

Grandparent Custody Rights

While people tend to think of custody cases as battles between two biological parents of the child, a significant number of custody cases involve a more expanded notion of the term “family law.” Maternal and paternal grandparents often get involved in custody cases either through supporting their child or as actual parties to the case. Colorado law does grant certain rights to grandparents, although the United States Supreme Court opinion in ***Troxel v. Granville***, 530 U.S. 57 (2000), circumscribes those rights to a certain extent.

In ***Troxel v. Granville***, the Supreme Court found that parents have certain fundamental rights in the raising of their children. For the state to intrude on those fundamental rights (by, for example, forcing the parents to allow grandparents to see the child), the state needed to have a compelling reason for doing so. In interpreting this opinion, Colorado courts have held that a presumption exists that the child’s natural or adopted parents act in the best interests of the child when denying grandparent visitation. Grandparents seeking visitation with their children must overcome this presumption with clear and convincing evidence.

Cases involving grandparent visitation issues are often highly complex. Most often, the issue arises in high conflict divorce or custody cases. Grandparents seeking to intervene in a high conflict case have to navigate between two hostile parents, a complicated court system, and complex legal issues requiring reference to the U.S. Constitution, U.S. Supreme Court Opinions, Colorado Supreme and Appellate Court Opinions, and Colorado statutes. The experience can be overwhelming for people who find themselves caught in one of these situations, even if they have an attorney to walk them through the process.

Grandparents have the right to petition the Court for visitation with the minor child in any custody case that has already been filed. However, there **must** be a custody case already filed with the Court. Grandparents who have been denied visitation with the minor child cannot start a court case on their own solely for the purpose of having grandparent visitation ordered by the Court. One situation we often see involves grandparents living in the same state as a custodial parent who is hostile to them seeing the child, while their own child lives in a different state, preventing the grandparents from seeing the grandchild during their child’s parenting time.

Ultimately, grandparents seeking visitation with a child will have to prove their case via an evidentiary hearing in front of a Judge or Magistrate. This means presenting testimony and documentary evidence. Testimony from

the grandparents and the parents will almost certainly be necessary.

There may also be testimony from a Child and Family Investigator if the Court appointed one. Under normal circumstances, grandparent visitation will not be much more than every other weekend with the minor child and often times will be significantly less than that.

Grandparents seeking custody of a child face a very different legal landscape. If a grandparent (or any non-parent) has had physical care of the child for a six-month time period and less than six months have elapsed since that physical care ended, the grandparent can file a case requesting custody of the child.

The presumptions in favor of the natural parents are not as strong, considering the child has already been given into the care of the grandparents for a significant period of time.

Also, these situations normally involve much lower levels of conflict, primarily because at least one parent and usually both have already consented to the grandparent assuming care of the child.

A grandparent can gain much greater rights by filing for custody, including the right to make decisions for the minor child and to receive child support from the parents on behalf of the minor child, in addition to having significantly more time with the minor child.

If the grandparent's request for custody is opposed by one or both of the natural parents, however, the case will be much more complicated. Once again, the grandparents will have to prove their case by an evidentiary hearing and will likely have to involve experts appointed by the Court to do so.

In the end, grandparent visitation and custody cases turn on a number of highly factual questions that can turn on a number of intricate details. Consultation with an attorney is strongly advised so that grandparents can be fully aware of what rights, if any, they may have in their particular situation. Acting in a timely

manner can be very important.

The information provided above is general in nature, is not intended as legal advice for your particular situation and should not be relied upon without first consulting with legal counsel. The firm provides legal representation in domestic and family law matters in the Denver Colorado

metro area and will tailor its services to your particular needs and unique circumstances.