

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2528:

Vaughn

AS INTRODUCED

An Act relating to marriage and family; amending 43 O.S. 2001, Sections 111.1 and 112.2, as last amended by Section 25, Chapter 3, O.S.L. 2003 (43 O.S. Supp. 2003, Section 112.2), which relate to visitation and custody determination; establishing and providing for a standard visitation schedule and advisory guidelines; providing circumstances when the standard visitation schedule can be modified and considered; requiring the Administrative Director of the Courts to establish a standard visitation schedule and advisory guidelines; providing for contents; authorizing court orders for certain testing; providing for enforcement; authorizing certain exemptions; removing requirement of a showing of ongoing domestic abuse; regarding certain determinations; amending 10 O.S. 2001, Section 21.1, as last amended by Section 3, Chapter 3, O.S.L. 2003 (10 O.S. Supp. Section 21.1), which relates to custody of a child; removing requirement of a showing of ongoing domestic abuse for certain determinations; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 43 O.S. 2001, Section 111.1, is amended to read as follows:

Section 111.1 A. 1. ~~Any~~ The provisions of this section shall apply on and after January 1, 2005.

B. Except for good cause shown, any order providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent shall provide a specified minimum amount of visitation between the noncustodial parent and the child unless the court determines otherwise pursuant to the provisions of this section and Section 2 of this act.

~~2. Except for good cause shown and when in the best interests of the child, the order shall encourage additional visitations of~~

~~the noncustodial parent and the child and in addition encourage liberal telephone communications between the noncustodial parent and the child.~~

~~B. C. 1. The court shall encourage the parties to agree upon a mutual visitation schedule.~~

~~2. If the parties are unable to agree upon a mutual visitation schedule, the court shall establish a visitation schedule consistent with:~~

- ~~a. the best interests of the child,~~
- ~~b. at a minimum, the standard visitation schedule developed by the Administrative Director of the Courts pursuant to Section 2 of this act, and~~
- ~~c. the advisory guidelines established by the Administrative Director of the Courts pursuant to Section 2 of this act.~~

~~3. The standard visitation schedule developed by the Administrative Director of the Courts pursuant to Section 2 of this act shall be considered to be the minimum visitation to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise, by a preponderance of the evidence, that more or less visitation time should be awarded based upon any of the following criteria:~~

- ~~a. visitation would endanger the child's physical health or significantly impair the child's emotional development,~~
- ~~b. the distance between the residency of the child and that of the noncustodial parent,~~
- ~~c. a services-recommended determination, a confirmed report - services recommended, or a confirmed report - court intervention report of child abuse has been made,~~

- d. the lack of demonstrated parenting skills without safeguards to ensure the well-being of the child during visitation,
- e. the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of visitation,
- f. the preference of the child if the court determines the child to be of sufficient maturity pursuant to Section 113 of this title,
- g. the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility,
- h. a substantial and chronic pattern of missing, canceling, or denying regularly scheduled visitation,
- i. the minimal duration of and lack of significant bonding in the child-parent relationship prior to the order for visitation,
- j. the visitation schedule of siblings, and
- k. any other criteria the court determines relevant to the best interests of the child.

D. 1. Except for good cause shown, when a noncustodial parent who is ordered to pay child support and who is awarded visitation rights fails to pay child support, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

2. When a custodial parent refuses to honor a noncustodial parent's visitation rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

~~E.~~ E. 1. Violation of an order providing for the payment of child support or providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent may be prosecuted as indirect civil contempt pursuant to Section 566 of

Title 21 of the Oklahoma Statutes or as otherwise deemed appropriate by the court.

2. Unless good cause is shown for the noncompliance, the prevailing party shall be entitled to recover court costs and attorney fees expended in enforcing the order and any other reasonable costs and expenses incurred in connection with the denied child support or denied visitation as authorized by the court.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 111.1A of Title 43, unless there is created a duplication in numbering, reads as follows:

A. By January 1, 2005, the Administrative Director of the Courts shall have established a standard visitation schedule and advisory guidelines for use by the district courts of this state when parties to any action concerning the custody of a child are unable to mutually agree upon a visitation schedule.

B. The standard visitation schedule shall include a minimum graduated visitation schedule for children under the age of five (5) years and a minimum graduated visitation schedule for children five (5) years of age through seventeen (17) years of age. In addition, the standard visitation schedule shall address:

1. Midweek and weekend time-sharing;
2. Differing geographical residences of the custodian and noncustodian of the child requesting visitation;
3. Holidays, including Friday and Monday holidays;
4. Summer vacation break;
5. Midterm school breaks;
6. Notice requirements and authorized reasons for cancellations of visitation;
7. Transportation and transportation costs, including pick up and return of the child;
8. Religious, school, and extracurricular activities;
9. Grandparent and relative contact;

10. The birthday of the child;
11. Sibling visitation schedules;
12. Special circumstances, including, but not limited to, emergencies; and
13. Any other standards deemed necessary by the Administrative Director of the Courts.

C. 1. The Administrative Director of the Courts shall establish advisory guidelines for the purpose of governing all visitation arrangements between parents.

2. The advisory guidelines include the following considerations:

- a. a preference for visitation schedules that are mutually agreed upon by both parents over a court-imposed solution,
- b. a visitation schedule shall be utilized to maximize the continuity and stability of the life of the child,
- c. special consideration shall be given by each parent to make the child available to attend family functions, including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule,
- d. the noncustodial parent shall pick up the child at the times specified and return the child at the times specified, and the regular school hours of the child shall not be interrupted,
- e. the custodial parent shall have the child ready for visitation at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned,

- f. the court may make alterations in the visitation schedule to reasonably accommodate the work schedule of both parents and may increase the visitation time allowed to the noncustodial parent but shall not diminish the standardized visitation schedule provided in Section 111.1 of Title 43 of the Oklahoma Statutes,
- g. the court may make alterations in the visitation schedule to reasonably accommodate the distance between the parties and the expense of exercising visitation,
- h. neither visitation nor child support is to be withheld due to the failure of either parent to comply with a court-ordered visitation schedule,
- i. the custodial parent shall notify the noncustodial parent within twenty-four (24) hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully,
- j. except for good cause shown, the noncustodial parent shall have access directly to all school reports including preschool and day care reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency,
- k. each parent shall provide the other parent with the current address and telephone number of the other parent within twenty-four (24) hours of any change,
- l. each parent shall permit and encourage liberal electronic contact during reasonable hours and uncensored mail privileges with the child,

- m. parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care,
- n. each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise, and
- o. each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

In any action in which the custody of or the visitation with a child is a relevant fact and at issue, the court may order the mother, the child or father to submit to blood, saliva, urine or any other test deemed necessary by the court in determining that the custody of or visitation with the child will be in the best interests of the child. If so ordered and any party refuses to submit to such tests, the court may enforce its order if the rights of others and the interests of justice so require unless such individual is found to have good cause for refusing to cooperate.

SECTION 4. AMENDATORY 43 O.S. 2001, Section 112.2, as last amended by Section 25, Chapter 3, O.S.L. 2003 (43 O.S. Supp. 2003, Section 112.2), is amended to read as follows:

Section 112.2 A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider for determining the custody of, guardianship of or the visitation with a child:

1. Evidence of ~~ongoing~~ domestic abuse which is properly brought before it. If the occurrence of ~~ongoing~~ domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person;

2. Evidence of child abuse as such term is defined by the Oklahoma Child Abuse Reporting and Prevention Act pursuant to this paragraph. If the parent requesting custody of a child has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or the child has been adjudicated deprived pursuant to the provisions of the Oklahoma Children's Code as a result of the acts of the parent requesting custody and the requesting parent has not successfully completed the service and treatment plan required by the court, there shall be a rebuttable presumption that it is not in the best interests of the child for such parent to have sole custody, guardianship or unsupervised visitation; and

3. Whether any person seeking custody or who has custody of, guardianship of or visitation with a child:

- a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
- b. is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or

c. is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes.

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to a person who is:

1. Subject to or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state;

2. Residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state; or

3. Residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 10 O.S. 2001, Section 21.1, as last amended by Section 3, Chapter 3, O.S.L. 2003 (10 O.S. Supp. 2003, 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 including but not limited to a foster parent; 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. Subject to subsection E of this section, when a parent having physical custody and providing support to a child becomes deceased or when the custody is judicially removed from such parent, the court may only deny the noncustodial parent custody of the child or guardianship of the child if:

1. a. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of custody or guardianship action, the noncustodial parent has willfully failed, refused, or neglected to contribute to the child's support:

(1) in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

(2) according to such parent's financial ability to contribute to the child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto, and

b. The denial of custody or guardianship is in the best interest of the child;

2. The noncustodial parent has abandoned the child as such term is defined by Section 7006-1.1 of this title;

3. The parental rights of the noncustodial parent have been terminated;

4. The noncustodial parent has been convicted of any crime defined by the Oklahoma Child Abuse Reporting and Prevention Act or any crime against public decency and morality pursuant to Title 21 of the Oklahoma Statutes;

5. The child has been adjudicated deprived pursuant to the Oklahoma Children's Code as a result of the actions of the noncustodial parent and such parent has not successfully completed any required service or treatment plan required by the court; or

6. 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. The court may consider the preference of the child in awarding custody of the child if the child is of sufficient age to form an intelligent preference.

D. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of ~~ongoing~~ domestic abuse which is properly brought before it. If the occurrence of ~~ongoing~~ domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person.

E. 1. In every case involving the custody of, guardianship of or visitation with a child, the court shall determine whether any individual seeking custody or who has custody of, guardianship of or visitation with a child:

- a. is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
- b. is residing with a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or
- c. is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes.

2. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to:

- a. a person who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state,
- b. a person who is residing with an individual who is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, or
- c. a person who is residing with a person who has been previously convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes.

SECTION 6. This act shall become effective July 1, 2004.

SECTION 7. 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.

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