

Legal Update – Winter 2009 Newsletter

Grandparent's Rights – Visitation, Custody and Adoption

Most people recognize that a strong relationship with grandparents greatly enriches a child's life. What happens to that relationship, however, when a child's parents separate, or when one parent dies?

Many grandparents become concerned when situations such as these occur because they know it will have an effect on how often they see their grandchildren. After such an event, a grandparent may go from seeing grandchildren every day to seeing them only on holidays. These types of drastic changes take an emotional toll on the entire family.

Ohio courts are beginning to step in to prevent such devastation to the family. Some grandparents are able to get a court order allowing them to continue spending time with their grandchildren.

Visitation

A grandparent concerned about losing valuable bonding time with a grandchild may ask a court for visitation. If the court finds that visitation is in the best interest of the child, it will issue a court order. When a visitation order is in place, the grandparent is allowed a certain amount of time with the grandchild. The length of each visit, the number of visits each year, and where the visits may occur are explained in the court order.

Grandparents may seek court-ordered visitation if the child's parents are unmarried, if the child's parents are divorced, or if one of the child's parents has died.

In addition, prior to a divorce becoming final, a grandparent can intervene in the parent's divorce case and ask the court to award them their own visitation schedule with their grandchildren.

Grandparent visitation is not automatic. It will be granted only if the court, after evaluating several factors including the parent's wishes, determines that visitation is in the best interest of the child.

Also, it is important to note that a stepparent adoption will terminate grandparent visitation rights, unless the natural parent is deceased. So, for example, if your former daughter-in-law remarries and her new husband adopts your grandchild, your visitation rights will be terminated.

An important point to highlight about grandparent visitation is that there is no right to it if the family is intact. So, if your grandchild's parents are married and refuse to allow you to visit, you cannot seek a court order.

Custody

If visitation is not sufficient, grandparents may wish to seek custody of a grandchild. If custody is granted, the grandchild lives with the grandparent and the grandparent is responsible for the grandchild's primary care.

It is difficult in most cases for a grandparent to get custody. A custody action must be filed in juvenile court. Custody will be granted only if the court finds that both parents are unfit, and that it is in the best interest of the child for custody to be granted to the grandparents. Courts find parents unfit usually only upon a clear sign of abuse or neglect.

Adoption

In Ohio, grandparents may also seek to adopt a grandchild. If the adoption is granted, you become your grandchild's parents. All parental rights of the child's biological parents are terminated.

Grandparents seeking to adopt must file a petition for adoption. Proper notice must be given to the child's parents, a home-study will be conducted, and the adoption must be in the child's best interest.

Once the adoption is completed, the child's birth certificate will be changed to show that the grandparent(s) are the child's parents. This means that (1) the child will inherit from you; (2) you are now ultimately responsible for caring for the child; and (3) the child can receive any benefits that a naturally born child would have through you, such as social security and health care benefits.

Ohio law as it relates to grandparents' rights is still evolving. Therefore, it is important that you seek the advice of an attorney prior to starting any type of court action. ■