

Missouri

Chapter 452

Section 452.402

Grandparent's visitation rights granted, when, terminated, when-- guardian ad litem appointed, when--attorney fees and costs assessed, when.

452.402. 1. The court may grant reasonable visitation rights to the grandparents of the child and issue any necessary orders to enforce the decree. The court may grant grandparent visitation when:

- (1) The parents of the child have filed for a dissolution of their marriage. A grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights. Grandparents shall also have the right to file a motion to modify the original decree of dissolution to seek visitation rights when visitation has been denied to them; or
- (2) One parent of the child is deceased and the surviving parent denies reasonable visitation to a parent of the deceased parent of the child; or
- (3) The child has resided in the grandparent's home for at least six months within the twenty-four month period immediately preceding the filing of the petition; and
- (4) A grandparent is unreasonably denied visitation with the child for a period exceeding ninety days. However, if the natural parents are legally married to each other and are living together with the child, a grandparent may not file for visitation pursuant to this subdivision.

2. The court shall determine if the visitation by the grandparent would be in the child's best interest or if it would endanger the child's physical health or impair the child's emotional development. Visitation may only be ordered when the court finds such visitation to be in the best interests of the child. However, when the parents of the child are legally married to each other and are living together with the child, it shall be a rebuttable presumption that

such parents know what is in the best interest of the child. The court may order reasonable conditions or restrictions on grandparent visitation.

3. If the court finds it to be in the best interests of the child, the court may appoint a guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice law in Missouri. The guardian ad litem may, for the purpose of determining the question of grandparent visitation rights, participate in the proceedings as if such guardian ad litem were a party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

4. A home study, as described by section 452.390, may be ordered by the court to assist in determining the best interests of the child.

5. The court may, in its discretion, consult with the child regarding the child's wishes in determining the best interest of the child.

6. The right of a grandparent to maintain visitation rights pursuant to this section may terminate upon the adoption of the child.

7. The court may award reasonable attorneys fees and expenses to the prevailing party.

(L. 1977 S.B. 430 § 2, A.L. 1984 H.B. 1513, A.L. 1988 H.B. 1272, et al., A.L. 1996 S.B. 869, A.L. 1998 S.B. 674, A.L. 2002 S.B. 923, et al., A.L. 2004 H.B. 1453)

(1990) Although father of child born out of wedlock did not acknowledge paternity, pay support or otherwise establish a relationship with the child, parent of father could seek grandparent's visitation under statute. In the Matter of C.E.R., 796 S.W.2d 423 (Mo.App.S.D.).

(1993) Statute granting grandparent's visitation rights held to be constitutional. Herndon v. Tuhey, No. 75184, Mo. S. Ct., June 29, 1993.

(1993) Although parents have constitutional right to make decisions affecting family, statute is constitutional as court considers magnitude of infringement by state as significant factor and whether there is substantial infringement by

state on family relationship. Statute granting grandparents right to petition court for visitation with grandchildren is reasonable both because it contemplates only minimal intrusion on family relationship and because it is narrowly tailored to adequately protect interests of parents and children. *Herndon v. Tuhey*, 857 S.W.2d 203 (Mo.banc).

(2000) Award of grandparent visitation to child's maternal step-grandparents not authorized pursuant to statute governing grandparent visitation rights. *Hampton v. Hampton*, 17 S.W.3d 599 (Mo.App.W.D.).

(2002) Section, as enacted prior to 2002 amendment in SB 923, et al., is constitutional under the standard enunciated in *Troxel v. Granville*, 520 U.S. 57 (2000). *Blakely v. Blakely*, 83 S.W.3d 537 (Mo.banc).

(2003) Section requires that ninety-day period occurs prior to entry of visitation order and not prior to filing of petition. *Barker v. Barker*, 98 S.W.3d 532 (Mo.banc).

(2004) Where prior dissolution judgment includes custody and visitation provisions allocating parental time and responsibilities, grandparent is limited to seeking visitation with grandchild through motion to modify dissolution decree rather than independent petition. *Tompkins v. Ford*, 135 S.W.3d 508 (Mo.App.W.D.).