



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Aida S. Montano

H.B. 527

132nd General Assembly
(As Introduced)

Reps. LaTourette, Antonio, Arndt, Kick, Romanchuk, K. Smith

BILL SUMMARY

- States that there is a rebuttable presumption that it is in the best interest of an incompetent or ward to have visitation from specified relatives or an interested person, and provides the circumstances for the rebuttal of the presumption.
- Authorizes an incompetent's or ward's spouse, adult child, adult grandchild, parent, adult sibling, or other interested person to file a petition with an appropriate probate court for reasonable visitation with the incompetent or ward, and specifies the contents of the petition and the manner of service of summons.
- Provides that the petitioner has the burden of proof by clear and convincing evidence that the objection of an incompetent or ward who has the ability to consent to the visitation was procured by undue influence.
- Authorizes the court in its ruling to impose reasonable restrictions on the visitation and requires the court to consider imposing the reasonable restrictions before denying the petition.
- Permits the court to assess costs on any party to the proceeding and to impose reasonable attorney's fees against a petitioner who brings the petition in bad faith or a party that unjustifiably interferes with or denies visitation.
- States the General Assembly's declaration that every adult has the right to visit with, and receive communications from, whomever the adult so chooses, unless a court has specifically ordered otherwise.

CONTENT AND OPERATION

Rebuttable presumption

The bill establishes a rebuttable presumption that it is in the best interest of an incompetent or ward to have visitation from the incompetent's or ward's spouse, adult child, adult grandchild, parent, adult sibling, or other "interested person," defined as any person who has a significant, ongoing relationship with an incompetent or ward based on strong affection.¹

If a person other than the incompetent or ward seeks to rebut the above presumption, that person has the burden of proving by clear and convincing evidence that the visitation is not in the best interest of the incompetent or ward because the petitioner for the visitation has caused physical or financial harm against an elderly person or the visitation would be harmful to the physical or mental health of the incompetent or ward.²

Petition for reasonable visitation with incompetent or ward

The bill permits a spouse, adult child, adult grandchild, parent, adult sibling, or other interested person to petition for reasonable visitation with an incompetent or ward in the probate court in the county where the incompetent or ward resides or that appointed a guardian for the ward.³ The petition for reasonable visitation must include the following information:⁴

- That the petitioner is a person specified in the petition as described in the preceding paragraph;
- That the petitioner's visitation with the incompetent or ward has been unreasonably interfered with or denied;
- The identity of the person or persons who have unreasonably interfered with or denied the petitioner's visitation with the incompetent or ward.

¹ R.C. 2111.132(A) and (B).

² R.C. 2111.132(E).

³ R.C. 2111.132(C)(1).

⁴ R.C. 2111.132(C)(2).



Summons

The bill requires service of summons on the petition be issued and served by certified mail on the incompetent or ward who is the subject of the petition, the guardian, if applicable, and any individual alleged to have interfered with or denied visitation between the incompetent or ward and the petitioner.⁵

Burden of proof

If an incompetent or ward has the ability to consent to the visitation with the petitioner and the incompetent or ward objects to the petition, the petitioner has the burden to prove by clear and convincing evidence that the incompetent's or ward's objection to the petition was procured by undue influence.⁶

Court ruling, costs, and sanctions

In ruling on a petition for reasonable visitation, the probate court must issue a statement of facts and law. The court may impose reasonable restrictions on the visits, including reasonable time or frequency limitations, or required monitoring of visits. The bill requires the court to consider imposing those reasonable restrictions before denying a petition.⁷

The probate court may assess costs of the petition or visitation, including the costs of monitoring visits, on any party to the proceeding. The court may also impose sanctions in the amount of reasonable attorney's fees against a petitioner who brings a petition in bad faith or against a party that unjustifiably interferes with or denies the visitation. The bill prohibits the court from assessing costs or sanctions against an incompetent or ward that is the subject of the petition.⁸

Declaration

The bill states that the General Assembly, in enacting this act, declares that every adult in Ohio has the right to visit with, and receive mail and telephone or electronic communications from, whomever the adult so chooses, unless a court has specifically ordered otherwise.⁹

⁵ R.C. 2111.132(C)(3).

⁶ R.C. 2111.132(D).

⁷ R.C. 2111.132(F)(1).

⁸ R.C. 2111.132(F)(2).

⁹ Section 2.



HISTORY

ACTION

DATE

Introduced

02-26-18

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