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HOUSE BILL 296

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Patsy Trujillo Knauer

AN ACT

RELATING TO FAMILY LAW; EXPANDING THE CONSIDERATIONS FOR THE COURT WHEN A GRANDPARENT PETITIONS FOR VISITATION WITH A CHILD; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-9-2 NMSA 1978 (being Laws 1993, Chapter 93, Section 3) is amended to read:

"40-9-2. CHILDREN--VISITATION BY GRANDPARENT--PETITION--MEDIATION.--

A. In rendering a judgment of dissolution of marriage, legal separation or the existence of the parent and child relationship pursuant to the provisions of the Uniform Parentage Act, or at any time after the entry of the judgment,

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1 the district court may grant reasonable visitation privileges  
2 to a grandparent of a minor child, not in conflict with the  
3 child's education or prior established visitation or time-  
4 sharing privileges.

5 B. If one or both parents of a minor child are  
6 deceased, any grandparent of the minor child may petition the  
7 district court for visitation privileges with respect to the  
8 minor. The district court may order temporary visitation  
9 privileges until a final order regarding visitation privileges  
10 is issued by the court.

11 C. If a minor child resided with a grandparent for  
12 a period of at least three months and the child was less than  
13 six years of age at the beginning of the three-month period  
14 and the child was subsequently removed from the grandparent's  
15 home by the child's parent or any other person, the  
16 grandparent may petition the district court for visitation  
17 privileges with respect to the child, if the child's home  
18 state is New Mexico, as provided in the Child Custody  
19 Jurisdiction Act.

20 D. If a minor child resided with a grandparent for  
21 a period of at least six months and the child was six years of  
22 age or older at the beginning of the six-month period and the  
23 child was subsequently removed from the grandparent's home by  
24 the child's parent or any other person, the grandparent may  
25 petition the district court for visitation privileges with

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1 respect to the child, if the child's home state is New Mexico,  
2 as provided in the Child Custody Jurisdiction Act.

3 E. A biological grandparent may petition the  
4 district court for visitation privileges with respect to a  
5 grandchild when the grandchild has been adopted or adoption is  
6 sought, pursuant to the provisions of the Adoption Act, by:

- 7 (1) a stepparent;
- 8 (2) a relative of the grandchild;
- 9 (3) a person designated to care for the  
10 grandchild in the provisions of a deceased parent's will; or
- 11 (4) a person who sponsored the grandchild at  
12 a baptism or confirmation conducted by a recognized religious  
13 organization.

14 F. When a minor child is adopted by a stepparent  
15 and the parental rights of the natural parent terminate or are  
16 relinquished, the biological grandparents are not precluded  
17 from attempting to establish visitation privileges. When a  
18 petition filed pursuant to the provisions of the Grandparent's  
19 Visitation Privileges Act is filed during the pendency of an  
20 adoption proceeding, the petition shall be filed as part of  
21 the adoption proceedings. The provisions of the Grandparent's  
22 Visitation Privileges Act shall have no application in the  
23 event of a relinquishment or termination of parental rights in  
24 cases of other statutory adoption proceedings.

25 G. When considering a grandparent's petition for

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1 visitation privileges with a child, the district court shall  
2 assess:

- 3 (1) the best interests of the child;
- 4 (2) the prior interaction between the  
5 grandparent and the child;
- 6 (3) the prior interaction of the grandparent  
7 and each parent of the child;
- 8 (4) the present relationship between the  
9 grandparent and each parent of the child; [~~and~~]
- 10 (5) time-sharing or visitation arrangements  
11 that were in place prior to filing of the petition;
- 12 (6) the amount of time that may have elapsed  
13 since the child last had contact with the grandparent;
- 14 (7) the effect the visitation with the  
15 grandparent will have on the relationship between the child  
16 and the child's parent or the person with whom the child  
17 resides;
- 18 (8) any history of physical, emotional or  
19 sexual abuse or neglect by the grandparent;
- 20 (9) the good faith of the grandparent in  
21 filing the application; and
- 22 (10) other factors relevant to the best  
23 interests of the child.

24 H. It shall be prima facie evidence that  
25 visitation is in the child's best interest if in the past the

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1 grandparent had been a full-time caretaker for the child.

2           ~~[H-]~~ I. The district court may order mediation and  
3 evaluation in any matter when a grandparent's visitation  
4 privileges with respect to a minor child are at issue. When a  
5 judicial district has established a domestic relations  
6 mediation program pursuant to the provisions of the Domestic  
7 Relations Mediation Act, the mediation shall conform with the  
8 provisions of that act. Upon motion and hearing, the district  
9 court shall act promptly on the recommendations set forth in a  
10 mediation report and consider assessment of mediation and  
11 evaluation to the parties. The district court may order  
12 temporary visitation privileges until a final order regarding  
13 visitation privileges is issued by the court.

14           ~~[I-]~~ J. When the district court decides that  
15 visitation is not in the best interest of the child, the court  
16 may issue an order requiring other reasonable contact between  
17 the grandparent and the child, including regular communication  
18 by telephone, mail or any other reasonable means.

19           ~~[J-]~~ K. The provisions of the Child Custody  
20 Jurisdiction Act and Section 30-4-4 NMSA 1978, regarding  
21 custodial interference, are applicable to the provisions of  
22 the Grandparent's Visitation Privileges Act. "

23           Section 2. EFFECTIVE DATE. --The effective date of the  
24 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 12, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 296

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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.

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17 Respectfully submitted,

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21 R. David Pederson, Chairman  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HJ/HB 296

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4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

6 (Chief Clerk)

(Chief Clerk)

8 Date \_\_\_\_\_

10 The roll call vote was 9 For 0 Against

11 Yes: 9

12 Excused: Luna, Rios, Taylor, T.

13 Absent: None

15 J: \99BillsWP\H0296

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