



GRANDPARENT VISITATION

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Where to file?

- ▶ R.C. §2301.03(I)(2) (Summit County)
 - ▶ Except in cases that are subject to the **EXCLUSIVE ORIGINAL JURISDICTION** of the juvenile court, the judge of the juvenile division shall not have jurisdiction or the power to hear, and shall not be assigned, any case pertaining to paternity, custody, visitation, child support, or the allocation of parental rights and responsibilities for the care of children or any post-decree proceeding arising from any case pertaining to any of those matters.
- ▶ In Summit County, the Courts have agreed that all original jurisdiction visitation cases are heard by Domestic Relations. All other custody cases originate in Juvenile Court
 - ▶ Tricky in cases of grandparents.

Parental Rights are Paramount

- ▶ Parents have the fundamental right to raise their child. *Troxel v. Granville*, 530 U.S. 57 (2000).
- ▶ Courts are generally unwilling to order that a parent must allow a non-parent (including grandparents) to visit the Child against that parent's wishes. That parent's wishes must be taken into consideration in Ohio when determining the child's best interest.
- ▶ Consequently, a grandparent may only seek visitation where granted that ability by statute.
 - ▶ R.C. 3109.11 – Parent Deceased
 - ▶ R.C. 3109.12 – Parents unmarried
 - ▶ R.C. 3109.051 (B)
- ▶ These statutes have been held constitutional. *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165

Revised Code 3109.11 – Deceased Parent(s)

- ▶ A Court may grant a grandparent reasonable visitation where his or her child (parent) is deceased and where the grandparent:
 - ▶ 1) Files a written motion with the Court; and
 - ▶ 2) Such an order is in the best interest of the Child.
- ▶ No impact if surviving parent remarries or the Child is adopted by surviving parent's spouse.
- ▶ Best interest – Court shall consider the factors set forth in division (D) of section 3109.051 of the Revised Code. Divisions (C), (K), and (L) of section 3109.051 of the Revised Code.
- ▶ *Goeller v. Lorence*, 2006-Ohio-5807, C. A. No. 06CA008883
- ▶ *In re C.W.*, 2018-Ohio-5265, C.A. 16CA011044, 17CA011162, 17CA011165

Revised Code 3109.12 – Unmarried Parents

- ▶ A Court may grant a grandparent visitation where the parents are unmarried if:
 - ▶ 1) Written motion and, in the case of paternal relatives, paternity is established; and
 - ▶ 2) Such an order is in the best interest of the Child.
- ▶ Best interest - Court shall consider the factors set forth in division (D) of section 3109.051 of the Revised Code. Divisions (C), (K), and (L) of section 3109.051 of the Revised Code
- ▶ for appellants.
- ▶ *In re M.N.*, 2008-Ohio-3049, 07CA0088
- ▶ *In re J.L.M.*, 2018-Ohio-2175, 114 N.E.3d 658, (App. 9 Dist. 2018)

Revised Code 3109.051 (B)

- ▶ (1) In a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child, the court may grant reasonable companionship or visitation rights to any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent, if all of the following apply:
 - ▶ (a) The grandparent, relative, or other person files a motion with the court seeking companionship or visitation rights.
 - ▶ (b) The court determines that the grandparent, relative, or other person has an interest in the welfare of the child.
 - ▶ (c) The court determines that the granting of the companionship or visitation rights is in the best interest of the child.
- ▶ (2) A motion may be filed under division (B)(1) of this section during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case.

Best Interest Factors – 3109.051 (D)

- ▶ (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
- ▶ (2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- ▶ (3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;
- ▶ (4) The age of the child;
- ▶ (5) The child's adjustment to home, school, and community;
- ▶ (6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;
- ▶ (7) The health and safety of the child;
- ▶ (8) The amount of time that will be available for the child to spend with siblings;

Best Interest Factors – 3109.051 (D)

- ▶ (9) The mental and physical health of all parties;
- ▶ (10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;
- ▶ (11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;
- ▶ (12) Whether the individual has previously convicted of child abuse or neglect, or alleged to be a perpetrator of abuse in a DN case.
- ▶ (13) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;
- ▶ (14) Whether either parent has established a residence or is planning to establish a residence outside this state;
- ▶ (15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;
- ▶ (16) Any other factor in the best interest of the child.

Other Factors?

- ▶ It's Juvenile Court – know your 2151.414(D)(1) factors!
 - ▶ (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
 - ▶ (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
 - ▶ (c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;
 - ▶ (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

Other complications

- ▶ Intervention – Civ.R. 24

Case Law

- ▶ See *In re J.L.M.*, 2018-Ohio-2175, 114 N.E.3d 658 (9th Dist.) ¶¶8-12
 - ▶ Intervention of Right