

Wisconsin

767.43 Visitation rights of certain persons. (1) PETITION, WHO MAY FILE. Except as provided in subs. (1m) and (2m), upon petition by a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent–child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

(1m) EXCEPTION; HOMICIDE CONVICTION. (a) Except as provided in par. (b), the court may not grant visitation rights under sub. (1) to a person who has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(2) WISHES OF THE CHILD. Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the child.

(2m) WHEN SPECIAL GRANDPARENT PROVISION APPLICABLE. Subsection (3), rather than sub. (1), applies to a grandparent requesting visitation rights under this section if sub. (3) (a) to (c) applies to the child.

(3) SPECIAL GRANDPARENT VISITATION PROVISION. The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child’s parents have notice of the hearing and the court determines all of the following:

(a) The child is a nonmarital child whose parents have not subsequently married each other.

(b) Except as provided in sub. (4), the paternity of the child has been determined under the laws of this state or another jurisdiction if the

grandparent filing the petition is a parent of the child's father.

(c) The child has not been adopted.

(d) The grandparent has maintained a relationship with the child or has attempted to maintain a relationship with the child but has been prevented from doing so by a parent who has legal custody of the child.

(e) The grandparent is not likely to act in a manner that is contrary to decisions that are made by a parent who has legal custody of the child and that are related to the child's physical, emotional, educational or spiritual welfare.

(f) The visitation is in the best interest of the child.

(3c) ACTION IN WHICH PETITION FILED; ALTERNATIVES. A grandparent requesting visitation under sub. (3) may file a petition to commence an independent action for visitation under this chapter or may file a petition for visitation in an underlying action affecting the family under this chapter that affects the child.

(3m) PRETRIAL HEARING; RECOMMENDATION. (a) A pretrial hearing shall be held before the court in an action under sub. (3). At the pretrial hearing the parties may present and cross-examine witnesses and present other evidence relevant to the determination of visitation rights. A record or minutes of the proceeding shall be kept.

(b) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of granting visitation rights to a grandparent in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties.

(c) If a party or the guardian ad litem refuses to accept a recommendation under this subsection, the action shall be set for trial.

(d) The informal hearing under this subsection may be terminated and the action set for trial if the court finds it unlikely that all parties will accept a recommendation under this subsection.

(4) PATERNITY DETERMINATION. If the paternity of the child has not yet been determined in an action under sub. (3) that is commenced by a person other than a parent of the child's mother but the person filing the petition under sub. (3) has, in conjunction with that petition, filed a petition or motion

under s. 767.80 (1) (k), the court shall make a determination as to paternity before determining visitation rights under sub. (3).

(5) INTERFERENCE WITH VISITATION RIGHTS. Any person who interferes with visitation rights granted under sub. (1) or (3) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against that person.

(6) MODIFICATION OF ORDER IF HOMICIDE CONVICTION. (a) If a person granted visitation rights with a child under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a parent or guardian of the child, or upon the court's own motion, and upon notice to the person granted visitation rights.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

History: 1971 c. 220; 1977 c. 105 ss. 35, 39; 1979 c. 32 ss. 50, 92 (4); Stats. 1979s. 767.245; 1983 a. 447, 450; 1987 a. 355; 1995 a. 68; 1999 a. 9; 2005 a. 443 ss. 101, 183; Stats. 2005 s. 767.43.

Biological grandparents had no right to visitation following termination of their son's parental rights and adoption by the child's stepfather. *Soergel v. Soergel*, 154 Wis. 2d 564, 453 N.W.2d 624 (1990).

The visitation petition of a custodial parent's widow did not meet the criteria of sub.(1) when, prior to the custodial parent's death, the non-custodial parent had filed a motion to revise custody. Section 880.155 [now s. 54.56] governs visitation in the event of a parent's death. *Cox v. Williams*, 177 Wis. 2d 433, 502 N.W.2d 128 (1993).

A paternity case in which the court has retained postjudgment authority to enforce the judgment constitutes an underlying action under which a petition for grandparent visitation may be brought. *Paternity of Nastassja L.H.–J.* 181 Wis. 2d 666, 512 N.W.2d 189 (Ct. App. 1993).

An existing underlying action affecting the family does not alone provide standing to petition under this section. The underlying action must threaten the integrity of a family unit. An action under this section does not apply to intact families. Because the father figure in a household was not the biological or adoptive father of one of the children did not mean the family was not intact. *Marquardt v. Hegemann–Glascock*, 190 Wis. 2d 447, 526 N.W.2d 834 (Ct. App. 1994).

While this section does not apply outside the dissolution of a marriage, it does not preempt the consideration of visitation in circumstances not subject to the statute. A circuit court may consider visitation by a non–parent outside a marriage dissolution situation in the best interests of the child if the non–parent petitioner demonstrates a parent–like relationship with the child and shows a significant triggering event such as substantial interference with that relationship. *Custody of H.S.H.–K.* 193 Wis. 2d 649, 533 N.W.2d 419 (1995).

Public policy does not prohibit a court, relying on its equitable powers, to grant visitation outside this section on the basis of a co–parenting agreement between a biological parent and another when visitation is in the child’s best interest. *Custody of H.S.H.–K.* 193 Wis. 2d 649, 533 N.W.2d 419 (1995).

When applying sub. (3), circuit courts must apply the presumption that a fit parent’s decision regarding grandparent visitation is in the best interest of the child, but the court must still make its own assessment of the best interest of the child. *Paternity of Roger D.H.* 2002 WI App 35, 250 Wis. 2d 747, 641 N.W.2d 440, 00–3333.

Under *Troxel v. Granville*, 530 U.S. 57, the due process clause prevents a court from starting with a clean slate when assessing whether grandparent visitation is in the best interests of the child. Within the best interests

framework, the court must afford a parent's decision special weight by applying a rebuttable presumption that the fit parent's decision regarding grandparent visitation is in the best interest of the child. It is up to the party advocating for nonparental visitation to rebut the presumption by presenting evidence that the offer is not in the child's best interests. *Martin L. v. Julie R. L.* 2007 WI App 37, 299 Wis. 2d 768, 731 N.W.2d 288, 06–0199.

When an existing informal arrangement was sufficient to maintain the established relationship between grandparents and children, state interference in the form of court-ordered placement with the grandparents was unwarranted. The question is not whether the additional time sought by the grandparents with their grandchildren might be good for all concerned. The questions are whether, under the facts of the case, the state should intervene to dictate to the parent with primary placement, that added visitation time is warranted, and, if so, which parent should forfeit a portion of his or her placement time to accommodate the grandparent visitation. *Rogers v. Rogers*, 2007 WI App 50, 300 Wis. 2d 532, 731 N.W.2d 532, 06–1766. See also *Lubinski v. Lubinski*, 2008 WI App 151, 314 Wis. 2d 395, 761 N.W.2d 676, 07–1701. Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.

The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

Third-party Visitation in Wisconsin. Herman & Cooper. Wis. Law. March 2001.

54.56 Visitation by a minor's grandparents and stepparents.

(1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor, whether or not the surviving spouse has remarried.

(2) If one or both parents of a minor are deceased and the minor is in the custody of the surviving parent or any other person, a grandparent or stepparent of the minor may petition for visitation privileges with respect to

the minor, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the minor has notice of the hearing and if the court determines that visitation is in the best interest of the minor.

(3) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the minor.

(3m) (a) Except as provided in par. (b), the court may not grant visitation privileges to a grandparent or stepparent under this section if the grandparent or stepparent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the minor, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the minor. The court shall consider the wishes of the minor in making the determination.

(4) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify the visitation privileges or enforcement order for good cause shown.

(4m) (a) If a grandparent or stepparent granted visitation privileges with respect to a minor under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the minor, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the minor upon petition, motion or order to show cause by a person having custody of the minor, or upon the court's own motion, and upon notice to the grandparent or stepparent granted visitation privileges.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the minor. The court shall consider the wishes of the minor in making the determination.

(5) This section applies to every minor in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

History: 1975 c. 122; 1995 a. 38; 1999 a. 9; 2005 a. 387 s. 373; Stats. 2005 s.

The adoption of a child of a deceased parent does not terminate the decedent's parents' grandparental visitation rights under s. 880.155 [now this section]. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

Section 767.245 (5) [now s. 767.43 (5)] sets an appropriate standard for determining the best interests of a child under this section. The court did not exceed its authority under this section or violate a parent's constitutional rights to raise a child by ordering grandparent visitation, nor did it violate this section by ordering a guardian ad litem, mediation, and psychological evaluations. The court was not authorized by this section to order psychotherapeutic treatment that was arguably in the child's best interests, but outside the scope of visitation. *F.R. v. T.B.* 225 Wis. 2d 628, 593 N.W.2d 840 (Ct. App. 1999), 98-0819.

Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992. The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.