

OHIO REVISED CODE

TITLE XXXI DOMESTIC RELATIONS - CHILDREN

CHAPTER 3109 CHILDREN

[§ 3109.05.1] § 3109.051. Order granting parenting time or companionship or visitation rights.

(A) If a divorce, dissolution, legal separation, or annulment proceeding involves a child and if the court has not issued a shared parenting decree, the court shall consider any mediation report filed pursuant to section 3109.052 [3109.05.2] of the Revised Code and, in accordance with division (C) of this section, shall make a just and reasonable order or decree permitting each parent who is not the residential parent to have parenting time with the child at the time and under the conditions that the court directs, unless the court determines that it would not be in the best interest of the child to permit that parent to have parenting time with the child and includes in the journal its findings of fact and conclusions of law. Whenever possible, the order or decree permitting the parenting time shall ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact by either parent with the child would not be in the best interest of the child. The court shall include in its final decree a specific schedule of parenting time for that parent. Except as provided in division (E)(6) of section 3113.31 of the Revised Code, if the court, pursuant to this section, grants parenting time to a parent or companionship or visitation rights to any other person with respect to any child, it shall not require the public children services agency to provide supervision of or other services related to that parent's exercise of parenting time or that person's exercise of companionship or visitation rights with respect to the child. This section does not limit the power of a juvenile court pursuant to [Chapter 2151](#), of the Revised Code to issue orders with respect to children who are alleged to be abused, neglected, or dependent children or to make dispositions of children who are adjudicated abused, neglected, or dependent children or of a common pleas court to issue orders pursuant to section 3113.31 of the Revised Code.

(B) (1) In a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child, the court may grant reasonable companionship or visitation rights to any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent, if all of the following apply:

(a) The grandparent, relative, or other person files a motion with the court seeking companionship or visitation rights.

(b) The court determines that the grandparent, relative, or other person has an interest in the welfare of the child.

(c) The court determines that the granting of the companionship or visitation rights is in the best interest of the child.

(2) A motion may be filed under division (B)(1) of this section during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case.

(C) When determining whether to grant parenting time rights to a parent pursuant to this section or section 3109.12 of the Revised Code or to grant companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11 or 3109.12 of the Revised Code, when establishing a specific parenting time or visitation schedule, and when determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider any mediation report that is filed pursuant to section 3109.052 [3109.05.2] of the Revised Code and shall consider all other relevant factors, including, but not limited to, all of the factors listed in division (D) of this section. In considering the factors listed in division (D) of this section for purposes of determining whether to grant parenting time or visitation rights, establishing a specific parenting time or visitation schedule, determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or under section 3109.11 or 3109.12 of the Revised Code, and resolving any issues related to the making of any determination with respect to parenting time or visitation rights or the establishment of any specific parenting time or visitation schedule, the court, in its discretion, may interview in chambers any or all involved children regarding their wishes and concerns. If the court interviews any child concerning the child's wishes and concerns regarding those parenting time or visitation matters, the interview shall be conducted in chambers, and no person other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers during the interview. No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding those parenting time or visitation matters. A court, in considering the factors listed in division (D) of this section for purposes of determining whether to grant any parenting time or visitation rights, establishing a parenting time or visitation schedule, determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or under section 3109.11 or 3109.12 of the Revised Code, or resolving any issues related to the making of any determination with respect to parenting time or visitation rights or the establishment of any specific parenting time or visitation schedule, shall not accept or consider a written or recorded statement or affidavit that purports to set forth the child's wishes or concerns regarding those parenting time or visitation matters.

(D) In determining whether to grant parenting time to a parent pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11

or 3109.12 of the Revised Code, in establishing a specific parenting time or visitation schedule, and in determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider all of the following factors:

- (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
- (2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- (3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;
- (4) The age of the child;
- (5) The child's adjustment to home, school, and community;
- (6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;
- (7) The health and safety of the child;
- (8) The amount of time that will be available for the child to spend with siblings;
- (9) The mental and physical health of all parties;
- (10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;
- (11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child,

previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

(12) In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the person, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

(E) The remarriage of a residential parent of a child does not affect the authority of a court under this section to grant parenting time rights with respect to the child to the parent who is not the residential parent or to grant reasonable companionship or visitation rights with respect to the child to any grandparent, any person related by consanguinity or affinity, or any other person.

(F) (1) If the court, pursuant to division (A) of this section, denies parenting time to a parent who is not the residential parent or denies a motion for reasonable companionship or visitation rights filed under division (B) of this section and the parent or movant files a written request for findings of fact and conclusions of law, the court shall state in writing its findings of fact and conclusions of law in accordance with Civil Rule 52.

(2) On or before July 1, 1991, each court of common pleas, by rule, shall adopt standard parenting time guidelines. A court shall have discretion to deviate from its standard parenting time guidelines based upon factors set forth in division (D) of this section.

(G) (1) If the residential parent intends to move to a residence other than the residence specified in the parenting time order or decree of the court, the parent shall file a notice of intent to relocate with the court that issued the order or decree. Except as provided in divisions (G)(2), (3), and (4) of this section, the court shall send a copy of the notice to the parent who is not the residential parent. Upon receipt of the notice, the court, on its own motion or the motion of the parent who is not the residential parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the parenting time schedule for the child.

(2) When a court grants parenting time rights to a parent who is not the residential parent, the court shall determine whether that parent has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that that parent has not been so convicted and has not been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section will be sent to the parent who is given the parenting time rights in accordance with division (G)(1) of this section.

If the court determines that the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it shall issue an order stating that that parent will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination.

(3) If a court, prior to April 11, 1991, issued an order granting parenting time rights to a parent who is not the residential parent and did not require the residential parent in that order to give the parent who is granted the parenting time rights notice of any change of address and if the residential parent files a notice of relocation pursuant to division (G)(1) of this section, the court shall determine if the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that the parent who is granted the parenting time rights has not been so convicted and has not been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section will be sent to the parent who is granted parenting time rights in accordance with division (G)(1) of this section.

If the court determines that the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it shall issue an order stating that that parent will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination.

(4) If a parent who is granted parenting time rights pursuant to this section or any other section of the Revised Code is authorized by an order issued pursuant to this section or any other court order to receive a copy of any notice of relocation that is filed pursuant to division (G)(1) of this section or pursuant to court order, if the residential parent intends to move to a residence other than the residence address specified in the parenting time order, and if the residential parent does not want the parent who is granted the parenting time rights to receive a copy of the relocation notice because the parent with parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who

at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, the residential parent may file a motion with the court requesting that the parent who is granted the parenting time rights not receive a copy of any notice of relocation. Upon the filing of the motion, the court shall schedule a hearing on the motion and give both parents notice of the date, time, and location of the hearing. If the court determines that the parent who is granted the parenting time rights has been so convicted or has been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that the parent who is granted the parenting time rights will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section or that the residential parent is no longer required to give that parent a copy of any notice of relocation unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination. If it does not so find, it shall dismiss the motion.

(H) (1) Subject to section 3125.16 and division (F) of section 3319.321 [3319.32.1] of the Revised Code, a parent of a child who is not the residential parent of the child is entitled to access, under the same terms and conditions under which access is provided to the residential parent, to any record that is related to the child and to which the residential parent of the child legally is provided access, unless the court determines that it would not be in the best interest of the child for the parent who is not the residential parent to have access to the records under those same terms and conditions. If the court determines that the parent of a child who is not the residential parent should not have access to records related to the child under the same terms and conditions as provided for the residential parent, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to those records, shall enter its written findings of facts and opinion in the journal, and shall issue an order containing the terms and conditions to both the residential parent and the parent of the child who is not the residential parent. The court shall include in every order issued pursuant to this division notice that any keeper of a record who knowingly fails to comply with the order or division (H) of this section is in contempt of court.

(2) Subject to section 3125.16 and division (F) of section 3319.321 [3319.32.1] of the Revised Code, subsequent to the issuance of an order under division (H)(1) of this section, the keeper of any record that is related to a particular child and to which the residential parent legally is provided access shall permit the parent of the child who is not the residential parent to have access to the record under the same terms

and conditions under which access is provided to the residential parent, unless the residential parent has presented the keeper of the record with a copy of an order issued under division (H)(1) of this section that limits the terms and conditions under which the parent who is not the residential parent is to have access to records pertaining to the child and the order pertains to the record in question. If the residential parent presents the keeper of the record with a copy of that type of order, the keeper of the record shall permit the parent who is not the residential parent to have access to the record only in accordance with the most recent order that has been issued pursuant to division (H)(1) of this section and presented to the keeper by the residential parent or the parent who is not the residential parent. Any keeper of any record who knowingly fails to comply with division (H) of this section or with any order issued pursuant to division (H)(1) of this section is in contempt of court.

(3) The prosecuting attorney of any county may file a complaint with the court of common pleas of that county requesting the court to issue a protective order preventing the disclosure pursuant to division (H)(1) or (2) of this section of any confidential law enforcement investigatory record. The court shall schedule a hearing on the motion and give notice of the date, time, and location of the hearing to all parties.

(I) A court that issues a parenting time order or decree pursuant to this section or section 3109.12 of the Revised Code shall determine whether the parent granted the right of parenting time is to be permitted access, in accordance with section 5104.011 [5104.01.1] of the Revised Code, to any child day-care center that is, or that in the future may be, attended by the children with whom the right of parenting time is granted. Unless the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted access to the center, the parent who is not the residential parent and who is granted parenting time rights is entitled to access to the center to the same extent that the residential parent is granted access to the center. If the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted such access under division (C) of section 5104.011 [5104.01.1] of the Revised Code, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to the center, provided that the access shall not be greater than the access that is provided to the residential parent under division (C) of section 5104.011 [5104.01.1] of the Revised Code, the court shall enter its written findings of fact and opinions in the journal, and the court shall include the terms and conditions of access in the parenting time order or decree.

(J) (1) Subject to division (F) of section 3319.321 [3319.32.1] of the Revised Code, when a court issues an order or decree allocating parental rights and responsibilities for the care of a child, the parent of the child who is not the residential parent of the child is entitled to access, under the same terms and conditions under which access is provided to the residential parent, to any student activity that is related to the child and to which the residential parent of the child legally is provided access, unless the

court determines that it would not be in the best interest of the child to grant the parent who is not the residential parent access to the student activities under those same terms and conditions. If the court determines that the parent of the child who is not the residential parent should not have access to any student activity that is related to the child under the same terms and conditions as provided for the residential parent, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to those student activities, shall enter its written findings of facts and opinion in the journal, and shall issue an order containing the terms and conditions to both the residential parent and the parent of the child who is not the residential parent. The court shall include in every order issued pursuant to this division notice that any school official or employee who knowingly fails to comply with the order or division (J) of this section is in contempt of court.

(2) Subject to division (F) of section 3319.321 [3319.32.1] of the Revised Code, subsequent to the issuance of an order under division (J)(1) of this section, all school officials and employees shall permit the parent of the child who is not the residential parent to have access to any student activity under the same terms and conditions under which access is provided to the residential parent of the child, unless the residential parent has presented the school official or employee, the board of education of the school, or the governing body of the chartered nonpublic school with a copy of an order issued under division (J)(1) of this section that limits the terms and conditions under which the parent who is not the residential parent is to have access to student activities related to the child and the order pertains to the student activity in question. If the residential parent presents the school official or employee, the board of education of the school, or the governing body of the chartered nonpublic school with a copy of that type of order, the school official or employee shall permit the parent who is not the residential parent to have access to the student activity only in accordance with the most recent order that has been issued pursuant to division (J)(1) of this section and presented to the school official or employee, the board of education of the school, or the governing body of the chartered nonpublic school by the residential parent or the parent who is not the residential parent. Any school official or employee who knowingly fails to comply with division (J) of this section or with any order issued pursuant to division (J)(1) of this section is in contempt of court.

(K) If any person is found in contempt of court for failing to comply with or interfering with any order or decree granting parenting time rights issued pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights issued pursuant to this section, section 3109.11 or 3109.12 of the Revised Code, or any other provision of the Revised Code, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt, and may award reasonable compensatory parenting time or visitation to the person whose right of parenting

time or visitation was affected by the failure or interference if such compensatory parenting time or visitation is in the best interest of the child. Any compensatory parenting time or visitation awarded under this division shall be included in an order issued by the court and, to the extent possible, shall be governed by the same terms and conditions as was the parenting time or visitation that was affected by the failure or interference.

(L) Any parent who requests reasonable parenting time rights with respect to a child under this section or section 3109.12 of the Revised Code or any person who requests reasonable companionship or visitation rights with respect to a child under this section, section 3109.11 or 3109.12 of the Revised Code, or any other provision of the Revised Code may file a motion with the court requesting that it waive all or any part of the costs that may accrue in the proceedings. If the court determines that the movant is indigent and that the waiver is in the best interest of the child, the court, in its discretion, may waive payment of all or any part of the costs of those proceedings.

(M) The juvenile court has exclusive jurisdiction to enter the orders in any case certified to it from another court.

(N) As used in this section:

(1) "Abused child" has the same meaning as in section 2151.031 [2151.03.1] of the Revised Code, and "neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(2) "Record" means any record, document, file, or other material that contains information directly related to a child, including, but not limited to, any of the following:

(a) Records maintained by public and nonpublic schools;

(b) Records maintained by facilities that provide child day-care, as defined in section 5104.01 of the Revised Code, publicly funded child day-care, as defined in section 5104.01 of the Revised Code, or pre-school services operated by or under the supervision of a school district board of education or a nonpublic school;

(c) Records maintained by hospitals, other facilities, or persons providing medical or surgical care or treatment for the child;

(d) Records maintained by agencies, departments, instrumentalities, or other entities of the state or any political subdivision of the state, other than a child support enforcement agency. Access to records maintained by a child support enforcement agency is governed by section 3125.16 of the Revised Code.

(3) "Confidential law enforcement investigatory record" has the same meaning as in section 149.43 of the Revised Code.

HISTORY: 143 v H 15 (Eff 5-31-90); 143 v S 3 (Eff 4-11-91); 144 v H 155 (Eff 7-22-91); 146 v H 274 (Eff 8-8-96); 147 v H 408 (Eff 10-1-97); 148 v S 180. Eff 3-22-2001.

Cross-References to Related Sections

Child support, escrowing, impoundment on withholding prohibited, RC § 3109.05.

Companionship or visitation rights -

Child of unmarried woman, RC § 3109.12.

Parent is deceased, RC § 3109.11.

Contempt action for failure to comply with visitation order, RC § 2705.03.1.

Duties of public children services agency as to children in need of public care or protective services, RC § 5153.16.

Effect of granting relief on parenting time, companionship or visitation rights and on arrearages, RC § 3119.96.4.

Mediation of differences as to allocation of parental rights and responsibilities, RC § 3109.05.2.

Non-residential parent's right to confidential student information; limitations, RC § 3319.32.1.

Right of access of non-residential parents to child day-care centers, RC § 5104.01.1.

Supervision of parenting time or visitation or companionship rights, RC § 3113.31.

Support order to include specific provisions for different time periods, RC § 3119.08.

Ohio Administrative Code

Department of job and family services, division of social services -

School child day care centers: parental access to child and facility; limitations. OAC 5101:2-17-39.

Text Discussion

Custody before and after Senate Bill 3. Dom. Rel. Prac. § 4.1

Modification of parental rights. Dom. Rel. Prac. § 5.2

Modification of visitation. Dom. Rel. Prac. § 5.3

The negotiation process. Dom. Rel. Prac. § 2.3

Separation agreements - allocation of parental rights and responsibilities. Dom. Rel. Prac. § 2.6

Shared parenting plans; child support and health insurance provisions. Dom. Rel. Prac. § 4.4

Shared parenting plans; disclaimer of child abuse and neglect. Dom. Rel. Prac. § 4.6

Shared parenting plans; residency provisions. Dom. Rel. Prac. § 4.5

Forms

Motion to modify visitation. Dom. Rel. Prac. Form 5.2

Research Aids

Visitation rights:

O-Jur3d: Fam L §§ 401, 943, 1168-1170, 1172, 1174-1176, 1183-1186, 1189, 1192, 1195, 1273, 1274
ALR

Grandparents' visitation rights where child's parents are deceased, or where status of parents is unspecified. 69 ALR5th 1.

Restrictions on parent's child visitation rights based on parent's sexual conduct. 99 ALR5th 475.

Law Review

Civil orders of protection: Do they protect children, the tag-along victims of domestic violence? Judge Michael J. Voris. 17 Ohio N.U.L. Rev. 599 (1991).

Grandparent visitation rights in Ohio after grandchild adoption: is it time to move in a new direction? Note. 46 Clev. St. L. Rev. 385 (1998).

Grandparent visitation rights in Ohio when the family is intact. Comment. 28 CAP. U.L. Rev. 197 (1999).

Grandparent visitation: the best interests of the grandparent, child, and society. Erica L. Strawman. 30 ToledoLRev 31 (1998).

In re adoption of Ridenour. Note. 18 Ohio N.U.L. Rev. 719 (1992).

King v. King: the best interest of the child: a judicial determination for grandparent visitation. Casenote. 20 NoKyLRev 815 (1993).

Wide-open grandparent visitation statutes: is the door closing? Comment. 62 CinLRev 1659 (1994).

CASE NOTES AND OAG Analysis

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Visitation.

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Attorney's fees

Ordering that the parties be responsible for their own legal fees was proper where neither party was found to be in contempt of a visitation order: *Davis v. Davis*, 115 Ohio App. 3d 623, 685 N.E.2d 1292 (1996).

Construction between laws

Revised Code § 3109.05.1 does not apply to the modification of parental visitation rights; rather, the section applies only to the original establishment of parental visitation rights in a divorce, dissolution, legal separation or annulment proceeding and to the establishment and/or modification of "other person" visitation rights. RC § 3109.04(E)(1)(a) governs modification of parental visitation orders: *Jacobs v. Jacobs*, 102 Ohio App. 3d 568, 657 N.E.2d 580 (1995).

Contempt

Modification of a custody order is not among the available sanctions listed under RC § 2705.05(A) as punishment for contempt. Suspension of a child support obligation pending compliance with a visitation order exceeds the authority of the court for punishment of contempt: *Fry v. Fry*, 64 Ohio App. 3d 519, 582 N.E.2d 11 (1989).

Custody may not be changed as a sanction for contempt of court: *Truitt v. Truitt*, 65 Ohio App. 3d 126, 583 N.E.2d 331 (1989).

A trial court should utilize the full force of its powers, where necessary and appropriate, to compel a recalcitrant custodial parent to comply with court-ordered visitation. These powers include civil or criminal contempt proceedings with fines or imprisonment: *Davis v. Davis*, 55 Ohio App. 3d 196, 563 N.E.2d 320 (1988).

Contentious conduct of parties

The parties' contentious conduct justified a rigid parenting-time schedule: *In re Ross*, 154 Ohio App. 3d 1 (2003).

Domestic violence

A parent is not precluded from obtaining unsupervised visitation privileges by his acts of violence against his ex-wife and subsequent girlfriend where there is no evidence that the child was present at or affected by the violence: *In re Whaley*, 86 Ohio App. 3d 304, 620 N.E.2d 954 (1993).

Full faith and credit

A custodial parent residing in Ohio who commits an offense under California law by interfering with a visitation order is subject to extradition from Ohio: *In re Extradition of Adams*, 63 Ohio App. 3d 638, 579 N.E.2d 752 (1989).

Grandparent visitation

Biological grandparents no longer have any right to visitation following adoption of the child: *In re Adoption of Hilliard*, 154 Ohio App. 3d 54 (2003).

Incarceration

Visitation with an incarcerated parent is presumptively not in a child's best interest, and the parent bears the burden of proving that visitation is in the child's best interest: *In re Erica*, 65 Ohio Misc. 2d 17, 640 N.E.2d 623 (CP 1994).

A parent's incarceration does not necessarily authorize a court to refuse to provide for a visitation schedule: *Tobens v. Brill*, 89 Ohio App. 3d 298, 624 N.E.2d 265 (1993).

Visitation between a child and an incarcerated parent should be granted only where it is demonstrated that such visitation is in the best interests of the child: *In re Hall*, 65 Ohio App. 3d 88, 582 N.E.2d 1055 (1989).

Mental examination

Civil Rule 35(A) provides that an order for an examination can be made only upon motion and for good cause shown. Further, the court must specify time, place, manner,

conditions and scope of the examination. Where the requirements of CivR 35(A) are met, the court may order mental examinations of the parties in relation to a motion concerning visitation rights: *Brossia v. Brossia*, 65 Ohio App. 3d 211, 583 N.E.2d 978 (1989).

Military duty

Considering the uncertainty as to the father's projected seven years of military duty in Europe, the court did not err in its visitation order: *King v. King*, 78 Ohio App. 3d 599, 605 N.E.2d 970 (1992).

Records

Mere fact that a guardian ad litem's files did not constitute a record for purposes of the parties' agreed entry or RC § [3109.051\(H\)](#) did not, standing alone, provide a valid reason for quashing a subpoena seeking their disclosure. *Hogan v. Hogan*, - Ohio App. 3d - , - N.E.2d - 2003 Ohio App. LEXIS 4286 (Sept. 8, 2003).

Sexual offender therapy

A court should not order a parent to undergo sexual offender therapy as a condition of continued visitation without making any finding that the parent committed abuse: *In re Sarah H.*, 86 Ohio App. 3d 455, 621 N.E.2d 545 (1993).

Soldiers' and sailors' civil relief act

The stay of proceedings in a visitation dispute was error where a right to relief under the soldiers' and sailors' civil relief act was not established: *Henneke v. Young*, 145 Ohio App. 3d 111, 761 N.E.2d 1140 (2001).

Support

Visitation

A nonresidential parent cannot be ordered to exercise visitation as a form of support by giving the residential parent a break from caring for a special needs child: *Hamilton v. Hamilton*, 107 Ohio App. 3d 132, 667 N.E.2d 1256 (1995).

An order allocating visitation transportation expenses based on the obligor's income after deduction for child support and adding that support to the obligee's income is an abuse of discretion: *Gatliff v. Gatliff*, 89 Ohio App. 3d 391, 624 N.E.2d 779 (1993).

Termination

A court may permanently terminate a parent's right of visitation in accordance with the terms of a settlement agreement concerning the parent's future abuse of alcohol or drugs: *Brown v. Brown*, 78 Ohio App. 3d 416, 604 N.E.2d 1380 (1992).

Visitation

Denial of the father's request for unsupervised visitation with his son was proper where he was a convicted sex offender, posed a risk of emotional harm, and exhibited a lack of understanding of appropriate care for a young child, making unsupervised visitation not in the child's best interest under RC. § [3109.051\(D\)](#). *In re McCaleb*, - Ohio App. 3d -, - N.E.2d - 2003 Ohio App. LEXIS 3875 (Aug. 18, 2003).

When making a disposition in a dependency proceeding under RC § 2151.35.3(A)(3), the juvenile court should consider the issue of visitation under the totality of the circumstances, considering, to the extent applicable, those factors set forth in RC § 3109.05.1(D); however, since there is no statutory mandate that RC § 3109.05.1 be applied, literal, technical compliance with the statute is not required: *In re Knisley*, No. 97CA2316 1998 Ohio App. LEXIS 2347 (4th Dist. 1998).

Unlike RC § 3109.05.1(H)(1), subsection (I) is not self-executing. The court must determine the nonresidential parent's right of access to a day care facility: *Badovick v. Badovick*, 128 Ohio App. 3d 18, 713 N.E.2d 1066 (1998).

Despite the parties' agreement, the court had adequate grounds to adopt its standard visitation schedule: *Szerlip v. Szerlip*, 129 Ohio App. 3d 506, 718 N.E.2d 473 (1998).

Where the parent with custody moved outside the state during the divorce action without seeking the court's permission, requiring that parent to return the child for visitation every three-day school holiday was not an abuse of discretion: *Corple v. Corple*, 123 Ohio App. 3d 31, 702 N.E.2d 1234 (1997).

It was not an abuse of discretion for the court to order that the child be sent to China for visitation: *Mitchell v. Pietrykowski*, No. L-92-218 1993 Ohio App. LEXIS 3881 (6th Dist. 1993).

The court's refusal to order a neutral pick-up and delivery site for the children was reasonable under the circumstances: *Goode v. Goode*, 89 Ohio App. 3d 405, 624 N.E.2d 788 (1993).

Revised Code § 2307.50 provides a civil remedy for noncustodial parents who have their rights of visitation interfered with by third persons: *Brown v. Denny*, 72 Ohio App. 3d 417, 594 N.E.2d 1008 (1991).

- Child's input

Interviews of children conducted under RC § 3109.05.1 are confidential and not to be disclosed to the parents. Parents do not have a right to access to the sealed transcript of an in camera interview between a child and the judge. A parent may not shield his or her actions from court scrutiny by claiming religious motivations for them: *Willis v. Willis*, 149 Ohio App. 3d 50, 2002-Ohio-3716, 775 N.E.2d 878 (2002).

- Evidence

Appeals court reversed trial court's decision that mother was in contempt for not facilitating father's visitation with their child; decision that mother would not allow, or only allowed visitation in her home, was not supported by the evidence. *Yanik v. Yanik*, - Ohio App. 3d - , - N.E.2d - 2003 Ohio App. LEXIS 3694 (Aug. 6, 2003).

- Grandparents

There is a statutory right to grandparent visitation in Ohio, even where a post-divorce dispute is between the grandparents and their own child: *Gaffney v. Menrath*, 132 Ohio App. 3d 113, 724 N.E.2d 507 (1999).

The court lacked jurisdiction under RC §§ 3109.05.1, 3109.12 or 3111.13(C) to grant grandparent visitation rights: *Borkosky v. Mihailoff*, 132 Ohio App. 3d 508, 725 N.E.2d 694 (1999).

A stepparent's adoption of a child terminates any grandparent visitation rights: *Foor v. Foor*, 133 Ohio App. 3d 250, 727 N.E.2d 618 (1999).

The stepparent adoption divested the parents of the child's deceased natural father of any visitation rights: *Beard v. Pannell*, 110 Ohio App. 3d 572, 674 N.E.2d 1225 (1996).

The court did not err in terminating grandparent visitation rights pursuant to RC § 3109.11 where the grandparent was so unrelentingly hostile to the surviving parent that it frightened the children: *In re Skinner*, No. 93CA547 1994 Ohio App. LEXIS 1323 (4th Dist. 1994).

Trial court erred in awarding grandparent visitation without a hearing and testimony: *Harlow v. Stevens*, No. CA94-03-004 1994 Ohio App. LEXIS 3778 (12th Dist. 1994).

Trial court exceeded its jurisdiction when it linked appellant's holding bonds in trust for her grandchildren in exchange for gaining visitation rights, where appellant's child was past the age of majority: *Cox v. Cox*, No. 14446 1994 Ohio App. LEXIS 5429 (2nd Dist. 1994).

In general, grandparent visitation is in a child's best interest. A criminal conviction from years ago does not necessarily preclude visitation rights: *Holley v. Higgins*, 86 Ohio App. 3d 240, 620 N.E.2d 251 (1993).

Revised Code §§ 3109.05 and 3109.05.1 permit courts to uphold visitation rights of grandparents following divorce or dissolution regardless of a subsequent consensual adoption: *Lattanzio v. Lattanzio*, No. 91-C-8 1992 Ohio App. LEXIS 1060 (7th Dist. 1992).

A juvenile court lacks jurisdiction to grant visitation rights to biological grandparents after adoption by a stepparent: *Krnac v. Starman*, 83 Ohio App. 3d 578, 615 N.E.2d 344 (1992).

Relatives of parents whose parental rights are terminated by adoption have no standing in any Ohio court to assert visitation rights: *Farley v. Farley*, 85 Ohio App. 3d 113, 619 N.E.2d 427 (1992).

The domestic relations court which granted the divorce decree retains jurisdiction for the purposes of granting grandparent visitation rights as required by the best interest of any children born as issue of the marriage regardless of the existence or venue of a subsequent stepparent adoption proceeding: *Bente v. Hill*, 73 Ohio App. 3d 151, 596 N.E.2d 1042 (1991).

The complaint of a grandparent seeking only visitation with a grandchild may not be determined by the juvenile court pursuant to its authority to determine the "custody" of children under RC § 2151.23(A)(2): *In re Gibson*, 61 Ohio St. 3d 168, 573 N.E.2d 1074 (1991).

A court may not consider the possibility of granting post-adoption visitation by biological grandparents following a stranger adoption: *In re Adoption of Ridenour*, 61 Ohio St. 3d 319, 574 N.E.2d 1055 (1991).

The court did not err by suspending the father's visitation rights where the child disliked and feared him based on overly critical behavior and the father refused to accept counseling. A court may deny grandparent visitation rights where the result will be contact with an abusive parent and the grandparents reinforce the parent's behavior: *Johntonny v. Malliski*, 67 Ohio App. 3d 709, 588 N.E.2d 200 (1990).

-- Violence

In determining whether to grant visitation rights to a child's grandparent, a court must ascertain whether such visitation is in the child's best interests. A trial court does not abuse its discretion in refusing to grant visitation rights to a grandparent where the record shows that the grandparent is likely to have close contact with the child's father, who has subjected the child to traumatic scenes of extreme violence directed against the child's mother and who has threatened violence to the child, and where the grandparent has allowed the father to be alone with the child despite an agreement with the mother not to do so: *Drennen v. Drennen*, 52 Ohio App. 3d 121, 557 N.E.2d 149 (1988).

- Modification

Where the ex-husband was required by the military to move from Ohio to Virginia and subsequently lost his mid-week visitation with the child, the trial court did not abuse its discretion in determining the most that it could reasonably order was an extra two weeks of visitation during the summer. *Avery V.*, - Ohio App. 3d - , - N.E.2d - 2003 Ohio App. LEXIS 4503 (Sept. 19, 2003).

Record supported the trial court's conclusion that the father's visitation with his daughter should be modified; its factual findings supported the best interest determination of RC § [3109.051\(D\)](#), the trial court noted that it considered the daughter's wishes and concerns obtained during an in-chambers interview with the child, and the trial court further found that the daughter had a good relationship with both parents and her extended family. *In re Jones*, - Ohio App. 3d - , - N.E.2d - 2003 Ohio App. LEXIS 4283 (Sept. 8, 2003).

Modification of visitation rights is governed by RC § 3109.05.1. The party requesting a change in visitation rights need make no showing that there has been a change in circumstances in order for the court to modify those rights. Pursuant to RC § 3109.05.1(D), the trial court shall consider the fifteen factors enumerated therein, and in its sound discretion shall determine visitation that is in the best interest of the child: *Braatz v. Braatz*, 85 Ohio St. 3d 40, 706 N.E.2d 1218 (1999).

The trial court did not abuse its discretion in declining to revise the father's visitation schedule to permit the mother to relocate the children to Georgia where the court found that relocation would reduce her earnings substantially and would deprive the children of visitation with their father and his family and of the mother's family living in the area: *Nentwick v. Nentwick*, No. 96-JE-27 1998 Ohio App. LEXIS 561 (7th Dist. 1998).

Revised Code § 3109.05.1 does not require proof of changed circumstances, but only a showing that the modification of visitation would be in the child's best interest; since RC § 3109.05.1 applies to visitation determinations made pursuant to RC §§ 3109.05.1, 3109.11 or 3109.12, there is no requirement to show a change of circumstances in any request to change visitation rights: *In re Nichols*, No. CA97-11-102 1998 Ohio App. LEXIS 2539 (12th Dist. 1998).

The trial court enjoys broad discretion in applying the factors listed in RC § 3109.05.1(D)(1)-(15) to the facts of each case, but the trial court must apply these factors as a matter of law; RC § 3109.05.1 does not require the plaintiff to present proof of a change in circumstances as a prerequisite to modifying a visitation order: *Staten v. Staten*, No. 97CA818 1998 Ohio App. LEXIS 3975 (4th Dist. 1998).

- Other persons

A strict-scrutiny analysis must be applied to a nonparental-visitation statute and to the method in which the statute is applied. The "special weight" requirement means the deference provided to a parent's wishes will be overcome only by some compelling governmental interest and overwhelmingly clear circumstances supporting that governmental interest: *Oliver v. Feldner*, 149 Ohio App. 3d 114, 2002-Ohio-3209, 776 N.E.2d 499 (2002).

A third party may seek and a court may grant parental or companionship rights and responsibilities without the third party being a blood relative, adoptive parent or step-parent; the emphasis should be placed on the best interest of the child when granting or denying such rights: *Corn v. Corn*, No. 15-95-1 1995 Ohio App. LEXIS 4010 (3rd Dist. 1995).

- Stepparents

Under the circumstances, the court properly granted visitation to the child's ex-stepfather: *Shannon v. Shannon*, 122 Ohio App. 3d 346, 701 N.E.2d 771 (1997).

- Temporary

A temporary order that a parent have no visitation in the presence of non-relative adults of the opposite sex did not violate the parent's freedom of association: *Boggs v. Boggs*, 118 Ohio App. 3d 293, 692 N.E.2d 674 (1997).

- Waiver

The father could not later object to deferral of any visitation rights where he stood by in court as the attorneys for the parties agreed to defer consideration of visitation: *McClure v. McClure*, 98 Ohio App. 3d 27, 647 N.E.2d 832 (1994).

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