

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____,)
)
 Plaintiffs,)
)
 vs.)
)
 _____,)
)
 Defendant,)
)

File #

Motion for Grandparent Visitation; Brief

TO: DEFENDANT, _____, AND HIS/HER ATTORNEY OF RECORD, _____:

Motion

COMES NOW, the plaintiffs, _____, who by and through their attorney of record, _____, respectfully prays for issuance of an Order providing the following relief:

1. Requiring the parties to attend mediation with _____ to resolve this matter pursuant to N.D.C.C. § 14-09-05.1 and N.D.C.C. §14-09.1.;
2. Requiring the parties to be equally responsible for any/all costs associated with such mediation.
3. Awarding (paternal/maternal) grandparents, _____, reasonable visitation rights with the minor children of this action, namely _____ (provide child(ren)'s initials), pursuant to N.D.C.C. §14-09-05.1, as set forth in **Exhibit A**;
4. Granting such other, further and additional relief as the Court may deem just and proper.

Brief

14-09-05.1. Grandparent rights of visitation

N.D.C.C. §14-09-05.1 allows the court to grant reasonable visitation rights to grandparents if the court finds that the *visitation would be in the best interests of the child and that the visitation would not interfere with the parent-child relationship*. Id. (emphasis added). In doing so, the Court shall consider the amount of personal contact between the grandparents and the children. Id.

North Dakota case law is sparse on the issue of grandparent visitation, especially following the 2001 amendment to N.D.C.C. §14-09-05.1. Proof of a contentious or dysfunctional relationship between a parent and grandparent, alone, does not necessarily constitute interference with a parent-child relationship or prohibit the court from awarding grandparent visitation. See In re D.P.O., 2005 N.D. 39, 692 N.W.2d 128. In D.P.O., the North Dakota Supreme Court affirmed an award of grandparent visitation even though the child's father and maternal grandparents had a conflicted relationship. In re D.P.O., ¶16, 692 N.W.2d at 132. The district court in D.P.O. made specific findings explaining its decision to allow grandparent visitation:

[t]his has been a contentious case. [Nathan] claims that the [grandparents] are racially prejudiced against him and that they are trying to alienate [Donna] from him. The Court does not find any evidence of this alleged prejudice. It is true that the parties have had a contentious relationship, and that dysfunctional relationship continues at the present time. . . . [T]he charge of parental alienation by the [grandparents] is not persuasive to the Court. In fact, the clinical impressions reached by Northeast Human Service Center, through Dr. Myron Veenstra, indicated that: “[the grandfather] appears able to separate his feelings towards the biological father in contact with the child. He appears able to have unsupervised contact with the granddaughter and not act in a manner that alienates the biological father. He appreciates the importance of the granddaughter's need to develop a clear relationship with the father, although [the grandfather] would still prefer his getting custody.”

Id. ¶15, 692 N.W.2d at 131-32.

The district court went on to eloquently find:

The bad relationship is a two-way street, and each side must be able to put aside past feelings and work together for the good of [Donna}. Conversely, [Nathan] needs to recognize the right of the [grandparents] to continue their role, especially in view of the fact that the [grandparents] were the parent figures for [Donna] a few days after her birth until shortly before the Judgment was entered. . . Each party must share the blame for [Donna's acting out behaviors, which is really [Donna's] reaction to the stress that she feels because of the bad relationship between her father and the [grandparents]. The parties, as parents and grandparents, are the most important people in [Donna's] life. Any alienation of [Donna] by any party from any other party is very damaging to [Donna]... All parties must be able to recognize and correct the terrible toll that the current situation takes from [Donna].

In re D.P.O. is one of the very few North Dakota Supreme Court cases to be heard by our Supreme Court since the grandparent statute, N.D.C.C. § 14-09-05.1, was amended in 2001. Attached hereto as **Exhibit B** is a complete copy of In re D.P.O. for the Court's review and consideration.

Conclusion

Respectfully submitted this ____ day of _____, 20____.

Attorney
Address
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Fax
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Attorney for _____