



Sub. H.B. 144

125th General Assembly

(As Reported by H. Human Services and Aging)

Reps. Buehrer, Perry, Price, Brown, Cirelli

BILL SUMMARY

- Provides that third-party companionship or visitation rights are not restricted or curtailed by a stepparent adoption.
- Permits a court to grant third-party companionship or visitation rights after a stepparent adoption.

CONTENT AND OPERATION

Background

In Ohio, certain third parties (persons who are not the child's parents) may be granted companionship or visitation rights with a child by a court (1) if the child's mother was unmarried when the child was born, (2) in a proceeding for divorce, dissolution of marriage, legal separation, annulment, or child support or after a decree or final order is issued if circumstances have changed, or (3) if one of the child's parents is deceased. In making its decision on granting companionship or visitation rights to third parties, a court must consider all relevant factors, including all of the factors specified in statute. These factors include all of the following: the wishes and concerns of the child's parents; the prior interaction and interrelationships of the child with parents and other relatives; the geographical location of the parent's residence; the child's and parents' available time; the child's age; the child's adjustment to home, school, and community; the wishes of the child if the court has interviewed the child in chambers; the health and safety of the child; the amount of time that a child has available to spend with siblings; the mental and physical health of all parties; and whether the person seeking visitation has been convicted of or pleaded guilty to any criminal offense involving an act that resulted in a child being abused or neglected. The court can grant companionship or visitation rights if, after considering these factors, it determines that visitation is in the best interest of the child.

Third-party visitation after stepparent adoption

(R.C. 3107.15, 3109.11, and 3109.12)

The marriage or remarriage of a child's parent does not affect the court's authority to grant or modify third-party companionship or visitation rights. But the effect of a stepparent adoption differs depending on the circumstances. In the case of a child whose parent has died, Ohio law provides that a relative's right to visitation is not restricted or curtailed by the adoption. Also, in that situation, the adoption of a child by a stepparent does not affect the authority of the court to grant reasonable companionship or visitation rights with respect to the child. In the case of a child whose parents are divorced or separated or a child born to an unmarried woman, the Ohio Supreme Court has held that a provision of Ohio law providing that a final decree of adoption terminates all legal relationships between the adopted person and the adopted person's relatives has the effect of terminating third-party visitation rights on adoption, regardless of whether the child is adopted by strangers, relatives, or a stepparent. *In re Martin* (1994), 68 Ohio St.3d 250, *Sweeney v. Sweeney* (1994), 71 Ohio St.3d 169, *In re Adoption of Ridenour* (1991), 61 Ohio St.3d 319.

The bill extends the law that currently applies in the case of a child whose parent has died to those involving a child who is born to an unmarried woman or whose parents have obtained a divorce, dissolution, or annulment. It provides that adoption of a child by the child's stepparent does not restrict or curtail a third-party's right to companionship or visitation. Further, the adoption of a child by the child's stepparent does not affect the authority of the court to grant companionship or visitation rights.

Consideration of welfare of child

(R.C. 3109.11 and 3109.12)

Under existing law, when a child's parent dies, a relative of the deceased parent can seek visitation rights. In the case of a child whose mother was unmarried when the child was born, the court can grant visitation to the child's maternal relatives; visitation can be granted to the relatives of the father only if paternity has been established. When granting visitation rights in both cases, the court may grant companionship or visitation rights if it determines that granting companionship or visitation rights is in the best interest of the child.

The bill adds that, in order to grant companionship or visitation rights in cases in which a child is born to an unmarried woman or one of the child's parents has died, the court must also determine that the person seeking companionship or visitation rights has an interest in the welfare of the child.

Juvenile court jurisdiction

(R.C. 3109.11 and 3109.12)

Existing law requires that requests for third-party companionship or visitation rights be filed with the court of common pleas of the county where the child lives. The bill permits persons requesting third-party companionship or visitation rights in cases in which a child is born to an unmarried woman or one of the child's parents has died to file a complaint or motion in either the court of common pleas or the juvenile court of the county in which the child lives.

COMMENT

The United States Supreme Court has held that a Washington grandparent visitation statute was unconstitutional as applied in a particular case, because it infringed on the fundamental right of a parent to make decisions concerning the care, custody, and control of his or her child. *Troxel v. Granville*, 530 U.S. 57 (2000). The Court stated the following as its reasons: (1) the statute, by permitting anyone to bring an action for visitation at any time, was too broad, (2) it did not require a parental refusal regarding requested visitation prior to the bringing of the action, (3) it gave no deference to the constitutional presumption that a fit custodial parent acts in the best interests of the parent's child and, as a result, gave no deference to the parent's decision regarding grandparent visitation, and (4) it required the parent to rebut the presumption that visitation by the grandparents was in the best interest of the child. The Supreme Court reserved the issue of the scope of parental due process in the visitation context for another day, so it is difficult to determine whether Ohio's existing third-party visitation statutes would pass constitutional muster or the constitutional impact of further expanding third-party visitation.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-25-03	p. 278
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