

ANALYSIS OF MICHIGAN'S NEW GRANDPARENT VISITATION LAW

By: Richard S. Victor

On December 8, 2004, the Michigan House and Senate, through its Joint Conference Committee, unanimously passed a new grandparent visitation law which will create new rights for grandparents and grandchildren in the State of Michigan to be able to have contact with each other under certain circumstances, if that relationship has been denied following the death, divorce, children born out of wedlock, or other family dysfunction. This new law passed the Michigan Senate 37-0 and then moved to the Michigan House, where it passed 102-0. After the Governor signs it, it will take immediate effect. This law will create new rights for grandparents, following the Michigan Supreme Court decision of *Derose v. Derose* decided July 31, 2003, which held Michigan's old law unconstitutional. In that Michigan Supreme Court decision, the high court asked the Michigan legislature to redraft Michigan's law and insert new provisions in order to make Michigan's law constitutional so that grandparents and grandchildren would have access to see each other under these circumstances. This new law provides the safeguards required by the Michigan Supreme Court, which would protect parental rights, as guaranteed by the Constitution, while setting in place standards for grandparents who have been denied seeing their grandchildren and gives them an opportunity to come to court and show why they should have a right to see their grandchildren, if that request has been unreasonably denied.

Standing

The new law provides grandparents, in the following circumstances, rights to request relief from the courts to see their grandchildren, if they have been denied visitation by a parent:

- 1. If there is a divorce, separate maintenance, or annulment action pending**

- between the child's parents, or such an action has already been finalized.
2. The grandchild was born out-of-wedlock and the parents are not living together. However, this only applies, to grandparents of the alleged father if he has been declared legally to be the father of the child by a proper court proceeding and the child's father provides child support in accordance with his ability to provide support or care for his child.
 3. Legal custody of the child has been given to a person other than the child's parent or the child does not live in the parent's home (other than a child who has been adopted by a person who is not the child's stepparent).
 4. A grandparent has taken care of a grandchild during the year before they request visitation, whether or not they have done so by a valid court order.
 5. The child's parent, who is a child of the grandparent, is deceased.

If a grandparent falls into any of the above categories and has been denied visitation, they would have a right to bring an action in the court that has heard a prior action (such as a divorce or paternity action). If there has been no prior action filed in the court, then a new action would have to be brought in the circuit court in the county where the grandchild resides. Any person, who has legal custody, or an order for parenting time of the child, must be given notice of the grandparent visitation request.

Hearing

A hearing will be granted on a grandparent's request in the circuit court/family division assigned to the case. At the hearing, the court will presume that a "fit" parent's decision to deny a grandparent visitation request does not create harm to the child (mental, physical or emotional health). The grandparent who is requesting visitation has the duty to show the court by a preponderance of the evidence (51% or more) that the parent's decision to deny visitation to the grandparent does create harm, either mental, physical, or to the emotional health, of the child. If the grandparent does not prove this to the court, by a preponderance of proof, the court will dismiss the grandparent's petition. But, if the court is

convinced that the denial of visitation has the potential to create a risk of harm either to the physical, mental or emotional health of the child, then the court will follow a set of factors in determining what amount of grandparent visitation would be in the child's best interest.

Standards the Court will Follow in Determining The Amount of Grandparent Visitation

In determining the amount of and duration of grandparenting time that a court will allow, if the court believes the grandparent has overcome the presumption of a fit parent, the court will look to the following set of factors and consider all of them in making its decision:

- (a) The love, affection, and other emotional ties existing between the grandparent and the child.
- (b) The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent.
- (c) The grandparent's moral fitness.
- (d) The grandparent's mental and physical health.
- (e) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.
- (f) The effect on the child of hostility between the grandparent and the parent of the child.
- (g) The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child.
- (h) Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent.
- (i) Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason.
- (j) Any other factor relevant to the physical and psychological well-being of

the child.

If the court has determined that a grandparent has met the standard for rebutting the presumption, the court may refer the grandparent's request for visitation to mediation or to the friend of the court to attempt to resolve any dispute. Otherwise the court will decide the issue itself.

Agreement of Two Fit Parents to Deny Visitation

The law sets forth a provision that if two "fit" parents (not including a stepparent) sign an affidavit opposing a grandparent visitation request, then the court shall dismiss a grandparent's request for visitation.

Attorney Fees

The law sets forth that the court may order reasonable attorney fees to a prevailing party in any grandparent visitation request. This would be for either the parent or the grandparent, depending on the discretion of the court hearing the case.

Alternative Standard of Proof

The law indicates that in the event a challenge to this law is ever made regarding the standard which the Michigan legislature sets forth (preponderance of the evidence) through any appellate court challenge, and the Michigan Supreme Court later determines that the burden of proof should be made greater than preponderance of the evidence (such as clear and convincing evidence) then the statute would automatically revert from preponderance of the evidence to clear and convincing evidence. This section was intentionally put into the law by the Michigan legislature in order to make sure that Michigan's law will never be ruled unconstitutional again, and that grandparents will always be able to maintain their right to see their grandchildren, even if the burden of proof is changed from preponderance of the evidence to clear and convincing evidence.

Comments From Grandparent Rights Founder

The Grandparents Rights Organization, greatly applauds and respects the hard work and efforts of many individuals, including the many grandparents who testified in Lansing in support of this legislation. GRO especially wants to thank assistant director Kathy Germaine, State Representative Jim Howell, Senator Bruce Patterson and State Representative Edward Gaffney, for their conscientious work, diligent efforts and significant compassion that they have shown in their never-ending fight and crusade towards protecting grandparents, grandchildren and families in the state of Michigan in working towards passing this law. They have provided a wonderful gift to Michigan's families. Michigan is now the 46th state in the United States to re-enact and/or affirm their grandparent visitation law in order to protect the rights of grandparents and grandchildren to be able to maintain contact and to be part of a loving, nurturing, and familial relationship, if it has been denied unjustly because of death, divorce or other family dysfunction. For more information regarding this law or grandparents rights to visitation in the State of Michigan, please contact the National Non-Profit Grandparents Rights Organization at its direct line: (248) 646-7177 or check out their website at: www.grandparentsrights.org.

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