

1 ENGROSSED HOUSE  
2 BILL NO. 2469

By: Rousselot, BigHorse,  
Pittman and Shumate of the  
House

3  
4 and

Garrison of the Senate  
5  
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8 An Act relating to children; amending 10 O.S. 2001,  
9 Section 5, as last amended by Section 1, Chapter 102,  
10 O.S.L. 2007 (10 O.S. Supp. 2007, Section 5), which  
11 relates to grandparent visitation; eliminating  
12 certain requirement before granting visitation;  
13 providing for certain order in adoption proceeding;  
14 and declaring an emergency.

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

16 SECTION 1. AMENDATORY 10 O.S. 2001, Section 5, as last  
17 amended by Section 1, Chapter 102, O.S.L. 2007 (10 O.S. Supp. 2007,  
18 Section 5), is amended to read as follows:

19 Section 5. A. 1. Pursuant to the provisions of this section,  
20 any grandparent of an unmarried minor child may seek and be granted  
21 reasonable visitation rights to the child which visitation rights  
22 may be independent of either parent of the child if:

- 23 a. the district court deems it to be in the best interest  
24 of the child pursuant to subsection E of this section,  
and

1           b.    there is a showing of parental unfitness, or the  
2                grandparent has rebutted, by clear and convincing  
3                evidence, the presumption that the fit parent is  
4                acting in the best interests of the child by showing  
5                that the child would suffer harm or potential harm  
6                without the granting of visitation rights to the  
7                grandparent of the child, and

8           c.    the intact nuclear family has been disrupted in that  
9                one or more of the following conditions has occurred:

10           (1)   an action for divorce, separate maintenance or  
11                annulment involving the grandchild's parents is  
12                pending before the court, and the grandparent had  
13                a preexisting relationship with the child that  
14                predates the filing of the action for divorce,  
15                separate maintenance or annulment,

16           (2)   the grandchild's parents are divorced, separated  
17                under a judgment of separate maintenance, or have  
18                had their marriage annulled,

19           (3)   the grandchild's parent who is a child of the  
20                grandparent is deceased, and the grandparent had  
21                a preexisting relationship with the child ~~that~~  
22                ~~predates the death of the deceased parent,~~

23           (4)   except as otherwise provided in subsection C or D  
24                of this section, legal custody of the grandchild

1 has been given to a person other than the  
2 grandchild's parent, or the grandchild does not  
3 reside in the home of a parent of the child,

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

10 (6) the grandchild's parent has deserted the other  
11 parent for more than one (1) year and there  
12 exists a strong, continuous grandparental  
13 relationship between the grandparent and the  
14 child,

15 (7) except as otherwise provided in subsection D of  
16 this section, the grandchild's parents have never  
17 been married, are not residing in the same  
18 household and there exists a strong, continuous  
19 grandparental relationship between the  
20 grandparent and the child, or

21 (8) except as otherwise provided by subsection D of  
22 this section, the parental rights of one or both  
23 parents of the child have been terminated, and  
24 the court determines that there is a strong,

1 continuous relationship between the child and the  
2 parent of the person whose parental rights have  
3 been terminated.

4 2. The right of visitation to any grandparent of an unmarried  
5 minor child shall be granted only so far as that right is authorized  
6 and provided by order of the district court.

7 B. Under no circumstances shall any judge grant the right of  
8 visitation to any grandparent if the child is a member of an intact  
9 nuclear family and both parents of the child object to the granting  
10 of visitation.

11 C. If one natural parent is deceased and the surviving natural  
12 parent remarries, any subsequent adoption proceedings shall not  
13 terminate any ~~preexisting court-granted~~ grandparental rights  
14 belonging to the parents of the deceased natural parent unless the  
15 refusal to grant visitation or the termination of visitation rights  
16 is ordered by the court having jurisdiction over the adoption after  
17 opportunity to be heard, and the court determines it to be in the  
18 best interest of the child.

19 D. 1. If the child has been born out of wedlock and the  
20 parental rights of the father of the child have been terminated, the  
21 parents of the father of ~~such~~ the child shall not have a right of  
22 visitation authorized by this section to ~~such~~ the child unless:

- 23 a. the father of ~~such~~ the child has been judicially  
24 determined to be the father of the child, and

1           b.    the court determines that a previous grandparental  
2                    relationship existed between the grandparent and the  
3                    child.

4           2.    If the child is born out of wedlock and the parental rights  
5 of the mother of the child have been terminated, the parents of the  
6 mother of ~~such~~ the child shall not have a right of visitation  
7 authorized by this section to ~~such~~ the child unless the court  
8 determines that a previous grandparental relationship existed  
9 between the grandparent and the child.

10          3.    Except as otherwise provided by this section, the district  
11 court shall not grant to any grandparent of an unmarried minor  
12 child, visitation rights to that child:

13           a.    subsequent to the final order of adoption of the  
14                    child; provided however, any subsequent adoption  
15                    proceedings shall not terminate any ~~prior court-~~  
16                    ~~granted~~ grandparental visitation rights unless the  
17                    refusal to grant visitation or the termination of  
18                    visitation rights is ordered by the court after  
19                    opportunity to be heard and the district court  
20                    determines it to be in the best interest of the child,  
21                    or

22           b.    if the child had been placed for adoption prior to  
23                    attaining six (6) months of age.

1 E. 1. In determining the best interest of the minor child, the  
2 court shall consider and, if requested, shall make specific findings  
3 of fact related to the following factors:

4 a. the needs of and importance to the child for a  
5 continuing preexisting relationship with the  
6 grandparent and the age and reasonable preference of  
7 the child pursuant to Section 113 of Title 43 of the  
8 Oklahoma Statutes,

9 b. the willingness of the grandparent or grandparents to  
10 encourage a close relationship between the child and  
11 the parent or parents,

12 c. the length, quality and intimacy of the preexisting  
13 relationship between the child and the grandparent,

14 d. the love, affection and emotional ties existing  
15 between the parent and child,

16 e. the motivation and efforts of the grandparent to  
17 continue the preexisting relationship with the  
18 grandchild,

19 f. the motivation of parent or parents denying  
20 visitation,

21 g. the mental and physical health of the grandparent or  
22 grandparents,

23 h. the mental and physical health of the child,  
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- 1 i. the mental and physical health of the parent or
- 2 parents,
- 3 j. whether the child is in a permanent, stable,
- 4 satisfactory family unit and environment,
- 5 k. the moral fitness of the parties,
- 6 l. the character and behavior of any other person who
- 7 resides in or frequents the homes of the parties and
- 8 such person's interactions with the child,
- 9 m. the quantity of visitation time requested and the
- 10 potential adverse impact the visitation will have on
- 11 the customary activities of the child, and
- 12 n. if both parents are dead, the benefit in maintaining
- 13 the preexisting relationship.

14 2. For purposes of this subsection:

- 15 a. "harm or potential harm" means a showing that without
- 16 court-ordered visitation by the grandparent, the
- 17 child's emotional, mental or physical well-being could
- 18 reasonably or would be jeopardized,
- 19 b. "intact nuclear family" means a family consisting of
- 20 the married father and mother of the child,
- 21 c. "parental unfitness" includes, but is not limited to,
- 22 a showing that a parent of the child or a person
- 23 residing with the parent:

- 1 (1) has a chemical or alcohol dependency, for which  
2 treatment has not been sought or for which  
3 treatment has been unsuccessful,  
4 (2) has a history of violent behavior or domestic  
5 abuse,  
6 (3) has an emotional or mental illness that  
7 demonstrably impairs judgment or capacity to  
8 recognize reality or to control behavior,  
9 (4) has been shown to have failed to provide the  
10 child with proper care, guidance and support to  
11 the actual detriment of the child. The  
12 provisions of this division include, but are not  
13 limited to, parental indifference and parental  
14 influence on his or her child or lack thereof  
15 that exposes such child to unreasonable risk, or  
16 (5) demonstrates conduct or condition which renders  
17 him or her unable or unwilling to give a child  
18 reasonable parental care. Reasonable parental  
19 care requires, at a minimum, that the parent  
20 provides nurturing and protection adequate to  
21 meet the child's physical, emotional and mental  
22 health.  
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1           The determination of parental unfitness pursuant to  
2           this subparagraph shall not be that which is  
3           equivalent for the termination of parental rights, and

4           d.    "preexisting relationship" means occurring or existing  
5           prior to the filing of the petition for grandparental  
6           visitation.

7           F.   1.  The district courts are vested with jurisdiction to  
8           issue orders granting grandparental visitation rights and to enforce  
9           visitation rights, upon the filing of a verified petition for  
10          visitation rights or enforcement thereof.  Notice as ordered by the  
11          court shall be given to the person or parent having custody of the  
12          child.  The venue of such action shall be in the court where there  
13          is an ongoing proceeding that involves the child, or if there is no  
14          ongoing proceeding, in the county of the residence of the child or  
15          parent.

16          2.  When a grandparent of a child has been granted visitation  
17          rights pursuant to this section and those rights are unreasonably  
18          denied or otherwise unreasonably interfered with by any parent of  
19          the child, the grandparent may file with the court a motion for  
20          enforcement of visitation rights.  Upon filing of the motion, the  
21          court shall set an initial hearing on the motion.  At the initial  
22          hearing, the court shall direct mediation and set a hearing on the  
23          merits of the motion.

1           3. After completion of any mediation pursuant to paragraph 2 of  
2 this subsection, the mediator shall submit the record of mediation  
3 termination and a summary of the parties' agreement, if any, to the  
4 court. Upon receipt of the record of mediation termination, the  
5 court shall enter an order in accordance with the parties'  
6 agreement, if any.

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

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

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

- 19           a. a specific visitation schedule,
- 20           b. compensating visitation time for the visitation denied  
21           or otherwise interfered with, which time may be of the  
22           same type as the visitation denied or otherwise  
23           interfered with, including but not limited to holiday,

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1 weekday, weekend, summer, and may be at the  
2 convenience of the grandparent,

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

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

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

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

17 H. Any transportation costs or other costs arising from any  
18 visitation ordered pursuant to this section shall be paid by the  
19 grandparent or grandparents requesting such visitation.

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

23 J. For the purposes of this section, the term "grandparent"  
24 shall include "great-grandparent".

1 SECTION 2. It being immediately necessary for the preservation  
2 of the public peace, health and safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

5 Passed the House of Representatives the 25th day of February,  
6 2008.

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Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2008.

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Presiding Officer of the Senate