

You and the Law in North Dakota: The Rights of Grandparents and Stepgrandparents

FS-549, April 1994

Deb Gebeke,
Family Science Specialist

You've become a grandparent or stepgrandparent. For many, the relationships formed between grandparents and grandchildren are special. Grandparents often get to enjoy the pleasure of their grandchildren's company without the responsibility of raising or caring for the children full time. And for the grandchildren, their relationships with grandparents may be sources of stable, unconditional love. Divorce, death of a parent or adoption of grandchildren, however, frequently threatens these relationships and leaves grandparents with questions about their rights.

When the legislature or the courts make decisions about the rights of grandparents, they seek a balance between two ideals. The first is the value attached to allowing parents to care for their children in the best way they can. The second is the value attached to doing what is in the best interests of the children. The wishes or best interests of grandparents are not among the most important factors considered in making these decisions.

Here are some of the most commonly asked questions concerning the rights of grandparents. The answers are based in general on North Dakota law. Specific concerns should be directed to a family law attorney.

The parents of my grandchildren are divorced. Do I have a right to visit my grandchildren?

You may ask the district court to give you the right to reasonable visitation with your grandchildren. You can ask for this while the parents are in the process of getting divorced or after the divorce has been granted. The court presumes that grandparental visitation is in the best interests of the children. It will consider the amount of personal contact you have had with the children and with their parent(s) prior to your application. The court may order a home study done and may talk with the children to determine their wishes. If the court allows visitation, it may place reasonable conditions or restrictions on the visits. The court may also issue orders necessary to enforce your rights.

My child is dead and the surviving parent won't let me visit my grandchildren. Am I entitled to visit my grandchildren?

Again, you may ask the district court to give you the right to reasonable visitation as indicated in the example above.

My child is dead and my grandchildren have been adopted by a stepparent. Do I have a right to visit my grandchildren?

When children are adopted, all legal relationships and all rights and duties between the children and the biological parent(s) cease. The adopting parent(s) assumes all the rights, duties and obligations of a biological parent. The "former" grandparents, however, may ask the court to give them the right to visit the children. The grandparent may apply to the court and the court will decide whether to grant visitation after considering the same factors cited in the first question. If the grandchildren have been adopted by a stepparent or other grandparent, the court will consider the best interests of the children. However, grandparents do not have a right under North Dakota statutes to ask for visitation if the grandchildren are adopted by someone other than a stepparent or grandparent.

The parents of my grandchildren are angry with me and refuse to allow me to visit. Can I make them let me visit my grandchildren?

Courts generally don't want to interfere with families because the protection of the parent/child relationship is considered important. However, because of North Dakota law, grandparental visitation is presumed to be in the best interests of the children. Therefore, unless someone brings in supporting evidence to the contrary to show that visitation would not be in the best interests, the court must recognize the visitation request. Again, many factors previously discussed may be used to determine frequency and length of visitation. Upon considering all of the factors above, the court would issue an order to enforce the decision.

My child has died and I believe my grandchildren would be better off living with me than with the surviving

parent. Can I get custody?

North Dakota courts view parents as the natural guardians of their children. They have the primary right to custody. This right can only be taken away in a legal proceeding where it is shown that the parent's ability to provide care is so inadequate that the children's welfare, health and safety are compromised or where some other extraordinary circumstances exist.

It might be an extraordinary circumstance if a grandparent has had custody of grandchildren for a substantial length of time and during that time has become the children's "psychological parent" (a person thought of as the parental figure). But even then a court would return the children to the custody of the parent unless it found that restoring parental custody would cause serious harm to the children.

I am supporting my grandchildren. Neither parent is contributing. Can I get help?

It is the responsibility of parents to support their children. If grandparents furnish the support, they may go to court to try to make the parents pay back the funds. To recover the money, however, it must be clear the grandparents did not intend the support to be in the nature of a gift. The parents' responsibility to support their children remains intact even when they divorce. Divorce decrees set an amount for the child support, according to a child support schedule. This amount is the extent of the financial duty owed by the parent(s) and the court will not allow recovery of any excess amount.

Even if the divorce decree does not set a definite amount of support owed, the responsibility for supporting the children still belongs to both parents. If one or both of the parents do not fulfill the support responsibility, the other parent or a third person can try to recover the amount of support that should have been provided.

In certain limited circumstances, Aid to Families with Dependent Children (AFDC), which is a public welfare benefit program, may be paid on behalf of children who are cared for by a relative. The children must be residents of North Dakota and less than age 18 or full-time students who expect to complete high school before age 19.

Children whose parents have died, abandoned them or are unable to care for them because of physical or mental disabilities may be eligible for AFDC. The caretaker must show that funds are needed to provide proper care.

How can I be certain that money I save for my grandchildren's education will be used for that purpose?

Depending on the amount involved and how complicated you are willing to make things, several options are available. The simplest is to keep the money yourself and make it available directly.

You could use a formal trust with someone acting as trustee. This usually requires the services of a lawyer. It is the surest way to get what you want because the trustee is legally obligated to follow your wishes as set out in the trust agreement. Check with your lawyer for other ideas that best suit your needs.

The parental rights of my child have been terminated (either by death or court order) and my grandchildren have been adopted by a stepparent. Will these grandchildren inherit from me when I die?

Most likely. Under North Dakota law, your grandchildren will inherit from you since the adoption by the spouse of a biological parent has no effect on the relationship between the children and either biological parent. However, to be certain, you should identify your grandchildren by name in your will. Your grandchildren will then benefit under your will whether you die residing in North Dakota or another state.

Reference

Morrison, J. (1989). *The Rights of Grandparents*. University of Missouri, Columbia.

Special thanks to Tara Muhlhauser, J.D., University of North Dakota, Grand Forks, for her legal expertise in preparing this publication.

FS-549, April 1994

County Commissions, North Dakota State University and U.S. Department of Agriculture cooperating. North Dakota State University does not discriminate on the basis of race, color, national origin, religion, sex, gender identity, disability, age, status as a U.S. veteran, sexual orientation, marital status, or public assistance status. Direct inquiries to the Vice President for Equity, Diversity and Global Outreach, 205 Old Main, (701) 231-7708. This publication will be made available in alternative formats for people with disabilities upon request, 701 231-7881.

[Information for Prospective Students](#)

NDSU is an equal opportunity institution

This information may be photocopied for noncommercial, educational purposes in its entirety with no changes.
Requests to use any portion of the document should be sent to NDSU.permission@ndsu.edu.
North Dakota State University Agriculture and University Extension
Dept. 7070, Morrill 7, P.O. Box 6050, Fargo, ND 58108-6050