

SB 1201

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THE STATE SENATE
Monday, February 23, 2009

Senate Bill No. 1201
As Amended

SENATE BILL NO. 1201 - By: Gumm and Paddock of the Senate and Carey of the House.

[children - grandparental visitation rights - rebuttable presumption - effective date]

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

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

Section 5. A. 1. Pursuant to the provisions of this section, any 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 of the child if:

- a. the district court deems it to be in the best interest of the child pursuant to subsection E of this section, and
- b. there is a showing of parental unfitness, or the grandparent has rebutted, by clear and convincing evidence, the presumption that the fit parent is acting in the best interests of the child by showing that the child would suffer harm or potential harm

1 without the granting of visitation rights to the
2 grandparent of the child, and
3 c. the intact nuclear family has been disrupted in that
4 one or more of the following conditions has occurred:
5 (1) an action for divorce, separate maintenance or
6 annulment involving the grandchild's parents is
7 pending before the court, and the grandparent had
8 a preexisting relationship with the child that
9 predates the filing of the action for divorce,
10 separate maintenance or annulment,
11 (2) the grandchild's parents are divorced, separated
12 under a judgment of separate maintenance, or have
13 had their marriage annulled,
14 (3) the grandchild's parent who is a child of the
15 grandparent is deceased, and the grandparent had
16 a preexisting relationship with the child that
17 predates the death of the deceased parent unless
18 the death of the mother was due to complications
19 related to the birth of the child,
20 (4) except as otherwise provided in subsection C or D
21 of this section, legal custody of the grandchild
22 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

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

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

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

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

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

5 a. the father of the child has been judicially determined
6 to be the father of the child, and

7 b. the court determines that a previous grandparental
8 relationship existed between the grandparent and the
9 child.

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

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

19 a. subsequent to the final order of adoption of the
20 child; provided however, any subsequent adoption
21 proceedings shall not terminate any prior court-
22 granted grandparental visitation rights unless the
23 termination of visitation rights is ordered by the

1 court after opportunity to be heard and the district
2 court determines it to be in the best interest of the
3 child, or

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

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

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

20 a. the needs of and importance to the child for a
21 continuing preexisting relationship with the
22 grandparent and the age and reasonable preference of

- 1 the child pursuant to Section 113 of Title 43 of the
2 Oklahoma Statutes,
- 3 b. the willingness of the grandparent or grandparents to
4 encourage a close relationship between the child and
5 the parent or parents,
- 6 c. the length, quality and intimacy of the preexisting
7 relationship between the child and the grandparent,
- 8 d. the love, affection and emotional ties existing
9 between the parent and child,
- 10 e. the motivation and efforts of the grandparent to
11 continue the preexisting relationship with the
12 grandchild,
- 13 f. the motivation of parent or parents denying
14 visitation,
- 15 g. the mental and physical health of the grandparent or
16 grandparents,
- 17 h. the mental and physical health of the child,
- 18 i. the mental and physical health of the parent or
19 parents,
- 20 j. whether the child is in a permanent, stable,
21 satisfactory family unit and environment,
- 22 k. the moral fitness of the parties,

- 1 l. the character and behavior of any other person who
2 resides in or frequents the homes of the parties and
3 such person's interactions with the child,
4 m. the quantity of visitation time requested and the
5 potential adverse impact the visitation will have on
6 the customary activities of the child, and
7 n. if both parents are dead, the benefit in maintaining
8 the preexisting relationship.
- 9 2. For purposes of this subsection:
- 10 a. "harm or potential harm" means a showing that without
11 court-ordered visitation by the grandparent, the
12 child's emotional, mental or physical well-being could
13 reasonably or would be jeopardized,
14 b. "intact nuclear family" means a family consisting of
15 the married father and mother of the child,
16 c. "parental unfitness" includes, but is not limited to,
17 a showing that a parent of the child or a person
18 residing with the parent:
19 (1) has a chemical or alcohol dependency, for which
20 treatment has not been sought or for which
21 treatment has been unsuccessful,
22 (2) has a history of violent behavior or domestic
23 abuse,

- 1 (3) has an emotional or mental illness that
2 demonstrably impairs judgment or capacity to
3 recognize reality or to control behavior,
4 (4) has been shown to have failed to provide the
5 child with proper care, guidance and support to
6 the actual detriment of the child. The
7 provisions of this division include, but are not
8 limited to, parental indifference and parental
9 influence on his or her child or lack thereof
10 that exposes such child to unreasonable risk, or
11 (5) demonstrates conduct or condition which renders
12 him or her unable or unwilling to give a child
13 reasonable parental care. Reasonable parental
14 care requires, at a minimum, that the parent
15 provides nurturing and protection adequate to
16 meet the child's physical, emotional and mental
17 health.

18 The determination of parental unfitness pursuant to
19 this subparagraph shall not be that which is
20 equivalent for the termination of parental rights, and

- 21 d. "preexisting relationship" means occurring or existing
22 prior to the filing of the petition for grandparental
23 visitation.

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

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

18 3. After completion of any mediation pursuant to paragraph 2 of
19 this subsection, the mediator shall submit the record of mediation
20 termination and a summary of the parties' agreement, if any, to the
21 court. Upon receipt of the record of mediation termination, the
22 court shall enter an order in accordance with the parties'
23 agreement, if any.

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

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

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

- 13 a. a specific visitation schedule,
- 14 b. compensating visitation time for the visitation denied
15 or otherwise interfered with, which time may be of the
16 same type as the visitation denied or otherwise
17 interfered with, including but not limited to holiday,
18 weekday, weekend, summer, and may be at the
19 convenience of the grandparent,
- 20 c. posting of a bond, either cash or with sufficient
21 sureties, conditioned upon compliance with the order
22 granting visitation rights, or

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

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

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

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

15 ~~I.~~ J. In any action for grandparental visitation pursuant to
16 this section, the court may award attorney fees and costs, as the
17 court deems equitable.

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-17-09 - DO
22 PASS, As Amended and Coauthored.