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CS/CS/HB 149

2015 Legislature

1
2 An act relating to the rights of grandparents;
3 amending s. 752.001, F.S.; providing definitions;
4 repealing s. 752.01, F.S., relating to actions by a
5 grandparent for visitation rights; creating s.
6 752.011, F.S.; authorizing the grandparent of a minor
7 child to petition a court for visitation under certain
8 circumstances; requiring a preliminary hearing;
9 providing for the payment of attorney fees and costs
10 by a petitioner who fails to make a prima facie
11 showing of harm; authorizing grandparent visitation if
12 the court makes specified findings; providing factors
13 for court consideration; providing applicability of
14 the Uniform Child Custody Jurisdiction and Enforcement
15 Act; encouraging the consolidation of certain
16 concurrent actions; providing for modification of an
17 order awarding grandparent visitation; limiting the
18 frequency of actions seeking visitation; limiting
19 applicability to a minor child placed for adoption;
20 providing for venue; repealing s. 752.07, F.S.,
21 relating to the effect of adoption of a child by a
22 stepparent on grandparent visitation rights; creating
23 s. 752.071, F.S.; providing conditions under which a
24 court may terminate a grandparent visitation order
25 upon adoption of a minor child by a stepparent or
26 close relative; amending s. 752.015, F.S.; conforming

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27 provisions and cross-references to changes made by the
 28 act; providing an effective date.

30 Be It Enacted by the Legislature of the State of Florida:

32 Section 1. Section 752.001, Florida Statutes, is amended
 33 to read:

34 752.001 Definitions.—As used in ~~For purposes of~~ this
 35 chapter, the term:

36 (1) "Grandparent" shall include great-grandparent.

37 (2) "Missing" means having whereabouts which are unknown
 38 for a period of at least 90 days and not being able to be
 39 located after a diligent search and inquiry. Such search and
 40 inquiry for a missing person must include, at a minimum,
 41 inquiries of all relatives of the person who can reasonably be
 42 identified by the petitioner, inquiries of hospitals in the
 43 areas where the person last resided, inquiries of the person's
 44 recent employers, inquiries of state and federal agencies likely
 45 to have information about the person, inquiries of appropriate
 46 utility and postal providers, a thorough search of at least one
 47 electronic database specifically designed for locating persons,
 48 and inquiries of appropriate law enforcement agencies.

49 (3) "Persistent vegetative state" has the same meaning as
 50 provided in s. 765.101(12).

51 Section 2. Section 752.01, Florida Statutes, is repealed.

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52 Section 3. Section 752.011, Florida Statutes, is created
53 to read:

54 752.011 Petition for grandparent visitation with a minor
55 child.—A grandparent of a minor child whose parents are
56 deceased, missing, or in a persistent vegetative state, or whose
57 one parent is deceased, missing, or in a persistent vegetative
58 state and whose other parent has been convicted of a felony or
59 an offense of violence evincing behavior that poses a
60 substantial threat of harm to the minor child's health or
61 welfare, may petition the court for court-ordered visitation
62 with the grandchild under this section.

63 (1) Upon the filing of a petition by a grandparent for
64 visitation, the court shall hold a preliminary hearing to
65 determine whether the petitioner has made a prima facie showing
66 of parental unfitness or significant harm to the child. Absent
67 such a showing, the court shall dismiss the petition and may
68 award reasonable attorney fees and costs to be paid by the
69 petitioner to the respondent.

70 (2) If the court finds that there is prima facie evidence
71 that a parent is unfit or that there is significant harm to the
72 child, the court may appoint a guardian ad litem and shall refer
73 the matter to family mediation as provided in s. 752.015. If
74 family mediation does not successfully resolve the issue of
75 grandparent visitation, the court shall proceed with a final
76 hearing.

77 (3) After conducting a final hearing on the issue of

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78 visitation, the court may award reasonable visitation to the
79 grandparent with respect to the minor child if the court finds
80 by clear and convincing evidence that a parent is unfit or that
81 there is significant harm to the child, that visitation is in
82 the best interest of the minor child, and that the visitation
83 will not materially harm the parent-child relationship.

84 (4) In assessing the best interest of the child under
85 subsection (3), the court shall consider the totality of the
86 circumstances affecting the mental and emotional well-being of
87 the minor child, including:

88 (a) The love, affection, and other emotional ties existing
89 between the minor child and the grandparent, including those
90 resulting from the relationship that had been previously allowed
91 by the child's parent.

92 (b) The length and quality of the previous relationship
93 between the minor child and the grandparent, including the
94 extent to which the grandparent was involved in providing
95 regular care and support for the child.

96 (c) Whether the grandparent established ongoing personal
97 contact with the minor child before the death of the parent,
98 before the onset of the parent's persistent vegetative state, or
99 before the parent was missing.

100 (d) The reasons cited by the respondent parent in ending
101 contact or visitation between the minor child and the
102 grandparent.

103 (e) Whether there has been significant and demonstrable

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104 mental or emotional harm to the minor child as a result of the
 105 disruption in the family unit, whether the child derived support
 106 and stability from the grandparent, and whether the continuation
 107 of such support and stability is likely to prevent further harm.

108 (f) The existence or threat to the minor child of mental
 109 injury as defined in s. 39.01.

110 (g) The present mental, physical, and emotional health of
 111 the minor child.

112 (h) The present mental, physical, and emotional health of
 113 the grandparent.

114 (i) The recommendations of the minor child's guardian ad
 115 litem, if one is appointed.

116 (j) The result of any psychological evaluation of the
 117 minor child.

118 (k) The preference of the minor child if the child is
 119 determined to be of sufficient maturity to express a preference.

120 (l) A written testamentary statement by the deceased
 121 parent regarding visitation with the grandparent. The absence of
 122 a testamentary statement is not deemed to provide evidence that
 123 the deceased or missing parent or parent in a persistent
 124 vegetative state would have objected to the requested
 125 visitation.

126 (m) Other factors that the court considers necessary to
 127 making its determination.

128 (5) In assessing material harm to the parent-child
 129 relationship under subsection (3), the court shall consider the

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130 totality of the circumstances affecting the parent-child
 131 relationship, including:
 132 (a) Whether there have been previous disputes between the
 133 grandparent and the parent over childrearing or other matters
 134 related to the care and upbringing of the minor child.
 135 (b) Whether visitation would materially interfere with or
 136 compromise parental authority.
 137 (c) Whether visitation can be arranged in a manner that
 138 does not materially detract from the parent-child relationship,
 139 including the quantity of time available for enjoyment of the
 140 parent-child relationship and any other consideration related to
 141 disruption of the schedule and routine of the parent and the
 142 minor child.
 143 (d) Whether visitation is being sought for the primary
 144 purpose of continuing or establishing a relationship with the
 145 minor child with the intent that the child benefit from the
 146 relationship.
 147 (e) Whether the requested visitation would expose the
 148 minor child to conduct, moral standards, experiences, or other
 149 factors that are inconsistent with influences provided by the
 150 parent.
 151 (f) The nature of the relationship between the child's
 152 parent and the grandparent.
 153 (g) The reasons cited by the parent in ending contact or
 154 visitation between the minor child and the grandparent which was
 155 previously allowed by the parent.

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156 (h) The psychological toll of visitation disputes on the
157 minor child.

158 (i) Other factors that the court considers necessary in
159 making its determination.

160 (6) Part II of chapter 61 applies to actions brought under
161 this section.

162 (7) If actions under this section and s. 61.13 are pending
163 concurrently, the courts are strongly encouraged to consolidate
164 the actions in order to minimize the burden of litigation on the
165 minor child and the other parties.

166 (8) An order for grandparent visitation may be modified
167 upon a showing by the person petitioning for modification that a
168 substantial change in circumstances has occurred and that
169 modification of visitation is in the best interest of the minor
170 child.

171 (9) An original action requesting visitation under this
172 section may be filed by a grandparent only once during any 2-
173 year period, except on good cause shown that the minor child is
174 suffering, or may suffer, significant and demonstrable mental or
175 emotional harm caused by a parental decision to deny visitation
176 between a minor child and the grandparent, which was not known
177 to the grandparent at the time of filing an earlier action.

178 (10) This section does not provide for grandparent
179 visitation with a minor child placed for adoption under chapter
180 63 except as provided in s. 752.071 with respect to adoption by
181 a stepparent or close relative.

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182 (11) Venue shall be in the county where the minor child
 183 primarily resides, unless venue is otherwise governed by chapter
 184 39, chapter 61, or chapter 63.

185 Section 4. Section 752.07, Florida Statutes, is repealed.

186 Section 5. Section 752.071, Florida Statutes, is created
 187 to read:

188 752.071 Effect of adoption by stepparent or close
 189 relative.—After the adoption of a minor child by a stepparent or
 190 close relative, the stepparent or close relative may petition
 191 the court to terminate an order granting grandparent visitation
 192 under this chapter which was entered before the adoption. The
 193 court may terminate the order unless the grandparent is able to
 194 show that the criteria of s. 752.011 authorizing the visitation
 195 continue to be satisfied.

196 Section 6. Section 752.015, Florida Statutes, is amended
 197 to read:

198 752.015 Mediation of visitation disputes.—It is ~~shall be~~
 199 the public policy of this state that families resolve
 200 differences over grandparent visitation within the family. It is
 201 ~~shall be~~ the further public policy of this state that, when
 202 families are unable to resolve differences relating to
 203 grandparent visitation, ~~that~~ the family participate in any
 204 formal or informal mediation services that may be available. If
 205 ~~When~~ families are unable to resolve differences relating to
 206 grandparent visitation and a petition is filed pursuant to s.
 207 752.011 ~~s. 752.01~~, the court shall, if such services are

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208 | available in the circuit, refer the case to family mediation in
209 | accordance with the Florida Family Law Rules of Procedure ~~rules~~
210 | ~~promulgated by the Supreme Court.~~

211 | Section 7. This act shall take effect July 1, 2015.