

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/23/17
A Bill

HOUSE BILL 1773

By: Representative Rushing
By: Senator G. Stubblefield

For An Act To Be Entitled

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

Subtitle

TO AMEND GRANDPARENTS' RIGHTS IN CUSTODY AND VISITATION MATTERS; AND TO GRANT VISITATION RIGHTS TO GRANDPARENTS WHEN A PARENT OF A CHILD IS DECEASED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

The General Assembly recognizes:

- (1) The importance of family and the fundamental rights of parents and children;
- (2) That a fit parent's decision regarding whether or not to permit grandparent visitation is entitled to special weight due to a parent's fundamental right to make decisions concerning the rearing of his or her child;
- (3) That a parent's interest in a child must be balanced against the long-recognized interests of the state as parens patriae; and
- (4) That grandparent visitation balances the constitutional rights of parents and children by imposing an enhanced standard of review and consideration of the harm, emotional neglect, and emotional abuse to a child



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

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

(a) For purposes of this section:

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

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner;

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

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

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

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

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

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

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

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

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

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

a court of competent jurisdiction;

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

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

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

(5) A new spouse of either parent of the child adopts the child.

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

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

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

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

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

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

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

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

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

(e) To establish that visitation with the petitioner is not in the

best interest of the child, the ~~petitioner~~ custodian in subsection (c) of this section must prove by a preponderance of the evidence the following:

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

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

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

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

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

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

(a) For purposes of this section:

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

(A) Grandchild of the petitioner; or

(B) Great-grandchild of the petitioner;

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

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

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

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

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

(b) A great-grandparent or grandparent of a child whose parents are deceased, missing, or in a permanent vegetative states, or whose one (1) parent is deceased, missing, or in a permanent vegetative state may petition the court for reasonable visitation with the grandchild upon a finding that the visitation would be in the best interest of the child.

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

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

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

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

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

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

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

/s/Rushing