Grandparent Visitation/Custody

Grandparent Visitation Rights in New Jersey

In many families, grandparents play an essential role in their grandchildren's lives. Whether they are functioning as caretakers, babysitters, or sharing residences with the core family, grandparents often operate as surrogate parents. Despite the emotional, financial, and other forms of support that many grandparents provide for their grandchildren, visitation can be a very challenging and emotionally charged issue for grandparents and parents alike.

While grandparents do have certain legal rights when it comes to their grandchildren, parents have a constitutionally-protected right to raise their children. Fortunately, the "good news" for New Jersey grandparents is that in 1993 New Jersey passed a statute that affords grandparents and siblings of children with visitation rights under certain circumstances. Under N.J.S.A. 9:2-7.1 a grandparent has standing to file an application with the court for visitation rights. The "bad news" for grandparents is that in all grandparent visitation cases, the grandparents have a substantial burden to prove that grandparent-child visitation is needed to "avoid harm" to the child.

Although the court ultimately considers the child's best interests in fashioning a "visitation schedule" between the grandparents and child, the threshold burden on the grandparents – to demonstrate harm to the child in the absence of visitation – is the initial factor upon which nearly all grandparent visitation cases turn.

Absent parental consent for grandparent visitation, the New Jersey statute requires that the court consider the following eight factors in determining whether visitation should be granted:

1. The relationship that exists between the child and the grandparent filing the application;
2. The relationship that exists between each of the child's parents or the person with whom the child lives and the grandparent filing the application;

3. How long it has been since the grandchild last had contact with grandparent filing the application;
4. The impact that visitation will have on the relationship between the child and the child's parents or the person with whom the child is living with;
5. In situations where the parents are divorced or separated, any time-sharing arrangements that have been established between the parents;
6. The good faith of the grandparent in submitting an application for visitation;
7. Whether there is any history of physical, emotional or sexual abuse or neglect by the grandparent applicant; and
8. Any other factors that may be relevant to the best interest of the child.

Over the years, New Jersey courts have strictly interpreted the language of the grandparent visitation statute. As set forth in the New Jersey Supreme Court's 2016 decision in *Major v. Maguire*, a grandparent may meet his or her burden through expert psychological evidence or fact evidence that bears on the eight factors set forth in N.J.S.A. 9:2-7.1. Other important considerations include whether the child's parent or parents are deceased and/or the marital status of the child's parents. Finally, although not a requirement under the grandparent visitation statute, the statute specifically provides that if the applicant-grandparent was a "full-time caretaker of the child" in the past, that role shall serve as *prima facie* evidence that the visitation is, in fact, in the child's best interest.

The New Jersey family attorneys at Einhorn Barbarito have represented parents and grandparents in these matters at both the trial court and on appeal.

Grandparent Custody

In addition to visitation rights, there may be times when a grandparent seeks to obtain custody of a grandchild. In general, courts prefer to keep a child with one or both parents. However, when neither parent is able or willing to care for their child, a grandparent may be awarded custody. While there are a variety of situations that may warrant a court granting custody of child to a grandparent, obtaining custody is a very challenging process. In addition to the strong presumption that children should remain with their parents, a court will consider other family members who want to visit with the child. Overall, the court will look to the best interests of the child in making any custody decision.

Discuss Your Case with a New Jersey Family Lawyer at Our Firm

If you are considering filing an application for grandparent visitation rights or are contemplating seeking custody of a grandchild, the attorneys at Einhorn Barbarito can help. We will carefully evaluate your situation and explore all legal avenues that may be available to you. Contact us today at 937-627-7300 to schedule a consultation with a member of our experienced family law team.