



Temporary Grandparent & Relative Custody Through a “751 Action”

By Christopher R. Bruce

Over time, nearly all divorce and family law practitioners will consult with someone who is concerned about the well-being of a child that is not their own. Oftentimes, the prospective client is a grandparent or close relative to a child. Unfortunately, in many cases, the prospective client is concerned that a child’s parent or parents have substance abuse problems that render them incapable of adequately caring for a child. The prospective client wants to step in and help but the pervading legal myth is a relative or grandparent has no custody rights. The question many practitioners face in these nearly always emotional and heartbreaking interviews is “what on earth can be done to help?” The answer: take action with a “751 action”.

This article explains the procedures available for obtaining temporary or concurrent custody over a child in Florida through chapter 751, Florida Statutes. This article is limited to an overview of chapter 751 and does not even begin to touch on other remedies available to protect a child from immediate harm. It should go without saying that a client needs to call law enforcement and the Department of Children and Families (DCF) if they do not have physical custody of the child and the child is suspected to be the victim of abuse, abandonment or neglect.

Benefits of a 751 Action

A chapter 751 temporary relative custody action allows grandparents and relatives to obtain temporary custody of a child. This can include temporary sole custody or rights to see a child at certain times similar to the timesharing parents receive with children after a divorce. Further, a 751 action allows a grandparent or relative to obtain the temporary legal authority to do what is necessary to care for a child, such as enroll the child in school and obtain medical care. In some cases, a 751 action also allows a grandparent or relative to receive child support from the child’s parents.

Who Can Bring a 751 Action

Section 751.02 provides a relative custody action can be brought by (1) any “extended family member” who had the signed, notarized consent of the child’s legal parents, or (2) any “extended family member” who is caring fulltime for the child in the role of a substitute parent and with whom the child is presently living. Section 751.011 defines an “extended family member” as a relative by third degree or the child’s stepparent (in limited circumstances).

It is important to note that statutory entitlement to bring a 751 action without the consent of a parent requires the grandparent or relative to be caring for the child at the time the action is filed. If the child is not living with the client and the child’s parents do not consent to a temporary custody order, the best course of action is likely to seek relief through dependency court. There are more “moving parts” to dependency court but this route can ultimately result in the grandparent or relative obtaining temporary or concurrent custody of a child.

Process & Procedure

A 751 action is filed in circuit court. In Palm Beach County, a 751 action will be assigned to one of the judges in the family division that handles the county’s divorce and paternity cases.

Section 751.03 sets out the mandatory components of a 751 action and section 751.04 explains the required notice parents must receive before any hearing. Practitioners should take great care to comply with these pleading and notice requirements.

If both parents consent to the grandparent or relative having custody rights the process is similar to an uncontested divorce. Once the petition is filed the parties can arrange for the entry of an agreed temporary custody order, typically at a motion calendar hearing or short evidentiary hearing.

If a parent objects, the court cannot grant temporary custody to a relative unless there is clear and convincing evidence establishing that the parent or parents are “unfit” to care for the child. To find that a parent is “unfit”, the court must find that the parent abused, abandoned or neglected the child as defined by Florida’s dependency statute. Because of this high burden of proof, practitioners should engage in a thorough pre-suit evaluation and investigation before allowing a client to throw dollars at a 751 action. Typically, “shock the conscience” type evidence is needed to prevail in a contested 751 action- mere concerns about a parenting abilities will not be enough.

Bottom Line

A 751 action is not available to everyone and should only be used to remedy serious situations (which do not include a grandparent or relative’s disagreements with a family member’s parenting style). However, when appropriate, a 751 action is an effective remedy that grandparents or relatives can use to obtain temporary custody and responsibility over a child without involving law enforcement or DCF in what might otherwise be a private family situation.

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