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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 963

02/10/2021 Authored by Mortensen and Munson
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to families; amending the best interest factors for custody determinations;
1.3 amending Minnesota Statutes 2020, section 518.17, subdivision 1.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2020, section 518.17, subdivision 1, is amended to read:

1.6 Subdivision 1. Best interests of the child. (a) In evaluating the best interests of the child
1.7 for purposes of determining issues of custody and parenting time, the court must consider
1.8 and evaluate all relevant factors, including:

1.9 (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of
1.10 the proposed arrangements on the child's needs and development;

1.11 (2) any special medical, mental health, or educational needs that the child may have that
1.12 may require special parenting arrangements or access to recommended services;

1.13 (3) the reasonable preference of the child, if the court deems the child to be of sufficient
1.14 ability, age, and maturity to express an independent, reliable preference;

1.15 (4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents'
1.16 or either parent's household or relationship; the nature and context of the domestic abuse;
1.17 and the implications of the domestic abuse for parenting and for the child's safety, well-being,
1.18 and developmental needs;

1.19 (5) any physical, mental, or chemical health issue of a parent that affects the child's
1.20 safety or developmental needs;

1.21 (6) the history and nature of each parent's participation in providing care for the child;

2.1 (7) the willingness and ability of each parent to provide ongoing care for the child; to
2.2 meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to
2.3 maintain consistency and follow through with parenting time;

2.4 (8) the effect on the child's well-being and development of changes to home, school,
2.5 and community;

2.6 (9) the effect of the proposed arrangements on the ongoing relationships between the
2.7 child and each parent, siblings, and other significant persons in the child's life;

2.8 (10) the benefit to the child in maximizing parenting time with both parents and the
2.9 detriment to the child in limiting parenting time with either parent;

2.10 (11) except in cases in which domestic abuse as described in clause (4) has occurred,
2.11 the disposition of each parent to support the child's relationship with the other parent and
2.12 to encourage and permit frequent and continuing contact between the child and the other
2.13 parent; and

2.14 (12) the willingness and ability of parents to cooperate in the rearing of their child; to
2.15 maximize sharing information and minimize exposure of the child to parental conflict; and
2.16 to utilize methods for resolving disputes regarding any major decision concerning the life
2.17 of the child.

2.18 (b) Clauses (1) to (9) govern the application of the best interests of the child factors by
2.19 the court:

2.20 (1) The court must make detailed findings on each of the factors in paragraph (a) based
2.21 on the evidence presented and explain how each factor led to its conclusions and to the
2.22 determination of custody and parenting time. The court may not use one factor to the
2.23 exclusion of all others, and the court shall consider that the factors may be interrelated.

2.24 (2) The court shall consider that it is in the best interests of the child to promote the
2.25 child's healthy growth and development through safe, stable, nurturing relationships between
2.26 a child and both parents.

2.27 (3) The court shall consider both parents as having the capacity to develop and sustain
2.28 nurturing relationships with their children unless there are substantial reasons to believe
2.29 otherwise. In assessing whether parents are capable of sustaining nurturing relationships
2.30 with their children, the court shall recognize that there are many ways that parents can
2.31 respond to a child's needs with sensitivity and provide the child love and guidance, and
2.32 these may differ between parents and among cultures.

3.1 (4) The court shall not consider conduct of a party that does not affect the party's
3.2 relationship with the child.

3.3 (5) Disability alone, as defined in section 363A.03, of a proposed custodian or the child
3.4 shall not be determinative of the custody of the child.

3.5 (6) The court shall consider evidence of a violation of section 609.507 in determining
3.6 the best interests of the child.

3.7 (7) There is no presumption for or against joint physical custody, except as provided in
3.8 clause (9).

3.9 (8) Joint physical custody does not require an absolutely equal division of time.

3.10 (9) The court shall use a rebuttable presumption that upon request of either or both
3.11 parties, joint legal custody and joint physical custody is in the best interests of the child.
3.12 However, the court shall use a rebuttable presumption that joint legal custody or joint
3.13 physical custody is not in the best interests of the child if domestic abuse, as defined in
3.14 section 518B.01, has occurred between the parents. In determining whether the presumption
3.15 is rebutted, the court shall consider the nature and context of the domestic abuse and the
3.16 implications of the domestic abuse for parenting and for the child's safety, well-being, and
3.17 developmental needs. Disagreement alone over whether to grant sole or joint custody does
3.18 not constitute an inability of parents to cooperate in the rearing of their children as referenced
3.19 in paragraph (a), clause (12).

3.20 (10) The court shall recognize a parent's constitutionally protected fundamental right to
3.21 have the care, custody, and control of a parent's child. If a parent requests a parenting time
3.22 schedule that maximizes parenting time with a child, the court shall maximize the time that
3.23 a child spends with the child's parent to the highest degree possible, up to equal time as the
3.24 other parent, except when the court finds that there is clear and convincing evidence that
3.25 the following current circumstances exist and have caused emotional, physical, or educational
3.26 harm or endangerment to the child:

3.27 (i) abuse, harm, or neglect of the child as defined by chapter 260E;

3.28 (ii) willful abandonment of the child, meaning that a parent has had no contact on a
3.29 regular basis with the child for more than six months consistent with section 260C.301
3.30 unless one parent has prevented the other parent from having a relationship with the child,
3.31 in which case the court shall make efforts to reunite the child with the parent who had been
3.32 prevented access to the child without just cause;

4.1 (iii) a finding or conviction of domestic violence, through the family being adjudicated
4.2 in a filing under section 518B.01, or criminal conviction for domestic abuse under sections
4.3 609.221, 609.222, 609.223, 609.224, 609.2242, 609.2247, 609.26, 609.507, 609.749, or
4.4 629.75. The court shall not consider an order for protection issued without findings as
4.5 relevant to reduce parenting time for a parent, except that the court may order all exchanges
4.6 of the child to be in a neutral or public location, or to be conducted by a third party, or any
4.7 other reasonable method that the court deems proper to minimize contact between the parents
4.8 while exchanging the child for parenting time. A court shall not consider a parent's single
4.9 incident of escalated anger or abuse during the course of a custody battle, when the parent
4.10 has not demonstrated a history of anger management issues or domestic abuse, as a reason
4.11 to reduce parenting time. A court shall equally consider a victim's abuse accusations
4.12 regardless of whether the alleged victim is male or female. The court shall not be prejudicial
4.13 in weighing domestic abuse evidence because of the alleged victim or the alleged perpetrator's
4.14 gender. A false allegation that a party has been abused will be treated as a crime according
4.15 to section 609.507, and the court shall consider awarding sole custody or the majority of
4.16 parenting time to the falsely accused parent. The parent who made the false allegation shall
4.17 be ordered to participate in a therapeutic treatment plan to address anger management issues,
4.18 conflict resolution, assertiveness training, coparenting classes, mental health therapy, or
4.19 any other program that the court deems appropriate;

4.20 (iv) diagnosed by a professional certified to make a diagnosis for ongoing chemical
4.21 dependency or mental illness, but the parent remains untreated;

4.22 (v) unwillingness or inability of a parent to accept, request, or consistently fulfill a
4.23 schedule that maximizes the parent's parenting time, finding that an unreliable parenting
4.24 schedule impacts the stability of the child, including but not limited to a proven track record
4.25 of willfully and consistently not taking responsibility for the child during the parent's
4.26 scheduled parenting time or a parent's inability to demonstrate that the parent can adhere
4.27 to the parenting time schedule or take responsibility for finding safe alternative care for the
4.28 child during the parent's scheduled parenting time;

4.29 (vi) geographic considerations when parents cannot make regular exchanges of the child
4.30 because the parents' driving time for exchanges is greater than 40 minutes for each parent
4.31 or is otherwise excessive. The court shall assume that the location of the child will remain
4.32 in the same school district when the parents were together and the court shall give deference
4.33 to the parent who did not move away;

5.1 (vii) special needs of the child, diagnosed by a medical or educational professional, and
5.2 that the schedule will not support the child's special needs, or support the diagnostic plan
5.3 developed for the child by a qualified professional; or

5.4 (viii) any other criminal behaviors that negatively impact the safety of the child.

5.5 (c) The court shall recognize that exact schedules may vary greatly depending on the
5.6 unique circumstances of the family and the court shall approve of a parenting time schedule
5.7 agreement by the parents without the need for outside evaluation until there has been a
5.8 finding by a court that the child is currently in danger in the parent's care based on section
5.9 518.17, subdivision 1, paragraph (a), clause (10).

5.10 (d) The courts shall inform parents that they may agree in writing to temporary or periodic
5.11 adjustments in parenting time, without a court order, but that the most current court order
5.12 is the default parenting time schedule when the parents cannot reach an agreement regarding
5.13 a schedule.

5.14 (e) If a court denies a parent's request for maximized parenting time with a child, the
5.15 court shall, upon request of a parent, create a specific, clear, and reasonable case plan
5.16 outlining the case plan requirements that a parent must achieve before the court will grant
5.17 the parent's request for maximized parenting time. The court shall allow a parent the
5.18 opportunity to follow a case plan for six months after the parent has notice of the case plan
5.19 requirements. Six months after the parent has notice of a case plan, the court shall reconsider
5.20 whether to grant the parent's request to maximize parenting time with the child. If the parent
5.21 has substantially complied with the case plan, the court shall grant the parent's request to
5.22 maximize parenting time with the child. If the court finds that the parent has complied with
5.23 the case plan, making improvements in areas of the case plan, but has not yet substantially
5.24 complied with the case plan components, the court shall allow the parent another six months
5.25 to substantially comply with the case plan. At the end of the six-month period, the court
5.26 shall review the parent's case plan compliance and reconsider the parent's request to maximize
5.27 parenting time.

5.28 (~~e~~) (f) In a proceeding involving the custodial responsibility of a service member's child,
5.29 a court may not consider only a parent's past deployment or possible future deployment in
5.30 determining the best interests of the child. For purposes of this paragraph, "custodial
5.31 responsibility" has the meaning given in section 518E.102, paragraph (f).

5.32 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to filings
5.33 made on or after that date.