SB

21

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SB 21
GRANDPARENTS VISITATION RIGHTS
SPONSOR STATEMENT
(April 13, 1994)

SB 21, referred to as the Grandparents Visitation Rights bill, is currently in the Senate Judiciary Committee.

This is a very straight-forward and necessary bill. SB 21 would allow grandparents to petition Superior Court for an order establishing reasonable visitation rights with their grandchildren. Of course, visitation rights would only be granted if the Court deemed it was in the best interest of the child.

While we are in the throes of budget discussions and health care reform, I still think this bill deserves attention this session. It is a simple bill with no partisan undertones and I see no reason why it should not pass the Legislature this year. I have received many phone calls and letters of support from seniors and senior groups all over the state.

If you need additional information on SB 21 contact Alexis Miller in my office at 465-3892.

January-May: STATE CAPITOL 2 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • S' 58-8181 • FAX: (907) 258-5571

CO-CHAIR: Anchorage Caucus • ate Resources Committee

ALASKA WOMEN'S LOBBY
P.O. BOX 22156, JUNEAU, ALASKA 99802

To: Senator Dave Donley
From: The Alaska Women's Lobby
Date: March 10,1994

The Alaska Women's Lobby requests your consideration of an amendment to SB 21, regarding visitation rights of grandparents and other persons.

SB 21 requires that when custody is disputed in a divorce the court shall provide for visitation by a grandparent or other person with whom the court determines visitation is in the best interests of the child. The bill also allows a child's grandparents to petition the Superior Court for visitation after a divorce.

Sections 3 & 4 of the bill deal with dissolutions or divorces in which the parents are not in dispute but in agreement. The Alaska Women's Lobby supported changes in the dissolution statute several years ago which clarified that the agreements between spouses be in writing, that the written agreements constitute the entire agreement between the parties and that the court may amend the written agreements between the parties *only* if both petitioners concur in the amendment in writing or on the record. (A.S. 25.24.220 (g))

We continue to support this concept and so object to section 4 of SB 21 which specifically sets aside A.S. 25.24.220 (g) to allow the court to amend the dissolution agreement by inserting visitation rights for a grandparent or other person without the express consent of the parties to the agreement.

Section 3 of the bill requires the court when considering if the parents agreement on visitation is in the child's best interests to also consider whether the agreement should include visitation by a grandparent or other person. If the parents agree on all other aspects of the dissolution but cannot agree in writing to the insertion of an other person's right to visitation with their child the court has the option of not granting the dissolution.

A.S. 25.24.230 (a) (4) currently requires that in dissolutions " each spouse entered into the agreement voluntarily and free from coercion of another person".

We request that Section 4 be stricken from the bill. Thank you for your consideration of our concern.

LETTER OF SUPPORT

SB 21

Sec. 25.24.150. Judgments for custody. (a) In an action for divorce or for legal separation or for placement of a child when one or both parents have died, the court may, if it has jurisdiction under AS 25.30.020, and is an appropriate forum under AS 25.30.050 and 25.30.060, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of a child of the marriage, make, modify, or vacate an order for the custody of or visitation with the minor child that may seem necessary or proper, including an order that provides for visitation by a grandparent or other person if that is in the best interests of the child.

(b) If a guardian ad litem for a child is appointed, the appointment shall be made under the terms of AS 25.24.310(c).

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 — 25.20.130. In determining the best interests of the child the court shall consider

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

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

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

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

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

(6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent.

(d) In awarding custody the court may consider only those facts that directly affect the well-being of the child.

(e) Notwithstanding the provisions of (d) of this section, in awarding custody the court shall comply with the provisions of 25 U.S.C. 1901 — 1963 (P.L. 95-608, the Indian Child Welfare Act of 1978). (§ 1 ch 160 SLA 1968; am § 1 ch 167 SLA 1975; am § 2 ch 61 SLA 1977; am § 1 ch 63 SLA 1977; am § 1 ch 15 SLA 1982; am §§ 2, 3 ch 88 SLA 1982)

Revisor's notes. — Formerly AS 09.55.205. Renumbered in 1983.

Cross references. — For intent of 1982 amendments, see § 1, ch. 88, SLA 1982, in the Temporary and Special Acts; for enforcement of visitation rights, see AS 25.24.300.

Effect of amendments. — The first 1982 amendment designated the former first sentence as subsection (a), the second sentence as subsection (b), and the rest of the section as subsection (c), inserted "or for placement of a child when one or both parents have died" and "modify, or vacate" in subsection (a), substituted "a child of the marriage" for "any child of the marriage," and the language beginning "that may seem necessary or proper" for "which may seem necessary or proper and may at any time modify or vacate the order" in subsection (a), and substituted "If" for "Any appointment of" and "AS 09.65.130(c)" for "AS 09.65.130" and inserted "is appointed, the appointment" in subsection (b).

The second 1982 amendment, in subsection (c), substituted "under AS 25.20.060 — 25.20.180" for "neither parent is entitled to preference as a matter of right in awarding custody of the child" at the end of the first sentence, deleted "all relevant factors including" from the end of the introductory language in the second sentence, added "if the child is of sufficient

age and capacity to form a preference" to the end of paragraph (3), and substituted "the other parent" for "his other parent" at the end of paragraph (6). The amendment also added subsections (d) and (e).

NOTES TO DECISIONS

I. General Consideration.
II. Determination of Custody.
  A. In General.
  B. Review.
III. Custody Modification.
  A. In General.
  B. Decrees of Other States.

I. GENERAL CONSIDERATION.

Editor's notes. — A number of cases cited in the note below were decided under the former custody provisions of AS 09.55.210.

Applied in Hinchey v. Hinchey, Sup. Ct. Op. No. 2312 (File No. 4528), 625 P.2d 297 (1981); Matson v. Matson, Sup. Ct. Op. No. 2461 (File No. 5302), 639 P.2d 298 (1982); Morel v. Morel, Sup. Ct. Op. No. 2528 (File No. 5706), 647 P.2d 605 (1982).

Quoted in Honger v. Honger, Sup. Ct. Op. No. 520 (File No. 954), 449 P.2d 766 (1969); Delgado v. Fawcett, Sup. Ct. Op. No. 953 (File No. 1594), 515 P.2d 710 (1973); Balchen v. Balchen, Sup. Ct. Op. No. 1469 (File No. 3179), 566 P.2d 1324 (1977); Chavre v. Chavre, Sup. Ct. Op. No. 1891 (File No. 3349), 598 P.2d 81 (1979); Malekos v. Chloe Ann Yin, Sup. Ct. Op. No. 2580 (File Nos. 5767, 5817), P.2d (1982).

Stated in L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976); K.C.M. v. State, Sup. Ct. Op. No. 2326 (File No. 4764), 627 P.2d 607 (1981).

Cited in In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976); Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); Layne v. Niles, Sup. Ct. Op. No. 2396 (File No. 5887), 632 P.2d 234 (1981); Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 6854), 641 P.2d 14 (1982); Stone v. Stone, Sup. Ct. Op. No. 2522 (File No. 6674), P.2d (1982).

II. DETERMINATION OF CUSTODY.

A. In General.

Welfare of children is given paramount consideration. — In determining the custody of children the trial court should be guided by the rule of quite general application that the welfare and best interests of the children should be given paramount consideration. Rhodes v. Rhodes, Sup. Ct. Op. No. 83 (File No. 107), 370 P.2d 902 (1962); Ransier v. Ransier, Sup. Ct. Op. No. 348 (File No. 606), 414 P.2d 956 (1966); Glasgow v. Glasgow, Sup. Ct. Op. No. 405 (File No. 749), 426 P.2d 617 (1967); Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968); Sheridan v. Sheridan, Sup. Ct. Op. No. 603 (File No. 1120), 466 P.2d 821 (1970).

The paramount criterion of the welfare and best interests of the child overrides consideration of any factor of technical fault. Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968).

There has been a steady course of legal development, whereby the best interests of the child are to be the paramount consideration in custody cases, to the exclusion of other criteria, such as the doctrine that children of tender years will generally be awarded to the mother when other factors are fairly evenly balanced. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

The paramount consideration in any custody determination is what appears to be for the best interests of the child. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972); Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973); Wetzler v. Wetzler, Sup. Ct. Op. No. 1618 (File No. 2892), 570 P.2d 741 (1977); Faro v. Faro, Sup. Ct. Op. No. 1650 (File No. 3465), 579 P.2d 1377 (1978); Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979); Starkweather v. Curritt, Sup. Ct. Op. No. 2446 (File No. 5484), 636 P.2d 1181 (1981).

Between parents, custody is to be awarded according to the best interests of the child. Veazey v. Veazey, Sup. Ct. Op. No. 1381 (File No. 2631), 560 P.2d 382 (1977).

In sifting and weighing the often emotionally charged and diametrically opposed testimony of the parties, Alaska decisions, and Alaska's positive law, require that the trial court's resolution of custody issues be determined by the paramount criterion of the best interests of the child. Horutz v. Horutz, Sup. Ct. Op. No. 1390 (File No. 2615), 560 P.2d 397 (1977).

STATUTES

The primary goal of the court in awarding custody is to further the best interests of the child, which includes respecting the beliefs of a mature child, whether they be religious or nonreligious. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

Even over claims of parents. — Where neither parent exhibited any characteristics of a proper person to have the care and control of two little boys, the welfare of the children was made paramount to the claims of either parent. Leak v. Leak, 3 Alaska 164 (1906), appeal dismissed, 156 F. 473, 474 (9th Cir. 1907).

The best interests of the parent, or detriment to the parent, are not the test. Veazey v. Veazey, Sup. Ct. Op. No. 1381 (File No. 2631), 560 P.2d 382 (1977), Horutz v. Horutz, Sup. Ct. Op. No. 1390 (File No. 2616), 560 P.2d 397 (1977).

Stepchild as "child of the marriage". — Where stepparent has assumed status of in loco parentis, a stepchild is a "child of the marriage" within this section. Carter v. Brodrick, Sup. Ct. Op. No. 2600 (File No. 6511), 644 P.2d 850 (1982).

Broad discretion. — The trial court's duty to provide for the care and custody of minor children in divorce proceedings places a grave responsibility upon the court and at the same time gives it a broad discretion. Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968).

The law now vests a very wide discretion in the trial court to determine where custody shall be placed. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970); Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972); Horutz v. Horutz, Sup. Ct. Op. No. 1390 (File No. 2616), 560 P.2d 397 (1977).

The trial court is given broad discretion in fashioning suitable visitation rights and support obligations. Curgus v. Curgus, Sup. Ct. Op. No. 943 (File No. 1837), 514 P.2d 647 (1973).

But that discretion is not unlimited. — Trial courts have wide discretion in determining custody issues, but that discretion is not unlimited. Johnson v. Johnson, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978).

Standard for custody in section parallels supreme court standard. — The legislative standard for custody expressed in this section parallels the standard articulated by the supreme court. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972); Bonjour v. Bonjour, Sup. Ct. Op. No. 1156 (File No. 3000), 566 P.2d 667 (1977).

Children should be kept together if possible. — In determining custody of children consideration should be given to the desirability of keeping the children of the family together so that they may enjoy the normal condition of childhood of growing up together as brothers and sisters. Rhodes v. Rhodes, Sup. Ct. Op. No. 83 (File No. 107), 370 P.2d 902 (1962); Glasgow v. Glasgow, Sup. Ct. Op. No. 405 (File No. 749), 426 P.2d 617 (1967).

Consideration should be given to the desirability of not separating the children unless their welfare clearly requires such a course. Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

The question of whether or not it is necessary to separate children must depend upon the facts and circumstances of each particular case. Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

The doctrine of tender years is not an appropriate criterion for determination of the best interests of the child under this section. Johnson v. Johnson, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978); Wetzler v. Wetzler, Sup. Ct. Op. No. 1518 (File No. 2892), 570 P.2d 741 (1977).

The "tender years" doctrine was specifically rejected in Johnson v. Johnson, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978), and the opinion in Wetzler v. Wetzler, Sup. Ct. Op. No. 1518 (File No. 2892), 570 P.2d 741 (1977), in no way revived the doctrine. Faro v. Faro, Sup. Ct. Op. No. 1650 (File No. 3465), 579 P.2d 1377 (1978).

For cases prior to 1977 which construed the tender years doctrine, see Harding v. Harding, Sup. Ct. Op. No. 120 (File No. 218), 377 P.2d 378 (1962); Glasgow v. Glasgow, Sup. Ct. Op. No. 405 (File No. 749), 426 P.2d 617 (1967); Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968); Sheridan v. Sheridan, Sup. Ct. Op. No. 603 (File No. 1120), 466 P.2d 821 (1970).

Age of children is only one factor to be considered. — Although the age of the children in a custody dispute is one factor which may be considered by the trial court in its determination of the best interests of the child, it is only one factor, to be weighed with many others. Johnson v. Johnson, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978).

Constitutionality of section in specifying "religious needs" as consideration. — This section in specifying that the "religious needs" of the child may be considered in awarding custody, is not unconstitutional on its face. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

This section is limited to cases where particular religious practices or beliefs pose a substantial threat of or would result in actual physical, emotional or mental injury to the child or will otherwise have a harmful effect on the child in violation of valid state statutes. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

In addition, the court may consider the actual religious needs of a mature child. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

This section, insofar as it permits a court to consider the "religious needs" of a minor as an aspect of the child's "best interest," does not infringe upon constitutionally protected rights. However, the court must make a finding that the child has actual, not presumed, religious needs, and that one parent will be more able to satisfy those needs than the other parent. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

"Actual religious needs". — By actual religious needs, the supreme court refers to the expressed preference of a child mature enough to make a choice between a form of religion or the lack of it. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

Section not limited to consideration of formal religious needs. — In order to avoid running afoul of the establishment clause, this section cannot be limited to consideration of the formal religious needs of the child. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

Court must retain strict neutrality. So long as a court makes findings as to a child's actual needs respecting religion, the court may consider such needs, as one factor, in awarding custody. In such consideration, the court, however, may not substitute its own preferences, either for or against a particular type of religious observance, but must retain a strict neutrality. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

Reliance on parties' religious affiliations held improper. — The trial court's reliance on the religious affiliations of the parties, in the absence of a showing of actual religious needs of the child, constitutes the use of an improper criterion. Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

The trial court's reliance in determining custody on findings that the father and his second wife were "devout Protestants" and members of an "organized religious community," while the mother's interest in religion was "passive," was impermissible under the establishment clause of the first amendment, since there was no secular purpose in the trial court's action, the primary effect of such action was to advance religion, and the action fostered excessive government entanglement with religion. Bonjour v. Bonjour, Sup. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

Bicultural situations. — Where the differing life-styles flowing from two cultures have significance in determining which parent could provide the best possible parent-child relationship, it is inappropriate to decide the custody issue on the basis of cultural assumptions which are not borne out by the record. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972).

It is not permissible, in a bicultural context, to decide a child's custody on the hypothesis that it is necessary to facilitate the child's adjustment to what is believed to be the dominant culture. Such judgments are not relevant to the determination of custody issues. Rather, the focus should be on the fitness of the parent and the parent's ability to accord the child the most meaningful parent-child relationship. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972).

Unique facts of each case to be weighed. — The legislative intent is that the trial court decide custody matters by weighing the unique facts in each case in order to determine the best interests of the child. Johnson v. Johnson, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978).

Determination of the child's best interests must turn on a balancing of the unique facts of each case rather than on outmoded presumptions. Wetzler v. Wetzler, Sup. Ct. Op. No. 1518 (File No. 2892), 570 P.2d 741 (1977).

The weight to be accorded a child's preference in custody disputes depends

to some extent on the basis and reasons for that preference. Lacy v. Lacy, Sup. Ct. Op. No. 1308 (File No. 2770), 553 P.2d 928 (1976).

Custody decrees are not subject to modification merely because a child has developed a preference for one parent over the other. But where it would appear that the preferences of the children are of long standing duration, it was incumbent upon the superior court to hear the children's testimony regarding the circumstances of their preferences. Once the court has heard such testimony, it is then to determine whether the children's preferences, when considered with all other relevant factors, are sufficient to warrant the determination that it is in the best interests of the minor children to modify the decree's custody provisions. Lacy v. Lacy, Sup. Ct. Op. No. 1308 (File No. 2770), 553 P.2d 928 (1976).

Parental custody is preferable and only to be refused where clearly detrimental to the child. Turner v. Pannick, Sup. Ct. Op. No. 1189 (File No. 2293), 540 P.2d 1051 (1975); Britt v. Britt, Sup. Ct. Op. No. 1473 (File No. 2957), 567 P.2d 308 (1977).

Unless the superior court determines that a parent is unfit, has abandoned the child, or that the welfare of the child requires that a nonparent receive custody, the parent must be awarded custody. Turner v. Pannick, Sup. Ct. Op. No. 1189 (File No. 2293), 540 P.2d 1051 (1975).

Between a parent and a nonparent, the parent is to be preferred unless placing custody with him or her would be detrimental to the child. Veazey v. Veazey, Sup. Ct. Op. No. 1381 (File No. 2631), 560 P.2d 382 (1977).

In custody litigation between a parent and a nonparent, the nonparent must overcome by a preponderance of the evidence the preference for parental custody. Britt v. Britt, Sup. Ct. Op. No. 1473 (File No. 2957), 567 P.2d 308 (1977).

The parent is entitled to a preference over the grandparents, unless it is clearly shown that the parent is unfit for the trust, or that the welfare of the child requires it to be in the custody of the grandparents. Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968).

Review of Alaska cases with respect to test applicable to suits by biological parent to regain custody of child from third party. — See Turner v. Pannick, Sup. Ct. Op. No. 1189 (File No. 2293), 540 P.2d 1051 (1975).

No presumption in favor of person with whom child has most recently and continuously resided. — While there might be some preference for leaving the child in the custody of the person with whom he has most recently and continuously resided, the supreme court will not establish such a presumption lest it lend to pre-hearing maneuvering for possession of the child. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972).

Time spent with parent during appeal of custody order. — Where one parent obtained custody pursuant to a court order but on appeal the order was vacated and remanded, on remand the trial court could consider the quality and duration of the time which the child spent with each parent during the pendency of the appeal in deciding anew the child custody issue. Craig v. McBride, Sup. Ct. Op. No. 2462 (File No. 5358), 639 P.2d 303 (1982).

Fact of mother's adulterous relationship is of importance in a child custody case only as it may affect the best interests of the child. Bonjour v. Bonjour, Sup. Ct. Op. No. 1456 (File No. 3000), 566 P.2d 667 (1977).

Mother's bearing of children out of wedlock or her instability in terms of relationships should be determinative in a child custody dispute only where such conduct adversely affects the child or the mother's parenting abilities. Craig v. McBride, Sup. Ct. Op. No. 2462 (File No. 5358), 639 P.2d 303 (1982).

Evidence of lifestyle, habits, or character of custody claimant is relevant only to the extent that it may be shown to affect the person's relationship to the child. Britt v. Britt, Sup. Ct. Op. No. 1473 (File No. 2957), 567 P.2d 308 (1977).

Sexual abuse of children. — Given that the trial court accepted as fact the father's sexual abuse of his older children, it was an abuse of discretion to find that it was in the child's best interests to be placed in the custody of the father without ample evidence of his rehabilitation. Horton v. Horton, Sup. Ct. Op. No. 1020 (File No. 1825), 519 P.2d 1131 (1974).

Power to appoint guardian ad litem. — In contested custody cases the trial court, in its discretion, is empowered to appoint a guardian ad litem to represent the interests of the minor child. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972).

Custody award irrespective of fault. — The trial judge may make a custody

award irrespective of the fault of either party only if it would be manifestly improper to do otherwise. Harding v. Harding, Sup. Ct. Op. No. 120 (File No. 2181), 377 P.2d 378 (1962).

Admissibility of child welfare report. — See Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968).

Parents have standing to challenge determination of child's best interest. — Whether or not a constitutional due process right of the child is involved, parents have standing to challenge on appeal a determination of what is in the best interest of the child. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972).

Change in nature of proceeding. — Where superior court transformed proceeding which initially was contemplated to be one that would determine the question of child's interim custody for the impending school year into one that decided the question of permanent custody, proceeding did not afford basic fairness to parent of child. Cushing v. Painter, Sup. Ct. Op. No. 2699 (File No. 6491), P.2d (1983).

B. Review.

The scope of review in child custody cases is relatively narrow. Dellart v. Layman, Sup. Ct. Op. No. 1165 (File No. 2067), 536 P.2d 789 (1975), aff'd on other grounds, Sup. Ct. Op. No. 1393, 560 P.2d 1206 (1977).

Standard on review. — In custody questions findings of fact shall not be set aside unless clearly erroneous. Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968).

The supreme court will reverse the determinations of the trial court only where it is convinced that the findings of the trial court are clearly erroneous and the record indicates that an abuse of discretion has occurred. King v. King, Sup. Ct. Op. No. 650 (File No. 1205), 477 P.2d 356 (1970); Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972); Horutz v. Horutz, Sup. Ct. Op. No. 1390 (File No. 2615), 560 P.2d 397 (1977); Faro v. Faro, Sup. Ct. Op. No. 1650 (File No. 3465), 579 P.2d 1377 (1978); Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

On appeal the task of the supreme court is to ascertain whether or not the trial court misapplied the broad discretion vested in it in regard to determination of custody questions, and whether the court's findings in respect to custodial issues are clearly erroneous. Dellart v. Layman, Sup. Ct. Op. No. 1165 (File No. 2067), 536 P.2d 789 (1975).

When called upon to decide whether the trial court abused its discretion in applying the best interests test, the supreme court must at times determine whether the trial court assigned "too great a weight to some factors while ignoring others, perhaps by elevating the interests of one of the parties to the dispute above that of the child, perhaps by making a clearly erroneous finding with respect to some material issue." Horutz v. Horutz, Sup. Ct. Op. No. 1390 (File No. 2615), 560 P.2d 397 (1977).

The supreme court's standard of review in custody cases is that of "abuse of discretion." Findings of fact are reviewed against a "clearly erroneous" criterion. Layman v. Dellart, Sup. Ct. Op. No. 1393 (File No. 2806), 560 P.2d 1206 (1977).

The supreme court must determine on review "whether that discretion has been abused, perhaps by assigning too great a weight to some factors while ignoring others." Johnson v. Johnson, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977).

The award of custody is committed to the discretion of the trial court and is reversible only for an abuse of that discretion. Wetzler v. Wetzler, Sup. Ct. Op. No. 1518 (File No. 2892), 570 P.2d 741 (1977).

Review of visitation privileges is based upon the same standard applied in other custody matters, that is, the supreme court needs only to determine whether the trial court abused its discretion in fashioning suitable visitation rights. Faro v. Faro, Sup. Ct. Op. No. 1650 (File No. 3465), 579 P.2d 1377 (1978).

Custody award on conflicting evidence. — The fact that an award of custody is based upon extremely conflicting evidence does not of itself show an abuse of discretion. Harding v. Harding, Sup. Ct. Op. No. 120 (File No. 2181), 377 P.2d 378 (1962); Bass v. Bass, Sup. Ct. Op. No. 455 (File No. 832), 437 P.2d 324 (1968).

When case must be remanded. — Where the supreme court is unable to conclude with any degree of certainty that custody was decided without taking into consideration impermissible factors, the case must be remanded for further proceedings. Carle v. Carle, Sup. Ct. Op. No. 847 (File No. 1496), 503 P.2d 1050 (1972).

If the supreme court finds that the trial court has used an impermissible criterion in its determination, it will remand the case for a decision in which proper factors are considered. Johnson v. Johnson, Sup. Ct. Op. No. 1429 (File Nos. 2709, 2724), 564 P.2d 71 (1977), cert. denied, 434 U.S. 1048, 98 S. Ct. 896, 54 L. Ed. 2d 800 (1978); Bonjour v. Bonjour, Sup. Ct. Op. No. 1814 (File No. 3965), 592 P.2d 1233 (1979).

III. CUSTODY MODIFICATION.

A. In General.

All custody awards are subject to motions for modification. Britt v. Britt, Sup. Ct. Op. No. 1473 (File No. 2957), 567 P.2d 308 (1977).

A motion to modify custody may be made at any time during the minority of the child involved, and the superior court has an obligation to consider such a request. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Motion made immediately after decision in divorce case. — A motion for custody modification, which was made immediately after the court's decision in a contested divorce case, was tantamount to a motion for a new trial on the custody issue. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

Application of Uniform Child Custody Jurisdiction Act. — The jurisdictional prerequisites of AS 25.30.020 apply when a superior court is asked to modify custody. Szmyd v. Szmyd, Sup. Ct. Op. No. 2472 (File No. 5854), 641 P.2d 14 (1982).

A change in custody should not be ordered lightly. Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973); DeHart v. Layman, Sup. Ct. Op. No. 1165 (File No. 2067), 536 P.2d 789 (1975).

Best interests of child is test. — A court should not alter a previous custody determination without a reasonable basis for concluding that the best interests of the child dictate such a change. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970); Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

A court modifying a previous custody determination must be guided by what appears to be for the best interests of the child. Horton v. Horton, Sup. Ct. Op. No. 1020 (File No. 1825), 519 P.2d 1131 (1974).

Removal of the children from the state should not automatically shift custody without a hearing. Sherry v. Sherry, Sup. Ct. Op. No. 2271 (File No. 4939), 622 P.2d 960 (1981).

Modification of child custody or visitation must generally rest upon some substantial change in circumstances. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

The "change of circumstance" doctrine is not an ironclad rule. King v. King, Sup. Ct. Op. No. 60 (File No. 1235), 477 P.2d 356 (1970).

This section does not refer to a requirement of "change of circumstance" in order to modify a decree. Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

It is perhaps possible to conceive of a case in which, despite the fact that there was apparently no change of circumstances, nevertheless the welfare of the child might require that the previous order of custody be changed, but without some change in circumstance there is no logical basis for a court to alter a determination which has once seriously and finally been made. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970); Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

The concept of "substantial change" of circumstances is not a limitation on the discretion of the trial court to determine custody according to the best interest of the child. Rather, it may be considered simply a rule of judicial economy designed to discourage discontented parents from continually renewing custody proceedings. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970); Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

The "substantial change" of circumstances is not an initial obstacle which must be overcome by either party in order to have the court redetermine custody. It is simply one of the factors to be weighed in the balance by the court when a motion for modification of a divorce decree in respect to custody is made. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970); Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

There was satisfaction of the "substantial change" doctrine where each party had remarried and the home environment for the child which would be afforded by either party had changed. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

When hearing not required. — While a trial court must consider all motions for a change in custody, it is not required to grant a hearing on the motion if it is plain that the facts alleged in the moving papers, even if established, would not warrant a change. Deivert v. Oseira, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981).

This section precludes a superior court from denying a motion for a change in custody with prejudice. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Future requests for changes. — A superior court may deny any particular request for modification of child custody or visitation so long as it does not abuse its discretion in doing so; but, it cannot preclude future requests for a change in custody. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Weight must be given to findings made at the original hearing. DeHart v. Layman, Sup. Ct. Op. No. 1165 (File No. 2067), 536 P.2d 789 (1975).

A court must give great weight to a finding of unfitness by a trial judge who has heard exhaustive testimony and examined exhibits, including medical and psychiatric reports. Nichols v. Nichols, Sup. Ct. Op. No. 971 (File No. 1833), 516 P.2d 732 (1973).

Consideration of original decree in modification cases. — Where the court, in a hearing on a petition for change of custody, made only passing reference to the prior proceedings, the hearing became a reweighing of the evidence at the original custody hearing without imposing the heavy burden of persuasion required of the party seeking the modification, and was an abuse of discretion. Gratrix v. Gratrix, Sup. Ct. Op. No. 2573 (File No. 5980), 652 P.2d 76 (1982).

Review. — The Alaska supreme court will only reverse a trial court's decision to deny a change in custody if it abuses the substantial discretion it possesses in such matters, or if it makes clearly erroneous findings. Deivert v. Oseira, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981).

Establishment of abuse of discretion. — Abuse of discretion by a trial court in denying a change in custody can be established by showing that the court considered improper factors in making its determination, that it failed to consider statutorily mandated factors, or that too much weight was assigned to some factors. Deivert v. Oseira, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981); Starkweather v. Curritt, Sup. Ct. Op. No. 2440 (File No. 5484), 636 P.2d 1181 (1981).

B. Decrees of Other States.

Award of custody of child in another state is not binding on courts of latter state. — A decree awarding the custody of a child to one of the parties, rendered when the child is in another state, does not preclude the courts of the latter state from determining the question of custody of the child, although the court rendering such decree retains jurisdiction for the purpose of making further orders. Weber v. Weber, 10 Alaska 214 (1942).

A foreign custody decree can be modified in the absence of a showing of changed circumstances. Layman v. DeHart, Sup. Ct. Op. No. 1393 (File No. 2806), 560 P.2d 1206 (1977).

Relationship of the full faith and credit clause to child custody cases. — See Wilsonoff v. Wilsonoff, Sup. Ct. Op. No. 951 (File No. 1770), 514 P.2d 1264 (1973).

A child's welfare has such a great claim upon a state that this responsibility was not to be foreclosed by a prior adjudication made by another state. Wilsonoff v. Wilsonoff, Sup. Ct. Op. No. 951 (File No. 1770), 514 P.2d 1264 (1973); Layman v. DeHart, Sup. Ct. Op. No. 1393 (File No. 2806), 560 P.2d 1206 (1977).

Although a sister state's decree should not be ignored in custody matters, strict application of the full faith and credit clause would result in a default of the court's responsibility to ensure the welfare of minor children domiciled in Alaska. Layman v. DeHart, Sup. Ct. Op. No. 1393 (File No. 2806), 560 P.2d 1206 (1977).

Foreign decrees should not be wholly ignored in custody disputes. DeHart v. Layman, Sup. Ct. Op. No. 1165 (File No. 2067), 536 P.2d 789 (1975).

And are to be considered significant factor. — Alaska law requires that the custody decree of a sister state be considered a significant factor by the courts of Alaska in determining whether or not the foreign custody decree should be modified. Layman v. DeHart, Sup. Ct. Op. No. 1393 (File No. 2806), 560 P.2d 1206 (1977).

Application of "clean hands" doctrine. — The "clean hands" doctrine is generally considered a device for resolving problems of custody jurisdiction among the states and is most commonly invoked when a court is asked to either enforce or modify a custody decree of a sister state

King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

The "clean hands" doctrine serves no purpose in a setting where the court is asked to modify its own custody award as specifically allowed by the statute. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

Courts will recognize and enforce custody decrees of a sister state without reexamination of their merits, regardless of change of conditions, when there is misconduct or malfeasance on the part of the parent seeking such reexamination, by invoking the doctrine of "clean hands." This misconduct generally consists of defiantly leaving a sister state, usually the marital domicile, with the minor to avoid its jurisdiction and for the purpose of seeking redetermination of the issue in a more favorable forum. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

Collateral references. — Consent of natural parents as essential to adoption where parents are divorced, 47 ALR2d 824.

Court's power as to custody and visitation of children in marriage annulment proceedings, 63 ALR2d 1008.

Mental health of contesting parent as factor in award of child custody, 74 ALR2d 1073.

Power of court which denied divorce, legal separation or annulment, to award custody or make provisions for support of child, 7 ALR3d 1096.

Withholding or denying visitation rights for failure to make alimony or support payments, 51 ALR3d 520.

Right, in child custody proceedings, to cross-examine investigating officer whose report is used by court in its decision, 59 ALR3d 1337.

Effect in subsequent proceedings, of paternity findings or implications in divorce or annulment decree or in support or custody made incident thereto, 78 ALR3d 846.

Grandparents' visitation rights, 90 ALR3d 222.

Rights and remedies of parents inter se with respect to the names of their children, 92 ALR3d 1091.

Admissibility of social worker's expert testimony on custody issue, 1 ALR4th 837.

Visitation rights of persons other than natural parents or grandparents, 1 ALR4th 1270.

Parent's physical disability or handicap as factor in custody award or proceedings, 3 ALR4th 1044.

Initial award or denial of child custody to homosexual or lesbian parent, 6 ALR4th 1297.

Race as factor in custody award or proceedings, 10 ALR4th 796.

Desire of child as to geographical location of residence or domicile as factor in awarding custody or terminating parental rights, 10 ALR4th 827.

Right of incarcerated mother to retain custody of infant in penal institution, 14 ALR4th 748.

Propriety of awarding joint custody of children, 17 ALR4th 1013.

Propriety of awarding custody of child to parent residing or intending to reside in foreign country, 20 ALR4th 677.

Sec. 25.24.160. Judgment. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

(1) *[Repealed, § 2 ch 160 SLA 1968.]*

(2) for the payment by either or both parties of an amount of money or goods, in gross or installments, as may be just and proper for the parties to contribute toward the nurture and education of their children, and the court may order the parties to arrange with their employers for an automatic payroll deduction each month or each pay period, if the period is other than monthly, of the amount of the installment; if the employer agrees, the installment shall be forwarded by the employer to the clerk of the superior court which entered the judgment

or to the court trustee, and the amount of the installment is exempt from execution;

(3) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may be just and necessary without regard to which of the parties is in fault;

(4) for the delivery to either party of that party's personal property in the possession or control of the other party at the time of giving the judgment;

(5) *[Repealed, § 5 ch 251 SLA 1976.]*

(6) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of their real or personal property to the other party;

(7) to change the name of one of the parties. (§ 12.14 ch 101 SLA 1962; am § 1 ch 84 SLA 1966; am §§ 2 — 6 ch 160 SLA 1968; am §§ 72, 73 ch 127 SLA 1974; am § 5 ch 251 SLA 1976)

Revisor's notes. — Formerly AS 09.55.210. Renumbered in 1983.

NOTES TO DECISIONS

I. General Consideration.
II. Child Support.
III. Alimony.
IV. Division of Property.
    A. In General.
    B. What Constitutes Property.

I. GENERAL CONSIDERATION.

This section and AS 09.55.220 [now AS 25.24.170] are predicated upon the court's jurisdiction of the parties and the subject matter. Weber v. Weber, 10 Alaska 214 (1942).

And jurisdiction of defendant's person is necessary for money judgment for alimony. — Where the plaintiff was a resident of Connecticut and the defendant a resident of Alaska, constructive service of summons being made on the defendant in Alaska, the court of the forum had jurisdiction of the marital status but did not have jurisdiction of the person of the defendant which is essential for the entry of a money judgment for alimony. Thornhill v. Huston, 13 Alaska 160 (1951).

Quoted in Balchen v. Balchen, Sup. Ct. Op. No. 1169 (File No. 3178), 566 P.2d 1324 (1977); Allen v. Allen, Sup. Ct. Op. No. 2514 (File No. 6006), 645 P.2d 774 (1982).

Cited in Otton v. Zaborac, Sup. Ct. Op. No. 1072 (File No. 2050), 525 P.2d 537 (1974); Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

II. CHILD SUPPORT.

The trial court is given broad discretion in fashioning suitable visitation rights and support obligations. Curgus v. Curgus, Sup. Ct. Op. No. 913 (File No. 1837), 514 P.2d 647 (1973).

Continuation of educational support beyond age of majority. — A reasonable construction of this section allows for the continuation of educational support of children beyond the age of majority. Hinchey v. Hinchey, Sup. Ct. Op. No. 2312 (File No. 3528), 625 P.2d 297 (1981).

1993 Supplement

days or until the court is notified that mediation efforts have failed. All court orders made under AS 25.24.140 remain in effect during the period of mediation. (§ 2 ch 188 SLA 1975; am § 1 ch 117 SLA 1992)

Effect of amendments. — The 1992 amendment, effective September 20, 1992, in subsection (c), substituted "unmarried children" for "minor children" and inserted "under the age of 19 whose interests may be affected."

Sec. 25.24.140. Orders during action. (a) During the pendency of the action, a spouse may, upon application and in appropriate circumstances, be awarded expenses, including

(1) attorney fees and costs that reasonably approximate the actual fees and costs required to prosecute or defend the action; in applying this paragraph, the court shall take appropriate steps to ensure that the award of attorney fees does not contribute to an unnecessary escalation in the litigation;

(2) reasonable spousal maintenance, including medical expenses; and

(3) reasonable support for minor children in the care of the spouse and reasonable support for unmarried 18-year-old children of the marriage who are actively pursuing a high school diploma or an equivalent level of technical or vocational training and living as dependents with the spouse or designee of the spouse, if there is a legal obligation of the other spouse to provide support.

(b) During the pendency of the action, upon application, a spouse is entitled to necessary protective orders, including orders

(1) providing for the freedom of each spouse from the control of the other spouse;

(2) restraining each spouse from subjecting the other spouse or another person living in the household to domestic violence, as defined in AS 25.35.200;

(3) directing one spouse to vacate the marital residence or the home of the other spouse;

(4) restraining a spouse from communicating directly or indirectly with the other spouse;

(5) restraining a spouse from entering a propelled vehicle in the possession of or occupied by the other spouse; and

(6) prohibiting a spouse from disposing of the property of either spouse or marital property without the permission of the other spouse or a court order.

(c) After a hearing, if both parties agree, the court may also order that the parties engage in personal or family counseling or mediation. In the order, the court shall provide for the payment of the costs of the counseling or mediation. (§ 12.13 ch 101 SLA 1962; am § 71 ch 127 SLA 1974; am § 5 ch 130 SLA 1990; am § 2 ch 117 SLA 1992)

Effect of amendments. — The 1992 amendment, effective September 20, 1992, rewrote paragraph (a)(3).

NOTES TO DECISIONS

I. General Consideration
II. Attorney Fees and Costs

I. GENERAL CONSIDERATION.

Factors to consider in awarding interim spousal maintenance. — An award of interim maintenance provides for reasonable and necessary living expenses while divorce litigation is pending and insures that neither spouse is disadvantaged in presenting their claims. The primary factors which should be considered in awarding interim spousal maintenance are the relative economic circumstances and needs of the parties and the ability to pay the maintenance. Johnson v. Johnson, 836 P.2d 930 (Alaska 1992).

Specific findings required for interim spousal maintenance. — Where record contained no findings in support of the interim spousal maintenance order entered by trial court judge, award was vacated and the issue remanded for specific findings. Johnson v. Johnson, 836 P.2d 930 (Alaska 1992).

II. ATTORNEY FEES AND COSTS.

Evidence insufficient to award attorney's fees. — Award of $7,000 in attorney's fees to the wife was reversed, where the husband's act of taking his son out of state without notifying the wife was insufficient evidence that he undertook a modification action willfully and without just excuse. Kessler v. Kessler, 827 P.2d 1119 (Alaska 1992).

Sec. 25.24.150. Judgments for custody.

NOTES TO DECISIONS

I. General Consideration.
II. Determination of Custody
  A. In General.
III. Custody Modification
  A. In General.

I. GENERAL CONSIDERATION.

Applied in Farrell v. Farrell, 819 P.2d 896 (Alaska 1991); Lowdermilk v. Lowdermilk, 825 P.2d 874 (Alaska 1992); Kessler v. Kessler, 827 P.2d 1119 (Alaska 1992); Harvick v. Harvick, 828 P.2d 769 (Alaska 1992).

II. DETERMINATION OF CUSTODY.

A. In General.

Custody improperly awarded as sanction against parent. — Where the court awarded custody of son to father as a sanction against mother without undertaking a best interests of the child analysis, the award had to be vacated and the matter remanded for the purpose of redetermining custody based upon a best interests of the child analysis, with appropriate findings of fact which addressed all relevant criteria of subsection (c). Hakas v. Bergenthal, 843 P.2d 642 (Alaska 1992).

III. CUSTODY MODIFICATION.

A. In General.

Effect of hostility between parents. — Ordinarily, hostility and dispute between the parents, in and of itself, will not be considered a substantial change of circumstances unless the adverse impact on the child is extreme. The effect of hostility between the parents, however, may combine with other significant changes in circumstance to amount, in the aggregate, to a substantial change sufficient to warrant change of custody. Long v. Long, 816 P.2d 145 (Alaska 1991).

Arrangement jeopardizing father's relationship with children. — Finding that the existing custody arrangement, in which the mother had custody, placed the relationship of the father and the children at risk, supported change of custody, granting custody of the children to the father. Pinneo v. Pinneo, 835 P.2d 1233 (Alaska 1992).

Sec. 25.24.160. Judgment.

NOTES TO DECISIONS

I. General Consideration.
II. Child Support.
III. Alimony.
IV. Division of Property.
  A. In General.
  B. What Constitutes Property.

I. GENERAL CONSIDERATION.

Applied in Chotiner v. Chotiner, 829 P.2d 829 (Alaska 1992).

II. CHILD SUPPORT.

"Just and proper" contribution. — Civil Rule 90.3, regarding child support awards, does not modify or amend this section, but the rule interprets the code section and establishes guidelines to enable courts to determine what is a "just and proper" contribution. Coghill v. Coghill, 836 P.2d 921 (Alaska 1992).

Award excessive.

Expenses beyond reasonable need were son's summer hockey camp, daughter's gymnastics class that daughter was not enrolled in, and yearly expense for three year old daughter's psychotherapy sessions when the treatment would have only taken about six months. Money v. Money, 852 P.2d 1158 (Alaska 1993).

Trial court must disclose calculations. — A trial court abused its discretion in failing to disclose the actual numbers it used to calculate a child support award. Terry v. Terry, 851 P.2d 837 (Alaska 1993).

III. ALIMONY.

But such factors are not substitutes for statutory standard.

Failure to address any of the relevant statutory factors resulted in remand to consider subparagraph (a)(4)(A) through (I) with particular emphasis to the earning capacities and health of parties, and the income producing capacity of properties. Money v. Money, 852 P.2d 1158 (Alaska 1993).

Sizable award requires careful inquiry. — When a spouse's disabilities and lack of work experience make the alimony award sizable, it is imperative that the trial court inquire into the specific needs of the recipient spouse before making the award. Jones v. Jones, 835 P.2d 1173 (Alaska 1992).

Temporary forms of alimony preferred. — Either rehabilitative alimony or reorientation alimony where appropriate is, in general, to be preferred to permanent alimony because it is generally undesirable to require one person to support another on a long-term basis in the absence of an existing legal relationship. Jones v. Jones, 835 P.2d 1173 (Alaska 1992).

Rehabilitative designation. — Designation of alimony award as rehabilitative did not limit the award to rehabilitation. By awarding wife alimony to aid her in preparing for the job market and to help her organize her portion of the marital estate assets, the superior court effectively awarded wife both rehabilitative and reorientation alimony. Money v. Money, 852 P.2d 1158 (Alaska 1993).

Substantial evidence to support award. — Substantial evidence in support of the trial court's finding that the spouse awarded alimony was not employable justified award of permanent alimony. Jones v. Jones, 835 P.2d 1173 (Alaska 1992).

Retirement terminated agreement. — A financial agreement entered into when parties petitioned to dissolve their marriage provided for permanent spousal support, terminable only on wife's death or remarriage, terminated on husband's voluntary retirement. Keffer v. Keffer, 852 P.2d 394 (Alaska 1993).

Husband's retirement was not voluntary because his job was abolished and he was eligible for retirement and took it. Keffer v. Keffer, 852 P.2d 394 (Alaska 1993).

IV. DIVISION OF PROPERTY.

A. In General.

Property division generally.

Alaska law provides that the divorce court has the power to reorder the pre-dissolution interests of the parties as required for an equitable result, even if this requires the court to invade the pre-marital property of one spouse for the benefit of the other. Yerrington v. Yerrington, 144 Bankr. 96 (9th Cir. 1992).

Presumption favoring equal division. — In the absence of findings to warrant an unequal division, an equal division of the marital estate is presumptively the most equitable. Miles v. Miles, 816 P.2d 129 (Alaska 1991).

Time of valuing property.

The date on which the trial court values marital property generally should be as close as practicable to the date of trial. Doyle v. Doyle, 815 P.2d 366 (Alaska 1991).

In special situations, the trial court may value marital property as of the date of separation of the parties. However, in that event, there should be specific findings as to why the date of separation is the more appropriate choice for valuation. Doyle v. Doyle, 815 P.2d 366 (Alaska 1991).

Property should be valued for division purposes at the date of trial rather than the date of separation. However, the separation date may be used when special circumstances of the case demonstrate that a truly fair and appropriate property evaluation and division of assets cannot otherwise be achieved. Thomas v. Thomas, 815 P.2d 374 (Alaska 1991).

Fair market value as valuation index. — Fair market value, rather than purchase price values, was the appropriate index of valuation for the parties' personal property. Doyle v. Doyle, 815 P.2d 366 (Alaska 1991).

Valuation by parties. — A trial court is not bound by a buy-sell agreement valuation, but may consider such a valuation, especially when it is supported by other valuation methods. Money v. Money, 852 P.2d 1158 (Alaska 1993).

Evidence of valuation. — Where a party identifies a significant marital asset but presents no evidence as to its value, the best practice is for the trial court to direct the parties, or the delinquent party having the best access to the proof, to fill the evidentiary void. Root v. Root, 851 P.2d 67 (1993).

The division of property, etc.

When a marriage is of long duration or assets are commingled, the correct method of property division involves (1) identifying the specific property available for distribution, (2) determining the value of this property, and (3) determining the most equitable division of the property, beginning with the presumption that an equal division is most equitable. Lowdermilk v. Lowdermilk, 825 P.2d 874 (Alaska 1992).

In accord with paragraph in main pamphlet. See Jones v. Jones, 835 P.2d 1173 (Alaska 1992).

"Source of funds" approach to classification. — Under the "source of funds" approach, property is classified according to the classification of the funds used to purchase it. Property purchased on debt is classified according to the funds used to pay off the debt. The source of funds rule, although not adopted per se in this jurisdiction, is not inconsistent with this section. Zimin v. Zimin, 837 P.2d 118 (Alaska 1992).

Determining status of premarital assets. — The trial court retains discretion to decide whether a premarital asset remains separate property even where the asset has been treated as joint property. The trial court makes this determination in the context of an equitable division of marital assets and its balancing of the parties' situation. Miles v. Miles, 816 P.2d 129 (Alaska 1991).

Premarital assets. — It is an abuse of discretion for the trial court to shield the property from equitable distribution merely by affixing to the property the label of "premarital asset." Lowdermilk v. Lowdermilk, 825 P.2d 874 (Alaska 1992).

When invasion of premarital asset unauthorized. — A whole life insurance policy taken out on behalf of husband when he was four years old, although the $13.83 quarterly premiums were paid out of a joint checking account, was not invaded as marital property because the policy paid dividends which offset the annual premiums. Money v. Money, 852 P.2d 1158 (Alaska 1993).

Contributions benefiting separate property of other spouse, etc.

Wife's efforts in handling insurance and roofing contracts relating to her husband's premarital real property, and in

PREFACE

A growing number of grandparents throughout the country have been denied access to their grandchildren by the children's parents or other custodians and have sought legal assistance in obtaining visitation. At least one hundred appellate court decisions involving grandparent visitation rights have been published to date. Yet grandparent visitation law remains a relatively new area of domestic relations law, and there is little literature on the handling of grandparent visitation cases for judges, domestic relations attorneys, mediators and other professionals working in the family law arena.

In the Fall of 1987, the Administration on Aging of the U.S. Department of Health and Human Services provided funds to the American Bar Association for a one-year project focusing on grandparent visitation rights. The project was jointly sponsored by three American Bar Association entities: the Commission on Legal Problems of the Elderly, the Family Law Section, and the National Legal Resource Center for Child Advocacy and Protection. One of the primary goals of the project was to publish this legal resource manual to provide up-to-date information on statutory and case law, existing legal literature, case representation, judicial practice, the role of experts and the use of mediation.

We have many acknowledgements to make. First, we thank the Administration on Aging for providing the grant which made this project possible. We appreciate the tremendous efforts of the authors who contributed to this book. The following authors took time off from their various fields of practice to draft and redraft chapters for the manual: Judge Ernest Rotenberg, Leonard L. Loeb, Marcia B. Gevers, Patricia Fernandez, Dr. Pamela Langelier, and Dr. John Haynes. We also appreciate the help of our Advisory Committee members, who volunteered their time and shared their knowledge: Edith Engel, Dr. Arthur Kornhaber, Dr. Doris Jonas Freed, Leonard Loeb, Bruce Kaufman, T.H. Guerin, Paula Monopoli, Professor Judith Areen, and Daniel Skoler. We thank Inga Van Eysden and Kimberly Shanks, law students who did extensive research and drafted portions of the manual. On the American Bar Association staff we have numerous individuals to thank. We appreciate the guidance and supervision of Nancy Coleman, Staff Director of the Commission on Legal Problems of the Elderly, and Howard Davidson and Bob Horowitz, Director and Associate Director of the National Legal Resource Center for Child Advocacy and Protection. We also would like to thank Beverly Y. Lyons for word processing and performing numerous other helpful tasks, and Norma Gregerman for publication production.

Ellen C. Segal
Naomi Karp

February, 1989

. . . About the American Bar Association Commission on Legal Problems of the Elderly

In 1978, the American Bar Association established the Commission on Legal Problems of the Elderly to examine law-related concerns of older persons. The Commission has encouraged legal services for the elderly, particularly through involvement of the private bar; and has explored legal issues surrounding long term care, home care, guardianship, home equity conversion, surrogate decision-making, and Social Security due process.

. . . About the American Bar Association National Legal Resource Center for Child Advocacy and Protection

Since 1978 the Resource Center has worked to improve laws and professional practices in the child welfare arena. It routinely offers educational opportunities to lawyers and other professionals involved in child abuse, foster care, child support, and other substantive areas of law. One of its principal goals is to improve the way courts and public agencies handle their child welfare caseloads, particularly with an eye towards protecting the rights of children and families. Towards this end, the Center works with legislators, judges and agency administrators in the development and implementation of new laws and policies.

. . . About the American Bar Association Family Law Section

The Family Law Section was established in 1958 to promote the objectives of the ABA by improving the administration of justice in the field of family law, by study, conferences, and publication of reports and articles with respect to providing assistance and guidance to the practice of family law, and to provide assistance with the teaching, promulgation of, and improvement of the welfare and strength of the family unit and its members in all related matters.

Chapter I

INTRODUCTION

American grandparents are becoming increasingly vocal about being denied access to their grandchildren. It appears that more and more grandparents are being deprived of the opportunity to see their grandchildren. These visitation problems seem to reflect broad changes in American society: the divorce rate is growing, family members no longer live in close proximity to one another, and the traditional family unit is becoming diffused. The visibility of the grandparent visitation issue also seems to reflect demographic and political changes: as our population ages, older persons are becoming more verbal about issues affecting them, and legislators, policy makers and service providers are giving those issues more attention.

In the last two decades, grandparents have gained ground in their efforts to obtain court-ordered visitation. Under the common law parental rights doctrine, courts generally refused to order visitation rights for grandparents over the objections of the child's parents. Since 1965, every state (excluding the District of Columbia) has enacted a statute enabling grandparents to petition for visitation rights with grandchildren.

These state statutes vary a great deal. They differ on who is authorized to petition for visitation, when a grandparent may petition, and what standard a court should apply in deciding whether to grant visitation privileges.
The volume of litigation in the grandparent visitation area is growing rapidly. As many as one hundred or more cases may have reached the state appellate court level since 1980; many more have been filed at the trial court level.

Although domestic relations is traditionally governed by state law, there has been considerable activity on the federal level concerning grandparent visitation. In 1982 and 1983, the House of Representatives' Select Committee on Aging Subcommittee on Human Services held hearings on the issue. House Concurrent Resolution 67 was adopted on April 24, 1985 expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents adequate rights to petition State courts for privileges to visit their grandchildren.

APPENDIX A

GRANDPARENT VISITATION STATUTES*

	State	Citation to Statute	On Death[1] of Parent	On Divorce[2] of Parents	After Living with[3] Grandparent	General[4] Provision
1.	Alabama	Ala. Code §30-3-3 (1983)	X	X		
2.	Alaska	Alaska Stat. §25.24.150 (1983)	X	X		
3.	Arizona	Ariz. Rev. Ann. §25-337.01 (Supp. 1987)	X	X		
4.	Arkansas	Ar. Stat. Ann. §9-13-103 (Supp. 1987)	X	X		
5.	California	Cal. Civ. Code §§197.5, 4601 (West 1984 & Supp. 1987)	X			X
6.	Colorado	Colo. Rev. Stat. §19-1-116 (1986)	X	X		
7.	Connecticut	Conn. Gen. Stat. Ann. §§46b 59, -59a (West 1986 & Supp. 1988)				X
8.	Delaware	Del. Code Ann. tit. 10, §950(7) (Supp. 1986)		X		
9.	Florida	Fla. Stat. §61.13(2) (b)2c (Supp. 1987)		X		
10.	Georgia	Ga. Code Ann. §19-7-3 (Supp. 1988)	X			
11.	Hawaii	Haw. Rev. Stat. §571.46(7) (1985)		X		
12.	Idaho	Idaho Code §32-1008 (1983)				X
13.	Illinois	Ill. Ann. Stat. ch.40, para. 607(b) (c) (Smith-Hurd Supp. 1988)	X	X		
14.	Indiana	Ind. Code Ann. §§31-1-11.7-1 to .7-8 (Burns 1987 & Supp. 1988)	X	X		

*Reprinted, with minor editorial and substantive changes, from J. Atkinson 2 Modern Child Custody Practice §8.19 (1986 & Supp. 1987)

FOOTNOTES

1 Under this type of provision, visitation could be granted to a grandparent whose son or daughter (the parent of the child) died.

2 Several statutes also specifically provided for grandparent visitation while the parents are separated, where the marriage was annulled, or where there are or have been child custody proceedings.

3 The length of the time in which the child lived with the grandparent triggered the right of the grandparent to seek visitation: twelve months (Minnesota and Pennsylvania) and six months (Texas and New Mexico).

4 "General provision" refers to visitation statutes which did not specify or restrict the circumstances under which a grandparent could obtain visitation.

	State	Citation to Statute	of Parent	of Parents	Grandparent	Provision
15.	Iowa	Iowa Code Ann. §§598.35-.36 (West 1987 & Supp. 1988)	X	X		
16.	Kansas	Kan. Stat. Ann. §60-1616(b) (Supp. 1987)				X
17.	Kentucky	Ky. Rev. Stat. Ann. §405.021 (Baldwin 1984)				X
18.	Louisiana	La. Rev. Stat. Ann. §9:572 (West Supp. 1988)	X	X		
19.	Maine	Me. Rev. Stat. Ann. tit. 19, §752 (Supp. 1988)				X
20.	Maryland	Md. Fam. Law Code Ann. §9-102 (1984)		X		
21.	Massachusetts	Mass. Gen. Laws Ann. ch.119, §39D (West Supp. 1988)	X	X		
22.	Michigan	Mich. Comp. Laws Ann. §§722.72(b), 722.72b (West Supp. 1988)	X	X		
23.	Minnesota	Minn. Stat. Ann. §257.022 (West 1982 & Supp. 1988)	X	X	X	
24.	Mississippi	Miss. Code Ann. §§93-16-1. -3, -5, -7 (Supp. 1988)	X	X		
25.	Missouri	Mo. Ann. Stat. §§452.400, .402 (Vernon 1986)	X	X		
26.	Montana	Mont. Code Ann. §§40-9-101 to -102 (1987)				X
27.	Nebraska	Neb. Rev. Stat. §§43-1801 to -1803 (Supp. 1986)	X	X		
28.	Nevada	Nev. Rev. Stat. §§125A.330, .340 (1987)	X	X		
29.	New Hampshire	N.H. Rev. Stat. Ann. §458:17 VI (1983)		X		
30.	New Jersey	N.J. Stat. Ann. §9:2-7.1 (West Supp. 1988)	X	X		
31.	New Mexico	N.M. Stat. Ann. §§40-9-1 to -4 (1986 & Supp. 1988)	X	X	X	
32.	New York	N.Y. Dom. Re. Law §§72, 240(1) (McKinney 1986 & 1988)	X	X		X
33.	North Carolina	N.C. Gen. Stat. §§50-13.2(b1), .2A, .5(j) (1987)		X		
34.	North Dakota	N.D. Cent. Code §14-09-05.1 (Supp. 1987)				X
35.	Ohio	Ohio Rev. Code Ann. §3109.05(B) (Anderson Supp. 1987)		X		
36.	Oklahoma	Okla. Stat. Ann. tit. 10, §5 (West 1987)	X	X	X	
37.	Oregon	Or. Rev. Stat. §§109.121, .123 (1987)	X	X		

	State	Citation to Statute	On Death[1] of Parent	On Divorce[2] of Parents	After Living with[3] Grandparent	General[4] Provision
38.	Pennsylvania	23 Pa. Cons. Stat. Ann. §§5311-5314 (Purdon Supp. 1988)	X		X	
39.	Rhode Island	R.I. Gen. Laws §§15-5-24.1 to .2 (1981 & Supp. 1987)	X	X		
40.	South Carolina	S.C. Code Ann. §20-7-420(33) (Law. Co-op. 1976)				X
41.	South Dakota	S.D. Codified Laws Ann. §§25-4-52 to -54 (1984)	X	X		
42.	Tennessee	Tenn. Code Ann. §36-6-301 (Supp. 1988)				X
43.	Texas	Tex. Fam. Code Ann. §14.03(e)-(g) (Vernon Supp. 1988)	X	X	X	
44.	Utah	Utah Code Ann. §30-3-5(4),(7) (Supp. 1988)				X
45.	Vermont	Vt. Stat. Ann. tit. 15, 1011-1016 (Supp. 1988)	X	X		
46.	Virginia	Va. Code Ann. §20-107.2 (Supp. 1988)		X		
47.	Washington	Wash. Rev. Code Ann. §26.09.240. (Supp. 1988)				X
48.	West Virginia	W. Va. Code §§48-2-15(b)(1), 48-2B-1 (1986)	X	X		
49.	Wisconsin	Wis. Stat. Ann. §767.245 (West Supp. 1988)				X
50.	Wyoming	Wyo. Stat. §20-2-113(c) (Supp. 1988)	X	X		

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 21

Revision Date: March 9, 1994
Title: "...relating to child visitation rights of grandparents and other persons who are not parents of a child."
Sponsor: Senator Donley
Requestor: Senate State Affairs Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Operations

COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division
Phone: 465-3672
Date: March 9, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: March 9, 1994

PREPARER TO PROVIDE ALL ... 'S LEGISLATIVE OFFICE
For further distribu ... FISCAL NOTE ... slative Office

Rev 11/93

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 21

ANALYSIS CONTINUATION:

This bill amends AS 25.20 to provide that in a child custody determination a court shall provide for visitation by a grandparent or other person if that is in the best interests of a child. This bill deals with the rights of private parties, and it therefore will not have a fiscal impact on the Department of Law.