

## Nebraska

### **43-1802. Visitation; conditions; order; modification.**

(1) A grandparent may seek visitation with his or her minor grandchild if:

- (a) The child's parent or parents are deceased;
- (b) The marriage of the child's parents has been dissolved or petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered; or
- (c) The parents of the minor child have never been married but paternity has been legally established.

(2) In determining whether a grandparent shall be granted visitation, the court shall require evidence concerning the beneficial nature of the relationship of the grandparent to the child. The evidence may be presented by affidavit and shall demonstrate that a significant beneficial relationship exists, or has existed in the past, between the grandparent and the child and that it would be in the best interests of the child to allow such relationship to continue. Reasonable rights of visitation may be granted when the court determines by clear and convincing evidence that there is, or has been, a significant beneficial relationship between the grandparent and the child, that it is in the best interests of the child that such relationship continue, and that such visitation will not adversely interfere with the parent-child relationship.

(3) The court may modify an order granting or denying such visitation upon a showing that there has been a material change in circumstances which justifies such modification and that the modification would serve the best interests of the child.

**Source:**Laws 1986, LB 105, § 2.

#### **Annotations**

Grandparents' existing visitation rights are not automatically terminated by an adoption, but can be modified upon a showing of cause with the child's best interests at issue. *Raney v. Blecha*, 258 Neb. 731, 605 N.W.2d 449 (2000).

In order for a trial court to grant grandparent visitation under subsection (2) of this section, evidence must be adduced to enable the court to find "by clear and convincing evidence that there is, or has been, a significant beneficial relationship between the grandparent and the child, that it is in the best interests of the child that such relationship continue, and that such visitation will not adversely interfere with the parent-child relationship". Nothing contained within the modification provisions of the grandparent visitation statutes makes the modification of previously ordered grandparent visitation dependent upon the parent's continued parental relationship with the child. By the grandparent visitation statutes' express provision of a method by which to modify previously ordered grandparent visitation, the Legislature intended that grandparent visitation granted under those statutes not be interrupted by the adoption statutes. *Pier v. Bolles*, 257 Neb. 120, 596 N.W.2d 1 (1999).

The statutory criteria for modification of a prior grandparent visitation order are different than the criteria for obtaining grandparent visitation initially. Grandparents' efforts to undermine the relationship between a mother and her children do not serve the best interests of the children. *Morris v. Corzatt*, 255 Neb. 182, 583 N.W.2d 26 (1998).

This section sets out criteria for awarding grandparent visitation which must be proved by clear and convincing evidence before a court may exercise its discretionary authority to grant grandparent visitation rights. *Eberspacher v. Hulme*, 248 Neb. 202, 533 N.W.2d 103 (1995).

After the deaths of the minor child's biological parents, the child's maternal biological grandparents became his parents by adopting him. Therefore, the child's parents are not deceased within the meaning of this statute, and the paternal biological grandparents cannot seek court ordered visitation under subsection (1)(a) of this section. *Rust v. Buckler*, 247 Neb. 852, 530 N.W.2d 630 (1995).

The grandparent visitation statutes do not provide for an award of attorney fees, nor is there a uniform course of procedure in these cases which would allow recovery of attorney fees. A grandparent visitation action may be initiated either during the dissolution proceeding or after the marriage of the parents has been dissolved. *Rosse v. Rosse*, 244 Neb. 967, 510 N.W.2d 73 (1994).

Pursuant to subsection (2) of this section, a juvenile court is not the proper venue for a grandparent to petition for grandparent visitation under the grandparent visitation statutes. It is within the juvenile court's statutory jurisdiction to determine a motion for visitation asserted by a grandparent who has properly intervened. *In re Interest of Dylan W.*, 8 Neb. App. 1039, 606 N.W.2d 847 (2000).

The overriding and paramount consideration in determining grandparent visitation rights is the best interests of the children. The disruption to the lives of the grandchildren, including the distance of travel to exercise visitation rights, is clearly an appropriate consideration in the award of grandparent visitation privileges. *Beal v. Endsley*, 3 Neb. App. 589, 529 N.W.2d 125 (1995).

The standard of review in cases involving visitation by grandparents is the same as the standard of review in other custody and visitation cases. *Dice v. Dice*, 1 Neb. App. 241, 493 N.W.2d 207 (1992).

#### **43-1803. Venue; petition; contents; service.**

(1) If the minor child's parent or parents are deceased or have never been married, a grandparent seeking visitation shall file a petition in the district court in the county in which the minor child resides. If the marriage of the parents of a minor child has been dissolved or a petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered, a grandparent seeking visitation shall file a petition for such visitation in the district court in the county in which the dissolution was had or the proceedings are taking place. The county court or the district court may hear the proceeding as provided in section [25-2740](#). The form of the petition and all other pleadings required by this section shall be prescribed by the Supreme Court. The petition shall include the following:

(a) The name and address of the petitioner and his or her attorney;

(b) The name and address of the parent, guardian, or other party having custody of the child or children;

(c) The name and address of any parent not having custody of the child or children if applicable;

(d) The name and year of birth of each child with whom visitation is sought;

(e) The relationship of petitioner to such child or children;

(f) An allegation that the parties have attempted to reconcile their differences, but the differences are irreconcilable and such parties have no recourse but to seek redress from the court; and

(g) A statement of the relief sought.

(2) When a petition seeking visitation is filed, a copy of the petition shall be served upon the parent or parents or other party having custody of the child and upon any parent not having custody of such child by personal service or in the manner provided in section [25-517.02](#).

**Source:**Laws 1986, LB 105, § 3; Laws 1996, LB 1296, § 26; Laws 1997, LB 229, § 39; Laws 2007, LB221, § 2.

### **Annotations**

A grandparent visitation action may be initiated either during the dissolution proceeding or after the marriage of the parents has been dissolved. *Rosse v. Rosse*, 244 Neb. 967, 510 N.W.2d 73 (1994).

A proceeding for grandparent visitation under this section is subject to the Nebraska Child Custody Jurisdiction Act, section [43-1201](#) et seq. *Dorszynski v. Reier*, 6 Neb. App. 877, 578 N.W.2d 457 (1998). Note: Sections [43-1201](#) to [43-1225](#) were repealed in 2003.

Juvenile court is not the proper venue for grandparents seeking visitation rights of children placed in the temporary custody of the Nebraska Department of Social Services, since this section specifically provides for venue in the district court of the county where the children reside or in the district court where dissolution of parents' marriage was pending or was dissolved. *In re Interest of Zachary W. & Alyssa W.*, 3 Neb. App. 274, 526 N.W.2d 233 (1994).