

Hawaii

Haw. Rev. Stat. § 571-46.3 : Hawaii Statutes - Section 571-46.3:

Grandparents' visitation rights; petition; notice; order.

A grandparent or the grandparents of a minor child may file a petition with the court for an order of reasonable visitation rights. The court may award reasonable visitation rights provided that the following criteria are met:

- (1) This State is the home state of the child at the time of the commencement of the proceeding; and
- (2) Reasonable visitation rights are in the best interests of the child.

No hearing for an order of reasonable visitation rights under this section shall be had unless each of the living parents and the child's custodians shall have had due notice, actual or constructive, of the allegations of the petition and of the time and place of the hearing thereof.

An order made pursuant to this section shall be enforceable by the court, and the court may issue other orders to carry out these enforcement powers if in the best interests of the child. [L 1993, c 166, §1; am L 1998, c 20, §2]

Rules of Court

Pleadings, see Hawaii Family Court Rules, part A(III).

Case Notes

The "best interests of the child" standard in paragraph (2) requires the family court to give "special weight" to (i.e., uphold a rebuttable presumption in favor of) the visitation decisions of a custodial parent whose fitness has not been challenged; thus, the family court erred to the extent that it relied on *Troxel* to invalidate this section (2003); however, as a "harm to the child" standard was constitutionally required and could not be read into this section without making a substantive amendment to the statute, this section, as written, was unconstitutional. 116 H. 323, 172 P.3d 1067.

Article XII, §7 of the Hawaii constitution and/or §1-1 do not authorize for native Hawaiian grandparents any more visitation rights than §571-46(7) and this section authorize for all grandparents, native and non-native Hawaiian. 112 H. 113 (App.), 144 P.3d 561.

Discussed: 88 H. 68 (App.), 961 P.2d 1162.