

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1456

By: Roberts (Dustin)

AS INTRODUCED

An Act relating to marriage and family; amending 43 O.S. 2011, Section 109.4, as amended by Section 1, Chapter 60, O.S.L. 2016 (43 O.S. Supp. 2016, Section 109.4), which relates to grandparental visitation rights; clarifying language; 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, as amended by Section 1, Chapter 60, O.S.L. 2016 (43 O.S. Supp. 2016, Section 109.4), is amended to read as follows:

Section 109.4 A. 1. Pursuant to the provisions of this section, ~~any~~ a 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

1 b. there is a showing of parental unfitness, or the
2 grandparent has rebutted, by clear and convincing
3 evidence, the presumption that the fit parent is
4 acting in the best interests of the child by showing
5 that the child would suffer harm or potential harm
6 without the granting of visitation rights to the
7 grandparent of the child, and

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

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

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

19 (3) the grandchild's parent who is a child of the
20 grandparent is deceased, and the grandparent had
21 a preexisting relationship with the child that
22 predates the death of the deceased parent unless
23 the death of the mother was due to complications
24 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) grandparent had custody of the grandchild, whether or not the grandparent had custody under a court order, and there exists a strong, continuous grandparental relationship between the grandparent 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

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
24 court after opportunity to be heard and the district

1 court determines it to be in the best interest of the
2 child, or

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

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

- 8 a. the needs of and importance to the child for a
9 continuing preexisting relationship with the
10 grandparent and the age and reasonable preference of
11 the child pursuant to Section 113 of this title,
12 b. the willingness of the grandparent or grandparents to
13 encourage a close relationship between the child and
14 the parent or parents,
15 c. the length, quality and intimacy of the preexisting
16 relationship between the child and the grandparent,
17 d. the love, affection and emotional ties existing
18 between the parent and child,
19 e. the motivation and efforts of the grandparent to
20 continue the preexisting relationship with the
21 grandchild,
22 f. the motivation of parent or parents denying
23 visitation,
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- 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
- 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, 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,

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

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

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

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

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

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

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

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

9 F. 1. The district courts are vested with jurisdiction to
10 issue orders granting grandparental visitation rights and to enforce
11 visitation rights, upon the filing of a verified petition for
12 visitation rights or enforcement thereof. Notice as ordered by the
13 court shall be given to the person or parent having custody of the
14 child. The venue of such action shall be in the court where there
15 is an ongoing proceeding that involves the child, or if there is no
16 ongoing proceeding, in the county of the residence of the child or
17 parent.

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

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

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

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

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

- 21 a. a specific visitation schedule,
- 22 b. compensating visitation time for the visitation denied
- 23 or otherwise interfered with, which time may be of the
- 24 same type as the visitation denied or otherwise

1 interfered with, including but not limited to holiday,
2 weekday, weekend, summer, and may be at the
3 convenience of the grandparent,

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

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

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

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

18 H. Any transportation costs or other costs arising from any
19 visitation ordered pursuant to this section shall be paid by the
20 grandparent or grandparents requesting such visitation.

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

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

3 SECTION 2. This act shall become effective November 1, 2017.
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