

Getting Guardianship of your Grandchildren By Alexandra R. English

Increasingly, grandparents' rights are becoming a hot button issue. Kansas law does allow grandparents to file as an interested party in an open divorce, paternity or custody case to obtain "grandparenting time" with a grandchild. However, there are numerous requirements that must be met for this law to apply, and it is most definitely a very expensive uphill battle. These types of grandparents' rights cases have the potential to be highly contested between the grandparents and parents of the minor children.

On the other hand, if you are already the primary caregiver for your grandchild, there is an alternate legal course of action that gives you authority as your grandchild's legal guardian.

There are many advantages to following this course of action:

- 1) Your child's rights are not terminated as the parent of the child.
- 2) You can step in when necessary to make official decisions for your grandchild, like consent to medical treatment or school enrollment.
- 3) If you have legal guardianship over your grandchild, often times your health insurance provider will also provide those children with coverage.
- 4) You may be able to avoid some conflict with your own child under this arrangement.

I will caution you, however, that if you believe your grandchild is in immediate danger when they are with their parents, it is always best to make a report to the police and SRS. If a Child in Need of Care case is opened, you may have the opportunity to become a temporary guardian in that Child in Need of Care case.

A prime example of a situation where getting a guardianship over your grandchild works is when your child is very young, and possibly too immature to properly care for his own child. Perhaps your child is still living at home with you, or perhaps he is attending school or job training and is unable to be consistently present. If this is the case, your child can consent to the guardianship. You will also need the consent of your grandchild's other parent. You will need to hire an attorney to file a Petition for Appointment of Guardian for a Minor and Standby Guardian in probate court.

Once the petition is filed, a *guardian ad litem* (GAL) will be appointed to represent your minor grandchild. Essentially, a GAL is an attorney appointed who represents the best interests of your grandchild. You must be able to pay for the GAL who is appointed to your case. The GAL will talk to you, both parents, and, depending on the age of the minor child, the GAL might even talk to the child. The GAL can talk to any person who might have valuable information, or an interest in this child. The GAL could follow up with the child's doctor, teachers, extended family members, etc. Upon meeting with all parties, the GAL will prepare a report. A court hearing will be held where the GAL reads the report to the Court. If the Court finds that a guardianship is in the best interests of your grandchild, the Court will approve the guardianship, and you will be provided with documentation showing that you are the child's legal guardian.

Each year thereafter, you are required to file with the Court an Annual Report on the Condition of the Guardian's Ward. (The ward is the minor child of whom you have guardianship.) The guardianship will be terminated either upon a finding that it is no longer needed, or upon the child's turning 18. The guardianship may no longer be necessary if your own child is prepared to take a more active role in his child's life.

A guardianship can be a wonderful temporary solution for a family, particularly if all parties are in agreement. If, however, one of the minor child's parents contests the guardianship, there will likely be additional hearings and greatly increased legal fees in order to litigate what you believe is in the best interests of your grandchild. Furthermore, any kind of battle over a minor child can cause that child great stress. If you find yourself involved in a contested case regarding your grandchildren, it is important that you focus on maintaining a positive relationship with that child without degrading his or her parents. A child knows that he is half of each of his parents. When you criticize a child's parent or parents, it is as if you are telling the child that something is wrong with him. This can cause a great amount of inner conflict in the mind of a child.

Finally, think hard before you decide to move forward with any legal action regarding your grandchild. I have had grandparents call me because they do not feel like they get to see their grandchild enough, and they simply disagree with the way their grandchildren are being raised. If this is the case, keep in mind that a parent has a right to raise his or her child the way he or she sees fit. This is actually a constitutional right. So if the child is not in any danger, and you simply disagree with the way the minor child is being raised, think twice before confronting your child about this. Sometimes the best solution is not always a legal solution. You will likely get to spend many more enjoyable times with your grandchild, not to mention save a tremendous amount of stress and money, if you make an effort to get along with your child and respect him as a parent.

If you have any additional questions regarding guardianships over minor children, please contact Kansas Legal Services, Inc. at 1-800-723-6953, or contact a private attorney.