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HOUSE BILL 50

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Conrad James

AN ACT

RELATING TO PARENTAL RIGHTS; PROVIDING A PROCESS FOR
TERMINATION OF PARENTAL RIGHTS WITH RESPECT TO A CHILD
CONCEIVED AS A RESULT OF CRIMINAL SEXUAL PENETRATION.

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. 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
existing custody arrangement unless there has been a

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

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

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

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

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

25 (4) whether the child can best maintain and

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

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

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

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

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

17 (9) whether a judicial adjudication has been
18 made in a prior or the present proceeding that either parent or
19 other person seeking custody has engaged in one or more acts of
20 domestic abuse against the child, a parent of the child or
21 other household member. If a determination is made that
22 domestic abuse has occurred, the court shall set forth findings
23 that the custody or visitation ordered by the court adequately
24 protects the child, the abused parent or other household
25 member.

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

4 D. In any case in which the parents agree to a form
5 of custody, the court should award custody consistent with the
6 agreement unless the court determines that such agreement is
7 not in the best interests of the child.

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

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

19 (1) statements regarding the child's religion,
20 education, child care, recreational activities and medical and
21 dental care;

22 (2) designation of specific decision-making
23 responsibilities;

24 (3) methods of communicating information about
25 the child, transporting the child, exchanging care for the

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1 child and maintaining telephone and mail contact between parent
2 and child;

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

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

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

16 G. Where custody is contested, the court shall
17 refer that issue to mediation if feasible. The court may also
18 use auxiliary services such as professional evaluation by
19 application of Rule ~~[706 of the New Mexico Rules of Evidence or~~
20 ~~Rule 53 of the Rules of Civil Procedure for the District~~
21 ~~Courts]~~ 11-706 NMRA or Rule 1-053 NMRA.

22 H. Notwithstanding any other provisions of law,
23 access to records and information pertaining to a minor child,
24 including medical, dental and school records, shall not be
25 denied to a parent because that parent is not the child's

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1 physical custodial parent or because that parent is not a joint
2 custodial parent.

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

9 J. An award of joint custody means that:

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

12 (2) each parent shall have, and be allowed and
13 expected to carry out, responsibility for the child's
14 financial, physical, emotional and developmental needs during
15 that parent's periods of responsibility;

16 (3) the parents shall consult with each other
17 on major decisions involving the child before implementing
18 those decisions; that is, neither parent shall make a decision
19 or take an action [~~which~~] that results in a major change in a
20 child's life until the matter has been discussed with the other
21 parent and the parents agree. If the parents, after
22 discussion, cannot agree and if one parent wishes to effect a
23 major change while the other does not wish the major change to
24 occur, then no change shall occur until the issue has been
25 resolved as provided in this subsection;

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

3 (a) if either parent plans to change
4 ~~[his]~~ the parent's home city or state of residence, ~~[he]~~ that
5 parent shall provide to the other parent thirty days' notice in
6 writing stating the date and destination of move;

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

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

18 (d) both parents shall have access to
19 medical and dental treatment providers and records. Each
20 parent has authority to make emergency medical decisions.
21 Neither parent may contract for major elective medical or
22 dental treatment unless both parents agree or it has been
23 otherwise resolved as provided in this subsection; and

24 (e) both parents may attend the child's
25 public activities and both parents should know the necessary

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1 schedules. Whatever recreational activities the child
2 participated in during the marriage should continue with the
3 child's agreement, regardless of which of the parents has
4 physical custody. Also, neither parent may enroll the child in
5 a new recreational activity unless the parties agree or it has
6 been otherwise resolved as provided in this subsection; and

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

9 (a) agreement between the joint
10 custodial parents;

11 (b) requiring that the parents seek
12 family counseling, conciliation or mediation service to assist
13 in resolving their differences;

14 (c) agreement by the parents to submit
15 the dispute to binding arbitration;

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

18 (e) terminating joint custody and
19 awarding sole custody to one person;

20 (f) reference to a master pursuant to
21 Rule ~~[53 of the Rules of Civil Procedure for the District~~
22 ~~Courts]~~ 1-053 NMRA; or

23 (g) the district court.

24 K. When ~~[any]~~ a person other than a natural or
25 adoptive parent seeks custody of a child, no such person shall

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1 be awarded custody absent a showing of unfitness of the natural
2 or adoptive parent.

3 L. At any time, a custodial parent may petition the
4 court for termination of the parental rights of a noncustodial
5 parent, where there has been a conviction for criminal sexual
6 penetration and where the criminal sexual penetration resulted
7 in the conception and birth of the affected child.

8 Notwithstanding the provisions of this section, the court shall
9 grant the petition if the court determines that the child was
10 conceived as a result of the criminal sexual penetration for
11 which the noncustodial parent was convicted.

12 [~~L.~~] M. As used in this section:

13 (1) "child" means a person under the age of
14 eighteen;

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

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

21 (a) physical harm;
22 (b) severe emotional distress;
23 (c) a threat causing imminent fear of
24 physical harm by any household member;

25 (d) criminal trespass;

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- 1 (e) criminal damage to property;
2 (f) stalking or aggravated stalking, as
3 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or
4 (g) harassment, as provided in Section
5 30-3A-2 NMSA 1978;

6 (4) "joint custody" means an order of the
7 court awarding custody of a child to two parents. Joint
8 custody does not imply an equal division of the child's time
9 between the parents or an equal division of financial
10 responsibility for the child;

11 (5) "parent" means a natural parent, adoptive
12 parent or person who is acting as a parent who has or shares
13 legal custody of a child or who claims a right to have or share
14 legal custody;

15 (6) "parenting plan" means a document
16 submitted for approval of the court setting forth the
17 responsibilities of each parent individually and the parents
18 jointly in a joint custody arrangement;

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

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1 this section;

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

4 (9) "visitation" means a period of time
5 available to a noncustodial parent, under a sole custody
6 arrangement, during which a child resides with or is under the
7 care and control of the noncustodial parent."

8 SECTION 2. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2016.