

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1241
Judiciary

(Delegate Dumais, *et al.*)

Family Law - De Facto Parents

This bill requires a court to determine that an individual is a *de facto* parent if the individual requests judicial determination of *de facto* parentage and the court makes specified findings by clear and convincing evidence. A court must find that: (1) each parent of the minor child consented to, supported, and fostered the establishment of a parent-like relationship between the minor child and the individual; (2) the individual has exercised parent-like responsibility for the minor child; and (3) the individual has acted in a parent-like role for a sufficient length of time to have established a bonded and dependent relationship with the minor child that is parental in nature. An individual who is judicially determined to be a *de facto* parent has all the duties and obligations of a parent as specified in statute.

Fiscal Summary

State Effect: The bill's changes will not materially affect the workload of the Judiciary.

Local Effect: The bill's changes will not materially affect the workload for the circuit courts.

Small Business Effect: None.

Analysis

Current Law: Parents of a minor child are jointly and severally responsible for the child's support, care, nurture, welfare, and education and have the same powers and duties in relation to the child.

Background: A *de facto* parent, or “parent in fact” is used generally to describe a party who claims custody or visitation rights based on the party’s relationship with a nonbiological, nonadopted child. See, e.g., *Janice M. v. Margaret K.*, 404 Md. 661 (2008). The Court of Special Appeals addressed *de facto* parents in *S.F. v. M.D.*, 132 Md. App. 90 (2000). The court in *S.F.* held that proof of *de facto* parenthood could be established by demonstrating that the legal parents consented to and fostered the relationship between the third party and the child, the third party lived with the child and performed significant parental functions, and a parent-child bond was formed. On a finding of *de facto* parenthood, visitation could be granted to the *de facto* parent under the best interest of the child standard, without the need to show exceptional circumstances or that the legal parent is unfit.

However, later cases reiterated that any third party seeking custody or visitation must first demonstrate that the parent is unfit or show exceptional circumstances and then that visitation or custody is in the best interest of the child. See, e.g. *Koshko v. Haining*, 398 Md. 404, 441 (2007). The Court of Appeals recently addressed *de facto* parents in *Janice M.* In *Janice M.*, one member of a committed same-sex relationship of 18 years sought custody and/or visitation with the child adopted by the other member of the relationship. The parties lived together during most of the child’s life and divided the responsibilities related to her caretaking. After the parties separated, the adoptive mother began placing more restrictions on visitation and eventually denied all access to the child, causing the other party to file for custody or visitation. The trial court, relying on the *S.F.* decision, recognized the plaintiff as a *de facto* parent and allowed visitation. The Court of Special Appeals affirmed. However, the Court of Appeals reversed, holding that *de facto* parenthood is not recognized in Maryland; therefore, even individuals who claim a *de facto* parent status are ineligible for custody or visitation without a threshold showing of parental unfitness or exceptional circumstances. The court also held that although a finding that one meets requirements that would otherwise give an individual *de facto* parent status, if such status was recognized, is a factor to be considered in evaluating whether exceptional circumstances exist, it is not determinative as a matter of law.

Additional Information

Prior Introductions: None.

Cross File: SB 600 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2010
ncs/kdm

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510