



GRANDPARENTAL VISITATION RIGHTS

Arizona Revised Statutes Sections 25-402, 25-409(C)(1), and (3) allows for a grandparent or great grandparent to petition a court for visitation rights. Before the grandparent or great grandparent may petition the court one of the following must apply:

- A. One of the legal parents is deceased or missing;
- B. The child's legal parents are not married to each other at the time the petition is filed;
- C. The marriage of the parents of the child has been dissolved for at least three months.

Arizona's grandparental visitation rights statute has been upheld while recognizing that parents have a fundamental liberty interest in the care, custody, and management of their children but that is not without limit or beyond regulation. In the case of *Grayville v. Dodge v. Court*, the Supreme Court of Arizona held the statute permitting grandparental visitation does not substantially infringe on a parent's fundamental rights nor heavily burden rights - - at least as long as an intact family is not involved.

Arizona's non-parental visitation statute is limited to grandparents and great grandparents, the court may order visitation over parental objections only if the marriage of the parents has been dissolved for at least three months or if one of the parents is deceased or missing. Further, the Arizona statute requires the Court to evaluate "all relevant factors" as well as five specific factors to determine best interests. Arizona's statute also requires the Court to give weight to the parent's visitation decisions, for example the Court must assess the motivation of the person denying visitation and of the person requesting visitation and the historical relationship of the parties. The Court must assess the amount of visitation requested and determine its impact on the child's activities.

In determining and quantifying constitutional rights of the parents, Arizona Courts have held; (1) there is a presumption that a fit parent acts in the child's best interests in decisions concerning the child's care and custody including decisions re: grandparent visitation. However, the presumption of the fitness of a parent's decision, however, is rebuttable. Further, the presumption is not evidence that is weighed, but only dictates the order and burden of proof; (2) a trial court must consider and give some **special weight** to a fit parent's determination and whether such visitation is in the child's best interests; (3) the court must give **significant weight** to parents voluntary agreement to some visitation; (4) and the statute must be applied as written; (5) the mere fact that a parent has offered some grandparental visitation does not preclude the court from granting more visitation. *McGovern v. McGovern*

Lastly, the natural grandparent of a child born out of wedlock has no right of visitation following the adoption of the child. Grandparental visitation rights are based solely on statutory provision.