



Members Only

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Parenting Time and Visitation Orders in Ohio*

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When the parents of a minor child divorce, have their marriage dissolved or annulled, or legally separate, the court may issue an order affording parenting time to the nonresidential parent. Visitation may be granted to grandparents or other relatives if a child's parents have their marriage terminated or are unmarried, or a parent dies. Local courts have considerable discretion in granting parenting time and visitation rights, as they are required by state law to determine what serves the child's best interest. State statutes and state and local court rules guide their decisions. This Members' Brief uses the Franklin County Domestic Relations Court to illustrate local court rules.

Parenting Time and Visitation: When and to Whom Granted

When Married Parents Terminate Marriage or Separate

In a divorce, dissolution, annulment, or legal separation proceeding involving a child for whom the court has not issued a shared parenting decree,¹ the court must issue an order granting just and reasonable parenting time rights to the nonresidential parent, unless it determines that parenting time would not be in the child's best interest. The order must specify a schedule of parenting time. If the court determines parenting time would not be in the child's best interest, it must publish in its journal the findings of fact and conclusions of law supporting that determination. (Revised Code § 3109.051(A) and (C).)

Grandparents and other persons may request visitation rights by filing a motion while a divorce, dissolution, annulment, legal separation, or child support proceeding is pending or at any time after the final order is issued in

In a proceeding for marriage termination or legal separation, the court must grant the nonresidential parent parenting time, unless it is not in the child's best interest.

* This Members Only Brief is an update of an earlier Brief on this subject dated December 6, 1996.



If a child's parents have their marriage terminated or are unmarried, or a parent dies, visitation may be granted to grandparents or other persons.

A court issuing a parenting time or visitation order must consider all relevant factors.

the case. The court may grant reasonable visitation rights to a grandparent or other person who files a motion if it determines that the person has an interest in the child's welfare and granting visitation is in the child's best interest. (R.C. 3109.051(B).)

When Parents are not Married

If a child is born to an unmarried woman, the woman's parents or other relatives may file a complaint asking the common pleas court of the county in which the child resides to grant them reasonable visitation rights. The child's father and any of his relatives may file a complaint requesting reasonable parenting time or visitation rights if he has acknowledged paternity in accordance with Ohio law or has been determined to be the child's father pursuant to a paternity proceeding. The court may grant parenting time or visitation rights if it determines that doing so is in the child's best interest. (R.C. 3109.12.)

When a Parent Dies

If the father or mother of an unmarried minor child dies, the common pleas court of the county in which the child resides may grant the deceased person's parents and other relatives visitation rights during the child's minority. The parents or other relatives must file a complaint requesting visitation rights, and the court must determine whether visitation is in the child's best interest. (R.C. 3109.11.)

Factors the Court Must Consider

Before issuing a parenting time or visitation order, the court must consider any agreement made between the parties pursuant to court-ordered mediation and all other relevant factors, including factors enumerated in statute. Some of the statutory factors are:

- ◆ The child's wishes and concerns, if the court has interviewed the child in chambers;
- ◆ The location of each parent's residence and the distance between them and, if the person requesting visitation is not a parent, the location of that person's residence and the distance between it and the child's residence;
- ◆ The child's age;
- ◆ The child's available time and the amount of time available for the child to spend with siblings;
- ◆ Whether either parent or the person requesting visitation previously has abused or neglected a child;
- ◆ Prior interaction and inter-relationships of the child with the child's parents, siblings, other relatives, and with the person who has requested visitation;
- ◆ In relation to visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court.

The court may interview the child in chambers to determine the child's wishes and concerns. The only



persons that may be present are the child, the child's attorney, the judge, necessary court personnel, and, at the court's option, each parent's attorney. (R.C. 3109.051(C) and (D) and 3109.052(A) and (B).)

Guidelines

The Revised Code does not prescribe specific guidelines for courts to follow in establishing parenting time and visitation schedules and determining other visitation matters. Instead, it requires each court of common pleas to prescribe guidelines for use in its jurisdiction. A court may deviate from the guidelines established in its local rules based on its consideration of the factors enumerated in the Revised Code (R.C. 3109.051(D)).

In Franklin County, The Domestic Division of the Common Pleas Court has a model visitation/parenting time schedule to be used as a guideline for parenting time. The parties have a responsibility to tailor the schedule to meet their child's best interest. If no schedule can be agreed on by the parents, the model schedule becomes a court order. (Domestic Division Rule 27.)

Denial of Parenting Time or Visitation

If a person whose request for a parenting time or visitation order is

denied by a court files a request for findings of fact and conclusions of law, the court must state those findings and conclusions in accordance with Ohio Civil Rules, which are the rules of judicial procedure adopted by the Ohio Supreme Court. The Revised Code does not prescribe a deadline for the person to file the request and the Civil Rules do not prescribe a deadline for the court to issue its findings and conclusions. (R.C. 3109.051(A)(1), 3109.11, and 3109.12; Ohio Civil Rule 52; *Sambunjak v. Bd. of Review* (1984), 14 Ohio App.3d 432.)

Modification of Visitation Orders

A court that issues an order granting parenting time or visitation rights has continuing jurisdiction to modify the order. To invoke the court's continuing jurisdiction, a party must file a motion in the original action. (*Venable v. Venable* (1981), 3 Ohio App.3d 421; R.C. 3105.65; Civ. R. 75(J).)

Motions to modify a parenting time or visitation order must be filed in accordance with local court rules. In Franklin County, those rules require that motions filed with the court name the court where the action is pending, be typed, have the proper case style, name the judge or magistrate assigned to the case, and have the Ohio Supreme Court registration number of the attorney who

At the request of a person denied parenting time or visitation, the court must state its findings and conclusions.

Each common pleas court must establish guidelines for parenting time and visitation schedules.

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filed the pleading. (Domestic Division Rule 11.) For post-decree motions, the party filing the motion must file a certificate stating whether the action was previously filed and dismissed or withdrawn. The motion must also state the name of the judge or magistrate who was assigned to the case and the case number of the previous case. (Domestic Division Rule 11.)

The moving party must file a memorandum of fact and law with the motion. (Domestic Division Rule 13.) There are no domestic court rules in Franklin County that specifically pertain to the modification of parenting time and visitation rights, but the guidelines in the court rules state that parents should attempt in good faith to renegotiate an appropriate parenting time schedule when one parent moves and the current schedule is no longer the best plan. (Domestic Division Rule 27.)

A court has considerable discretion in modifying parenting time and visitation orders. A court will modify a parenting time or visitation order if it determines the modification is in the child's best interest. The burden of proving the current visitation arrangement is not in the child's best interest is on the party seeking modification. (*Appleby v. Appleby* (1986), 24 Ohio St.3d 39; *Bodine v. Bodine* (1988), 38 Ohio App.3d 173.)

The person moving to modify visitation does not need to show that there has been a change in circumstances for a court to revise visitation

or parenting time rights. However, a court must consider the factors in statute (R.C. 3109.051) and determine a parenting time or visitation schedule that is in the child's best interest. (*Braatz v. Braatz* (1999), 85 Ohio St.3d 40.)

Enforcement Through Contempt Proceedings

Any person with parenting time or visitation rights or subject to a parenting time or visitation order may bring an action for contempt for failure to comply with, or for interference with, the order. A court may impose a fine, a term of imprisonment, or both on a person found guilty of contempt. The maximum fine and term of imprisonment is \$250 and 30 days for a first offense; \$500 and 60 days for a second offense; \$1,000 and 90 days for a third or subsequent offense. The court may require the convicted person to pay all court costs and the reasonable attorney's fees of the other party. The court may award compensatory parenting time or visitation to the person whose rights were affected. (R.C. 2705.031(B)(2), 2705.05(A), and 3109.051(K).)

Other Provisions

Notice of Intent to Relocate

Ohio law requires a residential parent who intends to relocate to file



a notice with the court. The court must send a copy of the notice to the nonresidential parent unless (1) the nonresidential parent was convicted of or pled guilty to a domestic violence offense involving, or any other offense that caused physical harm to, a member of the nonresidential parent's family or household or (2) the nonresidential parent committed an abusive act that led to a child being adjudicated an abused child. On receipt of the notice, the court, on its own motion or the motion of the nonresidential parent, may schedule a hearing to determine whether the parenting time schedule should be changed. (R.C. 3109.051(G).)

Access to Child's Activities

A nonresidential parent of a child is entitled to access, under the same terms and conditions as the residential parent, to any records pertaining to the child, any day-care center that the child attends or may attend, and any student activities of the child, unless a court does not permit that access. A court may deny equal access to the child's records and student activities if it determines that the access would not be in the child's best interest. A court may deny equal access to a day-care center, however, without determining whether it is in the child's best interest. If the court does not permit equal access to the nonresidential parent, the court must specify the nonresidential parent's access privileges. (R.C. 3109.051(H) to (J).)

Marriage or Remarriage of a Parent

The marriage or remarriage of a parent subject to a parenting time order does not affect the court's authority to grant or modify parenting time rights or to grant reasonable visitation rights to any other person (R.C. 3109.051(E), 3109.11, and 3109.12).

Endnotes

1 A shared parenting decree allocates parental rights and responsibilities for the child's care between the parents and requires the parents to share the child's physical and legal care. Parenting time orders are not issued with shared parenting decrees. (R.C. 3109.04(A)(2) and 3109.051(A).)



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