



DO GRANDPARENTS HAVE PARENTAL RIGHTS?

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Children tend to bring enormous amounts of joy into the lives of their families and those they surround. Their laughter and curiosity can only make us smile. It is understandable that grandparents become protective of their grandchildren and want to maintain contact with them on a regular basis. Grandparents, too, play an important role in the lives of their grandchildren.

In the case of *Heuer and Another v Bruce-Alexander*¹, the court held that “[g]randparents, 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 compliments 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”.

It may happen that a situation turns out in such a way that, for whatever reason, grandparents are intentionally prevented contact with their grandchildren. The question what arises accordingly is whether grandparents have rights to access, or contact with their grandchildren.

South African law does not make specific provision for a grandparent’s rights over their grandchildren. However, the Children’s Act 38 of 2005 (“the Act”) provides a way to establish such rights.

¹ *Heuer and Another v Bruce-Alexander* [EL1426/20101] [2012] ZAECGHC 66; 2012 (6) SA 41 (ECG) 24 August 2012).

How will the Act assist a grandparent?

Section 23(1)(a) of the Act stipulates that any person having an interest in the care, wellbeing or development of a child may apply to the High Court, a Divorce Court in divorce matters, or the Children's Court for an order granting to the applicant, on such conditions the court may deem necessary, contact with the child.

How does the Act define 'contact'?

Contact, as defined in section 1 of the Act, means to maintain a personal relationship with the child. If the child lives with someone else, then contact would entail communication with the child on a regular basis either in person or by telephone.

What happens after care or contact has been granted by way of application?

In the event that the section 23 application is granted, it should be noted that the parental rights and responsibilities another person has in respect of the child (i.e. the mother or the father or other guardian) will remain intact, unless otherwise held by the court. The grandparent and mother/father/guardian will merely become co-holders of parental rights and responsibilities in respect of that child.

Take cognizance of section 23(2)(a) before proceeding with your application.

Section 23(2)(a) of the Act stipulates that when considering an application contemplated in subsection (1), the court must take into account, amongst others, the best interests of the child. Bringing an application prior to an attempt to amicably resolve the dispute by mediation, may aggravate the mother/father/guardian and cause more conflict within the family, which in turn may not be in the best interest of the child. One should therefore proceed with caution before bringing an application in terms of section 23.

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