

What Rights do Grandparents Have After Divorce?

Q: Our son and his wife divorced in 2003. Since then, our son has moved away and is late in his support payments, and now our former daughter-in-law will not allow us to see our grandchildren. What can we do?

A: The Ohio Legislature passed laws in 1990 that provide a method for grandparents of divorced or deceased parents to get visitation orders so that they can maintain relationships with their grandchildren. Grandparents may also obtain court-ordered visitation with an illegitimate child. In addition, grandparents may intervene in the parents' divorce case at any time, even after the divorce has been granted, and ask the court to award them their own visitation schedule with their grandchildren. Grandparents may also file a complaint for companionship in juvenile court in cases where the grandchild is illegitimate or where their own child is deceased and they are having trouble visiting his or her offspring. The 1990 Ohio laws provide that a court may order visitation if it determines this to be in the best interest of the children. The court must consider 16 factors, including the wishes of the parents of the child in making that determination.

Q: We are having a family dispute and now our son and daughter-in-law won't let us see our grandchildren. What can we do?

A: Probably nothing. Grandparents' visitation rights are statutory. There is no statutory right to a visitation order when the family is intact. Only children that are illegitimate, or have divorced or deceased parents may be the subject of court-ordered visitation. The reason is that generally, the right to be free from governmental interference in everyday life is a constitutionally protected right. Therefore, unless the state has some compelling interest (such as protecting a child that is illegitimate, has a deceased parent or is a ward of the court through divorce) it cannot order visitation.

Q: We don't approve of our daughter's lifestyle and we think we should have custody of our grandchildren. How difficult is it to get custody?

A: It's fairly difficult. You may file a complaint for custody in juvenile court. At the hearing, however, the court may not give you custody even if you can show it may be in the children's best interest to be in your custody. You have to prove that both parents are UNFIT and, unless there is some clear sign of abuse or neglect, that is difficult to prove.

Q: We have court-ordered visitation with our grandchildren, but our former daughter-in-law remarried and her new husband has filed to adopt the children. She says that after the adoption our court order is no good and we will not be able to see them anymore. Is she right?

A: Yes--if she and your son are divorced, or if they were never married. According to the language of the Adoption Statute, your visitation rights will be terminated by the stepparent adoption, and

any visitation following the adoption would continue strictly on a voluntary basis. This statutory language does not apply where the natural parent is deceased, however, so if your son is deceased, you will still be able to hang on to your visitation rights after the adoption. There is, from time to time, movement in the legislature to change the Adoption Statute language, but this matter is not currently being addressed.

10/10/2012

This "Law You Can Use" consumer legal information column was provided by the Ohio State Bar Association. It was prepared by Richard L. Innis, a Columbus attorney with the firm of Innis & Barker Co., L.P.A.

Articles appearing in this column are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

