

2016
Retreat to the Beach
Legislative Update

Penny Davis

Grandparent Visitation (HB334)

- **New Act:** Based on an Arkansas law, previously held by the Arkansas courts to meet the *Troxel* requirements.
- Provides a **rebuttable presumption that a fit parent's decision denying or limiting visitation to the petitioner is in the best interest of the child.**
- Requires **clear and convincing evidence** [rather than the preponderance of the evidence standard embraced by the Arkansas statute].

Grandparent Visitation (HB334)

- To rebut parental decision to deny visitation; the grandparent **must prove both** of the following:
 - 1. A significant and viable relationship with the grandchild; **and**
 - 2. Visitation with the grandparent is in the best interest of the grandchild.

Grandparent Visitation (HB334)

- To establish a **significant and viable relationship** with the child, the petitioner shall **prove either of the following**:
 - (1) a. The child resided with the petitioner for at least **six consecutive months** with or without a parent present;
 - b. The petitioner was the caregiver to the child on a regular basis for at **least six consecutive months**; or
 - c. The petitioner had **frequent or regular contact with the child for at least 12 consecutive months** that resulted in a strong and meaningful relationship with the child.
- (2) Any other facts that establish that the loss of the relationship between the petitioner and the child is likely to harm the child.

Grandparent Visitation (HB334)

- To establish that visitation with the petitioner is in the **best interest of the child**, the petitioner shall prove **all of the following**:
 - (1) That the petitioner has the capacity to give the child love, affection, and guidance.
 - (2) That the loss of an opportunity to maintain a significant and viable relationship between the petitioner and the child has caused or is reasonably likely to cause harm to the child.
 - (3) That the petitioner is willing to cooperate with the parent or parents if visitation with the child is allowed.

Grandparent Visitation (HB334)

- Courts may grant temporary visitation pending a final order under limited circumstances.
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- Also, the court has the discretion to award any party reasonable expenses incurred by or on behalf of the party.
- **Effective Date: Aug. 1, 2016**

Grandparent Visitation (HB334)

This act does **NOT replace** the
grandparent statute in
Title 26 [Adoption].

Grandparent Visitation (HB334)

This act does **NOT replace** the
grandparent statute in
Title 12.

Common Law Marriage (HB332)

- Does away with the ability to form or establish a common law marriage in Alabama after **January 1, 2017**
- An otherwise valid common-law marriage entered into in Alabama before January 1, 2017, shall continue to be valid in this state.

Common Law Marriage (HB332)

Must prove that all of the elements of a common law marriage existed **prior to January 1, 2017** when a party is asserting a marriage relationship exists based on an Alabama Common Law marriage.

Common Law Marriage (HB332)

The current elements required to establish the existence of a common law marriage:

- (a) Capacity;
- (b) Present, mutual agreement to permanently enter the marriage relationship to the exclusion of all other relationships; and
- (c) Public recognition of the relationship as a marriage, public assumption of marital duties, and cohabitation.

Protection of Vulnerable Adults from Financial Exploitation Act (SB220)

- **Requires qualified individuals** who reasonably believe that financial exploitation of a vulnerable adult may have occurred, been attempted, or is being attempted, **to notify promptly the Department of Human Resources and the Alabama Securities Commission.**
- Authorizes the disclosure to third parties in certain instances where a vulnerable adult has some relationship.
- Prohibit disclosure to the third party if the qualified individual suspects the third party of the financial exploitation.

Successor Guardianships In Juvenile Cases

(Act 2016-129, SB 95)

- Relating to foster care and kinship guardianship [Juvenile Court].
- Provides for the appointment of successor guardianships when a kinship guardian dies or is incapacitated.

Effective Date: July 1,2016

Guardianship Visitation Rights Act 2016-404, HB99

- Amends Section 26-2A-108, to establish a procedure by which a relative who has been isolated from an incapacitated family member who is the subject of a guardianship may petition the court with jurisdiction over the guardianship for reasonable visitation rights.
- **EFFECTIVE DATE:** January 1, 2017

Power to Limit Visitation

§26-2A-108

- (b) **Except as provided in Division 2A,**
- In addition to the duties, powers, and responsibilities of a guardian described in subsection (a),
- **A guardian of an incapacitated person has the power to limit or enforce the ward's right to visitation** or communication with anyone, including the right to receive visitors, telephone calls, and personal mail

Division 2A. [§26-2A-112-117]

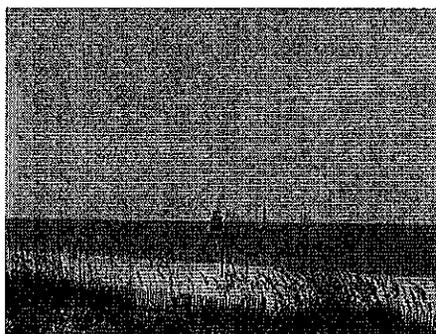
Visitation with Incapacitated Persons.

- **RELATIVE.** A sibling, child, parent, grandparent, or grandchild of a ward or a person who shares this same relationship through adoption or a spouse of the ward.
- **VISITATION ORDER.** An order issued by the court after notice and hearing regarding the visitation with a ward by his or her relative specifying the approval or disapproval of any visitation and the specifics of that visitation including, but not limited to, the time, place, and manner of the visitation.
- **WARD.** An adult who is a ward as defined in Section 26-2A-20.

Caregiver Immunity (HB55)

- Provides civil immunity for persons who are volunteer caregivers.

The End



- 2017
- Proposed Legislation

RETIREMENT BENEFITS
UPON DIVORCE

- PROPOSED ACT

§30-2-51 (b).

- **Eliminates the requirement** that the parties have been **married for 10 years** before the court may award retirement benefits.

§30-2-51 (b).

- Allows the court to use any equitable method of valuing, dividing, or distributing to benefits.
- **Unless parties agree otherwise**, non-covered spouse could receive **no more than 50 percent** of the benefits considered by the court.

§30-2-51 (b).

- (b)(2) **Burden of Proof** on party asserting that all or a portion of his or her retirement benefits **should be excluded** from the marital estate *including*:
 - the amount of the excluded interest; and
 - any active or passive income or appreciation on that interest.

§30-2-51 (d)

- **Each party bears equally** the burden or benefit of **passive appreciation or depreciation** of the retirements during the time between the award of benefits and their distribution.

§30-2-51 (e)

- (e) a court may enter any order designed to protect or preserve the legal interest of either spouse in retirement benefits, including any order to prevent, or to compensate a spouse for, the deprivation or dissipation of a legal share of any retirement benefits due to the act or omission of the other spouse.
- Retirement benefits are **not modifiable.**

ALIMONY

- PROPOSED ACT

Interim Alimony

- Section 1. (a)(1)
- the court may award either spouse interim alimony based upon a showing of **all of the following**:
 - a. The spouse maintains the validity of the marriage.
 - b. The spouse **needs interim alimony**, after taking into consideration any other financial contributions provided by the other spouse pursuant to other interim orders of the court.
 - c. The other spouse has the **ability to pay** interim alimony.

Interim Alimony

- (2) An award of interim alimony may be made **retroactive** to the date of the filing of the complaint.
- The amount awarded shall be based on the applicable factors for awarding rehabilitative or periodic alimony as established in subsections (d), (e), and (f) of Section 2.
- (b) An order awarding interim alimony may be terminated or prospectively modified at any time prior to the entry of a final judgment for good cause shown.

Funds to pursue or defend action

- (d) the court may award out of the marital property or current income:
 - reasonable interim fees;
 - costs, and litigation expenses, including discovery, expert witnesses, guardians ad litem, special masters; **and attorney fees.**

to enable each party to have **equitable access to the marital property to pursue or defend the action.**

Rehabilitative Or Periodic Alimony

- Section 2. (a) the court shall award either rehabilitative or periodic alimony as provided in subsection (b), if the court expressly **FINDS ALL** of the following:
- (1) **A party lacks a separate estate** or his or her separate **estate is in sufficient** to enable the party to acquire the ability to **preserve**, to the extent possible, the economic status quo of the parties as it existed during the marriage.
- (2) The other party has the **ability to supply** those means without **undue economic hardship.**
- (3) The circumstances of the case make it **equitable.**

Rehabilitative Alimony

- (b) If a party has met the requirements of subsection (a) of this section, the court shall award alimony in the following **priority**:
- (1) Unless the court expressly finds that **rehabilitative alimony** is not feasible, the court shall award rehabilitative alimony to the party for a limited duration, **not to exceed five years, absent extraordinary circumstances**, of an amount to enable the party to acquire the ability to preserve, to the extent possible, the **economic status quo** of the parties as it existed during the marriage.

Periodic Alimony

- (2) If rehabilitation is **not feasible**, a **good-faith attempt** at rehabilitation **fails**, or good-faith rehabilitation only enables the party to **partially acquire the marital economic status quo**:
- the court **shall award the party periodic installments** of alimony for a duration and an amount to allow the party to **preserve, to the extent possible, the economic status quo** of the parties as it existed during the marriage as provided in subsection (g) of Section 2.

Reservation of award of alimony

- (c) If a party should get periodic alimony but the other party does not have the current ability to pay periodic alimony, when equitable, the court shall **reserve jurisdiction** to award rehabilitative or periodic alimony.
- If there is **neither an award of alimony nor a reservation of jurisdiction** at the time of the divorce, the court **shall permanently lose jurisdiction** to subsequently make an award of rehabilitative or periodic alimony.

Factors

- The bill list the factors for the court to consider when determining:
- 1. If one party has sufficient separate estate to preserve economic status quo without receiving alimony;
- 2. If other party has the **ability to pay alimony**;
- 3. Whether award of rehabilitative or periodic alimony is **equitable**.

Duration Limitation

- (g) Unless equity requires a deviation from the time limitations, a person shall be eligible for periodic **alimony for a period not to exceed the length of the marriage**, as of the date of the filing of the complaint.
- **Exception:** if a party is **married for 20 years or longer**, there shall be **no time limit** as to his or her eligibility.

Modification and Termination

- (h) An order awarding rehabilitative or periodic alimony may be **modified** based upon application and a showing of **material change in circumstances**.
- Rehabilitative or periodic alimony awarded under this section terminates as provided in Section 30-2-55, Code of Alabama 1975, or upon the **death of either spouse**.

Application of Act

- This act governs only actions for divorce, legal separation, or annulment **pending on or filed after the effective date of this act.**
- **This act does not govern any actions concerning alimony in any case concerning divorce, legal separation, or annulment that was filed before the effective date of this act.**

CUSTODY AMENDMENTS Bill

- Amends and expands the current joint custody statutory law to all parental custody arrangements.

CUSTODY ARRANGEMENTS:

- Abolishes the concepts of one parent being awarded sole physical custody and the other parent being awarded visitation.
- That concept is replaced with the concept that if the parents are not awarded joint physical custody, then one parent will have primary physical custody and the other parent will be the **non-residential custodial parent** or will have **restricted physical custody**.

PARENTING PLANS:

- **Existing law:** Both parents are required to submit a parenting plan to the court only if they both seek joint physical custody.
- **Proposed:** Both parents are required to submit parenting plans in all custody cases.
- If both parents submit to the court the same parenting plan, that parenting plan shall be granted in the final court order unless the court makes specific findings as to why the parenting plan jointly submitted by the parties should not granted.

FACTORS:

- Enumerates the factors that the court shall consider when determining whether to award joint physical custody.
- Enumerates the factors to be used to determine which parent shall be designated as the parent with primary physical custody if joint custody is not awarded.

REMEDIES:

- Provides additional remedies to a party when a parent, without proper cause, fails to adhere to the time-sharing schedule in a parenting plan.
- **Make-up parenting time and reimbursement for costs and attorney fees** are among the remedies available when a parent violates the time-sharing schedule in a parenting plan.

Model Parenting Plans

- White Plans [Joint Custody]
- Blue Plans [Primary Physical Custody and Nonresidential Custody]
- Red Plans [Primary Physical Custody and Restricted Custody]

Model Parenting Plans and Handbooks

Age Specific Plans

Plan A: Birth to Age 3

Plan B: Pre-school [Ages 4-5]

Plan C: Elementary and Middle School [Ages 6-12]

Plan D: Teenagers [Ages 13-19]

Happy Trails



