

Does Companionship Merit Court-Ordered Access to Children?

Should parents be the only individuals granted court-ordered access to and possession of minor children? Many state access statutes continue to ignore the importance of companionship and the impact third parties may have on minor children.

By Elisa Reiter, Family Lawyer, and **Daniel Pollack, MSW, JD**, Professor and Litigation Consultant | November 24, 2022



Should parents be the only individuals granted court-ordered access to and possession of minor children? Some argue that [Troxel v. Granville](#) has long been misinterpreted. In 2000, the U.S. Supreme Court was asked to rule on the constitutionality of the Washington State access statute, which at that time provided, pursuant to Washington Rev. Code §26.10.160(3), that “[a]ny person” could petition for visitation rights “at any time” and authorized Washington state superior courts to grant access rights whenever the courts concluded that visitation might serve a child’s best interest. Petitioners Troxel, paternal grandparents of two minor girls whose father

had committed suicide, sought access to their granddaughters. The Supreme Court ruled that Washington Rev. Code § 26.10.160(3), as applied to Granville and her daughters, violated Granville's due process right to make decisions concerning the care, custody, and control of her children.

Notwithstanding that precedent, several states, faced with the reality of blended families, and third parties or more distant relatives having a significant relationship with minor children, have begun to expand their statutes to allow for access to and possession of minor children by individuals other than parents. For instance, in 2014, Ohio modified its standards for child visitation rights to broaden the base of persons who might petition for access to, or visitation. Ohio Revised Code Domestic Relations Section 3109.051 provides, in pertinent part, that:

(B)(1) In a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child, the court may grant reasonable companionship or visitation rights to any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent, if all of the following apply:

- (a) The grandparent, relative, or other person files a motion with the court seeking companionship or visitation rights.
- (b) The court determines that the grandparent, relative, or other person has an interest in the welfare of the child.
- (c) The court determines that the granting of the companionship or visitation rights is in the best interest of the child.

(2) A motion may be filed under division (B)(1) of this section during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case.

If companionship is deemed worthy of attention by the court, who might be impacted? A person who is a de facto parent, who has not legally adopted a child despite being in a relationship with or married to a parent. A step-mother. A step-father. A grandparent who has taken over child-rearing

duties, only to be spurned if a parent chooses not to have the third party continue to have substantial contact with the children.

Such third parties must be able to prove that they have had a substantial relationship with the child. How can that companionship be demonstrated? There are a number of possibilities. Pictures speak a thousand words. Are there photographs, taken over a period of years, reflecting a nurturing relationship between the third party and the child(ren)? The third party could substantiate their claim of a significant relationship with the children via a supporting affidavit appended to their pleadings. The movant must show the court that there has been a significant, positive relationship that has benefitted the minor child(ren). Has the third party been part of school events? Recitals? Extracurricular activities? Holidays and birthday parties? Travel? The court may take the precaution of appointing an amicus attorney, guardian ad litem, or attorney ad litem to represent the minor child, to assure that the minor child's interests will be well-served by establishing a "companionship" access order. Who can confirm this type of companionable relationship? Teachers. Neighbors. Medical care providers who have interacted with the third party in the presence of the child. Coaches who have seen the third parties transport the child(ren) to and from practices and games. Salespeople who have seen the third parties purchase clothing and/or sports uniforms, books, and hobby materials with the children.

In Ohio, companionship rights may be granted [for parents or other relatives of a deceased mother or father](#). There may need to be evidence presented via a *Uniform Child Custody Jurisdiction Act* affidavit in which the third party must address where the child has lived, with whom, for what period of time, the date of birth of the child, and identify any courts with continuing, exclusive jurisdiction over the child. Criminal history is a relevant factor for the court to consider in regard to any such applicant. In Ohio, a relative of a dead parent may be granted court-ordered access to and possession of a child even after a step-parent has formally adopted the child. In addition, another portion of the Ohio statute allows third parties to seek access where the biological mother is unmarried. This would apply to grandparents and other relatives of the child, despite the fact that the child's parents did not marry. The burden of proof per Ohio Revised Code 3109.12 requires a

showing that the child's paternity has been established. Yet, note that the mere fact that a man is listed on a child's birth certificate is not considered conclusive. Either a father must acknowledge paternity via an affidavit or conclusive DNA test results.

Court-Ordered Companionship Access to Children: 16 Factors Ohio Courts Consider

In weighing such requests for companionship access, here are the [factors an Ohio court should consider](#).

- (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
- (2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- (3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;
- (4) The age of the child;
- (5) The child's adjustment to home, school, and community;
- (6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;
- (7) The health and safety of the child;
- (8) The amount of time that will be available for the child to spend with siblings;

(9) The mental and physical health of all parties;

(10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;

(11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;



(12) In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the person, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether either parent

previously has been convicted of or pleaded guilty to a violation of [section 2919.25 of the Revised Code](#) involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

State Legislatures Must Modernize Statutes and Codify Legislation to Effectuate Access for Companions to Children

Many states have access statutes that ignore the importance of companionship and the impact third parties may have on minor children. In the wake of [In Re C.J.C.](#), and similar cases in other states, state legislatures may begin to recognize not only the due process rights of parents but also the sanctity of a relationship that has been established by a third party, who has served as a trusted companion for children, particularly following dissolution of a relationship that may have caused individuals to "banish" certain individuals from their lives, to the detriment of children. A [psychological parent's role in a child's life should be respected](#), if the relationship is significant, and if the individual can prove companionship will inure to the child's benefit.

Given turf wars that can thwart access to *de facto* parents, where one parent may be listed on a birth certificate but the other not, the time has come for state legislatures to modernize statutes and to codify legislation to effectuate access for third parties who have been companions to children. [It often does take a village](#) to parent a child.

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