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Senate Bill 734 (as introduced 9-25-03)
Sponsor: Senator Hansen Clarke
Committee: Senior Citizens and Veterans Affairs

Date Completed: 10-28-03

CONTENT

The bill would amend the Child Custody Act to replace provisions concerning grandparenting time. The bill would do the following:

- **Set forth circumstances under which a grandparent could seek a court order for grandparenting time.**
- **Establish a rebuttable presumption that a fit parent's decisions regarding grandparenting time were in the child's best interests; and define "fit parent".**
- **Provide that the burden would be on the grandparent to prove that the parent's actions were not in the child's best interests.**
- **Require the court to give a fit parent's position deference.**
- **Allow the court to refer a complaint or motion for grandparenting time to the Friend of the Court mediation service.**
- **Provide that the adoption of a child, except by a stepparent or a person related within the fifth degree, would terminate a grandparent's right to seek grandparenting time.**

(Statutory 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, the statutory provisions are described in the past tense.)

The bill would allow a child's grandparent to seek a grandparenting time order by filing a complaint or motion 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, were 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.
- Except as provided for an adopted child, legal custody of the child had been given to a person other than the child's parent, or the child was placed outside of and did not reside in the home of a parent.
- The grandparent had provided an established custodial environment for the child, as described in the Act, whether or not the grandparent had custody under a court order, at any time during the child's life.
- The child's parent had withheld from the grandparent opportunities to visit with the child in retaliation against the grandparent for reporting child abuse or neglect to the Family Independence Agency or a law enforcement agency, if the grandparent had reasonable cause to suspect abuse or neglect.
- The child's parent lived separately and away from the other parent and the child for more than one year.

-- Except as provided for a putative father, the child's parents had never been married and were not residing in the same household.

(The Act allowed a grandparent to seek a grandparenting time order only if a child custody dispute were pending. If a natural parent of an unmarried child were deceased, a parent of the deceased person was permitted to bring an action for grandparent time.)

Under the bill, unless a putative father had acknowledged paternity in writing, had been determined to be the father by a court, or had contributed regularly to the child's support, a parent of the putative father could not seek a grandparenting time order. (Under the Act, a court could not enter a grandparenting time order for the parent of a putative father except under these circumstances.)

If the circuit court had continuing jurisdiction over a child, a grandparent seeking a grandparenting time order would have to file a motion with the circuit court in the county where the court had continuing jurisdiction. Otherwise, the grandparent would have to file a complaint in the circuit court for the county where the child resided. (Under the Act, a grandparent could commence an action by complaint or complaint and motion for an order to show cause in the circuit court in the county where the grandchild lived. If a custody dispute were pending, the grandparent had to file a motion for a show cause order.)

As provided in the Act, a complaint or motion for grandparenting time would have to be accompanied by an affidavit setting forth facts supporting the requested order. The court could dismiss a complaint or motion without a hearing if the required affidavit did not accompany the complaint or motion or if it did not comply with requirements described above.

The grandparent would have to give notice of the filing to each person who had legal custody of, or an order for parenting time with, the child. (The Act required the grandparent to give notice to each person who had legal custody of the child. The Act specified that a party having legal custody could file an opposing affidavit; a hearing had to be held on the court's own motion or if a party requested one; and, at the hearing, parties submitting affidavits had 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 to prove that the parent's actions and decisions were not in the child's best interests. When making its decision, the court would have to give deference to a fit parent's position.

("Fit parent" would refer to a parent whom a court had not found to be unfit because of any of the following that had a negative impact on the parent's ability to act in the child's best interests: chronic substance abuse, a conviction of criminal sexual conduct, a homicide conviction, or another factor the court considered relevant to a determination of the parent's ability to act in the child's best interests.)

As the Act provided, if the court found at the conclusion of the hearing that the grandparent's request for grandparenting time was in the child's best interests, the court would have to enter an order providing for reasonable grandparenting time by general or specific terms and conditions. The court would have to make a record of the reasons for granting or denying a request for grandparent time. (The Act required a record of the reasons for a denial.)

The bill specifies that, if a grandparent sought a grandparenting time order by filing a motion in a pending divorce, separate maintenance, or annulment action, entry of the judgment of divorce, separate maintenance, or annulment would not dismiss the grandparent's motion.

The court could 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 after the date of referral, the court would have to hear the complaint or motion.

The court could not enter an order prohibiting a person who had legal custody of a child from changing the child's domicile if the prohibition were solely for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order. (The Act prohibited the court from entering an order restricting the movement of a grandchild for this purpose.)

As provided in the Act, a grandparenting time order would not create parental rights in the individual or individuals to whom grandparenting time rights were granted, and the entry of the order would not prevent a court from acting upon the custody or adoption of the child, or parental rights.

After a hearing, the court could enter an order modifying or terminating a grandparenting time order if there were a change of circumstances and a modification or termination were in the child's best interests. (The Act allowed a modification or termination whenever it was in the child's best interests.)

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 or placement for adoption by a stepparent, however, or by a person who was related to the child within the fifth degree by marriage, blood, or adoption, would not terminate the right of a grandparent to commence an action for grandparenting time with the child.

As the Act 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 bill also would require the court to dismiss the complaint or motion if it found that there was not good cause to allow more than one complaint or motion in a two-year period.

Upon a person's motion, the court could award costs and fees as provided in the Revised Judicature Act. (The Child Custody Act allowed the court to award reasonable attorney fees to the prevailing party.)

MCL 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 and expand the circumstances under which a grandparent could seek a grandparenting time order. To the extent that the bill would allow complaints or motions for grandparenting time to be referred to the Friend of the Court mediation services, it could 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.