

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1199

By: McDaniel (Jeannie)

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5
6 AS INTRODUCED

7 An Act relating to grandparental visitation; amending
8 10 O.S. 2001, Section 5, as last amended by Section
9 1, Chapter 290, O.S.L. 2008, and as renumbered by
10 Section 197, Chapter 233, O.S.L. 2009 (43 O.S. Supp.
11 2010, Section 109.4), which relates to grandparental
12 visitation; authorizing visitation by former
13 guardians or caretakers; and providing an effective
14 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 guardian or caretaker of an
22 unmarried minor child may seek and be granted reasonable visitation
23 rights to the child which visitation rights may be independent of
24 either 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 guardian or caretaker has
6 rebutted, by clear and convincing evidence, the
7 presumption that the fit parent is acting in the best
8 interests of the child by showing that the child would
9 suffer harm or potential harm without the granting of
10 visitation rights to the grandparent or former
11 guardian or caretaker of 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 guardian or caretaker 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,
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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 guardian or caretaker
18 had custody of the grandchild pursuant to Section
19 21.3 of this title, whether or not the
20 grandparent or former guardian or caretaker had
21 custody under a court order, and there exists a
22 strong, continuous ~~grandparental~~ relationship
23 between the grandparent or former guardian or
24 caretaker and the 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
20 guardian or caretaker of an unmarried minor child shall be granted
21 only so far as that right is authorized and provided by order of the
22 district court.

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

1 child is a member of an intact nuclear family and both parents of
2 the 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 guardian or caretaker and the
20 age and reasonable preference of the child pursuant to
21 Section 113 of Title 43 of the Oklahoma Statutes,

22 b. the willingness of the grandparent or ~~grandparents~~
23 former guardian or caretaker 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 guardian or caretaker,
- 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 guardian or caretaker to continue the
10 preexisting 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 guardian or caretaker,
- 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 or caretaker, the child's emotional, mental
10 or physical well-being could reasonably or would be
11 jeopardized,
12 b. "intact nuclear family" means a family consisting of
13 the married father and mother of the child,
14 c. "parental unfitness" includes, but is not limited to,
15 a showing that a parent of the child or a person
16 residing with the parent:
17 (1) has a chemical or alcohol dependency, for which
18 treatment has not been sought or for which
19 treatment has been unsuccessful,
20 (2) has a history of violent behavior or domestic
21 abuse,
22 (3) has an emotional or mental illness that
23 demonstrably impairs judgment or capacity to
24 recognize reality or to control behavior,

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 guardian or caretaker
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 guardian or caretaker of a
7 child has been granted visitation rights pursuant to this section
8 and those rights are unreasonably denied or otherwise unreasonably
9 interfered with by any parent of the child, the grandparent or
10 former guardian or caretaker may file with the court a motion for
11 enforcement of visitation rights. Upon filing of the motion, the
12 court shall set an initial hearing on the motion. At the initial
13 hearing, the court shall direct mediation and set a hearing on the
14 merits of the 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 guardian or caretaker have been unreasonably denied or
7 otherwise unreasonably interfered with by the parent, the court
8 shall enter an 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 guardian or
16 caretaker,
- 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 guardian or caretaker, the court may assess
2 reasonable attorney fees, mediation costs, and court costs against
3 the grandparent or former guardian or caretaker.

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 guardian or caretaker requesting
11 such 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 53-1-5578 SDR 01/16/11

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