

U*****

SHORT TITLE: Child custody; creating presumption for joint custody.
Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 881

By: Ford

AS INTRODUCED

An Act relating to child custody; amending Section 1, Chapter 243, O.S.L. 1992, as last amended by Section 7, Chapter 131, O.S.L. 1996, and 43 O.S. 1991, Section 111.1 (43 O.S. Supp. 1997, Section 107.1), which relate to actions involving custody of minor children and visitation; modifying and clarifying language; creating presumption for joint custody; providing factors to be shown to overcome certain presumption; prohibiting consideration of certain factors when determining custody of child; providing for contents of certain orders; requiring court approval of certain parenting plan; providing procedure where custody is contested; providing for access to certain records; defining terms; requiring order establishing periods of responsibility for joint custodial parents; providing penalty for violation of order establishing responsibility; providing for mediation or court hearing upon violation of certain order; authorizing certain orders upon violation of certain order; providing for certain form; clarifying certain rights of certain parties; authorizing modification of prior orders under certain circumstances; conforming language; repealing 43 O.S. 1991, Sections 109 and 112, as last amended by Section 10, Chapter 403, O.S.L.

1997 (43 O.S. Supp. 1997, Section 112), and Section 10, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 1997, Section 1010.10), which relate to care and custody of children; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 1, Chapter 243, O.S.L. 1992, as last amended by Section 7, Chapter 131, O.S.L. 1996 (43 O.S. Supp. 1997, Section 107.1), is amended to read as follows:

Section 107.1 A. 1. In an action for divorce or such other action where there are minor children involved, the court shall not issue a final order thereon for at least ninety (90) days from the date of filing the petition which ninety (90) days may be waived by the court for good cause shown and without objection by either party.

2. The court may require that within the ninety-day period specified by paragraph 1 of this subsection, the parties attend and complete an educational program specified by Section § 107.7 of this ~~act~~ title, and complete a parenting plan as specified by Section 2 of this act.

B. This section shall not apply to divorces filed for any of the following causes:

1. Abandonment for one (1) year;
2. Extreme cruelty;
3. Habitual drunkenness;
4. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;

5. The procurement of a final divorce decree outside this state by a husband or wife which does not in this state release the other party from the obligations of the marriage; and

6. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or an inmate of a state institution for the insane in some other state for such period, or an inmate of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery.

C. After a petition has been filed in an action for divorce where there are minor children involved, the court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 110 of this title, to be enforced during the pendency of the action, as may be right and proper.

D. The court may issue a final order in an action for divorce where minor children are involved before the ninety-day time period set forth in subsection A of this section has expired, if the parties voluntarily participate in marital or family counseling and the court finds reconciliation is unlikely.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 107.4 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. There shall be a presumption that joint custody is in the best interest of a child in any initial custody determination. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for a prior custody order, unless there has been a substantial and material change in circumstances since the entry of the prior custody order, which change affects the welfare of the child, such that joint custody is presently in the best interest of the child. With respect to any proceeding in which it is proposed that joint custody be terminated, the court shall not terminate

joint custody unless there has been a substantial and material change in circumstances affecting the welfare of the child since entry of the joint custody order, such that joint custody is no longer in the best interest of the child.

B. The presumption for joint custody may be overcome by a showing of one or more of the following factors:

1. Whether the child has established or has been allowed to establish a close relationship with each parent;

2. Whether each parent is capable of providing adequate care for the child throughout each period of responsibility, including arranging for the child's care by others as needed;

3. Whether each parent is willing to accept all responsibilities of parenting, including a willingness to accept care of the child at specified times and to relinquish care to the other parent at specified times;

4. Whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether a child's development will profit from such involvement and influence with both parents;

5. Whether each parent is able to allow the other to provide care without intrusion, that is, to respect the other's parental rights and responsibilities and his or her right to privacy;

6. The suitability of a parenting plan for the implementation of joint custody, preferably a plan developed through parental agreement or through mediation;

7. Geographic distance between the parent's residences, and each parent's willingness and ability to travel and transport the child for periods of responsibility; and

8. Willingness or ability of the parents to communicate, cooperate, or agree on issues regarding the child's needs.

C. In any proceeding in which the custody of a child is at issue and joint custody is not ordered, the court shall not prefer

one parent as a custodian solely because of gender, race, or religion.

D. In making an order for joint custody, the court may specify the circumstances, if any, under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent.

E. 1. When joint custody is awarded, the court shall approve a parenting plan for the implementation of the prospective custody arrangements prior to the award of joint custody. The parenting plan shall include a division of a child's time and care into periods of responsibility for each parent. It may also include:

- a. determinations regarding the child's religion, education, child care, recreational activities, and medical and dental care;
- b. designation of specific decision-making responsibilities;
- c. methods for communicating information about the child, transporting the child, exchanging care for the child, and maintaining telephone and mail contact between each parent and the child;
- d. procedures for future decision-making, including procedures for dispute resolution; and
- e. other determinations regarding the welfare of the child or statements to clarify and facilitate parenting under joint custody arrangements.

2. In a case where the parties do not agree to joint custody, or where aspects of the parenting plan are contested, the parties shall each submit parenting plans. The court may accept the plan proposed by either party, or it may combine or revise these plans as it deems necessary in the child's best interest, or it may order the parties to attend professional mediation on the specific contested issues to reach complete agreement on the parenting plan. The time

of filing of parenting plans shall be set by local court rule. A plan adopted by the court shall be entered as an order of the court.

F. Where a custody order is contested, the court shall refer that issue to mediation if feasible. The court may also order auxiliary services such as professional evaluations.

G. Notwithstanding any other provisions of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because that parent is not the child's physical custodial parent or because that parent is not a joint custodial parent.

H. Joint custody means:

1. Each parent shall have specified periods of responsibility for the child;

2. The parents shall consult with each other on major decisions involving the child before implementing those decisions. Neither parent shall make a decision or take an action which results in a major change in a child's life until the matter has been discussed with the other parent and the parents agree. If the parents, after discussion, cannot agree and if one parent wishes to effect a major change while the other does not wish the major change to occur, then no change shall occur until the issue has been resolved as provided in this subsection;

3. The following guidelines shall apply to the following major changes in a child's life:

a. if either parent plans to change his or her home city or state of residence, he or she shall notify the other parent in writing thirty (30) days prior to the change. The notice shall contain the date and destination,

b. the religious denomination and religious activities of the child, or lack thereof, which were being practiced

during the marriage should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection,

- c. the type of education, public or private, which was in place during the marriage should continue, whenever possible, and school districts should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection, and
- d. each parent has authority to make emergency medical decisions. Neither parent may contract for major elective medical or dental treatment unless both parents agree or it has been otherwise resolved as provided in this subsection, and

4. Decisions regarding major changes in a child's life may be decided by:

- a. agreement between the joint custodial parents,
- b. participation by the joint custodial parents in family counseling, professional conciliation, or mediation services to assist in resolving differences,
- c. agreement by the joint custodial parents to submit the dispute to binding arbitration,
- d. judicial allocation of responsibility for a particular major decision area to one parent,
- e. termination of joint custody and award of sole custody to one parent, or
- f. the district court.

I. No person other than a natural or adoptive parent shall be awarded custody absent a showing of unfitness of the natural or adoptive parent.

J. As used in this section:

- 1. "Child" means a person under eighteen (18) years of age;

2. "Custody" means physical custody of a child along with the authority and responsibility to make major decisions in the child's best interest in the areas of residence, medical and dental treatment, education or child care, religion, and recreation;

3. "Joint custody" means an order of the court awarding custody of a child to both parents. Joint custody does not imply equal division of the child's time between the parents, or an equal division of financial responsibility for the child;

4. "Parent" means a person who has or shares legal custody of a child;

5. "Parenting plan" means a document submitted for approval of the court setting forth the responsibilities of each parent individually and the parents jointly in a joint custody arrangement;

6. "Period of responsibility" is a specified time period during which a parent is responsible for providing a child's physical, developmental, and emotional needs, including the decision-making required in daily living. Specified periods of responsibility shall not be changed except by the methods of decision-making described in paragraph 4 of subsection H of this section;

7. "Sole custody" means an order of the court awarding custody of a child to one parent;

8. "Visitation" is a period of time available to a noncustodial parent under a sole custody arrangement during which a child resides with or is under the care and control of the noncustodial parent; and

9. "Mediation" means a session with both parents present and with a licensed mediator experienced in mediating the contested specifics of the case at hand, designed to facilitate the parties' agreement concerning the contested specifics of the case.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 111.1, is amended to read as follows:

Section 111.1 A. Any order providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent, or any order providing for established periods of responsibility pursuant to a parenting plan of joint custody, shall provide a specified minimum amount of visitation between the noncustodial parent and the child or specific periods of responsibility for the joint custodial parents and the child unless the court determines otherwise. Except for good cause shown and when in the best interests of the child, ~~the~~ an order shall encourage additional visitations of the noncustodial parent and the child, and liberal periods of responsibility for joint custodial parents and the child, and in addition encourage liberal telephone communications and postal communications between the noncustodial parent and the child, and the joint custodial parents and the child.

B. Violation of an order providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent, or violation of an order providing for established periods of responsibility pursuant to a parenting plan of joint custody, may be enforced by the noncustodial parent or a joint custodial parent by indirect civil contempt. Unless the custodial parent or joint custodial parent establishes good cause for noncompliance, the noncustodial parent or the joint custodial parent seeking to enforce an order shall be entitled to recover court costs and attorney fees expended in enforcing the order.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 111.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. When a parent has been granted visitation rights, or rights concerning established periods of responsibility, and such rights are denied or interfered with by the other parent, the parent denied visitation rights or custody may file with the court clerk a motion for enforcement of visitation or custody rights. The motion shall

be filed on a form provided by the court clerk. Upon filing of the motion, the court shall immediately:

1. Issue ex parte an order for mediation pursuant to the provisions of the Dispute Resolution Act; or

2. Set a hearing on the motion, which shall be not more than twenty-one (21) days after the filing of the motion.

B. Within five (5) days of termination of mediation ordered pursuant to paragraph 1 of subsection A of this section, the mediator shall submit the record of termination a summary of the parties' agreement, if any, to the court. Upon receipt of the record of termination, the court shall enter an order in accordance with the parties' agreement or set the matter for hearing, which shall be not more than ten (10) days after the record of termination is received by the court.

C. Notice of hearing shall be given to all interested parties by certified mail, return receipt requested, or as ordered by the court.

D. If the court finds that visitation rights or periods of responsibility of one parent have been unreasonably denied or interfered with by the other parent, the court shall enter an order providing for one or more of the following:

1. A specific visitation or period of responsibility schedule;

2. Compensating time for which visitation or period of responsibility was denied or interfered with, such time shall be of the same type (e.g., holiday, weekday, weekend, summer) as that denied or interfered with and shall be at the convenience of the parent whose visitation or period of responsibility was denied or interfered with;

3. The posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation or period of responsibility rights;

4. Assessment of reasonable attorney fees, mediation costs, and court costs to enforce visitation or period of responsibility rights against the parent who unreasonably denied or interfered with the other parent's visitation or period of responsibility rights;

5. Attendance of one or both parents at counseling or education sessions which focus on the impact on children of visitation or period of responsibility disputes;

6. Supervised visitation or period of responsibility; or

7. Any other remedy which the court considers appropriate.

E. Final disposition of a motion filed pursuant to this section shall take place no later than forty-five (45) days after the filing of the motion.

F. The Office of the Court Administrator shall develop the form required by subsection A of this section to be used for a motion to enforce visitation rights.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 111.4 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A parent not granted custody of a child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would seriously endanger the child's physical, mental, moral, or emotional health, pursuant to Section 111.1 of Title 43 of the Oklahoma Statutes.

B. Grandparents may be granted visitation rights pursuant to the provisions of Section 5 of Title 10 of the Oklahoma Statutes.

C. The court may modify an order granting or denying visitation or period of responsibility rights whenever modifications would serve the best interests of the child.

D. Repeated unreasonable denial of or interference with visitation rights or periods of responsibility granted to a parent pursuant to this act may be considered a material change of

circumstances which justifies modification of a prior order of child custody.

E. Repeated misuse of child support may be considered a material change of circumstances which justifies modification of a prior order of child custody.

SECTION 6. REPEALER 43 O.S. 1991, Sections 109 and 112, as last amended by Section 10, Chapter 403, O.S.L. 1997 (43 O.S. Supp. 1997, Section 112), and Section 10, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 1997, Section 1010.10), are hereby repealed.

SECTION 7. This act shall become effective November 1, 1998.

46-2-1844

KSM