

## **Chapter 7. Grandparent and Grandchild Visitation Statute**

### **5.701 PURPOSE**

The purposes of this statute are to establish a cause of action for Grandparent and Grandchild Visitation, and to set forth the criteria for granting a request for Grandparent and Grandchild Visitation. This statute repeals and replaces Waganakising Odawak Statute 2021-015.

(Source: WOS 2023-010, October 6, 2023, Section I)

### **5.702 DECLARATION OF VALUES AND GRANDCHILD’S RIGHTS**

- A.** Grandchildren are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well-being of its grandchildren.
  
- B.** Grandchildren have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development by preserving their interest in the culture, history and traditions of the Tribe. Feeling pride from their identity as Odawak will help them grow into adult Tribal Citizens who are strong, healthy and responsible.

(Source: WOS 2023-010, October 6, 2023, Section II)

### **5.703 DEFINITIONS**

For the purposes of this statute only, the following words and phrases shall have the meanings delineated below. The plural encompasses the singular, and the singular encompasses the plural wherever appropriate.

- A.** “Grandchild” means a person who is less than eighteen (18) years of age, has not been emancipated by a court of competent jurisdiction, and is either (1) a Tribal citizen or (2) eligible for citizenship in the Tribe under Article V, Subsection A of the LTBB Constitution.
  
- B.** “Grandparent” means the parent of the grandchild’s father or mother, who is a Tribal citizen.

**C.** “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

**D.** “Tribal Citizen” means a person who is an enrolled member of the Little Traverse Bay Bands of Odawa Indians.

**E.** “Tribal Court” means the Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

**F.** “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2023-010, October 6, 2023, Section III)

#### **5.704 JURISDICTION**

**A.** Tribal Court shall have jurisdiction if:

**1.** The action involves a grandchild who resides within the Tribe’s territorial jurisdiction and the petition is filed by a grandparent who resides within the Tribe’s territorial jurisdiction, requesting a court order for Grandparent and Grandchild Visitation within the Tribe’s territorial jurisdiction; or

**2.** A petition for Grandparent and Grandchild Visitation is filed by a grandparent, and the grandchild’s parent(s), guardian(s), or custodian(s) consent to the Tribal Court’s jurisdiction.

**B.** Jurisdiction once exercised by the Court is continuing and exclusive unless terminated by the Court. Full faith and credit shall apply to the Court’s order for Grandparent and Grandchild Visitation.

(Source: WOS 2023-010, October 6, 2023, Section IV)

#### **5.705 CAUSE OF ACTION**

**A.** A cause of action is created when a grandparent seeks Grandparent and Grandchild Visitation involving a grandchild under one or more of the following circumstances:

1. An action for divorce, separate maintenance, or annulment involving the grandchild's parents is pending before the court.
2. The grandchild's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.
3. The grandchild's parent who is a grandchild of the grandparents is deceased.
4. The grandchild's parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage, or by a determination by a court of competent jurisdiction that the individual is the father of the grandchild.
5. The legal custody of the grandchild has been given to a person other than the grandchild's parent, or the grandchild is placed outside of and does not reside in the home of a parent, with the exception of a placement of a grandchild for adoption that terminates the right of a grandparent to commence an action for Grandparent and Grandchild Visitation.

**B.** A court shall not permit a parent of a father who has never been married to the grandchild's mother to seek an order for Grandparent and Grandchild Visitation, unless the father has completed an acknowledgment of parentage, or the father has been determined to be the father by a court of competent jurisdiction.

**C.** The court shall not permit the parent of a putative father to seek an order for Grandparent and Grandchild Visitation unless the putative father has provided substantial and regular support or care in accordance with the putative father's ability to provide the support or care.

**D.** Adoption of a grandchild by a stepparent, does not terminate the right of the parent of a deceased parent of the grandchild to commence an action for Grandparent and Grandchild Visitation with that grandchild.

(Source: WOS 2023-010, October 6, 2023, Section V)

## **5.706 FILING OF PETITION**

- A.** A grandparent seeking a Grandparent and Grandchild Visitation order shall commence an action for Grandparent and Grandchild Visitation by filing a petition with Tribal Court.
- B.** The petition for Grandparent and Grandchild Visitation shall be accompanied by an affidavit setting forth facts supporting the requested order.
- C.** The grandparent shall give notice of the filing to each person who has legal custody of the grandchild.
- D.** A party having legal custody may file an opposing affidavit.
- E.** By the Court on its own motion, the Court may utilize alternative dispute resolution or Peacekeeping, or may hold a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.
- F.** The grandparent must show that the grandparent has established custodial environment for the grandchild.
- G.** In order to give deference to the decisions of fit parents, it is presumed that a fit parent's decision to deny Grandparent and Grandchild Visitation does not create a substantial risk of harm to the grandchild's spiritual, emotional, mental and physical health, and preserves interest in the culture, history and traditions of the Tribe. To rebut the presumption, a grandparent filing a petition must prove by a preponderance of the evidence that the parent's decision to deny Grandparent and Grandchild Visitation creates a substantial risk of harm to the grandchild's spiritual, emotional, mental and physical health and preserves interest in the culture, history and traditions of the Tribe. If the grandparent does not overcome the presumption, the court shall dismiss the petition.
- H.** If both fit parents sign an affidavit stating that they oppose an order for grandparenting time, the court shall dismiss the petition seeking an order for Grandparent and Grandchild Visitation. This does not apply if one of the fit parents is a stepparent who adopted a grandchild and the grandparent seeking the order is the natural or adoptive parent of a parent of the grandchild who is deceased.
- I.** If the court finds that a grandparent has met the standard for rebutting the presumption

of preponderance of the evidence, the court shall consider whether it is in the best interests of the grandchild to enter an order for Grandparent and Grandchild Visitation. If the court finds by a preponderance of the evidence that it is in the best interests of the grandchild to enter a Grandparent and Grandchild Visitation order, the court shall enter an order providing for reasonable grandparenting time of the grandchild by the grandparent by general or specific terms and conditions, including supervised or unsupervised visitation.

**J.** In determining the best interests of the grandchild, the court shall consider all of the following:

- 1.** The love, affection and other emotional ties existing between the grandparent and the grandchild.
- 2.** The length and quality of the prior relationship between the grandchild and the grandparent, the role performed by the grandparent, and the existing emotional ties of the grandchild to the grandparent.
- 3.** The grandparent's moral fitness.
- 4.** The grandparent's mental and physical health.
- 5.** The grandchild's reasonable preference, if the court considers the grandchild to be of sufficient age to express a preference.
- 6.** The effect on the grandchild of hostility between the grandparent and the parent of the grandchild.
- 7.** The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the grandchild and the parent or parents of the grandchild.
- 8.** Any history of physical, emotional, or sexual abuse or neglect of any grandchild by the grandparent.
- 9.** Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the grandchild's well-being or is for some other unrelated reason.

**10.** To preserve the opportunity for the grandchild to learn about their culture and heritage, and to become productive adult members of the Tribe, by experiencing their culture on an ongoing basis.

**11.** Any other factor relevant to the physical and psychological well-being of the grandchild.

(Source: WOS 2023-010, October 6, 2023, Section VI)

### **5.707 PROHIBITIONS**

**A.** A grandparent may not file a petition more than once every two years in this court or any court of competent jurisdiction, unless the grandparent can show good cause. If the court finds there is good cause to allow a grandparent to file more than one petition in a two-year period, the court shall allow the filing and shall consider the petition; otherwise the court shall automatically dismiss the petition.

**B.** A Grandparent and Grandchild Visitation order does not create parental rights in the individual or individuals to whom Grandparent and Grandchild Visitation are granted. The entry of a Grandparent and Grandchild Visitation order does not prevent a court of competent jurisdiction from acting upon the custody of the grandchild, the parental rights of the grandchild, or the adoption of the grandchild.

(Source: WOS 2023-010, October 6, 2023, Section VII)

### **5.708 MODIFICATION OR TERMINATION**

**A.** A court shall not modify or terminate a Grandparent and Grandchild Visitation order unless it finds by a preponderance of the evidence, on the basis of facts that have arisen since entry of the Grandparent and Grandchild Visitation order or were unknown to the court at the time it entered that order, that a change has occurred in the circumstances of the grandchild or his or her custodian and that a modification or termination of the existing order is necessary to avoid creating a substantial risk of harm to the grandchild's spiritual, emotional, mental and physical health and preserves interest in the culture, history and traditions of the Tribe.

**B.** The court modifying or terminating a Grandparent and Grandchild Visitation order shall include specific findings of fact in its order in support of its decision.

(Source: WOS 2023-010, October 6, 2023, Section VIII)

#### **5.709 COURT RECORD**

The Court shall make a record of its analysis and findings including the reasons for granting or denying a Grandparent and Grandchild Visitation petition.

(Source: WOS 2023-010, October 6, 2023, Section IX)

#### **5.710 SEVERABILITY**

If any section, subsection, paragraph, sentence, phrase or portion of this statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2023-010, October 6, 2023, Section X)

#### **5.711 EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2023-010, October 6, 2023, Section XI)