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Opinion No. 00-127

Grandparent Visitation

QUESTION

Are grandparents who are the parents of single or never-been-married parents of grandchildren eligible to petition the court for visitation under 2000 Tenn. Pub. Acts ch. 891?

OPINION

Assuming they otherwise meet the requirements in 2000 Tenn. Pub. Acts ch. 891, grandparents who are the parents of single or never-been-married parents of grandchildren are eligible to petition the court for visitation.

ANALYSIS

This request concerns 2000 Tenn. Pub. Acts ch. 891, which amended Tenn. Code Ann. §§ 36-6-306 and 307.

Tenn. Code Ann. § 36-6-306, as amended by 2000 Tenn. Pub. Acts ch. 891, states:

> Any of the following circumstances, when presented in a petition for grandparent visitation to a court of competent jurisdiction, necessitates a hearing if such grandparent visitation is opposed by the custodial parent or parents:
>
> (1) The father or mother of an unmarried minor child is deceased;
> (2) The child's father and mother are divorced or legally separated;
> (3) The child's father or mother has been missing for not less than six (6) months; or
> (4) The court of another state has ordered grandparent visitation.

The statute provides that at the hearing the court must determine the presence of a danger of substantial harm and if it finds a danger of substantial harm the court is to determine whether grandparent visitation is in the best interest of the child according to factors laid out in § 36-6-307.

In construing statutes, courts seek to give effect to the reasonable intent of the Legislature as reflected in the language of the statute. *City of Lenoir City v. State*, 571 S.W.2d 297 (Tenn. 1978); *State ex rel. Bastnagel v. City of Memphis*, 457 S.W.2d 532 (Tenn. 1970). Courts begin with the proposition that the language of the statute should be given its natural and ordinary meaning. *Wayne County v. Tennessee Solid Waste Disposal Board*, 756 S.W.2d 274 (Tenn. Ct. App. 1988); *City of Lenoir City v. State*, 571 S.W.2d 297 (Tenn. 1978).

We note that the statute does not specifically mention the situation of grandparents who are parents of single or never-been-married parents of grandchildren. Therefore, it appears that if grandparents meet one of the four circumstances set out in the statute (i.e., one of the parents has died, the parents are divorced or separated, one of the parents has been missing for six months, or another court has ordered visitation), they would be allowed to proceed regardless of whether the parents of the child were ever married or not. This would entitle the grandparents to a hearing where they would have to prove a danger of substantial harm. Whether the grandparents are entitled to a hearing is a fact specific inquiry and will depend on the circumstances of each individual case. For example, if a child born out of wedlock is legitimated and the father is then killed, the parents of the deceased father would fall into one of the categories enumerated in the statute and the court would be required to grant them a hearing to determine whether there is a danger of substantial harm to the child. There are numerous factual situations under which grandparents could fall within the ambit of this statute. As long as they meet one of the situations described in Section (a)(1)-(4), whether or not the parents were ever married should not change the analysis of whether the grandparents are entitled to a hearing.

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