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HOUSE BILL 2827

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State of Washington                      54th Legislature                      1996 Regular Session

By Representatives Wolfe and Carrell

Read first time 01/22/96. Referred to Committee on Law & Justice.

1            AN ACT Relating to visitation; amending RCW 26.09.240 and  
2 26.33.295; and adding a new section to chapter 26.33 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 26.09.240 and 1989 c 375 s 13 are each amended to read  
5 as follows:

6            (~~The court may order visitation rights for a person other than a~~  
7 ~~parent when visitation may serve the best interest of the child whether~~  
8 ~~or not there has been any change of circumstances.~~

9            ~~A person other than a parent may petition the court for visitation~~  
10 ~~rights at any time.~~

11            ~~The court may modify an order granting or denying visitation rights~~  
12 ~~whenever modification would serve the best interests of the child.))~~

13            (1) A person other than a parent may petition the court for  
14 visitation with a child at any time or may intervene in a pending  
15 dissolution, legal separation, or modification of parenting plan  
16 proceeding. A person other than a parent may not petition for  
17 visitation under this section unless the child's parent or parents have  
18 commenced an action under this chapter.

1       (2) A petition for visitation with a child by a person other than  
2 a parent must be filed in the county in which the child resides.

3       (3) A petition for visitation or a motion to intervene pursuant to  
4 this section shall be dismissed unless the petitioner or intervenor can  
5 demonstrate by clear and convincing evidence that a significant  
6 relationship exists with the child with whom visitation is sought. If  
7 the petition or motion is dismissed for failure to establish the  
8 existence of a significant relationship, the petitioner or intervenor  
9 shall be ordered to pay reasonable attorney's fees and costs to the  
10 parent, parents, other custodian, or representative of the child who  
11 responds to this petition or motion.

12       (4) The court may order visitation between the petitioner or  
13 intervenor and the child between whom a significant relationship exists  
14 upon a finding supported by the evidence that the visitation is in the  
15 child's best interests.

16       (5)(a) Visitation with a grandparent shall be presumed to be in the  
17 child's best interests when a significant relationship has been shown  
18 to exist. This presumption may be rebutted by a preponderance of  
19 evidence showing that visitation would endanger the child's physical,  
20 mental, or emotional health.

21       (b) If the court finds that reasonable visitation by a grandparent  
22 would be in the child's best interest except for hostilities that exist  
23 between the grandparent and one or both of the parents or person with  
24 whom the child lives, the court may set the matter for mediation under  
25 RCW 26.09.015.

26       (6) The court may consider the following factors when making a  
27 determination of the child's best interests:

28       (a) The strength of the relationship between the child and the  
29 petitioner;

30       (b) The relationship between each of the child's parents or the  
31 person with whom the child is residing and the petitioner;

32       (c) The nature and reason for either parent's objection to granting  
33 the petitioner visitation;

34       (d) The effect that granting visitation will have on the  
35 relationship between the child and the child's parents or the person  
36 with whom the child is residing;

37       (e) The residential time sharing arrangements between the parents;

38       (f) The good faith of the petitioner;

1 (g) Any criminal history or history of physical, emotional, or  
2 sexual abuse or neglect by the petitioner; and

3 (h) Any other factor relevant to the child's best interest.

4 (7) The restrictions of RCW 26.09.191 that apply to parents shall  
5 be applied to a petitioner or intervenor who is not a parent. The  
6 nature and extent of visitation, subject to these restrictions, is in  
7 the discretion of the court.

8 (8) The court may order an investigation and report concerning the  
9 proposed visitation or may appoint a guardian ad litem as provided in  
10 RCW 26.09.220.

11 (9) Visitation granted pursuant to this section shall be  
12 incorporated into the parenting plan for the child.

13 (10) The court may modify or terminate visitation rights granted  
14 pursuant to this section in any subsequent modification action upon a  
15 showing that the visitation is no longer in the best interest of the  
16 child.

17 **Sec. 2.** RCW 26.33.295 and 1990 c 285 s 4 are each amended to read  
18 as follows:

19 (1) Nothing in this chapter shall be construed to prohibit the  
20 parties to a proceeding under this chapter from entering into  
21 agreements regarding communication with or contact between child  
22 adoptees, adoptive parents, ~~((and))~~ a birth parent or parents, and  
23 grandparents.

24 (2) Agreements regarding communication with or contact between  
25 child adoptees, adoptive parents, grandparents, and a birth parent or  
26 parents shall not be legally enforceable unless the terms of the  
27 agreement are set forth in a written court order entered in accordance  
28 with the provisions of this section. The court shall not enter a  
29 proposed order unless the terms of such order have been approved in  
30 writing by the prospective adoptive parents, any birth parent whose  
31 parental rights have not previously been terminated, grandparents, and,  
32 if the child is in the custody of the department or a licensed child-  
33 placing agency, a representative of the department or child-placing  
34 agency. If the child is represented by an attorney or guardian ad  
35 litem in a proceeding under this chapter or in any other child-custody  
36 proceeding, the terms of the proposed order also must be approved in  
37 writing by the child's representative. An agreement under this section  
38 need not disclose the identity of the parties to be legally

1 enforceable. The court shall not enter a proposed order unless the  
2 court finds that the communication or contact between the child  
3 adoptee, the adoptive parents, grandparents, and a birth parent or  
4 parents as agreed upon and as set forth in the proposed order, would be  
5 in the child adoptee's best interests.

6 (3) Failure to comply with the terms of an agreed order regarding  
7 communication or contact that has been entered by the court pursuant to  
8 this section shall not be grounds for setting aside an adoption decree  
9 or revocation of a written consent to an adoption after that consent  
10 has been approved by the court as provided in this chapter.

11 (4) An agreed order entered pursuant to this section may be  
12 enforced by a civil action and the prevailing party in that action may  
13 be awarded, as part of the costs of the action, a reasonable amount to  
14 be fixed by the court as attorneys' fees. The court shall not modify  
15 an agreed order under this section unless it finds that the  
16 modification is necessary to serve the best interests of the child  
17 adoptee, and that: (a) The modification is agreed to by the adoptive  
18 parent and the birth parent or parents, and any grandparent subject to  
19 the agreed order; or (b) exceptional circumstances have arisen since  
20 the agreed order was entered that justify modification of the order.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 26.33 RCW  
22 to read as follows:

23 (1) A grandparent may petition the court for visitation with a  
24 grandchild who is or has been adopted under the following  
25 circumstances:

26 (a) The child of the grandparent who is the parent of the  
27 grandchild has died and the child was adopted after the parent's death;

28 (b) The child has been adopted by a stepparent who is the new  
29 spouse of one of the parents;

30 (c) The child has been adopted by another grandparent or  
31 grandparents, other member of the child's extended family, or a friend  
32 of the birth parents or grandparents who is known to the child or  
33 grandparents;

34 (d) The child's birthparent's parental rights have been terminated,  
35 if the grandparents allege that they will comply with any order  
36 restricting the grandparents from giving information about the child to  
37 the birthparents; or

38 (e) When the adoptive parents agree to the petition.

1           (2) The court must grant the petition for visitation if the court  
2 finds that visitation with the grandparents is in the child's best  
3 interests. Visitation with the child is presumed to be in the child's  
4 best interests if the adoptive parents agree to visitation by the  
5 grandparents; if the child has been adopted by another grandparent,  
6 family member, friends, or a stepparent who is the spouse of one of the  
7 parents; or if the grandparent's child who is the parent of the child  
8 has died. The court may find that visitation with the grandparent is  
9 in the child's best interests even if the birth parent's rights have  
10 been terminated provided the court finds that the termination order  
11 will not be undermined. Opposition to the petition by a parent,  
12 stepparent, other grandparent, relative, or friend that has adopted the  
13 child is, by itself, an insufficient ground to find that visitation  
14 with the petitioning grandparent is not in the child's best interest.

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