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DOMESTIC RELATIONS

Grandparents' Visitation Rights

CODE SECTIONS:	O.C.G.A. §§ 19-7-3 (amended), 19-8-8 (amended), and 19-8-10 (amended)
BILL NUMBER:	SB 395
ACT NUMBER:	1649
SUMMARY:	The Act provides that whenever a grandparent or other blood relative petitions for adoption of a minor child, the petitioner must serve a copy of the petition upon any grandparent having visitation rights to the child. Such a grandparent may file objections to the petition for adoption. The Act specifically eliminates the right of grandparents to file an original pleading requesting visitation rights to a minor child when custody of the child has been granted in an adoption where all legal relationships between the child and his or her relatives have been terminated.

History

During the last decade, the Georgia Legislature has turned its attention to providing a statutory definition of grandparents' visitation rights. At common law, a grandparent's access to a minor child had stemmed from a "moral, rather than a legal obligation" of the parent to allow such visitation.¹

One of the first Georgia cases to decide the issue of a grandparent's legal right to visit a minor grandchild was *Churchill v. Jackson*,² involving a custody dispute between the paternal and maternal grandparents. Applying the "best interest of the child" standard, the Georgia Supreme Court required that the non-custodial grandfather be allowed visitation rights with the child.³

Following the *Churchill* decision and prior to legislation which considered grandparents' visitation rights, Georgia judicial decisions "reflected

1. Comment, *Grandparents' Visitation Rights in Georgia*, 29 EMORY L.J. 1083, 1083 (1980).

2. *Churchill v. Jackson*, 125 Ga. 385, 53 S.E. 960 (1906).

3. *Id.*

a shift from the 'best interests' standard to the application of a 'parental rights' approach to grandparents' visitation rights."⁴ In *Davis v. Davis*,⁵ for example, the court recognized that the grandparents had played a significant role in the rearing of the child, but concluded that the court could not interfere on their behalf with the parent's right to custody and control of the child.⁶ Later in *Jackson v. Martin*,⁷ the Georgia Supreme Court held that a trial court abused its discretion when it qualified its award of child custody to the parent by granting visitation rights to the grandparents.⁸

In 1976, the Georgia General Assembly recognized the legal right of grandparents to visit with their grandchildren by enacting Georgia's grandparents' visitation rights statute.⁹ The language of the statute clearly authorized the courts to grant grandparents reasonable visitation rights in "custody and guardianship cases."¹⁰ However, such language afforded little relief to grandparents in situations in which custody or guardianship was not an issue. Furthermore, the statute was unclear as to whether the grandparents could seek visitation rights by intervening in a custody or guardianship dispute or were required instead to be parties to the dispute. In *George v. Sizemore*,¹¹ the Georgia Supreme Court interpreted the 1976 grandparents' visitation rights statute as allowing only grandparents who were parties in a custody or guardianship dispute to seek visitation rights.¹²

The court addressed a different problem in *Sachs v. Walzer*.¹³ In *Sachs*, the court considered the effect of stepparent adoption on the grandparents' court-ordered visitation rights. The court refused to ignore the adoptive parent's right and denied privileges to the grandparents.¹⁴

In 1980, the Georgia General Assembly amended the law relating to grandparents' visitation rights.¹⁵ The 1980 statute provided that the court may grant reasonable visitation rights to the grandparents when the minor child's parents have died or when parental rights have been terminated. It allowed the grandparents to file an original pleading no more

4. Comment, *supra* note 1, at 1094.

5. 212 Ga. 217, 220, 91 S.E.2d 487, 490 (1956).

6. *Id.*

7. 225 Ga. 170, 167 S.E.2d 135 (1969) (per curiam).

8. *Id.* at 172, 167 S.E.2d at 137.

9. 1976 Ga. Laws 247.

10. *Id.*

11. 238 Ga. 525, 233 S.E.2d 779 (1977).

12. *Id.* at 527, 233 S.E.2d at 781.

13. 242 Ga. 742, 251 S.E.2d 302 (1978). The child's mother first had custody under a divorce decree. When the mother died, custody of the child reverted to the father. The maternal grandparents sued for custody and visitation rights, and received the latter. After the child was adopted by her father's new wife (her stepmother), the maternal grandparents brought an action to enforce their visitation rights.

14. *Id.* at 743, 251 S.E.2d at 303.

15. 1980 Ga. Laws 936.

than once in a given calendar year. In 1980, the Georgia Court of Appeals applied this amendment and allowed grandparents to file an original pleading for visitation rights after an adoption was granted.¹⁶ The grandparents had sought visitation rights in a separate action before the adoption was granted but had no standing in the adoption proceeding before the 1980 amendment to the "Grandparents' Bill of Rights Act."¹⁷

The issue addressed by the 1986 General Assembly was expressed in *Mitchell v. Erdmier*,¹⁸ as "whether O.C.G.A. § 19-7-3, which provides visitation rights for grandparents in certain situations, is an exception to O.C.G.A. § 19-8-14, which operates to terminate all legal relationships between the adopted person and his relative."¹⁹ The General Assembly codified the court's response to this question — that this exception does not exist.

SB 395

While preserving the rights of grandparents provided in O.C.G.A. § 19-7-3 to petition for visitation rights in divorce actions involving the custody of a minor child, the Act conforms with existing case law,²⁰ confirming that this right does not extend to grandparents after an adoption is concluded. Such rights are not relevant in post-adoption situations since the legal relationships between the adopted child and the adopted child's relatives have been terminated pursuant to O.C.G.A. § 19-8-14.

The Act further adds a new subsection (f) to O.C.G.A. § 19-8-8, requiring that notice of a petition for adoption be given to any grandparent already having visitation rights when the petitioner is a grandparent or a blood relative of the child to be adopted.

The Act amends O.C.G.A. § 19-8-10 to give grandparents with visitation rights the privilege to file objections to any petition for adoption. This privilege extends to grandparents whether or not the child's mother or father is living.

16. *Houston v. Houston*, 156 Ga. App. 47, 48, 274 S.E.2d 91, 92 (1980).

17. *Id.*

18. 253 Ga. 335, 320 S.E.2d 163 (1984).

19. *Id.* at 335, 320 S.E.2d at 164.

20. *See Sachs v. Walzer*, 242 Ga. at 743, 251 S.E.2d at 303.