OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1259 By: Wells

COMMITTEE SUBSTITUTE

An Act relating to grandparent visitation rights; amending 10 O.S. 2001, Section 5, which relates to grandparent visitation; expanding conditions in determining the best interest of a minor child; requiring a showing of harm or potential harm in certain situations; defining terms; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 5, is amended to read as follows:

Section 5. A. 1. Pursuant to the provisions of this section, the grandparent of an unmarried minor child may seek and be granted reasonable visitation rights to the child which visitation rights may be independent of either parent 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 grandparent 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 does not reside in the home of a parent of the child,

e. the grandparent had custody of the grandchild pursuant to Section 21.3 of this title, whether or not the grandparent had custody under a court order, and there exists a strong, continuous grandparental relationship between the grandparent and the child,

f. the grandchild's parent has deserted the other parent for more than one (1) year and there exists a strong, continuous grandparental relationship between the grandparent and the child,

g. except as otherwise provided in subsection C of this section, the grandchild's parents have never been married, are not residing in the same household and there exists a strong, continuous grandparental relationship between the grandparent and the child,

h. except as otherwise provided by subsection C of this section, the parental rights of one or both parents of the child have been terminated, and the court determines that there is a strong, continuous relationship between the child and the parent of the person whose parental rights have been terminated, or

i. at any other time and for such other reason the court deems it to be in the best interests of the child <u>pursuant to subsection D of this section and after a showing that the parent is unfit or that the child would suffer harm or potential harm without the granting of visitation rights to the grandparent of the child</u>.

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.

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 having jurisdiction over the adoption after opportunity to be heard, and the court determines it to be in the best interest of the child.

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.

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.

3. 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.

D. 1. In determining the best interest of the minor child, the court shall consider and, if requested, make specific findings of fact supporting such action:

~~1. The~~

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

~~2. The~~

b. 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;~~

c. evidence of domestic abuse or child abuse by the grandparent. If a grandparent has been convicted of or has had a substantiated report of domestic abuse or child abuse issued by a peace officer or child welfare agency, such grandparent shall not be granted the right of visitation to a grandchild,

~~4. The~~

d. the mental and physical health of the child~~;~~,

~~5. The~~

e. the mental and physical health of the grandparent or grandparents~~;~~,

f. the love, affection and emotional ties existing between the parent and child,

g. the importance of continuity of the grandparent in the child's life,

h. the mental and physical health of the parent,

i. the reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children,

j. evidence of physical or emotional abuse to the child, of one parent to the other parent or to any other person,

k. the character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child, and

~~6. Such~~

l. such other factors as are necessary in the particular circumstances.

2. a. In addition to determining the best interest of the child, in granting visitation rights to grandparents, pursuant to this section, over the objection of both parents, the court shall find that:

(1) the child would suffer harm or potential harm without the granting of visitation rights to the grandparents of the child,

(2) the grandparent had custody of the grandchild pursuant to Section 21.3 of this title, whether or not the grandparent had custody under a court order, and there exists a strong, continuous grandparental relationship between the grandparent and the child, or

(3) the parents of the child are unfit.

b. For purposes of this paragraph:

(1) "harm or potential harm" means a showing that without court-ordered visitation by the grandparents, the child's emotional or physical well-being would be jeopardized, and

(2) "unfit" includes, but is not limited to, a showing that a parent has:

(a) a chemical or alcohol dependency,

(b) a habitual and/or excessive use of alcohol or drugs,

(c) a history of violent behavior,

(d) committed domestic abuse,

(e) an emotional or mental illness, or

(f) failed to provide the child with proper care, guidance and support to the actual detriment of the child. The provisions of this subdivision include, but are not limited to, parental indifference and parental influence on his or her child or lack thereof that exposes such child to unreasonable risk.

The determination of "unfitness" pursuant to this division shall not be that which is equivalent for the termination of parental rights.

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 unreasonably denied or otherwise unreasonably interfered with by any parent of the child, the grandparent may file with the court a motion for enforcement of visitation rights. Upon filing of the motion, the court shall set an initial hearing on the motion. At the initial hearing, the court shall direct mediation and set a hearing on the merits of the motion.

3. After completion of any mediation pursuant to 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.

4. Notice of a hearing pursuant to ~~paragraphs~~ paragraph 2 or 3 of this subsection shall be given to the parties at their last-known address or as otherwise ordered by the court, at least ten (10) days prior to the date set by the court for hearing on the motion. Provided, the court may direct a shorter notice period if the court deems such shorter notice period to be appropriate under the circumstances.

5. Appearance at any court hearing pursuant to this subsection shall be a waiver of the notice requirements prior to such hearing.

6. If the court finds that visitation rights of the grandparent have been unreasonably denied or otherwise unreasonably 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 may be of the same type as the visitation denied or otherwise interfered with, including but not limited to holiday,

weekday, weekend, summer, and may 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.

7. 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.

F. In addition to any other remedy authorized by this section or otherwise provided by law, any party violating an order of the court made pursuant to this section, upon conviction thereof, shall be guilty of contempt of court.

G. 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.

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

I. For the purposes of this section, the term “grandparent” shall include “great-grandparent”.

SECTION 2. This act shall become effective November 1, 2003.

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