

1 ENGROSSED SENATE
2 BILL NO. 1201

By: Gumm, Paddack, Garrison,
Johnson (Constance), Easley
and Marlatt of the Senate

3
4 and

Carey of the House

5
6
7 [children - grandparental visitation rights -

8 rebuttable presumption -

9 effective date]

10

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

12 SECTION 1. AMENDATORY 10 O.S. 2001, Section 5, as last
13 amended by Section 1, Chapter 290, O.S.L. 2008 (10 O.S. Supp. 2008,
14 Section 5), is amended to read as follows:

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

19 a. the district court deems it to be in the best interest
20 of the child pursuant to subsection E of this section,
21 and

22 b. there is a showing of parental unfitness, or the
23 grandparent has rebutted, by clear and convincing
24 evidence, the presumption that the fit parent is

1 acting in the best interests of the child by showing
2 that the child would suffer harm or potential harm
3 without the granting of visitation rights to the
4 grandparent of the child, and

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

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

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

16 (3) the grandchild's parent who is a child of the
17 grandparent is deceased, and the grandparent had
18 a preexisting relationship with the child that
19 predates the death of the deceased parent unless
20 the death of the mother was due to complications
21 related to the birth of the child,

22 (4) except as otherwise provided in subsection C or D
23 of this section, legal custody of the grandchild
24 has been given to a person other than the

1 grandchild's parent, or the grandchild does not
2 reside in the home of a parent of the child,

3 (5) one of the grandchild's parents has had a felony
4 conviction and been incarcerated in the
5 Department of Corrections and the grandparent had
6 a preexisting relationship with the child that
7 predates the incarceration,

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

14 (7) the grandchild's parent has deserted the other
15 parent for more than one (1) year and there
16 exists a strong, continuous grandparental
17 relationship between the grandparent and the
18 child,

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

1 (9) except as otherwise provided by subsection D of
2 this section, the parental rights of one or both
3 parents of the child have been terminated, and
4 the court determines that there is a strong,
5 continuous relationship between the child and the
6 parent of the person whose parental rights have
7 been terminated.

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

11 B. Under no circumstances shall any judge grant the right of
12 visitation to any grandparent if the child is a member of an intact
13 nuclear family and both parents of the child object to the granting
14 of visitation.

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

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

- 3 a. the father of the child has been judicially determined
4 to be the father of the child, and
- 5 b. the court determines that a previous grandparental
6 relationship existed between the grandparent and the
7 child.

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

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

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

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

3 E. If any custodial parent not a part of an intact nuclear
4 family grants apparent indefinite custody of a minor child to a
5 grandparent or grandparents with the intent of relinquishing
6 responsibility for said minor child, then such grandparent or
7 grandparents shall have a rebuttable presumption of custody. If any
8 such parent seeks to regain custody, the court, in determining the
9 best interest of the child, shall consider the fact that said parent
10 granted to a grandparent or grandparents apparent indefinite custody
11 of a minor child when making any grant of custody or visitation,
12 with special emphasis on the relationship between the grandparent or
13 grandparents and the minor child.

14 F. 1. In determining the best interest of the minor child, the
15 court shall consider and, if requested, shall make specific findings
16 of fact related to the following factors:

17 a. the needs of and importance to the child for a
18 continuing preexisting relationship with the
19 grandparent and the age and reasonable preference of
20 the child pursuant to Section 113 of Title 43 of the
21 Oklahoma Statutes,

22 b. the willingness of the grandparent or grandparents to
23 encourage a close relationship between the child and
24 the parent or parents,

- c. the length, quality and intimacy of the preexisting relationship between the child and the grandparent,
- d. the love, affection and emotional ties existing between the parent and child,
- e. the motivation and efforts of the grandparent to continue the preexisting relationship with the grandchild,
- f. the motivation of parent or parents denying visitation,
- g. the mental and physical health of the grandparent or grandparents,
- h. the mental and physical health of the child,
- i. the mental and physical health of the parent or parents,
- j. whether the child is in a permanent, stable, satisfactory family unit and environment,
- k. the moral fitness of the parties,
- l. the character and behavior of any other person who resides in or frequents the homes of the parties and such person's interactions with the child,
- m. the quantity of visitation time requested and the potential adverse impact the visitation will have on the customary activities of the child, and

1 n. if both parents are dead, the benefit in maintaining
2 the preexisting relationship.

3 2. For purposes of this subsection:

4 a. "harm or potential harm" means a showing that without
5 court-ordered visitation by the grandparent, the
6 child's emotional, mental or physical well-being could
7 reasonably or would be jeopardized,

8 b. "intact nuclear family" means a family consisting of
9 the married father and mother of the child,

10 c. "parental unfitness" includes, but is not limited to,
11 a showing that a parent of the child or a person
12 residing with the parent:

13 (1) has a chemical or alcohol dependency, for which
14 treatment has not been sought or for which
15 treatment has been unsuccessful,

16 (2) has a history of violent behavior or domestic
17 abuse,

18 (3) has an emotional or mental illness that
19 demonstrably impairs judgment or capacity to
20 recognize reality or to control behavior,

21 (4) has been shown to have failed to provide the
22 child with proper care, guidance and support to
23 the actual detriment of the child. The
24 provisions of this division include, but are not

1 limited to, parental indifference and parental
2 influence on his or her child or lack thereof
3 that exposes such child to unreasonable risk, or
4 (5) demonstrates conduct or condition which renders
5 him or her unable or unwilling to give a child
6 reasonable parental care. Reasonable parental
7 care requires, at a minimum, that the parent
8 provides nurturing and protection adequate to
9 meet the child's physical, emotional and mental
10 health.

11 The determination of parental unfitness pursuant to
12 this subparagraph shall not be that which is
13 equivalent for the termination of parental rights, and

14 d. "preexisting relationship" means occurring or existing
15 prior to the filing of the petition for grandparental
16 visitation.

17 ~~F.~~ G. 1. The district courts are vested with jurisdiction to
18 issue orders granting grandparental visitation rights and to enforce
19 visitation rights, upon the filing of a verified petition for
20 visitation rights or enforcement thereof. Notice as ordered by the
21 court shall be given to the person or parent having custody of the
22 child. The venue of such action shall be in the court where there
23 is an ongoing proceeding that involves the child, or if there is no
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1 ongoing proceeding, in the county of the residence of the child or
2 parent.

3 2. When a grandparent of a child has been granted visitation
4 rights pursuant to this section and those rights are unreasonably
5 denied or otherwise unreasonably interfered with by any parent of
6 the child, the grandparent may file with the court a motion for
7 enforcement of visitation rights. Upon filing of the motion, the
8 court shall set an initial hearing on the motion. At the initial
9 hearing, the court shall direct mediation and set a hearing on the
10 merits of the motion.

11 3. After completion of any mediation pursuant to paragraph 2 of
12 this subsection, the mediator shall submit the record of mediation
13 termination and a summary of the parties' agreement, if any, to the
14 court. Upon receipt of the record of mediation termination, the
15 court shall enter an order in accordance with the parties'
16 agreement, if any.

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

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

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

- 5 a. a specific visitation schedule,
- 6 b. compensating visitation time for the visitation denied
7 or otherwise interfered with, which time may be of the
8 same type as the visitation denied or otherwise
9 interfered with, including but not limited to holiday,
10 weekday, weekend, summer, and may be at the
11 convenience of the grandparent,
- 12 c. posting of a bond, either cash or with sufficient
13 sureties, conditioned upon compliance with the order
14 granting visitation rights, or
- 15 d. assessment of reasonable attorney fees, mediation
16 costs, and court costs to enforce visitation rights
17 against the parent.

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

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

3 ~~H.~~ I. Any transportation costs or other costs arising from any
4 visitation ordered pursuant to this section shall be paid by the
5 grandparent or grandparents requesting such visitation.

6 ~~F.~~ J. In any action for grandparental visitation pursuant to
7 this section, the court may award attorney fees and costs, as the
8 court deems equitable.

9 ~~J.~~ K. For the purposes of this section, the term "grandparent"
10 shall include "great-grandparent".

11 SECTION 2. This act shall become effective November 1, 2009.

12 Passed the Senate the 11th day of March, 2009.

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Presiding Officer of the Senate

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16 Passed the House of Representatives the ____ day of _____,
17 2009.

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Presiding Officer of the House
of Representatives

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