

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 76

Introduced By: Hudkins, 21;
Read first time: January 5, 2007
Committee: Judiciary

A BILL

1 FOR AN ACT relating to custody; to amend section 42-364, Revised
2 Statutes Cumulative Supplement, 2006; to provide for legal
3 and physical custody arrangements of a minor child as
4 prescribed; to provide powers and duties to the court; and
5 to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 42-364 Revised Statutes Cumulative
2 Supplement, 2006, 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 the
10 minor child require such orders. Custody and time spent with each
11 parent shall be determined on the basis of the best interests of the
12 minor child with the objective of maintaining the ongoing involvement
13 of both parents in the minor child's life. The social security number
14 of each parent and the minor child shall be furnished to the clerk of
15 the district court.

16 (2) In determining custody arrangements and the time to be
17 spent with each parent, the court shall consider the best interests of
18 the minor child which shall include, but not be limited to:

19 (a) The relationship of the minor child to each parent prior
20 to the commencement of the action or any subsequent hearing;

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

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

26 (d) Credible evidence of abuse inflicted on any family or
27 household member. For purposes of this subdivision, abuse and family

1 or household member shall have the meanings prescribed in section
2 42-903.

3 (3) In determining custody arrangements and the time to be
4 spent with each parent, the court shall not give preference to either
5 parent based on the sex of the parent and no presumption shall exist
6 that either parent is more fit or suitable than the other.

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

14 (5) After a hearing in open court, the court ~~may~~ shall
15 place the legal custody of a minor child with both parents and may
16 order physical custody on a shared or joint custody basis when both
17 parents agree to such an arrangement. In that event, each parent
18 shall have equal rights to make decisions in the best interests of the
19 minor child in his or her custody. The court ~~may~~ shall place a
20 minor child in joint legal custody after conducting a hearing in
21 open court and ~~specifically finding that joint custody is in the best~~
22 ~~interests of the minor child~~ finding that each parent is fit to
23 parent the minor child regardless of any parental agreement or
24 consent. The court shall place a minor child in joint physical
25 custody after conducting a hearing in open court and finding that each
26 parent is fit to parent the minor child and that such physical
27 custody arrangement is in the best interests of the minor child.

1 (6) In determining the amount of child support to be paid by
2 a parent, the court shall consider the earning capacity of each parent
3 and the guidelines provided by the Supreme Court pursuant to section
4 42-364.16 for the establishment of child support obligations. Upon
5 application, hearing, and presentation of evidence of an abusive
6 disregard of the use of child support money paid by one party to the
7 other, the court may require the party receiving such payment to file
8 a verified report with the court, as often as the court requires,
9 stating the manner in which such money is used. Child support paid to
10 the party having custody of the minor child shall be the property of
11 such party except as provided in section 43-512.07. The clerk of the
12 district court shall maintain a record, separate from all other
13 judgment dockets, of all decrees and orders in which the payment of
14 child support or spousal support has been ordered, whether ordered by
15 a district court, county court, separate juvenile court, or county
16 court sitting as a juvenile court. Orders for child support in cases
17 in which a party has applied for services under Title IV-D of the
18 federal Social Security Act, as amended, shall be reviewed as provided
19 in sections 43-512.12 to 43-512.18.

20 (7) Whenever termination of parental rights is placed in
21 issue by the pleadings or evidence, the court shall transfer
22 jurisdiction to a juvenile court established pursuant to the Nebraska
23 Juvenile Code unless a showing is made that the county court or
24 district court is a more appropriate forum. In making such
25 determination, the court may consider such factors as cost to the
26 parties, undue delay, congestion of dockets, and relative resources
27 available for investigative and supervisory assistance. A

1 determination that the county court or district court is a more
2 appropriate forum shall not be a final order for the purpose of
3 enabling an appeal. If no such transfer is made, the court shall
4 appoint an attorney as guardian ad litem to protect the interests of
5 any minor child. The court may terminate the parental rights of one or
6 both parents after notice and hearing when the court finds such action
7 to be in the best interests of the minor child and it appears by the
8 evidence that one or more of the following conditions exist:

9 (a) The minor child has been abandoned by one or both
10 parents;

11 (b) One parent has or both parents have substantially and
12 continuously or repeatedly neglected the minor child and refused to
13 give such minor child necessary parental care and protection;

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

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

24 (8) Whenever termination of parental rights is placed in
25 issue, the court shall inform a parent who does not have legal counsel
26 of the parent's right to retain counsel and of the parent's right to
27 retain legal counsel at county expense if such parent is unable to

1 afford legal counsel. If such parent is unable to afford legal counsel
2 and requests the court to appoint legal counsel, the court shall
3 immediately appoint an attorney to represent the parent in the
4 termination proceedings. The court shall order the county to pay the
5 attorney's fees and all reasonable expenses incurred by the attorney
6 in protecting the rights of the parent. At such hearing, the guardian
7 ad litem shall take all action necessary to protect the interests of
8 the minor child. The court shall fix the fees and expenses of the
9 guardian ad litem and tax the same as costs but may order the county
10 to pay on finding the responsible party indigent and unable to pay.

11 (9) Modification proceedings relating to support, custody,
12 visitation, or removal of children from the jurisdiction of the court
13 shall be commenced by filing a complaint to modify. Modification of a
14 parenting plan is governed by the Parenting Act. Proceedings to modify
15 a parenting plan shall be commenced by filing a complaint to modify.
16 Service of process and other procedure shall comply with the
17 requirements for a dissolution action.

18 Sec. 2. Original section 42-364, Revised Statutes Cumulative
19 Supplement, 2006, is repealed.