

# Members Only



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## Grandparent Visitation Rights in Ohio\*

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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 can also award visitation rights to a grandparent if a parent is deceased or the child's mother was unmarried when the child was born. Before awarding grandparent visitation rights in Ohio, a court must consider all relevant factors, including all factors listed in statute.

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 on their face.

### *Grandparent visitation: when granted*

Historically, grandparents had no legal right of access to their grandchild, and parents had complete authority to grant or deny the privilege of visitation.<sup>1</sup> 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 is deceased, and (3) when the child is born to an unmarried woman. In such cases, a court may order reasonable visitation if it is in the best interest of the child.

#### *When married parents terminate marriage or separate*

A court can grant reasonable visitation rights to a grandparent in a proceeding for divorce, dissolution of marriage, legal separation, annulment, or child support if the grandparent files a motion seeking visitation rights

\*This *Members Only* brief is an update of an earlier brief on this subject dated February 1, 2007 (Volume 127 Issue 3).

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*Historically, grandparents had no legal right to visitation with their grandchildren.*



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*If a child's parents have their marriage terminated or are unmarried, or a parent dies, grandparents may ask the court to grant them visitation.*

and the court determines that the grandparent has an interest in the welfare of the child and granting visitation rights is in the best interest of the child. The motion may be filed while the proceeding is pending or after a decree or final order is issued. In making its decision, the court is required to consider certain factors.<sup>2</sup>

*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, the court may order reasonable visitation if it determines that visitation is in the child's best interest.<sup>3</sup>

*When the child's mother is unmarried*

If a child's mother was unmarried when the child was born, the court of common pleas in the county in which the child resides may grant visitation rights to the maternal grandparents. If the father of the child 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 court may also grant visitation rights to the paternal grandparents. To obtain visitation rights, the grandparents must file a complaint requesting them, and the court must determine, after considering certain factors, that they are in the child's best interest.<sup>4</sup>

The statutory law also 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 of the child.<sup>5</sup> That said, Ohio appellate courts have reached differing conclusions about that authority if the child's parents subsequently marry each other. Some courts have determined that authority to be unconstitutional.<sup>6</sup>

*With abused, neglected, or dependent children*

The Revised Code does not expressly provide for grandparent visitation when a child is alleged or adjudicated by the juvenile court to be an abused, neglected, or dependent child. However, the Department of Job and Family Services has adopted a rule that requires a public children services agency (PCSA) or private child placing agency (PCPA) to arrange for visitation in certain circumstances. When a child is in temporary custody, the PCSA or PCPA must make arrangements for family members to have the opportunity to visit or communicate with the child, if it is in the child's best interest.<sup>7</sup> The rule is silent regarding grandparent visitation 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 visitation in abuse, neglect, or dependency cases, however, because the Ohio Supreme Court has held that if grandparents are to have visitation rights, they must be provided for in statute.<sup>8</sup>

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*Administrative rules governing temporary custody of abused, neglected, or dependent children encourage visitation between children in foster care and their families.*



### *After a child is adopted*

The effect of adoption on grandparent visitation rights depends on the circumstances. In the case of a child whose parent has died, Ohio law provides that a grandparent's right to visitation is not restricted or curtailed by the adoption. Additionally, in that situation, the adoption of a child by a stepparent does not affect the court's authority to grant reasonable companionship or visitation rights with respect to the child.<sup>9</sup>

In the case of a child whose parents are divorced or separated or a child born to an unmarried woman, the Ohio Supreme Court has held that a provision of 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 on adoption, regardless of whether the child is adopted by strangers, relatives, or a stepparent.<sup>10</sup>

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 child retains parental rights after a stepparent adoption remain entitled to seek visitation.<sup>11</sup>

### ***Factors the court must consider in granting visitation***

Before issuing an order concerning grandparent visitation, the court must consider all other relevant factors, including certain factors

specified in statute. These factors include all of the following:

- The wishes and concerns of the child's parents;
- The prior interaction and interrelationships of the child 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.

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 in writing those findings of fact and conclusions of law.<sup>12</sup>

### *Enforcement through contempt proceedings*

Any person who has visitation rights or is subject to a visitation order

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*Grandparent visitation rights may be terminated by adoption depending on the nature of the case.*

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*A court issuing a visitation order must consider all relevant factors.*



The U.S. Supreme Court held in 2000 that a Washington grandparent visitation statute resulted in an unconstitutional infringement on parental rights.

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.<sup>13</sup>

### ***Troxel v. Granville***

In 2000, the U.S. Supreme Court held 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.<sup>14</sup> In *Troxel*, 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 important, the parent's decision was not given a presumption of validity or any special weight, even though there is also a presumption 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. 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 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 with a person unless a parent has first refused it.


### ***Harrold v. Collier***

However, while the *Troxel* decision placed limits on third-party visitation, a subsequent Ohio Supreme Court ruling upheld a decision that granted third-party visitation to the grandparents of a child. In *Harrold v. Collier*, Renee Harrold and Brian Collier (unmarried) had a child, and Renee was designated as the residential parent while Brian was granted supervised visitation with the child twice a week. Renee and her child resided with Renee's parents until the time of Renee's death two



years later. The Harrolds (Renee's parents) 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 filed for grandparent visitation with the child, and the Wayne County Juvenile Court magistrate ruled that the Harrolds should be allowed to visit with the child. However, Brian objected to the ruling, and the juvenile court reviewed the decision and could not find overwhelmingly clear circumstances that the grandparent visitation outweighed Brian's wishes 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.

Upon hearing the case, the Ohio Supreme Court noted in 2005 that Ohio's statutes are more narrowly drawn than the Washington statute in *Troxel* in that Ohio law expressly identifies the parents' wishes and concerns regarding visitation as a factor the court must consider in making its determination. Also, since 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 that nothing in *Troxel* suggests that the parent's wishes should outweigh the best interest of the child, the Ohio Supreme Court ultimately determined that the circumstances of *Harrold* were not analogous to *Troxel* and allowed the grandparent visitation. In addition to granting the third-party visitation, the Ohio Supreme Court also determined that Ohio's third-party visitation statutes are "constitutional on their face."<sup>15</sup> 

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*The Ohio Supreme Court in 2005 determined that Troxel does not affect Ohio's statutes, and Ohio's third party visitation statutes are constitutional on their face.*

## Endnotes

<sup>1</sup> *In re Whitaker*, 36 Ohio St.3d 213, 522 N.E.2d 563 (1998).

<sup>2</sup> R.C. 3109.051(B) and (C).

<sup>3</sup> R.C. 3109.11.

<sup>4</sup> 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.

<sup>5</sup> R.C. 3109.12(B); *Stout v. Kline*, 5th Dist. Richland No. 96-CA-71, 1997 WL 219099 (March 28, 1997).

<sup>6</sup> *Rugola-Dye v. Dye*, 5th Dist. Delaware No. 08 CAF 06 0038, 2009-Ohio-2471; *Nicoson v. Hacker*, 11th Dist. Lake No. 2000-L-213, 2001 WL 1602666 (December 14, 2001); *In re K.M.-B.*, 2015-Ohio-4626, 48 N.E.3d 998 (6th Dist.); *Stout v. Kline*, 5th Dist. Richland No. 96-CA-71, 1997 WL 219099 (March 28, 1997).

<sup>7</sup> Ohio Administrative Code 5101:2-42-92(D).

<sup>8</sup> *In re Martin*, 68 Ohio St.3d 250, 626 N.E.2d 82 (1994).



<sup>9</sup> R.C. 3109.11.

<sup>10</sup> *In re Martin*, 68 Ohio St.3d 250, 626 N.E.2d 82 (1994); *Sweeney v. Sweeney*, 71 Ohio St.3d 169, 642 N.E.2d 629 (1994); *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 574 N.E.2d 1055 (1991).

<sup>11</sup> *Moore v. Strassel*, 4th Dist. Pickaway No. 97CA32, 1998 WL 101354 (February 26, 1998).

<sup>12</sup> R.C. 3109.051(D) and (F).

<sup>13</sup> R.C. 2705.031(B)(1), 2705.05, and 3109.051(K).

<sup>14</sup> *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 memorandum addresses only the plurality opinion.

<sup>15</sup> *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165 (2005).

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