

1 SB336
2 189812-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 22-FEB-18

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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.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
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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. Section 30-3-4.2 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§30-3-4.2.

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

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

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

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

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

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

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

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

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

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

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

19 "b. Visitation with the petitioner is in the best
20 interest of the child.

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

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

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

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

9 "(2) Any other facts that establish the loss of the
10 relationship between the petitioner and the child is likely to
11 harm the child.

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

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

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

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

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

26 "(g) (1) A grandparent or grandparents who are
27 married to each other may not file a petition seeking an order

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

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

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

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

1 "a. The grandchild has been the subject of an
2 adoption proceeding other than the one creating the
3 grandparent relationship.

4 "b. The grandchild is the subject of a pending or
5 finalized adoption proceeding.

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

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

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

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

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

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

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

26 "(l) In addition, upon filing of the action, notice
27 shall be given to all other grandparents of the child. The

1 petition shall affirmatively state the name and address upon
2 whom notice has been given.

3 "(m) Service and notice shall be made in the
4 following manner:

5 "(1) Service of process on necessary parties shall
6 be made in accordance with the Alabama Rules of Civil
7 Procedure.

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

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

18 "(o) Upon filing an action under this section, after
19 giving special weight to the fundamental right of a fit parent
20 to decide which associations are in the best interest of his
21 or her child, the court may, after a hearing, enter a pendente
22 lite order granting temporary visitation rights to a
23 grandparent, pending a final order, if the court determines
24 from the evidence that the petitioner has established a
25 significant and viable relationship with the child for whom he
26 or she is requesting visitation, visitation would be in the

1 best interest of the child, and any of the following
2 circumstances exist:

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

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

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

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

15 "(p) As a matter of public policy, this section
16 recognizes the importance of family and the fundamental rights
17 of parents and children. In the context of grandparent
18 visitation under this section, a fit parent's decision
19 regarding whether to permit grandparent visitation is entitled
20 to special weight due to a parent's fundamental right to make
21 decisions concerning the rearing of his or her child.

22 Nonetheless, a parent's interest in a child must be balanced
23 against the long-recognized interests of the state as *parens*
24 *patriae*. Thus, as applied to grandparent visitation under this
25 section, this section balances the constitutional rights of
26 parents and children by imposing an enhanced standard of
27 review and consideration of the harm to a child caused by the

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

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

7 Section 2. This act shall become effective
8 immediately on its passage and approval by the Governor, or
9 its otherwise becoming law.