



Members Brief

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Grandparent Companionship and Visitation Rights

Under Ohio law, a court can award companionship or visitation rights to a grandparent during or after a domestic relations proceeding if the grandparent has an interest in the child’s welfare and companionship or visitation is in the child’s best interest. A court can also award companionship or visitation rights to a grandparent if a parent is deceased or the child’s mother was unmarried when the child was born. The effect of adoption on a grandparent’s companionship or visitation rights depends on the circumstances, such as whether: a parent has died, there has been a divorce or separation, or the child has been adopted by a stepparent or two new parents. Before awarding grandparent companionship or visitation rights, a court must consider all relevant factors, including all factors listed in statute.

With regard to abused, neglected, or dependent children, the Administrative Code requires a public children services agency or private child placing agency to arrange visits and communication with certain family members for a child in its temporary custody, if it is in the child’s best interest.

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 his or her child. Five years later, the Ohio Supreme Court held that Ohio’s third-party visitation statutes are constitutional.

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Grandparent companionship or 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 Ohio has authorized grandparent companionship or 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 companionship or 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 companionship or 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 companionship or 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 companionship or visitation,**" below).²

When a parent dies

When a child's parent dies, a parent of the deceased parent can file a complaint for companionship or visitation rights in the court of common pleas of the county in which the child resides. After considering certain factors (see "**Factors in granting companionship or visitation,**" below), the court may order reasonable companionship or visitation if it determines that it is in the child's best interest. Courts have authority to order companionship or 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.³

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 companionship or visitation in the court of common pleas in the county where the child resides. If the child's father acknowledges 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 companionship or visitation rights. The court may grant companionship or visitation if it determines, after considering certain factors, that companionship or visitation is in the child's best interest (see "**Factors in granting companionship or visitation,**" below).⁴

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

² R.C. 3109.051(B) and (D).

³ R.C. 3109.11.

⁴ 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.

The Revised Code grants courts authority to order companionship or visitation when a child is born to an unmarried woman, even if the child's parents subsequently marry and establish paternity.⁵ 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 the Equal Protection Clause of the U.S. Constitution based on differential treatment between married and unmarried parents.⁶

With abused, neglected, or dependent children

The Revised Code does not expressly provide for grandparent companionship or visitation when a child is alleged or adjudicated by the juvenile court to be an abused, neglected, or dependent child. However, under rules adopted by the Ohio Department of Job and Family Services, a public children services agency (PCSA) or private child placing agency (PCPA) must arrange for visitation and communication in certain circumstances. When a child is in temporary custody, the PCSA or PCPA must arrange for siblings and significant others to have the opportunity to visit or communicate with the child, if it is in the child's best interest.⁷

The rule is silent regarding grandparent visits and communication in situations in which permanent custody of a child is granted to a PCSA or PCPA, a child is placed in a planned permanent living arrangement, legal custody is given to a person other than the child's parents, or a child is placed in protective supervision. It is unlikely that a court would conclude that grandparents have a right to visits or communication in abuse, neglect, or dependency cases, however, because the Ohio Supreme Court has held that if grandparents are to have companionship or visitation rights, they must be provided for in statute.⁸

After a child is adopted

The effect of adoption on grandparent companionship or 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 companionship or visitation rights.⁹ 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 companionship and visitation with those children (see "**When a parent dies**," above). The court held that Rachel had no grounds to seek companionship or 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

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

⁶ 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*, 1997 Ohio App. LEXIS 1947, 3-4 (5th Dist., Richland Cnty., March 28, 1997).

⁷ Ohio Administrative Code 5101:2-42-92(D).

⁸ See *In re Martin*, 68 Ohio St.3d 250, 254 (1994).

⁹ R.C. 3109.11.

remained unchanged. The court added that an award of visitation after an adoption contains a potential to introduce significant stress into the new parental relationship and threatens confusion and disruption for the new adoptive family.¹⁰

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.¹¹

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 companionship or visitation.¹²

Factors in granting companionship or visitation

Before issuing an order concerning grandparent companionship or visitation, the court must consider all other relevant factors, including factors specified in statute. These factors include, for example:

- 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 companionship or visitation has been convicted of or pleaded guilty to any criminal offense involving an act that resulted in a child being abused or neglected.

¹⁰ *Davis v. Nathaniel*, 2020-Ohio-6858, *P8-*P13 (9th Dist., Summit Cnty., December 23, 2020); see also *Davis v. Nathaniel*, 2022-Ohio-751, *P2-*P6 (Brunner, J., dissenting) (March 16, 2022).

¹¹ *In re Martin*, at 253-254; *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 328 (1991); R.C. 3107.15.

¹² *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 companionship or visitation rights and the grandparents file a written request for findings of fact and conclusions of law, the court must state those in writing.¹³

Enforcement through contempt proceedings

Any person who has companionship or visitation rights or is subject to a companionship or 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 companionship or visitation if it is in the best interest of the child.¹⁴

Troxel v. Granville

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.¹⁵ 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."

¹³ R.C. 3109.051(C), (D), and (F)(1).

¹⁴ R.C. 2705.031(B)(2), 2705.05, and 3109.051(K).

¹⁵ *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.

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 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.

Harrold v. Collier

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 this decision, 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 Ohio Supreme Court also determined that Ohio's third-party visitation statutes are "constitutional on their face."¹⁶

¹⁶ *Harrold v. Collier*, 107 Ohio St.3d 44 (2005).