

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1008

5 By: Representative R. Green
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 9-13-103
10 REGARDING GRANDPARENTS VISITATION RIGHTS; AND FOR
11 OTHER PURPOSES.
12

Subtitle

13 TO AMEND ARKANSAS CODE § 9-13-103
14 REGARDING GRANDPARENTS VISITATION
15 RIGHTS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 9-13-103 is amended to read as follows:

22 9-13-103. Visitation rights of grandparents when the child is in the
23 custody of a parent.

24 (a) For purposes of this section:

25 (1) "Child" means a minor under eighteen (18) years of age of
26 whom the primary custodian has control and who is:

27 (A) The grandchild of the petitioner; or

28 (B) The great-grandchild of the petitioner;

29 (2) "Counseling" means individual counseling, group counseling,
30 or other intervention method;

31 ~~(4)~~(3) "Mediation service" means any formal or informal
32 mediation; ~~and~~

33 ~~(5)~~(4) "Petitioner" means any individual who may petition for
34 visitation rights under this section; ~~and~~

35 ~~(3)~~(5) "~~Custodian~~ Primary custodian" means the custodial parent
36 of the child with the authority to grant or deny grandparental visitation



1 during periods when the child is in the care and subject to the control of
2 that parent under a custody agreement or court order+.

3 (b) A grandparent or great-grandparent may petition a circuit court of
4 this state for reasonable visitation rights with respect to his or her
5 grandchild or grandchildren or great-grandchild or great-grandchildren under
6 this section if:

7 (1) The marital relationship between the parents of the child
8 has been severed by death, divorce, or legal separation;

9 (2) The child is illegitimate and the petitioner is a maternal
10 grandparent of the illegitimate child; or

11 (3) The child is illegitimate, the petitioner is a paternal
12 grandparent of the illegitimate child, and paternity has been established by
13 a court of competent jurisdiction.

14 (c)(1) There is a rebuttable presumption that a primary custodian's
15 decision denying or limiting visitation to the petitioner is in the best
16 interest of the child.

17 (2) To rebut the presumption, the petitioner must prove by a
18 preponderance of the evidence the following:

19 (A) The petitioner has established a significant and
20 viable relationship with the child for whom he or she is requesting
21 visitation; and

22 (B) Visitation with the petitioner is in the best interest
23 of the child.

24 (d) To establish a significant and viable relationship with the child,
25 the petitioner must prove by a preponderance of the evidence the following:

26 (1)(A) The child resided with the petitioner for at least six
27 (6) consecutive months with or without the current primary custodian present;

28 (B) The petitioner was the caregiver to the child on a
29 regular basis for at least six (6) consecutive months; or

30 (C) The petitioner had frequent or regular contact with
31 the child for at least twelve (12) consecutive months; or

32 (2) Any other facts that establish that the loss of the
33 relationship between the petitioner and the child is likely to harm the
34 child.

35 (e) To establish that visitation with the petitioner is in the best
36 interest of the child, the petitioner must prove by a preponderance of the

1 evidence the following:

2 (1) The petitioner has the capacity to give the child love,
3 affection, and guidance;

4 (2) The loss of the relationship between the petitioner and the
5 child is likely to harm the child; and

6 (3) The petitioner is willing to cooperate with the primary
7 custodian if visitation with the child is allowed.

8 (f)(1) An order granting or denying visitation rights to grandparents
9 and great-grandparents shall be in writing and shall state any and all
10 factors considered by the court in its decision to grant or deny visitation
11 under this section.

12 (2)(A) If the court grants visitation to the petitioner under
13 this section, then the visitation shall be exercised in a manner consistent
14 with all orders regarding custody of or visitation with the child unless the
15 court makes a specific finding otherwise.

16 (B) If the court finds that the petitioner's visitation
17 should be restricted or limited in any way, then the court shall include the
18 restrictions or limitations in the order granting visitation.

19 (3) An order granting or denying visitation rights under this
20 section is a final order for purposes of appeal.

21 (4) After an order granting or denying visitation has been
22 entered under this section, the primary custodian or petitioner may petition
23 the court for the following:

24 (A) Contempt proceedings if one (1) party to the order
25 fails to comply with the order;

26 (B) To address the issue of visitation based on a change
27 in circumstances; or

28 (C) To address the need to add or modify restrictions or
29 limitations to visitation previously awarded under this section.

30 (g)(1) A court may order mediation services to resolve a visitation
31 issue under this section if:

32 (A) Mediation services are available;

33 (B) Both parties agree to participate in mediation
34 services; and

35 (C) One (1) or both of the parties agree to pay for
36 mediation services.

1 (2) Records, notes, reports, or discussions related to the
2 mediation service shall not be used by the court to determine visitation
3 under this section.

4 (h)(1) A court may order counseling to address underlying matters
5 surrounding the visitation issue under this section if:

6 (A) Counseling is available;

7 (B) Both parties agree to participate in counseling; and

8 (C) One (1) or both of the parties agree to pay for
9 counseling.

10 (2) Records, notes, reports, or discussions related to the
11 counseling shall not be used by the court to determine visitation under this
12 section.

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