

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1565

BY: LARASON

AS INTRODUCED

AN ACT RELATING TO CUSTODY; AMENDING 10 O.S. 1981, SECTION 21, AS AMENDED BY SECTION 1, CHAPTER 269, O.S.L. 1983 AND RENUMBERED BY SECTION 3, CHAPTER 171, O.S.L. 1990 (43 O.S. SUPP. 1990, SECTION 112.1), WHICH RELATES TO CUSTODY OF CERTAIN CHILDREN; AMENDING SECTION 2, CHAPTER 269, O.S.L. 1983, AS AMENDED BY SECTION 5, CHAPTER 238, O.S.L. 1988 (10 O.S. SUPP. 1990, SECTION 21.1), WHICH RELATES TO CUSTODY AND ORDER OF PREFERENCE FOR CUSTODY; AMENDING 12 O.S. 1981, SECTION 1275, AS RENUMBERED BY SECTION 1, CHAPTER 333, O.S.L. 1989, 1276, AS RENUMBERED BY SECTION 1, CHAPTER 333, O.S.L. 1989, AND 1277.1, AS AMENDED BY SECTION 1, CHAPTER 196, O.S.L. 1986 AND RENUMBERED BY SECTION 1, CHAPTER 333, O.S.L. 1989 (43 O.S. SUPP. 1990, SECTIONS 108, 110 AND 113), WHICH RELATE TO ORDERS CONCERNING CUSTODY OF CHILDREN; PRESCRIBING FACTORS IN DETERMINING CUSTODY OF A CHILD; PROVIDING FOR PREFERENCE OF THE CHILD; DIRECTING COURTS TO BE GUIDED BY CERTAIN RULES; REPEALING SECTION 4, CHAPTER 188, O.S.L. 1990, WHICH RELATES TO RECODIFICATION OF A STATUTE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 269, O.S.L. 1983, as amended by Section 5, Chapter 238, O.S.L. 1988 (10 O.S. Supp. 1990, Section 21.1), is amended to read as follows:

Section 21.1 A. Custody should be awarded or a guardian appointed in the following order of preference according to the best interests of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection B of this section;
2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent;
5. the person in whose home the child has been living in a wholesome and stable environment; or
6. any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. 1. In determining custody of a minor child pursuant to this section, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court may consider the following relevant factors:

- a. The emotional ties between the child and other family members;
- b. The interest of the parties in and attitude toward the child;
- c. The desirability of continuing an existing relationship; and
- d. The occurrence of domestic abuse between a family or household member by another family or household

member. For purposes of the provisions of this subparagraph the term family or household member means spouses, exspouses, parents, children, persons otherwise related by blood or marriage or persons living in the same household or who formerly shared the same residence. The term "domestic abuse" shall be defined as such term is defined by Section 60.1 of Title 22 of the Oklahoma Statutes.

2. The best interests and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in paragraph 1 of this subsection, or any other relevant factor, and relying on it to the exclusion of other factors.

3. In determining custody of a minor child pursuant to this section, the court shall consider the conduct, marital status or income of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child.

4. The family or household member who has committed an act of domestic abuse has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

~~B.~~ C. When a parent having physical custody and providing support to a child becomes deceased, in awarding custody or appointing as guardian of the child the noncustodial parent, the court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:

a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating

responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the court finds it would be detrimental to the health or safety of the child for the noncustodial parent to have custody or be appointed guardian.

~~C.~~ D. Pursuant to the provisions of Section 113 of Title 43 of the Oklahoma Statutes, the court may consider the preference of the child in awarding custody of said child if the child is of sufficient age to form an intelligent preference.

SECTION 2. AMENDATORY 10 O.S. 1981, Section 21, as amended by Section 1, Chapter 269, O.S.L. 1983, and as renumbered by Section 3, Chapter 171, O.S.L. 1990 (43 O.S. Supp. 1990, Section 112.1), is amended to read as follows:

Section 112.1 If the parents of a minor unmarried child are separated without being divorced, the judge of the district court, upon application of either parent, may issue any civil process necessary to inquire into the custody of said minor unmarried child. The court may award the custody of said child to either party or both, in accordance with the best interests of the child, for such time and pursuant to such regulations as the case may require. The decision of the judge shall be guided by the rules prescribed in ~~Section 2 of this act~~ 21.1 of Title 10 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 12 O.S. 1981, Section 1275, as renumbered by Section 1, Chapter 333, O.S.L. 1989 (43 O.S. Supp. 1990, Section 108), is amended to read as follows:

Section 108. A. That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce, but if a divorce is granted in such circumstances, it shall be granted to both parties.

B. In any such case or where the court grants alimony without a divorce or in any case where a divorce is refused, the court may for good cause shown make such order as may be proper for:

1. the custody, maintenance and education of the children; and
2. for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties.

C. In determining custody of a child, the court shall be guided by the rules prescribed in Section 21.1 of Title 10 and Section 112 of Title 43 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 12 O.S. 1981, Section 1276, as renumbered by Section 1, Chapter 333, O.S.L. 1989 (43 O.S. Supp. 1990, Section 110), is amended to read as follows:

Section 110. A. After a petition has been filed in an action for divorce and alimony, or for alimony alone, the court, or a judge thereof in vacation, may make and enforce by attachment such order to restrain the disposition of the property of the parties or of either of them, and for the use, management, and control thereof, or for the ~~control~~ custody and support of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and ~~may~~ also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, ~~on~~ In determining the custody of a child, the court

shall be guided by the rules prescribed in Section 21.1 of Title 10 and Section 112 of Title 43 of the Oklahoma Statutes.

B. Upon granting a divorce in favor of the wife or the husband, or both, the court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each, ~~provided further, that~~ the.

C. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys.

Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.

SECTION 5. AMENDATORY 12 O.S. 1981, Section 1277.1, as amended by Section 1, Chapter 196, O.S.L. 1986 and renumbered by Section 1, Chapter 333, O.S.L. 1989 (43 O.S. Supp. 1990, Section 113), is amended to read as follows:

Section 113. A. In any action for divorce, legal separation, or annulment in which a court must determine custody or limits of or period of visitation, the child may express a preference as to which of its parents the child wishes to have custody. The court may determine whether the best interest of the child will be served by the child's expression of preference as to which parent should have custody or limits of or period of visitation rights of either parent. If the court so finds, the child may express such preference or give other testimony. The court may consider the

expression of preference or other testimony of the child in determining custody or limits of or period of visitation. Provided, however, the court shall not be bound by the child's choice and may take other facts into consideration in awarding custody or limits of or period of visitation. In determining custody of the child, in addition to the provisions of this subsection, the court shall be guided by the rules prescribed in Section 21.1 of Title 10 and Section 112 of Title 43 of the Oklahoma Statutes.

B. If the child expresses a preference or gives testimony, such preference or testimony may be taken by the court in chambers, with or without the parents or other parties present, at the court's discretion. If attorneys are not allowed to be present, the court shall state, for the record, the reasons for their exclusion. At the request of either party, a record shall be made of any such proceeding in chambers.

SECTION 6. REPEALER Section 4, Chapter 188, O.S.L. 1990, is hereby repealed.

SECTION 7. This act shall become effective September 1, 1991.

43-1-6047 KSM