

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1238

(Senator Klausmeier)

Judicial Proceedings

Family Law - Grandparent Visitation

This bill alters the circumstances under which an equity court may grant visitation rights to a grandparent by authorizing the court to do so if each of the child's living parents consents to visitation. If one or both parents object 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: The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts.

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: SB 1032 of 2017 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 812, received an unfavorable report from the House Judiciary Committee. HB 421 of 2016 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 1019, was withdrawn. Similar bills were also considered in the 2015, 2014, and 2011 sessions.

Cross File: None.

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

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