

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1141
Judiciary

(Delegate Adams)

Family Law - Grandparent Visitation

This bill requires an equity court to consider specified factors when determining if it is in the best interests of a child to grant visitation rights to a grandparent. Specifically, the court must consider (1) the amount of personal contact that occurred between the grandparent and the child before the filing of the petition, including whether the child and grandparent shared a significant relationship for at least 12 months; (2) whether the child desires to have visitation with the grandparent, regardless of the age of the child; and (3) whether the grandparent was unduly denied visitation by the child's parent.

Fiscal Summary

State Effect: The bill does not materially impact the operations or finances of the Judiciary.

Local Effect: The bill does not materially impact the operations or finances 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.

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.

Designated Cross File: None..

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

Fiscal Note History: First Reader - February 20, 2022
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Analysis by: Jennifer K. Botts

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