

- i. Version Number: 4
- ii. Date of version: June 21, 2010 (incorporating feedback from workgroup meeting on May 27, 2010 and comments from Tom Alongi sent on 5/17)
- iii. Current section number and short title: 25-403 best interests
- iv. Names of members: Bill Fabricius, Grace Hawkins
- v. Purpose:
In Version 34 we try to incorporate points from the discussion of Version 3 at the May 27 meeting. Changes are tracked.

25-403. Parenting time and parental decision making; best interests of child

A. Absent evidence to the contrary, it is in a child's best interests for both parents:

- 1. To have substantial, meaningful, and continuing parenting time with their child;
- 2. To share parental decision-making concerning their child.
- 3. To develop a mutually agreeable parenting time plan and a parental decision-making plan.

B. In the event the parents are unable to reach an agreement on a plan for either parenting time or parental decision-making, each parent shall submit to the court a proposed, detailed parenting time plan and proposal for parental decision-making as outlined in 25-403.02.

C. The court shall determine parenting time and parental decision-making, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, including

- 1. The feasibility of each plan taking into account the distance between the parents' homes, the parents' and/or child's work, school, daycare or other schedules, and the child's age.
- 2. The child's own viewpoint and wishes.
- 3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
- 4. The child's adjustment to home, school and community.
- 5. The mental and physical health of all individuals involved.
- 6. Whether one parent is more likely to support and encourage the child's relationship and contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
- 7. The historical nature of the relationship between the parent and the child including whether one parent performed a disproportionate amount of primary care, the current relationship between the parent and the child, and the potential future relationship of the parent and the child.
- 8. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.
- 9. Whether there has been domestic violence or child abuse as defined in section 25-403.03.
- 10. Whether a parent has complied with chapter 3, article 5, of this title.

D. Consistent with the child's physical safety and emotional well-being, the court shall adopt a plan that maximizes parenting time with both parents and provides for both parents to share parental decision-making concerning their child. In determining parenting time and/or parental decision-making responsibility, the court shall not prefer one parent over the other due to gender.

E. In a contested parenting time and parental decision-making case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child.

Comment [BF1]: This just occurred to me.

Comment [BF2]: Deleted because redundant with C. 7. There was discussion here about whether to include reference to criminal conduct of "other persons" and whether parents should tell each other who else is living with the child.

Comment [BF3]: There was much discussion of this but we were unclear if there was any consensus

Comment [BF4]: There was discussion of alternate language such as, "clear, convincing evidence of false reporting."