Grandparent Visitation Rights

Grandparent visitation rights and the visitation rights of other nonparents did not exist more than 40 years ago. Visitation rights, until recently, only applied to a child’s parents. Today, however, every state has created statutes to govern the visitation rights of grandparents and certain other nonparents, such as foster parents, caregivers or stepparents. These visitation laws grant grandparents and these nonparents the legal right to visit a child.

State Rights

Each state has incorporated statutory guidelines for granting visitation rights to grandparents. The intent of granting grandparent visitation rights is to allow grandparents to maintain contact with grandchildren. In general, two types of laws exist: restrictive visitation statutes and permissive visitation statutes. Restrictive visitation laws only allow grandparents to seek visitation rights if the parents have divorced or if one or both parents are deceased.

Most states allow more leeway when granting visitation, however. These types of permissive visitation laws allow a grandparent or another third party to request visitation even if both parents are alive or still married. In this situation, the court will consider whether the proposed child visitation arrangement is in the best interest of the child.

The U.S. Supreme Court Ruling on Grandparent Visitation Rights

Because parents have a fundamental right under the Constitution to make decisions regarding the upbringing of their children, the implementation of some states’ visitation statutes has led to constitutional challenges. In *Troxel v. Granville*, 530 U.S. 57 (2000), grandparents petitioned for visitation rights after the mother, Tommie Granville, limited visitations to once per month and some holidays. The U.S. Supreme Court decided that the application of the Washington statute violated Granville’s right as a parent to make decisions regarding the “care, custody, and control” of her children. The Court, though, did not make a finding on whether all nonparent visitation statutes violate the constitution, and restricted its decision to the Washington statute in question.

The Court held that the Washington statute was overbroad since it permitted a court to overturn a parent’s decision about the visitation of a grandparent or any other person seeking to obtain visitation rights, even if the parent was perfectly fit to make such a decision. The statute allowed any person to petition for visitation rights and allowed a judge to grant visitation if the judge determined that it was in the best interest of the child, effectively overruling the fit parent’s decision. The Court held that, by granting judges this power, the Washington statute violated parents’ fundamental right to raise their children.

The *Troxel* Effect

Because the Supreme Court did not make a finding that visitation laws are unconstitutional *per se*, every state still allows third-party petitioners to seek visitation rights. Many states, particularly those with permissive statutes, consider third-party visitation rights as a privilege that only imposes a slight burden on parents’ right to control the upbringing of their children. After the ruling in *Troxel*, however, states now give substantial deference to a fit parent’s decision of what is best for their child when weighing whether to grant visitation rights.

Before Seeking Court-Mandated Visitation Rights

Sometimes a dispute about grandparent visitation rights can be resolved without seeking court-ordered visitation. Mediation is often an effective way to settle disputes without going to court. In mediation, a neutral third party will help the parties communicate and come to a legally binding solution that benefits both sides.
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