MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Evans (91st) To: Judiciary A

HOUSE BILL NO. 895

AN ACT TO AMEND SECTIONS 93-16-1 THROUGH 93-16-7, MISSISSIPPI CODE OF 1972, TO REVISE GRANDPARENTS' VISITATION RIGHTS TO INCLUDE GREAT-GRANDPARENTS; TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 93-16-1, Mississippi Code of 1972, is amended as follows:

93-16-1. Any court of this state which is competent to decide child custody matters shall have jurisdiction to grant visitation rights with a minor child or children to the grandparents <u>or great-grandparents, or both,</u> of such minor child or children as provided in this chapter.

SECTION 2. Section 93-16-3, Mississippi Code of 1972, is amended as follows:

93-16-3. (1) Whenever a court of this state enters a decree or order awarding custody of a minor child to one (1) of the parents of the child or terminating the parental rights of one (1) of the parents of a minor child, or whenever one (1) of the

parents of a minor child dies, either * * * grandparent or great-grandparent, or both of the minor child may petition the court in which the decree or order was rendered or, in the case of the death of a parent, petition the chancery court in the county in which the child resides, and seek visitation rights with the child.

(2) Any grandparent or great-grandparent who is not authorized to petition for visitation rights pursuant to subsection (1) of this section may petition the chancery court and seek visitation rights with his or her grandchild, and the court may grant visitation rights to the grandparent or great-grandparent, provided the court finds:

(a) That the grandparent or great-grandparent of the child had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent or great-grandparent visitation rights with the child; and

(b) That visitation rights of the grandparent or great-grandparent with the child would be in the best interests of the child.

(3) For purposes of subsection (2) of this section, the term "viable relationship" means a relationship in which the grandparents or great-grandparents or either of them have voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six (6) months

before filing any petition for visitation rights with the child, the grandparents or great-grandparents have had frequent visitation including occasional overnight visitation with said child for a period of not less than one (1) year, or the child has been cared for by the grandparents or great-grandparents or either of them over a significant period of time during the time the parent has been in jail or on military duty that necessitates the absence of the parent from the home.

(4) Any petition for visitation rights under subsection (2) of this section shall be filed in the county where an order of custody as to the child has previously been entered. If no custody order has been entered, then the grandparents' or great-grandparents' petition shall be filed in the county where the child resides or may be found. Upon a showing of financial hardship for the parents, the court shall on motion of the parent or parents direct the grandparents or great-grandparents to pay reasonable attorney's fees to the parent or parents at any time, including before a hearing, without regard to the outcome of the petition.

SECTION 3. Section 93-16-5, Mississippi Code of 1972, is amended as follows:

93-16-5. All persons required to be made parties in child custody proceedings or proceedings for the termination of parental rights shall be made parties to any proceeding in which a grandparent or great-grandparent, or both, of a minor child or

children seeks to obtain visitation rights with such minor child or children; and the court may, in its discretion, if it finds that such visitation rights would be in the best interest of the child, grant to a grandparent or great-grandparent, or both, reasonable visitation rights with the child. Whenever visitation rights are granted to a grandparent, or great-grandparent, or both, the court may issue such orders as shall be necessary to enforce such rights and may modify or terminate such visitation rights for cause at any time.

SECTION 4. Section 93-16-7, Mississippi Code of 1972, is amended as follows:

93-16-7. This chapter shall not apply to the granting of visitation rights to the natural grandparents or great-grandparents, or both, of any child who has been adopted by order or decree of any court unless: (a) one (1) of the legal parents of such child is also a natural parent of such child; or (b) one (1) of the legal parents of such child was related to the child by blood or marriage prior to the adoption. This chapter shall apply to persons who become grandparents or great-grandparents, or both, of a child by virtue of adoption.

SECTION 5. Section 93-5-24, Mississippi Code of 1972, is amended as follows:

93-5-24. (1) Custody shall be awarded as follows according to the best interests of the child:

(a) Physical and legal custody to both parents jointly pursuant to subsections (2) through (7).

(b) Physical custody to both parents jointly pursuant to subsections (2) through (7) and legal custody to either parent.

(c) Legal custody to both parents jointly pursuant to subsections (2) through (7) and physical custody to either parent.

(d) Physical and legal custody to either parent.

(e) Upon a finding by the court that both of the parents of the child have abandoned or deserted such child or that both such parents are mentally, morally or otherwise unfit to rear and train the child the court may award physical and legal custody to:

(i) The person in whose home the child has been living in a wholesome and stable environment; or

(ii) Physical and legal custody to any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

In making an order for custody to either parent or to both parents jointly, the court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) Joint custody may be awarded where irreconcilable differences is the ground for divorce, in the discretion of the court, upon application of both parents.

(3) In other cases, joint custody may be awarded, in the discretion of the court, upon application of one or both parents.

(4) There shall be a presumption that joint custody is in the best interest of a minor child where both parents have agreed to an award of joint custody.

(5) (a) For the purposes of this section, "joint custody" means joint physical and legal custody.

(b) For the purposes of this section, "physical custody" means those periods of time in which a child resides with or is under the care and supervision of one (1) of the parents.

(c) For the purposes of this section, "joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

(d) For the purposes of this section, "legal custody" means the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child.

(e) For the purposes of this section, "joint legal custody" means that the parents or parties share the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child. An award of joint legal custody obligates the parties to exchange information concerning the health, education and welfare of the

minor child, and to confer with one another in the exercise of decision-making rights, responsibilities and authority.

An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and unless allocated, apportioned or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

(6) Any order for joint custody may be modified or terminated upon the petition of both parents or upon the petition of one (1) parent showing that a material change in circumstances has occurred.

(7) There shall be no presumption that it is in the best interest of a child that a mother be awarded either legal or physical custody.

(8) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

(9) (a) (i) In every proceeding where the custody of a child is in dispute, there shall be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody of a parent who has a history of perpetrating

family violence. The court may find a history of perpetrating family violence if the court finds, by a preponderance of the evidence, one (1) incident of family violence that has resulted in serious bodily injury to, or a pattern of family violence against, the party making the allegation or a family household member of either party. The court shall make written findings to document how and why the presumption was or was not triggered.

(ii) This presumption may only be rebutted by a preponderance of the evidence.

(iii) In determining whether the presumption set forth in subsection (9) has been overcome, the court shall consider all of the following factors:

1. Whether the perpetrator of family violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child because of the other parent's absence, mental illness, substance abuse or such other circumstances which affect the best interest of the child or children;

2. Whether the perpetrator has successfully completed a batterer's treatment program;

3. Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate;

4. Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate;

5. If the perpetrator is on probation or parole, whether he or she is restrained by a protective order granted after a hearing, and whether he or she has complied with its terms and conditions; and

6. Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(iv) The court shall make written findings to document how and why the presumption was or was not rebutted.

(b) (i) If custody is awarded to a suitable third person, it shall not be until the natural grandparents or great-grandparents, or both, of the child have been excluded and such person shall not allow access to a violent parent except as ordered by the court.

(ii) If the court finds that both parents have a history of perpetrating family violence, but the court finds that parental custody would be in the best interest of the child, custody may be awarded solely to the parent less likely to continue to perpetrate family violence. In such a case, the court may mandate completion of a treatment program by the custodial parent.

(c) If the court finds that the allegations of domestic violence are completely unfounded, the chancery court shall order

the alleging party to pay all court costs and reasonable attorney's fees incurred by the defending party in responding to such allegations.

(d) (i) A court may award visitation by a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

(ii) In a visitation order, a court may take any of the following actions:

1. Order an exchange of the child to occur in a protected setting;

2. Order visitation supervised in a manner to be determined by the court;

3. Order the perpetrator of domestic or family violence to attend and complete to the satisfaction of the court a program of intervention for perpetrators or other designated counseling as a condition of visitation;

4. Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding the visitation;

5. Order the perpetrator of domestic or family violence to pay a fee to defray the cost of supervised visitation;

6. Prohibit overnight visitation;

7. Require a bond from the perpetrator of domestic or family violence for the return and safety of the child; or

8. Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family or domestic violence, or other family or household member.

(iii) Whether or not visitation is allowed, the court may order the address of the child or the victim of family or domestic violence to be kept confidential.

(e) The court may refer but shall not order an adult who is a victim of family or domestic violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence, as a condition of receiving custody of a child or as a condition of visitation.

(f) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.