

19-1-117. Visitation rights of grandparents.

(1) Any grandparent of a child may, in the manner set forth in this section, seek a court order granting the grandparent reasonable grandchild visitation rights when there is or has been a child custody case or a case concerning the allocation of parental responsibilities relating to that child. Because cases arise that do not directly deal with child custody or the allocation of parental responsibilities but nonetheless have an impact on the custody of or parental responsibilities with respect to a child, for the purposes of this section, a "case concerning the allocation of parental responsibilities with respect to a child" includes any of the following, whether or not child custody was or parental responsibilities were specifically an issue:

(a) That the marriage of the child's parents has been declared invalid or has been dissolved by a court or that a court has entered a decree of legal separation with regard to such marriage;

(b) That legal custody of or parental responsibilities with respect to the child have been given or allocated to a party other than the child's parent or that the child has been placed outside of and does not reside in the home of the child's parent, excluding any child who has been placed for adoption or whose adoption has been legally finalized; or

(c) That the child's parent, who is the child of the grandparent, has died.

(2) A party seeking a grandchild visitation order shall submit, together with his or her motion for visitation, to the district court for the district in which the child resides an affidavit setting forth facts supporting the requested order and shall give notice, together with a copy of his or her affidavit, to the party who has legal custody of the child or to the party with parental responsibilities as determined by a court pursuant to article [10](#) of title [14](#), C.R.S. The party with legal custody or parental responsibilities as determined by a court pursuant to article [10](#) of title [14](#), C.R.S., may file opposing affidavits. If neither party requests a hearing, the court shall enter an order granting grandchild visitation rights to the petitioning grandparent only upon a finding that the visitation is in the best interests of the child. A hearing shall be held if either party so requests or if it appears to the court that it is in the best interests of the child that a hearing be held. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard. If, at the conclusion of the hearing, the court finds it is in the best interests of the child to grant grandchild visitation rights to the petitioning grandparent, the court shall enter an order granting such rights.

(3) No grandparent may file an affidavit seeking an order granting grandchild visitation rights more than once every two years absent a showing of good cause. If the court finds there is good cause to file more than one such affidavit, it shall allow such additional affidavit to be filed and shall consider it. The court may order reasonable attorney fees to the prevailing party. The court may not make any order restricting the movement of the child if such restriction is solely for the purpose of allowing the grandparent the opportunity to exercise his grandchild visitation rights.

(4) The court may make an order modifying or terminating grandchild visitation rights whenever such order would serve the best interests of the child.

(5) Any order granting or denying parenting time rights to the parent of a child shall not affect visitation rights granted to a grandparent pursuant to this section.

Source: L. 87: Entire title R&RE, p. 709, § 1, effective October 1. L. 91: (5) added, p. 262, § 3, effective

May 31. **L. 93:** (5) amended, p. 581, § 18, effective July 1. **L. 98:** IP(1), (1)(b), and (2) amended, p. 1406, § 64, effective February 1, 1999.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (5), see section 1 of chapter 165, Session Laws of Colorado 1993.

ANNOTATION

C.J.S. See 43 C.J.S., Infants, § 24.

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001). For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (February 2003). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section not unconstitutional on its face. This section may be construed to embody the protections required by *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). The court read this section as requiring that the biological parent's decisions concerning grandparent visitation must carry special weight and significance in the adjudication of the grandparent's visitation petition. The burden of proof must be such that the parent need not prove that the grandparent visitation would adversely affect the child. In re C.M., 74 P.3d 342 (Colo. App. 2002); In re R.A., 66 P.3d 146 (Colo. App. 2002).

Section does not violate due process clause of the United States Constitution merely because it authorizes visitation rights for grandparents. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

Due process does not require a showing of parental unfitness prior to applying the best interest of the child standard to determine custody of a child. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents not similarly situated to biological parents for purposes of an equal protection analysis when determining the threshold circumstances under which grandparents could be permitted to seek court-enforced visitation rights. In re Petition of R.A., 66 P.3d 146 (Colo. App. 2002).

The wishes of adoptive parents should be given "special significance" like those of biological parents in determining the merits of a grandparents' visitation request, since the intent underlying the adoption statutes is to place the adopted child in the same position as the natural child and, correspondingly, bestow upon the adoptive parents the same rights and duties of natural parents. In re Petition of R.A., 121 P.3d 295 (Colo. App. 2005), rev'd on other grounds sub nom. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Appropriate standard for issuance of an order of grandparent visitation requires: (1) A presumption in favor of the parental visitation determination; (2) to rebut this presumption, a showing by grandparents through clear and convincing evidence that the parental determination is not in the child's best interests; and (3) placement of the ultimate burden on grandparents to establish by clear and convincing evidence that the visitation they seek is in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

In applying the best interest of the child standard in grandparent visitation petitions, the court must, if it orders grandparent visitation, make findings of fact and conclusions of law identifying those "special factors" upon which it relied. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Colorado statute is construed to contain a presumption that parental determinations about grandparent visitation are in the child's best interest. This is a rebuttable presumption, however, when the grandparent presents clear and convincing evidence that the parent is either unfit to make the grandparent visitation determination or that the

grandparent visitation decision made by the parent is not in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Trial court correctly determined that the filing requirement set forth in this section did not affect the court's subject matter jurisdiction; instead, this section is a venue provision and, as such, is subject to waiver. In re Villalva, 56 P.3d 1214 (Colo. App. 2002).

Hearing required if custodial parent requests. Subsection (2) requires the trial court to hold a hearing if the custodial parent so requests. In re Seright, 649 P.2d 730 (Colo. App. 1982).

Filing of an opposing affidavit is not a condition precedent to the exercise of the right to require the holding of such a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982).

No time limitation for hearing request. This section does not specify any time limitation upon the abilities of the custodial parent to request a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982).

Denial of visitation rights held in the best interests of the children. Kudler v. Smith, 643 P.2d 783 (Colo. App. 1981).

Proceeding under article 4 of this title is a custody case for purposes of this section. F.H. v. K.L.M., 740 P.2d 1006 (Colo. App. 1987).

Dependency and neglect proceeding is a custody case for purposes of this section. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997).

Father did not have standing to argue the inadequacy of visitation rights of child's grandparents. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Grandmother lacked standing on the sole basis that the children did not reside with their father, who was never married to the children's mother, as the plain meaning of this section does not authorize the court to hear grandmother's petition unless there has been a judicial intervention into the marriage of the children's parents, a judicial placement of the children outside their family, or the death of the grandparent's child. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O.-V., 151 P.3d 637 (Colo. App. 2006).

Mother may make determinations about the level of contact her children have with her own family without fear of court intervention when the children are in the care and custody of their mother, grandmother's daughter, and there has been no prior court intervention. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

Visitation is primarily a right of the child and only secondarily a right of the visiting party. Conditions on visitation are within the sound discretion of the trial court, taking the best interests of the child into consideration. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Order under this section expressly allowing noncustodial grandparent to take children to church, contrary to wishes of custodial parent, was invalid and unconstitutional. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Because trial court made no findings concerning child's best interests, did not accord special weight to mother's visitation proposal nor address whether mother's proposal would fail to meet the child's interests, and made no findings supporting its order allowing grandparent to take child to Wyoming over mother's objections, the visitation issue must be redetermined. In re C.M., 74 P.3d 342 (Colo. App. 2002).

This section does not authorize an order impinging on custodial parent's rights under § [14-10-130](#). In re Oswald, 847 P.2d 251 (Colo. App. 1993).

The presumption giving custodial preference to biological parent need not be accorded to a legal guardian. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

No irreconcilable conflict between subsections (1)(b) and (1)(c). The so-called "adoption exclusion" in subsection (1)(b) has been construed to apply only when a child becomes available for adoption because the natural parents' rights

have been legally terminated. Thus, subsection (1)(b) creates an interim statutory right in favor of grandparents to visit grandchildren until placement of the child for adoption or entry of a final decree of adoption. Under subsection (1)(c), a grandparent may seek visitation even after an adoption if a parent is deceased. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Grandparents' visitation rights not subject to exclusion under subsection (1)(b). Exclusionary statutory phrase concerning a child for whom adoption is pending or final pertains only to situations in which legal custody is vested in someone other than child's natural parents or in which child is placed out of the natural parents' home. In re Aragon, 764 P.2d 419 (Colo. App. 1988).

Grandparents' visitation rights not automatically terminated by adoption of child by natural parent's new spouse. Paternal grandparents' right to visitation with grandchild after dissolution of parents' marriage was not automatically divested when child was subsequently adopted by mother's new spouse. In re Aragon, 764 P.2d 419 (Colo. App. 1988).

Grandparents' visitation rights automatically terminate upon completion of adoption, regardless of whether adoption is by strangers or a natural relative. Thus, paternal grandparents' visitation rights terminated upon completion of adoption by maternal grandparents. People in Interest of N.S., 821 P.2d 931 (Colo. App. 1991).

Grandparent's visitation rights terminated and grandparent did not have standing to assert rights under this section where she did not seek to intervene in dependency and neglect proceeding and no order granting her leave to do so was entered by the trial court. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997).

Grandparent's visitation rights terminated and grandparent did not have standing in the relinquishment proceedings where the child had been placed for adoption with the family designated by the birth parents. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Grandparent's visitation rights are lapsed, not terminated because of death of biological parents. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents and biological parents not treated differently when grandparents are allowed visitation rights of an adopted child unless a custody case has taken place. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Marriage dissolved for purposes of subsection (1)(a) speaks to the marriage between persons who were parties to child custody case. In re Davisson, 797 P.2d 809 (Colo. App. 1990).

Applicability of statute is not limited by parents' marital status at the time visitation motion is filed. In re Davisson, 797 P.2d 809 (Colo. App. 1990).

An administrative paternity proceeding is a child custody case within the meaning of subsection (1). People in Interest of A.M.B., 946 P.2d 607 (Colo. App. 1997).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

This section does not confer an unconditional right to intervene in a paternity action under C.R.C.P. 24(a)(1) or as of right under 24(a)(2). Because the statute requires a grandparent to rebut the presumption that the parent's decision regarding visitation is in the child's best interest, it does not give rise to an absolute right to visitation. Because the statute does not vest a grandparent with an absolute right to visitation and issues concerning grandparent visitation are not inherent in a paternity action, there is no absolute or unconditional right for a grandparent to intervene in a paternity action. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).