

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 258

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO CHILD CUSTODY; REMOVING THE PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST INTERESTS OF A CHILD WHEN THE COURT DETERMINES DOMESTIC ABUSE HAS OCCURRED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-4-9.1 NMSA 1978 (being Laws 1986, Chapter 41, Section 1, as amended) is amended to read:

"40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION-- PARENTING PLAN. --

A. There shall be a presumption that joint custody is in the best interests of a child in an initial custody determination, except as otherwise provided in Subsection B of this section. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for an

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = del ete

1 existing custody arrangement unless there has been a
2 substantial and material change in circumstances since the
3 entry of the prior custody order or decree, which change
4 affects the welfare of the child such that joint custody is
5 presently in the best interests of the child. With respect to
6 any proceeding in which it is proposed that joint custody be
7 terminated, the court shall not terminate joint custody unless
8 there has been a substantial and material change in
9 circumstances affecting the welfare of the child, since entry
10 of the joint custody order, such that joint custody is no
11 longer in the best interests of the child.

12 B. In determining whether a joint custody order is
13 in the best interests of the child, in addition to the factors
14 provided in Section 40-4-9 NMSA 1978, the court shall consider
15 the following factors:

16 (1) whether the child has established a close
17 relationship with each parent;

18 (2) whether each parent is capable of
19 providing adequate care for the child throughout each period of
20 responsibility, including arranging for the child's care by
21 others as needed;

22 (3) whether each parent is willing to accept
23 all responsibilities of parenting, including a willingness to
24 accept care of the child at specified times and to relinquish
25 care to the other parent at specified times;

. 152773. 3

1 (4) whether the child can best maintain and
2 strengthen a relationship with both parents through
3 predictable, frequent contact and whether the child's
4 development will profit from such involvement and influence
5 from both parents;

6 (5) whether each parent is able to allow the
7 other to provide care without intrusion, that is, to respect
8 the other's parental rights and responsibilities and right to
9 privacy;

10 (6) the suitability of a parenting plan for
11 the implementation of joint custody, preferably, although not
12 necessarily, one arrived at through parental agreement;

13 (7) geographic distance between the parents'
14 residences;

15 (8) willingness or ability of the parents to
16 communicate, cooperate or agree on issues regarding the child's
17 needs; and

18 (9) whether a judicial adjudication has been
19 made in a prior or the present proceeding that either parent or
20 other person seeking custody has engaged in one or more acts of
21 domestic abuse against the child, a parent of the child or
22 other household member. If a determination is made by the
23 court that one parent has committed an act of domestic abuse
24 [has occurred] against the other parent within the last five
25 years, the court shall not presume that joint custody is in the

underscored material = new
[bracketed material] = delete

1 best interests of a child and shall set forth findings that the
2 custody or visitation ordered by the court adequately protects
3 the child, [~~the abused~~] a parent of the child or other
4 household member.

5 C. In any proceeding in which the custody of a
6 child is at issue, the court shall not prefer one parent as a
7 custodian solely because of gender.

8 D. In any case in which the parents agree to a form
9 of custody, the court should award custody consistent with the
10 agreement unless the court determines that such agreement is
11 not in the best interests of the child.

12 E. In making an order of joint custody, the court
13 may specify the circumstances, if any, under which the consent
14 of both legal custodians is required to be obtained in order to
15 exercise legal control of the child and the consequences of the
16 failure to obtain mutual consent.

17 F. When joint custody is awarded, the court shall
18 approve a parenting plan for the implementation of the
19 prospective custody arrangement prior to the award of joint
20 custody. The parenting plan shall include a division of a
21 child's time and care into periods of responsibility for each
22 parent. It may also include:

23 (1) statements regarding the child's religion,
24 education, child care, recreational activities and medical and
25 dental care;

underscored material = new
[bracketed material] = delete

1 (2) designation of specific decision-making
2 responsibilities;

3 (3) methods of communicating information about
4 the child, transporting the child, exchanging care for the
5 child and maintaining telephone and mail contact between parent
6 and child;

7 (4) procedures for future decision-making,
8 including procedures for dispute resolution; and

9 (5) other statements regarding the welfare of
10 the child or designed to clarify and facilitate parenting under
11 joint custody arrangements.

12 In a case where joint custody is not agreed to or
13 necessary aspects of the parenting plan are contested, the
14 parties shall each submit parenting plans. The court may
15 accept the plan proposed by either party or it may combine or
16 revise these plans as it deems necessary in the child's best
17 interests. The time of filing of parenting plans shall be set
18 by local rule. A plan adopted by the court shall be entered as
19 an order of the court.

20 G. Where custody is contested, the court shall
21 refer that issue to mediation if feasible. The court may also
22 use auxiliary services such as professional evaluation by
23 application of Rule 706 of the New Mexico Rules of Evidence or
24 Rule 53 of the Rules of Civil Procedure for the District
25 Courts.

underscored material = new
[bracketed material] = delete

1 H. Notwithstanding any other provisions of law,
2 access to records and information pertaining to a minor child,
3 including medical, dental and school records, shall not be
4 denied to a parent because that parent is not the child's
5 physical custodial parent or because that parent is not a joint
6 custodial parent.

7 I. Whenever a request for joint custody is granted
8 or denied, the court shall state in its decision its basis for
9 granting or denying the request for joint custody. A statement
10 that joint custody is or is not in the best interests of the
11 child is not sufficient to meet the requirements of this
12 subsection.

13 J. An award of joint custody means that:

14 (1) each parent shall have significant, well-
15 defined periods of responsibility for the child;

16 (2) each parent shall have, and be allowed and
17 expected to carry out, responsibility for the child's
18 financial, physical, emotional and developmental needs during
19 that parent's periods of responsibility;

20 (3) the parents shall consult with each other
21 on major decisions involving the child before implementing
22 those decisions; that is, neither parent shall make a decision
23 or take an action ~~[which]~~ that results in a major change in a
24 child's life until the matter has been discussed with the other
25 parent and the parents agree. If the parents, after

underscored material = new
[bracketed material] = delete

1 discussion, cannot agree and if one parent wishes to effect a
2 major change while the other does not wish the major change to
3 occur, then no change shall occur until the issue has been
4 resolved as provided in this subsection;

5 (4) the following guidelines apply to major
6 changes in a child's life:

7 (a) if either parent plans to change
8 [his] home city or state of residence, [he] the parent shall
9 provide to the other parent thirty days' notice in writing
10 stating the date and destination of the move;

11 (b) the religious denomination and
12 religious activities, or lack thereof, [~~which~~] that were being
13 practiced during the marriage should not be changed unless the
14 parties agree or it has been otherwise resolved as provided in
15 this subsection;

16 (c) both parents shall have access to
17 school records, teachers and activities. The type of
18 education, public or private, [~~which~~] that was in place during
19 the marriage should continue, whenever possible, and school
20 districts should not be changed unless the parties agree or it
21 has been otherwise resolved as provided in this subsection;

22 (d) both parents shall have access to
23 medical and dental treatment providers and records. Each
24 parent has authority to make emergency medical decisions.
25 Neither parent may contract for major elective medical or

underscored material = new
[bracketed material] = delete

1 dental treatment unless both parents agree or it has been
2 otherwise resolved as provided in this subsection; and

3 (e) both parents may attend the child's
4 public activities and both parents should know the necessary
5 schedules. Whatever recreational activities the child
6 participated in during the marriage should continue with the
7 child's agreement, regardless of which of the parents has
8 physical custody. Also, neither parent may enroll the child in
9 a new recreational activity unless the parties agree or it has
10 been otherwise resolved as provided in this subsection; and

11 (5) decisions regarding major changes in a
12 child's life may be decided by:

13 (a) agreement between the joint
14 custodial parents;

15 (b) requiring that the parents seek
16 family counseling, conciliation or mediation service to assist
17 in resolving their differences;

18 (c) agreement by the parents to submit
19 the dispute to binding arbitration;

20 (d) allocating ultimate responsibility
21 for a particular major decision area to one legal custodian;

22 (e) terminating joint custody and
23 awarding sole custody to one person;

24 (f) reference to a master pursuant to
25 Rule 53 of the Rules of Civil Procedure for the District

. 152773. 3

1 Courts; or

2 (g) the district court.

3 K. When ~~[any]~~ a person other than a natural or
4 adoptive parent seeks custody of a child, ~~[no]~~ such person
5 shall not be awarded custody absent a showing of unfitness of
6 the natural or adoptive parent.

7 L. As used in this section:

8 (1) "child" means a person under the age of
9 eighteen;

10 (2) "custody" means the authority and
11 responsibility to make major decisions in a child's best
12 interests in the areas of residence, medical and dental
13 treatment, education or child care, religion and recreation;

14 (3) "domestic abuse" means any incident by a
15 household member against another household member resulting in:

- 16 (a) physical harm;
- 17 (b) severe emotional distress;
- 18 (c) a threat causing imminent fear of
- 19 physical harm by any household member;
- 20 (d) criminal trespass;
- 21 (e) criminal damage to property;
- 22 (f) stalking or aggravated stalking, as
- 23 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or

24 (g) harassment, as provided in Section
25 30-3A-2 NMSA 1978;

underscored material = new
[bracketed material] = delete

1 (4) "joint custody" means an order of the
2 court awarding custody of a child to two parents. Joint
3 custody does not imply an equal division of the child's time
4 between the parents or an equal division of financial
5 responsibility for the child;

6 (5) "parent" means a natural parent, adoptive
7 parent or person who is acting as a parent who has or shares
8 legal custody of a child or who claims a right to have or share
9 legal custody;

10 (6) "parenting plan" means a document
11 submitted for approval of the court setting forth the
12 responsibilities of each parent individually and the parents
13 jointly in a joint custody arrangement;

14 (7) "period of responsibility" means a
15 specified period of time during which a parent is responsible
16 for providing for a child's physical, developmental and
17 emotional needs, including the decision making required in
18 daily living. Specified periods of responsibility shall not be
19 changed in an instance or more permanently except by the
20 methods of decision-making described under Subsection [E] J of
21 this section;

22 (8) "sole custody" means an order of the court
23 awarding custody of a child to one parent; and

24 (9) "visitation" means a period of time
25 available to a noncustodial parent, under a sole custody

1 arrangement, during which a child resides with or is under the
2 care and control of the noncustodial parent."

3 Section 2. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2005.

underscored material = new
[bracketed material] = delete