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Grandparent Visitation Rights in the States Compromising the 11th Circuit

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Research Guides

Grandparent Visitation Rights in the States Compromising the 11th Circuit

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Overview

As the generation of baby boomers age, the proportion of the population identifying as grandparents is increasing. As this group increases, the legal dynamics of and ramifications on the familial relationship have gotten significantly more complicated. At common law, there is no existing legal right to a relationship between a grandchild and the grandparent. However, over the course of the last century society has come to recognize that, in many family situations, relationships develop between the "core" family unit and a child's grandparents that has created expectations running counter to what the common law has provided. In reaction to this, all 50 states have enacted some form of substantive right to visitation between grandparents and their grandchildren. However, the constitutionally permissible scope of such action, in light of the common law and the vagueness of the Constitution's Due Process Clause left the ultimate effect of these laws in question.

Over the course of the last decade, guided by the United States Supreme Court, the states and federal courts began to define the scope and outerboundaries of these laws.

Disclaimer

This research guide is a starting point for a law student or an attorney for researching the area of Grandparent Visitation Rights. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

Scope of Topic

This LibGuide will focus on the development of the law of grandparent visitation within the Eleventh Circuit. The LibGuide will focus on the laws and cases from the states of Georgia, Alabama and Florida. It will also explore relevant federal statutory and case law within the Eleventh Circuit. In an attempt to be thorough, this Guide will explore some secondary articles and publications exploring the nature of grandparent visitation.

About the Author

Brandon Howard is a third year law student at the Georgia State University College of Law. This online research guide was created as a part of an Advanced Legal Research class taught by Professor Meg Butler.

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Primary Sources

Federal Constitutional Provisions

The Constitution in its entirety with annotations may be found free of charge at the Cornell Legal Information Institute.

In grandparent visitation cases, the most cited federal constitutional provision is the Fourteenth Amendment to the United States Constitution. The Supreme Court has held specifically that the substantive component of the Fourteenth Amendment's Due Process Clause limits the applicability of grandparent visitation statutes where those statutes encroach on fundamental rights of parenting. Further, because grandparent visitation statutes are based in state law, it is important to remember that the Constitution requires that valid judgements of a state be recognized and enforced with "full faith and credit" in sister states, thus Article IV, Section 1 of the Constitution is relevant as well.

U.S. Const. amend. XIV.

U.S. Const. art. 1, § 1.

State Constitutional Provisions

Some states have narrowed the applicability and scope of their grandparent visitation statutes by looking to their state constitutions and not the federal constitution. Specifically, in the 11th Circuit, this has been the approach of both Georgia and Florida.

Fla. Const. Art. I, § 23

§ 23. Right of privacy

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Ga. Const. Art. 1, Para. 1, Sec. 1.

No person shall be deprived of life, liberty or property except by due process of law.

U.S. Code

If you are interested in the legislative history of any of these provisions you can access them, free of charge at THOMAS, Library of Congress.

Because Family Law is primarily an area within the realm of the states, there are very few federal statutes touching the subject matter. Such is the case with regard to grandparent visitation rights. The only federal statute with direct and explicit relevance to the issue of grandparent visitation is 28 U.S.C. § 1738A. This statute gives substance to the Constitution's Article IV, Section 1 command that states give "full faith and credit" to the judicial determinations of sister states. This statute provides that the several states shall recognize the decisions of sister states in relation to grandparent visitation, if the judicial decision meets certain requirements found in the statute.

28 U.S.C. § 1738A.

Legislation

STATE STATUTES:

All fifty states have adopted procedures for allowing grandparents to obtain visitation with their grandchildren through court order. Relevant for the purposes of this LibGuide, the statutes of Alabama, Georgia and Florida are cited below. For a time, these statutes were seen as merely overriding the common law rule that grandparents have no visitation rights to their grandchildren. However, after the Supreme Court's decision in Troxel v. Glanville, these statutes took on a constitutional dimension that made their application questionable. Some states, such as Georgia and Florida, had already held the visitation statute as it was to be unconstitutional on state constitutional grounds. These states impose a seemingly narrower scope to the application of their grandparent visitation statutes. Other states, such as Alabama, have merely held that their statute must only comport with the scope assigned by the U.S. Constitution.

Pertinent Georgia Code Sections:

O.C.G.A. § 19-7-3:

A grandparent may file an original action or intervene in any action before a court considering the custody of a child to obtain visitation rights. The court may grant reasonable visitation rights on proof of special circumstances (i.e. only if the court finds that the health or welfare of the child would be harmed unless visitation is granted) that make visitation necessary to the best interests of the child. There is a presumption in favor of parental control.

Pertinent Alabama Code Sections:

Ala. Code § 30-3-04.

The court may grant grandparent visitation rights in divorce proceedings, or when a parent related by blood to the grandparent is deceased and (1) the surviving parent denies visitation, (2) the surviving parent relinquishes custody, or (3) the surviving parent's rights are terminated. There must be a presumption in favor of parental control.

Ala. Code § 26-10A-30.

Post-adoption visitation rights for the natural grandparents of the adoptee may be granted when the adoptee is adopted by a stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt or an uncle and their respective spouses, if any. Such visitation rights may be maintained or granted at the discretion of the court at any time prior to or after the final order of adoption is entered upon petition by the natural grandparents, if it is in the best interest of the child.

Pertinent Florida Code Sections:

Fla. Stat. § 752.01

Grandparents may be granted visitation if one or more of the child's parents are deceased, the marriage is dissolved, one of the parents has deserted the child, or the child is born out of wedlock. Visitation may also be granted for minors living with both natural parents who are still married to each other and the parents prohibit a relationship with the grandparent(s). The courts look at the child's best interest as well as the length and quality of the grandparent relationship. There must be a presumption in favor of parental control, and the best interests of the child will only be met if the court finds that the health or welfare of the child would be harmed unless visitation is granted.

New State Legislation

Georgia

House Bill 1198 [awaiting the Governor's signature] - "The bill will increase the visitation rights of grandparents whose grandchildren are involved in cases involving child custody, divorce or the termination of parental rights. It will encourage judges to allow children to visit their grandparents when that grandparent has financially supported the child for a year or regularly visited with the child.

The bill [will allow courts] to rule that the child's interests would be harmed without some "minimal" contact with their grandparents. Those visits would total at least 24 hours in a month." *See* Source.

Case Law - Unites States Supreme Court

Troxel v. Glanville, 530 U.S. 57 (2000).

In Troxel, the Court held that a child's fit custodial parents have a fundamental, constitutional right (found in the Due Process Clause of the 14th Amendment) to make determinations regarding the care, custody and control of their children without unjustified state interference. The Court stated that the states cannot simply override that fundamental interest with a determination of the best interests of the child without providing a presumption in favor of the child's fit custodial parents. The state's interest must be so weighty as to override the presumption in favor of the fit, custodial parent. In holding that parents have this fundamental right, the Court cited to the common law, which gave great weight to the decisions of fit parents, and did not allow a legal visitation right to grandparents.

Case Law - Federal

11th Circuit Court of Appeals:

Gottschalk v. Gottschalk, 2011 U.S. App. LEXIS 12222 (11th Cir. 2011).

The Eleventh Circuit has said that an allegation that a state law, which allows grandparent visitation rights, violates the Due Process Clause of the Fourteenth Amendment and the fundamental rights of parents, where the statute allows the state to grant visitation rights without a material change in conditions being shown, fails to state a claim upon which relief may be granted. This is because, according to the Court, neither the Eleventh Circuit, nor the U.S. Supreme Court have imposed a specific standard of proof for allowing the modification of visitation rights.

Case Law - State

Alabama:

Ex Parte E.R.G., 73 So.3d 634 (Ala. 2011).

Having an opportunity to narrow the the ability of the state legislature to allow Grandparent Visitation within the state of Alabama to a "harm to the child" standard, as has the Georgia and Florida Supreme Courts, the Alabama Court declined to affirm the determination of the Court of Appeals on those grounds. Rather, the Court held the Alabama Grandparent Visitation statute to be wholly unconstitutional because it failed to include a presumption in favor of the parents when deciding whether visitation rights should be granted. This infringed on the rights of the parents to direct the upbringing of their children.

The statute has since been amended to bring it within constitutional bounds and contains no harm provision.

E.H.G. v. E.R.G., 73 So.3d 614 (Ala. Civ. App. 2010).

The Alabama Court of Civil Appeals determined, after surveying a number of jurisdictions, that the only interest which is compelling enough to allow the government to override the fundamental interest of the parents to raise their child how they see fit through visitation statutes would be to prevent harm to the child. Although, affirmed on other grounds by the Alabama Supreme Court, this is an instructive case on how the Alabama appeals courts view this constitutional issue. Further, the opinion nicely survey's the standards of several other jurisdictions. *Id*. at 626.

Ex Parte D.W., 835 So.2d 186 (Ala. 2002).

The Supreme Court of Alabama held that the U.S. Supreme Court's decision in Troxel v. Granville does not apply to petitions for visitation rights under Code section 26-10A-30, which allows grandparents to petition for visitation as against adoptive parents of the grandchild. This is because Troxel dealt with natural parents, and not adoptive parents. However, the Court here was only considering "intrafamily" adoption and not a typical adoption. The Court made sure to specify that intrafamily adoptions are limited contexts. Because adoption is a state created right, the Court said that the legislature can qualify the rights that are assumed through adoption, and one qualification can be that suits for grandparent visitation can be maintained.

E.H.G. v. E.R.G., 73 So.3d 614 (Ala. Civ. App. 2010).

The Court of Appeals seems to have indicated that it will expand the rule of Ex Parte D.W. to all adoptive parents, and not simply to intrafamily adoption. It says that the Troxel rule recognizes a fundamental right only with regard to natural parents.

Georgia:

Brooks v. Parkerson, 265 Ga. 189 (1995).

The Supreme Court of Georgia held that the version of the grandparent visitation statute then in effect violated both the United States and the Georgia constitutions. The Court held that because the statute did not specify that the best interests of the child standard could only allow grandparent visitation when there was a danger of harm to the child without the visitation. The Supreme Court of the United States has not yet made this a requirement under the U.S. Constitution. However, this is the standard under the Georgia Constitution's Due Process Clause and it has since been placed into the statute through amendment.

Heard v. Coleman, 181 Ga. App. 899 (1987).

Unlike Alabama law, when a child is adopted from his natural parents (in most cases) the familial ties to the child's natural grandparents are severed and thus there can be no right to visitation brought under the statute. However, the courts have recognized that the statute makes an exception to this, which occurs when one parent dies, and the surviving parent remarries, and where the new step-parent then adopts the child.

Kunz v. Bailey, 290 Ga. 361 (2012).

The Georgia Supreme Court noted that O.C.G.A. 19-7-3 grants exceptions to the rule that adoption cuts off the grandparent's rights under the grandparent visitation statute. Specifically, the statute allows the grandparent to assert his/her rights when the child has been adopted by a step-parent, or where the child has been adopted by other family members. However, the Court construed the rest of the statute to define "parents" as both biological and adoptive parents, thus giving legal rights of control to each, provided the noted exceptions do not apply.

Rogers v. Barnett, 237 Ga. App. 301 (1999).

Ga. Code section 19-7-3 does not require a finding that the parent is unfit, but rather that the health or welfare of the child would be harmed unless the grandparent visitation is granted.

Ormond v. Ormond, 274 Ga. App. 869 (2005).

Because the mother and the father objected to court-mandated visitation with the grandparents and there was no showing that a failure to grant visitation to the grandparents would be harmful to the children, pursuant to O.C.G.A. § 19-7-3(c), the trial court erred in awarding visitation to the grandparents.

Luke v. Luke, 280 Ga. App. 607 (2006).

Trial court's grandparent visitation award contained a finding that the children would have suffered emotional harm unless grandparent visitation was granted, and that such visitation was in the best interests of the children; thus, visitation was granted on the grounds authorized by O.C.G.A. § 19-7-3.

Florida:

Sullivan v. Sapp, 866 So.2d 28 (Fla. 2004).

In a statute similar to Florida's primary grandparent visitation statute, Fla. Stat. § 752.01, the Florida Supreme Court held that it was unconstitutional because it allowed the state to force visitation between the grandparent and grandchild without a showing of harm to the child, which would occur without visitation being granted. The state legislature later deleted this provision rather than amend it. Notably, Fla. Stat. § 752.01 does not contain an explicit "harm to the child if visitation is not granted" element, although from the wording of the statute this element can be implied and read into it.

Cranney v. Coronado, 920 So.2d 132 (Fla. Dist. Ct. App.2d Dist. 2006).

The Court of Appeals in Florida held (and surveyed other Florida decisions) which invalidate the application of the grandparent visitation statutes in particular cases because there had been no showing of likelihood of harm to the child should visitation be denied. The Florida court held that this right stems from the right to privacy found within the state constitution, and not from the U.S. Constitution.

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Secondary Resources

American Law Reports

This American Law Report was originally publised in 1978 and has been continuously updated; the ALR databases are updated weekly to include new relevant cases. ALR reports are indepth studies of a discrete area of law - this is an excellent treatment of the Animal Welfare Act annotated with relevant cases, laws and rules. The second entry, originally published in 1992, is a comprehensive treatment of animal cruelty.

George L. Blum, Annotation, *Grandparents' Visitation Rights Where Child's Parents are Deceased, or Where Status of Parents is Unspecified,* 69 A.L.R. 1.

George L. Blum, Annotation, *Grandparents' Visitation Rights Where Child's Parents are Living*, 71 A.L.R. 99.

Legal Encyclopedia

American Jurisprudence is a vast legal encycopedia covering a wide range of subjects. It is an excellent resource with which to begin a research project. It can be found on WestLaw and LexisNexis and in print in the Georgia State University Law Library.

The following citation to Am.Jur., while skinny on actual details and narrative, it does provide a variety of sources from which further research can be done. Including keynumbers and A.L.R. Digests.

59 Am.Jur. 2d *Parent and Child* §13 (2012)

Corpus Juris Secundum is also a legal encyclopedia with first rate treatments of particular subjects. Here the subject is Parent and Child, which touches on grandparent rights.

67A C.J.S., Parent and Child, §§ 52 et seq., 357, 358

Practice Guides

American Jurisprudence's Proof of Facts is a one of a kind practice guide. It provides forms and guidance in setting forth the facts needed for trial, assists the practicioner in establishing those facts, and provides the standards that must be proven to succeed at trial. It is published by WestPublishing.

Am.Jur. Proof of Facts has a specific area devoted to Grandparent visitation. It can be found at the following cite:

Grandparent Visitation and Custody Awards, 69 POF3d 281.

Journal and Law Review Articles

The following Journal and Law Review articles are listed because of their general treatment of grandparent visitation statutes and the future being shaped for those statutes:

Joan Catherine Bohl, Grandparent Visitation Law Grows Up: The Trend Toward Awarding Visitation Only When the Child Would Otherwise Suffer Harm, 48 Drake L. Rev. 279 (2000).

Laurence C. Nolan, The Pragmatic Challenges of Grandparent Visitation Continue, 50 Drake L. Rev. 267 (2002).

Kristine L. Roberts, Troxel v. Granville and its Implications for Families and Practice: A Multidisciplinary Symposium: State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional, 41 Fam. Ct. Rev. 14 (2003).

Sara Elizabeth Culley, Troxel v. Granville and its Effect On the Future of Grandparent Visitation Statutes, 27 J. Legis. 237 (2001).

Lauren F. Cowan, There's No Place Like Home: Why the Harm Standard in Grandparent Visitation Disputes is in the Child's Best Interest, 75 Fordham L. Rev. 3137 (2007).

Mekisha F. Smith, Mama Didn't Raise No Fool: A Fit Mother's Right to Manage Grandparent Visitation, 37 S.U. L. Rev. 213 (2010).

Ayelet Blecher-Prigat, Rethinking Visitation: From a Parental to a Relational Right, 16 Duke J. Gender L. & Pol'y 1 (2009).

Sonya C. Garza, The Troxel Aftermath: A Proposed Solution for State Courts and Legislatures, 69 La. L. Rev. 927 (2009).

Lauren Worsek, It Really Does Take a Village: Recognizing the Total Caregiving Network by Moving Toward a Functional Perspective in Family Law After Troxel v. Granville, 30 Wash. U. J.L. & Pol'y 589 (2009).

Emily Chase Dubansky, Koshko v. Haining: Does a Heightened Standard for Grandparent Visitation Really Protect Children's Best Interests?, 67 Md. L. Rev. 805 (2008).

Maegen E. Peek, Grandparent Visitation Statutes: Do Legislatures Know the Way to Carry the Sleigh Through the Wide and Drifting Law?, 53 Fla. L. Rev. 321 (2001).

Stephanie O'Connor, Grandma Gets Devoured All Over Again and This Time the Huntsman Is Not Around to Save Her: An Analysis of Michigan's Grandparent Visitation Statute and a Comparison with Statutes of Other Jurisdictions, 84 U. Det. Mercy L. Rev. 383 (2007)

Books

There are many books that talk generally on the subject of grandparents rights and try to educate grandparents about their rights under the law. While perhaps not exclusively covering the issue of visitation, these books should prove helpful for whatever grandparents' rights issue is in controversy.

- Grandparents' Rights by Traci Truly
  ISBN: 9781572481398
  Publication Date: 2001-03-01
- Grandparents' Rights by Traci Truly
  ISBN: 9781572485266
  Publication Date: 2005-12-01
- Grandparents' Rights by Patricia Perkins Slorah
  ISBN: 9781410766274
  Publication Date: 2003-08-21
- No Greater Loss by Neil Taft

ISBN: 9781453822661
Publication Date: 2010-09-23

- Grand Wishes by Susan Hoffman
  ISBN: 9780979916809
  Publication Date: 2007-11-01

Blogs

Grandparents' rights advocates have embraced new technology as an avenue of gaining an audience and highlighting their issues. As such, many have created blogs which are easily accessible and offer a variety of analysis and perspectives. They are also extremely helpful in highlighting new developments and issues as they arise.

New Grandparent's Rights

This blog was started in 2009 to share information that the author had researched and found about grandparents rights with grandparents. The author wants the blog to help grandparents make the transition from grandparents to parents again or help grandparents who are having problems with visitation rights to see their grandchildren .If you are a grandparent in search of information on your grandparents legal rights maybe this blog can help.

Grandparents.com Expert Advice Column

Website devoted to grandparents rights issues and reaching out to grandparents to help them with issues they are facing.

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Associations and Interest Groups

Interest Groups

Organizations Dealing Specifically with Grandparents' Rights

Advocates for Grandparent-Grandchild Connection (AFGGC)

All-volunteer nonprofit organization advocates for change and provides support for grandparents.

Grandparents Rights Organization (GRO)

Purpose is to educate and support grandparents and grandchildren and to advocate their desire to continue a relationship that may be threatened with loss of contact or amputation, usually following: family acrimony; a child being born out of wedlock; the death of one of the child's parents or the divorce of the grandchild's parents.

Grandparents Resource Center (GRC)

GRC is a Colorado nonprofit that offers services, some for a fee, to grandparents struggling with rights issues.

Other Grandparent Focused Groups

The Foundation for Grandparenting

AARP (American Association of Retired People)

National Committee of Grandparents for Children's Rights (NCGCR)

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