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2017 Edition

Child Visitation Actions in Connecticut

A Guide to Resources in the Law Library

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Treated Elsewhere:

- [Best Interest of the Child Standard in Connecticut](#)
- [Child Custody Actions in Connecticut](#)
- [Enforcement of Family and Foreign Matrimonial Judgments](#)
- [Parental Relocation](#)
- [Rights of Grandparents and Third Parties in Connecticut](#)

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This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar.
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Introduction

A Guide to Resources in the Law Library

- Every application or verified petition in an action for visitation of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. An application brought under this section shall comply with Section 25-5. Any application or verified petition brought under this Section shall be commenced by an order to show cause. Upon presentation of the application or verified petition and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application or verified petition should not be granted. The application or verified petition, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application or verified petition. [Conn. Practice Book § 25-4 \(2017\)](#).
- **“(a) Any appropriate party may move for alimony, child support, custody, visitation, appointment or removal of counsel for the minor child, appointment or removal of a guardian ad litem for the minor child, counsel fees, or for an order with respect to the maintenance of the family or for any other equitable relief. (b) Each such motion shall state clearly, in the caption of the motion, whether it is a pendent lite or a postjudgment motion.”** [Conn. Practice Book § 25-24 \(2017\)](#).
- **U.S. Supreme Court:** “The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.” [Troxel v. Granville](#), 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 49 (2000).
- **“Accordingly, any third party, including a grandparent or a great-grandparent, seeking visitation must allege and establish a parent-like relationship as a jurisdictional threshold in order both to pass constitutional muster and to be consistent with the legislative intent.”** [Roth v. Weston](#) 259 Conn. 202, 225, 789 A.2d 431 (2002).

Section 1: Child Visitation Action

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to actions seeking court ordered visitation.

DEFINITIONS:

- Every application or verified petition in an action for visitation of a minor child, other than actions for dissolution of marriage or civil union, legal separation or annulment, shall state the name and date of birth of such minor child or children, the names of the parents and legal guardian of such minor child or children, and the facts necessary to give the court jurisdiction. An application brought under this section shall comply with Section 25-5. Any application or verified petition brought under this Section shall be commenced by an order to show cause. Upon presentation of the application or verified petition and an affidavit concerning children, the judicial authority shall cause an order to be issued requiring the adverse party or parties to appear on a day certain and show cause, if any there be, why the relief requested in the application or verified petition should not be granted. The application or verified petition, order and affidavit shall be served on the adverse party not less than twelve days before the date of the hearing, which shall not be held more than thirty days from the filing of the application or verified petition. [Conn. Practice Book § 25-4 \(2017\)](#).

CT STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Conn. Gen. Stat. (2017)

- § [45a-604](#). Definitions
- § [45a-606](#). Father and mother joint guardians
- § [46b-54](#). Counsel for minor children. Duties.
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- § [46b-57](#). Third party intervention re custody of minor children. Preference of the child.
- § [46b-59](#). Court may grant right of visitation to any person.
- § [46b-59a](#). Mediation of disputes re enforcement of visitation rights.
- § [46b-59b](#). Court may not grant visitation to parent convicted of murder. Exception.
- § [46b-61](#). Orders re Children where parents live separately. Commencement of proceedings.
- § [46b-64](#). Orders of court prior to return day of complaint
- §§ [46b-115 through 46b-115jj](#) [Uniform Child Custody Jurisdiction & Enforcement Act](#).

OLR REPORTS:

- Saul Spigel, Chief Analyst, [Department of Children and Families Visitation Criteria](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2004-R-0799

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

(October 5, 2004).

"You asked about the Department of Children and Families (DCF) criteria for deciding whether a child in foster care can visit overnight with a biological parent."

Connecticut Practice Book (2017)

- [Chapter 25, Superior Court - Procedure in Family Matters](#)
 - § [25-4](#). Action for visitation of minor child
 - § [25-5](#). Automatic orders upon service of complaint
 - § [25-7](#). Pleadings in general; Amendments to complaint or application
 - § [25-9](#). —Answer, cross complaint, claims for relief by defendant
 - § [25-23](#). Motions, requests, orders of notice, and short calendar
 - § [25-24](#). Motions
 - § [25-26](#). Modification of custody, alimony or support
 - § [25-27](#). Motion for contempt
 - § [25-28](#). Order of notice
 - § [25-30](#). Statements to be filed
 - § [25-38](#). Judgment files
 - § [25-50](#). Case management
 - § [25-57](#). Affidavit concerning children
 - § [25-59](#). Closure of courtroom in family matters
 - § [25-59A](#). Sealing files or limiting disclosure of documents in family matters
 - § [25-60](#). Family Division evaluations and studies
 - § [25-61](#). Family Division
 - § [25-62](#). Appointment of Guardian Ad Litem

LEGISLATIVE HISTORY:

- 1983 Conn. Acts 96. An act concerning visitation rights. "as initially enacted . . . permitted only grandparents to petition for visitation. [Castagno v. Wholean](#) [239 Conn. 336, 684 A.2d 1181], supra, 239 Conn. 347-48. In 1983, however § 49-59 . . . was amended to its current form to allow 'any person' to petition for visitation" [Roth v. Weston](#), 259 Conn. 202, 219, 789 A.2d 431(2002).
- 1974 Conn. Acts 169, § 12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [§ 46b-61] "...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married."

COURT FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Official Family Forms](#) (Connecticut Judicial Branch)
 - See Also: [Filing for Custody or Visitation \(or both\)](#)

Unofficial Forms

- MacNamara, Welsh, and George, editors. [Library of](#)

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Fish v. Fish](#), 285 Conn. 24, 38, 939 A. 2d 1040 (2008) “. . . a court could exercise jurisdiction over a petition for third party visitation against the wishes of a fit parent only if the **petition contains `specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship.** The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant [emotional] harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is `neglected, uncared-for or dependent.' The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court **have jurisdiction over the petition.**”
- [Raffino v. Bottass](#), Superior Court, Judicial District of Hartford, No. FA05-4019188-S (April 11, 2006) (41 Conn. L. Rptr. 181, 183) (2006 WL 1149131). **“This court recognizes the anguish that the grandparents are suffering in not being able to spend as much time with their grandchildren as they previously did and their concern that the children will suffer too. However, the court also recognizes that the father must devote his energies to re-establishing his family unit with the children, and, as the courts have indicated, there is a presumption that he is acting in the best interests of the children. It is that very principle that is so protected that the Connecticut Supreme Court has declared that a very high standard must be met so as to appropriately protect the father's right to not have to defend his decisions in a court of law. While adherence to the underlying principle may be very difficult for the grandparents at this time, the grandparents might consider that just as parents must give their children two things — roots and wings, grandparents must continue to do that for the parents of their grandchildren.”**
- [Foster v. Foster](#), 84 Conn. App. 311, 320, 853 A.2d 588 (2004). **“As the plaintiff has no constitutionally protected right to counsel in a custody or visitation proceeding, we decline to require the court, in every custody or visitation dispute confronted with a pro se litigant, to grant a continuance simply because the request is founded on a parent's right to raise a child without undue interference. Although we recognize the value of family integrity, we acknowledge also that the state has an interest in the orderly presentation of cases and the ability of the court to manage its docket. We therefore conclude that, balancing all**

the interests, the court's refusal to grant a continuance did not result in a constitutional deprivation."

- [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 231 (2002). "In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights." Ibid, p. 229.

"... the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... **Second, the petitioner must prove these allegations by clear and convincing evidence.**" Ibid, p. 235.

- [Laspina-Williams v. Laspina-Williams](#), 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999). [Syllabus: Motion to dismiss; parent and child; visitation; guardianship of minor child; subject matter jurisdiction; standing; in petition for visitation rights with minor child, conceived through alternative insemination, who had been jointly raised by coguardian same sex partners, whether separation of parties constituted sufficient disruption of family unit to confer standing upon plaintiff noncustodial parent to petition for visitation rights so **as to warrant denial of defendant custodial parent's motion to dismiss for lack of subject matter jurisdiction; since defendant had brought separate action pursuant to statute (§ 45a-616) in Probate Court to terminate plaintiff's coguardianship, whether that statute exclusively vested jurisdiction over plaintiff's petition for visitation brought under state (§46b-59) in either Probate Court or Superior Court so as to warrant granting of defendant's motion to dismiss.**]
- [Raymond v. Raymond](#), 165 Conn. 735, 742, 345 A.2d 48 (1974). "It has never been our law that support payments were conditioned on the ability to exercise rights of visitation or vice versa. The duty to support is wholly independent of the right of visitation."

WEST KEY NUMBERS:

- *Child Custody - Visitation*
 - # 175. In general
 - # 176. Discretion
 - # 177. Grounds in general
 - # 178. Welfare and best interest of child
 - # 179. Existence of factors other than best interest of the child
 - # 180. Right of biological parent as to third persons in general

- # 181. Ability of parties to cooperate
- # 182. Person entitled in general
- # 183. Custody of siblings
- # 184. Geographic considerations
- # 185. Religion
- # 186. Primary caregiver
- # 187. Rewarding or punishing party
- # 188. Behavior of parties in general
- # 189. Motives
- # 190. Litigation conduct
- # 191. Sexual behavior or preference of party
- # 192. —In general
- # 193. —Homosexuals
- # 194. —Effect on child
- # 195. Cohabitation with third party
- # 196. Previous interference with lawful custody or visitation
- # 197. Abuse or neglect of child
- # 198. Physical condition of custodian
- # 199. Use of drugs or alcohol
- # 200. Commission of crime
- # 201. Mental condition
- # 202. Previous abandonment or relinquishment by custodian
- # 203. Agreements, contracts, or stipulations
- # 204. Child's preference
- # 205. Age of child
- # 206. Health and physical condition of child
- # 207. Mental health or condition of child
- # 208. Performance of child in school
- # 208.5 Nonmarital circumstances of birth or conception
- # 209. Physical custody arrangement
- # 210. —In general
- # 211. —Hours
- # 212. —Holidays
- # 213. Transporting and transferring child
- # 214. Placement of child with third parties
- # 215. Visitation conditions
- # 216. —In general
- # 217. —Supervised visitation
- # 218. —**Payment of child support, attorney's fees, alimony**
- # 219. —Excluding other persons from being present during visitation
- # 220. —Place of visitation
- # 221. —Notice to custodial parent
- # 222. —Counseling
- # 223. —Restrictions on conduct
- # 224. —Bond
- # 225. Control and authority of parties
- # 226. —In general
- # 227. —Religion
- # 228. —Education

- # 229. —Extracurricular choices
- # 230. —Discipline or punishment
- # 231. Employment status
- ***Children out of Wedlock***
 - # 20.9. Visitation and joint custody

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 42. Custody and visitation
 - § 42.44. Visitation—General considerations
 - § 42.45. Visitation schedules—Allocation of vacations, holidays and the like
 - § 42.46. Visitation—Checklist of holidays, vacations and special events
 - § 42.47. —Parental access via mail, telephone, and the like
 - § 42.48. —Supervision or denial of visitation rights
 - § 42.49. —With third parties
 - § 42.50. Parenting education program
 - § 42.52. Parenting plan
- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2017 edition).
 - Chapter 8. Custody and Visitation
 - Part II. Establishing Jurisdiction and Analyzing Statutory Provisions for Child Custody and Visitation.
 - Part III. Determining Who May Seek Custody and Visitation.
 - Part V. Assessing Considerations in Custody and Visitation Actions.
 - Part VI. Filing Custody or Visitation Actions Post Judgment.
 - Part VII. Assessing Evidentiary Considerations in Custody or Visitation Actions.
- 3 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
 - Chapter 16A. Visitation
 - § 16A.01. Introduction
 - § 16A.02. Support and Visitation as Independent Obligations and Rights
 - § 16A.03. Conditioning Child Support on Compliance with Visitation
 - § 16A.04. Conditioning Visitation on Payment of Child Support
 - § 16A.05. The Perils of Self-Help Remedies
 - § 16A.06. Payment of Child Support Arrears
 - § 16A.08. The Impact of Interference with Visitation on a URESA Proceeding
 - § 16A.09. Bibliography
 - Appendix A. Uniform Reciprocal Enforcement of Support Act (1968 Revised Act)

- Cynthia C. George and Amy Calvo MacNamara, Connecticut Family Law Citations (2016).
 - Chapter 11. Child Custody and Visitation
 - § 11.01. Best Interest of the Child Standard
 - § 11.03. Temporary Custody and Visitation
 - § 11.04. Modification of Custody and Visitation
 - § 11.01. Third Party Intervention for Custody and Visitation

- Donald T. Kramer, [Legal Rights of Children](#), Rev. 2d ed., (2005)
 - Chapter 3. Visitation rights
 - § 3:1. Visitation rights; Generally
 - § 3:2.—Noncustodial parents
 - § 3.3. —Stepparents and adoptive parents
 - § 3.4. —Foster parents
 - § 3.5. —Grandparents, generally
 - § 3.6. —Natural grandparents of adopted grandchildren
 - § 3.7. —Siblings and other family members
 - § 3.8. Other third parties
 - § 3.9. Factors considered in granting or denying visitation rights; Child abuse and sexual abuse
 - § 3.10. —Mental instability or physical handicap of parent
 - § 3.11. —Use and abuse of alcohol or drugs
 - § 3.12. —Sexual preferences or conduct of the noncustodial parent
 - § 3.13. —Wishes of the child
 - § 3.14. —**Parent's domicile or place of residence**
 - § 3.15. —Previous surrender of parental rights
 - § 3.16. —**Parent's incarceration**
 - § 3.17. —**Parent's or child's religion**
 - § 3.18. Terms of visitation
 - § 3.19. Modification
 - § 3.20. **Child's best interest**

ENCYCLOPEDIAS:

- 59 [Am. Jur. 2d](#) Parent & Child § 36-38 (2012).
 - § 36. Right to visitation
 - § 37. —Denial to noncustodial parent
 - § 38. —By third party

Section 2: Third Party Visitation Actions

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to right of nonparents to initiate child visitation actions or to seek visitation by intervening in a pending family action.

SEE ALSO:

- [Rights of Grandparents and Third Parties in Connecticut \(Research Guide\)](#)

DEFINITIONS:

- **Constitutional Issues:** "The relevant statutes concerning visitation and custody are overly broad in exactly the same fashion; they fail to define with particularity those persons who may seek visitation and custody other than parents. Accordingly, we conclude that, to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in *Roth* [*Roth v. Weston*, 259 Conn. 202 (2002)] to third party custody awards and to third parties seeking intervention in existing custody proceedings." [Fish v. Fish](#), 285 Conn. 24, 44, 939 A. 2d 1040 (2008).
- **Third Party:** "is not defined in the foregoing statutes or in any other related statutes. The legislative history of the statutes sheds no additional light on the matter. As we stated in *Castagno*, [*Castagno v. Wholean*, 239 Conn. 336, 684 A.2d 1181(1996)] 'courts are bound to assume that the legislature intended, in enacting a particular law, to achieve its purpose in a manner which is both effective and constitutional. . . . [T]his presumption of constitutionality imposes upon the trial court, as well as this court, the duty to construe statutes, whenever possible, in a manner that comports with constitutional safeguards of liberty.'" [Fish v. Fish](#), 285 Conn. 24, 42-43, 939 A. 2d 1040 (2008).
- **Petition for visitation:** "First, the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is 'neglected, uncared-for or dependent.' The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made will a court have jurisdiction over the petition.

Second, once these high jurisdictional hurdles have been overcome, the petitioner must prove these allegations by clear

and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation. These requirements thus serve as the constitutionally mandated safeguards against unwarranted intrusions into a parent's authority." [Roth v. Weston](#), 259 Conn. 202, 234-235, 789 A.2d 431 (2002).

- **Harm:** "The harm alleged in a visitation petition results from the child's lack of access to the petitioner rather than from the parent-child relationship, which is deemed to be beneficial." [Fish v. Fish](#), 285 Conn. 24, 47, 789 A.2d 431 (2002).
- **Custody vs. visitation:** "In summary, we conclude that third party custody petitions challenge the liberty interest of a parent in a way that is fundamentally different from visitation petitions . . . in which the child's relationship with the parent has not been placed in issue." [Fish v. Fish](#), 285 Conn. 24, 55-56, 939 A. 2d 1040 (2008)

CT STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

Conn. Gen. Statutes (2017)

- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- § [46b-57](#). Third party intervention re custody of minor children. Preference of child.
- § [46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.

OLR REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Duke Chen, [Updated Report: Caselaw on Grandparents' Visitation Right in Connecticut](#), Connecticut General Assembly, Office of Legislative Research Report No. 2011-R-0333 (October 25, 2011).
"You asked us to summarize four Connecticut Supreme Court cases and one U.S. Supreme Court case involving child visitation and custody disputes between fit parents and third parties, including grandparents (*Castagno v. Wholean*, *Troxel v. Granville*, *Roth v. Weston*, *Fish v. Fish*, and *DiGiavanni v. St. George*)."
- Mary M. Janicki, [Grandparents' Visitation Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2011-R-0079 (February 7, 2011).
"You asked for a comparison of Connecticut's law on grandparents' right to visit their grandchildren with the laws on that subject in other states."
- Soncia Coleman, [Grandparents' Rights](#), Connecticut General Assembly, Office of Legislative Research Report No. 2009-R-0439 (Dec. 30, 2009).
"You asked several questions regarding grandparents' rights to petition the court for visitation with their grandchildren."
- Susan Price, [Grandparents' Rights](#), Connecticut General

Assembly, Office of Legislative Research Report No. 2006-R-0383 (September 18, 2006).

"You have asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren."

- Saul Spigel, [Grandparents' Custody of Grandchildren](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2003-R-0596 (September 22, 2003).
"You asked for an explanation of (1) Connecticut law on grandparents' custody of, and visitation with, their grandchildren and (2) "de facto" custody laws in other states."

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

Connecticut Practice Book (2017)

- [Chapter 25 Superior Court - Procedure in Family Matters](#)
 - § 25-1. Definitions Applicable to Proceedings on Family Matters
 - § 25-3. Action for custody of Minor Child
 - § 25-4. Action for Visitation of Minor Child
 - § 25-5. Automatic Orders upon Service of Complaint or Application
 - § 25-23. Motions, Requests, Orders of Notice, and Short Calendar
 - § 25-59. Closure of courtroom in family matters
 - § 25-59a. Sealing files or limiting disclosure of documents in family matters
 - § 25-62. Appointment of Guardian Ad Litem

COURT FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Filing for Custody or Visitation \(or both\)](#) (Connecticut Judicial Branch)
 - [Official Family Forms](#) (Connecticut Judicial Branch)
 - JD-CL-12 Appearance
 - JD-FM-75 Application for Waiver of Fees
 - JD-FM-221 Verified Petition for Visitation — Grandparents & Third Parties
 - JD-FM-162 Order to Attend Hearing and Notice to the Defendant
 - JD-FM-158 Notice of Automatic Orders
 - JD-FM-164 Affidavit Concerning Children
 - JD-FM-164A Addendum to Affidavit Concerning Children
 - JD-FM-6-Long Financial Affidavit **or**
 - JD-FM-6-Short Financial Affidavit
 - JD FM-183 Custody/Visitation Agreement

CASES:

- [Warner v. Bicknell](#), 126 Conn. App. 588, 593 (2011). "Our case law is clear that, absent the allegations identified by the *Roth* court, the court must dismiss a third party's application for visitation. Id., 240, [789 A.2d 431]; see also *Denardo v. Bergamo*, 272 Conn. 500, 514, 863 A.2d 686 (2005); *Crockett v. Pastore*, 259 Conn. 240, 250, 789 A.2d 453 (2002); *Fennelly v. Norton*, 103 Conn. App. 125, 142, 931 A.2d 269

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

(‘[i]f the application [for visitation] does not contain such allegations, the court lacks subject matter jurisdiction and the application must **be dismissed**’), cert. denied, 284 Conn. 918, 931 A.2d 936 (2007); *Clements v. Jones*, 71 Conn. App. 688, 696, 803 A.2d 378 (2002).” (Emphasis added.)

- [DiGiovanna v. St George](#), 300 Conn. 59, 61 (2011). “In *Roth v. Weston*, 259 Conn. 202, 789 A.2d 431 (2002), this court held that the legislature could, consistent with due process, authorize a nonparent to obtain visitation with a minor child over a fit parent’s objection if the nonparent alleges and proves by clear and convincing evidence that he or she has a parent-like relationship with the child and that the child would suffer harm akin to abuse and neglect if that relationship is not permitted to continue. The present case calls on this court to consider whether a trial court may deny a nonparent’s application for visitation when the applicant has met this stringent burden of proof if that court concludes that visitation nonetheless is not in the best interest of the child.... **We** conclude that the trial court improperly determined that the best interest of the child standard can overcome the Roth standard for ordering visitation.”
- [Fish v. Fish](#), 285 Conn. 24, 46 (2008). “Mindful of the parent’s constitutional rights, we concluded in *Roth* that Connecticut’s third party visitation statute, without a judicial gloss, was unconstitutional and interfered with the fundamental right of parents to raise and care for their children because it was too broadly written and provided no standard to guide the court in making a visitation decision, other than the best interests of the child.”
- [Denardo v. Bergamo](#), 272 Conn. 500, 514, 863 A.2d 686(2005). “Our conclusion that *Roth* applies retrospectively leads to the further conclusion that the trial court was compelled to grant the defendant’s motion to terminate visitation. The plaintiffs failed to allege or attempt to prove that their relationship with the child was similar to a parent-child relationship and that denial of visitation would cause real and significant harm to the child. Without those specific, good faith allegations or such proof, either at the time of the filing of their petition or at the time of the hearing on the defendant’s motion, the trial court’s prior order of visitation was rendered without subject matter jurisdiction. Accordingly, the defendant’s motion to modify and terminate the plaintiffs’ visitation **rights properly was granted.**”
- [Troxel v. Granville](#), 530 U.S. 57, 68, 120 S.Ct. 2054, 2061. (2000). “Accordingly, so long as a parent adequately cares for his or her children ... there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that **parent’s children.**”
- [Roth v. Weston](#), 259 Conn. 202, 789 A.2d 231 (2002).

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

"In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights." (229)

"...the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... **Second, the petitioner must prove these allegations by clear and convincing evidence.**" (235)

- [Crockett v. Pastore](#), 259 Conn. 240, 246, 789 A.2d 453 (2002). "This case is controlled by our concurrent decision in *Roth*, wherein we overruled our previous decision in *Castagno*..."
- [Castagno v. Wholean](#), 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled* by [Roth v. Weston](#), 259 Conn. 202, 217, 789 A.2d 431 (2002).
- [In Re Felicia B](#), 56 Conn. App. 525, 743 A.2d 1160 (2000), *cert. denied*, 252 Conn. 952 (2000). Paternal grandparents were denied both custody and visitation in a case where the father's parental rights were terminated. "...they cannot safeguard and provide care in the children's best interests while clinging to the hope that their son did not sexually abuse their grandchildren" (p. 527).
- [Alexander v. Gomez](#), Superior Court, Judicial District of Danbury, No FA01-0344023-S (May 30, 2003) (34 Conn. L. Rptr. 660) (2003 Conn. Super. Lexis 1586). "The plaintiff argues that applying Roth retroactively would be a substantial injustice to the plaintiff. This court agrees. The court in Roth noted that applying the new standard to the specific complaint allegations in the case before it would be 'manifestly unfair, because these requirements are newly stated, and the plaintiffs could not have anticipated their adoption.' *Id.*, 235... For the foregoing reasons, the defendant's motion to modify and eliminate the plaintiff's visitation rights is denied, without prejudice, and the plaintiff will be allowed an opportunity to amend her application and provide proof that it is consistent with all the requirements of Roth."

[Pivnick v. Lasky](#), Superior Court, Judicial District of Hartford, No. FA99-0720419 (Mar. 24, 2003) (34 Conn. L. Rptr. 426) (2003 Conn. Super. Lexis 944). "The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties

against the wishes of a fit custodial parent.”

**WEST KEY
NUMBERS:**

- Child Custody #175. Visitation in general
- Child Custody #181. Ability of parties to cooperate.
- Child Custody #182. Person entitled in general
- Child Custody #183. Custody of siblings
- Child Custody #282. Grandparent visitation and access to child
 - #283. In General.
 - #284. Grandparent rights as derivative.
 - #285. Conduct of parent or custodian.
 - #286. Objections of Parent
 - #287. Interference with parental rights.
 - #288. Parent unavailable.
 - #289. Death of parent.

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 42.49. Visitation—With third parties
- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
 - Chapter 11. Disputes Between Parents and Third Parties
 - § 11.01. Introduction
 - § 11.02. The constitutional basis of parental rights
 - § 11.03. The parental preference standard
 - § 11.04. Determination of parental fitness: Factors to be considered
 - § 11.05. The best interests standard
 - § 11.06. Standing
 - § 11.07. Role of expert witness
 - § 11.08. Bibliography
- 3 Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2015).
 - Chapter 32. Child custody and visitation
 - § 32.09. Visitation
 - [7] Nonparent visitation
 - [a] Generally
 - [b] Grandparents
 - [c] Stepparents, siblings, other nonparents
 - [d] Guidelines for granting and scheduling nonparent visitation
- 2 Ann M. Haralambie, [Handling Child Custody, Abuse and Adoption Cases](#), 3rd ed. (2009).
 - Chapter 10. Third-party custody and visitation
 - § 10.15. Third party visitation generally
 - § 10.17. Standing
 - § 10.19. Coordinating schedules
 - § 10.20. Representing the third party
 - § 10.21. Opposing third-party visitation

§ 10.22. Effect of termination of parental rights or adoption

- 1 Donald T. Kramer, [Legal Rights of Children](#), Rev. 2d ed., (2005).
 - § 2: 19. Preference of natural parent(s) over others; Generally—preference of natural parent(s) over grandparent(s)
 - § 2: 20. Preference of the natural parent(s) over others; Generally—Preference of natural parent(s) over adult siblings or other relative
 - § 3: 5. Visitation rights; Generally—Grandparents, generally
 - § 3: 6. Visitation rights; Generally—Natural grandparents of adopted grandchildren
 - § 3: 7. Visitation rights; Generally—Siblings and other family members
 - § 3: 8. Other third parties

ENCYCLOPEDIAS:

- 59 [Am Jur 2d](#) Parent and Child (2012).
 - Custody; Visitation
 - § 36. Right of visitation
 - § 37. —Denial to noncustodial parent
 - § 38. —By third party
- 67A [C.J.S.](#) Parent and child (2013)
 - § 132. Visitation
 - § 134. Visitation—Rights of persons other than parents

ARTICLES:

- Jeff Atkinson, "Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children", 47 [Family Law Quarterly](#) 1 (2013).
- Sonya C. Garza, "[The Troxel Aftermath: A Proposed Solution for State Courts and Legislatures](#)", 69 Louisiana Law Review 927 (2009).
- John R. Logan, "Connecticut's Visitation Statute After Troxel v. Granville", [Conn. Lawyer](#) (Nov. 2000, at 4).
- Koreen Labrecque, Note, "Grandparent Visitation After Stepparent Adoption", 6 [Conn. Prob. L. J.](#) 61 (1991).

Section 3: Temporary or Pendente Lite Visitation Orders

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to temporary visitation orders issued while a family action is pending.

DEFINITION:

- **"Pendente lite** orders, by their very definition, are orders that continue to be in force 'during the pendency of a suit, action, or litigation.' *Ballentine's Law Dictionary (3d ed., 1969.*" [Febroriello v. Febroriello](#), 21 Conn. App. 200, 206, 572 A.2d 1032 (1990).
- **"Pendente lite** orders necessarily cease to exist once a final judgment in the dispute has been rendered because their **purpose is extinguished at that time.**" [Connolly v. Connolly](#), 191 Conn. 468, 480, 464 A.2d 837 (1983).

CT STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

Conn. Gen. Stat. (2017)

- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- § [46b-61](#). Orders re children where parents live separately. Commencement of proceedings
- § [46b-64](#). Orders of court prior to return day of complaint.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

Connecticut Practice Book (2017)

- § [25-23](#). Motions, Requests, Orders of Notice, and Short Calendar
- § [25-24](#). Motions
(b) Each such motion shall state clearly in the caption of the motion, whether it is a pendente lite or a postjudgment motion.
- § [25-26](#). Modification of Custody, Alimony or Support

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Official Family Forms](#) (Connecticut Judicial Branch)
- [JD-FM-176 Motion for Orders Before Judgment \(Pendente Lite\) in Family Matters](#)

Unofficial Forms

- MacNamara, Welsh, and George, editors. [Library of Connecticut Family Law Forms](#) (2d ed. 2014)
Pendente Lite Motions – Pendente Lite Motions—Custody & Visitation, Forms 5-012 through 5-033.
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).
VI. Pendente Lite motions, p.98.
- [Gardner v. Falvey](#), 45 Conn. App. 699 (1997), Connecticut Appellate Records & Briefs, February 1997.

Motion for Specific Visitation, Pendente Lite

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 41. Pendente lite custody and visitation
 - § 41.1. In general
 - § 41.2. Automatic orders affecting temporary custody
 - § 41.3. Determining necessity of motion for temporary custody
 - § 41.4. Significance of temporary custody determinations
 - § 41.5. Modification and enforcement of temporary orders
 - § 41.6. Appealability of temporary orders
 - § 41.7. Emergency temporary orders
- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2017).
 - Chapter 8. Custody and Visitation
 - Part II. Establishing Jurisdiction and Analyzing Statutory Provisions for Child Custody and Visitation.
 - Part III. Determining Who May Seek Custody and Visitation.
 - Part V. Assessing Considerations in Custody and Visitation Actions.
 - § 8.26 Filing Custody and Visitation Motions
Pendente Lite – General Considerations
 - § 8.27 Filing a Motion for Custody and Visitation
Pendente Lite
 - § 8.31 Modifying *Pendente Lite* Orders
- Barbara Kahn Stark, [Friendly Divorce Guidebook for Connecticut](#) (2d ed., 2003).
 - Temporary (Pendente Lite) orders, pp. 124-127.
- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
 - Chapter 8. Temporary custody determinations
 - § 8.01. Generally
 - § 8.02. Obtaining a temporary custody order
 - § 8.03. Third-party custody
 - § 8.04. Appealing a temporary custody order
 - § 8.05. Modification and enforcement of temporary custody orders
 - § 8.06. Forms
- Cynthia C. George and Amy Calvo MacNamara, [Connecticut Family Law Citations](#) (2016).
 - Chapter 11. Child Custody and Visitation
- 3 Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2015).
 - Chapter 32. Child custody and visitation
 - § 32.05. Temporary custody
 - [1] Generally

- [2] Purposes and significance of temporary custody
- [3] Obtaining temporary custody orders
- [4] Effect of temporary custody on permanent award
- [5] Appeal
- [6] Forms: Temporary custody

Section 4: Preference of the Child in Visitation Actions

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the consideration courts give to the wishes of the child when making child visitation orders.

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

Conn. Gen. Stat. (2017)

- § [46b-56](#). (b). In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child.
- § [46b-56](#). (c) In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors:... (3) any relevant and material information obtained from the child, including the informed preferences of the child; ...”
- § [46b-57](#). Third party intervention re custody of minor children. Preference of child.
- § [46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.

COURT RULES:

Connecticut Practice Book (2017)

- [Sec. 25-60](#). Evaluations, Studies, Family Services Mediation Reports and Family Services Conflict Resolution Reports

CASES:

- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 434 (2000). “Indeed, as the court succinctly stated, ‘We’re trying to respond to the articulated needs of the children to spend more time with [the plaintiff].’ No other rational

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

reading of the court's language is possible but that it was acting in the children's best interests when it modified visitation..."

- [Knock v. Knock](#), 224 Conn. 776, 788, 621 A.2d 267 (1993). "Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child's wishes into consideration."
- [Gennarini v. Gennarini](#), 2 Conn. App. 132, 137, 477 A.2d 674 (1984). "...whether the child's preferences and feelings as to custody and visitation are a significant factor in the court's ultimate determination ... will depend on all the facts of the particular case, including the child's age and ability intelligently to form and express those preferences and feelings." (p. 137)
- [Hamele v. Hamele](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. 273497 (Dec. 31, 1991) (5 Conn. L. Rptr. 795) (91 WL 288142) (1991 Conn. Super. Lexis 3108). *The court refused to make an order requiring a 15 year old child to visit with his father in prison after the child testified that he did not wish to do so.*
- [Kawaller v. Kawaller](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. 241310 (July 22, 1986) (1 C.S.C.R. 566).

"... it is the desire of all parties that the court modify the existing orders pertaining to visitation and transportation ... In so doing, the court is guided by the best interests of the child, ... age 11, giving consideration to his wishes as is set forth in Conn. Gen. Stat. §46b-56(b)."

- Child Custody
Visitation.
#204. Child's preference

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
Chapter 42. Child custody and visitation
§ 42.26. Court conference or interview with child
§ 42.31. Preference of the child
- 3 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
Chapter 16. Child visitation
§ 16.05. Child's preference

WEST KEY NUMBERS:

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Steven Sichel, *The Child's Preference in Disputed Custody Cases*, 6 [Conn. Family Law](#). 45 (1991).

Section 5: Modification of Child Visitation Orders

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the grounds and procedures for modification of child visitation orders.

DEFINITIONS:

- **Modification:** "In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests." Conn. Gen. Stats. [§ 46b-56](#)(b) (2017).
- "In ruling on a motion to modify visitation, the court is not required to find as a threshold matter that a change in circumstances has occurred. *Szczerkowski v. Karmelowicz*, 60 Conn.App. 429, 433, 759 A.2d 1050 (2000); see also *McGinty v. McGinty*, 66 Conn.App. 35, 40, 783 A.2d 1170 (2001). Instead, '[i]n modifying an order concerning visitation, the trial court shall "be guided by the best interests of the child...." General Statutes § 46b-56 (b).' *Kelly v. Kelly*, 54 Conn.App. 50, 57, 732 A.2d 808 (1999);" [Balaska v. Balaska](#), 130 Conn. App. 510, 515-16, 25 A.3d 680, 684 (2011).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

Conn. Gen. Stat. (2017)

- [§ 46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- [§ 46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.
- [§ 46b-59a](#). Mediation of disputes re enforcement of visitation rights
- [§ 46b-61](#). Orders re children where parents live separately. Commencement of proceedings
- [§ 46b-71](#). Filing of foreign matrimonial judgment; enforcement in this state
 - (b) "Such foreign matrimonial judgment shall become a judgment of the court of this state where it is filed and shall be enforced and otherwise treated in the same manner as a judgment of a court in this state; provided such foreign matrimonial judgment does not contravene the public policy of the state of Connecticut. A foreign matrimonial judgment so filed shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of a court of this state and is subject to the same

procedures for modifying, altering, amending, vacating, setting aside, staying or suspending said judgment as a judgment of a court of this state; provided, in modifying, altering, amending, setting aside, vacating, staying or suspending any such foreign matrimonial judgment in this state the substantive law of the foreign jurisdiction shall be **controlling.**"

- § [46b-115m](#). Modification of custody determination of another state.
- § [46b-115w](#). Registration of child custody determination

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

Connecticut Practice Book (2017)

- § [25-26](#). Modification of Custody, Alimony or Support
- § [25-30](#). Statements to be filed

OLR Reports:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication.

- Saul Spigel, [Modifying Visitation Orders After Divorce](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2001-R-0250 (February 23, 2001). **"You wanted to know what existing state laws could prevent a father who had sexually abused another child from having unsupervised visits with his daughter following a divorce."**

COURT FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Official Family Forms](#) (Connecticut Judicial Branch)
 - See also: [Filing a Motion for Modification](#)

Unofficial Forms

- [Ruggiero v. Ruggiero](#), 76 Conn. App. 338 (2003), Connecticut Appellate Court Records & Briefs, January 2003.
Ex Parte Motion for Modification of Visitation and Custody (p.28)
- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
§ 44.3. Motion for modification of custody/visitation--
Form
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991)
XVI-b-2. Motion to Fix Visitation, p. 245
- [McGinty v. McGinty](#), 66 Conn. App. 35, 40, 783 A.2d 1170 (2001). **"In *Szczerkowski*, as here, the defendant claimed that the court abused its discretion by modifying a visitation order without finding that there was a substantial change in circumstances... We concluded that when considering**

CASE LAW:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

motions to modify visitation, the court's should apply the best interest of the child standard."

- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000). **"The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred. Rather, the standard the court applies is that of the best interest of the child."**
- [Kioukis v. Kioukis](#), 185 Conn. 249, 440 A.2d 894 (1981) At the time of the action to modify visitation Connecticut was **not the "home state" of the child and therefore lacked jurisdiction to grant a modification.**

Support payments are independent of visitation rights.

- [Baumert v. Baumert](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA96-0152534-S (Jan. 28, 1997) (19 Conn. L. Rptr. 59) (1997 WL 66500) (1997 Conn. Super. Lexis 268). The court concluded that Texas should have jurisdiction to hear a motion to modify visitation **based on the fact that "all visitation took place in Texas" and "Texas would seem to possess the greater information as to the child's best interests"**.
- [Pfister v. Pfister](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. FA890263992S (June 10, 1997) (1997 WL 334903) (1997 Conn. Super. Lexis 1578). **"The children would benefit emotionally by increasing the father's visitation to allow their relationship to grow in a loving and positive manner. Section 46b-56(a)."**
- [Serrel v. Serrel](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA94-0138147-S (December 17, 1996) (1996 WL 745868) (1996 Conn. Super. Lexis 3373). **"It is found to be in the best interests of the older child that visitation with her father be suspended. It is found to be in the best interests of the younger child that overnight visitation be suspended until suitable home or home-like quarters are obtained by the defendant and the court finds such to be the case in a future hearing."**

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 44. Modification of custody and visitation orders
 - §44.1. In general
 - §44.2. Procedure for seeking modification
 - §44.3. Motion for modification of custody/visitation—Form
 - §44.4. Standards for modification
 - §44.5. Time of events and circumstances to be

considered

§44.6. Parties entitled to seek modification

§44.7. Pleading specific facts justifying modification

§44.8. Temporary or interim orders

§44.9. Motion for temporary change of custody—
Form

§44.10. Particular reasons for modifying orders

§44.11. Relocation of the child's residence

§44.12. Violation of visitation rights

§44.13. Needs of the child

§44.14. Fitness of parent

§44.15. Health of parent

§44.16. Remarriage or cohabitation of parent

§44.17. Default in support

§44.18. Preference of the child

§44.19. Death of custodial parent

§44.20. Burden of proof

§44.21. Effect of agreement for change in custody or visitation

§44.22. Automatic modification provisions

§44.23. Effects of prior modification

- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2017 edition).
 - Chapter 8. Custody and Visitation
 - Part V. Assessing Considerations in Custody and Visitation Actions
 - § 8.26 Filing Custody and Visitation Motions ***Pendente Lite***--General Considerations
 - § 8.27 Filing a Motion for Custody and Visitation ***Pendente Lite***
 - § 8.31 Modifying ***Pendente Lite*** Orders
 - Part VI. Filing Custody or Visitation Actions Post Judgment
 - § 8.39 Filing Custody or Visitation Actions Post Judgment--In General
 - § 8.41 Seeking a Modification
- 4 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
 - Chapter 25. Modification and enforcement of forum **state's custody**-visitation directives
 - § 25.01. Preliminary considerations
 - § 25.02. Modification proceedings: Procedural issues
 - § 25.03. Modification standards
 - § 25.04. Key modification factors
 - § 25.05. Enforcement proceedings

Section 6: Contempt of Visitation Orders

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the use of contempt proceedings to enforce visitation orders.

SEE ALSO:

- [Enforcement of Family and Foreign Matrimonial Judgments \(Research Guide\)](#)

DEFINITIONS:

- "While particular acts do not always readily lend themselves to classification as civil or criminal contempts, a **contempt** is considered **civil** when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public." [McCrone v. United States](#), 307 U.S. 61, 64, 59 S. Ct. 685, 686 (1939).
- "**Civil contempt** is conduct directed against the rights of the opposing party." [Tatro v. Tatro](#), 24 Conn. App. 180, 185 (1991)

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

Conn. Gen. Stat. (2017)

- § [46b-87](#). Contempt of orders
- § [46b-87a](#). Forms and instructions for application for contempt order based on violation of visitation order

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

Connecticut Practice Book (2017)

- § [25-27](#). Motion for Contempt
- § [25-63](#). Right to Counsel in Family Civil Contempt Proceedings
- § [25-64](#). Waiver
- § [23-20](#). Review of Civil Contempt

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Official Family Forms](#) (Connecticut Judicial Branch)
 - See Also: [Filing a Motion for Contempt](#)

Unofficial Forms

- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) 188 (1991).
 - Form No. XI-A-1. Motion for Contempt [pendente lite], pp. 189-190
 - Form No. XI-A-3a. Application for Order to Show Cause and Contempt Citation [post judgment], pp. 193-194
 - Form No. XI-A-3b. Order for hearing, p. 195
 - Form No. XI-A-3c. Summons, p.196

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Wilson v. Wilson](#), 38 Conn. App. 263, 661 A.2d 621 (1995). "We agree with the plaintiff that a court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was wilful. See *id.*, 124; *Marcil v. Marcil*, 4 Conn. App. 403, 405, 494 A.2d 620 (1985). Despite the plaintiff's claims to the contrary, our review of the transcripts of the proceedings in this case establish that the trial court gave thorough consideration to the circumstances surrounding the plaintiff's violation of the court's order of visitation."
- [Tatro v. Tatro](#), 24 Conn. App. 180, 186, 587 A.2d 154 (1991). "The inability of a contemnor to obey a court order through no fault of her own is a defense to a claim of contempt... The act for which the penalty was imposed cannot constitute contempt if the actor was unable to obey the order."
- [Tufano v. Tufano](#), 18 Conn. App. 119, 556 A. 2d 1036 (1989). The plaintiff mother was found in contempt for willful violation of the visitation rights granted to the paternal grandparents.
- [Gilman v. Gilman](#), Superior Court, Judicial District of New Haven at New Haven, No. 385930 (May 14, 1997) (1997 WL 276459) (1997 Conn. Super. Lexis 1284). "...the court has serious concerns as to whether the plaintiff fully appreciates the importance of complying with the court's orders and the consequences for not doing so. It is fundamentally important that the children have visitation with their father according to the court's schedule. In order to insure that visitation occurs when scheduled, the court imposes a fine of \$150 for every visitation missed, now and in the future, due to the plaintiff's willful actions. The court also finds that an award to the defendant of attorney fees in the amount of \$750 ... is reasonable."

WEST KEY NUMBERS:

- Child Custody
- Enforcement
 - # 850. In general
 - # 851. Contempt
 - # 852. —In general
 - # 853. —Excuses and defenses
 - # 854. —Visitation
 - # 855. Jurisdiction
 - # 856. Venue
 - # 857. Time for proceedings
 - # 858. Parties
 - # 859. Process
 - # 860. Appearance
 - # 861. Pleading
 - # 862. —In general
 - # 863. —Issues, proof and variance
 - # 864. Evidence
 - # 865. —In general

- # 866. —Admissibility
- # 867. —Burden of proof
- # 868. —Presumptions
- # 869. —Degree of proof
- # 870. —Weight and sufficiency
- # 871. Hearing
- # 872. Judgment or order
- # 873. Operation and effect of judgment or order
- # 874. Relief granted

PAMPHLETS:

- [How to get a contempt order \(when court orders are not being obeyed\)](#). Connecticut Network for Legal Aid.

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - Chapter 43. Enforcement of custody and visitation orders
 - § 43.1. In general
 - § 43.2. Parties entitled to seek enforcement
 - § 43.3. Venue for enforcement proceedings
 - § 43.4. Contempt proceedings generally
 - § 43.5. Notice and hearing requirements for contempt proceedings
 - § 43.6. Defenses to contempt claims
 - § 43.7. Penalties imposed for contempt
 - § 43.8. Habeas Corpus proceedings
 - § 43.9. Application for writ of habeas corpus—Form
 - § 43.10. Arbitration or mediation
 - § 43.11. Criminal sanctions
 - § 43.12. Tort claims
 - § 43.13. Effect of pending claims for modification
 - § 43.14. Enforcement provisions incorporated into judgment or agreement
- Louise Truax, Editor, [LexisNexis Practice Guide Connecticut Family Law](#), (2017 edition).
 - Chapter 17. Enforcement of Orders
 - Part II. Filing Motions for Contempt.
 - Part III. Asserting Defenses to a Motion for Contempt.
 - Part IV. Determining General Relief that May be Sought in a Motion for Contempt.
 - Part VII. Crafting Orders to Enforce Custody and Visitation.
- 4 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
 - Chapter 25. Modification and enforcement of forum **state's custody**-visitation directives
 - § 25.05. Enforcement proceedings
 - [1] Preliminary considerations
 - [a]. Types of enforcement proceedings and remedies

- [i]. Contempt of court and habeas corpus
 - [ii]. Punitive modification
 - [iii]. Reduction, suspension or termination of child support
 - [iv]. Required posting of a bond
 - [v]. Money damages
 - [vi]. Criminal liability
 - [vii]. Injunctive relief
 - [viii]. Court's discretionary powers in enforcing visitation directives**
 - [ix]. Noncustodial parent compelled to exercise visitation
- [2] Contempt of court proceedings
 - [3] Punitive transfer of custody or modification of visitation directives
 - [4] Reduction, termination or suspension of child support payments as an enforcement mechanism
 - [5] Requirement that a bond be posted to secure custody or visitation rights
 - [a] Court's authority to require the posting of bonds in child custody or visitation proceedings**
 - [b] Appropriate circumstances for the imposition of a bond requirement
 - [c] Amount of the bond
 - [d] Execution on the bond

Section 7: Habeas Corpus Proceedings in Child Visitation Matters

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the applicability of a writ of habeas corpus in child visitation matters and form preparation and procedure in habeas corpus visitation proceedings.

DEFINITION:

- "The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common-law writ... The primary purpose is to furnish a means by which the court ... may determine what is best for the welfare of the child." [Howarth v. Northcott](#), 152 Conn. 460, 464 (1965).
- "A habeas corpus petition concerning a minor child's custody is an equitable proceeding in which the trial court is called upon to decide, in the best exercise of its sound discretion, the custodial placement which will be best for the child." [Evans v. Santoro](#), 6 Conn. App. 707, 709 (1986).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)
- § [45a-606](#). Father and mother joint guardians
 - § [46b-1](#)(8), (9). Family relations matters defined
 - § [52-466](#). Application for writ of habeas corpus. Service.
 - Return.
 - § [52-467](#). Punishment for refusal to obey writ or accept copy.
 - § [52-493](#). Order in the nature of prerogative writs

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2017)
- § [25-40](#). Habeas Corpus in Family Matters; the Petition
 - § [25-41](#). —Preliminary Consideration
 - § [25-42](#). —Dismissal
 - § [25-43](#). —The Return
 - § [25-44](#). —Reply to the Return
 - § [25-45](#). —Schedule for filing Pleadings
 - § [25-46](#). —Summary Judgment as to Writ of Habeas Corpus
 - § [25-47](#). —Discovery

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 43.9. Application for Writ of Habeas Corpus
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).
 - Form No. X-A-1a. Application for writ of habeas corpus concerning custody /visitation of minor child(ren), pp. 176-177
 - Form no. X-A-1b. Affidavit, pp. 178-179

- Form no. X-A-1c. Writ of habeas corpus, p. 180
- Form no. X-A-1d. Certification into court
- Form no. X-A-1e. Petition for return of child

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [In Re Jonathan M.](#), 255 Conn. 208, 223, 764 A.2d 739 (2001). **"The primary issue** in this appeal is whether the habeas petition may be employed as a means of testing the merits of the termination judgment, and not solely as a means of bringing challenges to custody and visitation orders. **Although the petitioner's parental rights have been terminated by a presumptively valid judgment ... to foreclose, on jurisdictional grounds, his ability to seek custody and assert subsequent challenges to the termination judgment, whether through a petition for a writ of habeas corpus or other means, would require a circular course of reasoning in which we are unprepared to indulge."**
- [Weidenbacher v. Duclos](#), 234 Conn. 51, 73, 661 A.2d 988 (1995). **"...we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child."**
- [Doe v. Doe](#), 163 Conn. 340, 307 A.2d 166 (1972). The court held that only parents and legal guardians have standing to bring an action for habeas corpus seeking visitation rights.
- [Evans v. Santoro](#), 6 Conn. App. 707, 709, 507 A.2d 116 (1986). **"In order to invoke the aid of a habeas corpus writ to enforce a right to physical custody of a minor, the applicant for the writ must show a prima facie legal right to custody... Once the writ has issued, the burden of proving that a change of custody would be in the child's best interest rests upon the party seeking the change... In this case, that party was the petitioner."**
- [Axelrod v. Avery](#), Superior Court, judicial district of New London at New London, No. 532395 (Dec. 1, 1994) (13 Conn. L. Rptr. 124) (1994 Conn. Super. Lexis 3058). **"The language of Nye arguably extends standing in habeas corpus petitions from the narrow construction in Doe to a broad construction which include members of a child's biological family... Moreover, a finding of standing is appropriate on the facts ... because the plaintiffs have a sufficient 'personal stake in the outcome of the controversy,' namely the custody of their granddaughter and the maintenance of a familial relationship with her."**
- [Forestiere v. Doyle](#), 30 Conn. Supp. 284, 288, 31 A. 2d 607 (1973). ***Plaintiff father's petition for a writ of habeas corpus seeking visitation rights* "... to deny him visitation rights without a hearing on the ultimate question of what is best for the welfare of the child is to deny him his constitutional rights."**

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 43.8. Habeas corpus proceedings
 - § 43.9. Application for writ of habeas corpus—Form
- 1 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
 - Chapter 6. Commencement of action or proceeding
 - § 6.06. Habeas corpus
 - [1]. —Applicability to custody disputes
 - [2]. —Procedure

Section 8: Relocation and Child Visitation Orders

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the impact of relocation on visitation orders and the role of the courts in controversies where the noncustodial parent objects to the relocation of the custodial parent, effective October 1, 2006.

SEE ALSO: • [Parental Relocation \(Research Guide\)](#)

STATUTES: Conn. Gen. Stat. (2017)

- § [46b-56d](#). Relocation of parent with minor child. Burden of proof. Factors considered by court

CASES:

- [Stancuna v. Stancuna](#), 135 Conn. App. 349, 41 A.3d 1156 (2012). **"Clearly, the court considered the best interests of the children in formulating its orders.... Although the defendant makes repeated reference to Russia's failure to ratify the Hague Convention's child abduction provisions, the court specifically found, on the basis of the evidence before it, that the plaintiff does not pose a flight risk.... Additionally, the court found that the plaintiff has made considerable progress toward United States citizenship and that she has invested significant time and money in establishing a home and career in Connecticut. In light of the foregoing, we conclude that the court did not abuse its discretion in permitting the plaintiff to travel with the minor children to Russia."**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Emrich v. Emrich](#), 127 Conn. App. 691, 696, 15 A.3d 1104 (2011). **"The court found, pursuant to § 46b-56d (a), that the plaintiff proved by a preponderance of the evidence that the proposed relocation of the children to Maine was for a legitimate purpose, the proposed location was reasonable in light of such purpose, and the relocation was in the best interests of the children."**
- [Noonan v. Noonan](#), 122 Conn. App. 184, 191-192, 998 A.2d 231, 236 (2010). **"In 2006, the legislature enacted Public Acts 2006, No. 06-168, codified as § 46b-56d, which sets out the analysis a court is to apply when deciding a *postjudgment* motion to relocate with a couple's minor child. Section 46b-56d adopted the shift in the burden of proof to the relocating parent set forth in [Ireland v. Ireland](#), 246 Conn. 413, 425, 717 A.2d 676 (1998), and expanded the best interest of the child standard adopted through case law by providing specific factors that the court is to consider."** (Emphasis added.) [Taylor v. Taylor](#), 119 Conn. App. 817, 821-22, 990 A.2d 882 (2010)"
- [Taylor v. Taylor](#), 119 Conn. App. 817, 825, 990 A.2d 882, 887, 990 A.2d 882 (2010). **"This court has noted that**

employing the best interest of the child standard in a **termination case 'is a difficult task that requires the court to weigh many different and sometimes competing interests.'**

[In re Davonta V.](#), 98 Conn. App. 42, 48, 907 A.2d 126 (2006), *aff'd*, [285 Conn. 483](#), 940 A.2d 733 (2008).

Similarly, the trial court was faced with the same challenge when deciding the issue of relocation. It candidly stated that both options, allowing or disallowing relocation, had negative aspects. For example, the court recognized that by allowing relocation, the plaintiff would not be able to coach the parties' minor child or attend his sporting events with the same frequency. Overall, however, the court found that although this relationship would not be the same, the parties' minor child would be able to maintain a relationship with the plaintiff while gaining a mother who **"can work with some emotional support and be able ... to care for her family."** **Because the defendant is the sole custodian of the parties' minor child, the court found that this result was in the best interest of the child."**

TREATISES:

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8 Arnold H. Rutkin et al., [Connecticut Practice: Family Law and Practice with Forms](#) (2010).
 - § 42.39. Parental residence within or outside Connecticut
 - § 42.41. Limitation on location of residence
 - § 42.41.50 Limitations on Travel
- Louise Truax, Editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017 edition).
 - Chapter 8. Custody and Visitation
 - Part VI. Filing Custody or Visitation Actions Post Judgment.
 - § 8.44 Making Orders Regarding Relocation Post Judgment
- 3 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2016 edition).
 - Chapter 16. Visitation
 - § 16.11 Jurisdictional restrictions on visitation
 - [1] Removal of child from jurisdiction
 - [2] Distance between noncustodial parent and child due to relocation of noncustodial parent