Custody and Companionship Juvenile Court

Liz Igoe

May 23, 2019

3109.12 Visitation rights of grandparents and other relatives when child's mother unmarried

- (A) If a child is born to an unmarried woman, the parents of the woman and any relative of the woman may file a complaint requesting the court of common pleas of the county in which the child resides to grant them reasonable companionship or visitation rights with the child. If a child is born to an unmarried woman and if the father of the child has acknowledged the child and that acknowledgment has become final pursuant to section 2151.232, 3111.25, or 3111.821 of the Revised Code or has been determined in an action under Chapter 3111. of the Revised Code to be the father of the child, the father may file a complaint requesting that the court of appropriate jurisdiction of the county in which the child resides grant him reasonable parenting time rights with the child and the parents of the father and any relative of the father may file a complaint requesting that the court grant them reasonable companionship or visitation rights with the child.

Paternity

- 1. ACKNOWLEDGEMENT OF PATERNITY AFFIDAVIT

Paternity

- 1. ACKNOWLEDGEMENT OF PATERNITY AFFIDAVIT

- 2. ADMINISTRATIVE PATERNITY ESTABLISHMENT

Paternity

- 1. ACKNOWLEDGEMENT OF PATERNITY AFFIDAVIT
- 2. ADMINISTRATIVE PATERNITY ESTABLISHMENT
- 3. COURT ACTION

COURT ACTION WHEN?

MOM + PATERNITY + ALLOCAITON OF PARENTAL RIGHTS AND/OR RECOUP PREGNANCY COSTS

COURT ACTION WHEN?

MOM + PATERNITY + ALLOCAITON OF PARENTAL RIGHTS AND/OR RECOUP PREGNANCY COSTS

DAD + PATERNITY + ALLOCAITON OF PARENTAL RIGHTS

COURT ACTION WHEN?

MOM + PATERNITY + ALLOCAITON OF PARENTAL RIGHTS AND/OR RECOUP PREGNANCY COSTS

DAD + PATERNITY + ALLOCAITON OF PARENTAL RIGHTS

CSEA + FAILED ATTEMPT THROUGH THE ADMINSITRATIVE PROCESS

JURISDICTION??

3127.15 Jurisdiction to make initial determination

Ohio has jurisdiction to make an initial determination in a child custody proceeding if:

This state is the HOME STATE of the child on the date of the commencement of the proceeding, or was the home state of the child within SIX MONTHS before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

WHEN OHIO IS NOT THE HOME STATE

No other court has exercised jurisdiction.

or

Has the Home State Court declined to exercise jurisdiction?

or

No one lives there anymore.

Do both of the following apply?

- The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a ***significant connection with this state other than mere physical presence***.

AND

- Substantial evidence is available in this state concerning the ***child's care, protection, training, and personal relationships***.

Juvenile R. 10 Complaint

- (A) Any person may file a complaint to have determined the custody of a child not a ward of another court of this state, and any person entitled to the custody of a child and unlawfully deprived of such custody may file a complaint requesting a writ of habeas corpus. Complaints concerning custody shall be filed in the county where the child is found or was last known to be.

O.R.C. § 2151.27 Complaint

- (D) Any person with standing under applicable law may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by section 2151.23 of the Revised Code. The complaint shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be found.

- Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits, while venue connotes the locality where the suit should be heard.

Fireproof Construction v. Brenner-Bell (1949), 152 Ohio St. 347, 89 N.E.2d 472; New York, Chicago & St. Louis Rd. Co. v. Matzinger (1940), 136 Ohio St. 271, 25 N.E.2d 349

WHAT IS THE STANDARD???

LEGAL PARENT VS. LEGAL PARENT

UNMARRIED PARENTS BEFORE COURT ACTION

=

MOM

O.R.C. § 3109.042 Designation of residential parent and legal custodian

- (A) An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. A court designating the residential parent and legal custodian of a child described in this section shall treat the mother and father as standing upon an equality when making the designation.

BEST INTEREST OF THE CHILD FACTORS

(a) The wishes of the child's parents;

(b) The child's wishes and concerns as expressed to the court (if an in camera interview is conducted);

(c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

(d) The child's adjustment to the child's home, school, and community;

(e) The mental and physical health of all persons involved in the situation;

BEST INTEREST OF THE CHILD FACTORS

(f) The parent more likely to honor and facilitate parenting time;

(g) Child support payments, including all arrearages;

(h) Convictions or an adjudication for abused child or neglected child or for a sexually orient offence or domestic violence by either parent or any member of their household;

(i) Continuously and willfully denial of court ordered parenting time;

(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

SHARED PARENTING PLANS ALSO CONSIDER

- (a) The ability to cooperate and make joint decisions;
- (b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;
- (c) Any history or potential for abuse, domestic violence, or parental kidnapping;
- (d) The geographic proximity of the parents as it relates to the practical considerations of shared parenting;
- (e) Recommendation of the guardian ad litem if any.

DON'T SHOW ME THE MONEY

The court *shall not* give preference to a parent because of that parent's financial status or condition.

CHANGE IN CIRCUMSTANCES

- ORC. 3109.04 the Court's prior award of custody shall not be modified unless: the court determines that there has been a change in circumstances.

CHANGE IN CIRCUMSTANCES

- 1. The life of the child.

CHANGE IN CIRCUMSTANCES

- 1. The life of the child.
- **2. The legal custodian and that change must have occurred since the last court order was issued, or the facts were unknown to the court at the time it issued it's last order.**

CHANGE IN CIRCUMSTANCES

- 1. The life of the child.
- 2. The legal custodian and that change must have occurred since the last court order was issued, or the facts were unknown to the court at the time it issued it's last order.
- 3. **A change in custody must be in the best interest of the child and not outweighed by the harm which can be caused by a change in custody.**

CONSTANT TUG OF WAR

WHAT IS ENOUGH FOR A CHANGE IN CIRCUMSTANCES???

Changes in the behavior of the child

The Custodian

Fighting between residential parent and a significant other

Frequent moves by the custodian

New marriage

Denial of Visitation

Natural Development of a Child

PARENT VS NON-PARENT

SHARED CUSTODY

- In re BONFIELD: 97 Ohio St.3d 387 (2002)
- Shared Custody is recognized in the State of Ohio

In re MULLEN; 129 Ohio St.3d 417

- Did the parent, by their conduct with a nonparent, enter into an agreement through which the parent permanently relinquished sole custody of the child in favor of shared custody with a nonparent?

In Re: Perales, 52 Ohio St2d. 89, (1977)

In Re: Perales, 52 Ohio St2d. 89, (1977)

- 1. Abandoned the child;

In Re: Perales, 52 Ohio St2d. 89, (1977)

- 1. Abandoned the child;
- 2. **Contractually relinquished custody of the child;**

In Re: Perales, 52 Ohio St2d. 89, (1977)

- 1. Abandoned the child;
- 2. Contractually relinquished custody of the child;
- 3. **Parent has become totally incapable of caring for the child; or**

In Re: Perales, 52 Ohio St2d. 89, (1977)

- 1. Abandoned the child;
- 2. Contractually relinquished custody of the child;
- 3. Parent has become totally incapable of caring for the child; or
- 4. **Custody to the parent would be detrimental to the child.**

In re: Brayden James;113 Ohio St3rd 420, (2007)

ORC3109.04 E is Constitutional as applied to noncustodial parents.

COMPANIONSHIP RIGHTS

3109.12. Parenting time, companionship or visitation rights where mother is unmarried

- (A) If a child is born to an unmarried woman, the parents of the woman and any relative of the woman may file a complaint requesting the court of common pleas of the county in which the child resides to grant them reasonable companionship or visitation rights with the child. If a child is born to an unmarried woman and if the father of the child has acknowledged the child and that acknowledgment has become final pursuant to section 2151.232, 3111.25, or 3111.821 of the Revised Code or has been determined in an action under Chapter 3111. of the Revised Code to be the father of the child, the father may file a complaint requesting that the court of appropriate jurisdiction of the county in which the child resides grant him reasonable parenting time rights with the child and the parents of the father and any relative of the father may file a complaint requesting that the court grant them reasonable companionship or visitation rights with the child.

ORC 3109.051

- (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
- (2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- (3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;
- (4) The age of the child,

ORC 3109.051

- (5) The child's adjustment to home, school, and community;
- (6) The wishes of the child, as expressed to the court; if an in camera interview is conducted.
- (7) The health and safety of the child;
- (8) Time that will be available for the child to spend with siblings;
- (9) The mental and physical health of all parties;
- (10) Willingness to reschedule missed visitation;
- (11) Convictions or an adjudication for abused child or neglected child or for a sexually orient offence or domestic violence by the parent or any member of their household.
- (12) Convictions or an adjudication for abused child or neglected child or for a sexually orient offence or domestic violence by the party or any member of their household.

ORC 3109.051

- (13) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;
- (14) Whether either parent has established a residence or is planning to establish a residence outside this state;
- (15) the wishes and concerns of the child's parents, as expressed by them to the court;
- (16) Any other factor in the best interest of the child.

Two part standard in Ohio:

- 1. Deference to the fit parents' wishes
  and
- 2. The best interest of the child factors

Gaffney vs. Menrath, (First District Ohio App.1999) 132 Ohio App.3d 113

- The trial court must consider the extent to which the autonomy of either parent many be undermined, and the impact on the then existing family situation. There is the strong constitutional protection afforded to parents to rear one's children as they see fit.

Troxel vs. Granville, 530 U.S. 57, 120 S. Ct 2054 (2000)

- A fit parent is presumed to act in the best interest of their children and the parent's decisions regarding visitation should be afforded some special weight.

Harold vs. Collier, 107 Ohio St.3d 44 (2005)

- A parent's wishes must be given some special weight when considering companionship to a non-parent.

THE END