

VISITATION RIGHTS OF GRANDPARENTS

By K. Dean Kantaras and Jennifer H. Cavill

PARENTS, AS THE NATURAL guardians of their own children, have the right to rear their children free from government intrusion. This right is protected by Article I, Section 23 of the Florida Constitution. This means that parents have the right to decide if any third parties, including grandparents, have access to the child. When timesharing is an issue between two parents, the Court will enter a timesharing schedule based upon the best interest of the child, pursuant to [§61.13, Florida Statutes](#). However, when timesharing is an issue between a parent and a third party, the test is different. “The Florida Supreme Court has...consistently held all statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child standard ... to be unconstitutional.” [Cranney v. Coronado](#), 920 So.2d 132 (Fla. 2nd DCA 2006); citing [Sullivan v. Sapp](#), 866 So.2d 28, 37 (Fla. 2004).

Instead, for third party timesharing, the Court must “follow a two-step test: first, the court would determine whether remaining with the natural parent would be a detriment to the child; if so, the court could consider the best interests of the child.” [Corona v. Harris](#), 164 So.3d 159 (Fla. 1st DCA May 15, 2015); citing [Richardson v. Richardson](#), 766 So.2d 1036 (Fla.2000).

Furthermore, a parent’s prior agreement to grandparent visitation with the minor child does not waive a parent’s right to later enforce his or her constitutional privacy right to raise the child free from government intrusion and, therefore, from later revoking the agreement for visitation. See [Forbes v. Chaplin](#), 917 So.2d 948 (Fla. 4th DCA 2005). Since a parent has a constitutional right to rear their child free from governmental intrusion, in order to effectively waive this constitutional right, the waiver must “be clearly established that there was an intentional abandonment of a known right. And, “where there is doubt as to whether a constitutional right



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is waived, such doubt should be resolved in favor of the party in whom the right is vested [internal citations omitted].” [Forbes v. Chaplin](#), 917 So.2d 948 (Fla. 4th DCA 2005).

Chapter 752, Florida Statutes addresses grandparental visitation and permits a grandparent to seek visitation rights with a child when the child’s parents are deceased, missing, or in a persistent vegetative state, or whose one parent is deceased, missing, or in a persistent vegetative state and whose other parent has been convicted of a felony or an offense of violence evincing behavior that poses a substantial threat of harm to the minor child’s health or welfare. See [§752.011, Florida Statutes](#). This right to seek grandparental visitation is applicable only in limited circumstances. The burden is on the petitioning party at a preliminary hearing to show prima facie evidence of parental unfitness or significant harm to the child. If the petitioner does not meet this burden, the matter will be dismissed.

If the burden is met, the Court may appoint a Guardian Ad Litem to investigate the matter and make a recommendation to the Court on what is in the child’s best interest. The Court will also refer the matter to family mediation. If the matter is not resolved at mediation, the Court may award reasonable visitation to the grandparent if the Court finds by clear and convincing evidence that the parent is unfit or that there is significant harm to the child, that visitation is in the best interest of the minor child, and that the visitation will not materially harm the parent-child relationship. See [§752.011, Florida Statutes](#). For more information on grandparent visitation, contact K. Dean Kantaras, P.A. at (727) 781-0000. ■■■

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