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Thursday, November 8, 2007  
Interim Special Judiciary Committee  
2007-2008 Kansas Legislative Session

TESTIMONY OF RONALD W. NELSON  
Issues Surrounding Child Custody Disputes with Military Servicemembers

Members of the Committee: Good afternoon. My name is Ronald W. Nelson. I practice domestic relations law with my offices in Shawnee Mission, Kansas. My practice emphasizes handling complex domestic relations issues in divorce, parentage and other domestic relations disputes including child custody and child support. My clientele is fairly evenly split between representation of men and women. Over the years, a significant number of my clients are associated with the United States Military; either as the servicemember or as the spouse of a servicemember. In the context of those cases, I've often had to wrestle with the difficult issues that arise when the family dynamics and existing practices of sharing a child's custody are disrupted by military service including a servicemember's overseas assignment or orders to a new duty headquarters.

Recently, the increasing number of both mothers and fathers being deployed overseas has caused significant problems among military families. The problems that have arisen are not unique to military families; however, because of the large number of families affected by these deployments, family disputes that had been limited to a small number of people now affect a much larger number. As a result, proposed legislation has been introduced in many States as well as in the United States Congress seeking to correct perceived wrongs with the way in which child custody matters are being addressed. Among the legislation proposed is an Act passed by the North Carolina Legislature which contains four sections and provides certain "protections" to military servicemembers during and after deployment:

- It allows expedited hearings upon the request of a servicemember.
- It lets the court use electronic testimony when the SM is unavailable.
- It allows the court to delegate the visitation rights of the SM to another family member.
- It requires that any temporary custody order entered upon a servicemember's deployment end within ten days of the servicemember's return, and that the servicemember's absence due to deployment may not be used against him in a change of custody hearing.

Many of the provisions proposed to deal with this issue are good and appropriate; however, many of them do not necessarily take into consideration what would truly be in the subject child's best interests. Unfortunately, some of the proposed "remedies" use a sledgehammer to deal with a fly and others fail to consider that a general rule imposing the same result on all cases has as much chance of harming the child as benefiting the servicemember parent. These cases are tricky; these cases are delicate; these cases are complex. There is no "one-size-fits-all" solution and any attempt to impose such a solution is bound to cause as many or more problems in execution as does the existing legal landscape.

One remedy often suggested by those seeking to correct the problem is to allow a custodial or non-custodial parent to assign their rights to another – sometimes including relatives of the first, second or third degree and sometimes including new spouses and step-children. What happens, however, when this "assignment" is made without consultation with the other parent? What if the person to whom rights are assigned is unknown or unacceptable to the non-servicemember parent? What if the person to whom the rights are assigned has an adversarial relationship with the non-servicemember parent? What if a servicemember seeks to assign primary residency status to another family member in derogation of the rights of the non-servicemember parent?

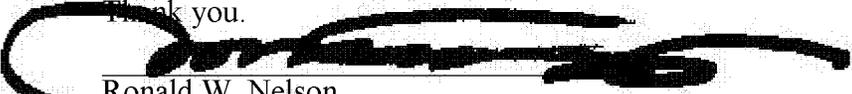
Another common provision is that any "temporary custody change" terminates within a certain period after the servicemember parent returns home. However, how does an automatic termination of a temporary custodial change consider the best interests of the child? What if the child has become settled in a new environment? What if the child is in the middle of the school year in another school district or another city or state? What if the original custody order did not truly consider the child's best interests, but was made as an accommodation of circumstances that existed at the time the custody arrangement was originally made that have completely changed in the interim? What if the child and the non-servicemember parent have formed a different bond than they had before the servicemembers deployment that did not exist before the child changed residence from the servicemembers home? What if upon returning from deployment the servicemember chooses to locate to a different place than the servicemember lived before deployment?

Still another common provision is a requirement that the courts hear motions by a servicemember within a certain number of days from their request for a hearing. However, how will that direction create more time for the courts? How will the courts deal with such emergency motions when they already have difficulty fitting motions to modify temporary orders into the statutory twenty-one days from the filing of a motion? Why should servicemembers have preference on the courts dockets when cases identical in the issues raised in cases involving non-servicemembers? Shouldn't we try to give everyone the same expedited rights in court to challenge unfair and improper assertions affecting a child's best interests? Shouldn't any time mandates apply to all cases asserting that one parent is seeking to use the child as a pawn?

Unfortunately, I have no solutions to suggest to the committee. This problem is significant and complex. I raise only concerns. This committee must be aware of the effect that any change in current law may have on children in child-custody disputes. Children are already too often used as pawns by the adults who love them for their own selfish, manipulative, and hurtful reasons. This legislature should not play into the hands of those who would misuse a law

meant to protect the rights of children. Any changes should be made with a consideration of the effect of that change on the whole family and the ways in which it will affect the child upon whom it primarily acts.

Thank you.



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