

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 1199

6 By: McDaniel (Jeannie)

7 COMMITTEE SUBSTITUTE

8 An Act relating to grandparental visitation; amending  
9 10 O.S. 2001, Section 5, as last amended by Section  
10 1, Chapter 290, O.S.L. 2008, and as renumbered by  
11 Section 197, Chapter 233, O.S.L. 2009 (43 O.S. Supp.  
12 2010, Section 109.4), which relates to grandparental  
13 visitation; authorizing visitation by former legal  
14 guardians; and providing an effective date.

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 290, O.S.L. 2008, and as renumbered by  
18 Section 197, Chapter 233, O.S.L. 2009 (43 O.S. Supp. 2010, Section  
19 109.4), is amended to read as follows:

20 Section 109.4 A. 1. Pursuant to the provisions of this  
21 section, any grandparent or former legal guardian of an unmarried  
22 minor child may seek and be granted reasonable visitation rights to  
23 the child which visitation rights may be independent of either  
24 parent of the child if:

- 1 a. the district court deems it to be in the best interest  
2 of the child pursuant to subsection E of this section,  
3 and
- 4 b. there is a showing of parental unfitness, or the  
5 grandparent or former legal guardian has rebutted, by  
6 clear and convincing evidence, the presumption that  
7 the fit parent is acting in the best interests of the  
8 child by showing that the child would suffer harm or  
9 potential harm without the granting of visitation  
10 rights to the grandparent or former legal guardian of  
11 the child, and
- 12 c. the intact nuclear family has been disrupted in that  
13 one or more of the following conditions has occurred:
- 14 (1) an action for divorce, separate maintenance or  
15 annulment involving the ~~grandchild's~~ parents of  
16 the child is pending before the court, and the  
17 grandparent or former legal guardian had a  
18 preexisting relationship with the child that  
19 predates the filing of the action for divorce,  
20 separate maintenance or annulment,
- 21 (2) the ~~grandchild's~~ parents of the child are  
22 divorced, separated under a judgment of separate  
23 maintenance, or have had their marriage annulled,
- 24

1 (3) the grandchild's parent who is a child of the  
2 grandparent is deceased, and the grandparent had  
3 a preexisting relationship with the child that  
4 predates the death of the deceased parent unless  
5 the death of the mother was due to complications  
6 related to the birth of the child,

7 (4) except as otherwise provided in subsection C or D  
8 of this section, legal custody of the grandchild  
9 has been given to a person other than the  
10 grandchild's parent, or the grandchild does not  
11 reside in the home of a parent of the child,

12 (5) one of the grandchild's parents has had a felony  
13 conviction and been incarcerated in the  
14 Department of Corrections and the grandparent had  
15 a preexisting relationship with the child that  
16 predates the incarceration,

17 (6) the grandparent or former legal guardian had  
18 custody of the grandchild pursuant to Section  
19 21.3 of this title, whether or not the  
20 grandparent or former legal guardian had custody  
21 under a court order, and there exists a strong,  
22 continuous ~~grandparental~~ relationship between the  
23 grandparent or former legal guardian and the  
24 child,

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

6 (8) except as otherwise provided in subsection D of  
7 this section, the grandchild's parents have never  
8 been married, are not residing in the same  
9 household and there exists a strong, continuous  
10 grandparental relationship between the  
11 grandparent and the child, or

12 (9) except as otherwise provided by subsection D of  
13 this section, the parental rights of one or both  
14 parents of the child have been terminated, and  
15 the court determines that there is a strong,  
16 continuous relationship between the child and the  
17 parent of the person whose parental rights have  
18 been terminated.

19 2. The right of visitation to any grandparent or former legal  
20 guardian of an unmarried minor child shall be granted only so far as  
21 that right is authorized and provided by order of the district  
22 court.

23 B. Under no circumstances shall any judge grant the right of  
24 visitation to any grandparent or former legal guardian if the child

1 is a member of an intact nuclear family and both parents of the  
2 child object to the granting of visitation.

3 C. If one natural parent is deceased and the surviving natural  
4 parent remarries, any subsequent adoption proceedings shall not  
5 terminate any preexisting court-granted grandparental rights  
6 belonging to the parents of the deceased natural parent unless the  
7 termination of visitation rights is ordered by the court having  
8 jurisdiction over the adoption after opportunity to be heard, and  
9 the court determines it to be in the best interest of the child.

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

- 14 a. the father of the child has been judicially determined  
15 to be the father of the child, and  
16 b. the court determines that a previous grandparental  
17 relationship existed between the grandparent and the  
18 child.

19 2. If the child is born out of wedlock and the parental rights  
20 of the mother of the child have been terminated, the parents of the  
21 mother of the child shall not have a right of visitation authorized  
22 by this section to the child unless the court determines that a  
23 previous grandparental relationship existed between the grandparent  
24 and the child.

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

4           a. subsequent to the final order of adoption of the  
5 child; provided however, any subsequent adoption  
6 proceedings shall not terminate any prior court-  
7 granted grandparental visitation rights unless the  
8 termination of visitation rights is ordered by the  
9 court after opportunity to be heard and the district  
10 court determines it to be in the best interest of the  
11 child, or

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

14       E. 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 or former legal guardian and the age and  
20 reasonable preference of the child pursuant to Section  
21 113 of Title 43 of the Oklahoma Statutes,

22           b. the willingness of the grandparent or ~~grandparents~~  
23 former legal guardian to encourage a close  
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1 relationship between the child and the parent or  
2 parents,

3 c. the length, quality and intimacy of the preexisting  
4 relationship between the child and the grandparent or  
5 former legal guardian,

6 d. the love, affection and emotional ties existing  
7 between the parent and child,

8 e. the motivation and efforts of the grandparent or  
9 former legal guardian to continue the preexisting  
10 relationship with the ~~grandchild~~ child,

11 f. the motivation of parent or parents denying  
12 visitation,

13 g. the mental and physical health of the grandparent or  
14 ~~grandparents~~ former legal guardian,

15 h. the mental and physical health of the child,

16 i. the mental and physical health of the parent or  
17 parents,

18 j. whether the child is in a permanent, stable,  
19 satisfactory family unit and environment,

20 k. the moral fitness of the parties,

21 l. the character and behavior of any other person who  
22 resides in or frequents the homes of the parties and  
23 such person's interactions with the child,

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- 1 m. the quantity of visitation time requested and the  
2 potential adverse impact the visitation will have on  
3 the customary activities of the child, and  
4 n. if both parents are dead, the benefit in maintaining  
5 the preexisting relationship.

6 2. For purposes of this subsection:

- 7 a. "harm or potential harm" means a showing that without  
8 court-ordered visitation by the grandparent or former  
9 guardian, the child's emotional, mental or physical  
10 well-being could reasonably or would be jeopardized,  
11 b. "intact nuclear family" means a family consisting of  
12 the married father and mother of the child,  
13 c. "parental unfitness" includes, but is not limited to,  
14 a showing that a parent of the child or a person  
15 residing with the parent:  
16 (1) has a chemical or alcohol dependency, for which  
17 treatment has not been sought or for which  
18 treatment has been unsuccessful,  
19 (2) has a history of violent behavior or domestic  
20 abuse,  
21 (3) has an emotional or mental illness that  
22 demonstrably impairs judgment or capacity to  
23 recognize reality or to control behavior,  
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1 (4) has been shown to have failed to provide the  
2 child with proper care, guidance and support to  
3 the actual detriment of the child. The  
4 provisions of this division include, but are not  
5 limited to, parental indifference and parental  
6 influence on his or her child or lack thereof  
7 that exposes such child to unreasonable risk, or  
8 (5) demonstrates conduct or condition which renders  
9 him or her unable or unwilling to give a child  
10 reasonable parental care. Reasonable parental  
11 care requires, at a minimum, that the parent  
12 provides nurturing and protection adequate to  
13 meet the child's physical, emotional and mental  
14 health.

15 The determination of parental unfitness pursuant to  
16 this subparagraph shall not be that which is  
17 equivalent for the termination of parental rights, and

18 d. "preexisting relationship" means occurring or existing  
19 prior to the filing of the petition for ~~grandparental~~  
20 visitation.

21 F. 1. The district courts are vested with jurisdiction to  
22 issue orders granting grandparental or former legal guardian  
23 visitation rights and to enforce visitation rights, upon the filing  
24 of a verified petition for visitation rights or enforcement thereof.

1 Notice as ordered by the court shall be given to the person or  
2 parent having custody of the child. The venue of such action shall  
3 be in the court where there is an ongoing proceeding that involves  
4 the child, or if there is no ongoing proceeding, in the county of  
5 the residence of the child or parent.

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

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

21 4. Notice of a hearing pursuant to paragraph 2 or 3 of this  
22 subsection shall be given to the parties at their last-known address  
23 or as otherwise ordered by the court, at least ten (10) days prior  
24 to the date set by the court for hearing on the motion. Provided,

1 the court may direct a shorter notice period if the court deems such  
2 shorter notice period to be appropriate under the circumstances.

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

5 6. If the court finds that visitation rights of the grandparent  
6 or former legal guardian have been unreasonably denied or otherwise  
7 unreasonably interfered with by the parent, the court shall enter an  
8 order providing for one or more of the following:

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

23 7. If the court finds that the motion for enforcement of  
24 visitation rights has been unreasonably filed or pursued by the

1 grandparent or former legal guardian, the court may assess  
2 reasonable attorney fees, mediation costs, and court costs against  
3 the grandparent or former legal guardian.

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

8 H. Any transportation costs or other costs arising from any  
9 visitation ordered pursuant to this section shall be paid by the  
10 grandparent or ~~grandparents~~ former legal guardian requesting such  
11 visitation.

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

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

17 SECTION 2. This act shall become effective November 1, 2011.

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19 53-1-6654 SDR 02/15/11

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