



CENTRE FOR CHILD LAW



## No more foster child grants for grannies

3 September 2012 – A judgment handed down by the South Gauteng High Court last week has determined that grandparents no longer qualify for foster child grants. This means they will only be able to access the child support grant for children in their care. At a monthly rate of R 280, this grant is considerably less than the foster child grant of R 770 per month.

The case arose from an application for foster care to the Krugersdorp Children's Court. The presiding officer declined to order foster care for the 12-year-old boy because he had been living for some time with his great aunt and uncle. The law requires that in order to be found in need of care of protection, and therefore eligible for foster care, a child must be 'orphaned or abandoned and without visible means of support'. The boy was an orphan but the court held he had visible means of support because his aunt and uncle were already caring for him. The Centre for Child Law (University of Pretoria), acting on behalf of the child, took this on appeal to the High Court.

Judge Halima Salduker upheld the appeal and placed the boy in foster care with his great aunt and uncle until he turns 18. She found that 'visible means of support' includes a consideration of whether someone has a legal duty to support the child. Grandparents do have a legal duty of support towards their grandchildren, and adult siblings also have such a legal duty towards their younger siblings. However, uncles and aunts do not have such a legal duty.

Child law experts have expressed concern that this judgment will mean that the many grandmothers caring for children will no longer be eligible for the foster child grant. Paula Proudlock of the Children's Institute (University of Cape Town), which entered the case as amicus curiae, said that 'there are approximately 350 000 orphans living with relatives who are receiving the foster child grant. The majority of these relatives are grandparents. The likely effect of the judgment will be that when they have to have their foster care orders reviewed (which generally has to happen every two years) they will lose their foster child grants of R770 per month. They will then have to rely on the lower child support grant of R280 per month. It will also mean that hundreds of thousands of orphans being cared for by grandparents and adult siblings hoping to apply for, or in the process of applying for foster child grants, will no longer be eligible.'

The Black Sash, a human rights organisation, is equally concerned. Regional Manager, Thandiwe Zulu said 'we are very unhappy that this judgment fails to acknowledge the real financial burden placed on grandparents and siblings who take responsibility for orphaned children in families which are mostly already desperately poor. While the foster care system, social workers and courts, have been overburdened for a very long time, and are not the appropriate vehicle to support family care of orphans, we need to find an effective mechanism to offer appropriate income support to those who take on this essential social role.'

Ann Skelton of the Centre for Child Law said that 'the issue of a special 'kinship grant' which avoids taking all cases through the foster care system has been on the table for some time, and the Minister can avert any possible crisis through creating such a grant'.

Paula Proudlock said that 'if a new 'kinship grant' could be accessed by relatives directly from the SA Social Security Agency (SASSA), instead of via social workers and the magistrate's courts, it will be in the best interests of all children affected by the crisis in the foster care system. 'It could mean that orphans will get their grants faster and more efficiently, and abused and neglected children will get better quality protection services from social workers and courts. This will not cost any extra budget - it will just mean shifting these cases from the foster care system into the normal grant application system.'

Lucy Jamieson, also of the Children's Institute, University of Cape Town, said that 'social workers and courts are currently swamped by foster care applications. The complex foster care system was designed for 50 000 children but at the end of April 2012 there were 544 000 children getting the foster child grant and hundreds of thousands in various stages of application. The majority of orphans, like the 12-year-old boy in the recent High Court case, wait up to four years before they get their grants. And abused and protected children are getting inadequate protection services because the social workers and courts have such high foster care case loads. These problems could be prevented if a new kinship grant was created.'

#### **Contact details**

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