

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 476
Judiciary

(Delegate Shoemaker)

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) both of the child's living parents consent to visitation; (2) one of the child's living parents consents to visitation and the other parent is unable to consent; (3) both of the child's living parents are unable to consent to visitation; or (4) exceptional circumstances exist that demonstrate current or future detriment to the child absent visitation with the grandparent.

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: HB 1337 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. HB 1602 of 2020, a similar bill, remained in the House Rules and Executive Nominations Committee. SB 1238 of 2018, a similar bill, 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

Fiscal Note History: First Reader - February 1, 2021
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