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Senator pushes for grandparents' rights

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When Wendell Turner and his wife showed up at a Wichita courtroom for their grandsons' custody hearing, the two young boys broke away from their keeper and ran into their grandparents' arms the minute they spotted them.

The children, Barry and Troy, had spent nearly a week at the Wichita Children's Home after police removed them from their father's residence.

"How did you know where we were?" Troy, the younger of the two, asked his grandparents.

Recently Turner found himself recounting the scene before a Kansas Senate committee, almost five years after it happened.

"That poor little boy thought he was lost forever," Turner told the committee. "The keeper said we have to go see the judge, and that was the last time we saw them for a month."

Turner's story about his long journey to secure his grandchildren was part of emotional testimony for a bill sponsored by Sen. Oletha Faust-Goudeau, D-Wichita, that would give grandparents first priority in custody hearings.

Some lawyers feared the measure would impede the courts' ability to make difficult decisions in the best interest of the child, concerns that were reflected in the watered-down version of the bill that ultimately passed the Senate 40-0 last week.

Faust-Goudeau's original bill stated that grandparents "shall receive preference" in custody cases. By the time it cleared the Senate Federal and State Committee, that wording had been changed to "may receive consideration," partially on the advice of Sen. Tim Owens, R-Overland Park, a lawyer specializing in family law.

Faust-Goudeau reached a compromise on the Senate floor that left the final wording "shall receive consideration."

Ron Nelson, a prominent family practice lawyer in Lenexa, said that isn't much different from current law, in which grandparents and other close relatives are considered "interested parties." But Nelson said he and other lawyers who have contacted him still have some concerns.

One concern is that the bill appears to give grandparents an edge even if there is another noncustodial parent who still has a constitutional right to custody.

"A fit parent has absolute right to decide matters regarding their children," Nelson said. "So if one parent's rights are terminated and the other parent's rights are not terminated, the grandparents can't gain any more rights, or necessarily any custody rights, because of the fact that one parent's rights are terminated."

Nelson said when both parents' rights are terminated, the court's job is to find the best home for children, which isn't always with their grandparents.

Faust-Goudeau said the bill is simply meant to give grandparents a fair shake in a legal world that she said is too often prejudiced against them.

"There's a perception out there that 'the apple doesn't fall far from the tree,' and so why even look at grandparents (for custody) if they raised a child that the courts had to take a child away from," she said. "Well, we all know you could have three children and one becomes a doctor, one becomes a lawyer and the other just goes their way for whatever reason."

Faust-Goudeau said judges also often look upon grandparents as too old to raise their grandchildren.

But Nelson said the law is written to preclude judges from making custody decisions on those type of prejudicial grounds, and a good lawyer would object to them or overcome them in an appellate court. He pointed to a recent appeals court decision that overturned a ruling that relied on the "apple-doesn't-fall-far-from-the-tree" philosophy.

Though Nelson said judges occasionally make mistakes, the authority to decide custody questions should still ultimately reside with them, if those questions can't be resolved out of court.

"Over the last probably 10 or 15 years, the Legislature has wanted to have more and more power over how judges decide individual cases," Nelson said. "Statutes don't do that well, especially when you're dealing with families and custody and all the variations that can happen with family law."

Turner said he and his wife ultimately dipped into their retirement savings to hire a lawyer to help them with their custody battle — and none too soon.

Until the Turners objected, the nonprofit child welfare agency that was fostering Barry and Troy had recommended that the boys be sent to live with one of Barry's sixth-grade teachers — a teacher named Rick Pendland, who Turner said would often call his house when the boys were there and ask if Barry could go swimming, which Turner thought was odd (he always denied permission).

Pendland was arrested in Sedgwick County in September on charges of molesting two other boys under the age of 14.

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