ASSEMBLY, No. 1812

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman ERIK PETERSON
District 23 (Hunterdon, Somerset and Warren)
Assemblywoman ANNETTE CHAPARRO
District 33 (Hudson)
Assemblyman JOHN DIMAIO
District 23 (Hunterdon, Somerset and Warren)
Assemblywoman ANGELA V. MCKNIGHT
District 31 (Hudson)

Co-Sponsored by:
Assemblyman Holley, Assemblywomen Murphy, N.Munoz, Assemblyman Auth, Assemblywoman Jimenez, Assemblymen Chiaravalloti, Mejia, Caputo, Assemblywomen Reynolds-Jackson, Carter, DiMaso, Assemblymen Wimberly, Spearman and Assemblywoman Dunn

SYNOPSIS

Establishes presumption of joint legal and physical custody in child custody matters.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 6/22/2020)

AN ACT concerning child custody and amending R.S.9:2-4.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.9:2-4 is amended to read as follows:

9:2-4. The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The court shall presume that an award of joint legal and physical custody is in the best interests of the child.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and there shall be a rebuttable presumption of joint legal custody and equal or approximately equal physical custody. **[**the**]** The court shall enter an order for joint legal and physical custody of a minor child to both parents which shall include: (1) provisions for residential arrangements so that a child shall reside an equal or approximately equal amount of time with each parent in accordance with the needs of the child and the parents; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education, and general welfare.

To rebut the presumption of equal or approximately equal physical custody, a parent shall bear the burden of proof and must provide clear and convincing evidence that joint physical custody is harmful to the child. Findings of fact shall be placed on the record.

If the court determines that the presumption of joint legal and equal or approximately equal physical custody is rebutted, the court shall enter an order which may include:

a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;

b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or

c. Any other custody arrangement as the court may determine to be in the best interests of the child.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

In making an award of custody, the court shall consider but not be limited to the following factors: [the parents' ability to agree, communicate and cooperate in matters relating to the child;] the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

d. `The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.

e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.

f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

(cf: P.L.1997, c.299, s.9)

2. This act shall take effect immediately.

STATEMENT

This bill provides for a presumption of joint legal and equal or approximately equal physical custody in a child custody determination.

The current law provides that the court will order any custody arrangement which has been agreed to by both parents unless it is contrary to the best interests of the child. Courts may award joint custody, which is comprised of legal custody or physical custody with the child residing either solely with one parent or alternatively with each parent according to the needs of the parents and the child,

and the parents sharing in the decision-making regarding their children's health, education and general welfare; sole custody to one parent with appropriate parenting time for the noncustodial parent; or any other custody arrangement as determined to be in the child's best interest.

The bill makes it a presumption that the court will award parents joint legal and equal or approximately equal physical custody of their children. Under the bill, a child will reside for an equal or approximately equal amount of time with each parent in accordance with the needs of the child, and the parents will share decision-making authority and responsibility as to the important decisions affecting the child's welfare. This presumption may be rebutted if the parent can show by clear and convincing evidence that an order of joint legal and physical custody is harmful to the child. If the presumption is successfully rebutted, then custody will be awarded according to the child's best interests.