ENGROSSED HOUSE
BILL NO. 1983

By: Worthen, Deutschendorf, Wells, Boyd and Roach of the House

and

Snyder of the Senate

An Act relating to children; amending 10 O.S. 1999, Section 5, as last amended by Section 1, Chapter 383, O.S.L. 1999 (10 O.S. Supp. 1999, Section 5), which relates to grandparent visitation; detailing rights; clarifying language; providing process for cases of interference of visitation rights; providing for mediation and certain hearings; providing for certain orders; providing for court costs; requiring development of certain forms; 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 1, Chapter 383, O.S.L. 1999 (10 O.S. Supp. 1999, Section 5), is amended to read as follows:

Section 5. A. 1. Pursuant to the provisions of this section, ~~each and every~~ the grandparent of an unmarried minor child ~~shall have~~ may seek and be granted reasonable ~~rights of~~ independent visitation rights to the child if the district court deems it to be in the best interest of the child and:

a. an action for divorce, separate maintenance or annulment involving the grandchild's parents is pending before the court,

b. the grandchild's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled,

c. the grandchild's parent who is a child of the grandparents is deceased,

d. except as otherwise provided in subsection B or C of this section, legal custody of the grandchild has been given to a person other than the grandchild's parent, or the grandchild is placed outside of and does not reside in the home of the parent,

e. the grandparent had custody or has provided an established custodial environment for the grandchild as described in Section 21.3 of this title, whether or not the grandparent had custody under a court order, at any time during the life of the grandchild,

f. the grandchild's parent has withheld from the grandparent opportunities to visit with the grandchild to retaliate against the grandparent for reporting child abuse or neglect to the Department of Human Services or a law enforcement agency if the grandparent had reasonable cause to suspect child abuse or neglect,

g. the grandchild's parent has lived separate and away from the other parent and grandchild for more than one (1) year,

h. except as otherwise provided in subsection C of this section, the grandchild's parents have never been married and are not residing in the same household, and

i. except as otherwise provided by subsection C of this section, if the parental rights of one or both parents of one child have been terminated, the court determines that a previous grandparental relationship existed between the child and the parent of the person whose parental rights have been terminated, and

j. at any other time and for such other reason the court deems it to be in the best interests of the child.

2. 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.

~~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.~~ B. 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 the 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.~~ C. 1. 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.~~ 2. 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.~~ 3. ~~For the purposes of paragraphs 4, 5 and 6 of~~ Except as otherwise provided by this section, 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.~~ 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. 1. The district courts are vested with jurisdiction to issue orders granting grandparental visitation rights and enforce such visitation rights, 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 the child and the venue of such action shall be in the county of the residence of such person or parent.

2. When a grandparent of a child has been granted visitation rights pursuant to this section and those rights are denied or otherwise interfered with by any parent of the child, the grandparent may file with the court clerk a motion for enforcement of visitation rights. The motion shall be filed on a form provided by the court clerk. Upon filing of the motion, the court shall:

a. issue ex parte an order for mediation, or

b. set a hearing on the motion.

3. After any mediation ordered pursuant to subparagraph a of paragraph 2 of this subsection, the mediator shall submit the record of mediation termination and a summary of the parties' agreement, if any, to the court. Upon receipt of the record of mediation termination, the court shall enter an order in accordance with the parties' agreement, if any, or set the matter for hearing.

4. Notice of a hearing pursuant to paragraphs 2 or 3 of this subsection shall be given to all interested parties by certified mail, return receipt requested, or as ordered by the court.

5. If the court finds that visitation rights of the grandparent have been unreasonably denied or otherwise interfered with by the parent, the court shall enter an order providing for one or more of the following:

a. a specific visitation schedule,

b. compensating visitation time for the visitation denied or otherwise interfered with, which time shall be of the same type as the visitation denied or otherwise interfered with, including but not limited to holiday, weekday, weekend, summer, and shall be at the convenience of the grandparent,

c. posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights,

d. assessment of reasonable attorney fees, mediation costs, and court costs to enforce visitation rights against the parent, or

e. any other remedy the court considers appropriate.

6. If the court finds that the motion for enforcement of visitation rights has been unreasonably filed or pursued by the grandparent, the court may assess reasonable attorney fees, mediation costs, and court costs against the grandparent.

7. The Office of the Court Administrator shall develop the form required by this subsection to be used for a motion to enforce visitation rights.

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

~~E.~~ G. In any action for grandparental visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.

~~F.~~ H. For the purposes of this section, the term "grandparent" shall include "great-grandparent".

SECTION 2. This act shall become effective November 1, 2000.

Passed the House of Representatives the 7th day of March, 2000.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 2000.

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President of the Senate