

RIGHTS OF GRANDPARENTS AND THIRD PARTIES
AND HOW TO HANDLE A GRANDPARENT/THIRD
PARTY CUSTODY CASE

HEATHER WILLIS LEWIS, Esquire

McNERNEY, PAGE, VANDERLIN & HALL
433 Market Street
Williamsport, PA 17701
570.326.6555

Lycoming County Law Association
Eat & Earn
October 16, 2013

**RIGHTS OF GRANDPARENTS AND THIRD PARTIES AND HOW TO HANDLE A
GRANDPARENT/THIRD PARTY CUSTODY CASE**

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Effective: January 24, 2011

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness

Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)

Part VI. Children and Minors

Chapter 53. Child Custody (Refs & Annos)

→ → **§ 5324. Standing for any form of physical custody or legal custody**

The following individuals may file an action under this chapter for any form of physical custody or legal custody:

- (1) A parent of the child.
- (2) A person who stands in loco parentis to the child.
- (3) A grandparent of the child who is not in loco parentis to the child:
 - (i) whose relationship with the child began either with the consent of a parent of the child or under a court order;
 - (ii) who assumes or is willing to assume responsibility for the child; and
 - (iii) when one of the following conditions is met:
 - (A) the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters);
 - (B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or
 - (C) the child has, for a period of at least 12 consecutive months, resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

Current through Regular Session Act 2013-72

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Effective: January 24, 2011

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▣ Part VI. Children and Minors

▣ Chapter 53. Child Custody (Refs & Annos)

→→ **§ 5325. Standing for partial physical custody and supervised physical custody**

In addition to situations set forth in section 5324 (relating to standing for any form of physical custody or legal custody), grandparents and great-grandparents may file an action under this chapter for partial physical custody or supervised physical custody in the following situations:

(1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;

(2) where the parents of the child have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve their marriage; or

(3) when the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, an action must be filed within six months after the removal of the child from the home.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

Current through Regular Session Act 2013-72

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Effective: January 24, 2011

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↳ Part VI. Children and Minors

↳ Chapter 53. Child Custody (Refs & Annos)

→ → § 5326. Effect of adoption

Any rights to seek physical custody or legal custody rights and any custody rights that have been granted under section 5324 (relating to standing for any form of physical custody or legal custody) or 5325 (relating to standing for partial physical custody and supervised physical custody) to a grandparent or great-grandparent prior to the adoption of the child by an individual other than a stepparent, grandparent or great-grandparent shall be automatically terminated upon such adoption.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

Current through Regular Session Act 2013-72

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Effective: January 24, 2011

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness

Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)

Part VI. Children and Minors

Chapter 53. Child Custody (Refs & Annos)

→ → § 5327. Presumption in cases concerning primary physical custody

(a) **Between parents.**—In any action regarding the custody of the child between the parents of the child, there shall be no presumption that custody should be awarded to a particular parent.

(b) **Between a parent and third party.**—In any action regarding the custody of the child between a parent of the child and a nonparent, there shall be a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.

(c) **Between third parties.**—In any action regarding the custody of the child between a nonparent and another nonparent, there shall be no presumption that custody should be awarded to a particular party.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

Current through Regular Session Act 2013-72

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Effective: January 24, 2011

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness
Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)
▣ Part VI. Children and Minors
▣ Chapter 53. Child Custody (Refs & Annos)
→ → § 5328. Factors to consider when awarding custody

(a) **Factors.**—In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.
- (3) The parental duties performed by each party on behalf of the child.
- (4) The need for stability and continuity in the child's education, family life and community life.
- (5) The availability of extended family.
- (6) The child's sibling relationships.
- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.
- (8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.
- (9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

(b) Gender neutral.--In making a determination under subsection (a), no party shall receive preference based upon gender in any award granted under this chapter.

(c) Grandparents and great-grandparents.--

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2)(relating to standing for partial physical custody and supervised physical custody), the court shall consider the following:

(i) the amount of personal contact between the child and the party prior to the filing of the action;

(ii) whether the award interferes with any parent-child relationship; and

(iii) whether the award is in the best interest of the child.

(2) In ordering partial physical custody or supervised physical custody to a parent's parent or grandparent who has standing under section 5325(3), the court shall consider whether the award:

(i) interferes with any parent-child relationship; and

(ii) is in the best interest of the child.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

Current through Regular Session Act 2013-72

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Effective: June 11, 2012

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness
Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)
Part VI. Children and Minors
Chapter 53. Child Custody (Refs & Annos)
→ → § 5329. Consideration of criminal conviction

(a) Offenses.—Where a party seeks any form of custody, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the offenses in this section or an offense in another jurisdiction substantially equivalent to any of the offenses in this section. The court shall consider such conduct and determine that the party does not pose a threat of harm to the child before making any order of custody to that parent when considering the following offenses:

18 Pa.C.S. Ch. 25 (relating to criminal homicide).

18 Pa.C.S. § 2702 (relating to aggravated assault).

18 Pa.C.S. § 2706 (relating to terroristic threats).

18 Pa.C.S. § 2709.1 (relating to stalking).

18 Pa.C.S. § 2901 (relating to kidnapping).

18 Pa.C.S. § 2902 (relating to unlawful restraint).

18 Pa.C.S. § 2903 (relating to false imprisonment).

18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).

18 Pa.C.S. § 3121 (relating to rape).

18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

18 Pa.C.S. § 3124.1 (relating to sexual assault).

18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

18 Pa.C.S. § 3126 (relating to indecent assault).

18 Pa.C.S. § 3127 (relating to indecent exposure).

18 Pa.C.S. § 3129 (relating to sexual intercourse with animal).

18 Pa.C.S. § 3130 (relating to conduct relating to sex offenders).

18 Pa.C.S. § 3301 (relating to arson and related offenses).

18 Pa.C.S. § 4302 (relating to incest).

18 Pa.C.S. § 4303 (relating to concealing death of child).

18 Pa.C.S. § 4304 (relating to endangering welfare of children).

18 Pa.C.S. § 4305 (relating to dealing in infant children).

18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses).

18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other sexual materials and performances).

18 Pa.C.S. § 6301 (relating to corruption of minors).

18 Pa.C.S. § 6312 (relating to sexual abuse of children).

18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

Section 6114 (relating to contempt for violation of order or agreement).

The former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance).

75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs).

Section 13(a)(1) of the act of April 14, 1972 (P.L. 233, No. 64), [FN1] known as The Controlled Substance, Drug, Device and Cosmetic Act, to the extent that it prohibits the manufacture, sale or delivery, holding, offering for sale or possession of any controlled substance or other drug or device.

(b) Parent convicted of murder.—No court shall award custody, partial custody or supervised physical custody to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder) of the other parent of the child who is the subject of the order unless the child is of suitable age and consents to the order.

(c) Initial evaluation.—At the initial in-person contact with the court, the judge, conference officer or other appointed individual shall perform an initial evaluation to determine whether the party or household member who committed an offense under subsection (a) poses a threat to the child and whether counseling is necessary. The initial evaluation shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary.

(d) Counseling.—

(1) Where the court determines under subsection (c) that counseling is necessary, it shall appoint a qualified professional specializing in treatment relating to the particular offense to provide counseling to the offending individual.

(2) Counseling may include a program of treatment or individual therapy designed to rehabilitate the offending individual which addresses, but is not limited to, issues regarding physical and sexual abuse, the psychology of the offender and the effects of the offense on the victim.

(e) Subsequent evaluation.—

(1) At any time during or subsequent to the counseling under subsection (d), the court may require another evaluation to determine whether further counseling is necessary.

(2) If the court awards custody to a party who committed an offense under subsection (a) or who shares a household with an individual who committed an offense under subsection (a), the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order. If, upon review of a subsequent evaluation, the court determines that the offending individual poses a threat of physical, emotional or psychological harm to the child, the court may schedule a hearing to modify the custody order.

(f) Costs.—The court may order a party to pay all or part of the costs of the counseling and evaluations under this section.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011]. Amended 2012, April 12, P.L. 241, No. 32, § 1, effective in 60 days [June 11, 2012].

[FN1] 35 P.S. § 780-113.

Current through Regular Session Act 2013-72

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Westlaw

23 Pa.C.S.A. § 5330

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Effective: January 24, 2011

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness

Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)

Part VI. Children and Minors

Chapter 53. Child Custody (Refs & Annos)

→ → § 5330. Consideration of criminal charge

(a) **Expedited hearing.**—A party who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) or otherwise about a charge filed against the other party for an offense listed under section 5329(a) (relating to consideration of criminal conviction) may move for a temporary custody order or modification of an existing custody order. The court shall hold the hearing under this subsection in an expeditious manner.

(b) **Risk of harm.**—In evaluating any request under subsection (a), the court shall consider whether the party who is or has been charged with an offense set forth in section 5329(a) poses a risk of physical, emotional, or psychological harm to the child.

(c) **No prejudice.**—Failure to either apply for information under 42 Pa.C.S. § 1904 or act under this section shall not prejudice any party in a custody proceeding.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

Current through Regular Session Act 2013-72

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Effective: January 24, 2011

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Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)
 § Part VI. Children and Minors
 § Chapter 53. Child Custody (Refs & Annos)
 → → § 5334. Guardian ad litem for child

(a) Appointment.—The court may on its own motion or the motion of a party appoint a guardian ad litem to represent the child in the action. The court may assess the cost upon the parties or any of them or as otherwise provided by law. The guardian ad litem must be an attorney at law.

(b) Powers and duties.—The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child during the proceedings and shall do all of the following:

(1) If appropriate to the child's age and maturity, meet with the child as soon as possible, following the appointment and on a regular basis thereafter.

(2) On a timely basis, be given access to relevant court records, reports of examination of the parents or other custodian of the child and medical, psychological and school records.

(3) Participate in all proceedings.

(4) Conduct such further investigation necessary to ascertain relevant facts for presentation to the court.

(5) Interview potential witnesses, including the child's parents and caretakers, if any. The guardian ad litem may examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) Make specific recommendations in a written report to the court relating to the best interests of the child, including any services necessary to address the child's needs and safety. The court shall make the written report part of the record so that it may be reviewed by the parties. The parties may file with the court written comments regarding the contents of the report. The comments filed by the parties shall also become part of the record.

(7) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition and

emotional condition.

(8) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph (6) shall not be considered a conflict of interest for the guardian ad litem.

(c) **Abuse.**—If substantial allegations of abuse of the child are made, the court shall appoint a guardian ad litem for the child if:

(1) counsel for the child is not appointed under section 5335 (relating to counsel for child); or

(2) the court is satisfied that the relevant information will be presented to the court only with such appointment.

(d) **Evidence subject to examination.**—A guardian ad litem may not testify except as authorized by Rule 3.7 of the Rules of Professional Conduct, but may make legal argument based on relevant evidence that shall be subject to examination by the parties.

(e) **Costs.**—The court may order a party to pay all or part of the costs of appointing a guardian ad litem under this section.

CREDIT(S)

2010, Nov. 23, P.L. 1106, No. 112, § 2, effective in 60 days [Jan. 24, 2011].

Current through Regular Session Act 2013-72

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CUSTODY CHECKLIST

| <i>FACTOR</i> | <i>MOTHER</i> | <i>FATHER</i> |
|--|---------------|---------------|
| Which party is more likely to encourage and permit frequent and continuing contact between the child and another party | | |
| The present and past abuse committed by either party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child. | | |
| The parental duties performed by each party on behalf of the child. | | |
| The need for stability and continuity in the child's education, family life and community life. | | |
| The availability of extended family | | |
| The child's sibling relationships | | |

| | | |
|---|--|--|
| <p>The well-reasoned preference of the child, based on the child's maturity and judgment</p> | | |
| <p>The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.</p> | | |
| <p>Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs</p> | | |
| <p>Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child</p> | | |
| <p>The proximity of the residences of the parties</p> | | |
| <p>Each party's availability to care for the child or ability to make appropriate child-care arrangements</p> | | |
| <p>The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party</p> | | |

| | | |
|--|--|--|
| The history of drug or alcohol abuse of a party or member of a party's household | | |
| The mental and physical condition of a party or member of a party's household | | |
| Any other relevant factor | | |