
When one parent is granted custody of a child, the other parent is usually entitled to visitation rights. A parent's visitation right is a natural right. It should only be denied under extreme circumstances such as when visitation could harm the child. An example of a circumstance that may justify denying visitation rights is if a parent is addicted to narcotics or if a parent has been convicted of extremely violent offenses.

If a convicted parent is ineligible to participate in shared parental responsibility because it would be detrimental to a minor child, a Florida court may "make such arrangements for visitation as will best protect the child." Fla. Stat. ch. 61.13(2)(b)2.

2) THIRD PARTIES

a) General Rules

In most states, a court cannot award visitation rights to a third party without statutory authority. In a minority of states, however, courts may make such an award if it is in the child's best interest -- at least to parties who have stood in *loco parentis* to the child. In some states, grandparents have a statutory right to visitation if one of the child's biological parents is deceased or has abandoned the child and it is in the best interests of the child. In order for any order granting grandparent visitation rights to be constitutionally permissible, great weight must be given to the parent's wishes when determining the best interests of the child.

b) Florida Rule

In a grandparent's action seeking visitation rights, a Florida court can grant the grandparent reasonable visitation rights with respect to a minor grandchild if doing this is in that grandchild's best interest and if:

- a) The marriage of the parents of the child has been dissolved;
- b) A parent of the child has deserted the child; or
- c) The child was born out of wedlock and is not later determined to be a child born within wedlock.

See Fla. Stat. ch. 752.01(1)(a)-(c).

Under this grandparent visitation law, a Florida court must consider these factors when determining if grandparent visitation is in the child's best interests:

(1) Parent-Child Relationship

Each grandparent's willingness to foster a close relationship between the child and his or her parent or parents.

(2) Grandparent(s)-Child Relationship

The duration and quality of the child and grandparent(s)' relationship.

(3) Child's Preference

The child's preference if the child is found to possess sufficient maturity to express a preference.

(4) Child's Health

The child's mental and physical health.

(5) Grandparent(s)'s Health

The grandparent(s)' mental and physical health.

See Fla. Stat. ch. 752.01(2)(a)-(f).

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C. Joint Custody

1) INTRODUCTION

In recent years, some courts have moved away from granting sole custody in one parent. Instead, the parents are granted joint custody and, in theory, each possesses equal custody rights. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.

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2) MECHANICS OF JOINT CUSTODY

When parents are awarded joint custody, they share in the legal custody of the children. In other words, the both participate in decision-making regarding the upbringing of the child. Additionally, either or both parents may be awarded physical custody. However, as a practical matter, equality in physical custody is virtually impossible to achieve.

In Florida, a custodial parent with whom a child resides is known as a "primary residential parent." Fla. Stat. ch. 61.046(3). Conversely, the child does not primarily reside with the "noncustodial parent." Fla. Stat. ch. 61.046(11). Thus, generally the primary residential parent possesses physical custody subject to shared or sole parental responsibility regarding major decisions regarding the child's life such as religion or education.

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a) Shared Parental Responsibility

In Florida, joint legal custody is referred to as "shared parental responsibility." Fla. Stat. ch. 61.046(15). Under this court-ordered relationship, both parents possess full parental rights and responsibilities over their child. *Id.* Both parents must discuss with each other all major issues concerning their child's welfare and jointly decide them. *Id.*

A Florida court may allocate parental responsibility regarding specific aspects of the child's welfare based on either parent's articulated desires regarding these responsibilities or divide them based on the child's best interests. *See Fla. Stat. ch. 61.13(2)(b)2.a.* Types of parental

responsibilities can include maintaining the child's primary residence and providing for the child's education, and medical and dental care. *Id.*

★ b) Sole Parental Responsibility

In Florida, sole custody is described as "sole parental responsibility." Fla. Stat. ch. 61.046(16). Under this court-ordered relationship, only one parent makes decisions regarding the minor child. *Id.* A Florida court must order "sole parental responsibility," to one parent when it is in the minor child's best interests, with or without visitation rights. Fla. Stat. ch. 61.13(2)(b)2.b.

★ c) Rotating Child Custody

Florida trial courts can order or approve rotating child custody plans. *See Ruffridge v. Ruffridge*, 1997.FL.0000272 (Tex. Dist. Ct. App. 01/27/1997). But this method of alternating child custody between parents is disfavored. Generally, a child should have a primary residence and the provision of this residence should be shared by the child's parents. *Id.* Accordingly, rotating child support is presumptively not in a child's best interest. *Id.* Thus, a rotating custody plan should only be adopted in "an exceptional case" when the presumption is overcome such that the plan is in the child's best interest. *Id.*

D. Enforcement

If the parent with custody refuses to permit judicially ordered visitation, a parent may attempt to enforce the visitation order through statutory or judicial remedies.

Many jurisdictions have enacted statutes providing for a judicial procedure to enforce visitation orders. If a parent does not comply with an order, under some of these statutes, a court may order the custodial parent to pay a bond to guarantee future compliance. Additionally, if the custodial parent does not provide the child for the additional visits, the parent risks being jailed for contempt.

1) FLORIDA LAW

When issuing an order regarding child custody or visitation, a Florida court can enter certain additional types of orders to enforce a child custody or visitation order. *See Fla. Stat. ch. 61.45(1)*. These additional orders can be premised upon either the parties' written stipulation or by a party's showing of sufficient proof. *Id.* Specifically, the party must present:

- I. "competent substantial evidence" of
- II. a risk that another party might violate the court's order of visitation or custody;
- III. by removing a child from Florida or the United States; or
- IV. by concealing the child's location. *Id.*

Based on that presentation, the court can impose the following additional orders: