
OLR Bill Analysis

sHB 6453

AN ACT CONCERNING GRANDPARENTS' VISITATION RIGHTS.

SUMMARY:

Current law allows grandparents and other third parties to petition for the right to visit a minor, and the court may grant the request, subject to conditions and limitations it deems equitable. This bill requires, instead, that the court consider whether the applicant demonstrates, by a preponderance of the evidence, that (1) he or she has a parent-like relationship with the child and (2) the child will suffer real and substantial harm if visitation is denied. By establishing the “preponderance of evidence” standard, the bill sets a lower standard for granting visitation requests than the “clear and convincing evidence” standard stated in a recent Connecticut Supreme Court decision.

The bill eliminates a provision specifying that in making, modifying, or terminating a visitation order, the court must be guided by the child’s best interest, taking into consideration the child’s wishes if he or she is old enough and capable of forming an intelligent opinion.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2011

BACKGROUND

Supreme Court Case on Visitation

In *Roth v. Weston*, a maternal grandmother and aunt petitioned under CGS § 46b-59 for visitation with children whose father had terminated it after the children’s mother committed suicide (*Roth v. Weston*, 259 Conn. 202 (2002)). The relatives claimed that visitation was in the children’s best interest, although they did not contend that the

father was not a fit parent. In his response, the father presented reasons why he believed visitation was not in the children's best interest.

The trial court granted the petition but the Connecticut Supreme Court reversed. It ruled that CGS § 46b-59 would be unconstitutional unless it required any third party, including a grandparent or a great-grandparent, seeking visitation to make specific and good faith allegations that (1) a parent-like relationship exists between the child and the person seeking visitation and (2) denial of the visitation will cause real and significant harm to the child. That degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to a claim that the child is neglected, uncared-for or dependent within the meaning of Connecticut's child abuse statutes. These requirements serve as constitutionally mandated safeguards against unwarranted intrusions into a parent's authority (*Roth v. Weston*, 259 Conn. 202, 234-235 (2001)).

Once these high jurisdictional hurdles are overcome, the petitioner must prove the allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation (*Roth v. Weston*).

Standards of Proof

A "preponderance of the evidence" means that it is more likely than not that the facts asserted are true. "Clear and convincing" means that it is highly probably or reasonably certain. Clear and convincing is a greater burden of proof than preponderance of the evidence, but less than evidence beyond a reasonable doubt (*Black's Law Dictionary*, 7th ed.).

Related Bill

On February 15, the Children's Committee reported HB 6281, An Act Concerning Visitation Rights for Grandparents When a Parent is Deceased, to the Judiciary Committee. HB 6281 requires the court to grant a right of visitation based on clear and convincing evidence

when the child's parent is deceased. HB 6281's other conditions for an order are the same as those in this bill: the existence of a parent-like relationship and real and substantial harm to the child if visitation is denied.

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/10/2011)