to offer the child's testimony in a safe setting, but that motion was denied. Herbert sought the assistance of the GAL to determine the wishes of the children, and that was denied. Thus, every opportunity for this statement to be vetted and offered in litigation was foreclosed by this Court. Nonetheless, this Court erroneously went outside the evidentiary record to grab that statement and use it.

11. For centuries, it has been axiomatic that a trial court cannot go outside of the evidentiary record except as to matters judicially noticed." *See In re Rokowski*, 168 N.H. 57, 61 (2015) (citing *Morse v. Allen*, 45 N.H. 571, 572 (1864)). As this Court noted, the GAL was not appointed to determine matters related to the grandparent visitation petition. Nor was the testimony of the GAL or the child's therapist (from whom the information was gathered) offered at the hearing on the petition. This Court did not take judicial notice of the report (nor could it). Thus, the parties had no notice whatsoever that

the unvetted assertions in the GAL's report would be part of the judge's consideration. In reconsidering its decision, this Court must rely only those matters presented by the parties at the hearing.

*Conclusion*

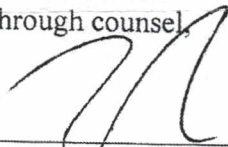
12. The grandchildren lived with Herbert for a brief, transitional period. Prior to that, he only saw them at a handful of family gatherings in their entire lives. Despite that, and despite the lack of contact resulting from a dispute completely independent from the statutory triggering event (and despite that event giving Herbert greater access to the grandchildren), this Court ordered that Herbert have more time with the grandchildren than he had ever enjoyed, save for when they were temporarily living together. This decision turns the purpose of the grandparent visitation on its head—it does not save a grandparent who lost access to children because of an unfortunate incident resulting in the lack of a nuclear family. Instead, the decision is a cursory substitution of the Court's judgment in place of Brianna's that exposes her to losing all of the positive gains she made when she dispelled her father's negative influence from her life.

WHEREFORE, the Petitioner Brianna Kauble prays that this Honorable Court:

- A. Issue rulings of law on her position that this order violates her substantive due process and equal protection rights;
- B. Reconsider its analysis of the statutory factors in RSA 461-A:13 and deny visitation to the Intervenor; and
- C. Issue any further orders that justice requires.

Respectfully submitted,

*Brianna Kauble*  
Through counsel,

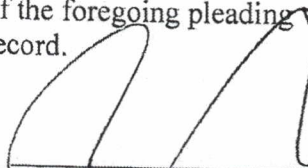


Date: 11/8/21

Jared Bedrick #20438  
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603-436-8100  
jared@champions.law

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was forwarded on this date to Herbert Novell at his address of record.



Jared Bedrick

Motion to Reconsider is respectfully denied. The Court conducted an evidentiary hearing on October 4, 2021. The Court has considered the arguments raised in Petitioner's motion. Petitioner's motion to reconsider fails to state any points of law or fact that the Court has overlooked or misapprehended that were raised or could have been raised at the trial in this matter. Rule 1.26 F

*Polly L. Hall, Judge*  
12/14/21

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

ROCKINGHAM COUNTY

10<sup>TH</sup> CIRCUIT – FAMILY DIVISION – BRENTWOOD

**In the Matter of:  
Brianna Kauble, Petitioner and William Kauble, Respondent  
And Intervener, Herbert Novell  
Case No. 618-2019-DM-217**

**ORDER REGARDING GRANDPARENT VISITATION**

On October 4, 2021 the parties appeared for a Final Hearing on Herbert Novell's motion for grandparent visitation. Ms. Kauble had counsel. Mr. Novell was self-represented. Mr. Kauble also appeared with counsel, but did not participate at the hearing, beyond noting his assent to Mr. Novell's request for grandparent visitation.

Herbert Novell is the father of Brianna Kauble. He asks the court to grant him grandparent visitation with his three (3) granddaughter's, Brylee (dob: 8/9/08), and twins, Lydia and Harper (dob: 6/30/14).

Herbert Novell resides in East Kingston, New Hampshire with his wife of 20 years, Lori. Brianna and William Kauble resided in Arizona with their children until 2018. Mr. Novell says that he and his wife have seen the children since they were born, as frequently as possible, given the distance between Arizona and New Hampshire. During the period of time that the children resided in Arizona, Mr. Novell and Lori took frequent trips to Arizona to see the children. Every summer, Brianna and the children came for and stayed in New Hampshire with him and his wife for a period of time. Mr. Kauble says that Brylee, who is the oldest granddaughter, has a very close relationship with his wife, whom all of the children call "Hunny."

Mr. Novell submitted as an exhibit, pictures of time spent with Brylee, Harper, and Lydia since their birth. See: Petitioner's Exhibit 1.

In 2018, Brianna reached out to her father to let him know that she and William wanted to relocate to New Hampshire. Financially, they could not afford it and after much discussion, Mr. Novell paid to relocate Brianna and the children to New Hampshire. William did not come initially, as he was working, and in any event thereafter, the parties began a contentious divorce proceeding and William never ended up joining Brianna and the girls in New Hampshire.

When Brianna and the children first moved to New Hampshire, she had nowhere to live and no vehicle. Brianna and the children moved in with Mr. Novell and his wife for a period of six months from November of 2018 through March of 2019. During that time, Mr. Novell paid for and renovated a three-bedroom mobile home for Brianna and the girls to move into, so that she would have her own place. Additionally, Mr. Novell paid for Brianna to have a vehicle because she did not have one when she came to New Hampshire.

Mr. Novell describes the period of time when the children resided with he and Lori as wonderful. He admits that, at first, it was difficult to go from having a quiet house without any children in it, to having three young children. Notwithstanding, he loved having his grandchildren in his home and getting to spend time with them. Mr. Novell described watching the girls walk on grass for the first time, because they really had no grass in Arizona. He took them to UNH hockey games. He describes nurturing and sharing love with the children. Mr. Novell is retired and as a result, he was able to spend time teaching the children to garden, which is a hobby near and dear to him. Additionally, he taught Brylee how to drive the ride on lawnmower and describes how excited she was to drive it for the very first time.

After Brianna and the children moved out in March of 2019, he and Lori continued to spend a substantial amount of time together with the girls. They watched them whenever Brianna needed them. If the girls were sick, they watched them, they frequently got them off the school bus. Additionally, Mr. Novell helped the girls with things like science projects, went to any of their plays or extra-curricular activities that the children were involved in. During that time the children, especially Brylee, frequently asked to sleep over at their grandfather's home.

Brianna filed a Petition for Divorce in June 2019. The divorce and parenting matter were bifurcated. The parties Stipulated Final Decree of Divorce was approved by the court on May 21, 2021. The Stipulated Parenting Plan was approved by the court on October 5, 2021.

Mr. Novell says that in approximately March of 2020, Brianna began to shut everyone out of her life.

Mr. Novell credibly testified to what he believes was the cause for Brianna shutting him and Hunny out of her and the children's lives. He believes that it is twofold. The first instance occurred when Ms. Kauble moved in a new boyfriend into the home that Mr. Novell had purchased for her and the children. Brianna and William were in the midst of a divorce. The children had not had any contact with their father in a long time and a Guardian ad Litem was involved. Mr. Novell was concerned about Brianna's boyfriend, Josh Coldwell's, background in that he understood that he was homeless, was a recovering drug addict, and was involved in a biker's gang. He expressed his concern to Brianna about exposing the three impressionable children to him and tried to encourage her not to permit him to move in with her. Ms. Kauble told Mr. Novell to mind his own business and that she is an adult and would do what she wants. Mr. Novell says that he had to respect that because she is an adult. A few months after Josh began living with Brianna and the children, Harper and Lydia told their grandfather that Josh pulls down our pants and spansks our bottoms. Mr. Novell was understandably concerned by this statement and called Brianna to express his concern and that nobody should be pulling the children's pants down to discipline them. Brianna became very angry at her father and said, "F--- you, you just don't like Josh."

Thereafter, Mr. Novell says that while things were strained, he continued to see Brianna and the children. Brianna invited him to an initial consultation that she had with a divorce attorney. At that time, the divorce attorney requested a \$3,000.00 retainer. Brianna asked her father for the money, and he refused. Mr. Novell says that he simply could not justify paying more money or taking loans from his 401(k) for the divorce attorney and did not believe that Brianna and William had any significant issues outside of the parenting schedule that would justify a \$3,000.00 retainer. Mr. Novell says that after he refused to give her money for the retainer, Brianna completely shut him and Lori out of the children's lives, and he has not had any contact with the children since approximately June of 2020.

Mr. Novell credibly testified that he and Lori miss the girls terribly. They would like to be part of their lives, and simply want to be able to see the children. Mr. Novell proposes that he have visits with the children on weekends, possibly to include overnights and sometime around their birthdays and around the holidays.

Mr. Novell acknowledged on cross-examination that since Brianna and the children moved here in 2018, there has been some friction in their relationship. He believes that they otherwise have a good relationship but says, moving in with your parents and living together obviously creates some friction. He acknowledges that there was some friction around the events as he has described above.

Brianna Kauble says that in the spring of 2020 she told her father that he was not welcome at her home anymore. According to Ms. Kauble, she was tired of suffering from the emotional and verbal abuse she says her father inflicted on her. Ms. Kauble says that she had a terrible childhood. While she admits that she was involved in competitive gymnastics and had the opportunity to travel internationally, she says she was a middle child and believes she was treated differently than her other two sisters. She says that her father was a strong disciplinarian. Ms. Kauble complains that her father did not pay for her college, made her feel inferior, and used to frequently chastise her.

According to Ms. Kauble, she is sober now and recognizes that she was not the last several years. She is being the best mother that she can be and has a wonderful family life with her new boyfriend, Josh Colwell, whom she says the girls have a good relationship with. She says she cut ties with her father and family because they did not support her relationship with Josh. She wants to prove that she can make it on her own; that she can be successful. Ms. Kauble says that she does not want to be "under her father's thumb anymore." She believes that allowing Mr. Novell to have visits with her children over her objection would interfere with her authority of her children.

According to Ms. Kauble, all the things that her father did for her children were financial but were not actually given with a loving and open heart. She chose to move in with her father for the period of six months because she says, it was the lesser of two evils, because she was leaving a domestic violence relationship with her now ex-husband. Ms. Kauble contends that her father essentially "evicted" her and the children from the mobile home that they were living in, because he foreclosed on the loan. Ms. Kauble says that when she was living with her father, he was volatile, often absent, and hung out in his office. She says that her father is just a gift giver but there are always conditions to his gifts. She believes that her children are at risk for physical and emotional harm if they were to see their grandfather.

Ms. Kauble says that it is not in the children's best interest to see her father. According to Ms., Kauble, the children are not interested in seeing their grandfather and do not ask about him. Ms. Kauble testified that she believes the children would be emotionally harmed by spending time with Mr. Novell. By way of example, she says that the children have told her that Mr. Novell has called them "little bitches." She also testified that her father told Brylee that, "you will grow up to be a loser like your mother." Ms. Kauble contends that her father speaks derogatively towards her and has called her a selfish bitch. The court notes that while Ms. Kauble takes issue with her claim that her father has called her children "little bitches", at the same time she testified that she frequently curses at the children, and believes that it is normal, and that all parents curse at their children from time to time.

A Guardian ad Litem was not appointed to investigate the issue of grandparent visitation. However, there was a Guardian ad Litem appointed to address parenting issues in the Kauble's

divorce. The court notes that the *Guardian ad Litem's* report reflects that Brylee's therapist, Kayla Trondeau, says that Brylee expressed being upset about no longer seeing her grandfather.

Ms. Kauble minimizes Mr. Novell's involvement in the children's lives since they were born. According to Ms. Kauble, he barely saw the children. She disputes that Mr. Novell has had a stable and loving relationship with them. By way of example, she says that the children hate gardening with him. He loves it, they do not. Similarly, she acknowledges that her father frequently brought the children to UNH Hockey games, but says that was all for show, and is something he liked to do. He bought the children a snow cone maker but he is just a gift giver, without substance.

Contrary to Ms. Kauble's contention, the court finds that the photographs spanning twelve (12) years paint a more accurate reflection of Mr. Novell's and his wife Lori's relationship with the children.

Ms. Kauble also says that she does not agree with Mr. Novell's form of discipline, which she describes as sitting with him in his office when you have done something wrong, Mr. Novell explaining what you have done wrong and how to do better the next time. Ms. Kauble said she hated being called to her father's office when she was young and does not want that for her children. She says that when they were living with her father, this is the form of discipline he used with the children.

Mr. Novell admits that he believes that is an appropriate form of discipline. He denies that he routinely needed to discipline the children, and can only recall one occasion he did so. Mr. Kauble says there was an occasion when one of the twins ran into the yard and gave her grandfather the "middle finger". Mr. Kauble says he did sit his granddaughter down in his office and talk with her about the behavior. Mr. Kauble aptly points out that the children are no longer living in his home, and discipline is no longer an issue, if it ever was one.

Mr. Novell denies that he ever "evicted" Brianna from the home. The parties were divorcing. Mr. Novell needed to protect the investment that he made in the property. Mr. Novell offered to work with Brianna to transfer the mortgage into her name if she wanted to keep the property. Mr. Novell did not agree, as Brianna wanted, to add her new boyfriend, Josh, to the title. Ms. Kauble was angry at Mr. Novell's refusal, and moved out of the home, which meant removing the children from their schools, and moved to Rochester with Mr. Colwell.

The Court also heard from Kelly Cozeau, who is Ms. Kauble's older sister. She describes their childhood growing up as tumultuous and that her father held them all to a high standard and you were punished if you did not live up to his standards. She believes that she is an overachiever, in part, because of her father's high standards. Despite this, she acknowledges that she has a good relationship with her father. She and her children generally FaceTime with him and Lori once per week. She also acknowledges that her father has never disparaged her or her children, that he has always been supportive of her, and helped her financially and shown love and kindness to her and to her children.

Mr. Colwell testified. He denies that he was homeless when he moved in with Brianna but does acknowledge that he is a recovering addict and was clean for approximately one year prior to moving in with Brianna. He also was on pre-trial release for a federal criminal case when he met Brianna. He acknowledges that he used to be part of a biker gang, but says he no longer associates with them. He has been sober since October of 2018. He has never observed the children with Mr. Novell, although he reports that he did once hear Mr. Novell on the phone with Brianna calling her a selfish bitch.

Mr. Novell does not agree with everything his daughter does or says. But he feels as though Brianna is punishing him because of his initial concerns about Josh and his refusal to pay her legal fees. Has complied with Brianna's directive not to see the children. He misses his grandchildren and just wants to re-establish some formal contact with them. He has continued to save their birthday and Christmas gifts. He acknowledges that he has high standards, but says that he wants something better for his children and grandchildren, than he had growing up. He is a loving grandfather, and good role model.

The seminal case in New Hampshire on grandparent visitation is Rupa and Rupa, 161 N.H. 311, 312, 318 (2010). Rupa and Rupa, *supra*, was later cited by the Supreme Court in its decision of T.B. and T.W., 167 N.H. 627 (2015) as follows:

"Furthermore, we have long recognized the rights of parents are natural, essential, and inherent rights, to which great judicial deference must be accorded ... we have held that when a trial court applies RSA 461-A:13, it must weigh the first two statutory factors more heavily than the other statutory factors because, by so doing, the court accords deference to a fit parent's judgment as to the child's best interest ..."

"We have recognized that trial courts must presume fit parents naturally act in the best interest of their children. Rupa, 161 N.H. at 318 ... Thus, trial courts must accord deference to the parent's determinations with respect to the first factor in RSA 461-A:13, II. A trial court cannot simply substitute its judgment for that of fit parents, ..."

A close review of RSA 461-A:13, II, (a) confirms that the first factor is whether the visitation with a grandparent is in the child's best interest. Sub-Section B contains the element of whether the grandparent visits would interfere with any parent-child relationship or the parent's authority over the child. Those are the two criteria constitutionally emphasized by the Rupa case.

The third criteria is the relationship between the grandparent and the child.

The fourth criteria is the relationship between the grandparent and the parent, "... including friction between a grandparent and the parent, and the effect such friction would have on the child."

The final component involved the circumstances resulting in the absence of a nuclear family, which specifically include divorce.

Mr. Novell credibly testified about the loving relationships he and his wife Lori share with the girls. His contention is supported by the fact that Brylee expressed to her therapist, that she was upset about no longer seeing her grandfather. Considering the totaling of the evidence presented, the court finds that it is in the children's best interest to have continued visits with their grandfather.

Both parties testified under oath. The undersigned observed and has considered their testimony, their tone and demeanor, and has assessed their credibility. The court finds, on the evidence presented, that Mr. Novell's version of the events are the more credible.

Based on the evidence presented, the court finds that there has been and continues to be a strained relationship between the children's mother and maternal grandfather. I do not find, however,



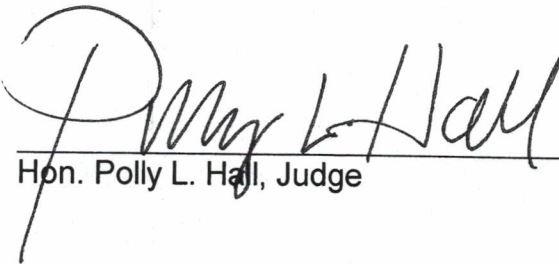
that grandparent visits will interfere with Ms. Kauble's parent-child relationship or with her authority over the children.

Having considered all of the foregoing as well as the balance of the parties' testimony, and having assessed their credibility, and having determined the relevance and the weight to be afforded to the evidence presented, the Court more specifically Orders as follows:

1. Mr. Novell shall have grandparent visitation with the children one day, every month from 9 am to 7pm. In the absence of a different agreement between Ms. Kauble and Mr. Novell, that day shall be the first Sunday of every month. Mr. Novell shall be responsible for transportation. Mr. Novell shall also have visits a day before or after each of the children's birthdays for a period of four (4) hours and a day near to the Christmas holiday. The Christmas holiday visit shall be from 9am to 7pm.
2. The Court declines to rule on each of the individual Requests for Findings and Rulings submitted by the parties finding that this narrative Order contains sufficient findings of fact and rulings of law to support the Court's conclusions.

**So Ordered.**

October 28, 2021  
Date

  
Hon. Polly L. Hall, Judge

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

10<sup>TH</sup> CIRCUIT COURT  
BRENTWOOD FAMILY DIVISION

In the Matter of Brianna Kauble and William Kauble and  
Herbert Novell, Grandparent Intervenor

Docket No. 618-2019-DM-00217

**PETITIONER BRIANNA KAUBLE'S**  
**REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW**

NOW COMES the Petitioner, Brianna Kauble, by her attorney, Laurie A. Lacoste, Champions Law, PLLC, who respectfully requests that the court make the following findings of fact and rulings of law:

1. In Parham v. JR, the United States Supreme Court explained: "Our constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations... The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." 442 U.S. 584, 602 (1979). That principle was re-affirmed in Troxel v. Granville, 530 U.S. 57 (2000), which held that the Due Process Clause of the United States Constitution protects a parent's decision to refuse a grandparent visitation, absent "special circumstances." *Id.* at 68.

2. New Hampshire's Grandparent's Rights statute, RSA 461-A:13, on its face, purports to provide such "special circumstances" for situations where the disruption of the nuclear family causes a grandparent to lose the ability to visit with a grandchild. Here, however, applying the circumstances of RSA 461-A:13 violates both Brianna's Substantive Due Process and Equal Protection rights guaranteed by the State and Federal Constitutions. This occurs because Herbert's claim lacks anything by a tenuous, coincidental connection to any of the circumstances outlined in RSA 461-A:13. The relationship between Brianna and Herbert occurred because of incidents that unfolded directly between each other. Thus, there is no interest at play that overrides Brianna's natural right to parent.
3. Furthermore, an order in Herbert's favor would discriminate against Brianna for choosing to get divorced. Crucial to the analysis here is that Herbert is Brianna's biological parent. This is dissimilar to the number of cases in which a grandparent seeks visitation over a non-biological parent's objection after the last remaining ties between the two were severed by death, divorce, or loss of parental rights. Here, the decision affects whether Brianna is forced to acquaint herself and her children with her father, who she identifies as her abuser. The same connection that bound them before and during the marriage binds them to this day, even after a final decree of divorce. Thus, the distinction between a married-Brianna and a divorced-Brianna has no consequence whatsoever.

4. In LeClair v. LeClair, 137 NH 21 (1993), New Hampshire has recognized that Part 1, Article 2 of the New Hampshire Constitution protected against arbitrary discriminatory treatment between divorced and married individuals. That case involved a mere “economic” interest, so the “rational basis” test was applied. Here, however, as noted above, the right at issue that is affected by the discriminatory treatment, as applied, is a fundamental right protected by the Due Process Clause of the United States Constitution, warranting a strict-scrutiny analysis. This is all but fatal to Herbert’s claim because the State cannot assert an interest in overriding Brianna’s decision to remove Herbert from her life where Herbert’s claim’s connection to the interests identified by the legislature in RSA 461-A:13 is so attenuated. Therefore, the New Hampshire and Federal constitutions compel this Court to deny Herbert’s claim.
5. RSA 458-A:13 provides that grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child as provided in paragraph III. The provisions of this section ***shall not apply*** in cases ***where access by the grandparent*** or grandparents to the minor child ***has been restricted for any reason*** prior to ***or contemporaneous with the divorce***, death, relinquishment or termination of parental rights, or other cause of the absence of a nuclear family. See RSA 461-A:13, I. (2005).
6. The court shall consider the following criteria in making an order relative to a grandparent's visitation rights to the minor child:
  - (a) Whether such visitation would be in the best interest of the child.

(b) Whether such visitation would interfere with any parent-child relationship or with a parent's authority over the child.

(c) The nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and length of time of such residence, and when there is no reasonable cause to believe that the child's physical and emotional health would be endangered by such visitation or lack of it.

(d) The nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and the effect such friction would have on the child.

(e) The circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause.

(f) The recommendation regarding visitation made by any guardian ad litem appointed for the child pursuant to RSA 461-A:16.

(g) Any preference or wishes expressed by the child.

(h) Any such other factors as the court may find appropriate or relevant to the petition for visitation.

See RSA 461-A:13, II. (2005).

7. The parties' minor children Brylee, Harper, and Lydia only briefly resided with their grandfather Herbert Novell who is Brianna Kauble's father for approximately six months from on or about October 2018 until April or May of 2019.

8. Herbert Novell has not had consistent visitation and/or contact with the parties' minor children since their birth and while the parties resided in Arizona prior Brianna's move with the children from Arizona into Herbert Novell's residence in East Kingston.
9. The breakdown of Herbert Novell's relationship with Brianna Kauble arose out of circumstances unrelated to the divorce in this case.
10. The circumstances which resulted in the absence of a nuclear family was caused by the breakdown of Brianna Kauble and William Kauble's marriage which resulted in Brianna filing her Petition for Divorce.
11. Herbert Novell, father to Petitioner Brianna Kauble, was physically, verbally, and emotionally abusive to Brianna during her childhood.
12. Herbert Novell continued to be verbally and emotionally abusive to Brianna while in the presence of her minor children Brylee, Harper, and Lydia and while the children temporarily and briefly resided with their grandfather Herbert Novell after Brianna and her children moved into Mr. Novell's residence in East Kingston, on or about October of 2018.
13. Herbert Novell is verbally and emotionally abusive to the parties' children by calling them little "bitches" and berating them, telling Brylee that she "will grow up to be a loser like her mother" and by his abusive discipline of Harper, for instance, while he and Harper were in his office at his home in East Kingston, New Hampshire.
14. It is not in the best interest of the parties' minor children Brylee, Harper, and Lydia to have visitation with their grandfather Herbert Novell because he is

verbally and emotionally abusive to them, calling them little “bitches” and berating them, telling Brylee that she “will grow up to be a loser like her mother” and by abusively disciplining Harper, for instance, while he and Harper were in his office at his home in East Kingston, New Hampshire.

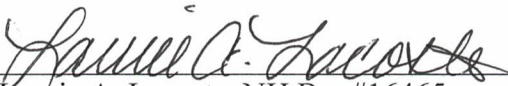
15. There is reasonable cause to believe that the children’s physical and emotional health would be endangered by visitation with their grandfather Herbert Novell.
16. The nature of Herbert Novell’s relationship with his daughter Brianna Kauble is abusive and toxic due to Herbert Novell’s continued verbal and emotional abuse of Brianna which causes friction between Herbert Novell and Brianna Kauble and such friction between Mr. Novell and his daughter Brianna would have grave or negative emotional impact on the parties’ minor children.
17. It is not in the best interest of the parties’ minor children Brylee, Harper, and Lydia to have visitation with the because their grandfather Herbert Novell is demeaning and verbally and emotionally abusive to his daughter Brianna Kauble while in the presence of her children.
18. If Herbert Novell were to be granted grandparent’s visitation with the parties’ minor children such visitation would interfere with Brianna’s relationship with or her authority over her children Brylee, Harper, and Lydia.
19. Based upon this court’s findings of fact and rulings of law, the grandfather Herbert Novell’s request for grandparent visitation is denied.

WHEREFORE, the Petitioner Brianna Kauble prays that this Honorable Court:

- A. Grant Petitioner's Request for Findings of Fact and Rulings of Law;
- B. Issue a Final Order incorporating Petitioner's Findings of Fact and Rulings of Law into the court's Final Order on Herbert Novell's Motion to Intervene and Request for Grandparent's Visitation; and
- C. Issue any other orders as justice requires.

Respectfully submitted,  
Brianna Kauble,  
By Her Attorney,

Date: October 15, 2021

  
Laurie A. Lacoste, NH Bar #16465  
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170 West Road, Suite 6D  
Portsmouth, NH 03801  
603-436-8100

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petitioner's Request for Findings of Fact and Rulings of Law was forwarded by first class mail, postage prepaid to Attorney Chantal Crawley, counsel for the Respondent, and Herbert Novell, *pro se*, at their addresses of record.

Date: October 15, 2021

  
Laurie A. Lacoste