

LEGISLATIVE BILL 673

Approved by the Governor May 24, 2011

Introduced by Flood, 19.

FOR AN ACT relating to family law; to amend sections 42-371, 43-2920, 43-2922, and 43-2929, Reissue Revised Statutes of Nebraska; to change provisions relating to release of judgment and subordination of support order liens; to define and redefine terms; to provide intent and procedures for child custody, child support, parenting time, and visitation proceedings involving a military parent; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 42-371, Reissue Revised Statutes of Nebraska, is amended to read:

42-371 Under the Uniform Interstate Family Support Act and sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, and 43-1401 to 43-1418:

(1) All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments;

~~(2)(a)~~ (2) The judgment creditor may execute a partial or total release of the judgment or a document subordinating the lien of the judgment to any other lien, generally or on specific real or personal property. ~~(b)~~ Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support may, if all such payments are current and not delinquent or in arrears, be released or subordinated by a release or subordination document executed by the judgment creditor, and such document shall be sufficient to remove or subordinate the lien. A properly executed, notarized release or subordination document explicitly reciting that all child support payments or spousal support payments are current is prima facie evidence that such payments are in fact current. For purposes of this section, any delinquency or arrearage of support payments shall be determined as provided in subsection (2) of section 42-358.02;

~~(c)~~ Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support shall be approved by the court which rendered the judgment if all such payments are not current. The judgment debtor may file a motion in the court which rendered the original judgment for an order releasing or subordinating the lien as to specific real or personal property. The court shall grant such order upon a showing by the judgment debtor that sufficient real or personal property or property interests will remain subject to the lien or will maintain priority over other liens sufficient to cover all support due and which may become due;

(3) ~~Whenever~~ If a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in subdivision (2) of this section or the support payments are not current, the person desiring such release or subordination may file an application for the relief desired in the court which rendered the original judgment. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no later than ten days before the date of hearing. If the court finds that the release or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order releasing real or personal property from the judgment lien or issue an order subordinating the judgment lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment. If the court orders a release or subordination, the court may order a judgment creditor who, without a good faith reason, refused to execute a release or subordination to pay the judgment debtor's court costs and attorney's fees involved with the application brought under this subdivision. A showing that all support payments are current shall be evidence that the judgment creditor did not have a good faith reason to refuse to execute such release or subordination. For purposes of this section, a current certified copy of support order payment history from the Title IV-D Division of the Department of Health and Human Services setting forth evidence that all support payments are current is prima facie evidence that such payments are in fact current and is valid for thirty days after the date of certification;

(4) Full faith and credit shall be accorded to a lien arising by operation of law against real and personal property for amounts overdue relating to a support order owed by ~~an~~ a judgment debtor or obligor who resides or owns property in this state when another state agency, party, or other entity seeking to enforce such lien complies with the procedural rules relating to the filing of the lien in this state. The state agency, party, or other entity seeking to enforce such lien shall send a certified copy of the support order with all modifications, the notice of lien prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the clerk of the district court in the jurisdiction within this state in which the lien is sought. Upon receiving the appropriate documents and fee, the clerk of the district court shall accept the documents filed and such acceptance shall constitute entry of the foreign support order for purposes of this section only. Entry of a lien arising in another state pursuant to this section shall result in such lien being afforded the same treatment as liens arising in this state. The filing process required by this section shall not be construed as requiring an application, complaint, answer, and hearing as might be required for the filing or registration of foreign judgments under the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act;

(5) Support order judgments shall cease to be liens on real or registered personal property ten years from the date (a) the youngest child becomes of age or dies or (b) the most recent execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated;

(6) Alimony and property settlement award judgments, if not covered by subdivision (5) of this section, shall cease to be a lien on real or registered personal property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated;

(7) The court may in any case, upon application or its own motion, after notice and hearing, order a person required to make payments to post sufficient security, bond, or other guarantee with the clerk to insure payment of both current and any delinquent amounts. Upon failure to comply with the order, the court may also appoint a receiver to take charge of the debtor's property to insure payment. Any bond, security, or other guarantee paid in cash may, when the court deems it appropriate, be applied either to current payments or to reduce any accumulated arrearage;

(8)(a) The lien of a mortgage or deed of trust which secures a loan, the proceeds of which are used to purchase real property, and (b) any lien given priority pursuant to a subordination document under this section shall attach prior to any lien authorized by this section. Any mortgage or deed of trust which secures the refinancing, renewal, or extension of a real property purchase money mortgage or deed of trust shall have the same lien priority with respect to any lien authorized by this section as the original real property purchase money mortgage or deed of trust to the extent that the amount of the loan refinanced, renewed, or extended does not exceed the amount used to pay the principal and interest on the existing real property purchase money mortgage or deed of trust, plus the costs of the refinancing, renewal, or extension; and

(9) Any lien authorized by this section against personal property registered with any county consisting of a motor vehicle or mobile home shall attach upon notation of the lien against the motor vehicle or mobile home certificate of title and shall have its priority established pursuant to the terms of section 60-164 or a subordination document executed under this section.

Sec. 2. Section 43-2920, Reissue Revised Statutes of Nebraska, is amended to read:

43-2920 Sections 43-2920 to 43-2943 and section 4 of this act shall be known and may be cited as the Parenting Act.

Sec. 3. Section 43-2922, Reissue Revised Statutes of Nebraska, is amended to read:

43-2922 For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923 and section 4 of this act;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

(16) Military parent means a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or Reserves of the United States or the National Guard;

~~(16)~~ (17) Office of Dispute Resolution means the office established under section 25-2904;

~~(17)~~ (18) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of

the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

~~(18)~~ (19) Parenting plan means a plan for parenting the child that takes into account parenting functions;

~~(19)~~ (20) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

~~(20)~~ (21) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

~~(21)~~ (22) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

~~(22)~~ (23) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

~~(23)~~ (24) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

~~(24)~~ (25) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

~~(25)~~ (26) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Sec. 4. (1) The Legislature finds that for children of military parents it is in the best interests of the child to maintain the parent-child bond during the military parent's mobilization or deployment.

(2) In a custody or parenting time, visitation, or other access proceeding or modification involving a military parent, the court shall consider and provide, if appropriate:

(a) Orders for communication between the military parent and his or her child during any mobilization or deployment of greater than thirty days. Such communication may be by electronic or other available means, including webcam, Internet, or telephone; and

(b) Parenting time, visitation, or other access orders that ensure liberal access between the military parent and the child during any military leave of the military parent during a mobilization or deployment of greater than thirty days.

(3) A military parent's military membership, mobilization, deployment, absence, relocation, or failure to comply with custody, parenting time, visitation, or other access orders because of military duty shall not, by itself, be sufficient to justify an order or modification of an order involving custody, parenting time, visitation, or other access.

(4) If a custody, child support, or parenting time, visitation, or other access proceeding, or modification thereof, involves a military parent and is filed after the military parent's unit has received notice of potential deployment or during the time the military parent is mobilized or deployed:

(a) The court shall not issue a custody order or modify any previous custody order that changes custody as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may issue a temporary custody order or temporary modification if there is clear and convincing evidence that the custody change is in the best interests of the child;

(b) The court shall not issue a child support order or modify any

previous child support order that changes child support as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may issue a temporary child support order or temporary modification if there is clear and convincing evidence that the order or modification is required to meet the child support guidelines established pursuant to section 42-364.16; and

(c) The court shall not issue a parenting time, visitation, or other access order or modify any previous order that changes parenting time, visitation, or other access as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may enter a temporary parenting time, visitation, or other access order or modify any such existing order to permit liberal parenting time, visitation, or other access during any military leave of the military parent.

(5) If a temporary order is issued under subsection (4) of this section, upon the military parent returning from mobilization or deployment, either parent may file a motion requesting a rehearing or reinstatement of a prior order. The court shall rehear the matter if the temporary order was the initial order in the proceeding and shall make a new determination regarding the proceeding. The court shall reinstate the original order if the temporary order was a modification unless the court finds that the best interests of the child or the child support guidelines established pursuant to section 42-364.16 require a new determination.

(6) Upon finding an (a) unreasonable failure of a nonmilitary parent to accommodate the military leave schedule of the military parent, (b) unreasonable delay by the nonmilitary parent of custody, child support, parenting time, visitation, or other access proceedings, (c) unreasonable failure of the military parent to notify the nonmilitary parent or court of release from mobilization, or (d) unreasonable failure of the military parent to provide requested documentation, the court may order the offending party to pay any attorney's fees of the other party incurred due to such unreasonable action.

(7) This section does not apply to permanent change of station moves by a military parent.

Sec. 5. Section 43-2929, Reissue Revised Statutes of Nebraska, is amended to read:

43-2929 (1) In any proceeding in which parenting functions for a child are at issue under Chapter 42, a parenting plan shall be developed and shall be approved by the court. Court rule may provide for the parenting plan to be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act. A parenting plan shall serve the best interests of the child pursuant to sections 42-364 and 43-2923 and section 4 of this act and shall:

(a) Assist in developing a restructured family that serves the best interests of the child by accomplishing the parenting functions; and

(b) Include, but not be limited to, determinations of the following:

(i) Legal custody and physical custody of each child;

(ii) Apportionment of parenting time, visitation, or other access for each child, including, but not limited to, specified religious and secular holidays, birthdays, Mother's Day, Father's Day, school and family vacations, and other special occasions, specifying dates and times for the same, or a formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court, and set out appropriate times and numbers for telephone access;

(iii) Location of the child during the week, weekend, and given days during the year;

(iv) A transition plan, including the time and places for transfer of the child, method of communication or amount and type of contact between the parties during transfers, and duties related to transportation of the child during transfers;

(v) Procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person or persons who have legal custody and responsibility for parenting functions;

(vi) Provisions for a remediation process regarding future modifications to such plan;

(vii) Arrangements to maximize the safety of all parties and the child;

(viii) Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties; and

(ix) Provisions for safety when a preponderance of the evidence

establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity which is directly harmful to a child.

(2) A parenting plan shall require that the parties notify each other of a change of address, except that the address or return address shall only include the county and state for a party who is living or moving to an undisclosed location because of safety concerns.

(3) When safe and appropriate for the best interests of the child, the parenting plan may encourage mutual discussion of major decisions regarding parenting functions including the child's education, health care, and spiritual or religious upbringing. However, when a prior factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been made, then consideration shall be given to inclusion of provisions for safety and a transition plan that restrict communication or the amount and type of contact between the parties during transfers.

(4) Regardless of the custody determinations in the parenting plan, unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(5) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party.

Sec. 6. Original sections 42-371, 43-2920, 43-2922, and 43-2929, Reissue Revised Statutes of Nebraska, are repealed.