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Grandparent Visitation Right Statutes

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I. INTRODUCTION

Many states' grandparent visitation statutes contain provisions related to: (1) the best interest of the grandchild; (2) the treatment of a parent's death or deprivation of visitation rights; and (3) the effect of a subsequent adoption on grandparent visitation. While some statutes address additional issues, the scope of this article is limited to these three provisions.

This article compares Utah's new grandparent visitation statute with the statutes of other states. The second section summarizes the history and creation of Utah's new grandparent visitation statute. The third section looks at state statutes that set a best interest standard in grandparent visitation cases. The fourth section reviews the treatment of a parent's death or deprivation of custody, and its effect on grandparental visitation. The fifth section summarizes the effect of adoption on grandparent visitation rights. The sixth section concludes the article.

II. UTAH'S GRANDPARENT VISITATION STATUTE

Utah first enacted a law granting visitation rights to grandparents in 1977. Since that time, Utah law has generally provided grandparent visitation rights only in cases where the grandparent's child has died, divorced, or separated from his or her spouse.

In 1998, Utah amended its law to allow grandparents to receive visitation rights with their grandchildren even if the grandparent's son or daughter has not died or become a noncustodial parent through divorce or legal separation. Utah's revised grandparent visitation law allows visitation not only when the grandparent's child has died or has become a noncustodial parent through divorce or separation, but also when the...
parents are still together. Similar rights are expanding throughout the United States, with the benefit that grandchildren can receive additional love, respect, and responsibility; and grandparents are invigorated, gain valuable insights, and are spared unnecessary loneliness.

In Utah, the court may only grant grandparents reasonable visitation if it is in the best interest of the grandchild. If the parents are still together, the court must find that the following additional factors are met: (1) the grandparent is “a fit and proper person” to have visitation rights, (2) the grandparent has repeatedly attempted and been denied visitation with the grandchild, (3) there is no other way for the grandparent to visit the child than through court intervention, and (4) the grandparent has rebutted the presumption that the parent’s decision to refuse or limit visitation was reasonable. Adoption of the grandchild or termination of parental rights ends grandparent visitation rights under Utah’s new statute.

III. THE “BEST INTEREST” REQUIREMENT

A key element of grandparent visitation is the “best interest” standard. This is a key element because it gives the court power to protect a grandchild from situations in which grandparent visitation could be harmful. This element is required in all 50 states. The District of

5. UTAH CODE ANN. § 30-5-2 (Supp. 1998).
Columbia is the only jurisdiction that does not articulate a best interest requirement since it has no grandparent visitation statute. A determination of "best interest" in the context of grandparent visitation means looking at the "physical, intellectual, and moral well being" of the grandchild. Different states have specific factors required for consideration in determining whether or not grandparent visitation should be ordered.

IV. TREATMENT OF PARENTAL DEATH OR DEPRIVATION OF CUSTODY

A. States that Do Not Allow Grandparent Visitation Except in Cases of a Parent's Death or Deprivation of Custody

Twenty states still allow grandparents to petition for visitation rights only if a parent has died or if a parent has been deprived of custody in some way. A summary of these states' statutes follows.

In Alabama, visitation privileges are granted to the grandparents when the parents of the grandchild are divorcing or when the parent related by blood to the grandparents is deceased and the surviving parent denies reasonable visitation or loses custody of the child.

Arizona allows grandparent visitation only if the marriage of the parents has been dissolved for at least three months, either parent has been


10. See Appendix.
12. Among all fifty states, there are fourteen states whose statutes restrict grandparent visitation in cases involving a noncustodial parent compared to cases in which the grandparent seeking visitation is the parent of the noncustodial parent. These states include: Alabama (in cases involving death, parental rights termination, or relinquished custody), ALA. CODE § 30-3-4 (Supp. 1997); Colorado (in cases involving death of a parent), COLO. REV. STAT. § 19-1-117(1) (1997); Iowa (in cases of death, divorce, paternity, and unreasonably denied visitation), IOWA CODE ANN. § 598.34 (West Supp. 1998); Kansas (in cases of death of a parent), KAN. STAT. ANN. § 38-129 (1993); Kentucky (in all cases), KY. REV. STAT. ANN. § 405.021 (Michie Supp. 1996); Michigan (in cases involving death of a parent), Mich. Comp. Laws Ann. § 710.60 (West Supp. 1998); Minnesota (in cases involving death of a parent), MINN. STAT. ANN. § 257.022 (West 1998); Ohio (in cases involving death of a parent), OHIO REV. CODE ANN. §§ 3109.05.1, 11, 12 (Anderson 1996 & Supp. 1997); Oklahoma (in paternity matters, termination cases, and step-parent adoptions), OKLA. STAT. ANN. tit. 10, § 5 (West 1998); Pennsylvania (in cases involving death of a parent), 23 PA. CONS. STAT. ANN. §§ 5311-5313 (West 1991 & Supp. 1997); Rhode Island (in cases involving death of a parent), R.I. GEN. LAWS § 15-5-24.1 to .3 (1996); Tennessee (in cases involving death or absence of a parent), TENN. CODE ANN. §§ 36-6-302, -306, -307 (Supp. 1997); Utah (in cases of death or divorce of a parent), UTAH CODE ANN. § 30-5-2 (Supp. 1998); West Virginia (in cases of death, divorce, or paternity), W. VA. CODE §§ 48-2B-2 to -6 (1996).
missing for at least three months, or the grandchild was born out of wedlock. 14 Arizona requires the grandparents to petition for visitation rights in the same action in which their child's marriage is being dissolved and requires efforts to make grandparent visitation occur during their child's visitation period. 15

Arkansas allows grandparent visitation only if: (1) the marital relationship between the parents has ended in death, divorce, or legal separation; (2) the grandchild is in the custody or under the guardianship of someone other than one of the natural parents; or (3) the grandchild is illegitimate and, in the case of paternal grandparents, paternity has been established. 16 The court must provide a written decision providing the reasons for denial and may award attorneys fees and court costs if the petition for visitation was not well-founded, filed maliciously, or not in the best interest of the child. 17

In Colorado, a grandparent may receive grandparent visitation rights if: (1) the marriage of grandchild's parents has been declared invalid, or dissolved, or the parents are legally separated; (2) the legal custody of the grandchild has been given to someone other than the grandchild's parents (except in the case of adoption); or (3) if the grandchild's parent, who is the child of the grandparent, has died. 18 Colorado allows a petition for grandparent visitation to be filed no more frequently than once in every two years, absent a showing of good cause; and the court may make an order modifying or terminating grandchild visitation rights whenever it would serve the best interest of the child. 19

The District of Columbia has no provision for grandparent visitation rights.

In Georgia, a grandparent may file an original action for visitation or intervene in an action regarding the child: a custody action, divorce action, termination of parental rights action, visitation action, or stepparent (or blood relative) adoption. 20 No original action may be filed where the parents of the minor child are not separated and the child is living with both parents. 21 The court may order the grandparents to participate in mediation and appoint a guardian ad litem for the child, at the grandparents' expense. 22

20. GA. CODE ANN. § 19-7-3(b) (Supp. 1998).
21. GA. CODE ANN. § 19-7-3(b) (Supp. 1998).
22. GA. CODE ANN. § 19-7-3(d) (Supp. 1998).
Hawaii allows grandparent visitation if either or both parents of the child have died, or if the child’s parents are divorced or separated.\textsuperscript{23} Hawaii will not assume jurisdiction unless it is the home state of the child at the time the proceeding is commenced.\textsuperscript{24}

Indiana allows grandparent visitation only if the child’s parent is deceased, divorced in Indiana, or if the child was born out of wedlock.\textsuperscript{25} A court is not permitted to grant visitation rights to a paternal grandparent of a child born out of wedlock until paternity has been established.\textsuperscript{26} Visitation rights survive the establishment of paternity of a child by a court proceeding other than adoption.\textsuperscript{27}

In Louisiana, grandparent visitation is allowed if the grandparent’s child is deceased or interdicted.\textsuperscript{28}

Massachusetts allows grandparent visitation rights if the grandchild’s parents are divorced, separated (under a temporary order or judgment of separate support), deceased (one or both parents), or if the grandchild was born out of wedlock and paternity has been established.\textsuperscript{29} It also allows visitation if the child is in foster care.\textsuperscript{30}

In Michigan, grandparents can obtain visitation rights if: (1) one of the parents has died; (2) the marriage of the grandchild’s parents is declared invalid or dissolved by the court; (3) the court enters a decree of legal separation; or (4) legal custody of the child has been given to someone other than a parent or stepparent.\textsuperscript{31} The court is not permitted to enter an order that would restrict the movement of the grandchild if the restriction is solely for the purpose of allowing the grandparent to exercise visitation rights.\textsuperscript{32} Michigan allows grandparents to petition for visitation no more frequently than once in every two years.\textsuperscript{33}

Nebraska allows grandparent visitation if the child’s parent or parents are deceased, the marriage of the child’s parents has been dissolved (or dissolution is pending), or the parents have never married but paternity has been legally established.\textsuperscript{34}

\textsuperscript{23} HAW. REV. STAT. \S 571-46.3 (Supp. 1997).
\textsuperscript{24} HAW. REV. STAT. \S 571-46.3 (Supp. 1997).
\textsuperscript{25} IND. CODE ANN. \S 31-17-5-1(a) (Michie 1997).
\textsuperscript{26} IND. CODE ANN. \S 31-17-5-1(b) (Michie 1997).
\textsuperscript{27} IND. CODE ANN. \S 31-17-5-8(b) (Michie 1997).
\textsuperscript{28} LA. REV. STAT. ANN. \S 9:344 (West Supp. 1998).
\textsuperscript{29} MASS. GEN. LAWS ANN. ch. 119, \S 39D (West Supp. 1998).
\textsuperscript{30} MASS. GEN. LAWS ANN. ch. 119, §§ 23, 26 (West Supp. 1998).
\textsuperscript{31} MICH. COMP. LAWS ANN. \S 722.27b (West Supp. 1998).
\textsuperscript{32} MICH. COMP. LAWS ANN. \S 722.27b (West Supp. 1998).
\textsuperscript{33} MICH. COMP. LAWS ANN. \S 722.27b (West Supp. 1998).
\textsuperscript{34} NEB. REV. STAT. \S 43-1802 (1993).
In Nevada, a grandparent may obtain visitation with a minor child if one of the child’s parents is deceased, divorced or separated from the other parent, or if the parental rights of either parent have been terminated.\textsuperscript{35}

New Hampshire allows grandparent visitation in cases of divorce, legal separation, death of a parent, or unwed parents.\textsuperscript{36}

In North Carolina, grandparent visitation is allowed only when custody is at issue or if the child has been adopted by a stepparent or other relative of the child.\textsuperscript{37}

Ohio allows grandparent visitation only in cases of divorce, annulment, legal separation, child support, death of a parent, or unwed parents.\textsuperscript{38}

South Carolina allows grandparent visitation only if there has been a death, divorce, or separation, and if it will not interfere with the parent-child relationship.\textsuperscript{39}

Tennessee allows grandparent visitation in the case of death, divorce, separation, if the parent has been missing for at least six months, or if the court of another state has ordered grandparent visitation.\textsuperscript{40} In addition, if the child has been removed from the custody of the child’s parents, guardian, or custodian, and the child is placed in foster care, the grandparents may be allowed visitation if the grandparent would protect the child and the grandparent is not implicated in the commission of an abusive or criminal act against the child or the child’s parents.\textsuperscript{41}

In Vermont, grandparents may be awarded visitation as party of a custody or visitation action,\textsuperscript{42} or if a parent is deceased, incompetent, or has abandoned the child.\textsuperscript{43} The order may be modified or terminated\textsuperscript{44} and a new petition for grandparent visitation may not be filed sooner than one year after denial.\textsuperscript{45}

Virginia provides for grandparent visitation only in cases where a child has been placed in foster care.\textsuperscript{46} Visitation will only be allowed if the grandparent had an on-going relationship with the child prior to being placed in foster care.\textsuperscript{47}

\textsuperscript{38} Ohio Rev. Code Ann. \textsection{}s 3109.05.1, -11, -12 (Anderson 1996 & Supp. 1997).
\textsuperscript{40} Tenn. Code Ann. \textsection{} 36-6-306 (Supp. 1997).
\textsuperscript{41} Tenn. Code Ann. \textsection{} 36-6-302 (Supp. 1997).
\textsuperscript{46} Va. Code Ann. \textsection{} 63.1-204.1 (Michie 1995).
Washington allows grandparent visitation only if the parents have commenced an action for divorce.\textsuperscript{48}

\textbf{B. States which Allow Visitation Even in Cases Not Involving Parental Death or Deprivation of Custody}

Thirty other states have statutes, similar to Utah’s new statute, which allow visitation even if the grandparent’s child has not been separated from the grandchild by death or deprivation of custody. This approach creates a greater likelihood that grandparents will have access to their grandchildren. Contact between a grandchild and grandparent is beneficial to both.\textsuperscript{49} The child can learn respect, responsibility, and love; the grandparent can avoid loneliness, be invigorated by exposure to youth, and gain an insight into changes in society.\textsuperscript{50}

With this expansion of grandparent visitation rights there is the risk that, in certain cases, a grandparent who really should not be allowed access to a grandchild could still pursue visitation rights. This could happen in situations where a grandparent is abusive, has a criminal history, or is physically or mentally incapable of supervising a child. These ill-effects of grandparent visitation can be avoided by the court’s authority to deny grandparent visitation if it is not in the best interest of the grandchildren.

The Alaska statute allows grandparent visitation so long as the grandparent has established or attempted to establish ongoing personal contact with the grandchild and the visitation is in the best interest of the child.\textsuperscript{51} The statute does not restrict grandparent visitation to situations in which the grandchild’s parent has died or been through a divorce.\textsuperscript{52} After a decree or final order of custody has been entered, grandparents may only obtain visitation if they did not request it during a custody suit or if there has been a change in circumstances.\textsuperscript{53}

In California a petition for grandparent visitation is not to be filed while the parents are married unless: (1) the parents are living separately; (2) a parent has been absent for a month; (3) a parent joins in the petition with the grandparents; or (4) the child is not residing with either parent.\textsuperscript{54} Therefore, it is possible for grandparents to obtain visitation, as they can in


\textsuperscript{49} \textit{See}, e.g., Sightes v. Barker, 684 N.E. 2d 224, 231 (Ind. App. 1997).

\textsuperscript{50} Id.

\textsuperscript{51} \textit{Alaska Stat.} § 25-20-065 (Michie 1996).

\textsuperscript{52} \textit{Alaska Stat.} § 25-20-065 (Michie 1996).

\textsuperscript{53} \textit{Alaska Stat.} § 25-20-065 (Michie 1996).

Delaware and Illinois, even if the parents are still together, if one parent joins in the petition with the grandparents.

Connecticut allows "the right of visitation with respect to any minor child or children to any person, upon an application of such person."\(^55\) There is no restriction based upon the death or divorce of the grandparent's child.\(^56\) However, the statute provides that a court may terminate such visitation rights in a later action for custody, parental rights, or adoption.\(^57\)

The Delaware statute says that, if the natural or adoptive parents of the child are cohabiting as husband and wife, "grandparental visitation may not be granted over both parents' objection."\(^58\) Thus, as in California and Illinois, grandparents may obtain visitation with their grandchildren, even if the parents are still together, as long as only one parent objects.

Florida allows grandparent visitation if: (1) one or both parents have died; (2) the marriage of the parents has been dissolved; (3) a parent has deserted the child; (4) the child was born out of wedlock; or (5) the child is living with both parents and either parent has denied visitation.\(^59\) The court cannot order "that a child be kept within the state or jurisdiction of the court solely for the purpose of permitting visitation by the grandparents."\(^60\) Furthermore, Florida requires mediation in cases where grandparent visitation is disputed.\(^61\)

The Idaho statute provides that "[t]he district court may grant reasonable visitation rights to grandparents upon a proper showing that the visitation would be in the best interests of the child." Even without a parents death or divorce, grandparents visitation rights will not be precluded.

\(^{59}\) Fla. Stat. Ann. § 752.01(1) (West 1997) (the portions of this statute requiring grandparent visitation when a grandchild's parent has died or when a parent has denied visitation were declared unconstitutional because no showing of harm to the children is required prior to awarding grandparent visitation and because those portions of the statute interfere with parents' rights to raise their children without government intervention. Von Eiff v. Azizri, 720 So. 2d 510, 511 (Fla. 1998); Beagle v. Beagle, 678 So. 2d 1271, 1272 (Fla. 1996)). There are other examples of cases declaring a grandparent visitation statute unconstitutional for similar reasons. See, e.g., Brooks v. Parkerson, 454 S.E.2d 769 (Ga. 1995). The Georgia statute has been amended since it was ruled unconstitutional and now includes a provision requiring a showing of harm to the child unless grandparent visitation is granted. But see In re Petition of Santoro, 578 N.W.2d 369, 376 (Minn. Ct App. 1998) (constitutional challenge withstood).
In Illinois, a grandparent may receive visitation only if one of the following conditions exist: (1) the parents are separated on a permanent or indefinite basis; (2) one parent has been absent for more than a month without the spouse knowing where he or she is; (3) one (or both) parents died; (4) one parent joins in the petition for grandparent visitation; or (5) a sibling is in State custody. Visitation rights of a putative father will not be allowed until paternity has been established. Therefore, like California and Delaware, grandparents can obtain visitation rights, over the objection of one party, even if the parties are still together.

Iowa allows grandparent visitation in each of the following circumstances: (1) divorce or dissolution of marriage; (2) death; (3) foster care placement; (4) paternity; or (5) unreasonably restricted visitation by the grandparents' child, regardless of whether the grandparents' child is divorced.

In Kansas, grandparent visitation is allowed, even if death or divorce has not occurred, provided there is a substantial relationship between the child and the grandparent. Visitation rights are also allowed if the grandparents' child has died.

The Kentucky statute provides that the court may grant reasonable visitation rights to the grandparents. The statute does not require evidence of death or divorce. However, it specifically allows for grandparent visitation following the death of the grandparent's child if the grandparent has assumed the financial obligation of child support owed by the deceased parent.

Maine allows grandparent visitation if one of the child's parents has died or if "there is a sufficient existing relationship," or sufficient effort to establish one, between the child and the grandparent. The court may refer the case to mediation; if the court finds that either party fails to make a good faith effort to mediate, the court may dismiss the action, render a decision by default, assess attorney fees, or impose sanctions.

In Maryland, grandparents may obtain visitation without a showing that the parents are divorced or deceased.
Minnesota allows grandparent visitation if the grandparent’s child has died, or if there has been a proceeding for dissolution, custody, legal separation, annulment, or parentage. 73 It also allows visitation if the child has resided with the grandparents for a period of 12 months or more and is subsequently removed from the home. 74

Mississippi allows grandparent visitation in cases where the grandparent’s child has died, lost custody of the grandchild, or had their parental rights terminated. 75 It also allows grandparent visitation if the grandparent has established a viable relationship with the child and the parent or custodian of the child unreasonably denied the visitation. 76 Viable relationship means that the grandparent has “voluntarily and in good faith” supported the child financially for at least six months or has had frequent visitation (including occasional overnight visitation) for at least one year. 77

In Missouri, grandparents may obtain visitation if their child has died, the parents have filed for dissolution of the marriage, or if a grandparent is unreasonably denied visitation with the child for more than ninety days. 78 The court may order mediation in cases where a grandparent has been denied visitation with a grandchild. 79 In addition, a guardian ad litem may be appointed if it is in the best interest of the grandchild. 80 A home study may be ordered, and the child may be consulted in determining the best interest of the grandchild. 81

The Montana statute allows grandparent visitation under any circumstances in which it is found to be in the best interest of the grandchild. 82 A grandparent is not allowed to petition for visitation more than once every two years unless there has been a significant change in circumstances related to the grandchild, the grandchild’s parents or guardian, or the grandchild’s grandparent. 83

New Jersey allows grandparent visitation even if there has not been a death or divorce. 84

In New Mexico, grandparents are allowed visitation in the case of death of the grandchild’s parent(s), dissolution of a marriage, legal

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73. MINN. STAT. ANN. § 257.022 (West Supp. 1998).
74. MINN. STAT. ANN. § 257.022 (West Supp. 1998).
75. MISS. CODE ANN. § 93-16-3(1) (1994).
76. MISS. CODE ANN. § 93-16-3(2) (1994).
77. MISS. CODE ANN. § 93-16-3(3) (1994).
78. MO. ANN. STAT. § 452.402 (West 1997).
79. MO. ANN. STAT. § 452.403 (West 1997).
80. MO. ANN. STAT. § 452.402 (West 1997).
81. MO. ANN. STAT. § 452.402 (West 1997).
separation, or in a paternity case. Visitation is also allowed if the child is under six months of age and has lived with a grandparent for three months and is subsequently removed. For children age six months or over, visitation is allowed if the child has lived with a grandparent for six months with subsequent removal.

New York allows grandparents to seek visitation rights with their grandchildren if one or both parents are deceased or "where circumstances show that conditions exist which equity would see fit to intervene." North Dakota law states that the grandparents must be granted reasonable visitation unless it is found to be against the best interest of the grandchild. Visitation may be sought in a divorce proceeding, but may also be obtained even if no divorce action has been filed. Mediation and/or arbitration may be required, and the grandparents must be joined in any proceeding to terminate parental rights once visitation rights have been awarded.

Oklahoma allows grandparent visitation whenever the district court deems it to be appropriate. In the case of a child born out of wedlock, the father's parents can obtain visitation rights only after the father has been judicially determined to be the child's father. If the court has terminated the rights of the illegitimate child's parents, the grandparents may only obtain visitation rights if a previous grandparental relationship existed between the grandparents and the child.

The Oregon statute provides that if it is in the best interest of the grandchild and an ongoing personal relationship exists, visitation will be allowed. It will also be allowed: (1) upon a showing that the grandparent has established or attempted to establish ongoing contact with the child, but the custodian of the child has denied reasonable visitation; (2) any time during a domestic relations suit; or (3) after a final decree of divorce, if the parent did not file a petition during the divorce or if there has been a change of circumstances.

Pennsylvania allows grandparent visitation rights, or even partial custody, in cases of death or divorce. Grandparents may also petition for partial custody or visitation rights if the grandchild lived with the

grandparent for at least twelve months and the grandchild is subsequently removed from the home by the parents. The petition will not be granted if the court finds that it would interfere with the parent-child relationship.

Rhode Island's statute is nearly identical to the Utah statute. It allows grandparent visitation rights upon notice to both parents and to the child. Like the Utah statute, five things must be established: (1) visitation is in the best interest of the grandchild; (2) the grandparent is a fit and proper person to have visitation; (3) the grandparent has made repeated attempts to visit the grandchild during a six month period but was not allowed to do so; (4) there is no other way for the grandparent to visit the grandchild other than through court intervention; and (5) the grandparent has, by clear and convincing evidence, successfully rebutted the presumption that the parent's decision to refuse grandparent visitation was reasonable.

South Dakota allows grandparent visitation with or without petition by the grandparents. No restriction is indicated based upon death or divorce of the grandchild's parents.

In Texas, grandparents may obtain visitation in the following circumstances: (1) incarceration, incompetence, or death of the grandparent's child; (2) divorce or separation of the parents; (3) abuse or neglect of the child by a parent; (4) adjudication that the child is in need of supervision; (5) termination of parental rights; or (6) the child has lived with the grandparent for at least six months during the twenty-four month period preceding filing of the petition. The petition can either be by way of an original suit or a suit for modification.

In West Virginia, grandparents may obtain visitation rights in cases of divorce, annulment, or separation. Grandparents may also obtain visitation if their child is deceased, unwed, or if the grandchild resided with the grandparents for six of the preceding twenty-four months and the parents subsequently refused visitation. Visitation may be terminated or modified if it is in the best interest of the grandchild or if the grandparent

97. 23 PA. CONS. STAT. ANN. § 5313(a) (West Supp. 1997).
98. 23 PA. CONS. STAT. ANN. § 5313(a) (West Supp. 1997).
has materially violated the terms and conditions of the order of visitation.\textsuperscript{108}

Wisconsin allows grandparent visitation in the case of death of the grandparent’s child.\textsuperscript{109} It is also allowed in cases where the grandparent has “maintained a relationship similar to a parent-child relationship with the child.” Furthermore, it is allowed in paternity cases where paternity has been established, the child has not been adopted, and the parents have not married.\textsuperscript{110}

The Wyoming statute allows grandparent visitation without restricting visitation to situations in which the grandchild’s parent has died or been through a divorce.\textsuperscript{111} All that is required is that the visitation be in the grandchild’s best interest and that the rights of the grandchild’s parents not be substantially impaired by the visitation.\textsuperscript{112} Grandparent visitation rights may be terminated for good cause.\textsuperscript{113}

V. GRANDPARENT VISITATION RIGHTS IF THE CHILD HAS BEEN ADOPTED

In Utah, adoption of the child or parental rights termination ends grandparent visitation rights.\textsuperscript{114} Like Utah, four other states\textsuperscript{115} do not allow grandparent visitation if the child has been adopted, even if it is a stepparent adoption. Twenty-two states\textsuperscript{116} allow post-adoption grandparent visitation if the adoption is by a stepparent or other relative. This is perhaps the better approach because it allows visitation in circumstances such as when a grandchild has been adopted by one set of grandparents, following the death of the parents, but the other set of grandparents still wants access to the grandchild.\textsuperscript{117} Likewise it could allow visitation where a stepparent adoption follows a divorce or a parent’s death. The court still has discretion, under the best interest standard, to deny visitation in appropriate cases. This preserves the relationship between grandparents and grandchildren without interfering with completely new family units.

\begin{itemize}
\item \textsuperscript{108} W. VA. CODE § 48-2B-7 (1996).
\item \textsuperscript{109} WIS. STAT. ANN. § 880.155 (West 1991 & Supp. 1997).
\item \textsuperscript{110} WIS. STAT. ANN. § 767.245 (West 1993 & Supp. 1997).
\item \textsuperscript{111} WYO. STAT. ANN. § 20-7-101 (Michie 1997).
\item \textsuperscript{112} WYO. STAT. ANN. § 20-7-101 (Michie 1997).
\item \textsuperscript{113} WYO. STAT. ANN. § 20-7-101 (Michie 1997).
\item \textsuperscript{114} UTAH CODE ANN. § 30-5-2 (Supp. 1998).
\item \textsuperscript{115} ARIZ. REV. STAT. ANN. § 25-409 (West Supp. 1997); IDAHO REV. STAT. § 19-1-117(1)(b) (1997); ME. REV. STAT. ANN. tit. 19-A, § 1802 (West 1998) (grandparent visitation rights continue after termination of parental rights, but only until the grandchild's adoption); MASS. GEN. LAWS ANN. ch. 119, § 39D (West Supp. 1998); UTAH CODE ANN. § 30-5-2 (Supp. 1998) (termination of parental rights also terminates grandparent visitation rights).
\item \textsuperscript{116} Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, and Wyoming.
\item \textsuperscript{117} See In re Petition of Santoro, 578 N.W.2d 369, 376 (Minn. Ct. App. 1998).
\end{itemize}
such as when an illegitimate grandchild is adopted at birth and the grandparents have never really known the grandchild. Six states\textsuperscript{118} allow grandparent visitation under other circumstances. Seventeen states\textsuperscript{119} do not discuss grandparent visitation rights in their grandparent visitation statutes. In these states, grandparent visitation rights are governed by the state’s adoption laws. The following is a summary of how adoption affects grandparent visitation rights throughout the country.

Alabama allows post-adoption visitation only in cases where the child is adopted by a stepparent, grandfather, grandmother, brother, half-brother, sister, half-sister, aunt, uncle, or their spouse.\textsuperscript{120}

Alaska allows grandparent visitation, following adoption of the grandchild, if the request is made prior to, during, or after (if based on a change of circumstances) an adoption or divorce proceeding.\textsuperscript{121}

The Connecticut statute says that, after a person has been granted visitation rights, a later adoption proceeding “may include” an order terminating the visitation rights.\textsuperscript{122} Since the term “may” is used, there is a possibility that grandparent visitation rights can survive an adoption proceeding.\textsuperscript{123}

In Florida, termination of parental rights does not affect the rights of grandparents.\textsuperscript{124} However, the Florida act does not provide for grandparental visitation rights for children placed for adoption except in the case of adoption by a stepparent.\textsuperscript{125}

The Georgia statute allows grandparent visitation rights, following adoption of the child, only if the child has been adopted by “the child’s blood relative or by a stepparent.”\textsuperscript{126}

Illinois allows grandparent visitation, following adoption, only if the adopting parents are related to the biological parents of the child.\textsuperscript{127}

In Indiana, visitation rights survive adoption only if the adoption was by a stepparent or close biological relative.\textsuperscript{128}

Iowa allows grandparent visitation following a stepparent adoption.\textsuperscript{129}

\textsuperscript{118} Alaska, Connecticut, Kentucky, Michigan, Oklahoma, and Wisconsin.

\textsuperscript{119} Arkansas, California, Delaware, Hawaii, Idaho, Louisiana, Maryland, Nebraska, Nevada, New Jersey, New York, Ohio, Rhode Island, South Carolina, Virginia, Washington, and West Virginia.

\textsuperscript{120} ALA. CODE § 26-10A-31 (1975).

\textsuperscript{121} ALASKA STAT. § 25.20.065 (Michie 1996).

\textsuperscript{122} CONN. GEN. STAT. ANN. § 46b-59 (West 1958).

\textsuperscript{123} See CONN. GEN. STAT. ANN. § 46b-59 (West 1958).

\textsuperscript{124} FLA. STAT. ANN. § 39.475 (West 1998).

\textsuperscript{125} FLA. STAT. ANN. §§ 752.01(3), .07 (West 1997).

\textsuperscript{126} GA CODE ANN. § 19-7-3(b) (Supp. 1998).


\textsuperscript{128} IND. CODE ANN. § 31-17-5-9 (Michie 1997).

\textsuperscript{129} IOWA CODE ANN. § 598.35 (West Supp. 1998).
In Kansas, in cases where a grandparent’s child has died, visitation with the grandchild is allowed even after a stepparent adoption.\textsuperscript{130}

The Kentucky statute provides that, once a grandparent has been granted visitation rights with a grandchild, those rights are not to be adversely affected by the termination of parental rights belonging to the grandparent’s child.\textsuperscript{131}

In Michigan, an order of adoption does not prohibit the court from entering an order for grandparent visitation.\textsuperscript{132}

Minnesota allows grandparent visitation following an adoption, only if the adoption was to a stepparent or grandparent.\textsuperscript{133}

The Mississippi statute provides for grandparent visitation following adoption if one of the legal parents is also a natural parent of the child or if one of the legal parents was related to the child by blood or marriage prior to the adoption.\textsuperscript{134}

In Missouri, grandparent visitation “may terminate” upon the adoption of the grandchild by someone other than a stepparent or blood relative.\textsuperscript{135}

Montana allows grandparents to have reasonable rights of contact with a child, if it is in the child’s best interest and the child has not been adopted by someone other than a stepparent or grandparent.\textsuperscript{136}

New Hampshire allows grandparent visitation in adoption cases only where the adoption was by a stepparent.\textsuperscript{137}

In New Mexico, grandparents can seek visitation rights after adoption by the following: a stepparent, relative, person designated, by will, to care for the grandchild, or person who sponsored the grandchild at baptism or confirmation conducted by a recognized religious organization.\textsuperscript{138}

In North Carolina, grandparents may seek visitation rights only if the child has been adopted by a stepparent or other relative and if it is in the best interest of the child.\textsuperscript{139}

North Dakota allows grandparent visitation if the child has been adopted by a stepparent or grandparent.\textsuperscript{140} In addition, if the grandparent has previously been awarded visitation rights, they must be joined in any later proceeding for termination of parental rights.\textsuperscript{141}

\textsuperscript{130} KAN. STAT. ANN. § 38-129(b) (1993).
\textsuperscript{131} KY. REV. STAT. ANN. § 405-021(1) (Michie Supp. 1996).
\textsuperscript{132} MICH. COMP. LAWS ANN. § 710.60 (West Supp. 1998).
\textsuperscript{133} MINN. STAT. ANN. § 257.022 (West Supp. 1998).
\textsuperscript{134} MISS. CODE ANN. § 93-16-7 (1994).
\textsuperscript{135} MO. ANN. STAT. § 452.402 (West 1997).
\textsuperscript{136} MONT. CODE ANN. § 40-9-102 (1997).
\textsuperscript{138} N.M. STAT. ANN. § 40-9-2 (Michie 1994).
\textsuperscript{140} N.M. CENT. CODE § 14-09-05.1 (1997).
\textsuperscript{141} N.M. CENT. CODE § 14-09-05.1 (1997).
Oklahoma allows grandparent visitation, following any adoption, if the grandparent’s visitation rights were established prior to the adoption and if it is in the best interest of the child for the visitation rights to continue. If parental rights have been terminated, grandparent visitation rights will also end if the child is placed for adoption prior to attaining six months of age.

Oregon allows grandparent visitation, following a stepparent adoption, if a motion is filed no later than thirty days after service of the petition. Furthermore, the court must find such an order is 1) in the best interest of the child; 2) there has been a substantial relationship between the child and grandparent; and 3) the visitation rights do not substantially interfere with the relationship between the child and the adoptive family.

In Pennsylvania, grandparent visitation rights end upon adoption of the child by someone other than a stepparent or grandparent.

In South Dakota, grandparent visitation rights also end upon the adoption of the child by someone other than a stepparent or grandparent.

Tennessee allows grandparent visitation, following an adoption, only if the adoption was by a stepparent or other relative of the child. In such cases, visitation will be allowed if the grandparent has had a sufficient existing relationship with the child.

Texas allows visitation following adoption only if the adoption was by the child’s stepparent.

In Vermont, grandparent visitation automatically terminates upon adoption of the grandchild by someone other than a stepparent, grandparent, or other relative.

Wisconsin only allows grandparent visitation following an adoption of the grandchild in cases where the grandparent’s child has died.

Wyoming allows grandparent visitation if it is in the best interest of the child, if the child has not been adopted by someone other than a stepparent, and if the visitation will not substantially impair the rights of the parents.

Grandparent visitation statutes in seventeen states neither allow nor prohibit post-adoption visitation for grandparents. In these states, the post-adoption relationship between the grandparent and grandchild is governed by state adoption laws.

VI. CONCLUSION

All fifty states require a consideration of the "best interest" standard in grandparent visitation cases. Some states articulate specific factors in determining the best interest of grandchildren.

Some state statutes only allow grandparent visitation in cases of death or divorce of a parent, etc., while other statutes allow grandparent visitation even when the parents are still together. Twenty states only allow grandparent visitation in cases of death, divorce, or other deprivation of custody. Thirty states allow grandparent visitation even when the parents are still together. The trend is toward more liberal grandparent visitation rights.

Several states treat post-adoption grandparent visitation rights in different ways. Five states (Arizona, Colorado, Massachusetts, Maine, and Utah), allow no grandparent visitation following adoption. Twenty-two states allow grandparent visitation, following an adoption, only if the adoption was by a stepparent or other relative. Three states (Connecticut, Kentucky, and Oklahoma), may allow all previously determined visitation rights to continue. Two states (Alaska and Michigan), have broad discretion in allowing visitation rights following adoption. One state, Wisconsin, allows grandparent visitation to survive an adoption only if the grandparent's child has died. Seventeen states do not have a provision in their grandparent visitation statutes which addresses grandparent visitation rights after a child has been adopted. In these states adoption statutes determine the grandparents' rights.

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155. See supra text accompanying notes 51 - 113.

156. See supra note 116.

157. See supra note 119.

Expanding grandparent visitation rights is important because a large percentage of marriages end in divorce. Without statutory protection, grandparents with close attachments to their grandchildren could be left out of their grandchildren's lives. Grandparents who are able to visit their grandchildren can benefit the children by adding to the love, guidance, and support given by their parents. Where grandparents may negatively affect the family, the best interest standard (which now exists in every state) will protect grandchildren.

relationships between an adopted person and his natural relatives, making the person a "stranger to his former relatives for all purposes").
SPECIAL FACTORS LOOKED AT BY VARIOUS STATES IN DETERMINING WHETHER OR NOT GRANDPARENT VISITATION IS APPROPRIATE

Alaska, in addition to requiring the court to consider the best interest of the child, also has a requirement that the grandparent has established or attempted to establish ongoing personal contact with the grandchild. ALASKA STAT. § 25-20-065 (Michie 1996).

Arizona lists some of the relevant factors that the court should consider in determining the best interests of the child: (1) the historical relationship between the grandchild and grandparent; (2) the motivation of the grandparent; (3) the motivation of the person denying visitation; (4) the quantity of visitation time requested and the impact this may have on the child’s regular activities; and (5) if one or both of the grandchild’s parents have died, the benefit of continuing an “extended family relationship.” ARIZ. REV. STAT. ANN. § 25-409 (West Supp. 1997).

In California cases where the grandparent is petitioning for visitation rights, separate from a custody action, the court must find a preexisting relationship that justifies the visitation and balance the interest of the grandchild in having visitation with the grandparent with the right of the parents to exercise their parental authority. CAL. FAM. CODE § 3104(a) (West 1994).

Florida lists the following factors for the court to consider in determining the best interest of the minor grandchild: (1) willingness of the grandparents to encourage a close relationship between the grandchild and the parents; (2) length and quality of the prior relationship between the grandchild and the grandparents; (3) preference of the grandchild; (4) mental and physical health of the grandchild; (5) mental and physical health of the grandparents; and (6) other factors that are necessary under the particular circumstances. FLA. STAT. ANN. § 752.01(2) (West 1997).

In Georgia, in addition to a finding that the best interests of the grandchild will be served by such visitation, the court must also find that the health or welfare of the grandchild would be harmed unless such visitation is granted. GA. CODE ANN. § 19-7-3(c) (Supp. 1998).

In Indiana, the court “may consider whether a grandparent has had or has attempted to have meaningful contact with the child,” in determining the best interest of the grandchild. IND. CODE ANN. § 31-17-5-2 (Michie 1997).

Kansas requires that, in addition to looking at the best interest of the grandchild, the court must find a substantial relationship between the grandchild and the grandparent. KAN. STAT. ANN. § 38-129(a) (1993).
Maine lists the following factors to be considered in determining the grandchild’s best interest: (1) age of the grandchild; (2) relationship of the grandchild with the grandparents; (3) preference of the grandchild, if old enough; (4) “duration and adequacy of the child’s current living arrangements and the desirability of maintaining continuity”; (5) stability of proposed living arrangements; (6) motivation of the parties and their capacities to give love, affection, and guidance; (7) grandchild’s adjustment to present home, school, and community; (8) capacity of the parent and grandparent to cooperate in child care; and (9) other factors bearing on the physical and psychological well-being of the grandchild. ME. REV. STAT. ANN. tit. 19-A, § 1803.3 (West 1998). In addition to looking at the best interest of the grandchild, Maine requires either a showing that there is a sufficient existing relationship between the grandparent and the grandchild or that there has been a sufficient effort to establish such a relationship. ME. REV. STAT. ANN. tit. 19-A, § 1803.1.B-C (West 1998).

In Minnesota, in addition to considering the best interest of the child, the court must: (1) find that the grandparent has established emotional ties “creating a parent and child relationship”; (2) find that the visitation rights would not interfere with the relationship between the grandchild and the custodial parent; and (3) consider the preference of a grandchild of sufficient age. MINN. STAT. ANN. § 257.022 (West Supp. 1998).

In cases where a grandparent seeks visitation that has been unreasonably denied, besides looking at the best interests of the grandchild, Mississippi requires the courts to find that the grandparent has established a viable relationship with the grandchild (i.e., support the grandchild financially in whole or in part for six months or have frequent visitation including overnight visitation for at least a year). MISS. CODE ANN. § 93-16-3(2) (1994).

In Missouri, as an alternative to looking at the best interest test, the court may look at whether or not visitation would endanger the grandchild’s physical health or impair his emotional development. MO. ANN. STAT. § 452.402.2 (West 1997).

In determining the best interest of the grandchild, Nebraska requires evidence concerning the beneficial nature of the relationship of the grandparent to the grandchild. NEB. REV. STAT. § 43-1802 (1993).

The factors looked at in New Hampshire in addition to the best interest of the grandchild are: (1) whether the visitation would interfere with any parent-child relationship; (2) the nature of the relationship between the grandparent and grandchild; (3) the circumstances that ended the family relationship; (4) recommendations of the guardian ad litem; (5) preferences of the grandchild; (6) and other appropriate factors. N.H. REV. STAT. ANN. § 458:17-d II (1992).
New Jersey lists its “best interest” factors as: (1) the relationship between the grandchild and applicant; (2) the relationship between parents and the applicant; (3) the amount of time that has elapsed since the grandparent last had contact with the grandchild; (4) the effect that visitation will have on the relationship between the grandchild and the person the grandchild is living with; (5) time sharing schedules of divorced parents; (6) good faith of the applicant; (7) history of abuse; and (8) other factors. N.J. STAT. ANN. § 9:2-7.1.b (West Supp. 1998). Proof of the best interest of the child must be by a preponderance of the evidence and it is prima facie evidence of best interest if the grandparent has been a full-time caretaker for the child. N.J. STAT. ANN. § 9:2-7.1 (West Supp. 1998).

In addition to looking at the best interest of the child, New Mexico courts consider: (1) prior interaction between the grandchild and grandparent and prior interaction between the grandparent and the parents; (2) the present relationship between the grandparent and each parent; and (3) time-sharing or visitation arrangements that were in place prior to filing the petition. N.M. STAT. ANN. § 40-9-2 (Michie 1994). The court may order mediation or evaluation in regard to grandparent visitation. N.M. STAT. ANN. § 40-9-2 (Michie 1994).

In North Dakota, in addition to looking at the best interest of the grandchild, the court must consider the amount of personal contact that has occurred between the grandparents and the grandchild and between the grandparents and the parents. N.M. CENT. CODE § 14-09-05.1 (1997).

Ohio lists the following factors to be considered in deciding whether or not to allow grandparent visitation: (1) prior interaction; (2) geographical location; (3) time schedules; (4) age of the child; (5) child’s adjustment to home, school, and community; (6) child’s wishes; (7) health and safety of child; (8) amount of time child has available with siblings; (9) mental and physical health of all parties; (10) willingness to reschedule missed visits; (11) abuse or criminal activity; (12) parent’s willfully denied visitation; (13) plans to move out of state; and (14) other factors. OHIO REV. CODE ANN. § 3109.05.1 (Anderson Supp. 1997).

Oklahoma lists as factors to be considered in determining the best interest of the grandchild: (1) the willingness of the grandparents to encourage a close relationship between the grandchild and the parents; (2) the length and quality of the prior relationship between the grandchild and grandparents; (3) preference of the grandchild; (4) mental and physical health of the grandchild and grandparents; and (5) other factors. OKLA. STAT. ANN. tit. 10, § 5 (West 1998).

Pennsylvania, in addition to requiring courts to look at the best interest of the grandchild, requires the court to consider whether or not the visitation would interfere with the parent-child relationship and the amount
of contact between the grandparents and the child, prior to the application. 23 PA. CONS. STAT. ANN. §§ 5311-5313 (West 1991 & Supp. 1997).

As mentioned previously, the Rhode Island statute, like the Utah statute, requires five things to be established in order to allow grandparent visitation, other than in cases of death or divorce: (1) visitation is in the best interest of the grandchild; (2) the grandparent is a fit and proper person to have visitation; (3) the grandparent has made repeated attempts to visit the grandchild (during a six month period) but was not allowed to do so; (4) there is no other way for the grandparent to visit the grandchild other than through court intervention; and (5) the grandparent has, by clear and convincing evidence, successfully rebutted the presumption that the parent’s decision to refuse grandparent visitation was reasonable. R.I. GEN. LAWS § 15-5-24.3(a)(2) (1996).

In South Carolina, in addition to looking at the best interest of the grandchild, the court is to consider the nature of the relationship between the grandchild and the grandparents prior to the filing of the petition and make sure that the visitation rights will not interfere with the parent/child relationship. S.C. CODE ANN. § 20-7-420(33) (Law Co-op. Supp. 1997).

In Tennessee, the factors looked at in determining the best interest of the child are: (1) length and quality of the prior relationship between the grandchild and grandparent; (2) the existing emotional ties between the grandchild and the grandparent; (3) the preference of a child of sufficient age; (4) the effect of hostility between the parent and the grandparent; (5) good faith of the petitioner; (6) time-sharing arrangements between divorced parents; and (7) relationship between the grandparents and a missing or deceased parent. TENN. CODE ANN. § 36-6-306(a)(4); -307(d)(2) (Supp. 1997).

As mentioned previously, if the parents are still together, the Utah courts, in addition to considering the best interest of the grandchild, must find that the following factors are met: (1) the grandparent is “a fit and proper person” to have visitation rights; (2) the grandparent has repeatedly attempted and been denied visitation with the grandchild; (3) there is no other way for the grandparent to visit the child than through court intervention; and (4) the grandparent has rebutted the presumption that the parent’s decision to refuse or limit visitation was reasonable. UTAH CODE ANN. § 30-5-2 (Supp. 1998).

The best interest factors listed in Vermont are: (1) the love, affection and emotional ties between the grandparents and the grandchild; (2) the capacity and disposition of the parties to give the grandchild love, affection, and guidance; (3) the benefit of maintaining the relationship between the grandchild and the grandparent; (4) moral fitness; (5) mental and physical health of the parties; (6) preference of the grandchild; (7) willingness of the grandparent to facilitate and encourage the grandchild’s
relationship with other parties; and (8) other factors. VT. STAT. ANN. tit. 15, § 1013(b) (1989).

In addition to the best interest test, Virginia requires the court to consider whether or not the grandparent had an on-going relationship with the child prior to placement in foster care. VA. CODE ANN. § 63.1-204.1 (Michie 1995).

The best interest standards in Washington are: (1) strength of relationship between the grandchild and grandparent; (2) relationship between the parents or guardians and the grandparent; (3) nature and reason for either parent’s objection to granting visitation; (4) the effect that granting visitation will have on the relationship between the child and the parents or guardians; (5) the residential time sharing arrangements of the parents; (6) good faith of the grandparent; (7) criminal history or abuse history of the grandparent; and (8) other factors. WASH. REV. CODE ANN. § 26.09.240(6) (West 1997). Visitation will be presumed to be in the best interest of the grandchildren if a significant relationship exists with the grandparent. WASH. REV. CODE ANN. § 26.09.240(5)(a) (West 1997).

In West Virginia, in addition to looking at the best interest of the grandchild, the court must look at the amount of personal contact between the grandparent and the grandchild and whether or not the visitation would interfere with the parent-child relationship. W. VA. CODE §§ 48-2B-2 through -4; -6 (1996).

Under Wisconsin law, a court is to look at the following factors in addition to the best interest of the grandchild: (1) the grandchild’s wishes; and (2) in paternity cases where the grandchild has not married or been adopted and where paternity has been established (if the grandparent filing is the father’s parent), the grandparent has maintained or attempted to maintain a relationship with the grandchild, and the grandparent is not likely to act in a manner contrary to decisions that are made by a parent who has legal custody of the grandchild and that are for the grandchild’s physical, emotional, educational, or spiritual welfare. WIS. STAT. ANN. § 880.155 (West 1991 & Supp. 1997); § 767.245 (West 1993 & Supp. 1997).

Wyoming, in addition to looking at the best interest of the grandchild, looks at whether or not the rights of the parents will be substantially impaired by an order of grandparent visitation. WYO. STAT. ANN. § 20-7-101 (Michie 1997).