

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 761
Judiciary

(Delegate Dumais)

Family Law - Grandparent Visitation

This bill authorizes an equity court to grant visitation rights to a grandparent if the court finds by a preponderance of the evidence that (1) visitation is in the best interests of the child; and (2) the child's health or welfare will be harmed if visitation to the grandparent is denied or other extraordinary circumstances exist. The bill establishes specified factors that the court must consider in determining whether the child's health or welfare will be harmed if visitation to the grandparent is denied or whether other extraordinary circumstances exist.

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 of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: The court must consider the following factors in determining whether the child's health or welfare will be harmed if visitation to the grandparent is denied, or whether other extraordinary circumstances exist:

- the relationship between the child and the grandparent;
- the relationship between each of the child's parents and the grandparent;

- the time that has elapsed since the child last had contact with the grandparent;
- the effect that the visitation will have on the relationship between the child and the child's parents;
- the custody arrangement that exists between the parents, if the parents are divorced or separated;
- whether the grandparent is seeking visitation in good faith; and
- any other factor the court considers relevant in making a determination.

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: HB 1037 of 2011, another bill relating to grandparent visitation, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 21, 2012
mlm/kdm

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