

CHAPTER 2015-134

Committee Substitute for Committee Substitute for House Bill No. 149

An act relating to the rights of grandparents; amending s. 752.001, F.S.; providing definitions; repealing s. 752.01, F.S., relating to actions by a grandparent for visitation rights; creating s. 752.011, F.S.; authorizing the grandparent of a minor child to petition a court for visitation under certain circumstances; requiring a preliminary hearing; providing for the payment of attorney fees and costs by a petitioner who fails to make a prima facie showing of harm; authorizing grandparent visitation if the court makes specified findings; providing factors for court consideration; providing applicability of the Uniform Child Custody Jurisdiction and Enforcement Act; encouraging the consolidation of certain concurrent actions; providing for modification of an order awarding grandparent visitation; limiting the frequency of actions seeking visitation; limiting applicability to a minor child placed for adoption; providing for venue; repealing s. 752.07, F.S., relating to the effect of adoption of a child by a stepparent on grandparent visitation rights; creating s. 752.071, F.S.; providing conditions under which a court may terminate a grandparent visitation order upon adoption of a minor child by a stepparent or close relative; amending s. 752.015, F.S.; conforming provisions and cross-references to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 752.001, Florida Statutes, is amended to read:

752.001 Definitions.—~~As used in~~ For purposes of this chapter, the term:

(1) “Grandparent” shall include great-grandparent.

(2) “Missing” means having whereabouts which are unknown for a period of at least 90 days and not being able to be located after a diligent search and inquiry. Such search and inquiry for a missing person must include, at a minimum, inquiries of all relatives of the person who can reasonably be identified by the petitioner, inquiries of hospitals in the areas where the person last resided, inquiries of the person’s recent employers, inquiries of state and federal agencies likely to have information about the person, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, and inquiries of appropriate law enforcement agencies.

(3) “Persistent vegetative state” has the same meaning as provided in s. 765.101(12).

Section 2. Section 752.01, Florida Statutes, is repealed.

Section 3. Section 752.011, Florida Statutes, is created to read:

752.011 Petition for grandparent visitation with a minor child.—A grandparent of a minor child whose parents are deceased, missing, or in a persistent vegetative state, or whose one parent is deceased, missing, or in a persistent vegetative state and whose other parent has been convicted of a felony or an offense of violence evincing behavior that poses a substantial threat of harm to the minor child’s health or welfare, may petition the court for court-ordered visitation with the grandchild under this section.

(1) Upon the filing of a petition by a grandparent for visitation, the court shall hold a preliminary hearing to determine whether the petitioner has made a prima facie showing of parental unfitness or significant harm to the child. Absent such a showing, the court shall dismiss the petition and may award reasonable attorney fees and costs to be paid by the petitioner to the respondent.

(2) If the court finds that there is prima facie evidence that a parent is unfit or that there is significant harm to the child, the court may appoint a guardian ad litem and shall refer the matter to family mediation as provided in s. 752.015. If family mediation does not successfully resolve the issue of grandparent visitation, the court shall proceed with a final hearing.

(3) After conducting a final hearing on the issue of visitation, the court may award reasonable visitation to the grandparent with respect to the minor child if the court finds by clear and convincing evidence that a parent is unfit or that there is significant harm to the child, that visitation is in the best interest of the minor child, and that the visitation will not materially harm the parent-child relationship.

(4) In assessing the best interest of the child under subsection (3), the court shall consider the totality of the circumstances affecting the mental and emotional well-being of the minor child, including:

(a) The love, affection, and other emotional ties existing between the minor child and the grandparent, including those resulting from the relationship that had been previously allowed by the child’s parent.

(b) The length and quality of the previous relationship between the minor child and the grandparent, including the extent to which the grandparent was involved in providing regular care and support for the child.

(c) Whether the grandparent established ongoing personal contact with the minor child before the death of the parent, before the onset of the parent’s persistent vegetative state, or before the parent was missing.

(d) The reasons cited by the respondent parent in ending contact or visitation between the minor child and the grandparent.

(e) Whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family

unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm.

(f) The existence or threat to the minor child of mental injury as defined in s. 39.01.

(g) The present mental, physical, and emotional health of the minor child.

(h) The present mental, physical, and emotional health of the grandparent.

(i) The recommendations of the minor child's guardian ad litem, if one is appointed.

(j) The result of any psychological evaluation of the minor child.

(k) The preference of the minor child if the child is determined to be of sufficient maturity to express a preference.

(l) A written testamentary statement by the deceased parent regarding visitation with the grandparent. The absence of a testamentary statement is not deemed to provide evidence that the deceased or missing parent or parent in a persistent vegetative state would have objected to the requested visitation.

(m) Other factors that the court considers necessary to making its determination.

(5) In assessing material harm to the parent-child relationship under subsection (3), the court shall consider the totality of the circumstances affecting the parent-child relationship, including:

(a) Whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the minor child.

(b) Whether visitation would materially interfere with or compromise parental authority.

(c) Whether visitation can be arranged in a manner that does not materially detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship and any other consideration related to disruption of the schedule and routine of the parent and the minor child.

(d) Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child benefit from the relationship.

(e) Whether the requested visitation would expose the minor child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent.

(f) The nature of the relationship between the child's parent and the grandparent.

(g) The reasons cited by the parent in ending contact or visitation between the minor child and the grandparent which was previously allowed by the parent.

(h) The psychological toll of visitation disputes on the minor child.

(i) Other factors that the court considers necessary in making its determination.

(6) Part II of chapter 61 applies to actions brought under this section.

(7) If actions under this section and s. 61.13 are pending concurrently, the courts are strongly encouraged to consolidate the actions in order to minimize the burden of litigation on the minor child and the other parties.

(8) An order for grandparent visitation may be modified upon a showing by the person petitioning for modification that a substantial change in circumstances has occurred and that modification of visitation is in the best interest of the minor child.

(9) An original action requesting visitation under this section may be filed by a grandparent only once during any 2-year period, except on good cause shown that the minor child is suffering, or may suffer, significant and demonstrable mental or emotional harm caused by a parental decision to deny visitation between a minor child and the grandparent, which was not known to the grandparent at the time of filing an earlier action.

(10) This section does not provide for grandparent visitation with a minor child placed for adoption under chapter 63 except as provided in s. 752.071 with respect to adoption by a stepparent or close relative.

(11) Venue shall be in the county where the minor child primarily resides, unless venue is otherwise governed by chapter 39, chapter 61, or chapter 63.

Section 4. Section 752.07, Florida Statutes, is repealed.

Section 5. Section 752.071, Florida Statutes, is created to read:

752.071 Effect of adoption by stepparent or close relative.—After the adoption of a minor child by a stepparent or close relative, the stepparent or close relative may petition the court to terminate an order granting grandparent visitation under this chapter which was entered before the adoption. The court may terminate the order unless the grandparent is able

to show that the criteria of s. 752.011 authorizing the visitation continue to be satisfied.

Section 6. Section 752.015, Florida Statutes, is amended to read:

752.015 Mediation of visitation disputes.—It ~~is shall be~~ the public policy of this state that families resolve differences over grandparent visitation within the family. It ~~is shall be~~ the further public policy of this state that, when families are unable to resolve differences relating to grandparent visitation, ~~that~~ the family participate in any formal or informal mediation services that may be available. ~~If~~ When families are unable to resolve differences relating to grandparent visitation and a petition is filed pursuant to ~~s. 752.011 s. 752.01~~, the court shall, if such services are available in the circuit, refer the case to family mediation in accordance with the Florida Family Law Rules of Procedure ~~rules promulgated by the Supreme Court.~~

Section 7. This act shall take effect July 1, 2015.

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.