

ASSEMBLY, No. 2945

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 14, 2012

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS

Establishes new standard for court to grant grandparent or sibling visitation rights under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning grandparent and sibling visitation rights and
2 amending P.L.1971, c. 420.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1971, c.420 (C.9:2-7.1) is amended to read
8 as follows:

9 1. a. A grandparent or any sibling of a child residing in this
10 State may make application before the Superior Court, in
11 accordance with the Rules of Court, for an order for visitation.

12 It shall be the burden of the applicant to prove by a
13 preponderance of the evidence that the granting of visitation is in
14 the best interests of the child.

15 b. In making a determination on an application **[filed]** made
16 pursuant to this section, the court shall consider the following
17 factors:

18 (1) The relationship between the child and the applicant;

19 (2) The relationship between each of the child's parents or the
20 person with whom the child is residing and the applicant;

21 (3) The time which has elapsed since the child last had contact
22 with the applicant;

23 (4) The effect that such visitation will have on the relationship
24 between the child and the child's parents or the person with whom
25 the child is residing;

26 (5) If the parents are divorced or separated, the time sharing
27 arrangement which exists between the parents with regard to the
28 child;

29 (6) The good faith of the applicant in filing the application;

30 (7) Any history of physical, emotional or sexual abuse or
31 neglect by the applicant; and

32 (8) Any other factor relevant to the best interests of the child.

33 c. With regard to any application made pursuant to this section,
34 **[it shall be prima facie evidence that visitation is in the child's best**
35 **interest]** if the applicant had, in the past, been a full-time caretaker
36 for the child, it shall be prima facie evidence that visitation is in the
37 child's best interest and the child will be harmed if the applicant is
38 denied visitation.

39 d. In the event that: one or both of the child's parents are
40 deceased; the child's parents are separated or divorced; the applicant
41 can demonstrate that there is or has been a close relationship
42 between the child and the applicant; or the applicant has made
43 significant efforts to establish a close relationship with the child,
44 and the child's parent's have refused to allow such a relationship to
45 develop:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (1) It shall be prima facie evidence that visitation is in the
2 child's best interests and the child will be harmed if the applicant is
3 denied visitation;

4 (2) The court shall order the applicant and the child's parent to
5 participate in at least one session of mediation, conducted by a
6 certified mediator, in order to resolve any visitation issues. Failure
7 of any party to participate in the mandatory mediation session shall
8 be considered a factor by the court in making a determination on the
9 application; and

10 (3) The court shall make a determination on the application
11 based on the factors listed in subsection b. of this section, except
12 that animosity between the child's parent and the applicant shall not
13 be a basis for the court to deny an order for visitation.

14 (cf. P.L.1993, c.161, s.1)

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16 2. The Supreme Court may adopt Rules of Court to effectuate the
17 purposes of this act.

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19 3. This act shall take effect on the first day of the second month
20 next following the date of enactment.

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STATEMENT

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25 Under the provisions of current law, a grandparent or any sibling
26 of a child residing in this State may make an application for an
27 order for visitation. The applicant bears the burden to prove, by the
28 preponderance of the evidence, that visitation is in the best interests
29 of the child, and the court then makes a determination on the
30 application based on eight factors that constitute best interests of
31 the child.

32 Although State statute allows grandparents or siblings to apply
33 for visitation, recent court decisions have limited instances where
34 visitation is permitted over the objections of a parent. In Moriarty v.
35 Bradt (177 N.J. 847, 827 A.2d 203 (2003)), the New Jersey
36 Supreme Court ruled that if a parent objects to a grandparent or
37 sibling's application for an order for visitation, the applicant bears
38 the burden, by a preponderance of the evidence, to prove that
39 visitation is necessary to avoid potential harm to the child. If the
40 court agrees that the potential for harm has been shown, the parent
41 is required to offer a visitation schedule, to which the applicant
42 must agree. This "potential for harm" standard places an onerous
43 burden on an applicant to prove that the child would be specifically
44 or concretely harmed if the court denies the order of visitation,
45 especially if the applicant has been unable to establish a
46 relationship with the child because the child's parent refuses to
47 allow visitation.

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1 This bill, therefore, establishes a new standard for review that
2 courts shall use to make a determination on an application made by
3 a child's grandparent or sibling for an order for visitation under
4 certain circumstances.

5 Specifically, the bill stipulates that if: one or both of the child's
6 parents are deceased; the child's parents are divorced or separated;
7 the applicant can demonstrate that there is or has been a close
8 relationship between the child and the applicant; or the applicant
9 has made significant efforts to establish a close relationship with
10 the child, and the child's parent's have refused to allow such a
11 relationship to develop, it shall be prima facie evidence that
12 visitation is in the child's best interests and the child will be harmed
13 if the applicant is denied visitation; the applicant and the child's
14 parent or parents shall be required to participate in at least one
15 session of mandatory mediation, conducted by a certified mediator,
16 in order to resolve any visitation issues.

17 The bill also stipulates that failure of any party to participate in
18 mandatory mediation shall be considered a factor by the court in
19 making a determination on the application, and the court shall make
20 a determination on the application based on the eight factors
21 outlined in the statute, except that animosity between the child's
22 parent or parents and the applicant shall not be a basis for the court
23 to deny an order for visitation.