ENROLLED SENATE
BILL NO. 264

By: Snyder of the Senate

and

Reese, Graves, McCarter
and Davis of the House

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. 1998, Section 5), which relates to grandparental visitation rights; allowing attorney fees and costs; defining term; including great-grandparent in definition of grandparent; providing for visitation of minor child with sibling after death of parent; requiring court to consider best interests of siblings; stating factors for determination of best interests; stating jurisdiction; requiring notice; stating venue; allowing court to determine location for visitation; providing for payment of certain costs; providing for termination of visitation rights upon adoption of minor child; allowing attorney fees and costs; defining terms; providing for codification; 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. 1998, 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.

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~~ 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. 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, 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. 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. 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 ~~said~~ the child and the venue of such action shall be in the county of the residence of such person or parent.

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5A of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon the death of a parent of an unmarried minor child, a parent of the unmarried minor child or a parent of a minor sibling of the unmarried minor child may file a verified petition to commence an action requesting rights of visitation between the siblings. The court may award reasonable rights of visitation between the siblings if the court determines that visitation is in the best interests of the siblings.

B. In determining whether visitation is in the best interests of the siblings, the court shall consider:

1. The willingness of the parents of the siblings to encourage or maintain a relationship between the siblings;

2. The length and quality of the relationship between the siblings including, but not limited to, whether the siblings previously resided together in the same household;

3. The time which has elapsed since the siblings last had contact;

4. The preference of the siblings, if they are of sufficient maturity to express a preference;

5. The effect that visitation will have on the relationship between the siblings and their parents;

6. The mental and physical health of the siblings; and

7. All other factors appropriate to the particular circumstances.

C. The district courts are vested with jurisdiction to issue orders granting visitation between siblings and to enforce these orders.

D. Notice as required by Section 2004 of Title 12 of the Oklahoma Statutes shall be given to all parents of the siblings.

E. Venue of an action under this section shall be in the county where the siblings reside or, if the siblings reside in different counties, in the county where the respondent resides.

F. The court may determine the location for visitation ordered pursuant to this section and require any transportation costs or other costs arising from visitation to be paid by a parent or parents of the siblings as the court deems equitable.

G. Any visitation rights granted pursuant to this section before the adoption of a sibling shall automatically terminate if the sibling is adopted by a person other than a stepparent or grandparent of the sibling.

H. In any action for sibling visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.

I. As used in this section:

1. "Sibling" means sister, brother, stepsister, stepbrother, halfsister, halfbrother, adopted sister, or adopted brother; and

2. "Parent" means biological parent, stepparent, adoptive parent, or legal guardian of a minor.

SECTION 3. This act shall become effective November 1, 1999.

Passed the Senate the 24th day of May, 1999.

President of the Senate

Passed the House of Representatives the 27th day of May, 1999.

Speaker of the House of Representatives