

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 973
Judiciary

(Delegate C. Branch)

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 (1) the child's parent, who is the child of the grandparent, is deceased or (2) the petition for visitation rights was filed after an action for divorce, annulment, custody, or paternity was filed by a parent of the child and the court finds that granting visitation rights to a grandparent is in the best interests of the child and would not interfere with the parent-child relationship. The bill also requires a court to grant visitation rights to a grandparent in specified circumstances and establishes other restrictions on denying visitation.

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

Bill Summary: In making a determination as to whether visitation is in the best interests of the child, the court must consider the amount of personal contact that occurred between the grandparent and the child before the filing of the petition. A court must grant visitation rights to a grandparent if (1) the child resided with the grandparent for a period of at least 12 months and (2) the court finds that granting visitation rights to the grandparent is in the

best interests of the child and would not interfere with the parent-child relationship. In making a determination regarding grandparent visitation, the court may not deny visitation rights based on allegations that granting visitation rights to the grandparent would interfere with the parent-child relationship unless, after a hearing, the court determines by a preponderance of the evidence that interference would occur.

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, although similar bills regarding grandparent visitation have been introduced in prior legislative sessions. For example, HB 1337 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. HB 1602 of 2020 remained in the House Rules and Executive Nominations Committee. SB 1238 of 2018 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Similar bills were also considered in prior legislative sessions.

Designated Cross File: None.

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

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rh/lgc

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