Grandparent Visitation Rights

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States that have had constitutional challenges to their grandparent visitation statutes

As of the end of the 1998 legislative session, all states, excluding the District of Columbia, had statutes giving visitation rights to grandparents under a variety of circumstances, most commonly: divorce, legal separation, annulment of the marriage of the grandchild’s parents; adoption of the grandchild (under certain circumstances); death of one or both of the grandchild’s parents; grandchild born out of wedlock; termination of the parental rights of the grandchild’s parents; grandchild’s parent deserts child, is incarcerated or incompetent; a relationship between the child and the grandparent is prohibited by the parent; and/or the grandchild’s parent unreasonably denies the grandparent visitation.

A few states specifically also include great-grandparent visitation rights in their statutes. Some states also permit or require mediation in disputes surrounding grandparent visitation.

Best Interests

The best interests of the child is the guiding standard in the determination of grandparent visitation, no matter what the circumstances. Some of the factors that the court looks at in determining the best interests of the child are: historical relationship between the child and the grandparent; motivation of grandparent in seeking visitation; motivation of child’s parent in denying visitation; quantity of visitation time requested and potential adverse impact that visitation will have on child’s customary activities; benefit of maintaining an extended family relationship; willingness of grandparent to encourage a close relationship between child and parent(s); preference of child; mental and physical health of child and grandparent; capacity of grandparent to give child love, affection and guidance; capacity of grandparent to cooperate in child care; moral fitness of grandparent; any history of physical, emotional or sexual abuse or neglect being performed, procured, assisted, or condoned by the grandparent.

Challenges

Sixteen states have withstood constitutional challenges to their grandparent visitation statutes: Delaware, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, Ohio, Texas, Utah, Wyoming. Three states have found all or part of their grandparent visitation statute unconstitutional: Florida, Georgia, Tennessee.

Most states require that the family in question be disrupted, for example, by divorce, before the court has jurisdiction to hear the grandparent visitation issue.

Some stipulations that apply to a grandparent’s right of visitation with a child when the child’s parents object and the family is intact are: no evidence of parental abuse or neglect; parents are mentally, physically, and morally fit; parents are capable of meeting their child’s financial, moral, educational, and social needs.

Tests

Courts that have looked at the intact family issue have applied one of three tests:

Test One: requires that before visitation can be ordered over the objection of the child’s parents in an intact family, the court must find actual harm to the child’s health or welfare without such visitation. The best interests of the child in having such visitation are considered only after the court finds harm if visitation is not ordered.

Test Two: requires proof of substantial potential danger of harm to the child without grandparent visitation.

Test Three: requires the court to apply a totality of the circumstances test and determine whether granting visitation would be in the child’s best interest.

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