



Grandparent's Rights

Increasingly grandparents are these days very involved in their grandchildren's life. Many grandparents have taken over the role of day-to-day carer while both parents work fulltime. Does the fact that the child spends significant time with the grandparents entitle the grandparents to make decisions regarding the important issues in a child's life?

What happens if parents and grandparents disagree on a child's cultural upbringing, religion, health or schooling? What happens if the parents have a history of anti-social behaviour e.g. drug abuse and criminal behaviour and the parents are unable to fulfil their role as a parent of the child? Do the grandparents have any rights in these circumstances?

The accepted principle in relation to an application for parenting orders by grandparents is that there is no presumption in favour of a biological parent. The best interests of the child remain the paramount consideration; however it is not the only consideration.

Family Law legislation starts from the point that, subject to the child's best interests, parents of a child are entitled to spend equal time with that child. It is also presumed that it will be in the best interest of a child if his or her parents have equal shared parental responsibility of the child. Parental responsibility includes making decisions regarding a child's education, health care, sporting activities, cultural and social activities and so on.

In circumstances where the biological parents have proved to be significantly deficient to act as parents, sole parental responsibility has been awarded to the child's grandparents – shared parental responsibility applies to parents only.

However, this is a very significant step interfering with the parents' legitimate fundamental rights. It should also be remembered that if sole parental responsibility is awarded to a non- parent e.g. the grandparents, this does not take away from the parent's responsibility for the child.

The importance of children having a meaningful relationship with their extended family including grandparents is recognised. However, if parents are able to fulfil their obligations as parents of a child, and the parents jointly have a strong view in relation to the parenting of their child, the courts will be very cautious to interfere with the exercise of the parents' parental responsibility.

It is accepted that when children are in the care of their grandparents, the grandparents are entitled make decisions in relation to minor issues affecting the child's day- to- day life e.g. what the child should wear or eat. However, when it comes to the long term care, welfare and development of the child, this remains the parents' responsibility to share. The child's grandparents will only be awarded sole parental responsibility in circumstances where the child's parents are unable to fulfil their role as parents of the child.

Remember – your circumstances cannot be generalised and it is therefore very important to always seek legal advice. If you have any questions in relation to your rights as a grandparent or children's issues in general, please contact one of our experienced family lawyers Oliver Hagen or Ken Gray on 02 4731 5899 or email familylaw@batemanbattersby.com.au at our office.