

CHAPTER 600C

GRANDPARENT VISITATION

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1. The grandparent or great-grandparent of a minor child may petition the court for grandchild or great-grandchild visitation when the parent of the minor child, who is the child of the grandparent or the grandchild of the great-grandparent, is deceased.

2. The court shall consider a fit parent's objections to granting visitation under this section. A rebuttable presumption arises that a fit parent's decision to deny visitation to a grandparent or great-grandparent is in the best interest of a minor child.

3. The court may grant visitation to the grandparent or great-grandparent under this section if the court finds all of the following by clear and convincing evidence:

a. It is in the best interest of the child to grant such visitation.

b. The grandparent or great-grandparent has established a substantial relationship with the child prior to the filing of the petition.

c. That the presumption that the parent who is being asked to temporarily relinquish care, custody, and control of the child to provide visitation is fit to make the decision regarding visitation is overcome by demonstrating one of the following:

(1) The parent is unfit to make such decision.

(2) The parent's judgment has been impaired and the relative benefit to the child of granting visitation greatly outweighs any effect on the parent-child relationship. Impaired judgment of a parent may be evidenced by any of, but not limited to, the following:

(a) Neglect of the child.

(b) Abuse of the child.

(c) Violence toward the child.

(d) Indifference or absence of feeling toward the child.

(e) Demonstrated unwillingness and inability to promote the emotional and physical well-being of the child.

(f) Drug abuse.

(g) A diagnosis of mental illness.

4. In determining the best interest of the child, the court shall consider all of the following:

a. The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, compared to the child's relationship with the grandparent or great-grandparent.

b. The geographical location of the grandparent's or great-grandparent's residence and the distance between the grandparent's or great-grandparent's residence and the child's residence.

c. The child's and parent's available time, including but not limited to the parent's employment schedule, the child's school schedule, the amount of time that will be available for the child to spend with siblings, and the child's and the parent's holiday and vacation schedules.

d. The age of the child.

e. If the court has interviewed the child in chambers as provided in this section regarding the wishes and concerns of the child as to visitation by the grandparent or great-grandparent or as to a specific visitation schedule, the wishes and concerns of the child, as expressed to the court.

f. The health and safety of the child.

g. The mental and physical health of all parties.

h. Whether the grandparent or great-grandparent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the grandparent or great-grandparent previously has been convicted of or pleaded guilty to a crime involving a victim who at the time of

the commission of the offense was a member of the family or household that is the subject of the current proceeding; and whether there is reason to believe that the grandparent or great-grandparent has acted in a manner resulting in a child having ever been found to be an abused child or a neglected child.

- i. The wishes and concerns of the child's parent, as expressed by the parent to the court.
- j. Any other factor in the best interest of the child.

5. For the purposes of this section, "*substantial relationship*" includes but is not limited to any of the following:

- a. The child has lived with the grandparent or great-grandparent for at least six months.
- b. The grandparent or great-grandparent has voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six months.
- c. The grandparent or great-grandparent has had frequent visitation including occasional overnight visitation with the child for a period of not less than one year.

6. If the court interviews any child concerning the child's wishes and concerns regarding parenting time or visitation, the interview shall be conducted in chambers, and only the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of the parent shall be permitted to be present in the chambers during the interview. A person shall not obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding parenting time or visitation.

7. For the purposes of this section, "*court*" means the district court or the juvenile court if that court currently has jurisdiction over the child in a pending action. If an action is not pending, the district court has jurisdiction.

8. Notwithstanding any provision of this chapter to the contrary, venue for any action to establish, enforce, or modify visitation under this section shall be in the county where the child resides if no final custody order determination relating to the grandchild or great-grandchild has been entered by any other court. If a final custody order has been entered by any other court, venue shall be located exclusively in the county where the most recent final custody order was entered. If any other custodial proceeding is pending when an action to establish, enforce, or modify visitation under this section is filed, venue shall be located exclusively in the county where the pending custodial proceeding was filed.

9. Notice of any proceeding to establish, enforce, or modify visitation under this section shall be personally served upon the parent of the child whose interests are affected by a proceeding brought pursuant to this section and all grandparents or great-grandparents who have previously obtained a final order or commenced a proceeding under this section.

10. The court shall not enter any temporary order to establish, enforce, or modify visitation under this section.

11. An action brought under this section is subject to chapter 598B, and in an action brought to establish, enforce, or modify visitation under this section, each party shall submit in its first pleading or in an attached affidavit all information required by section 598B.209.

12. A grandparent or great-grandparent shall not petition for visitation under this section more than once every two years absent a showing of good cause.

13. The court shall not issue an order restricting the movement of the child if such restriction is solely for the purpose of allowing the grandparent or great-grandparent the opportunity to exercise the grandparent's or great-grandparent's visitation under this section.

2007 Acts, ch 218, §206; 2010 Acts, ch 1193, §130; 2011 Acts, ch 34, §134

[T] Subsection 5 amended