

Flying Solo: Grandparent Visitation

By Jan Warner and Jan Collins

Question: Our only son and his wife were divorced five years ago. Because my husband and I were denied access to our two grandchildren, we went to court and were given visitation with them. Our daughter-in-law remarried two years ago, but our visits were still going along just fine, as far as we could tell.

Then late last year, our son was killed in a traffic accident, and since shortly after his funeral, we have been stymied in our rights to visit despite the court order. We recently received a letter from our former daughter-in-law's lawyer telling us that her new husband had adopted our grandchildren, that the family was going to move to another state, and that we would no longer have visitation rights. He asked that we sign an order terminating our rights to visit.

We did not get notice of the adoption, and we understand that the mother's parents (maternal grandparents) still have visits. We talked to a lawyer who does not hold out much hope for us to keep in contact with our only living blood descendants. This does not seem fair to us or to the children. Do you know of anything we can do to keep in contact?

Answer: While many states have laws on the books that provide for grandparent visitation under certain circumstances, a decision by the United States Supreme Court in 2000 provides that a child's parents have the authority to decide whether the minor children have contact or continue to have contact with grandparents. Obviously, this case has strengthened parents' rights and has dealt a serious blow to grandparents' rights.

In some states, the law provides that grandparent visitation automatically terminates when a child is adopted. The fact that you did not get notice of the adoption probably will not give you enough standing to help your cause. In a recent West Virginia decision, the Court allowed adoptive parents to terminate grandparent visitation despite the fact that the young child had been cared for by her paternal grandmother for most of her early years.

Therefore, it appears that in order to secure visitation where there has been an adoption, grandparents must show that the benefit of continued contact greatly outweighs the wishes of the adoptive parents. This is a very heavy burden of proof for grandparents to carry, especially given the need for mental health experts and guardians ad litem to investigate and report their findings. The expense, not to mention the potential adverse effect on the grandchildren and grandparents, would be devastating.

What to Do: We don't believe there is much you will be able to accomplish in the Court system. For this reason alone, if there are grandchildren involved, we believe it is a good idea for grandparents to try to stay on the "good side" of daughters-in-law and sons-in-law, regardless of perceived – or real – idiosyncrasies, as we never know when situations may place us in positions of being "beggars" rather than "choosers."