

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2864

By: Buck

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6 AS INTRODUCED

7 An Act relating to marriage and family; amending 43
8 O.S. 2001, Section 109, as amended by Section 1,
9 Chapter 307, O.S.L. 2009 (43 O.S. Supp. 2009, Section
10 109), which relates to custody determinations in
11 divorce; providing for a rebuttable presumption that
12 joint custody is in best interest of the child; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 43 O.S. 2001, Section 109, as
16 amended by Section 1, Chapter 307, O.S.L. 2009 (43 O.S. Supp. 2009,
17 Section 109), is amended to read as follows:

18 Section 109. A. In awarding the custody of a minor unmarried
19 child or in appointing a general guardian for said child, the court
20 shall consider what appears to be in the best interests of the
21 physical and mental and moral welfare of the child. There shall be
22 a rebuttable presumption that joint custody is in the best interests
23 of the child.
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1 B. The court, pursuant to the provisions of subsection A of
2 this section, may grant the care, custody, and control of a child to
3 either parent or to the parents jointly.

4 For the purposes of this section, the terms joint custody and
5 joint care, custody, and control mean the sharing by parents in all
6 or some of the aspects of physical and legal care, custody, and
7 control of their children.

8 C. If either or both parents have requested joint custody, said
9 parents shall file with the court their plans for the exercise of
10 joint care, custody, and control of their child. The parents of the
11 child may submit a plan jointly, or either parent or both parents
12 may submit separate plans. Any plan shall include but is not
13 limited to provisions detailing the physical living arrangements for
14 the child, child support obligations, medical and dental care for
15 the child, school placement, and visitation rights. A plan shall be
16 accompanied by an affidavit signed by each parent stating that said
17 parent agrees to the plan and will abide by its terms. The plan and
18 affidavit shall be filed with the petition for a divorce or legal
19 separation or after said petition is filed.

20 D. The court shall issue a final plan for the exercise of joint
21 care, custody, and control of the child or children, based upon the
22 plan submitted by the parents, separate or jointly, with appropriate
23 changes deemed by the court to be in the best interests of the
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1 child. The court also may reject a request for joint custody and
2 proceed as if the request for joint custody had not been made.

3 E. The parents having joint custody of the child may modify the
4 terms of the plan for joint care, custody, and control. The
5 modification to the plan shall be filed with the court and included
6 with the plan. If the court determines the modifications are in the
7 best interests of the child, the court shall approve the
8 modifications.

9 F. The court also may modify the terms of the plan for joint
10 care, custody, and control upon the request of one parent. The
11 court shall not modify the plan unless the modifications are in the
12 best interests of the child.

13 G. 1. The court may terminate a joint custody decree upon the
14 request of one or both of the parents or whenever the court
15 determines said decree is not in the best interests of the child.

16 2. Upon termination of a joint custody decree, the court shall
17 proceed and issue a modified decree for the care, custody, and
18 control of the child as if no such joint custody decree had been
19 made.

20 H. In the event of a dispute between the parents having joint
21 custody of a child as to the interpretation of a provision of said
22 plan, the court may appoint an arbitrator to resolve said dispute.
23 The arbitrator shall be a disinterested person knowledgeable in
24 domestic relations law and family counseling. The determination of

1 the arbitrator shall be final and binding on the parties to the
2 proceedings until further order of the court.

3 If a parent refuses to consent to arbitration, the court may
4 terminate the joint custody decree.

5 I. 1. In every proceeding in which there is a dispute as to
6 the custody of a minor child, a determination by the court that
7 domestic violence, stalking, or harassment has occurred raises a
8 rebuttable presumption that sole custody, joint legal or physical
9 custody, or any shared parenting plan with the perpetrator of
10 domestic violence, harassing or stalking behavior is detrimental and
11 not in the best interest of the child, and it is in the best
12 interest of the child to reside with the parent who is not a
13 perpetrator of domestic violence, harassing or stalking behavior.

14 2. For the purposes of this subsection:

15 a. "domestic violence" means the threat of the infliction
16 of physical injury, any act of physical harm or the
17 creation of a reasonable fear thereof, or the
18 intentional infliction of emotional distress by a
19 parent or a present or former member of the household
20 of the child, against the child or another member of
21 the household, including coercive control by a parent
22 involving physical, sexual, psychological, emotional,
23 economic or financial abuse,

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1 b. "stalking" means the willful course of conduct by a
2 parent who repeatedly follows or harasses another
3 person as defined in Section 1173 of Title 21 of the
4 Oklahoma Statutes, and

5 c. "harassment" means a knowing and willful course or
6 pattern of conduct by a parent directed at another
7 parent which seriously alarms or is a nuisance to the
8 person, and which serves no legitimate purpose
9 including, but not limited to, harassing or obscene
10 telephone calls or conduct that would cause a
11 reasonable person to have a fear of death or bodily
12 injury.

13 3. If a parent is absent or relocates as a result of an act of
14 domestic violence by the other parent, the absence or relocation
15 shall not be a factor that weighs against the parent in determining
16 custody or visitation.

17 4. The court shall consider, as a primary factor, the safety
18 and well-being of the child and of the parent who is the victim of
19 domestic violence or stalking behavior, in addition to other facts
20 regarding the best interest of the child.

21 5. The court shall consider the history of the parent causing
22 physical harm, bodily injury, assault, verbal threats, stalking, or
23 harassing behavior, or the fear of physical harm, bodily injury, or
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1 assault to another person, including the minor child, in determining
2 issues regarding custody and visitation.

3 SECTION 2. This act shall become effective November 1, 2010.

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