

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 844

Introduced by Hadley, 37.

Read first time January 06, 2012

Committee:

A BILL

1 FOR AN ACT relating to family law; to amend section 42-364, Revised
2 Statutes Cumulative Supplement, 2010, and section
3 43-2929, Revised Statutes Supplement, 2011; to change
4 provisions relating to the use of child support and
5 medical support and to parenting time; and to repeal the
6 original section.

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

1 Section 1. Section 42-364, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 42-364 (1)(a) In an action under Chapter 42 involving
4 child support, child custody, parenting time, visitation, or other
5 access, the parties and their counsel, if represented, shall develop
6 a parenting plan as provided in the Parenting Act. If the parties and
7 counsel do not develop a parenting plan, the complaint shall so
8 indicate as provided in section 42-353 and before July 1, 2010, the
9 case may be referred to mediation, specialized alternative dispute
10 resolution, or other alternative dispute resolution process and on or
11 after such date the case shall be referred to mediation or
12 specialized alternative dispute resolution as provided in the
13 Parenting Act. For good cause shown and (i) when both parents agree
14 and such parental agreement is bona fide and not asserted to avoid
15 the purposes of the Parenting Act, or (ii) when mediation or
16 specialized alternative dispute resolution is not possible without
17 undue delay or hardship to either parent, the mediation or
18 specialized alternative dispute resolution requirement may be waived
19 by the court. In such a case where waiver of the mediation or
20 specialized alternative dispute resolution is sought, the court shall
21 hold an evidentiary hearing and the burden of proof for the party or
22 parties seeking waiver is by clear and convincing evidence.

23 (b) The decree in an action involving the custody of a
24 minor child shall include the determination of legal custody and
25 physical custody based upon the best interests of the child, as

1 defined in the Parenting Act, and child support. Such determinations
2 shall be made by incorporation into the decree of (i) a parenting
3 plan developed by the parties, if approved by the court, or (ii) a
4 parenting plan developed by the court based upon evidence produced
5 after a hearing in open court if no parenting plan is developed by
6 the parties or the plan developed by the parties is not approved by
7 the court. The decree shall conform to the Parenting Act.

8 (c) The social security number of each parent and the
9 minor child shall be furnished to the clerk of the district court but
10 shall not be disclosed or considered a public record.

11 (2) In determining legal custody or physical custody, the
12 court shall not give preference to either parent based on the sex of
13 the parent and, except as provided in section 43-2933, no presumption
14 shall exist that either parent is more fit or suitable than the
15 other. Custody shall be determined on the basis of the best interests
16 of the child, as defined in the Parenting Act. Unless parental rights
17 are terminated, both parents shall continue to have the rights stated
18 in section 42-381.

19 (3) Custody of a minor child may be placed with both
20 parents on a joint legal custody or joint physical custody basis, or
21 both, (a) when both parents agree to such an arrangement in the
22 parenting plan and the court determines that such an arrangement is
23 in the best interests of the child or (b) if the court specifically
24 finds, after a hearing in open court, that joint physical custody or
25 joint legal custody, or both, is in the best interests of the minor

1 child regardless of any parental agreement or consent.

2 (4)(a) In determining the amount of child support to be
3 paid by a parent, the court shall consider the earning capacity of
4 each parent and the guidelines provided by the Supreme Court pursuant
5 to section 42-364.16 for the establishment of child support
6 obligations. ~~Upon application, hearing, and presentation of evidence~~
7 ~~of an abusive disregard of the use of child support money or cash~~
8 ~~medical support paid by one party to the other, the court may require~~
9 ~~the party receiving such payment to file a verified report with the~~
10 ~~court, as often as the court requires, stating the manner in which~~
11 ~~child support money or cash medical support is used. Child support~~
12 ~~money or cash medical support paid to the party having custody of the~~
13 ~~minor child shall be the property of such party except as provided in~~
14 ~~section 43-512.07. used for the benefit of the minor child, and such~~
15 ~~party shall be a fiduciary with respect to such funds.~~ The clerk of
16 the district court shall maintain a record, separate from all other
17 judgment dockets, of all decrees and orders in which the payment of
18 child support, cash medical support, or spousal support has been
19 ordered, whether ordered by a district court, county court, separate
20 juvenile court, or county court sitting as a juvenile court. Orders
21 for child support or cash medical support in cases in which a party
22 has applied for services under Title IV-D of the federal Social
23 Security Act, as amended, shall be reviewed as provided in sections
24 43-512.12 to 43-512.18.

25 **(b) Upon request of the party paying child support money**

1 or cash medical support, the court shall order the party who receives
2 such child support money or cash medical support to submit an annual
3 verified report of the use of such funds. Repeated misuse of child
4 support money or cash medical support establishes a rebuttable
5 presumption of a material change of circumstances.

6 (5) Whenever termination of parental rights is placed in
7 issue:

8 (a) The court shall transfer jurisdiction to a juvenile
9 court established pursuant to the Nebraska Juvenile Code unless a
10 showing is made that the county court or district court is a more
11 appropriate forum. In making such determination, the court may
12 consider such factors as cost to the parties, undue delay, congestion
13 of dockets, and relative resources available for investigative and
14 supervisory assistance. A determination that the county court or
15 district court is a more appropriate forum shall not be a final order
16 for the purpose of enabling an appeal. If no such transfer is made,
17 the court shall appoint an attorney as guardian ad litem to protect
18 the interests of any minor child. The court may terminate the
19 parental rights of one or both parents after notice and hearing when
20 the court finds such action to be in the best interests of the minor
21 child, as defined in the Parenting Act, and it appears by the
22 evidence that one or more of the grounds for termination of parental
23 rights stated in section 43-292 exist; and

24 (b) The court shall inform a parent who does not have
25 legal counsel of the parent's right to retain counsel and of the

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

13 (6) Modification proceedings relating to support,
14 custody, parenting time, visitation, other access, or removal of
15 children from the jurisdiction of the court shall be commenced by
16 filing a complaint to modify. Modification of a parenting plan is
17 governed by the Parenting Act. Proceedings to modify a parenting plan
18 shall be commenced by filing a complaint to modify. Such actions may
19 be referred to mediation, specialized alternative dispute resolution,
20 or other alternative dispute resolution process before July 1, 2010,
21 and on and after such date shall be referred to mediation or
22 specialized alternative dispute resolution as provided in the
23 Parenting Act. For good cause shown and (a) when both parents agree
24 and such parental agreement is bona fide and not asserted to avoid
25 the purposes of the Parenting Act, or (b) when mediation or

1 specialized alternative dispute resolution is not possible without
2 undue delay or hardship to either parent, the mediation or
3 specialized alternative dispute resolution requirement may be waived
4 by the court. In such a case where waiver of the mediation or
5 specialized alternative dispute resolution is sought, the court shall
6 hold an evidentiary hearing and the burden of proof for the party or
7 parties seeking waiver is by clear and convincing evidence. Service
8 of process and other procedure shall comply with the requirements for
9 a dissolution action.

10 (7) In any proceeding under this section relating to
11 custody of a child of school age, certified copies of school records
12 relating to attendance and academic progress of such child are
13 admissible in evidence.

14 Sec. 2. Section 43-2929, Revised Statutes Supplement,
15 2011, is amended to read:

16 43-2929 (1) In any proceeding in which parenting
17 functions for a child are at issue under Chapter 42, a parenting plan
18 shall be developed and shall be approved by the court. Court rule may
19 provide for the parenting plan to be developed by the parties or
20 their counsel, a court conciliation program, an approved mediation
21 center, or a private mediator. When a parenting plan has not been
22 developed and submitted to the court, the court shall create the
23 parenting plan in accordance with the Parenting Act. A parenting plan
24 shall serve the best interests of the child pursuant to sections
25 42-364, 43-2923, and 43-2929.01 and shall:

1 (a) Assist in developing a restructured family that
2 serves the best interests of the child by accomplishing the parenting
3 functions; and

4 (b) Include, but not be limited to, determinations of the
5 following:

6 (i) Legal custody and physical custody of each child;

7 (ii) Apportionment of parenting time, visitation, or
8 other access for each child, including, but not limited to, specified
9 religious and secular holidays, birthdays, Mother's Day, Father's
10 Day, school and family vacations, and other special occasions,
11 specifying dates and times for the same, or a formula or method for
12 determining such a schedule in sufficient detail that, if necessary,
13 the schedule can be enforced in subsequent proceedings by the court,
14 and set out appropriate times and numbers for telephone access;

15 (iii) Location of the child during the week, weekend, and
16 given days during the year;

17 (iv) A transition plan, including the time and places for
18 transfer of the child, method of communication or amount and type of
19 contact between the parties during transfers, and duties related to
20 transportation of the child during transfers;

21 (v) Procedures for making decisions regarding the day-to-
22 day care and control of the child consistent with the major decisions
23 made by the person or persons who have legal custody and
24 responsibility for parenting functions;

25 (vi) Provisions for a remediation process regarding

1 future modifications to such plan;

2 (vii) Arrangements to maximize the safety of all parties
3 and the child;

4 (viii) Provisions to ensure regular and continuous school
5 attendance and progress for school-age children of the parties; and

6 (ix) Provisions for safety when a preponderance of the
7 evidence establishes child abuse or neglect, domestic intimate
8 partner abuse, unresolved parental conflict, or criminal activity
9 which is directly harmful to a child.

10 (2) A parenting plan shall require that the parties
11 notify each other of a change of address, except that the address or
12 return address shall only include the county and state for a party
13 who is living or moving to an undisclosed location because of safety
14 concerns. A parenting plan shall state that the parent receiving
15 child support money or cash medical support shall use such funds for
16 the benefit of the minor child, such parent is a fiduciary with
17 respect to such funds and may be required to account for the use of
18 such funds, and repeated misuse of such funds establishes a
19 rebuttable presumption of a material change of circumstances.

20 (3) When safe and appropriate for the best interests of
21 the child, the parenting plan may encourage mutual discussion of
22 major decisions regarding parenting functions including the child's
23 education, health care, and spiritual or religious upbringing.
24 However, when a prior factual determination of child abuse or
25 neglect, domestic intimate partner abuse, or unresolved parental

1 conflict has been made, then consideration shall be given to
2 inclusion of provisions for safety and a transition plan that
3 restrict communication or the amount and type of contact between the
4 parties during transfers.

5 (4) Regardless of the custody determinations in the
6 parenting plan, unless parental rights are terminated, both parents
7 shall continue to have the rights stated in section 42-381.

8 (5) In the development of a parenting plan, consideration
9 shall be given to the child's age, the child's developmental needs,
10 and the child's perspective, as well as consideration of enhancing
11 healthy relationships between the child and each party.

12 (6) The Supreme Court shall, no later than January 1,
13 2013, establish guidelines for parenting time in the case of court-
14 created parenting plans. Such guidelines shall apportion parenting
15 time equally between the parents. Court-created parenting plans shall
16 be established in accordance with such guidelines, which guidelines
17 are presumed to be in the best interests of the child, unless the
18 court finds that one or both parties have produced sufficient
19 evidence to rebut the presumption that the application of the
20 guidelines will be in the best interests of the child. The burden of
21 proof for the party or parties seeking to rebut the presumption is by
22 clear and convincing evidence.

23 Sec. 3. Original section 42-364, Revised Statutes
24 Cumulative Supplement, 2010, and section 43-2929, Revised Statutes
25 Supplement, 2011, are repealed.