

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1773

5 By: Representative Rushing
6 By: Senator G. Stubblefield
7

For An Act To Be Entitled

9 AN ACT TO AMEND GRANDPARENTS' RIGHTS IN CUSTODY AND
10 VISITATION MATTERS; TO GRANT VISITATION RIGHTS TO
11 GRANDPARENTS WHEN A PARENT OF A CHILD IS DECEASED;
12 AND FOR OTHER PURPOSES.
13
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Subtitle

15 TO AMEND GRANDPARENTS' RIGHTS IN CUSTODY
16 AND VISITATION MATTERS; AND TO GRANT
17 VISITATION RIGHTS TO GRANDPARENTS WHEN A
18 PARENT OF A CHILD IS DECEASED.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Legislative intent.

25 The General Assembly recognizes:

26 (1) The importance of family and the fundamental rights of
27 parents and children;

28 (2) That a fit parent's decision regarding whether or not to
29 permit grandparent visitation is entitled to special weight due to a parent's
30 fundamental right to make decisions concerning the rearing of his or her
31 child;

32 (3) That a parent's interest in a child must be balanced against
33 the long-recognized interests of the state as parens patriae; and

34 (4) That grandparent visitation balances the constitutional
35 rights of parents and children by imposing an enhanced standard of review and
36 consideration of the harm, emotional neglect, and emotional abuse to a child



1 caused by the parent's limitation or termination of a prior relationship of
 2 the child to his or her grandparent.

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 4 SECTION 2. Arkansas Code § 9-13-103(a)-(e), concerning visitation
 5 rights of grandparents when the child is in the custody of the parent, are
 6 amended to read as follows:

7 (a) For purposes of this section:

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

10 (A) The grandchild of the petitioner; or

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

12 (2) "Counseling" means individual counseling, group counseling,
 13 or other intervention method;

14 (3) "Custodian" means the custodial parent of the child with the
 15 authority to grant or deny grandparental visitation;

16 (4) "Mediation service" means any formal or informal mediation;

17 ~~and~~

18 (5) "Petitioner" means any individual who may petition for
 19 visitation rights under this section-;

20 (6) "Reasonable visitation" means a period of time that is
 21 comfortable or agreeable to all parties involved in the proceeding and that
 22 is no less than one (1) week during a year and no more than four (4) weeks
 23 during a year; and

24 (7) "Unreasonable alienation" means that a parent or parents of
 25 a child have refused or obstructed access to or communication with a
 26 grandparent or great-grandparent of the child without a justifiable purpose.

27 (b) A grandparent or great-grandparent may petition a circuit court of
 28 this state for reasonable visitation rights with respect to his or her
 29 grandchild or grandchildren or great-grandchild or great-grandchildren under
 30 this section if:

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

33 (2) The child is illegitimate and the petitioner is a maternal
 34 grandparent of the illegitimate child; ~~or~~

35 (3) The child is illegitimate, the petitioner is a paternal
 36 grandparent of the illegitimate child, and paternity has been established by

1 a court of competent jurisdiction; or

2 (4)(A) The marital relationship between the parents of the child
 3 is intact, but there has been an unreasonable alienation of a grandparent or
 4 great-grandparent with respect to his or her grandchild or great-grandchild.

5 (B) The grandparent or great-grandparent under subdivision
 6 (b)(4)(A) of this section shall demonstrate to the court that an unreasonable
 7 alienation has occurred.

8 (C) Upon a finding of unreasonable alienation, the court
 9 shall allow the grandparent or great-grandparent to be heard.

10 ~~(c)(1) There is a rebuttable presumption that~~ A court will defer to a
 11 custodian's decision denying or limiting visitation to the petitioner if the
 12 decision is in the best interest of the child.

13 ~~(2) To rebut the presumption, the petitioner~~ If the custodian in
 14 subdivision (c)(1) of this section decides to limit or deny visitation to the
 15 petitioner, he or she must prove to the court by a preponderance of the
 16 evidence the following:

17 (A) The petitioner has not established a significant and
 18 viable relationship with the child for whom he or she is requesting
 19 visitation; and

20 (B) Visitation with the petitioner is not in the best
 21 interest of the child.

22 ~~(d) To establish a significant and viable relationship with the child,~~
 23 ~~the petitioner must prove by a preponderance of the evidence the following~~
 24 For purposes of this section, "significant and viable relationship" means
 25 that:

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

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

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

32 (4) 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 not in the
 36 best interest of the child, the ~~petitioner~~ custodian in subsection (c) of

1 this section must prove by a preponderance of the evidence the following:

2 (1) The petitioner ~~has~~ does not have the capacity to give the
3 child love, affection, and guidance;

4 (2) The loss of the relationship between the petitioner and the
5 child is not likely to harm, emotionally distress, emotionally abuse, or
6 emotionally neglect the child; and

7 (3) The petitioner is not willing to cooperate with the
8 custodian if visitation with the child is allowed.

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10 SECTION 3. Arkansas Code Title 9, Chapter 13, Subchapter 1, is amended
11 to add an additional section to read as follows:

12 9-13-111. Visitation rights of grandparents when a parent of the child
13 is deceased, missing, or in a permanent vegetative state – Definitions.

14 (a) For purposes of this section:

15 (1) "Child" means a minor under eighteen (18) years of age who
16 is the:

17 (A) Grandchild of the petitioner; or

18 (B) Great-grandchild of the petitioner;

19 (2)(A) "Emotional abuse" means subjecting or exposing a child to
20 behavior that may result in psychological trauma, including anxiety, chronic
21 depression, or post-traumatic stress disorder.

22 (B) "Emotional abuse" includes confinement, isolation,
23 verbal assault , humiliation, or intimidation that may diminish the sense of
24 a child's identity;

25 (3) "Emotional neglect" means the failure to provide adequate
26 nurturing and affection to a child or the exposure of the child to chronic or
27 extreme domestic violence;

28 (4) "Petitioner" means the parent or grandparent of a deceased
29 parent of a child; and

30 (5) "Reasonable visitation" means a period of time that
31 comfortable or agreeable to all parties involved in the proceeding and that
32 is no less than one (1) week during a year and no more than four (4) weeks
33 during a year.

34 (b) A great-grandparent or grandparent of a child whose parents
35 are deceased, missing, or in a permanent vegetative states, or whose one (1)
36 parent is deceased, missing, or in a permanent vegetative state may petition

1 the court for reasonable visitation with the grandchild upon a finding that
2 the visitation would be in the best interest of the child.

3 (c) To establish that visitation with the petitioner is in the best
4 interest of the child, the petitioner shall prove by a preponderance of the
5 evidence that:

6 (1) The petitioner has the capacity to give the child love,
7 affection, emotional support, and guidance;

8 (2) The loss of the relationship between the petitioner and the
9 child is likely to harm or emotionally distress the child, or that the loss
10 of the relationship would result in emotional abuse or emotional neglect to
11 the child; and

12 (3) The petitioner is willing to cooperate with the custodian of
13 the child if visitation with the child is allowed.

14 (d) An order granting or denying visitation to a petitioner under this
15 section shall be in writing and shall state all factors considered by the
16 court in its decision to grant or deny visitation.

17 (e) The court may require the petitioner to pay attorney's fees of the
18 other party if the court determines the case to be without merit.

19 (f) This section does not apply to dependency-neglect proceedings
20 conducted under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

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