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Legislative Report

Visitation to Third Parties

H.B. 144-Pending in the Senate

Three present sections of the Ohio Revised Code, R.C. 3109.051, 3109.11, and 3109.12, address the issue of non-parent visitation in three different contexts, with three disparate results. H.B. 144 makes these three statutes consistent.

R.C. 3109.051(B)(1) permits a court to award non-parent visitation in the event of a ‘divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child***.’ ‘Reasonable companionship or visitation rights’ may be granted to ‘any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent.’ *Id.* The remarriage of the residential parent of a child does not affect the authority of a court to grant companionship or visitation rights to non-parent. R.C. 3109.051(E).

However, the Ohio Supreme Court has held that a final decree of adoption terminates all legal relationships between the adopted child and the adopted child’s relatives, including third party visitation rights. *In re Martin*, 68 Ohio St.3d 250, 626 N.E.2d 82 (1994); *Sweeney v. Sweeney*, 71 Ohio St.3d 169, 1994-Ohio-221, 642 N.E.2d 629 (1994); and, *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 574 N.E.2d 1055 (1991).

H.B. 144 adds a new paragraph to R.C. 3109.051(E), which legislatively repeals this holding and nullifies the legal effect of step-parent adoption as to non-parent visitation:

The adoption of a child by the child’s stepparent does not affect the authority of the court under this section to grant reasonable companionship or visitation rights with respect to the child to any grandparent, any person related by consanguinity or affinity, or any other person.

Currently, R.C. 3109.11 provides, in the situation where either the mother or the father of a child is deceased, that ‘the parents or other relatives of the deceased father or mother’ may seek reasonable companionship or visitation rights with the minor child. Excluded from the right to seek visitation is the additional category of ‘other persons’ permitted by R.C. 3109.051.

H.B. 144 adds ‘other persons’ to the categories of persons who may seek visitation rights in the event of the death of one of the parents, thus making R.C. 3109.11 consistent with R.C. 3109.051 in that respect.

Furthermore, while current R.C. 3109.11 does provide that the remarriage of the surviving parent or the adoption of the child by the spouse of the surviving parent does not affect the authority of the court to grant visitation rights to a parent or other relative of the deceased father or mother, it does not extend that protection to non-relatives. H.B. 144 adds a provision that the remarriage or adoption does not affect the right of the ‘another person’ to seek visitation rights. R.C. 3109.11, then, would be made consistent with R.C. 3109.051 as amended by H.B. 144.

Current R.C. 3109.12 provides, in cases where a child is born to an unmarried woman, that the parents of the woman and ‘any relative’ of hers may seek reasonable companionship or visitation rights. If parentage has been established the same right

applies to the parents and any relative of the father. As is the case with those seeking such rights pursuant to R.C. 3109.051, a step-parent adoption terminates those rights.

H.B. 144 broadens the category of those who may seek visitation rights to include ‘any other person.’ Additionally, the bill permits such

rights to be granted to the new category of ‘other persons’ in the event of the remarriage of the mother. Finally, the same provision regarding step-parent adoption quoted above in amended R.C. 3109.051(E) is added to R.C. 3109.12 and applies to the parents or relatives of the parents of the child or other persons.

Consequently, H.B. 144 brings all three non-parent visitation statutes into consistency:

‘other persons’ may seek visitation in the triggering events of divorce, dissolution of marriage, legal separation, annulment, child support proceeding, the death of a parent, or the birth of a child to an unmarried woman, and, the remarriage of a parent or a step-parent adoption will not affect the authority of a court to grant such visitation.

Attorney Fees

H.B. 36-Pending in the Senate

Current R.C. 3105.18(H) provides that a court may award reasonable attorney fees at any stage of a proceeding if it determines that the paying party has the ability to pay the award and if the other party will be prevented from fully litigating his or her rights and interests. H.B. 36 repeals this subsection.

New section R.C. 3105.73 would replace this subsection. It would provide that in any divorce, legal separation, annulment, or post-decree proceeding a court may award reasonable attorney fees and litigation expenses ‘if the court finds the award appropriate under the totality of the circumstances’ involved in the action or proceeding. The proposed statute further provides that in examining the totality of the circumstances, the court ‘shall consider the moving party’s need versus each party’s ability to pay.’ The fee award may be for fees already incurred or ‘reasonably anticipated’ and the court may specify whether the payment is in gross or by installments. The bill also provides that the fees may be designated as spousal support.

If enacted, the new provisions would apply to actions or proceedings brought or filed on or after the effective date of the act, or, if brought or filed before the effective date but that are still pending on the effective date.

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