

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1037
Judiciary

(Delegate Dumais)

Family Law - Grandparent Visitation

This bill authorizes an equity court to grant visitation rights to a grandparent if each of the child's living parents consents to visitation. If one or both parents objects to visitation, the court is authorized to grant visitation if the court finds that (1) exceptional circumstances exist that show current or future detriment to the child if visitation with the grandparents is not allowed; (2) visitation rights would not interfere with the parent-child relationship; and (3) visitation rights would be in the best interest of the child.

Fiscal Summary

State Effect: It is expected that the Judiciary can implement the bill's changes with existing resources.

Local Effect: The circuit courts can implement the bill's changes with existing resources.

Small Business Effect: None.

Analysis

Current Law: An equity court may consider a petition for reasonable visitation of a grandchild by a grandparent and grant visitation rights to the grandparent, if the court finds it to be in the best interests of the child.

Background: Standards established in common law require an equity court, in considering a grandparent's petition for visitation, to find either parental unfitness or exceptional circumstances indicating that the absence of grandparental visitation would

have a significantly detrimental effect on a child. A presumption exists, based on the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, that a parent is acting in the best interests of the child. In *Koshko v. Haining* 398 Md. 404 (2007) the Court observed that the common law has upheld the fundamental right of parents to make decisions regarding the care, custody and control of their children. This standard influences any judicial determination regarding custody or visitation. Grandparents do not enjoy a constitutionally recognized liberty interest in visitation with their grandchildren. Whatever visitation rights exist are dependent on what rights, if any, are granted in statute.

The Court further observed that while there is no dispute that a grant or modification of visitation involves a lesser degree of intrusion on the fundamental right to parent than the assignment of custody, there is intrusion, nonetheless, on the parent's basic right to direct the care, control and custody of their children. Accordingly the Court ruled, "[t]o preserve fundamental liberty interests, we now apply a gloss to the Maryland GVS (sic) requiring a threshold showing of either parental unfitness or exceptional circumstances indicating that the lack of grandparental visitation has a significant deleterious effect upon the children who are the subject of the petition." (*Koshko*, p. 42)

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mm/kdm

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