

Do Grandparents Have Visitation Rights When Their Own Child's Parental Rights To The Grandchild Are Terminated?

Question: I am divorced and remarried. My new spouse wants to adopt my child. My ex-spouse is willing to sign away parental rights, but my ex-spouse's mother is suing for grandparent visitation rights. Can she do that?

Answer: Under Arizona Revised Statute 25-409, a grandparent seeking visitation may initiate a superior court action to try and obtain visitation rights. The Superior Court may grant reasonable visitation rights to a grandparent on finding that this would be in the best interests of the minor child and any of the following are true: (1) the marriage of the parents of the child has been dissolved for at least 3 months; (2) a child's parent is deceased or has been reported missing for at least 3 months to a law enforcement agency; or (3) the child is born out of wedlock.

A.R.S. 25-409 requires that the Court consider "all relevant factors" in determining what is in the child's best interests. This includes an analysis of the history of the grandparent/child relationship, the motivation of the respective parties, the amount of visitation time requested and the impact this will have on the child's customary activities.

A.R.S. 25-409, Subsection F. states, "All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries."

So, according to the text of A.R.S. 25-409, grandparent visitation rights terminate upon adoption or adoption placement, except if one of the natural parents remarries and the new spouse is the one adopting the child. This may apply even if the natural parent and new spouse obtain written consent from the other natural parent under A.R.S. 8-106 to adopt the child.

However, A.R.S. 25-409 does not address what happens if a natural parent remarries AND the new spouse wants to adopt, AND the other natural parent through whom the grandparents seek visitation rights relinquishes parental rights through a parent termination proceeding. A.R.S. 8-539 states that an order terminating parental rights divests the parent and child of all legal rights, privileges, duties and obligations with respect to each other, except the child's right to inherit and support from the parent. This termination of rights includes barring the terminated parent from having visitation with the child.

By virtue of that termination order, it is arguable that the corresponding grandparents would be barred from having visitation rights as well, irrespective of the child's best interests.

There are many factors, both legal and emotional, involved in this process. It is recommended that legal counsel be consulted to address the law as it relates to the particular facts of each case.