

NY Appellate Division Decision Provides Equity for Guardians of Limited Means

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Last week, Proskauer obtained a critical victory for our client—a grandmother acting as guardian for her two learning-disabled grandchildren—in an appeal to the Appellate Division, First Department. The appeal challenged a lower court holding that an amendment to New York’s Kinship Guardianship Assistance Program (“KinGAP”) did not apply retroactively to beneficiaries, such as our client’s grandchildren, who entered the program before the amendment took effect.

[KinGAP](#), established in 2011, enables foster-care children for whom returning home or adoption are not available options, to achieve a permanent placement with a guardian relative. To subsidize the costs of caregiving for guardians of limited means such as our client, KinGAP provides monthly assistance payments pursuant to a statutorily prescribed form of agreement between the guardian and a local department of social services.

When our client entered into a KinGAP agreement in 2014, New York Social Services Law § 458-b(7)(a) made the duration of the subsidy dependent on whether the agreement was entered into before or after the child’s 16th birthday. Continued assistance payments were available beyond the age of 18 only if the agreement commenced after the child was already 16 years of age. Section 458-b(7)(a) thus drew a distinction between foster parents and adoptive parents on the one hand and guardians on the other because foster and adoptive children were entitled to assistance payments until they turned 21 notwithstanding their age at the time their subsidy agreements were commenced.

In 2017, the New York State Legislature acted to “rectify [this] anomaly” by amending the law to provide for guardianship assistance payments to continue until a child reaches the age of 21, regardless of the child’s age when the agreement first became effective.

Following the amendment, the Bronx Family Court considered our client's pro se petition to extend assistance payments for her grandsons until they turned 21. While the court recognized that the amendment was remedial in nature—ordinarily warranting retroactive application—it nonetheless held that it could not apply the statute retroactively for the benefit of our client's grandchildren because such application supposedly would impinge on purported vested contractual rights of the state agency administering KinGAP.

In a unanimous [decision](#), the First Department reversed the family court's order denying our client extended assistance payments. Relying on legislative history, the First Department explained that the amendment was specifically intended to rectify an anomaly in the original statute that had arbitrarily denied extended financial support to a class of children, including the our client's grandchildren. Thus, even if the amendment impaired the state agency's vested contractual rights, the impairment was "reasonable and necessary to accomplish a legitimate public purpose," warranting retroactive application. "Holding otherwise," the court explained, would "lead to an absurd legal conclusion" because "the disparity created by the original law" would continue, and the intended purpose of the amendment would be thwarted. Accordingly, the First Department granted our client's petition to extend the much-needed assistance payments.

I was honored to argue this case on behalf of our client before the First Department, and am grateful to Proskauer partner [Steven Obus](#) for his thoughtful guidance.

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