

By: Brown, Burkett, Phillips, Madden, et al.

H.B. No. 2557

Substitute the following for H.B. No. 2557:

By: Jackson

C.S.H.B. No. 2557

A BILL TO BE ENTITLED

AN ACT

relating to a suit for possession of or 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 by amending Subsections (a) and (c) and adding Subsections (d), (e), and (f) to read as follows:

(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.

(c) In a suit described by Subsection (a), the person filing the suit must execute and attach an affidavit on knowledge or belief that contains, along with supporting facts, the allegation that denial of possession of or access to the child by the petitioner would significantly impair the child's physical health or emotional well-being. ~~[The court shall deny the relief sought and dismiss the suit unless the court determines that the facts stated in the affidavit, if true, would be sufficient to support the relief authorized under Section 153.433.]~~

(d) The court shall deny the relief sought and refuse to schedule a hearing unless the court determines that the facts

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

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

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

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

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

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

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

1 child's physical health or emotional well-being; and

2 (3) the grandparent requesting possession of or access
3 to the child is a parent of a parent of the child and that parent of
4 the child:

5 (A) has been incarcerated in jail or prison
6 during the three-month period preceding the filing of the petition;

7 (B) has been found by a court to be incompetent;

8 (C) is dead; or

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

11 (b) As a threshold issue, the court shall conduct an initial
12 hearing not later than the 45th day after the date of service of
13 process at which the court shall dismiss the suit unless the
14 grandparent requesting possession of or access to the child proves
15 by clear and convincing evidence that denial of possession of or
16 access to the child would significantly impair the child's physical
17 health or emotional well-being.

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

20 (d) In a suit by a grandparent, unless the grandparent meets
21 the evidentiary burden at the initial hearing, the court may not
22 order:

23 (1) the appointment of an amicus attorney, guardian ad
24 litem, or attorney ad litem; or

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

1 (e) An order granting possession of or access to a child by a
2 grandparent that is rendered over a parent's objections must state,
3 with specificity [~~that~~]:

4 (1) that at the time the relief was requested, at least
5 one biological or adoptive parent of the child had not had that
6 parent's parental rights terminated;

7 (2) that the grandparent requesting possession of or
8 access to the child has overcome the presumption that a parent acts
9 in the best interest of the parent's child by proving by clear and
10 convincing [~~a preponderance of the~~] evidence that the denial of
11 possession of or access to the child would significantly impair the
12 child's physical health or emotional well-being; [~~and~~]

13 (3) that the grandparent requesting possession of or
14 access to the child is a parent of a parent of the child and that
15 parent of the child:

16 (A) has been incarcerated in jail or prison
17 during the three-month period preceding the filing of the petition;

18 (B) has been found by a court to be incompetent;

19 (C) is dead; or

20 (D) has [~~does~~] not had [~~have~~] actual or
21 court-ordered possession of or access to the child;

22 (4) the parent's objections;

23 (5) the fact that the court gave special weight to the
24 parent's objections;

25 (6) the manner in which the court gave special weight
26 to the parent's objections; and

27 (7) the specific grounds for overriding the parent's

1 objections.

2 (f) In a suit by a grandparent, the court may not impose a
3 geographic restriction.

4 (g) If the grandparent requesting possession of or access to
5 a child fails to meet all of the evidentiary burdens under this
6 section, the court may award the parent all costs, fees, and
7 expenses incurred by the parent to defend the suit in accordance
8 with Chapter 106.

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

12 SECTION 3. Section 153.434, Family Code, is amended to read
13 as follows:

14 Sec. 153.434. LIMITATION ON RIGHT TO REQUEST POSSESSION OR
15 ACCESS. A biological or adoptive grandparent may not request
16 possession of or access to a grandchild if the child has been
17 adopted or is the subject of a pending suit for adoption and~~+~~

18 ~~[(1)]~~ each of the biological parents of the child
19 ~~[grandchild]~~ has:

20 (1) [(A)] died;

21 (2) [(B)] had the person's parental rights terminated;

22 or

23 (3) [(C)] executed an affidavit of waiver of interest
24 in child or an affidavit of relinquishment of parental rights under
25 Chapter 161 and the affidavit designates an authorized agency,
26 licensed child-placing agency, or another person ~~[other than the~~
27 ~~child's stepparent]~~ as the managing conservator of the child~~+, and~~

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

4 SECTION 4. Notwithstanding Chapter 156, Family Code, or any
5 other provision of the Family Code, Sections 153.432, 153.433, and
6 153.434, Family Code, as amended by this Act, apply equally to an
7 original suit and a suit for modification filed by a grandparent
8 seeking possession of or access to a grandchild.

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

13 SECTION 6. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2011.