

THE RIGHTS OF GRANDPARENTS TO HAVE CONTACT WITH THEIR GRANDCHILDREN:

The trauma inflicted by grandparents' losing contact with their grandchildren is immense. As a result, I am frequently tasked by grandparents who wish to re-establish contact with their grandchildren. Usually, such contact has been denied them subsequent to a divorce or the death of their child (the parent of their grandchild).

An avenue for redress is found within The Children's Act (38 of 2005). Section 23 of the Act provides for the rights of those who are considered interested third parties. For instance, a grandparent, aunt, or adult step-sister who wishes to engage in the care, well-being, and development of the child would be categorised as interested third parties. As such, they have the right to apply for contact with the child – either through the Children's Court or the High Court.

If their application is accepted, they can receive an order granting them continued contact with their grandchild or grandchildren – provided they are still minors, of course. Those who have already achieved their majority, (18), are considered adults and if they chose no contact that is their right.

As with all matters concerning a minor, the court is specifically required to ensure that whatever decision is made is in the best interests of the child. When bringing the application, it is very important to provide evidence of the relationship that did exist between the parties, and how committed the grandparent is and has been to the child. Furthermore, the Court will also consider the importance of culture, family and

tradition when weighing up the decision, but it is always the needs of the child that are absolutely paramount.

In this regard, however, in a recent court case, it was stated that *“grandparents, more often than not, play an important part in a child’s social and psychological development and usually take a keen interest in the upbringing of their grandchildren. The relationship with their grandchildren often assists and complements parental care. There can, therefore, be little doubt that it is usually in a child’s best interest to maintain a close relationship with his or her grandparent.”*

If the order is granted, the term ‘contact’ is defined in terms of a relationship, and would include communication with the child either by telephone, electronic communication or in person.

At the same time, it must be noted that even if a grandparent is granted contact, this does not in any way take away any parental rights or responsibilities from the parent or parents. All parties are considered to play a necessary role in the care and upbringing of the child, and whichever parent is the guardian retains their full rights and responsibilities with regard to the child.

If you are suffering from the loss of contact with your grandchild or grandchildren, it is advised that you consult with a family specialist to set about the process of gaining contact again.

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