

September 9, 2014

HUFF POST DIVORCE

MARRIAGES COME AND GO, BUT DIVORCE IS FOREVER



Caroline Choi

Family Law Attorney, Solomon Ward Seidenwurm & Smith LLP

Divorce Confidential: Do Grandparents Have Rights in Divorce?

Posted: 09/01/2014 11:22 am | Updated: 09/09/2014 11:59 am



It's no secret that divorce can be messy at times, especially for those directly involved in the process. Many times, divorce can have major ramifications upon other significant relationships such as the relationship between grandparents and grandchild. In certain unfortunate circumstances, a parent may decide to cut off any relationship a grandparent may have with the grandchild for reasons only known to the parent. Other times, a grandchild may be adopted by a stepparent, and there is a subsequent demise in the relationship between the biological grandparent and grandchild.

Regardless of why, if you're a grandparent and you are restricted from seeing your grandchild, your first thought may be to take legal action to preserve the bond and relationship you have established with your grandchild. But before you move forward with any legal action, here are some things to consider:

1. Does a Grandparent Have Rights to Visitation? Maybe. The answer here is not so straightforward. Unfortunately there is no hard and fast rule that a grandparent has an absolute legal right to visit with a grandchild. Generally speaking, a grandparent cannot file a motion for visitation when both parents of a grandchild are still married. There are exceptions however, including circumstances where parents are living separately or when the parents' whereabouts are unknown. Try not to assume that your rights as a grandparent are absolute. Many factors are considered before an order is made.

2. What Will Courts Consider for Grandparent Visitation? Every state is different when it comes to an order regarding grandparent visitation. In California, the court will look at whether there is an existing relationship between a grandparent and a grandchild. From there, the court will determine if a visitation order would be in the best interests of the child. To balance that out, the court will look to a parent's right to make decisions about their child. In Hawaii, a court may even consider a child's wishes if he or she is old enough to make a decision and has a capacity to reason behind his or her decision. Generally speaking, most courts will look to the best interests of the child when making a decision regarding grandparent visitation. It is important to consult with an attorney in your state so that he or she can provide you with appropriate legal advice specific to your state.

3. Have You Attempted to Resolve Issues Out of Court? Before jumping the gun and seeking court orders regarding grandparent visitation, you may want to consider trying to resolve this issue outside of court. This requires open communication between a grandparent and parent and a focus on the best interests of the child. Mediation is also another option. Whether you are a grandparent seeking a court order for visitation or a parent preventing a grandparent from seeing your child, you may want to consider mediation first because it increases the chance of a more peaceful resolution. Ideally, a preservation of relationship between grandparent, grandchild and parent glued together with love and care is preferable. If you are a grandparent, I suggest you take some time to draft a reasonable visitation schedule to see your grandchild and approach the parent with your request. If you are a parent, think about how much visitation time you would be willing to give the grandparent. If all parties are reasonable in their proposals and expectations, a resolution to the problem may not be so far off.

As I always state in my articles, be sure to contact an attorney in your state. There are specific laws unique to each state, so it's important you conduct due diligence before proceeding with any legal action. The laws regarding grandparent visitation is no exception to the need to consult a professional.

Follow Caroline Choi on Twitter: www.twitter.com/@carolineychoi