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## Who Has Best Custody Claim for Michael Jackson's Kids?

**07.01.2009 | Culture and Society, Law** Even though Michael Jackson's will indicates his intention to give custody of his three children to his mother, Katherine, a University of Dayton family law expert contends that the nanny of Michael Jackson's children ought to have a legal claim for visitation or custodial rights. But, Grace Rwaramba's status as a paid caregiver will likely squash any chance of that.

Pamela Laufer-Ukeles, who published "Money, Caregiving and Kinship: Should Paid Caretakers Be Allowed to Obtain De Facto Parental Status?" in the spring edition of the Missouri Law Review, said state laws and American Law Institute principles almost always exclude caretakers who receive compensation — foster parents, paid childcare providers and surrogate mothers — from the categories of psychological parents or de facto parents to whom courts may grant such rights.

Laufer-Ukeles' article contends that paid childcare providers should not automatically be disqualified from obtaining custodial rights in certain cases.

"Had Rwaramba been unpaid, or Jackson's girlfriend of 10 years, she would have a good case for custody. But, add in some financial compensation and she becomes irrelevant," Laufer-Ukeles said. "Based on the available information, Rwaramba loves the children, has raised them their whole lives and is the only mother figure they know. The children have no relationship with their legal mother and their grandmother is almost 80 years old and not in the prime of her life to care for young children. Yet, as a paid nanny, the value of her bond with the children and her status as a functional caregiver, become legally irrelevant. This case is an excellent example of how society's disdain for paid caregivers hurts children."

Laufer-Ukeles said the law of custody and visitation is expanding to include the possibility of non-biological and non-adoptive parents' legal access to children. The concept of the psychological parent or functional caretaker is becoming increasingly prevalent and influential in state laws. Moreover, the American Law Institute Principles of Family Dissolution include de facto parents in its proposed guidelines for who can petition for custody and visitation rights to children.

According to the American Law Institute, a de facto parent is a person other than a legal parent who for at least two years lived with the child and performed the majority of caretaking functions or as many caretaking functions as the parent with whom the child resided, either by agreement or because of failure of the legal parent to do so.

Yet, paid caretakers are eliminated from being able to obtain de facto parental status in the ALI Principles in the vast majority of state laws and cases that have examined the issue. Laufer-Ukeles said there are just limited instances of paid foster or surrogate mothers obtaining custodial rights, but she has found no case where a nanny has been awarded custody. Her article cites some attempts by paid or unpaid caregivers, but all of those failed.

Excluding those who receive compensation for the care they give denigrates the value of care given by paid caregivers, misjudges the strength of the psychological bond between paid caregivers and children and discriminates against the poor and racial minorities, according to Laufer-Ukeles.

"Legitimate concerns about allowing a third party to use the power of the state to infringe on the parent-child relationship, as well as more general anxiety about mixing money and the personal relationship of care, must be addressed," she said. "But, I recommend a more nuanced approach to addressing these concerns. This approach takes into account both the paid nature of the relationship as well as the strength of the psychological bond involved."

Although Laufer-Ukeles believes Rwaramba should receive some consideration as a de facto parent, her prediction is that Rwaramba and Michael Jackson's mother, Katherine, who now has temporary custody, would likely lose out to Debbie Rowe, mother to Michael Jackson's two oldest children, if Rowe chooses to pursue custody.

"The will does not affect Rowe's claims because she is a legal parent. In theory the court could still set aside Michael Jackson's request although the court probably would defer to it," Laufer-Ukeles said. "Regardless, the nanny could request custodial

rights and would have had good case for at least visitation had she not been paid."

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