STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2609 By: McDaniel (Jeannie)

AS INTRODUCED

An Act relating to visitation; amending 43 O.S. 2011, Section 109.4, which relates to visitation rights; allowing former legal guardian to seek visitation rights; providing procedure and exceptions; deleting reference to repealed statute; updating statutory citation; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, Section 109.4, is amended to read as follows:

Section 109.4 A. 1. Pursuant to the provisions of this section, any grandparent or former legal guardian 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 or former legal guardian 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 without the granting of visitation rights to the grandparent or former legal guardian of the child, and

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

(1) an action for divorce, separate maintenance or annulment involving the ~~grandchild's~~ parents of the child is pending before the court, and the grandparent or former legal guardian had a preexisting relationship with the child that predates the filing of the action for divorce, separate maintenance or annulment,

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

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

the death of the mother was due to complications related to the birth of the child,

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

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

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

(7) the grandchild's parent has deserted the other parent for more than one (1) year and there exists a strong, continuous grandparental

relationship between the grandparent and the child,

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

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

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

B. Under no circumstances shall any judge grant the right of visitation to any grandparent <u>or former legal guardian</u> if the child is a member of an intact nuclear family and both parents of the child object to the granting of visitation.

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

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

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

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

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

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

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

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

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

a. the needs of and importance to the child for a continuing preexisting relationship with the grandparent or former legal guardian and the age and reasonable preference of the child pursuant to Section 113 of ~~Title 43 of the Oklahoma Statutes~~ this title,

b. the willingness of the grandparent or ~~grandparents~~ former legal guardian to encourage a close

relationship between the child and the parent or parents,

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

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

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

f. the motivation of parent or parents denying visitation,

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

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

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

2. For purposes of this subsection:

a. "harm or potential harm" means a showing that without court-ordered visitation by the grandparent <u>or former legal guardian</u>, the child's emotional, mental or physical well-being could reasonably or would be jeopardized,

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

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

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

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

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

(4) has been shown to have failed to provide the child with proper care, guidance and support to the actual detriment of the child. The provisions of this division include, but are not limited to, parental indifference and parental influence on his or her child or lack thereof that exposes such child to unreasonable risk, or

(5) demonstrates conduct or condition which renders him or her unable or unwilling to give a child reasonable parental care. Reasonable parental care requires, at a minimum, that the parent provides nurturing and protection adequate to meet the child's physical, emotional and mental health.

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

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

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

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

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

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

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

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

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

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

a. a specific visitation schedule,

b. compensating visitation time for the visitation denied or otherwise interfered with, which time may be of the same type as the visitation denied or otherwise interfered with, including but not limited to holiday, weekday, weekend, summer, and may be at the convenience of the grandparent or former legal guardian,

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

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

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

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

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

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

I. In any action for grandparental or former legal guardian visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.

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

SECTION 2. This act shall become effective November 1, 2016.

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