STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2048 BY: DAVIS

AS INTRODUCED

AN ACT RELATING TO MARRIAGE AND FAMILY; AMENDING 43 O.S. 1991, SECTIONS 110, 112, AND 112.1, WHICH RELATE TO DIVORCE; PROVIDING FOR ISSUANCE OF CERTAIN EX PARTE ORDERS; MODIFYING TIME PERIOD FOR HEARINGS ON CERTAIN ORDERS; PROVIDING FOR ORDERS FOR TEMPORARY CUSTODY FOR SPECIFIED REASONS; PROVIDING FOR TESTIMONY AND EVIDENCE; REPEALING 43 O.S. 1991, SECTION 109.1, WHICH RELATES TO CHILD PREFERENCE AND WHICH IS A DUPLICATE STATUTE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 43 O.S. 1991, 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:

1. 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 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~~

2. make such order relative to the expenses of the suit as will ~~insure~~ ensure an efficient preparation of the case~~; and, on~~.

B. On 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~~. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, 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~~ Except ex parte orders for the temporary custody of children, pursuant to Section 112 or 112.1 of this title, 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 2. AMENDATORY 43 O.S. 1991, Section 112, is amended to read as follows:

Section 112. A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are such children, the court:

1. shall make provision for guardianship, custody, medical care, support and education of the minor children,

2. unless not in the best interests of the minor children, may provide for the visitation of the noncustodial parent with any of the children of such noncustodial parent,

3. may modify or change any order whenever circumstances render such change proper either before or after final judgment in the action, provided that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or such entity.

B. In awarding the custody of a minor unmarried child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 21.1 of Title 10 of the Oklahoma Statutes and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of the child, the court shall:

a. assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of a child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents. To this effect, in making an order for custody to either parent, the court:

a. may consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and

b. shall not prefer a parent as a custodian because of the gender of that parent.

4. In making an order for custody, the court may specify that:

a. unless there is a prior written agreement to change the permanent residence of the child either parent shall notify the other parent if such parent plans to change the permanent residence of the child.

b. the noncustodial parent is to notify the custodial parent if such noncustodial parent plans to change permanent residence.

D. If there is an imminent danger that the child will be removed from the jurisdiction of the court or concealed within the court's jurisdiction from either parent, or that the child is in danger of being the victim of domestic abuse prior to a hearing on the petition or cross-petition for a divorce, legal separation or annulment, upon petition by a party, the court may issue an ex parte order granting temporary custody of the child to either party, in accordance with the best interests of the child for such time and pursuant to such regulations as the court may require. Provided that such order shall contain a provision allowing the opposing party an opportunity to appear on a date certain not more than ten (10) days thereafter and show good cause why such order should not remain in full force and effect. Prior to issuance of any such order, the court may take testimony and hear evidence as to the danger or likelihood of removal of the child from the jurisdiction of the court.

E. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years.

~~E.~~ F. In any case in which provision is made for the custody or support of a minor child after November 1, 1990, the court may determine whether public assistance money has been provided by the Department of Human Services for the benefit of each such minor child. If public assistance money has been provided for the benefit of the minor child since the date of the last child support order, the Department of Human Services is a necessary party for just adjudication and establishment of the debt due and owing the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes.

~~F.~~ G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support, if any.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 112.1, is amended to read as follows:

Section 112.1 A. 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.

B. If there is an imminent danger that the child will be removed from the jurisdiction of the court or concealed within the court's jurisdiction from either parent, or that the child is in danger of being the victim of domestic abuse prior to a hearing on the application, the court may issue an ex parte order granting temporary custody of the child to either party, in accordance with the best interests of the child for such time and pursuant to such regulations as the court may require. Provided that such order

shall allow the opposing party an opportunity to appear on a date certain not more than ten (10) days thereafter and show good cause why such order should not remain in full force and effect. Prior to issuance of any such order, the court may take testimony and hear evidence as to the danger or likelihood of removal of the child from the jurisdiction of the court.

SECTION 4. REPEALER 43 O.S. 1991, Section 109.1, is hereby repealed.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-7388 KSM