

1 HB536
2 209219-2
3 By Representatives Crawford, McCutcheon and Whitt
4 RFD: Judiciary
5 First Read: 11-MAR-21

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8 SYNOPSIS: Under existing law, a grandparent may file
9 an action in circuit court to intervene in any
10 action when any court in the state has before it an
11 issue concerning custody of his or her grandchild,
12 to establish visitation rights with the child.

13 Under existing law, there is a rebuttable
14 presumption that a fit parent's decision not to
15 allow visitation to a grandparent, in certain
16 circumstances, is in the best interest of the
17 child.

18 This bill would provide that in cases of the
19 divorce of the parents of the child or the death of
20 a parent or parents of the child, there is a
21 rebuttable presumption that a fit grandparent's
22 ability to exercise visitation with the child is in
23 the best interest of the child, and that to rebut
24 the presumption, the parent would need to show that
25 allowing visitation would not be in the best
26 interest of the child.

1 This bill would also provide for temporary
2 orders granting visitation to a grandparent in
3 instances of the divorce of the parents or the
4 death of the parent or parents of the child,
5 pending a final order.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to grandparent visitation; to amend Section
12 30-3-4.2, Code of Alabama 1975; to provide that in certain
13 circumstances, there is a rebuttable presumption that a fit
14 grandparent's ability to exercise visitation with the child is
15 in the best interest of the child; to provide for the rebuttal
16 of that presumption; and to provide for temporary orders
17 granting visitation to a grandparent in certain circumstances,
18 pending a final order.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 30-3-4.2, Code of Alabama 1975,
21 is amended to read as follows:

22 "§30-3-4.2.

23 "(a) For the purposes of this section, the following
24 words have the following meanings:

25 "(1) GRANDPARENT. The parent of a parent, whether
26 the relationship is created biologically or by adoption.

1 "(2) HARM. A finding by the court, by clear and
2 convincing evidence, that without court-ordered visitation by
3 the grandparent, the child's emotional, mental, or physical
4 well-being has been, could reasonably be, or would be
5 jeopardized.

6 "(b) A grandparent may file an original action in a
7 circuit court where his or her grandchild resides or any other
8 court exercising jurisdiction with respect to the
9 grandchild or file a motion to intervene in any action when
10 any court in this state has before it any issue concerning
11 custody of the grandchild, including a domestic relations
12 proceeding involving the parent or parents of the grandchild,
13 for reasonable visitation rights with respect to the
14 grandchild if any of the following circumstances exist:

15 "(1) An action for a divorce or legal separation of
16 the parents has been filed, or the marital relationship
17 between the parents of the child has been severed by death or
18 divorce.

19 "(2) The child was born out of wedlock and the
20 petitioner is a maternal grandparent of the child.

21 "(3) The child was born out of wedlock, the
22 petitioner is a paternal grandparent of the child, and
23 paternity has been legally established.

24 "(4) An action to terminate the parental rights of a
25 parent or parents has been filed or the parental rights of a
26 parent has been terminated by court order; provided, however,
27 the right of the grandparent to seek visitation terminates if

1 the court approves a petition for adoption by an adoptive
2 parent, unless the visitation rights are allowed pursuant to
3 Section 26-10A-30.

4 "(c) (1) ~~There~~ Except as provided in subsection (d),
5 there is a rebuttable presumption that a fit parent's decision
6 to deny or limit visitation to the petitioner is in the best
7 interest of the child.

8 "(2) To rebut the presumption, the petitioner shall
9 prove by clear and convincing evidence, both of the following:

10 "a. The petitioner has established a significant and
11 viable relationship with the child for whom he or she is
12 requesting visitation.

13 "b. Visitation with the petitioner is in the best
14 interest of the child.

15 "(d) (1) There is a rebuttable presumption that a fit
16 grandparent's ability to exercise visitation with the child is
17 in the best interest of the child when any of the following
18 are true:

19 "a. An action for a divorce or legal separation of
20 the parents has been filed.

21 "b. The marital relationship between the parents of
22 the child has been severed by death or divorce.

23 "c. An action to establish paternity, custody,
24 visitation, or support has been filed by or on behalf of a
25 parent.

26 "d. Regardless of marital status, either parent has
27 failed to offer financial support or emotional support for the

1 child or has otherwise failed to maintain a significant
2 parental relationship with the child for a period of six
3 months or more.

4 "(2) To rebut the presumption, the respondent shall
5 prove by clear and convincing evidence that visitation with
6 the child by the petitioner is not in the best interest of the
7 child.

8 "(e) To establish a significant and viable
9 relationship with the child, the petitioner shall prove by
10 clear and convincing evidence any of the following:

11 "(1) a. The child resided with the petitioner for at
12 least six consecutive months with or without a parent present
13 within the ~~three~~ five years preceding the filing of the
14 petition.

15 "b. The petitioner was the caregiver to the child on
16 a regular basis for at least six consecutive months within the
17 ~~three~~ five years preceding the filing of the petition.

18 "c. The petitioner had frequent or regular contact
19 with the child for at least 12 consecutive months that
20 resulted in a strong and meaningful relationship with the
21 child within the ~~three~~ five years preceding the filing of the
22 petition.

23 "(2) Any other facts that establish the loss of the
24 relationship between the petitioner and the child is likely to
25 harm the child.

26 ~~(e)~~ (f) To establish that visitation with the
27 petitioner is in the best interest of the child, the

1 petitioner shall prove by clear and convincing evidence all of
2 the following:

3 "(1) The petitioner has the capacity to give the
4 child love, affection, and guidance.

5 "(2) The loss of an opportunity to maintain a
6 significant and viable relationship between the petitioner and
7 the child has caused or is reasonably likely to cause harm to
8 the child.

9 "(3) The petitioner is willing to cooperate with the
10 parent or parents if visitation with the child is allowed.

11 "~~(f)~~ (g) The court shall make specific written
12 findings of fact in support of its rulings.

13 "~~(g)~~ (h) (1) A grandparent or grandparents who are
14 married to each other may not file a petition seeking an order
15 for visitation more than once every 24 months absent a showing
16 of good cause. The fact that a grandparent or grandparents who
17 are married to each other have petitioned for visitation shall
18 not preclude another grandparent from subsequently petitioning
19 for visitation within the 24-month period. After an order for
20 grandparent visitation has been granted, the parent, guardian,
21 or legal custodian of the child may file a petition requesting
22 the court to modify or terminate a grandparent's visitation
23 time with a grandchild.

24 "(2) The court may modify or terminate visitation
25 upon proof that a material change in circumstances has
26 occurred since the award of grandparent visitation was made
27 and a finding by the court that the modification or

1 termination of the grandparent visitation rights is in the
2 best interest of the child.

3 ~~"(h)~~ (i) The court may award any party reasonable
4 expenses incurred by or on behalf of the party, including
5 costs, communication expenses, attorney's fees, guardian ad
6 litem fees, investigative fees, expenses for court-appointed
7 witnesses, travel expenses, and child care during the course
8 of the proceedings.

9 ~~"(i)~~ (j) (1) Notwithstanding any provisions of this
10 section to the contrary, a petition filed by a grandparent
11 having standing under Chapter 10A of Title 26, seeking
12 visitation shall be filed in probate court and is governed by
13 Section 26-10A-30, rather than by this section if either of
14 the following circumstances exists:

15 "a. The grandchild has been the subject of an
16 adoption proceeding other than the one creating the
17 grandparent relationship.

18 "b. The grandchild is the subject of a pending or
19 finalized adoption proceeding.

20 "(2) Notwithstanding any provisions of this section
21 to the contrary, a grandparent seeking visitation pursuant to
22 Section 12-15-314 shall be governed by that section rather
23 than by this section.

24 "(3) Notwithstanding any provisions of this section
25 to the contrary, a parent of a parent whose parental rights
26 have been terminated by a court order in which the petitioner

1 was the Department of Human Resources, shall not be awarded
2 any visitation rights pursuant to this section.

3 "~~(j)~~ (k) The right of a grandparent to maintain
4 visitation rights pursuant to this section terminates upon the
5 adoption of the child except as provided by Section 26-10A-30.

6 "~~(k)~~ (l) All of the following are necessary parties
7 to any action filed under this section:

8 "(1) Unless parental rights have been terminated,
9 the parent or parents of the child.

10 "(2) Every other person who has been awarded custody
11 or visitation with the child pursuant to court order.

12 "(3) Any agency having custody of the child pursuant
13 to court order.

14 "~~(l)~~ (m) In addition, upon filing of the action,
15 notice shall be given to all other grandparents of the child.
16 The petition shall affirmatively state the name and address
17 upon whom notice has been given.

18 "~~(m)~~ (n) Service and notice shall be made in the
19 following manner:

20 "(1) Service of process on necessary parties shall
21 be made in accordance with the Alabama Rules of Civil
22 Procedure.

23 "(2) As to any other person to whom notice is
24 required to be given under subsection (1), notice shall be
25 given by first class mail to the last known address of the
26 person or persons entitled to notice. Notice shall be
27 effective on the third day following mailing.

1 "~~(n)~~(o) Notwithstanding the foregoing, the notice
2 requirements provided by this section may be limited or waived
3 by the court to the extent necessary to protect the
4 confidentiality and the health, safety, or liberty of a person
5 or a child.

6 "~~(o)~~ Upon (p) (1) Except as provided in subdivision
7 (2), upon filing an action under this section, after giving
8 special weight to the fundamental right of a fit parent to
9 decide which associations are in the best interest of his or
10 her child, the court may, after a hearing, enter a pendente
11 lite order granting temporary visitation rights to a
12 grandparent, pending a final order, if the court determines
13 from the evidence that the petitioner has established a
14 significant and viable relationship with the child for whom he
15 or she is requesting visitation, visitation would be in the
16 best interest of the child, and any of the following
17 circumstances exist:

18 "~~(1)~~a. The child resided with the grandparent for at
19 least six consecutive months within the three years preceding
20 the filing of the petition.

21 "~~(2)~~b. The grandparent was the caregiver of the
22 child on a regular basis for at least six consecutive months
23 within the three years preceding the filing of the petition.

24 "~~(3)~~c. The grandparent provided significant
25 financial support for the child for at least six consecutive
26 months within the three years preceding the filing of the
27 petition.

1 "~~(4)~~d. The grandparent had frequent or regular
2 contact with the child for at least 12 consecutive months
3 within the three years preceding the filing of the petition.

4 "(2) Upon filing an action under this section, if
5 the petitioner is a grandparent, and any of the following are
6 true, the court, after a hearing, may enter a pendente lite
7 order granting temporary visitation rights to a grandparent,
8 pending a final order, if the court determines that the
9 presumption that a fit grandparent's ability to exercise
10 visitation with the child is in the best interest of the child
11 has not been rebutted by the respondent:

12 "a. An action for a divorce or legal separation of
13 the parents has been filed.

14 "b. The marital relationship between the parents of
15 the child has been severed by death or divorce.

16 "c. An action to establish paternity, custody,
17 visitation, or support has been filed by or on behalf of a
18 parent.

19 "d. Regardless of marital status, either parent has
20 failed to offer financial support or emotional support for the
21 child or has otherwise failed to maintain a significant
22 parental relationship with the child for a period of six
23 months or more.

24 "~~(p)~~ (q) As a matter of public policy, this section
25 recognizes the importance of family and the fundamental rights
26 of parents and children. In the context of grandparent
27 visitation under this section, a fit parent's decision

1 regarding whether to permit grandparent visitation is entitled
2 to special weight due to a parent's fundamental right to make
3 decisions concerning the rearing of his or her child.
4 Nonetheless, a parent's interest in a child must be balanced
5 against the long-recognized interests of the state as *parens*
6 *patriae*. Thus, as applied to grandparent visitation under this
7 section, this section balances the constitutional rights of
8 parents and children by imposing an enhanced standard of
9 review and consideration of the harm to a child caused by the
10 parent's limitation or termination of a prior relationship of
11 a child to his or her grandparent."

12 Section 2. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.