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Senate Bill 727 (Substitute S-2)
Sponsor: Senator Alan Sanborn
Committee: Senior Citizens and Veterans Affairs

Date Completed: 12-10-03

CONTENT

The bill would amend the Child Custody Act to do the following:

- Specify circumstances under which a child's grandparent could seek a grandparenting time order, including situations in which the parents were divorced or separated, the child's parent (who was the child of the grandparent) had died, or the parents were never married but paternity had been established.**
- Create a rebuttable presumption that a fit parent's actions or decisions regarding grandparenting time were in the child's best interests.**
- Place the burden on a grandparent to prove by clear and convincing evidence that grandparenting time was in the child's best interests.**
- Require the court to give deference to a fit parent's decision.**
- Require the court to consider specific factors in determining the best interests of a child.**
- Allow the court to refer a complaint or motion for grandparenting time to the Friend of the Court for mediation.**
- Require the court to make a record of its findings and analysis, including its reasons for granting or denying a request for grandparenting time.**

(Provisions concerning grandparenting time are found in Section 27b of the Act, which the Michigan Supreme Court held to be unconstitutional in *DeRose v DeRose*, 469 Mich 320, July 31, 2003. In the following summary, therefore, those provisions are described in the past tense.)

The Act allowed a grandparent to seek an order for grandparenting time with a child if a child custody dispute was pending before the court. If a natural parent of an unmarried child was deceased, a parent of the deceased person could bring an action for grandparenting time. If a custody dispute was pending, the grandparent had to file a motion for an order to show cause. Otherwise, the grandparent had to file a complaint or a complaint and motion for a show cause order, in the circuit court in the county where the child lived. ("Child custody dispute" included a proceeding involving divorce, legal separation, or annulment; as well as a proceeding in which legal custody of the child was given to a party other than the parents, or the child was placed outside the parent's home, excluding a child who had been adopted by or placed for adoption with someone other than a stepparent.)

Under the bill, a child's grandparent could seek a grandparent time order under one or more of the following circumstances:

- An action for divorce, separate maintenance, or annulment involving the child's parents was pending before the court.
- The child's parents were divorced, separated under a judgment of separate maintenance, or had had their marriage annulled.

- The child's parent who was a child of the grandparent was deceased.
- The child's parents had never been married and were not living in the same household, and paternity had been established by the completion of an acknowledgment of parentage under the Acknowledgment of Parentage Act, by an order of filiation entered under the Paternity Act, or by a court's determination that the individual was the father of the child.

The court could not permit a parent of a man who had never been married to the child's mother to seek a grandparenting time order unless he had completed an acknowledgment of parentage, an order of filiation had been entered, or a court had determined that the father was the father. The court could not permit the parent of a putative father to seek a grandparenting time order unless the putative father had provided substantial and regular support or care in accordance with his ability to do so.

The bill specifies that adoption of a child or placement of a child for adoption would terminate the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child by a stepparent, however, would not terminate the right of a grandparent to commence an action.

The bill would require a grandparent seeking a grandparenting time order to commence an action as follows:

- Filing a motion with the circuit court in the county where the court had continuing jurisdiction, if the circuit court had continuing jurisdiction.
- Filing a complaint in the circuit court for the county where the child lived, if the court did not have continuing jurisdiction.

As previously required, the complaint or motion would have to be accompanied by an affidavit setting forth facts supporting the requested order. The Act had required the grandparent filing the complaint or motion to give notice of the filing to each person who had legal custody of the child, who could file an opposing affidavit. The bill would retain this provision, and require that notice also be given to each person who had an order for parenting time with the child.

As provided before, the court would have to hold a hearing on its own motion or if a party requested a hearing, and parties submitting affidavits would have to be given an opportunity to be heard.

Under the bill, in a determination of a grandparenting time request, there would be a rebuttable presumption that a fit parent's actions and decisions regarding grandparenting time were in the child's best interests. The burden would be on the grandparent filing a complaint or motion to prove by clear and convincing evidence that ordering grandparenting time would be in the child's best interests. When making its decision, the court would have to give deference to a fit parent's position.

The Act had required the court to enter an order for reasonable grandparenting time if the court found, at the conclusion of the hearing, that grandparenting time was in the best interests of the child. The bill would retain this requirement. Under the bill, in determining the best interests of the child, the court would have to consider all of the following:

- The love, affection, and other emotional ties existing between the grandparent and the child.
- The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent.
- The grandparent's moral fitness.
- The grandparent's mental and physical health.
- The child's reasonable preference, if the court considered the child to be old enough to express a preference.

- The effect on the child of hostility between his or her parent and the grandparent.
- The grandparent's willingness, except in the case of abuse or neglect, to encourage a close relationship between the child and his or her parent or parents.
- Any history of physical, emotional, or sexual abuse or neglect of the child by the grandparent.
- Whether the child would be harmed by granting grandparenting time or whether the child would be harmed by denying grandparenting time.
- Any other factor relevant to the child's physical and psychological well-being.

The bill would allow the court to refer a complaint or motion for grandparenting time to the Friend of the Court mediation service. If the complaint or motion were referred and no settlement were reached through mediation within a reasonable time, the court would have to hear the complaint or motion.

Previously, the court could not enter an order restricting the movement of a grandchild if the restriction was solely for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order. The bill provides, instead, that the court could not enter an order prohibiting an individual who had legal custody of a child from changing the child's domicile if the prohibition were primarily for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order.

As the Act had provided, a grandparent could not file a complaint or motion seeking a grandparenting time order more than once every two years, absent a showing of good cause. If the court found good cause to allow a grandparent to file more than one complaint or motion in a two-year period, the court would have to allow the filing and consider the complaint or motion.

The Act allowed the court to enter an order modifying or terminating a grandparenting time order whenever a modification or termination was in the child's best interests. Under the bill, the court could modify or terminate a grandparenting time order if there were a change in circumstances and a modification or termination were in the child's best interests.

The bill would require the court to make a record of its analysis and findings regarding the determination of a child's best interests, the limit on filing once every two years, and the modification or termination of a grandparenting time order. The record would have to include the reasons for granting or denying a requested grandparenting time order. (Previously, the court had to make a record of the reasons for denying an order.)

The bill would define "grandparent" as a natural or adoptive parent of a child's natural or adoptive parent. "Parent" would mean the natural or adoptive parent of a child.

MCL 722.22 & 722.27b

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on the State and an indeterminate fiscal impact on local units of government. The bill could increase local court costs to the extent that it would re-enact provisions allowing a grandparent to seek a grandparenting time order. To the extent that the complaints or motions for grandparenting time were successfully mediated by the Friend of the Court, the bill would potentially decrease local court costs.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.