

# How Grandparents Can Get Visitation

By K. Dean Kantaras and Briana Texter

Almost all of us know at least one person who has been a party to a family law matter. Have you ever wondered if you could join as a party to the case? After all, your daughter or son's divorce and parenting plan may ultimately affect your time with the grandchildren.

Recently, the Fifth District Court of Appeals in Florida took on a case where an aunt and grandfather joined a custody matter as parties. The lower court allowed the aunt and grandfather to join a dependency proceeding as parties, and the department and guardian ad litem sought the district court's review of this interlocutory order, allowing the joinder on appeal. The district court did not allow the joinder and remanded the case.

The court ruled this way based on Chapter 39 of the Florida Statutes that defines a "party" as "the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed. The Florida Rules of Juvenile Procedure 8.210(a) defines "party" and "parties" as "the petitioner, the child, the parent(s) of the child, the department, and the guardian ad litem or the representative of the guardian ad litem program, when the program has been appointed." The district court held that "these definitions do not include any language that would support the trial court's decision to allow either respondent to intervene as a party in this case," and the parties were allowed to seek notice of further proceedings rather than act as a party.

While that is a lot of legalese, an important aspect of law is derived from this rule and statute regarding family and custody matters. That is, parties generally cannot join in these actions if they are not a parent, someone from the department, or the guardian ad litem. Aunts, uncles, grandmas and grandpas are typically not allowed to be parties to these cases.



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However, there are other ways a grandparent or other family member may assert visitation with a minor child. Chapter 751 permits grandparents (as extended family members) to seek temporary custody of a minor child without the parents' consent by demonstrating "that the parents have abused, abandoned, or neglected the child as defined in Chapter 39." In other words, grandparents and other family members may assert visitation rights when a court makes certain findings.

The vital concept of these rulings arises from the Constitution, specifically relating to an individual's fundamental rights. In a Florida Supreme Court case from 1996, the court reaffirmed in *Beagle v. Beagle*, the importance of parents' interest in the care, custody, and control over their children. "

Ten years later, another family law matter paved a way to override the parents' fundamental right to raise their children, as this may occur when the "state demonstrates there is a compelling interest in doing so." In *Cranney v. Coronado*, the mother unfortunately

passed away. Subsequently, the husband obtained custody of their two minor children and prohibited visitation or contact between the children and a grandmother. A lower court allowed the guardian ad litem to determine whether visitation with the grandparent is in the best interests of the minor children; the father sought the appellate court's review of the order. The court noted in *Sullivan v. Sapp* that this was not proper of the guardian ad litem because 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."

In this case, the court did not allow a determination of whether the best interests of the children would be served with visitation with the grandparents, because there must be "the essential showing of harm to the child as a result of a lack of grandparent visitation." In other words, the court requires a showing of harm that will result from a lack of visitation, rather than a determination of what is in the best interests of the minor children.

In summary, grandparents and other family members are usually NOT able to join a family matter. However, there are some circumstances where a court will enforce visitation rights. ❖

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