

By: King of Parker, Hughes, Anderson, Isett,
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H.B. No. 2084

A BILL TO BE ENTITLED

AN ACT

relating to a suit for access to a child by a grandparent.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 153.432, Family Code, is amended to read as follows:

Sec. 153.432. SUIT FOR [~~POSSESSION OR~~] ACCESS BY GRANDPARENT. (a) Subject to Section 153.434, a [A] biological [or adoptive] grandparent may request [~~possession of or~~] access to a grandchild by filing:

(1) an original suit; or

(2) a suit for modification as provided by Chapter 156.

(b) A grandparent may request [~~possession of or~~] access to a grandchild in a suit filed for the sole purpose of requesting the relief, without regard to whether the appointment of a managing conservator is an issue in the suit.

(c) In a suit for access or for modification described by Subsection (a), the person filing the suit must execute and attach an affidavit that contains, along with supporting facts, the allegation that denial of access to the child by the petitioner endangers the child's physical health or significantly impairs the child's emotional well-being and development.

(d) The court shall deny the relief sought and refuse to schedule a hearing unless the court determines, on the basis of the

1 affidavit, that facts adequate to support an allegation as
2 described in Subsection (c) are stated in the affidavit. If the
3 court determines that the facts stated are adequate to support an
4 allegation, the court shall set a time and place for the initial
5 hearing as provided by Section 153.433(b).

6 (e) If the court finds that a suit for access or for
7 modification is filed frivolously or is designed to harass a party,
8 the court shall assess attorney's fees as costs against the
9 offending party.

10 (f) A suit for access or for modification described by
11 Subsection (a) may not be tried or consolidated with any other suit
12 for conservatorship of the child or any other proceeding involving
13 or arising from a claim involving the parent-child relationship.
14 Any order resulting from a consolidated proceeding prohibited by
15 this subsection is void.

16 SECTION 2. Section 153.433, Family Code, is amended to read
17 as follows:

18 Sec. 153.433. [~~POSSESSION OF OR~~] ACCESS TO
19 GRANDCHILD. (a) The court may [~~shall~~] order reasonable
20 [~~possession of or~~] access to a grandchild by a grandparent if:

21 (1) at the time the relief is requested, at least one
22 biological or adoptive parent of the child has not had that parent's
23 parental rights terminated;

24 (2) the grandparent requesting [~~possession of or~~]
25 access to the child overcomes the presumption that a parent acts in
26 the best interest of the parent's child by proving by clear and
27 convincing [~~a preponderance of the~~] evidence that denial of

1 ~~[possession of or]~~ access to the child ~~[would]~~ significantly
2 impairs ~~[impair]~~ the child's physical health or emotional
3 well-being; and

4 (3) the grandparent requesting ~~[possession of or]~~
5 access to the child is a parent of a parent of the child and that
6 parent of the child has not had parental rights terminated and that
7 parent, for not less than six months before commencing the suit:

8 (A) has been ~~[incarcerated in jail or prison~~
9 ~~during the three-month period preceding the filing of the petition;~~

10 ~~[(B) has been found by a court to be incompetent;~~

11 ~~[(C) is] dead; or~~

12 (B) has ~~[(D) does]~~ not had ~~[have]~~ actual or
13 court-ordered possession of or access to the child.

14 (b) As a threshold issue, the court shall conduct an initial
15 hearing not later than the 45th day after the date of service of
16 process at which the court shall dismiss the suit unless the
17 grandparent requesting access to the child proves by clear and
18 convincing evidence that the child's parent does not provide
19 adequate care for the child and has engaged in culpable conduct that
20 endangers the child's physical health or significantly impairs the
21 child's emotional development.

22 (c) In a hearing under Subsection (b), the court may not
23 render a temporary order.

24 (d) In a suit for access by a grandparent, unless the
25 grandparent meets the evidentiary burden at the initial hearing,
26 the court may not order:

27 (1) the appointment of an amicus attorney, guardian ad

1 litem, or attorney ad litem; or

2 (2) counseling, a social study, mental examination,
3 physical examination, or parenting classes, except for a
4 grandparent who files the suit.

5 (e) An order granting access to a child by a grandparent
6 that is rendered over a parent's objections must state, with
7 specificity:

8 (1) the court's findings regarding the fitness of the
9 parent;

10 (2) the parent's objections;

11 (3) the fact that the court gave special weight to the
12 parent's objections;

13 (4) the manner in which the court gave special weight
14 to the parent's objections; and

15 (5) the specific grounds for overriding the parent's
16 objections.

17 (f) In a suit for access by a grandparent, the court may not:

18 (1) impose a geographic restriction; or

19 (2) award possession of a child to a grandparent.

20 (g) If the grandparent requesting access to a child fails to
21 meet all of the evidentiary burdens under this section, the court
22 shall award the parent all costs, fees, and expenses incurred by the
23 parent to defend the suit in accordance with Chapter 106.

24 (h) This section does not prohibit a grandparent from filing
25 a suit for managing conservatorship of a child under this chapter or
26 Chapter 102 or 156.

27 SECTION 3. Section 153.434, Family Code, is amended to read

1 as follows:

2 Sec. 153.434. LIMITATION ON RIGHT TO REQUEST [~~POSSESSION~~
3 ~~OR~~] ACCESS. A biological [~~or adoptive~~] grandparent may not request
4 [~~possession of or~~] access to a grandchild if:

5 (1) a court does not already have continuing exclusive
6 jurisdiction of a suit involving the child;

7 (2) the child's parent who is the competent child of
8 the grandparent opposes the suit; or

9 (3) the child has been adopted or is the subject of a
10 pending suit for adoption and each of the biological parents of the
11 child [~~grandchild~~] has:

12 (A) died;

13 (B) had the person's parental rights terminated;

14 or

15 (C) executed an affidavit of waiver of interest
16 in child or an affidavit of relinquishment of parental rights under
17 Chapter 161 and the affidavit designates an authorized agency,
18 licensed child-placing agency, or another person [~~other than the~~
19 ~~child's stepparent~~] as the managing conservator of the child[, and

20 [~~(2) the grandchild has been adopted, or is the~~
21 ~~subject of a pending suit for adoption, by a person other than the~~
22 ~~child's stepparent~~].

23 SECTION 4. Notwithstanding Chapter 156, Family Code, or any
24 other provision of the Family Code, Sections 153.432 through
25 153.434, Family Code, as amended by this Act, apply equally to an
26 original suit and a suit for modification filed by a grandparent
27 seeking access to a grandchild.

1 SECTION 5. The changes in law made by this Act apply to a
2 suit affecting the parent-child relationship that is pending in a
3 court on the effective date of this Act or is filed on or after that
4 date.

5 SECTION 6. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2009.