

1 HB263
2 216495-1
3 By Representative Treadaway
4 RFD: Judiciary
5 First Read: 03-FEB-22

SYNOPSIS: Under existing law, the visitation rights of an adoptee's grandparents terminate upon the adoptee's adoption by certain individuals.

This bill would allow the court to grant visitation rights to a biological grandparent if the court finds that visitation is in the best interest of the adoptee.

A BILL
TO BE ENTITLED
AN ACT

Relating to visitation; to amend Section 30-3-4.2, Code of Alabama 1975, to allow the court to grant visitation rights to an adoptee's grandparent in certain situations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§30-3-4.2.

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

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

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

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

19 "(1) An action for a divorce or legal separation of
20 the parents has been filed, or the marital relationship
21 between the parents of the child has been severed by death or
22 divorce.

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

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

1 "(4) An action to terminate the parental rights of a
2 parent or parents has been filed or the parental rights of a
3 parent has been terminated by court order; provided, however,
4 the right of the grandparent to seek visitation terminates if
5 the court approves a petition for adoption by an adoptive
6 parent, ~~unless the visitation rights are allowed pursuant to~~
7 ~~Section 26-10A-30.~~ either of the following circumstances
8 exists:

9 "a. The visitation rights are allowed pursuant to
10 Section 26-10A-30.

11 "b. The court, by clear and convincing evidence,
12 finds that preserving a biological grandparent and adoptee's
13 relationship is in the best interest of the adoptee, and that
14 harm would befall the adoptee without court-ordered
15 visitation.

16 "(c) (1) There is a rebuttable presumption that a fit
17 parent's decision to deny or limit visitation to the
18 petitioner is in the best interest of the child.

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

21 "a. The petitioner has established a significant and
22 viable relationship with the child for whom he or she is
23 requesting visitation.

24 "b. Visitation with the petitioner is in the best
25 interest of the child.

1 "(d) To establish a significant and viable
2 relationship with the child, the petitioner shall prove by
3 clear and convincing evidence any of the following:

4 "(1) a. The child resided with the petitioner for at
5 least six consecutive months with or without a parent present
6 within the three years preceding the filing of the petition.

7 "b. The petitioner was the caregiver to the child on
8 a regular basis for at least six consecutive months within the
9 three years preceding the filing of the petition.

10 "c. The petitioner had frequent or regular contact
11 with the child for at least 12 consecutive months that
12 resulted in a strong and meaningful relationship with the
13 child within the three years preceding the filing of the
14 petition.

15 "(2) Any other facts that establish the loss of the
16 relationship between the petitioner and the child is likely to
17 harm the child.

18 "(e) To establish that visitation with the
19 petitioner is in the best interest of the child, the
20 petitioner shall prove by clear and convincing evidence all of
21 the following:

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

24 "(2) The loss of an opportunity to maintain a
25 significant and viable relationship between the petitioner and
26 the child has caused or is reasonably likely to cause harm to
27 the child.

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

3 "(f) The court shall make specific written findings
4 of fact in support of its rulings.

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

16 "(2) The court may modify or terminate visitation
17 upon proof that a material change in circumstances has
18 occurred since the award of grandparent visitation was made
19 and a finding by the court that the modification or
20 termination of the grandparent visitation rights is in the
21 best interest of the child.

22 "(h) The court may award any party reasonable
23 expenses incurred by or on behalf of the party, including
24 costs, communication expenses, attorney's fees, guardian ad
25 litem fees, investigative fees, expenses for court-appointed
26 witnesses, travel expenses, and child care during the course
27 of the proceedings.

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

7 "a. The grandchild has been the subject of an
8 adoption proceeding other than the one creating the
9 grandparent relationship.

10 "b. The grandchild is the subject of a pending or
11 finalized adoption proceeding.

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

16 "(3) Notwithstanding any provisions of this section
17 to the contrary, a parent of a parent whose parental rights
18 have been terminated by a court order in which the petitioner
19 was the Department of Human Resources, shall not be awarded
20 any visitation rights pursuant to this section.

21 "(j) The right of a grandparent to maintain
22 visitation rights pursuant to this section terminates upon the
23 adoption of the child except as provided by Section 26-10A-30,
24 unless a biological grandparent proves to the court by clear
25 and convincing evidence that preserving the grandparent and
26 adoptee's relationship is in the best interest of the adoptee,

1 and that harm would befall the adoptee without court-ordered
2 visitation.

3 "(k) All of the following are necessary parties to
4 any action filed under this section:

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

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

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

11 "(1) In addition, upon filing of the action, notice
12 shall be given to all other grandparents of the child. The
13 petition shall affirmatively state the name and address upon
14 whom notice has been given.

15 "(m) Service and notice shall be made in the
16 following manner:

17 "(1) Service of process on necessary parties shall
18 be made in accordance with the Alabama Rules of Civil
19 Procedure.

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

25 "(n) Notwithstanding the foregoing, the notice
26 requirements provided by this section may be limited or waived
27 by the court to the extent necessary to protect the

1 confidentiality and the health, safety, or liberty of a person
2 or a child.

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

14 "(1) The child resided with the grandparent for at
15 least six consecutive months within the three years preceding
16 the filing of the petition.

17 "(2) The grandparent was the caregiver of the child
18 on a regular basis for at least six consecutive months within
19 the three years preceding the filing of the petition.

20 "(3) The grandparent provided significant financial
21 support for the child for at least six consecutive months
22 within the three years preceding the filing of the petition.

23 "(4) The grandparent had frequent or regular contact
24 with the child for at least 12 consecutive months within the
25 three years preceding the filing of the petition.

26 "(p) As a matter of public policy, this section
27 recognizes the importance of family and the fundamental rights

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

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