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2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1678

5 By: Representative Beck
6

For An Act To Be Entitled

8 AN ACT CONCERNING VISITATION WITH AN INCAPACITATED
9 PERSON OR A WARD; TO AMEND THE LAW CONCERNING
10 DECISIONS MADE BY APPOINTED GUARDIANS ON BEHALF OF
11 WARDS; AND FOR OTHER PURPOSES.
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Subtitle

14 CONCERNING VISITATION WITH AN
15 INCAPACITATED PERSON OR A WARD; AND TO
16 AMEND THE LAW CONCERNING DECISIONS MADE
17 BY APPOINTED GUARDIANS ON BEHALF OF
18 WARDS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 9-20-103, concerning the definition of
25 terms used under the Adult Maltreatment Custody Act, is amended to add
26 additional subdivisions to read as follows:

27 (25) "Relative" means the spouse, child, grandchild, parent, or
28 sibling of an incapacitated person;

29 (26) "Incapacitated person" means a person for whom a guardian
30 is not appointed and who is:

31 (A) An endangered adult or impaired adult; or

32 (B) Impaired by reason of a disability such as mental
33 illness, mental deficiency, physical illness, chronic use of drugs, or
34 chronic intoxication, to the extent of lacking sufficient understanding or
35 capacity to make or communicate decisions to meet the essential requirements
36 for his or her health or safety or to manage his or her estate; and



1 (27) "Interested person" means a person who has a significant
2 and ongoing affectionate relationship with an incapacitated person.

3
4 SECTION 2. Arkansas Code Title 9, Chapter 20, is amended to add an
5 additional section to read as follows:

6 9-20-123. Rights of relatives and interested persons.

7 (a)(1) A relative or an interested person may file a petition for
8 reasonable visitation with an incapacitated person in a court with
9 jurisdiction over proceedings concerning the incapacitated person.

10 (2) A petition filed under subdivision (a)(1) of this section
11 shall be verified and shall state:

12 (A) Whether the petitioner is a relative or an interested
13 person as defined under § 9-20-103;

14 (B) Whether the petitioner's visitation with the
15 incapacitated person is being unreasonably interfered with or denied; and

16 (C) The identity of any person alleged to be unreasonably
17 interfering with or denying visitation between the petitioner and the
18 incapacitated person.

19 (3) A petition filed under subdivision (a)(1) of this section
20 shall be served on the incapacitated person and any person alleged to be
21 unreasonably interfering with or denying visitation between the petitioner
22 and the incapacitated person.

23 (b)(1) There is a presumption that it is in the best interest of an
24 incapacitated person to visit with a relative and an interested person.

25 (2) A person alleged to be interfering with or denying
26 visitation between an incapacitated person and a relative or interested
27 person may rebut the presumption described under subdivision (b)(1) of this
28 section with clear and convincing evidence that:

29 (A) The petitioner committed physical or financial abuse
30 against the incapacitated person; or

31 (B) Visitation between the petitioner and the
32 incapacitated person would be harmful to the health or mental well-being of
33 the incapacitated person.

34 (3)(A) If an incapacitated person who is the subject of a
35 petition filed under subdivision (a)(1) of this section objects to visitation
36 with the petitioner, the petitioner shall demonstrate by clear and convincing

1 evidence that the incapacitated person's objection to visitation resulted
 2 from undue influence.

3 (B) If a petitioner is required to meet and does meet the
 4 burden of proof described under subdivision (b)(3)(A) of this section, then
 5 the person alleged to be unreasonably interfering with or denying visitation
 6 between the incapacitated person and the relative or interested person has
 7 the burden of rebutting the presumption described under subdivision (b)(1) of
 8 this section.

9 (c)(1)(A) An order issued by the court concerning a petition filed
 10 under subdivision (a)(1) of this section shall include statements of fact and
 11 law supporting the court's order to grant or deny visitation between the
 12 petitioner and the incapacitated person.

13 (B) If the court grants visitation between the petitioner
 14 and the incapacitated person, the court may impose reasonable restrictions on
 15 the visitation.

16 (2)(A) The court may assess or impose the following costs or
 17 sanctions against a party to a proceeding concerning a petition filed under
 18 subdivision (a)(1) of this section:

19 (i) The cost of filing the petition;

20 (ii) Any costs associated with visitation granted by
 21 the court;

22 (iii) Reasonable attorney's fees incurred as a
 23 result of the petitioner filing the petition in bad faith and not proving his
 24 or her claim; and

25 (iv) Reasonable attorney's fees incurred as a result
 26 of the person alleged to be interfering with or denying visitation between
 27 the incapacitated person and the relative or interested person.

28 (B) The court shall not assess any costs against the
 29 incapacitated person.

30
 31 SECTION 3. Arkansas Code § 28-65-106 is amended to read as follows:
 32 28-65-106. Rights of incapacitated persons.

33 (a) An incapacitated person for whom a guardian has been appointed a
 34 ward is not presumed to be incompetent and retains all legal and civil rights
 35 except those which have been expressly limited by court order or have been
 36 specifically granted by order to the guardian by the court.

1 (b)(1) A ward retains the right to communicate, visit, or interact
 2 with any person of the ward's choice.

3 (2) If a ward is unable to give express consent to
 4 communication, visitation, or interaction with a person due to a physical or
 5 mental condition, then the consent of the ward may be presumed by a guardian
 6 or a court based on the ward's prior relationship with the person seeking
 7 communication, visitation, or interaction with the ward.

8
 9 SECTION 4. Arkansas Code § 28-65-101, concerning definitions, is
 10 amended to add additional subdivisions to read as follows:

11 (11) "Relative" means the spouse, child, grandchild, parent, or
 12 sibling of a ward; and

13 (12) "Interested person" means a person who has a significant
 14 and ongoing affectionate relationship with a ward.

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 16 SECTION 5. Arkansas Code Title 28, Chapter 65, Subchapter 1, is
 17 amended to add an additional section to read as follows:

18 28-65-110. Rights of relatives and interested persons.

19 (a)(1) A relative or interested person may file a petition for
 20 visitation with a ward in the court with jurisdiction over proceedings
 21 concerning the ward if the relative or interested person believes that the
 22 guardian of the ward is unreasonably interfering with or denying visitation
 23 between the ward and the relative or interested person.

24 (2) A petition filed under subdivision (a)(1) of this section
 25 shall be verified and shall state:

26 (A) Whether the petitioner is a relative or an interested
 27 person as defined under § 28-65-101;

28 (B) The identity of the guardian alleged to be
 29 unreasonably interfering with or denying visitation between the ward and the
 30 relative or interested person; and

31 (C) The facts supporting the petitioner's allegation that
 32 the guardian is unreasonably interfering with or denying visitation between
 33 the ward and the relative or interested person.

34 (3) A petition filed under subdivision (a)(1) of this section
 35 shall be served on the ward and the guardian.

36 (b)(1) There is a presumption that it is in the best interest of a

1 ward to visit with a relative and an interested person.

2 (2) A guardian identified in a petition filed under subdivision
3 (a)(1) of this section may rebut the presumption described under subdivision
4 (b)(1) of this section with clear and convincing evidence that:

5 (A) The petitioner committed physical or financial abuse
6 against the ward; or

7 (B) Visitation between the petitioner and the ward would
8 be harmful to the health or mental well-being of the ward.

9 (3)(A) If the ward who is the subject of a petition filed under
10 subdivision (a)(1) of this section objects to visitation with the petitioner,
11 the petitioner shall demonstrate by clear and convincing evidence that the
12 ward's objection to visitation resulted from undue influence.

13 (B) If a petitioner is required to meet and does meet the
14 burden of proof described under subdivision (b)(3)(A) of this section, then
15 the guardian has the burden of rebutting the presumption described under
16 subdivision (b)(1) of this section.

17 (c)(1)(A) An order issued by the court concerning a petition filed
18 under subdivision (a)(1) of this section shall include statements of fact and
19 law supporting the court's order to grant or deny visitation between the
20 petitioner and the ward.

21 (B) If the court grants visitation between the petitioner
22 and the ward, the court may impose reasonable restrictions on the visitation.

23 (2)(A) The court may assess or impose the following costs or
24 sanctions against a party to a proceeding concerning a petition filed under
25 subdivision (a)(1) of this section:

26 (i) The cost of filing the petition;

27 (ii) Any costs associated with visitation granted by
28 the court;

29 (iii) Reasonable attorney's fees incurred as a
30 result of the petitioner filing the petition in bad faith and not proving his
31 or her claim; and

32 (iv) Reasonable attorney's fees incurred as a result
33 of the guardian unjustifiably interfering or denying visitation between the
34 petitioner and the ward.

35 (B) The court shall not assess any costs against the ward.

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1 SECTION 6. Arkansas Code § 28-65-302(a), concerning decisions by
 2 guardians requiring court approval, is amended to add an additional
 3 subdivision to read as follows:

4 (3) A guardian appointed on or after October 1, 2017, shall not
 5 make any of the following decisions without filing a petition and receiving
 6 express court approval:

7 (A) Consent on behalf of the ward to abortion,
 8 sterilization, psychosurgery, or removal of bodily organs except when
 9 necessary in a situation threatening the life of the ward;

10 (B) Consent to withholding life-saving treatment;

11 (C) Authorize experimental medical procedures;

12 (D) Authorize termination of parental rights;

13 (E) Authorize an incapacitated person to vote;

14 (F) Prohibit the incapacitated person from obtaining a
 15 driver's license;

16 (G) Consent to a settlement or compromise of any claim by
 17 or against the ward or his or her estate; or

18 (H)(i) For an adult ward, deny all communication,
 19 visitation, or interaction of the adult ward with a person with whom the
 20 adult ward has expressed a desire to communicate, visit, or interact or with
 21 a person who seeks to communicate, visit, or interact with the adult ward.

22 (ii) A court may approve a guardian's petition to
 23 deny communication, visitation, or interaction between a person and an adult
 24 ward if the guardian:

25 (a) Shows good cause for the denial of
 26 communication, visitation, or interaction between the person and the ward;
 27 and

28 (b) Is not found by a court to have
 29 unreasonably interfered with or denied visitation between the ward and a
 30 relative or an interested person under § 9-20-123 and § 28-65-110.

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