

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2618

By: Erwin

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 5, as last amended by Section 19, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1997, Section 5), which relates to grandparents rights; expanding authority of court; granting to certain persons intervenor status; providing for mediation; providing process; providing for notice and hearing; providing for resolution; providing procedures; providing for authority of mediator; providing for recommendation; providing for agreements; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 5, as last amended by Section 19, Chapter 389, O.S.L. 1997 (10 O.S. Supp. 1997, Section 5), is amended to read as follows:

Section 5. A. 1. Pursuant to the provisions of this section, each and every grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child. The right of visitation to any grandparent of an unmarried minor child shall be granted only so far as that right is authorized and provided by

order of the district court. The court may set the matter for mediation pursuant to subsection C of this section.

2. Except as otherwise provided by paragraphs 5 and 6 of this subsection, if a child is born out of wedlock, the parents of the father of such child shall not have the right of visitation authorized by this section unless such father has been judicially determined to be the father of the child.

3. If one natural parent is deceased and the surviving natural parent remarries, any subsequent adoption proceedings shall not terminate any court-granted grandparental rights belonging to the parents of the deceased natural parent unless said termination of visitation rights is ordered by the court after opportunity to be heard, and the district court determines it to be in the best interest of the child.

4. Except as otherwise provided by paragraphs 5, 6 and 7 of this subsection, if the parental rights of one or both parents have been terminated, any person who is the parent of the person whose parental rights have been terminated may be given reasonable rights of visitation if the court determines that a previous grandparental relationship has existed between the grandparents and the child and the district court determines it to be in the best interest of the child.

5. If the child has been born out of wedlock and the parental rights of the father of the child have been terminated, the parents of the father of such child shall not have a right of visitation authorized by this section to such child unless:

- a. the father of such child has been judicially determined to be the father of the child,
- b. the court determines that a previous grandparental relationship existed between the grandparents and the child, and

- c. the court determines such visitation rights to be in the best interest of the child.

6. If the child is born out of wedlock and the parental rights of the mother of the child have been terminated, the parents of the mother of such child shall not have a right of visitation authorized by this section to such child unless:

- a. the court determines that a previous grandparental relationship existed between the grandparents and the child, and
- b. the court determines such visitation rights to be in the best interest of the child.

7. For the purposes of paragraphs 4, 5 and 6 of this ~~section~~ subsection, the district court shall not grant to the grandparents of an unmarried minor child, visitation rights to that child:

- a. subsequent to the final order of adoption of the child, provided however, any subsequent adoption proceedings shall not terminate any prior court-granted grandparental visitation rights unless said termination of visitation rights is ordered by the court after opportunity to be heard and the district court determines it to be in the best interest of the child, or
- b. if the child had been placed for adoption prior to attaining six (6) months of age.

B. 1. In addition to the rights of visitation authorized by this section, except as otherwise provided by this section, a grandparent of a child may petition the court for standing and intervenor status in any child placement proceeding made pursuant to the provisions of the Oklahoma Adoption Code, Title 43 of the Oklahoma Statutes, the Oklahoma Children's Code and the Juvenile Justice Code. The standing and intervenor status is limited to that proceeding unless otherwise ordered by the court.

2. The court shall grant standing and intervenor status when the court finds that:

- a. the grandparent has an existing relationship or has made sufficient effort to establish a relationship with the child,
- b. the status would be in the best interest of the child, and
- c. the status would also be consistent with the purposes of Sections 7001-1.2 and 7501-1.2 of this title.

3. In any proceeding when standing and intervenor status has been granted, the grandparent may request the court to order that the child be placed with the grandparent. In making a decision on the request, the court shall give the grandparents priority for consideration for placement if that placement is in the best interest of the child.

4. Nothing in this section prevents the court, the Department of Human Services or the Office of Juvenile Justice from removing the child from the grandparents' home if the child is in jeopardy or for the protection of the public.

C. 1. If a matter is set for mediation pursuant to this subsection, the mediation shall be set before or concurrent with the setting of the matter for hearing.

- 2. a. Notice of mediation and of any hearing to be held pursuant to this subsection shall be given to the following persons:
 - (1) if mediation is required to settle a contested issue of custody or visitation, to each party and to each party's counsel of record, and
 - (2) if a grandparent seeks visitation rights, to the grandparent seeking visitation rights, to each parent of the child, and to each parent's counsel of record.

b. Notice shall be given by certified mail, return receipt requested, to the last-known address.

3. Mediation proceedings pursuant to this subsection shall be held in private and shall be confidential.

4. An agreement reached by the parties as a result of mediation shall be limited as follows:

a. where mediation is required to settle a contested issue of custody or visitation, the agreement shall be limited to the resolution of issues relating to parenting plans, custody, visitation, or a combination of these issues, and

b. where a grandparent seeks visitation rights, the agreement shall be limited to the resolution of issues relating to visitation.

5. A custody or visitation agreement reached as a result of mediation may be modified at any time at the discretion of the court.

6. In mediation proceedings pursuant to this subsection, the mediator has the duty to assess the needs and interests of the child involved in the controversy and is entitled to interview the child where the mediator considers the interview appropriate or necessary.

7. The mediator shall use best efforts to effect a settlement of the custody or visitation dispute that is in the best interest of the child.

8. In a proceeding in which mediation is required pursuant to this subsection, where there has been a history of domestic violence between the parties or where a protective order is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the mediator appointed pursuant to this subsection shall meet with the parties separately and at separate times.

9. The mediator has authority to exclude counsel from participation in the mediation proceedings pursuant to this subsection if, in the mediator's discretion, exclusion of counsel is appropriate or necessary.

10. The mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child.

11. Where the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted for determining best interests of the child or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.

12. In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

13. Nothing in this subsection prohibits the mediator from recommending to the court that counsel be appointed, pursuant to the Oklahoma Children's Code, the Oklahoma Adoption Code or the Juvenile Justice Code, to represent the child. In making this recommendation, the mediator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

14. If issues that may be resolved by agreement pursuant to this subsection are not resolved by an agreement of all the parties who participate in mediation, the mediator shall inform the court in writing, and the court shall set the matter for hearing on the unresolved issues.

15. An agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the

mediator on the day set for mediation or as soon thereafter as practical, but before the agreement is reported to the court.

16. An agreement may not be confirmed or otherwise incorporated in an order unless each party, in person or by counsel of record, has affirmed and assented to the agreement in open court or by written stipulation.

17. An agreement may be confirmed or otherwise incorporated in an order if a party fails to appear at a noticed hearing on the issue involved in the agreement.

D. In determining the best interest of the minor child, the court shall consider:

1. The willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents;

2. The length and quality of the prior relationship between the child and the grandparent or grandparents;

3. The preference of the child if the child is determined to be of sufficient maturity to express a preference;

4. The mental and physical health of the child;

5. The mental and physical health of the grandparent or grandparents; and

6. Such other factors as are necessary in the particular circumstances.

~~C.~~ E. The district courts are vested with jurisdiction to issue orders granting grandparental visitation rights and standing and intervenor status, to enforce such visitation rights, or set the matter for mediation upon the filing of a verified application ~~for such visitation rights or enforcement thereof.~~ Notice as ordered by the court shall be given to the person or parent having custody of said child and the venue of such action shall be in the county of the residence of such person or parent.

D. F. Any transportation costs or other costs arising from any ~~visitation ordered~~ order pursuant to this section shall be paid by the grandparent or grandparents requesting such ~~visitation~~ order.

SECTION 2. This act shall become effective November 1, 1998.

46-2-8171

KSM