

# Legal Lines

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## **PRESIDENT'S MESSAGE**

**By Robert S. White**

As I compose this month's President's Message, I note that February is racing by and soon Spring will arrive. Annually, the time treadmill accelerates and it gets harder to keep all of the proverbial balls in the air. Focus becomes a challenge because the mind is going in so many directions at once. There has to be a better way, and there is.

As part of our wellness initiative this year, the term "Mindfulness" comes up a lot. What is mindfulness? According to the Greater Good Science Center at UC Berkeley, Mindfulness means "maintaining a moment-by-moment awareness of our thoughts, feelings, bodily sensations, and surrounding environment, through a gentle, nurturing lens. ... When we practice mindfulness, our thoughts tune into what we're sensing in the present moment rather than rehashing the past or imagining the future."

Does mindfulness help? According to the experts, mindfulness induces a relaxation response, calming the body down by lowering the heart and respiratory rate, blood pressure, and muscle tension. The result is reduced stress and anxiety, improved performance, better focus, and an increased sense of well-being. In the second installment of our Attorney Wellness Series, speakers will discuss and demonstrate mindfulness technique and practice. Hopefully, this will be a first step toward a healthier practice and lifestyle.

And speaking of time getting away from us, I don't know a successful attorney that isn't dedicated to the calendar. I know that I absolutely live by my calendar and if an event isn't on my calendar, it simply doesn't exist. Like yours, my calendar fills up very quickly. So I want to take a moment to let you know what is scheduled here at the Worcester County Bar Association so that you can mark your calendar.

Thanks to our outstanding WCBA staff, and to our active committees and sections, the number of events planned for the Spring is impressive. We have already held eight or nine CLE seminars since September and seven of them are on videotape, available for you to view on the WCBA Website. There are currently four seminars on the calendar and there are at least an equal number in the works that will be announced soon, including a practical trial skills series and the second installment of the Attorney Wellness Series.

This is also the time of year when the WCBA's major events start to happen. On March 5, 2020 we will hold our annual New Lawyer/Member Reception at the Tavern in the Square in Shrewsbury. Last year, that event was very well attended and attendees included many of the judges whom young lawyers will soon be practicing before. I am very thankful to the members of our judiciary who are so willing to

*-continued on page 4*

## **PUBLIC OFFICIAL RECOGNITION BREAKFAST**

The Public Official Recognition Breakfast sponsored by the Worcester County Bar Association's Government Relations Committee is scheduled for April 2, 2020 at 7:30 a.m., at AC Marriott, 125 Front Street, Worcester.

This year we will honor Senator Anne M. Gobi and Worcester City Manager, Edward M. Augustus, Jr., with the WCBA 2020 Public Officials of the Year Award.

For your convenience, a registration form is included in this issue of Legal Lines. You may also visit our website at [worcestercountybar.org](http://worcestercountybar.org) to register online. Please go to the "Events" tab at the top of the page and follow the link. Please note that the deadline for the office to accept reservations is no later than, March 23, 2020. Please plan accordingly.

We strongly encourage you to attend this important WCBA breakfast as a demonstration not only of our appreciation for our legislators and public officials but also of the Bar's interest in legislative affairs.

This is an important event for our Association and we hope that you will make every effort to attend.

## **MARK YOUR CALENDARS!!!**

### **LAW DAY 2020**

#### **Theme:**

**Your Vote, Your Voice, Our Democracy:  
The 19<sup>th</sup> Amendment at 100**

**May 1, 2020**

### ***Law Day Breakfast***

**7:30 a.m. – 9:00 a.m.**

*Guest Speaker:*

***Honorable Judith Fabricant,***  
**Chief Justice of the Superior Court**

***Beechwood Hotel***  
***363 Plantation Street***  
***Worcester, MA***

**Case Summary: Frazier v. Frazier, Appeals Court No. 19-P-178 (Dec. 30, 2019)**

**By Kevin J. Powers<sup>1</sup>**

**Submitted on behalf of the Family Law/Domestic Relations Section of the WCBA**

I. Issue

Under G.L. c. 119, § 39D, the grandparent visitation statute, do allegations of a nurturing and enriching relationship satisfy the notice pleading requirements of Blixt v. Blixt, 437 Mass. 649, 665-666 (2002) and Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), even in the absence of allegations that the children will be significantly harmed unless the court overrides a parent's right to determine the best interests of the children?

II. Procedural History

In an underlying divorce proceeding, the mother was granted temporary sole physical and legal custody of the children, while the father was granted three hours of weekly parenting time due to substance use. The paternal grandparents filed a petition pursuant to G.L. c. 119, § 39D for visitation.

In their petition, the paternal grandparents alleged "a significant relationship between the grandparent(s) and the child(ren) and that it is in the best interest of the minor child(ren) that [the grandparents] be granted visitation with the child(ren)." The paternal grandmother averred that she had a "close relationship" with the children because she and her husband had enjoyed many activities with the children over the years. The paternal grandfather averred that he enjoyed a "close personal relationship" with the children and spent time with them over meals and holidays.

The mother opposed grandparent visitation outside of the father's parenting time and moved to dismiss the petition. The Probate and Family Court dismissed the petition. The paternal grandparents appealed.

III. Rule of Law

To protect the parent from the burden of litigating a domestic relationships proceeding and thereby disrupting the parent-child relationship, a grandparent's complaint for visitation must "be detailed and verified or be accompanied by a detailed and verified affidavit setting out the factual basis relied on by the [grandparents]." Blixt, 437 Mass. at 666. In Iannachino, the Supreme Judicial Court revised the notice pleading standard, such that, to survive a motion to dismiss, a complaint must include "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief" (internal punctuation and citations omitted). Iannachino, 451 Mass. at 636.

IV. Analysis

Justice Wendlandt, writing for the Appeals Court and reviewing the decision of the motion judge *de novo*, first observed that "the paternal grandparents[]" allegations do not suggest the type of relationship with the children plausibly suggesting a right to relief – that is, nothing in the allegations plausibly suggests that the children will be significantly harmed unless the mother's right to determine what is in her children's best interest is overridden." "The relationship, as alleged in the ... petition.... consists of shared meals, visits, vacations, and holidays and includes providing access to extracurricular activities at the paternal grandparents' clubs."

V. Policy

The Appeals Court stated that "[w]e are not unsympathetic to the paternal grandmother's desire to maintain a relationship with the children." "[H]owever, our analysis must be guided by '[t]he liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- [which] is perhaps the oldest of the fundamental liberty interests recognized by this Court.'" See Martinez v. Martinez-Cintrón, 93 Mass. App. Ct. 202, 205-206 (2018).

VI. Holding

"While apparently nurturing and enriching, the relationship is not 'such as de facto parents or other relationships of close bonding, where significant harm may be readily inferred from and is inherent in the disruption of that relationship.'" See Dearborn v. Deausault, 61 Mass. App. Ct. 231, 238 (2004). "As such, the petition fails to set forth factual allegations 'plausibly suggesting' a right to relief for any claim under Iannacchino... let alone meet the heightened pleading requirements of Blixt."

VII. Disposition

The Appeals Court therefore affirmed the judgment.

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<sup>1</sup> The author, who has spent years developing a hair-trigger instinct for whether traffic from Foxborough to Worcester is heavier on Route 146 or on Interstate 495, handles appeals and complex trial motions for busy trial lawyers who love going into court but who lack the time to decamp to a law library. His practice, both as counsel of record and as consulting counsel working with trial counsel, encompasses a broad range of legal areas within both civil and criminal litigation.