

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2430

By: Kern

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Section 21.1, as last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp. 2005, Section 21.1), which relates to order of custody; modifying order of priority; providing for third party rights of custody to a child; making certain custody by operation of law or order of the court; specifying conditions for obtaining custody; amending 43 O.S. 2001, Section 112, as last amended by Section 22, Chapter 3, O.S.L. 2003 (43 O.S. Supp. 2005, Section 112), which relates to care and custody of children; authorizing court in certain circumstances to provide for grandparental custody or visitation; creating temporary guardianship of minors for educational, medical care and dental care; providing definitions; providing for ex parte orders; providing for notice; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 21.1, as last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp. 2005, Section 21.1), is amended to read as follows:

Section 21.1 A. Except as otherwise provided by this section, 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 this section;

2. A grandparent;

3. The person in whose home the child has been living in a wholesome and stable environment;

~~3-~~ 4. A person who was indicated by the wishes of a deceased parent;

~~4-~~ 5. 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. In addition to subsection ~~D~~ E of this section, when a parent having custody of a child becomes deceased ~~or~~, when custody of a child is judicially removed from the parent having custody of the child, or when a parent having custody of a child abandons the child to a third party, and the third party petitions the court for custody or guardianship of the child, 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 of the child:

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

Incidental or token financial contributions, visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child, 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 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 and the noncustodial parent has not successfully completed a service or treatment plan if 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. 1. It is presumed to be in the best interest of a child for a relative, as defined in Section 7001-1.3 of this title, of the child to receive custody of the child if:

a. the child is abandoned and left in the physical custody of the relative by a parent or the parents of the child with no physical contact between the parents and the child for one (1) year or more, excluding parents on active duty in the military, or

b. the custodial parent or parents, for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding any petition for custody of the child, have willfully failed, refused, or neglected to contribute to the support of the child:

- (1) in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support, or
- (2) according to the financial ability of the parent to contribute to the support of the child if no provision for support is provided in an order.

Incidental or token financial contributions, visits or communications shall not be construed or considered in establishing whether a parent has maintained or contributed to the support of the child.

2. Such custody shall be by operation of law or by order of a court of competent jurisdiction.

D. The court shall consider the preference of the child in awarding custody of the child pursuant to Section 113 of Title 43 of the Oklahoma Statutes.

~~D.~~ 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. has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
- c. is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency,

- d. has been convicted of domestic abuse within the past five (5) years,
- e. 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,
- f. is residing with a person who has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or
- g. is residing with a person who has been convicted of domestic abuse within the past five (5) years.

2. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody, or guardianship 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 has been convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes,
- c. an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency,
- d. a person who has been convicted of domestic abuse within the past five (5) years,

- e. 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,
- f. a person who is residing with a person who has been previously convicted of a crime listed in the Oklahoma Child Abuse Reporting and Prevention Act or in Section 582 of Title 57 of the Oklahoma Statutes, or
- g. a person who is residing with a person who has been convicted of domestic abuse within the past five (5) years.

3. Custody of, guardianship of, or any visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to a foreseeable risk of material harm.

~~F.~~ F. Except as otherwise provided by the Oklahoma Child Supervised Visitation Program, court-ordered supervised visitation shall be governed by the Oklahoma Child Supervised Visitation Program.

~~F.~~ G. For purposes of this section:

- 1. "Alcohol-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes;
- 2. "Domestic abuse" has the same meaning as such term is defined in Section 60.1 of Title 22 of the Oklahoma Statutes;
- 3. "Drug-dependent person" has the same meaning as such term is defined in Section 3-403 of Title 43A of the Oklahoma Statutes; and
- 4. "Supervised visitation" means a program established pursuant to Section ~~5~~ 110.1a of ~~this act~~ Title 43 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 43 O.S. 2001, Section 112, as last amended by Section 22, Chapter 3, O.S.L. 2003 (43 O.S. Supp. 2005, 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 minor children of the marriage, the court:

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

2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and

3. May modify or change any order whenever circumstances render the 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 other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be submitted to the Central Case Registry as provided for in Section 112A of this title with all child support or paternity orders.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the 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 a minor unmarried child, the court shall:

- a. assure 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 the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

- a. shall 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 of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. In making an order for custody, the court shall require compliance with Section ~~§~~ 112.3 of this ~~act~~ title.

D. In any case involving the custody or visitation of a child, the court shall award custody according to the best interests of the child, upon petition, to any party listed in subsection A of Section 21.1 of Title 10 of the Oklahoma Statutes.

E. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

~~E.~~ F. Except as otherwise provided by Section 112.1A of this title, 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. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school.

~~F.~~ G. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the court shall inquire whether public assistance money or medical support has been provided by the Department of Human Services for the benefit of each child. If public assistance money or medical support has been provided for the benefit of the child, the Department of Human Services shall be a necessary party for the 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, for the just adjudication and establishment of paternity, current child support, and medical insurance coverage for the minor children in accordance with federal regulations.

~~G.~~ H. 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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21.7 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Caregiver" means a person, other than a natural parent or legal guardian, who is at least eighteen (18) years of age and is the primary physical custodian and a relative of a minor child;

2. "Child" means a person under eighteen (18) years of age who is in the primary physical custody of a caregiver;

3. "Relative" or "related" means the relationship of a parent, stepparent, grandparent, great-grandparent, sibling, stepsibling, half sibling, uncle, aunt or cousin.

B. A caregiver of a child may petition for appointment as a temporary guardian of a child for educational, medical care and dental care purposes. The petition shall be verified by affidavit setting forth:

1. The full name of the petitioner, the place of residence and the length of time the petitioner has been a resident of the county in which the petition is filed, and the Oklahoma driver license or identification card of the petitioner;

2. The qualifications of the proposed guardian as a fit and proper person to serve as guardian;

3. The name, birth date and place of birth of the child;

4. The physical address of the child for the previous one (1) year preceding the filing of the petition, if known;

5. The full names of the natural parents of the child;

6. The last known addresses of the natural parents of the child;

7. The name and address of the person or facility having the care, custody or control of the child;

8. A concise statement of the reason for the desired temporary guardianship for educational, medical care, and dental care purposes;

9. The facts showing the best interest of the child requires the appointment of a guardian for educational, medical care, and dental care purposes in this state; and

10. A concise statement setting forth the attempts made by the petitioner and whether the petitioner has been able to contact the natural parents or other person having legal custody of the child to advise of the intent of the petitioner to enroll the child in school, to authorize medical or dental care, or seek a temporary guardianship for education, medical care, and dental care purposes.

C. A temporary guardian for educational, medical care, and dental care purposes may be appointed through an ex parte temporary guardianship order without notice to the natural parents of the child if the court finds by a preponderance of the evidence from the petition and testimony, if any testimony is deemed necessary by the court, that temporary guardianship is in the best interest of the child and not detrimental to the interests of any other person and that no other person appears to have authority and willingness to act in the circumstances. The court shall cause the ex parte temporary guardianship order, together with notice of right to a hearing, to be served on the natural parents pursuant to Title 12 of the Oklahoma Statutes.

D. The notice of right to a hearing shall clearly inform the natural parents of the child that a temporary guardianship for educational, medical care, and dental care purposes has been granted to the petitioner and that the natural parents, individually or jointly, have the right to request a full hearing on the temporary guardianship by filing a written request for hearing with the court. A request for full hearing by a natural parent shall be filed with the court and shall be served on the temporary guardian pursuant to

Title 12 of the Oklahoma Statutes. Upon receipt of a request for hearing, the court shall set the full hearing at the earliest convenience of the court.

E. Except upon a showing of good cause, an ex parte order appointing a temporary guardian of a child for educational, medical care, and dental care purposes shall be limited to not more than one (1) year.

F. If a child subject to an ex parte order appointing a temporary guardian of a child for educational, medical care, and dental care purposes is no longer living in the primary physical custody of the caregiver, the caregiver, within three (3) business days, shall notify the court in writing of the circumstances regarding the change in the primary physical custody and the court may make any order it deems appropriate.

SECTION 4. This act shall become effective November 1, 2006.

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