

LEGISLATIVE BILL 612

Approved by the Governor June 7, 1985

Introduced by Schmit, 23; Hannibal, 4

AN ACT relating to children; to amend section 42-364, Reissue Revised Statutes of Nebraska, 1943; to provide for custody placements as prescribed; to provide for the ownership of child support; and to repeal the original section.

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

Section 1. That section 42-364, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-364. When dissolution of a marriage or legal separation is decreed, the court may include such orders in relation to any minor children and their maintenance as shall be justified, including placing the minor children in the custody of the court or third parties; or terminating parental rights pursuant to subdivision (4) (5) of this section if the welfare of the children so requires. Custody and visitation of minor children shall be determined on the basis of their best interests. Subsequent changes may be made by the court after hearing on such notice as prescribed by the court.

(1) In determining with which of the parents the children, or any of them, shall remain, the court shall consider the best interests of the children, which shall include, but not be limited to:

(a) The relationship of the children to each parent prior to the commencement of the action or any subsequent hearing;

(b) The desires and wishes of the children if of an age of comprehension regardless of their chronological age, when such desires and wishes are based on sound reasoning; and

(c) The general health, welfare, and social behavior of the children.

(2) In determining with which of the parents the children, or any of them, shall remain, the court shall not give preference to either parent based on the sex of the parent, and no presumption shall exist that either parent is more fit to have custody of the children than the other.

(3) The court may place the custody of a child with both parents on a shared or joint-custody basis when both parents agree to such an arrangement. In that event, the parents shall have equal rights to make decisions in the best interests of the child in their custody. The court shall not place a child in joint custody without conducting a hearing in open court and specifically

finding that joint custody is in the best interest of the child regardless of any parental agreement or consent.

(3) (4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court as often as the court shall require stating the manner in which such money is used. Child support paid to the party having custody of the child shall be the property of such party. The clerk of the district, county, or separate juvenile court shall maintain a record, separate from all other judgment dockets, of all decrees in which the payment of child support has been ordered.

(4) (5) Whenever termination of parental rights is placed in issue by the pleadings or evidence, the court shall transfer jurisdiction to a juvenile court established pursuant to ~~Chapter 43, article 2, the Nebraska Juvenile Code~~ unless a showing is made that the district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall forthwith appoint an attorney as guardian ad litem to protect the interests of any minor children. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the children and it appears by the evidence that one or more of the following conditions exist:

(a) Such children have been abandoned by one or both parents;

(b) One or both parents have substantially and continuously or repeatedly neglected the children and have refused to give such children necessary parental care and protection;

(c) One or both parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the children; or

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

Whenever termination of parental rights is

placed in issue, the court shall forthwith inform a parent who does not have legal counsel of that parent's right to retain counsel and shall further inform such parent of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the ~~attorney~~ attorney's fee and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor children. The court shall fix the fee and expenses of the guardian ad litem and tax the same as costs, but may order the county to pay on finding the responsible party indigent and unable to pay.

Sec. 2. That original section 42-364, Reissue Revised Statutes of Nebraska, 1943, is repealed.