

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1298

By: Pemberton

6 AS INTRODUCED

7 An Act relating to child custody; amending 43 O.S.
8 2011, Sections 111.1 and 112, which relate to
9 visitation and care and custody of children;
10 requiring written findings on certain determinations
11 upon request; clarifying right to appeal certain
12 orders; and providing an effective date.

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

14 SECTION 1. AMENDATORY 43 O.S. 2011, Section 111.1, is
15 amended to read as follows:

16 Section 111.1. A. 1. Any order providing for the visitation
17 of a noncustodial parent with any of the children of such
18 noncustodial parent shall provide a specified minimum amount of
19 visitation between the noncustodial parent and the child unless the
20 court determines otherwise.

21 2. Except for good cause shown and when in the best interests
22 of the child, the order shall encourage additional visitations of
23 the noncustodial parent and the child and in addition encourage
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1 liberal telephone communications between the noncustodial parent and
2 the child.

3 3. The court may award visitation by a noncustodial parent who
4 was determined to have committed domestic violence or engaged in
5 stalking behavior as defined in Section 109 of this title, if the
6 court is able to provide for the safety of the child and the parent
7 who is the victim of that domestic violence.

8 4. In a visitation order, the court shall provide for the
9 safety of the minor child and victim of domestic violence, stalking,
10 or harassment as defined in Section 109 of this title, and subject
11 to the provisions of Section 109 of this title, may:

- 12 a. order the exchange of a child to be facilitated by a
13 third party where the parents do not have any contact
14 with each other,
- 15 b. order an exchange of a child to occur in a protected
16 setting,
- 17 c. order visitation supervised by another person or
18 agency,
- 19 d. order the abusive, stalking, or harassing parent to
20 pay a fee to help defray the costs of supervised
21 visitation or other costs of child exchanges,
22 including compensating third parties,
- 23 e. order the abusive, stalking, or harassing parent to
24 attend and complete, to the satisfaction of the court,

1 an intervention program for batterers certified by the
2 Office of the Attorney General,

- 3 f. prohibit unsupervised or overnight visitation until
4 the abusive, stalking, or harassing parent has
5 successfully completed a specialized program for
6 abusers and the parent has neither threatened nor
7 exhibited violence for a substantial period of time,
8 g. order the abusive, stalking, or harassing parent to
9 abstain from the possession or consumption of alcohol
10 or controlled substances during the visitation and for
11 twenty-four (24) hours preceding visitation,
12 h. order the abusive, stalking, or harassing parent to
13 complete a danger/lethality assessment by a qualified
14 mental health professional, and
15 i. impose any other condition that is deemed necessary to
16 provide for the safety of the child, the victim of
17 domestic violence, stalking, or harassing behavior, or
18 another household member.

19 5. The court shall not order a victim of domestic violence,
20 stalking, or harassment to be present during child visitation
21 exchange if the victim of domestic violence, stalking, or harassment
22 objects to being present.

23 6. Visitation shall be terminated if:
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- a. the abusive, stalking, or harassing parent repeatedly violates the terms and conditions of visitation,
- b. the child becomes severely distressed in response to visitation, including the determination by a mental health professional or certified domestic violence specialist that visitation with the abusive, stalking, or harassing parent is causing the child severe distress which is not in the best interest of the child, or
- c. there are clear indications that the abusive, stalking, or harassing parent has threatened to either harm or flee with the child, or has threatened to harm the custodial parent.

7. Whether or not visitation is allowed, the court shall order the address of the child and the victim of domestic violence, stalking, or harassing behavior to be kept confidential if requested.

- a. The court may order that the victim of domestic violence, stalking, or harassing behavior participate in the address confidentiality program available pursuant to Section 60.14 of Title 22 of the Oklahoma Statutes.
- b. The abusive, stalking, or harassing parent may be denied access to the medical and educational records

1 of the child if those records may be used to determine
2 the location of the child.

3 8. Upon request of a party, the court shall submit clear and
4 concise written findings specifying the factors considered in making
5 a determination on visitation to be included in the final visitation
6 order. An order entered pursuant to this section shall be an
7 appealable order to a court of competent jurisdiction.

8 B. 1. Except for good cause shown, when a noncustodial parent
9 who is ordered to pay child support and who is awarded visitation
10 rights fails to pay child support, the custodial parent shall not
11 refuse to honor the visitation rights of the noncustodial parent.

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

15 C. 1. Violation of an order providing for the payment of child
16 support or providing for the visitation of a noncustodial parent
17 with any of the children of such noncustodial parent may be
18 prosecuted as indirect civil contempt pursuant to Section 566 of
19 Title 21 of the Oklahoma Statutes or as otherwise deemed appropriate
20 by the court.

21 2. Any person complying in good faith with the provisions of
22 Section 852.1 of Title 21 of the Oklahoma Statutes, by refusing to
23 allow his or her child to be transported by an intoxicated driver,
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1 shall have an affirmative defense to a contempt of court proceeding
2 in a divorce or custody action.

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

8 SECTION 2. AMENDATORY 43 O.S. 2011, Section 112, is
9 amended to read as follows:

10 Section 112. A. A petition or cross-petition for a divorce,
11 legal separation, or annulment must state whether or not the parties
12 have minor children of the marriage. If there are minor children of
13 the marriage, the court:

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

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

19 3. May modify or change any order whenever circumstances render
20 the change proper either before or after final judgment in the
21 action; provided, that the amount of the periodic child support
22 payment shall not be modified retroactively or payment of all or a
23 portion of the past due amount waived, except by mutual agreement of
24 the obligor and obligee, or if the obligee has assigned child

1 support rights to the Department of Human Services or other entity,
2 by agreement of the Department or other entity. Unless the parties
3 agree to the contrary, a completed child support computation form
4 provided for in Section 120 of this title shall be required to be
5 filed with the child support order.

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

11 B. In any action in which there are minor unmarried children in
12 awarding or modifying the custody of the child or in appointing a
13 general guardian for the child, the court shall be guided by the
14 provisions of Section 112.5 of this title and shall consider what
15 appears to be in the best interests of the child.

16 C. 1. When it is in the best interests of a minor unmarried
17 child, the court shall:

- 18 a. assure children of frequent and continuing contact
19 with both parents after the parents have separated or
20 dissolved their marriage, and
- 21 b. encourage parents to share the rights and
22 responsibilities of child rearing in order to effect
23 this policy.

1 2. There shall be neither a legal preference nor a presumption
2 for or against joint legal custody, joint physical custody, or sole
3 custody.

4 3. When in the best interests of the child, custody shall be
5 awarded in a way which assures the frequent and continuing contact
6 of the child with both parents. When awarding custody to either
7 parent, the court:

8 a. shall consider, among other facts, which parent is
9 more likely to allow the child or children frequent
10 and continuing contact with the noncustodial parent,
11 and

12 b. shall not prefer a parent as a custodian of the child
13 because of the gender of that parent.

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

18 5. Notwithstanding any custody determination made pursuant to
19 the Oklahoma Children's Code, when a parent of a child is required
20 to be separated from a child due to military service, the court
21 shall not enter a final order modifying an existing custody order
22 until such time as the parent has completed the term of duty
23 requiring separation. For purposes of this paragraph:
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- 1 a. in the case of a parent who is a member of the Army,
2 Navy, Air Force, Marine Corps or Coast Guard, the term
3 "military service" means a combat deployment,
4 contingency operation, or natural disaster requiring
5 the use of orders that do not permit any family member
6 to accompany the member,
- 7 b. in the case of a parent who is a member of the
8 National Guard, the term "military service" means
9 service under a call to active service authorized by
10 the President of the United States or the Secretary of
11 Defense for a period of more than thirty (30)
12 consecutive days under 32 U.S.C. 502(f) for purposes
13 of responding to a national emergency declared by the
14 President and supported by federal funds. "Military
15 service" shall include any period during which a
16 member is absent from duty on account of sickness,
17 wounds, leave or other lawful cause, and
- 18 c. the court may enter a temporary custody or visitation
19 order pursuant to the requirements of the Deployed
20 Parents Custody and Visitation Act.

21 6. In making an order for custody, the court shall require
22 compliance with Section 112.3 of this title.

23 7. Upon request of a party, the court shall submit clear and
24 concise written findings specifying the factors considered in making

1 a custody determination to be included in the final custody order.

2 An order entered pursuant to this section shall be an appealable
3 order to a court of competent jurisdiction.

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

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

13 E. Except as otherwise provided by Section 112.1A of this
14 title, any child shall be entitled to support by the parents until
15 the child reaches eighteen (18) years of age. If a child is
16 regularly enrolled in and attending high school, as set forth in
17 Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means
18 of high school education, or an alternative high school education
19 program as a full-time student, the child shall be entitled to
20 support by the parents until the child graduates from high school or
21 until the age of twenty (20) years, whichever occurs first. Full-
22 time attendance shall include regularly scheduled breaks from the
23 school year. No hearing or further order is required to extend
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1 support pursuant to this subsection after the child reaches the age
2 of eighteen (18) years.

3 F. In any case in which provision is made for the custody or
4 support of a minor child or enforcement of such order and before
5 hearing the matter or signing any orders, the court shall inquire
6 whether public assistance money or medical support has been provided
7 by the Department of Human Services, hereafter referred to as the
8 Department, for the benefit of each child. If public assistance
9 money, medical support, or child support services under the state
10 child support plan as provided in Section 237 of Title 56 of the
11 Oklahoma Statutes have been provided for the benefit of the child,
12 the Department shall be a necessary party for the adjudication of
13 the debt due to the State of Oklahoma, as defined in Section 238 of
14 Title 56 of the Oklahoma Statutes, and for the adjudication of
15 paternity, child support, and medical insurance coverage for the
16 minor children in accordance with federal regulations. When an
17 action is filed, the petitioner shall give the Department notice of
18 the action according to Section 2004 of Title 12 of the Oklahoma
19 Statutes. The Department shall not be required to intervene in the
20 action to have standing to appear and participate in the action.
21 When the Department is a necessary party to the action, any orders
22 concerning paternity, child support, medical support, or the debt
23 due to the State of Oklahoma shall be approved and signed by the
24 Department.

1 G. In any case in which a child support order or custody order
2 or both is entered, enforced or modified, the court may make a
3 determination of the arrearages of child support.

4 SECTION 3. This act shall become effective November 1, 2018.

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