Members Brief

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Grandparent Visitation Rights

Under Ohio law, a court can award visitation rights to a grandparent during or after a domestic relations proceeding if the grandparent has an interest in the child's welfare and visitation is in the child's best interest. A court also can award visitation rights to a grandparent if a child's parent is deceased or the child's mother was unmarried when the child was born. Before awarding grandparent visitation rights, a court must consider all relevant factors, including a list of statutory factors. Among these factors, the parents' wishes regarding visitation must be given special weight.

In 2000, the U.S. Supreme Court held that a Washington grandparent visitation statute was unconstitutional as applied in a particular case because it infringed on the fundamental right of a parent to make decisions concerning the care, custody, and control of the parent's child. Five years later, the Ohio Supreme Court held that Ohio's third-party visitation statutes are constitutional.

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Grandparent visitation: when granted

Under common law, grandparents had no legal right of access to their grandchildren, and parents had complete authority to grant or deny the privilege of visitation.[1] There is no constitutional right of association with grandchildren, so grandparent visitation rights must be

[1] *In re Whitaker*, 36 Ohio St.3d 213, 214 (1998).

provided for by statute.[2] Ohio has authorized grandparent visitation rights by statute in three circumstances: (1) when married parents terminate their marriage or separate, (2) when a parent of a child dies, and (3) when a child is born to an unmarried woman. In these cases, a court may order reasonable visitation if it is in the best interest of the child.

When married parents terminate marriage or separate

In a proceeding for divorce, dissolution of marriage, legal separation, annulment, or child support, a grandparent may file a motion seeking visitation rights. The motion may be filed while the proceeding is pending or after a decree or final order is issued. The court may grant these rights if it determines that the grandparent has an interest in the welfare of the child and visitation is in the child's best interest. In making its decision, the court must consider certain factors that help inform what is in the child's best interest (see "**Factors in granting visitation**," below).[3]

When a parent dies

When a child's parent dies, a parent of the deceased parent can file a complaint for visitation rights in the court of common pleas of the county in which the child resides. After considering certain factors (see "**Factors in granting visitation**," below), the court may order reasonable visitation if it determines that it is in the child's best interest. Courts have authority to order visitation rights to a parent of the child's deceased parent even if the child's surviving parent remarries or the spouse of the surviving parent adopts the child.[4]

When a child's mother is unmarried

If a child's mother was unmarried when the child was born, the maternal grandparents may file a complaint requesting visitation in the court of common pleas in the county where the child resides. If the child's father acknowledges paternity of the child and the acknowledgment has become final, or if he is found in a parentage action to be the child's father, the paternal grandparents also may file a complaint for visitation rights. The court may grant visitation if it determines, after considering certain factors, that visitation is in the child's best interest (see "**Factors in granting visitation**," below).[5]

Ohio law grants courts authority to order visitation when a child is born to an unmarried woman, even if the child's parents subsequently marry and establish paternity.[6] That said, Ohio appellate courts have reached differing conclusions about that authority if the child's biological parents subsequently marry each other. Some courts have determined that authority violates

[2] *In re Martin*, 68 Ohio St.3d 250, 252 (1994).

[3] R.C. 3109.051(B) and (D).

[4] R.C. 3109.11.

[5] R.C. 3109.12. Acknowledgment means that the biological mother and father have signed an affidavit acknowledging that the child is the child of the man who signed the acknowledgment.

[6] R.C. 3109.12(B); *Stout v. Kline*, 1997 Ohio App. LEXIS 1947, 3-4 (5th Dist., Richland Cnty., March 28, 1997).

the Equal Protection Clause of the U.S. Constitution based on differential treatment between married and unmarried parents.[7]

With abused, neglected, or dependent children

Although the law addresses sibling visitation, it does not expressly provide for grandparent visitation when a child is alleged or adjudicated by a juvenile court to be an abused, neglected, or dependent child.[8] However, under rules adopted by the Department of Children and Youth, when a child is in temporary custody, the public children services agency (PCSA) or private child placing agency (PCPA) must arrange for visitation and communication with siblings and significant others integral to maintaining those connections, unless doing so would not be in the child's best interest.[9]

Because this rule addresses children in temporary custody only, it is silent regarding grandparent visits and communication when a PCSA or PCPA is granted permanent custody, the child is placed in a planned permanent living arrangement, or the court awards legal custody. It is unlikely that, absent the circumstances described above, a court could award grandparent visitation rights in the case of abused, neglected, or dependent children, however, because the Ohio Supreme Court has held that grandparents visitation rights must be provided for in statute.[10]

After a child is adopted

The effect of adoption on grandparent visitation rights depends on the circumstances. When a child's parent has died, the adoption of a child by a stepparent does not affect the court's authority to grant reasonable visitation rights.[11] However, a 2020 appellate case held that these rights do not apply if the child is adopted by two new parents after a biological parent's death. *Davis v. Nathaniel* involved three sisters—Rachel, Tammie, and Lora. After Lora died, Tammie and her husband adopted Lora's three children. Five years later, Rachel sought visitation with those children (see "**When a parent dies**," above). The court held that Rachel had no grounds to seek visitation because the final decree of adoption superseded the statute that permits visitation after a parent's death, even though her status as Tammie's sister and the maternal aunt of the adopted children remained unchanged. The court added that an award of visitation after

[7] See, e.g., *In re K.M.-B.*, 2015-Ohio-4626, ¶27-40 (6th Dist., Lucas Cnty., November 6, 2015); *Rugola-Dye v. Dye*, 2009-Ohio-2471, ¶22 and 23 (5th Dist., Delaware Cnty., May 22, 2009); *Nicoson v. Hacker*, 2001 Ohio App. LEXIS 5657, 8-10 (11th Dist., Lake Cnty., December 14, 2001); *Cf. Stout v. Kline*, at 3-4.

[8] R.C. 2151.411.

[9] Ohio Administrative Code 5180:3-13-92(I).

[10] See *In re Martin*, at 254 (1994).

[11] R.C. 3109.11.

an adoption contains potential to introduce significant stress and threatens confusion and disruption for the new adoptive family.[12]

For a child whose parents are divorced or separated or a child born to an unmarried woman, the Ohio Supreme Court has held that an Ohio law providing that a final decree of adoption terminates all legal relationships between the adopted person and the adopted person's relatives has the effect of terminating third-party visitation rights for the relatives whose status has changed as a result of the adoption. This applies regardless of whether the child is adopted by strangers, relatives, or a stepparent.[13]

In contrast, Ohio law does not terminate the relationship between a child and the family of the parent whose status is not changed by a stepparent adoption. Grandparents whose son or daughter retains parental rights after a stepparent adoption remain entitled to seek visitation.[14]

Factors in granting visitation

Before issuing an order concerning grandparent visitation, the court must consider all relevant factors, including factors specified in statute. Examples of the factors include:

- The wishes and concerns of the child's parents;
- The child's prior interaction and interrelationships with parents and other relatives;
- The location of the grandparent's residence and its distance from the child's residence;
- The child's and parents' available time;
- The child's age;
- The child's adjustment to home, school, and community;
- The child's wishes, if the court has interviewed the child in chambers;
- The child's health and safety;
- The amount of time that a child has available to spend with siblings;
- The mental and physical health of all parties;
- Whether the person seeking visitation has been convicted of or pleaded guilty to any criminal offense involving an act that resulted in a child being abused or neglected.

[12] *Davis v. Nathaniel*, 2020-Ohio-6858, *P8-*P13 (9th Dist., Summit Cnty., December 23, 2020); see also *Davis v. Nathaniel*, 167 Ohio St.3d 561 (Brunner, J., dissenting) (March 16, 2022); DR-2019-11-3155 (July 26, 2022, granting defendants' motion for judgment on pleadings).

[13] *In re Martin*, at 253-254; *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 328 (1991); R.C. 3107.15.

[14] *Moore v. Strassel*, 1998 Ohio App. LEXIS 883, 5-10 (4th Dist., Pickaway Cnty., February 26, 1998).

If the court denies the grandparents' motion for visitation rights and the grandparents file a written request for findings of fact and conclusions of law, the court must state those in writing.[15]

Enforcement through contempt proceedings

Any person who visitation rights or is subject to a visitation order may bring an action for contempt for another person's failure to comply with, or interference with, the order. A court may impose a fine, a term of imprisonment, or both on a person found guilty of contempt. The court must require the person to pay all court costs and the reasonable attorney's fees of the other party and may award compensatory visitation if it is in the best interest of the child.[16]

Constitutional considerations

In 2000, the U.S. Supreme Court held in *Troxel v. Granville* that a Washington grandparent visitation statute, as applied in that particular case, violated the Due Process Clause of the Fourteenth Amendment, because it infringed on the fundamental right of a parent to make decisions concerning the care, custody, and control of his or her child.[17] The statute provided, "Any person may petition the court for visitation rights at any time […]. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." The children's mother attempted to place limits on the amount of grandparent visitation after their father's death. The paternal grandparents petitioned for visitation rights.

A combination of factors led the Supreme Court to decide that the statute as applied by the trial court was too broad. Most importantly, the trial court did not give the parent's decision a presumption of validity or any special weight, even though a presumption exists that fit parents act in their child's best interest. The Supreme Court determined that this lack of deference effectively permits a court to disregard the decisions of a fit custodial parent concerning visitation based solely on the judge's determination of a child's best interest. But the Due Process Clause does not permit a state to infringe on the fundamental right of a parent to make childrearing decisions simply because a judge believes a better decision could be made.

The crux of the opinion was summed up by Justice O'Connor as follows: "[s]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."

The Court also objected to the trial court placing on the parent the burden of disproving that visitation was in the child's best interest. Finally, the Court was concerned that the trial court

[15] R.C. 3109.051(C), (D), and (F)(1).

[16] R.C. 2705.031(B)(2), 2705.05, and 3109.051(K).

[17] *Troxel v. Granville*, 530 U.S. 57 (2000). The decision is notable in that it consists of six separate opinions: the plurality opinion authored by Justice O'Connor, separate concurrences by Justices Souter and Thomas, and separate dissents by Justices Stevens, Scalia, and Kennedy. In describing the decision, this brief addresses only the plurality opinion.

gave no weight to the fact that the children's mother agreed to visitation and had tried only to limit the number of visits. The Court noted that many other states provide by statute that courts may not award visitation unless a parent has denied (or unreasonably denied) visitation to the concerned third party.

Ohio law upheld

After *Troxel,* the Ohio Supreme Court upheld Ohio's third-party visitation law. In *Harrold v. Collier*, Renee Harrold and Brian Collier, an unmarried couple, had a child. Renee was designated as the residential parent while Brian was granted supervised visitation with the child twice per week. Renee and her child resided with Renee's parents, the Harrolds, until Renee's death two years later. The Harrolds were granted temporary legal custody of the child until Brian was designated the residential parent. After gaining custody, Brian refused to allow the Harrolds to visit with the child.

The Harrolds requested grandparent visitation, and a magistrate ruled in their favor; however, Brian objected to the ruling. The reviewing court did not find overwhelmingly clear circumstances to support forcing grandparent visitation over Brian's opposition and reversed the magistrate's decision. The Harrolds appealed, and the appellate court decided that *Troxel* did not invalidate Ohio's nonparental visitation statute and allowed the Harrolds to visit with the child. Again, Brian appealed.

In its 2005 decision, the Ohio Supreme Court noted that Ohio's statutes are more narrowly drawn than the Washington statute in *Troxel,* because Ohio law expressly identifies the parents' wishes and concerns regarding visitation as a factor that the court must consider in making its determination. The Court determined that the circumstances in *Harrold* were not analogous to *Troxel* and allowed the grandparent visitation. Two determining factors were: (1) the trial court initially placed the burden on the Harrolds to prove that visitation would be in the child's best interest, thus protecting Brian's due process rights, and (2) nothing in *Troxel* suggests that the parent's wishes should outweigh the best interest of the child. In addition to granting visitation, the Court also determined that Ohio's third-party visitation statutes are "constitutional on their face."[18]

Since Harrold, Ohio appellate courts have interpreted the "special weight" that must be accorded to the parents' wishes to mean extreme deference. While this does not necessarily mean that the parents' wishes will prevail, at least one appellate court has concluded that, in the trial court's discretion, the parents' wishes may be dispositive of the complaint for visitation.[19]

[18] *Harrold v. Collie*r, 107 Ohio St.3d 44 (2005).

[19] Ferrell v. Ferrell, 2025-Ohio-5476, 2025 Ohio App. LEXIS 4150 (Trumbull Co. Ct. App Dec. 8, 2025); *Bowling v. Thacker*, 2019-Ohio-3683, 2019 Ohio App. LEXIS 3768 (Clark Co. Ct. App. Sept. 13, 2019); *In re N.C.W.*, 2014-Ohio-3381, 2014 Ohio App. LEXIS 3321 (Butler C. Ct. App. August 4, 2014).