



JUVENILE COURT JUDICIAL BENCHCARD

CUSTODY AND VISITATION

AUTHORITY

T.C.A. § 36-6-101 et. seq (General Custody)
T.C.A. § 36-6-301 et. seq: (Visitation)
T.C.A. § 36-6-401 et. seq (Parenting Plans)
T.C.A. § 36-6-501 et. seq (Parent Visitation)

STATEMENT OF THE LAW

CUSTODY

T.C.A. § 36-6-106(a):

A custody determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that:

- permits both parents to enjoy maximum participation in child's life consistent with custody factors;
- location of residences of parents;
- child's need for stability; and
- all other relevant factors.

T.C.A. § 36-6-106(2)(A)(i):

Neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody is established, but *the court shall have the widest discretion to order a custody arrangement that is in the best interest of the child.*

VISITATION

T.C.A. § 36-6-301:

Rights of visitation shall be granted as will enable the child and noncustodial parent to maintain a parent-child relationship unless visitation is likely to endanger child's physical or emotional health.

MODIFICATION

T.C.A. § 36-6-101(a)(2)(C):

Modification of a prior order requires proof by preponderance of the evidence of 1) a material change in circumstances 2) affecting the child's best interest.

CUSTODY CONSIDERATIONS

Best Interest Factors (T.C.A. § 36-6-106(a)):

- 1) The strength, nature, and stability of the child's relationship with each parent, including whether one parent has performed most parenting responsibilities relating to the daily needs of the child.
- 2) Each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child.
- 3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort.
- 4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care.
- 5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities.
- 6) The love, affection, and emotional ties existing between each parent and the child.
- 7) The emotional needs and developmental level of the child.
- 8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child.
- 9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities.
- 10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment.
- 11) Evidence of physical or emotional abuse to the child, to the other parent, or to any other person, including the child's siblings.
- 12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.
- 13) The reasonable preference of the child if twelve or older.
- 14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules.
- 15) Any other factors deemed relevant by the court.
- 16) Whether a parent has failed to pay court-ordered child support for a period of three (3) years or more.

Additional Custody Considerations:

- Previous dependency and neglect or abuse proceedings involving child or party. (T.C.A. § 36-6-106(f))
- Conviction (or civil liability) of custodial parent for the intentional and wrongful death of the child's other parent or legal guardian. (T.C.A. § 36-6-106(b))
- Impact of parent's disability on the parent's ability to meet the needs of the child. (T.C.A. § 36-6-106(e))
- Military deployment.



Parenting Plans (T.C.A. § 36-6-404):

- ✓ Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications.
- ✓ Establish the authority and responsibilities of each parent with respect to the child.
- ✓ Minimize the child's exposure to harmful parental conflict.
- ✓ Provide for a process for dispute resolution, before court action.
- ✓ Allocate decision-making authority to one or both parties regarding the child's education, health care, extracurricular activities, and religious upbringing.
- ✓ Provide that each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent.
- ✓ Provide that when mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the dispute resolution process.
- ✓ Require the child support obligor to report income annually on a date certain to the obligee, and the department of human services.
- ✓ Specify that if the driver license of a parent is currently invalid or if the parent does not possess a valid driver license for any reason, the parent shall make acceptable transportation arrangements as may be necessary to protect and ensure the health, safety and welfare of child when the child is in the custody of the parent.
- ✓ Shall include a residential schedule.

Restrictions on Visitation (T.C.A. § 36-6-703):

- Supervised visitation with costs to be primarily borne by the perpetrating parent.
- Complete of a program of counseling or other intervention by perpetrating parent as a precondition to visitation.
- Prohibition of overnight visitation until perpetrating parent has completed court ordered counseling or intervention, or otherwise demonstrated a change in circumstances that guarantees safety of the child.
- Keeping the address of the child and the non-perpetrating parent confidential; and
- Any other conditions the court deems necessary and proper to guarantee the safety of the child.

Grandparent Visitation (T.C.A. § 36-6-306):

- 1) Child has a significant existing relationship with the grandparent that loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child.
 - A. child resided with the grandparent for at least six (6) consecutive months;
 - B. grandparent was a full-time caretaker of the child for a period of not less than six (6) consecutive months; or
 - C. grandparent had frequent visitation with the child who is the subject of the suit for a period of not less than one (1) year.
 - 2) Grandparent functioned as a primary caregiver such that cessation or severe reduction of the relationship could interrupt provision of the daily needs of the child and cause physical or emotional harm; or
 - 3) Child had a significant existing relationship with the grandparent and loss or severe reduction of the relationship presents the danger of other direct and substantial harm to the child.
- ❖ Analyze using best interest factors set out in T.C.A. § 36-6-307.

Parental Relocation (T.C.A. § 36-6-108):

- If a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail no later than 60 days prior to the move.
- If opposition filed, court shall determine whether relocation is in the best interest of child according to factors set out in T.C.A. § 36-6-108.

Mediation/Dispute Resolution (T.C.A. § 36-6-409):

- If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:
- Differences between the parents that would substantially inhibit their effective participation in designated process;
 - Parents' wishes or agreements and whether the agreements were made knowingly and voluntarily; and
 - Financial circumstances of the parties to pay for alternative dispute resolution processes.