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M E M O R A N D U M

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TO: Interested Persons
FROM: Elizabeth Burger, Principal Research Analyst, (303) 866-6272
SUBJECT: Grandparent and Great-Grandparent Visitation Rights

Summary

This memorandum summarizes Colorado law that governs the visitation rights of grandparents and great-grandparents and disputes concerning those rights. The memorandum also summarizes relevant court decisions regarding grandparents' visitation rights. This memorandum is not a legal opinion.

Colorado Law Concerning Grandparents' and Great-Grandparents' Visitation Rights

Visitation rights of grandparents and great-grandparents. The General Assembly first enacted legislation that affirmed the visitation rights of grandparents in 1987. In 2014, the law was expanded to include great-grandparents. Under this visitation law, any grandparent or great-grandparent may seek a court order granting the person reasonable grandchild or great-grandchild visitation rights.¹ Grandparents and great-grandparents may seek such visitation rights *only when there is or has been a child custody case or a case concerning the allocation of parental responsibilities regarding the child.*

The law acknowledges that there are cases that do not directly deal with child custody or the allocation of parental responsibilities, but do have an impact on the custody of, or parental responsibilities regarding, the child. For this reason, the statutes specify additional circumstances that, for the purposes of the visitation law, constitute "a child custody case or a case concerning the allocation of parental responsibilities regarding the child" as follows:

- the marriage of the child's parents has been declared invalid or has been dissolved by a court, or the court has entered a decree of legal separation with regard to the marriage;

¹Section 19-1-117, C.R.S.

- legal custody of or parental responsibilities regarding the child have been given to a party other than the child's parent, or the child has been placed outside of the home of the child's parent, excluding any child who has been placed for adoption or whose adoption has been finalized; or
- the child's parent, who is the child of the grandparent or the grandchild of the great-grandparent, has died.

Grandparents or great-grandparents seeking a court order for visitation must submit the request via affidavit to the district court in which the child resides. The affidavit must set forth the facts supporting the request for visitation. A copy of the affidavit must be delivered to the party who has legal custody of the child, or to the party with parental responsibilities as determined by a court. Such parties may file opposing affidavits. If neither party requests a hearing, the court must enter an order granting visitation rights to the grandparents or great-grandparents only upon a finding that the visitation is in the best interests of the child.

If either party requests a hearing, or if it appears to the court that it is in the best interests of the child, the court must order a hearing. The court must then make a determination on whether or not to grant visitation rights based on the testimony at the hearing and must order such visitation only upon finding that such visitation is in the best interests of the child.

Grandparents and great-grandparents may only file an affidavit seeking an order for visitation once every two years unless a court finds there is good cause to file more than one such affidavit. If the court finds such good cause, and allows the additional affidavit to be filed, the court may award reasonable attorney fees to the prevailing party.

Disputes concerning visitation. Colorado law also provides a method of resolving disputes concerning grandparent and great-grandparent visitation.² When a grandparent or great-grandparent files a motion with the court alleging that a person with legal custody or parental responsibilities of a child has not complied with a court order granting visitation, the court must determine whether there has been, or there is likely to be, substantial and continuing noncompliance with the order. In considering the motion, the court can either: deny the motion if there is an inadequate allegation; set the matter for hearing; or require the parties to seek mediation and report back to the court within 60 days.

If, after a hearing, the court finds that the person with legal custody or parental responsibilities of the child has violated the court order for visitation, the court, in the best interests of the child, may issue orders that include but are not limited to the following:

- impose additional terms and conditions consistent with the court's previous order;
- modify the prior order to meet the best interests of the child;
- require the violator to post bond or security to insure future compliance;
- require that makeup visitation be provided;
- find the noncompliant person in contempt of court and impose a fine or jail sentence; or
- award the grandparent or great-grandparent actual expenses, including attorney fees, court costs, and expenses incurred because of the other person's non-compliance.

²Section 19-1-117.5, C.R.S.

Court Rulings on Grandparents' Visitation Rights

In the 2000 decision *Troxel v. Granville*,³ the U.S. Supreme Court ruled unconstitutional a Washington nonparent visitation statute, reasoning that it impermissibly infringed on the due process right of parents to make decisions concerning the care, custody, and control of their children. The court found that, because of the traditional presumption that fit parents act in the best interests of their children, at least some "special weight" must be given to such parents' wishes regarding grandparent visitation. The court further found that "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."⁴

Following the *Troxel* decision, the Colorado Supreme Court decided a grandparent visitation case to determine how Colorado's law was to be reconciled with the *Troxel* decision.⁵ The Colorado Supreme Court held in that case that the appropriate standard for allowing grandparent visitation requires:

- a presumption in favor of the parental visitation determination;
- to rebut this presumption, a showing by grandparents through clear and convincing evidence that the parental visitation decision is not in the child's best interests; and
- placement of the ultimate burden on grandparents to establish by clear and convincing evidence that the visitation schedule they seek is in the best interests of the child.

The court must apply this standard in grandparent visitation cases and, if it orders grandparent visitation, it must make findings of fact and conclusions of law identifying the factors to which it gave "special weight" in making the order.

³*Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)

⁴*Ibid.*

⁵*N.F. v. R.A., Jr. (In re adoption of C.A.)*, 137 P.3d 318 (2006)