

Effective 5/12/2020

Superseded 9/1/2022

30-5-2 Visitation rights of grandparents.

- (1) In accordance with the provisions and requirements of this section:
 - (a) a grandparent has standing to bring an action requesting visitation in district court by petition; and
 - (b) a grandparent may file a petition for visitation rights in the juvenile court or district court where a divorce proceeding or other proceeding involving custody and visitation issues is pending.
- (2)
 - (a) In accordance with Section 62A-4a-201, it is the public policy of this state that a parent retains the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's children.
 - (b) A court shall presume that a parent's decision in regard to grandparent visitation is in the best interest of the parent's child.
- (3) A court may find the presumption in Subsection (2)(b) rebutted if the grandparent, by clear and convincing evidence, establishes that:
 - (a) the grandparent has filled the role of custodian or caregiver to the grandchild that:
 - (i) is in a manner akin to a parent; and
 - (ii) the loss of the relationship between the grandparent and the grandchild would cause substantial harm to the grandchild; or
 - (b) both parents are unfit or incompetent in a manner that causes potential harm to the grandchild.
- (4)
 - (a) If the court finds the presumption in Subsection (2)(b) is rebutted, the court may consider whether grandparent visitation is in the best interest of the grandchild.
 - (b) If the court considers whether grandparent visitation is in the best interest of the child, the court shall take into account the totality of the circumstances, including:
 - (i) the reasonableness of the parent's decision to deny grandparent visitation;
 - (ii) the age of the grandchild;
 - (iii) the death or unavailability of a parent; and
 - (iv) if the grandchild is 14 years old or older, the grandchild's desires regarding visitation after the court inquires of the grandchild.
- (5) If the court finds the presumption in Subsection (2)(b) is rebutted and grandparent visitation is in the best interest of the grandchild, the court may issue an order for grandparent visitation.
- (6) The adoption of a grandchild by the grandchild's stepparent does not diminish or alter visitation rights previously ordered under this section.
- (7) On the petition of a grandparent or the legal custodian of a grandchild the court may, after a hearing, modify an order regarding grandparent visitation if:
 - (a) the circumstances of the grandchild, the grandparent, or the custodian have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and
 - (b) the court determines that a modification is appropriate based upon the factors set forth in Subsections (3) and (4).
- (8) A grandparent may petition the court to remedy a parent's wrongful noncompliance with a visitation order.