

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 784

Introduced by Beutler, 28

Read first time January 17, 2001

Committee: Judiciary

A BILL

1 FOR AN ACT relating to divorce; to amend sections 42-364, 43-2,113,
2 43-2911, and 43-2915, Reissue Revised Statutes of
3 Nebraska; to change child custody determination,
4 parenting plan, and costs provisions; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 42-364, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 42-364. (1) When dissolution of a marriage or legal
4 separation is decreed, the court may include a parenting plan
5 developed under the Parenting Act, if a parenting plan has been so
6 developed, and such orders in relation to any minor child and the
7 child's maintenance as are justified, including placing the minor
8 child in the custody of the court or third parties or terminating
9 parental rights pursuant to this section if the best interests of
10 the minor child require such orders. Custody and time spent with
11 each parent shall be determined on the basis of the best interests
12 of the minor child with the objective of maintaining the ongoing
13 substantial involvement of both parents in the minor child's life
14 and first consideration shall be given to placing legal custody of
15 the minor child with both parents on a joint custody basis. The
16 custody determination of the court shall include both the
17 determination of to whom the legal custody of the child shall be
18 given and the determination of to whom the physical custody of the
19 child shall be given as separate and independent issues.
20 Subsequent changes may be made by the court after hearing on such
21 notice as prescribed by the court. A decree of dissolution of a
22 marriage or legal separation shall include the social security
23 number of each party.

24 (2) In determining custody and visitation arrangements
25 and the time to be spent with each parent, the court shall consider
26 the best interests of the minor child which shall include, but not
27 be limited to:

28 (a) The relationship of the minor child to each parent

1 prior to the commencement of the action or any subsequent hearing;

2 (b) The desires and wishes of the minor child if of an
3 age of comprehension regardless of chronological age, when such
4 desires and wishes are based on sound reasoning;

5 (c) The general health, welfare, and social behavior of
6 the minor child; and

7 (d) Credible evidence of abuse inflicted on any family or
8 household member. For purposes of this subdivision, abuse and
9 family or household member shall have the meanings prescribed in
10 section 42-903.

11 (3) In determining custody and visitation arrangements
12 and the time to be spent with each parent:

13 (a) The court may place the minor child in joint legal
14 custody only after conducting a hearing in open court and
15 specifically finding that such joint custody is in the best
16 interests of the minor child. If joint legal custody is ordered,
17 each parent shall have the right to make decisions in the best
18 interests of the minor child in accordance with the parenting plan
19 developed under the Parenting Act. A decree ordering joint legal
20 custody shall include a parenting plan;

21 (b) The ~~7 the~~ court shall not give preference to either
22 parent based on the sex of the parent and no presumption shall
23 exist that either parent is more fit or suitable than the other;
24 and

25 (c) In determining visitation arrangements, the court
26 shall take into consideration the parents' necessary work schedules
27 so as to enable each parent to spend quality parenting time with
28 the minor child.

1 (4) Regardless of the custody determination of the court,
2 (a) each parent shall continue to have full and equal access to the
3 education and medical records of his or her child unless the court
4 orders to the contrary and (b) either parent may make emergency
5 decisions affecting the health or safety of his or her child while
6 the child is in the physical custody of such parent pursuant to a
7 visitation order entered by the court.

8 (5) ~~After a hearing in open court, the court may place~~
9 ~~the custody of a minor child with both parents on a shared or joint~~
10 ~~custody basis when both parents agree to such an arrangement. In~~
11 ~~that event, each parent shall have equal rights to make decisions~~
12 ~~in the best interests of the minor child in his or her custody.~~
13 ~~The court may place a minor child in joint custody after conducting~~
14 ~~a hearing in open court and specifically finding that joint custody~~
15 ~~is in the best interests of the minor child regardless of any~~
16 ~~parental agreement or consent.~~

17 (6) In determining the amount of child support to be paid
18 by a parent, the court shall consider the earning capacity of each
19 parent and the guidelines provided by the Supreme Court pursuant to
20 section 42-364.16 for the establishment of child support
21 obligations. Upon application, hearing, and presentation of
22 evidence of an abusive disregard of the use of child support money
23 paid by one party to the other, the court may require the party
24 receiving such payment to file a verified report with the court, as
25 often as the court requires, stating the manner in which such money
26 is used. Child support paid to the party having custody of the
27 minor child shall be the property of such party except as provided
28 in section 43-512.07. The clerk of the district court shall

1 maintain a record, separate from all other judgment dockets, of all
2 decrees and orders in which the payment of child support or spousal
3 support has been ordered, whether ordered by a district court,
4 county court, separate juvenile court, or county court sitting as a
5 juvenile court. Orders for child support in cases in which a party
6 has applied for services under Title IV-D of the federal Social
7 Security Act, as amended, shall be reviewed as provided in sections
8 43-512.12 to 43-512.18.

9 ~~(7)~~ (6) Whenever termination of parental rights is placed
10 in issue by the pleadings or evidence, the court shall transfer
11 jurisdiction to a juvenile court established pursuant to the
12 Nebraska Juvenile Code unless a showing is made that the county
13 court or district court is a more appropriate forum. In making
14 such determination, the court may consider such factors as cost to
15 the parties, undue delay, congestion of dockets, and relative
16 resources available for investigative and supervisory assistance.
17 A determination that the county court or district court is a more
18 appropriate forum shall not be a final order for the purpose of
19 enabling an appeal. If no such transfer is made, the court shall
20 appoint an attorney as guardian ad litem to protect the interests
21 of any minor child. The court may terminate the parental rights of
22 one or both parents after notice and hearing when the court finds
23 such action to be in the best interests of the minor child and it
24 appears by the evidence that one or more of the following
25 conditions exist:

26 (a) The minor child has been abandoned by one or both
27 parents;

28 (b) One parent has or both parents have substantially and

1 continuously or repeatedly neglected the minor child and refused to
2 give such minor child necessary parental care and protection;

3 (c) One parent is or both parents are unfit by reason of
4 debauchery, habitual use of intoxicating liquor or narcotic drugs,
5 illegal possession or sale of illegal substances, or repeated lewd
6 and lascivious behavior, which conduct is found by the court to be
7 seriously detrimental to the health, morals, or well-being of the
8 minor child; or

9 (d) One parent is or both parents are unable to discharge
10 parental responsibilities because of mental illness or mental
11 deficiency and there are reasonable grounds to believe that such
12 condition will continue for a prolonged indeterminate period.

13 ~~(8)~~ (7) Whenever termination of parental rights is placed
14 in issue, the court shall inform a parent who does not have legal
15 counsel of the parent's right to retain counsel and of the parent's
16 right to retain legal counsel at county expense if such parent is
17 unable to afford legal counsel. If such parent is unable to afford
18 legal counsel and requests the court to appoint legal counsel, the
19 court shall immediately appoint an attorney to represent the parent
20 in the termination proceedings. The court shall order the county
21 to pay the attorney's fees and all reasonable expenses incurred by
22 the attorney in protecting the rights of the parent. At such
23 hearing, the guardian ad litem shall take all action necessary to
24 protect the interests of the minor child. The court shall fix the
25 fees and expenses of the guardian ad litem and tax the same as
26 costs but may order the county to pay on finding the responsible
27 party indigent and unable to pay.

28 Sec. 2. Section 43-2,113, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 43-2,113. (1) In counties where a separate juvenile
3 court is established, the county board of the county shall provide
4 suitable rooms and offices for the accommodation of the judge of
5 the separate juvenile court and the officers and employees
6 appointed by such judge or by the probation administrator pursuant
7 to subsection (4) of section 29-2253. Such separate juvenile court
8 and the judge, officers, and employees of such court shall have the
9 same and exclusive jurisdiction, powers, and duties that are
10 prescribed in the Nebraska Juvenile Code, concurrent jurisdiction
11 under section 83-223, and such other jurisdiction, powers, and
12 duties as specifically provided by law.

13 (2) A juvenile court created in a separate juvenile court
14 judicial district or a county court sitting as a juvenile court in
15 all other counties shall have and exercise jurisdiction within such
16 juvenile court judicial district or county court judicial district
17 with the county court and district court in all matters arising
18 under Chapter 42, article 3, when the care, support, custody, or
19 control of minor children under the age of eighteen years is
20 involved. Such cases shall be filed in the county court and
21 district court and may, with the consent of the juvenile judge, be
22 transferred to the docket of the separate juvenile court or county
23 court.

24 (3) All orders issued by a separate juvenile court or a
25 county court which provide for child support or spousal support as
26 defined in section 42-347 shall be governed by sections 42-347 to
27 42-381 and 43-290 relating to such support. Certified copies of
28 such orders shall be filed by the clerk of the separate juvenile or

1 county court with the clerk of the district court who shall
2 maintain a record as provided in subsection ~~(6)~~ (5) of section
3 42-364. There shall be no fee charged for the filing of such
4 certified copies.

5 Sec. 3. Section 43-2911, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 43-2911. The costs of the mediation or remediation
8 process shall be paid by the parties on an equal-share basis
9 according to each party's ability to pay or on a sliding fee scale.
10 If a court refers a case to court-based mediation or remediation,
11 there shall be no fee.

12 Sec. 4. Section 43-2915, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 43-2915. (1) The parenting plan shall include a schedule
15 which designates in which party's home the minor child shall reside
16 on given days of the year, including provisions for specified
17 religious and secular holidays, birthdays of family members,
18 vacations, and other special occasions and shall, in establishing
19 visitation, specifically take into consideration the importance of
20 the parents' necessary work schedules so as to enable each parent
21 to spend quality parenting time with the minor child.

22 (2) In the development of a parenting plan, consideration
23 shall be given to the minor child's age and developmental needs and
24 provision of a healthy relationship between the minor child and
25 each party.

26 (3) The minimum court-ordered time the minor child shall
27 spend with each parent shall be specified, including, but not
28 limited to, specified religious and secular holidays, birthdays,

1 vacations, and other special occasions.

2 (4) The decree shall include the parenting plan developed
3 by the parents through mediation and approved by the court pursuant
4 to the Parenting Act.

5 Sec. 5. Original sections 42-364, 43-2,113, 43-2911, and
6 43-2915, Reissue Revised Statutes of Nebraska, are repealed.