

GRANDPARENT VISITATION RIGHTS

“What do you mean I can’t see my Grandkids ? These are supposed to be my golden years!”

Grandparents Had No Rights in New York for Hundreds of Years

For literally hundreds of years, Grandparents in New York had no legal rights whatsoever to have a relationship with their Grandchildren. Then finally in 1966 the Legislature enacted section 72 of the Domestic Relations Law and for the first time granted Grandparents the right to go to Court to seek visitation rights. These rights, however, only applied to a very limited number of Grandparents. As originally enacted, visitation was available only when the Parents' Child had died. Grandparents had no independent right to maintain the proceeding and their rights were derived entirely from the deceased parent.



Meaningful Rights of Grandparents Finally Arrive

Then in 1975, the statute was amended to allow a Grandparent access to the Courts not only where a Parent had died, but also where circumstances show that conditions exist which justify the continuation of a previously existing Grandparent/Grandchild relationship (New York Domestic Relations Law Section 72(1)).

New York’s highest Court of Appeals provided further guidance to this law, noting:

“[A Grandparent’s access to the Courts for visitation with the Grandchild] should be allowed, only after it has examined all the relevant facts. Although an intact family is not beyond the reach of the statute, that fact and the nature and basis of the Parents’ objection to visitation are among the several circumstances which should be considered by Courts deciding the standing question. Also an essential part of the inquiry is the nature and extent of the Grandparent-Grandchild relationship. It is not sufficient that the grandparents allege love and affection for their Grandchild. They must establish a sufficient existing relationship with their Grandchild, or in cases where that has been frustrated by the Parents, a sufficient effort to establish one, so that the Court perceives it as one deserving the court’s intervention. If the Grandparents have done nothing to foster a relationship or demonstrate their attachment to the Grandchild, despite opportunities to do so, then they will be unable to establish that conditions exist where ‘equity would see fit to intervene.’ The evidence necessary will vary in each case but what is required of Grandparents must always be measured against what they

could reasonably have done under the circumstances” (In Emanuel S. v. Joseph E., 78 N.Y.2d 178, 182, 577 N.E.2d 27, 29-30, 573 N.Y.S.2d 36, 38-39 (1991).

The Court of further explained in Emanuel S. that “[t]he amended statute rests on the humanitarian concern that visits with a Grandparent are often a precious part of a Child's experience and there are benefits which devolve upon the grandchild which he cannot derive from any other relationship.”

A Two Part Legal Test

A Grandparent gaining access to the Courts as explained above, however, is only the first of two hurdles that they must overcome in order to be awarded visitation rights with their Grandchild. Next, the Grandparent must prove that the proposed visitation is in the best interest of the grandchild. This can be shown by illustrating the various benefits derived by the Grandchild from the relationship.



Hostility Between the Grandparent and Parent is Not Enough to Deny Visitation

The acrimonious nature of the relationship between a Parent and Grandparent is an insufficient basis upon which to determine that visitation is not in the child's best interest. Indeed, in cases where Grandparents must use legal procedures to obtain visitation rights, some degree of animosity exists between them and the parent. Were it otherwise, visitation could be achieved by agreement.

For Help With Grandparent Visitation and Family Law Cases

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