

1 SB348
2 184619-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 04-APR-17

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8 SYNOPSIS: Under existing law, a grandparent may
9 petition for court-ordered visitation with a
10 grandchild by filing an action in the circuit
11 court.

12 This bill would require an action by a
13 grandparent requesting visitation with a grandchild
14 to be assigned to the circuit court, domestic
15 relations division, if one exists, or to a circuit
16 judge in the circuit who regularly hears domestic
17 relations cases.

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19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 Relating to grandparent visitation; to amend Section
24 30-3-4.2 of the Code of Alabama 1975, to provide further for
25 the filing and assignment of an action in the circuit court.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 1 and 2 of Act 2016-362, 2016
2 Regular Session, now appearing as Section 30-3-4.2 of the Code
3 of Alabama 1975, are amended to read as follows:

4 "§30-3-4.2.

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

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

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

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

23 "(1) An action for a divorce or legal separation of
24 the parents has been filed, or the marital relationship
25 between the parents of the child has been severed by death or
26 divorce.

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

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

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

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

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

18 "a. The petitioner has established a significant and
19 viable relationship with the child for whom he or she is
20 requesting visitation.

21 "b. Visitation with the petitioner is in the best
22 interest of the child.

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

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

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

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

12 "(2) Any other facts that establish the loss of the
13 relationship between the petitioner and the child is likely to
14 harm the child.

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

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

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

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

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

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

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

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

26 "(i) (1) Notwithstanding any provisions of this
27 section to the contrary, a petition filed by a grandparent

1 having standing under Chapter 10A of Title 26, seeking
2 visitation shall be filed in probate court and is governed by
3 Section 26-10A-30, rather than by this section if either of
4 the following circumstances exists:

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

8 "b. The grandchild is the subject of a pending or
9 finalized adoption proceeding.

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

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

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

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

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

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

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

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

7 "(m) Service and notice shall be made in the
8 following manner:

9 "(1) Service of process on necessary parties shall
10 be made in accordance with the Alabama Rules of Civil
11 Procedure.

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

17 "(n) Notwithstanding the foregoing, the notice
18 requirements provided by this section may be limited or waived
19 by the court to the extent necessary to protect the
20 confidentiality and the health, safety, or liberty of a person
21 or a child.

22 "(o) Upon filing an action under this section, after
23 giving special weight to the fundamental right of a fit parent
24 to decide which associations are in the best interest of his
25 or her child, the court may, after a hearing, enter a pendente
26 lite order granting temporary visitation rights to a
27 grandparent, pending a final order, if the court determines

1 from the evidence that the petitioner has established a
2 significant and viable relationship with the child for whom he
3 or she is requesting visitation, visitation would be in the
4 best interest of the child, and any of the following
5 circumstances exist:

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

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

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

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

18 "(p) As a matter of public policy, this section
19 recognizes the importance of family and the fundamental rights
20 of parents and children. In the context of grandparent
21 visitation under this section, a fit parent's decision
22 regarding whether to permit grandparent visitation is entitled
23 to special weight due to a parent's fundamental right to make
24 decisions concerning the rearing of his or her child.
25 Nonetheless, a parent's interest in a child must be balanced
26 against the long-recognized interests of the state as *parens*
27 *patriae*. Thus, as applied to grandparent visitation under this

1 section, this section balances the constitutional rights of
2 parents and children by imposing an enhanced standard of
3 review and consideration of the harm to a child caused by the
4 parent's limitation or termination of a prior relationship of
5 a child to his or her grandparent.

6 "(q) Any original action shall be filed in the
7 circuit court, domestic relations division, if one exists in
8 the circuit, or shall be assigned to a circuit judge who
9 regularly hears domestic relations cases."

10 Section 2. This act shall become effective
11 immediately on its passage and approval by the Governor, or
12 its otherwise becoming law.