

Chapter XXI

GRANDPARENTING TIME

2101. **PURPOSE** - It is the purpose of this Chapter to establish the terms and conditions under which grandparents may obtain an order of the Tribal Court granting separate visitation with grandchildren, while recognizing that parents' decisions about the care, custody and management of their children are generally to be in the children's best interest and are accorded deference.
2102. **DEFINITIONS** - As used in this Chapter, the following terms have the meanings prescribed herein:
- A. "Fit Parent" means a parent who adequately cares for his or her children.
 - B. "Grandparent" means the biological parent or step-parent of either the mother or father of the grandchildren at issue.
2103. **CIRCUMSTANCES UNDER WHICH GRANDPARENTING TIME CAN BE SOUGHT** - A child's grandparent may seek a grandparenting time order from the Tribal Court when such contact is not authorized by one or both parents, under one or more of the following circumstances:
- A. An action for divorce or separate maintenance involving the child's parents is before the Tribal court.
 - B. The child's parents are divorced by order of the Tribal Court and jurisdiction has been maintained to carry out any resulting orders regarding the minor children.
 - C. The child's parent who is the child of the grandparents is deceased.
 - D. The child's parents have never been married, they are not currently residing in the same household, and paternity has been established pursuant to Chapter XIX of the Tribal Code, or by a determination by a court of competent jurisdiction that the individual is the father of the child.

- E. Legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of a parent.
- F. In the year preceding the filing of a petition for grandparenting time, the grandparent provided an established custodial environment for the child, whether or not the grandparent had custody under a court order.

2104. CIRCUMSTANCES UNDER WHICH GRANDPARENTING TIME CANNOT BE SOUGHT

- A. Adoption of a child under Chapter XI of the Tribal Code, or pursuant to an order of adoption by a court of competent jurisdiction, terminates the right of a grandparent to commence an action for grandparenting time with the child; *provided*, adoption by a step-parent of the child does not terminate the right of the parent of a deceased parent of the child to seek grandparenting time.
- B. A father who never married the child's mother cannot seek a grandparenting time order, unless the father establishes paternity under Chapter XIX of this Code or has been determined to be the father by a court of competent jurisdiction.
- C. The parent of a putative father cannot seek a grandparenting time order unless the putative father has provided substantial and regular support or care in accordance with his ability to provide the support or care.

2105. INITIATION OF GRANDPARENTING TIME PROCEEDING IN TRIBAL COURT - A grandparent seeking a grandparenting time order shall file in Tribal Court under the following circumstances:

- A. The Tribal Court has continuing jurisdiction over the child with whom the grandparent seeks grandparenting time; or
- B. The grandparent and the child are each residents of the Reservation of the Bay Mills Indian Community at the time the action is filed.

2106. CONTENTS OF MOTION FOR GRANDPARENTING TIME - The filing must include an affidavit setting forth facts supporting the proposed order.
2107. NOTICE OF FILING; TO WHOM GIVEN - The grandparent shall give notice of the filing to each person who has legal custody of, or an order for parenting time with, the child.
2108. RESPONSE TO FILING - Any party having legal custody may file an opposing affidavit.
2109. HEARINGS - A hearing may be held by the court on its own motion or if a party requests a hearing. At the hearing, parties submitting affidavits shall be provided an opportunity to be heard.
2110. WEIGHT OF THE EVIDENCE; PRESUMPTION OF PARENTAL ACTION IN CHILD'S BEST INTERESTS
- A. In order to give deference to the decisions of fit parents, the Court shall presume that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health.
 - B. In order to rebut this presumption, a grandparent seeking grandparenting time must prove by a preponderance of the evidence that the parent's decision denying grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent's evidence does not overcome the presumption, the court shall dismiss the action.
 - C. If two (2) fit parents each sign an affidavit stating that they both oppose an order for grandparenting time, the court shall dismiss the action; *provided*, that this section does not apply if one of the fit parents is a step-parent who adopted the child, and the grandparent seeking the order is the natural or adoptive parent of a parent of the child who is deceased or whose parental rights have been terminated.
2111. COURT INQUIRY ON FINDING OF SUBSTANTIAL RISK TO CHILD IF GRANDPARENTING TIME DENIED - If the court finds that a grandparent has met the standard for rebutting the presumption of good parental decision-making, the court shall consider whether it is in the child's best interest to enter a grandparenting

time order. If the court finds by a preponderance of the evidence that such an order is in the best interests of the child, the court shall enter an order providing for reasonable grandparenting time with the child by the grandparent with general or specific terms and conditions. These factors shall be considered in determining the child's best interests:

- A. The love, affection, and other emotional ties existing between the grandparent and the child;
- B. The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent;
- C. The grandparent's moral fitness;
- D. The grandparent's mental and physical health;
- E. The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference;
- F. The effect on the child of hostility between the grandparent and the parent of the child;
- G. The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child.
- H. Any history of physical, emotional or sexual abuse or neglect of any child by the grandparent.
- I. Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason.

2112. FREQUENCY OF REQUESTS FOR GRANDPARENTING TIME - A motion or complaint for grandparenting time may not be filed by the grandparent more than once every two (2) years, absent a showing of good cause by the grand-parent to file more frequently. Upon such a showing in an affidavit accompanying the motion or complaint, the court shall authorize the filing and proceed under the provisions of this Chapter.

2113. CHANGE OF DOMICILE NOT PRECLUDED BY GRANDPARENTING TIME ORDER - The Court shall not prohibit by order an individual who has legal custody of a child from changing the domicile of the child, if the prohibition is primarily for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order entered under this Chapter.
2114. PARENTAL RIGHTS NOT CONFERRED BY GRANDPARENTING TIME ORDER - An order for grandparenting time does not create parental rights in the individual or individuals to whom grandparenting time rights are granted. The entry of an order for grandparenting time under this Chapter does not prevent a court of competent jurisdiction from acting upon the custody of the child, the parental rights of the child, or the adoption of the child.
2115. MODIFICATION OF GRANDPARENTING TIME ORDER - The Court shall not modify or terminate a grandparenting time order entered under this Chapter unless the Court finds by a preponderance of the evidence, and on the basis of facts that have arisen since entry of the order or were unknown to the Court at the time it entered that order, that a change in circumstances has occurred as to the child or to his or her custodian, and that a modification or termination of the existing grandparenting time order is necessary to avoid a substantial risk of harm to the mental, physical, or emotional health of the child. Any order entered by the Court which modifies or terminates an existing order for grandparenting time shall include specific findings of fact in support of the decision.