STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3472 By: Nelson

COMMITTEE SUBSTITUTE

An Act relating to child custody; amending 43 O.S. 2011, Section 112.5, which relates to child custody and guardianship; providing exception; prohibiting court from awarding custody or guardianship to persons convicted of certain crimes; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, Section 112.5, is amended to read as follows:

Section 112.5 A. Custody or guardianship of a child may be awarded to:

1. A parent or to both parents jointly;

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. In applying subsection A of this section, a court shall award custody or guardianship of a child to a parent, unless a nonparent proves by clear and convincing evidence that:

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

a. 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

b. according to the financial ability of the parent to contribute to the support of the child if no provision for support is entered by a court of competent jurisdiction, or an order of modification subsequent thereto.

For purposes of this paragraph, incidental or token financial contributions shall not be considered in establishing whether a

parent has satisfied his or her obligation under subparagraphs a and b of this paragraph; or

2. a. the child has been left in the physical custody of a nonparent by a parent or parents of the child for one (1) year or more, excluding parents on active duty in the military, and

b. the parent or parents have not maintained regular visitation or communication with the child.

For purposes of this paragraph, incidental or token visits or communications shall not be considered in determining whether a parent or parents have regularly maintained visitation or communication.

C. In applying subsection A of this section, a court shall award custody or guardianship of a child to a parent, unless the court finds that the parent is affirmatively unfit. There shall be a rebuttable presumption that a parent is affirmatively unfit if the parent:

1. Is or has been subject to the registration requirements of the Oklahoma Sex Offenders Registration Act or any similar act in any other state, except as provided in subsection D of this section;

2. Has been convicted of a crime listed in Section 582 of Title 57 of the Oklahoma Statutes;

3. 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;

4. Has been convicted of domestic abuse within the past five (5) years;

5. 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;

6. Is residing with a person who has been convicted of a crime listed in ~~the Oklahoma Child Abuse Reporting and Prevention Act~~ Section 843.5 of Title 21 or in Section 582 of Title 57 of the Oklahoma Statutes; or

7. Is residing with a person who has been convicted of domestic abuse within the past five (5) years.

D. In applying subsection A of this section, a court shall not award custody or guardianship of a child to any person who has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term, or is currently serving a sentence or any form of probation or parole in a court in any state of any of the following crimes:

1. Sexual abuse or sexual exploitation of a child, Section 843.5 of Title 21 of the Oklahoma Statutes;

2. Child endangerment, if the offense involved sexual abuse of a child, Section 852.1 of Title 21 of the Oklahoma Statutes;

3. Kidnapping, if the offense involved sexual abuse or sexual exploitation of a child, Section 741 of the Title 21 of the Oklahoma Statutes;

4. Incest, Section 885 of Title 21 of the Oklahoma Statutes;

5. Forcible sodomy of a child, Section 888 of Title 21 of the Oklahoma Statutes;

6. Child stealing, if the offense involved sexual abuse or sexual exploitation, Section 891 of Title 21 of the Oklahoma Statutes;

7. Procuring minors for participation in child pornography, Section 1021.2 of Title 21 of the Oklahoma Statutes;

8. Consent to participation of minors in child pornography, Section 1021.3 of Title 21 of the Oklahoma Statutes;

9. Facilitating, encouraging, offering or soliciting sexual conduct with a minor, Section 1040.13a of Title 21 of the Oklahoma Statutes;

10. Distributing child pornography, Section 1040.13 of Title 21 of the Oklahoma Statutes;

11. Possession of child pornography, Section 1024.2 of Title 21 of the Oklahoma Statutes;

12. Aggravated possession of child pornography, Section 1040.12a of Title 21 of the Oklahoma Statutes;

13. Procuring a child under eighteen (18) years of age for prostitution, Section 1087 of Title 21 of the Oklahoma Statutes;

14. Inducing or restraining a child under eighteen (18) years of age for prostitution, Section 1088 of Title 21 of the Oklahoma Statutes;

15. First degree rape, Section 1114 of Title 21 of the Oklahoma Statutes;

16. Lewd or indecent proposals or acts to a child under sixteen (16) years of age, Section 1123 of Title 21 of the Oklahoma Statutes.

E. Subject to subsection ~~E~~ F of this section, a custody determination made in accordance with subsections B and C of this section shall not be modified unless the person seeking the modification proves that:

1. Since the making of the order sought to be modified, there has been a permanent, material, and substantial change of conditions that directly affects the best interests of the child; and

2. That as a result of such change of circumstances, the child would be substantially better off with regard to its temporal, mental, and moral welfare if custody were modified.

~~E.~~ F. If the custody determination made in accordance with subsections B and C of this section indicates that custody is temporary, the determination may be modified upon a showing that the

conditions which led to the custody or guardianship determination no longer exist.

SECTION 2. This act shall become effective November 1, 2014.

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