

Grandparents Rights

Grandparents have always had a great interest in their grandchildren but it really wasn't until the U.S. Supreme Court's decision in the 2000 case, *Troxell v. Granville*, that a grandparent's right to their grandchild became such a hot button issue. More and more grandparents are trying to define their legal rights regarding their grandchildren and sadly they are learning they have very limited rights.

Standing

Grandparents have very limited rights for the simple fact that they generally do not have standing to assert rights over a grandchild. "Standing" is the legal concept that refers to the recognizable a person right has to bring the matter to court. Unfortunately, when it comes to grandparents the courts have found that unless a statute states otherwise, grandparents have no standing.

Grandparenting Time

Grandparenting time is one limited area in which grandparents have been granted standing to petition for access to a grandchild. To achieve grandparenting time a grandparent must first show that the parents are unmarried, separated or divorcing, or that the grandparent's child (the mother or father of the grandchild) has died. If any of these can be established then the grandparent must rebut the presumption that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm. In most cases, the court will follow the wishes of a fit parent.

Custody - Generally

Grandparents have little to no rights when it comes to seeking custody of their grandchildren as the law does not grant them the right to petition.

Custody – Emergency

In certain emergency circumstances a grandparent can seek custody of a grandchild, at least on a temporary basis. Usually the emergency is limited to the death of a parent, where the parents were unmarried and no court order for custody previously existed, and where the other parent is unavailable. As is it is limited by

parental availability the right for emergency custody will disappear once that parent is available again.

Custody - Guardianship

Grandparents, and other third parties, who are guardians of their grandchildren have a statutory right to petition the court for custody. Therefore, if you are a grandparent contemplating custody of a grandchild one first step may be to be appointed the child's legal guardian. In most situations grandparents can petition to be appointed a legal guardian when a) the parents rights to the child have been suspended or terminated; b) the child lives with the grandparent and the grandparent provides all support for the child; or c) other emergency circumstances. If one of those examples exists, petitioning to be appointed a legal guardian may be a gateway to custody.

Best Interests of the Child

Should you properly establish standing to seek custody it is important to understand that all custody decisions are made in the best interests of the child. In many states these 'best interest factors' are specifically enumerated, while in others they are left to court discretion.

Caution

Laws do vary from state-to-state and nothing in this article can replace the legal advice of a licensed and qualified attorney in your area.

Reference

Michigan Compiled Laws §§ 722.26b-c; 722.27b; and 700.5204

Grandparents Caring for Grandchildren

Troxell v. Granville, 530 US 57 (2000) ; Johnson v. White, 261 Mich App 332 (2004)

Resource

California Courts Self-Help Center

Custody Rights of Grandparents