

Original sponsors: Rogers and Gardiner

Offered: 5/11/82
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 2d SENATE CS FOR CS FOR HOUSE BILL NO. 210 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child custody."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. LEGISLATIVE INTENT. (a) The legislature finds that it is
9 generally desirable to assure a minor child frequent and continuing contact
10 with both parents after the parents have separated or dissolved their mar-
11 riage and that it is in the public interest to encourage parents to share the
12 rights and responsibilities of child rearing. While actual physical custody
13 may not be practical or appropriate in all cases, it is the intent of the
14 legislature that both parents have the opportunity to guide and nurture their
15 child and to meet the needs of the child on an equal footing beyond the
16 considerations of support or actual custody.

17 (b) The legislature also finds that it is in the best interests of a
18 child to encourage parents to implement their own child care agreements
19 outside of the court setting.

20 * Sec. 2. AS 09.55.205(c) is amended to read:

21 (c) The court shall determine custody in accordance with the best
22 interests of the child under AS 25.20.060 - 25.20.130 [NEITHER PARENT IS
23 ENTITLED TO PREFERENCE AS A MATTER OF RIGHT IN AWARDING CUSTODY OF THE
24 CHILD]. In determining the best interests of the child the court shall
25 consider [ALL RELEVANT FACTORS INCLUDING:]

26 (1) the physical, emotional, mental, religious, and social
27 needs of the child;

28 (2) the capability and desire of each parent to meet these
29 needs;

1 (3) the child's preference if the child is of sufficient age
2 and capacity to form a preference;

3 (4) the love and affection existing between the child and
4 each parent;

5 (5) the length of time the child has lived in a stable, sat-
6 isfactory environment and the desirability of maintaining continuity;

7 (6) the desire and ability of each parent to allow an open
8 and loving frequent relationship between the child and the [HIS] other
9 parent.

10 * Sec. 3. AS 09.55.205 is amended by adding new subsections to read:

11 (d) In awarding custody the court may not consider the conduct,
12 marital status, income, social or cultural environment, or life style of
13 either parent unless the court determines that the factor affects the
14 well-being of the child.

15 (e) Notwithstanding the provisions of (d) of this section, in
16 awarding custody the court shall comply with the provisions of the
17 Indian Child Welfare Act (25 U.S.C. 1901 - 1963).

18 * Sec. 4. AS 09.55.220 is amended to read:

19 Sec. 09.55.220. MODIFICATION OF JUDGMENT. Subject to AS 25.20.-
20 110, any [ANY] time after judgment [,] the court, upon the motion of
21 either party, may set aside, alter, or modify so much of the judgment as
22 may provide for alimony, [OR] for the appointment of trustees for the
23 care and custody of the minor children [,] or for their nurture and
24 education, or for the maintenance of either party to the action.

25 * Sec. 5. AS 25.20.060 is amended to read:

26 Sec. 25.20.060. CUSTODY OF THE CHILD. (a) If there is a dispute
27 over child custody, either parent may petition the superior court for
28 resolution of the matter under AS 25.20.060 - 25.20.130 [THIS SECTION
29 UNLESS AN ACTION BETWEEN THE PARENTS IS PENDING UNDER AS 09.55]. The

1 court shall award custody on the basis of the best interests of the
2 child. In determining the best interests of the child, the court shall
3 consider all relevant factors including those factors enumerated in
4 AS 09.55.205(c) [AS 09.55.205].

5 (b) Neither parent, regardless of the question of the child's
6 legitimacy, is entitled to preference in the awarding of custody.

7 (c) The court may award shared custody to both parents if shared
8 custody is determined by the court to be in the best interests of the
9 child. An award of shared custody shall assure that the child has fre-
10 quent and continuing contact with each parent to the maximum extent
11 possible.

12 * Sec. 6. AS 25.20 is amended by adding new sections to read:

13 Sec. 25.20.070. TEMPORARY CUSTODY. Unless it is shown to be
14 detrimental to the welfare of the child, the child shall have, to the
15 greatest degree practical, equal access to both parents during the time
16 that the court considers an award of custody under AS 25.20.060 - 25.20.-
17 130.

18 Sec. 25.20.080. MEDIATION OF CUSTODY MATTER. (a) At any time
19 within 30 days after a petition for child custody is filed under AS 25.-
20 20.060 the court may order the parties to submit to mediation. Each
21 party shall have the right to challenge peremptorily one mediator
22 appointed.

23 (b) Mediation shall be conducted informally as a conference, or by
24 telephone, or series of conferences, as determined by the mediator. The
25 parties to the action and a court-appointed representative of the minor
26 children shall attend.

27 (c) If the mediator determines that mediation efforts are un-
28 successful, the mediator shall terminate mediation and notify the court
29 that mediation efforts have failed. The custody proceeding shall proceed

1 in the usual manner.

2 (d) Upon submission of the parties to mediation under this section,
3 a pending child custody proceeding shall be stayed for a period of 30
4 days or until the court is notified that mediation efforts have failed.
5 All court orders made during the pending custody proceeding remain in
6 effect during the period of mediation.

7 (e) Costs of mediation shall be paid as ordered by the court by
8 one party, by both parties, or by the state if both parties are indigent.

9 Sec. 25.20.090. FACTORS FOR CONSIDERATION IN AWARDING SHARED
10 CUSTODY. In determining whether to award shared custody of a child the
11 court shall consider

12 (1) the child's preference if the child is of sufficient age
13 and capacity to form a preference;

14 (2) the needs of the child;

15 (3) the stability of the home environment likely to be of-
16 fered by each parent;

17 (4) the education of the child;

18 (5) the advantages of keeping the child in the community
19 where the child presently resides;

20 (6) the optimal time for the child to spend with each parent
21 considering

22 (A) the actual time spent with each parent;

23 (B) the proximity of each parent to the other and to the
24 school in which the child is enrolled;

25 (C) the feasibility of travel between the parents;

26 (D) special needs unique to the child that may be better
27 met by one parent than the other;

28 (E) which parent is more likely to encourage frequent
29 and continuing contact with the other parent;

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- (7) any findings and recommendations of a neutral mediator;
- (8) whether there is a history of violence between the parents;
- (9) other factors the court considers pertinent.

Sec. 25.20.100. DENIAL OF SHARED CUSTODY. If a parent or the guardian ad litem requests shared custody of a child and the court denies the request, the reasons for the denial shall be stated on the record.

Sec. 25.20.110. MODIFICATION OF CUSTODY OR VISITATION. An award of custody of a child or visitation with the child may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the award of custody or visitation with the child and the modification is granted, the court shall enter on the record its reason for the modification.

Sec. 25.20.120. CONFIDENTIALITY. At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time.

Sec. 25.20.130. ACCESS TO RECORDS OF THE CHILD. A parent who is not granted custody under AS 25.20.060 - 25.20.130 has the same access to the medical, dental, school, and other records of the child as the custodial parent.