WEST virginia legislature

2021 regular session

Committee Substitute

for

Senate Bill 79

By Senators Trump and Woelfel

[Originating in the Committee on the Judiciary; reported on February 19, 2021]

A BILL to amend and reenact §48-9-403 of the Code of West Virginia, 1931, as amended, all relating to providing a fair mechanism for the adjudication of requests for relocation of a parent with a child.

Be it enacted by the Legislature of West Virginia:

Article 9. Allocation of Custodial Responsibility and decision-making responsibility of children.

Part IV. Modification of Parenting Plan.

**§48-9-403. Relocation of a parent.**

~~(a) The relocation of a parent constitutes a substantial change in the circumstances under subsection 9-401(a) of the child only when it significantly impairs either parents ability to exercise responsibilities that the parent has been exercising.~~

~~(b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty days advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:~~

~~(1) The relocation date;~~

~~(2) The address of the intended new residence;~~

~~(3) The specific reasons for the proposed relocation;~~

~~(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and~~

~~(5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.~~

~~Failure to comply with the notice requirements of this section without good cause may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section and is a basis for an award of reasonable expenses and reasonable attorneys fees to another parent that are attributable to such failure.~~

~~The Supreme Court of Appeals shall make available through the offices of the circuit clerks and the secretary-clerks of the family courts a form notice that complies with the provisions of this subsection. The Supreme Court of Appeals shall promulgate procedural rules that provide for an expedited hearing process to resolve issues arising from a relocation or proposed relocation.~~

~~(c) When changed circumstances are shown under subsection (a) of this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties.~~

~~(d) When the relocation constituting changed circumstances under subsection (a) of this section renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent, the court shall modify the parenting plan in accordance with the childs best interests and in accordance with the following principles:~~

~~(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the childs household from significant risk of harm, to pursue a significant employment or educational opportunity or to be with ones spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving of the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially achievable without moving or by moving to a location that is substantially less disruptive of the other parents relationship to the child.~~

~~(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that is reasonable in light of the purpose and if neither has been exercising a significant majority of custodial responsibility for the child, the court shall reallocate custodial responsibility based on the best interest of the child, taking into account all relevant factors including the effects of the relocation on the child.~~

~~(3) If a parent does not establish that the purpose for that parents relocation is in good faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the childs best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall not be ordered if the relocating parent demonstrates that the childs best interests would be served by the relocation.~~

~~(4) The court shall attempt to minimize impairment to a parent-child relationship caused by a parents relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents resources and circumstances and the developmental level of the child.~~

~~(e) In determining the proportion of caretaking functions each parent previously performed for the child under the parenting plan before relocation, the court may not consider a division of functions arising from any arrangements made after a relocation but before a modification hearing on the issues related to relocation.~~

~~(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of rule 17 of the rules of practice and procedure for family law as promulgated by the Supreme Court of Appeals.~~

(a) The relocation of a parent constitutes a substantial change in the circumstances of the child under §48-9-401(a) of this code when it impairs either parent's ability to exercise responsibilities that the parent has been exercising, or when it impairs the schedule of custodial allocation that has been ordered by the court for a parent or any other person.

(b) A parent who has responsibility under a parenting plan who changes, or intends to change, residences must file a verified petition with the court for modification of the parenting plan, and cause a copy of the same to be served upon the other parent and upon all other persons who, pursuant to the court’s order in effect at the time of the petition, have been allocated custodial time with the child. The petition shall be filed at least 75 days prior to any relocation, and the summons must be served at least 45 days in advance of any relocation, unless the relocating parent establishes that it was impracticable under the circumstances to provide such notice 75 days in advance. The verified petition shall include:

(1) The proposed relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;

(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and

(5) A request for a hearing.

Failure to comply with the requirements of this section may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section, and may also be a basis for reallocation of the primary residence and custodial responsibility for the child and for an award of reasonable expenses and reasonable attorney's fees to another parent or another person exercising custodial responsibility for the child pursuant to an order of the court that are attributable to such failure.

(c) A hearing on the petition shall be held by the court at least 30 days in advance of the proposed date of relocation. A parent proposing to relocate may move for an expedited hearing upon the petition in circumstances under which the parent needs an answer expeditiously. If the hearing is held fewer than 30 days in advance of the proposed date of relocation, the court’s order shall include findings of fact as to why the hearing was not held at least 30 days prior to the petition’s proposed date of relocation. After a hearing upon a petition filed under this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents and all such other persons exercising custodial responsibility for the child pursuant to the order of the court. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties and may consider §48-13-702 of this code authorizing the court to disregard the child support formula relating to long distance visitation costs.

(d) (1) At the hearing held pursuant to this section, the relocating parent has the burden of proving that: (A) The reasons for the proposed relocation are legitimate and made in good faith; (B) that allowing relocation of the relocating parent with the child is in the best interests of the child as defined in §48-9-102 of this code; and (C) that there is no reasonable alternative, other than the proposed relocation, available to the relocating parent that would be in the child’s best interests and less disruptive to the child.

(2) A relocation is for a legitimate purpose if it is to be close to immediate family members, for substantial health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity, or to be with one's spouse or significant other with whom the relocating parent has cohabitated for at least a year, who is established, or who is pursuing a significant employment or educational opportunity, in another location.

(3) The relocating parent has the burden of proving the proposed relocation is for one of these legitimate purposes. The relocating parent has the burden of proving the legitimacy of any other purpose. A move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving, and that moving to a location that is substantially less disruptive of the other parent's relationship to the child is not feasible.

(4) When the relocation is for a legitimate purpose, in good faith, and renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent and all other persons exercising custodial responsibility for the child pursuant to an order of the court, the court shall modify the parenting plan in accordance with the child's best interests.

(5) If the relocating parent does not establish that the purpose for that parent's relocation is made in good faith for a legitimate purpose to a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, to become effective if and when the parent’s relocation occurs.

(6) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.

(e) If the parties file with the court a modified parenting plan signed by all the parties the court may enter an order modifying custodial responsibility in accordance with the parenting plan if the court determines that the parenting plan is in the best interest of the child to do so.

(f) Except in extraordinary circumstance articulated in the court’s order, a relocation may not be considered until an initial permanent parenting plan is established.

(g) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of Rule 17 of the Rules of Practice and Procedure for Family Court as promulgated by the Supreme Court of Appeals.