



## Parenting Time and Visitation Orders in Ohio\*

PREPARED BY: CHENWEI ZHANG, LSC ATTORNEY  
REVIEWED BY: RALPH D. CLARK, LSC DIVISION CHIEF

A court may grant parenting time to the nonresidential parent of a child, when the parents divorce, dissolve, or annul their marriage, or legally separate. Grandparents and other relatives of a child may get visitation if the parents terminate their marriage or are unmarried, or one of them 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 Only* 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,<sup>1</sup> 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.<sup>2</sup>

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 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.<sup>3</sup>

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*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 January 31, 2007 (Volume 127 Issue 2).



*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.*

### ***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.<sup>4</sup>

### ***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.<sup>5</sup>

### ***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 from 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 who 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.<sup>6</sup>

### ***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.<sup>7</sup>

In Franklin County, the Domestic Relations Division of the Common Pleas Court has a model 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.<sup>8</sup>

### **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 Rules of Civil Procedure adopted by the Ohio Supreme Court.<sup>9</sup> 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.

### **Modification of parenting time and visitation orders**

A court that issues an order granting parenting time or visitation

rights has continuing jurisdiction to modify the order; the case does not close when the order is issued. To invoke the court's continuing jurisdiction, a party must file a motion in the continuing case.<sup>10</sup>

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 the motions name the court where the action is pending, be typed, have the proper case style and number, name the judge or magistrate assigned to the case, and have the Ohio Supreme Court registration number and contact information of the attorney who filed the pleading. For post-decree motions, the party filing the motion must file a certificate stating whether the action was previously filed and dismissed or withdrawn.<sup>11</sup>

The moving party must file a memorandum of fact and law with the motion. 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 and beneficial parenting time schedule when one parent moves.<sup>12</sup>

A court, in its sound discretion, may modify a parenting time or visitation order if it is in the child's best interest, based on the enumerated statutory factors described above. However, the party requesting the modification does not need to show that there has been a change in circumstances for a court to revise parenting time or visitation rights.<sup>13</sup>

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

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

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*A court that issues a parenting time or visitation order has continuing jurisdiction to modify it.*



## **Enforcement through contempt proceedings**

### **Contempt action**

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, and \$1,000 and 90 days for a third or subsequent offense. The court must 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.<sup>14</sup>

### **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.<sup>15</sup>

#### **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 daycare 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 daycare 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.<sup>16</sup>

#### **Military service**

A parent who is called to active military service may apply to the court for any of the following temporary orders related to parenting time that spans from the date of the parent's departure to the date of return:

(1) An order delegating all or part of the parent's parenting time to a relative or another person with a close and substantial relationship with the child, if the delegation is in the child's best interest;




(2) An order requiring the other parent to make the child reasonably available for parenting time when the parent is on leave from active military service;

(3) An order that the other parent facilitate contact between the parent and child while the parent is on active military service. The contact may include telephone and electronic contact.

The service member parent must notify the other parent and apply to the court as soon as reasonably possible after receiving orders for active military service. The court must then schedule a hearing and hold it within 30 days, unless exigent circumstances exist requiring the motion to be handled expeditiously. However, no hearing is required if both parents agree to the terms of the requested temporary order

and the court determines that the order is in the child's best interest, after considering all relevant factors, including the statutory factors for granting parenting time or visitation.<sup>17</sup>

### *Marriage or remarriage of a parent*

The statutory law provides that the marriage or remarriage of a parent does not affect the court's authority to grant or modify parenting time rights or to grant reasonable visitation rights to any other person.<sup>18</sup> However, with respect to granting visitation to relatives of a child born to an unmarried woman (R.C. 3109.12), two appellate courts have held the authority unconstitutional as applied to cases of parents who later marry each other.<sup>19</sup> 

## **Endnotes**

<sup>1</sup> 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).)

<sup>2</sup> R.C. 3109.051(A).

<sup>3</sup> R.C. 3109.051(B).

<sup>4</sup> R.C. 3109.12.

<sup>5</sup> R.C. 3109.11.

<sup>6</sup> R.C. 3109.051(C) and (D).

<sup>7</sup> R.C. 3109.051(F)(2).

<sup>8</sup> Domestic Division Rule 27.1.

<sup>9</sup> R.C. 3109.051(F)(1), 3109.11, and 3109.12(B); Ohio Civil Rule 52.

<sup>10</sup> See, R.C. 3105.65(B).

<sup>11</sup> Domestic Division Rule 11.

<sup>12</sup> Domestic Division Rules 13(C) and 27.1.

<sup>13</sup> *Braatz v. Braatz*, 85 Ohio St.3d 40, paragraphs 1 and 2 of syllabus (1999).

<sup>14</sup> R.C. 2705.031(B)(2), 2705.05(A), and 3109.051(K).





<sup>15</sup> R.C. 3109.051(G).

<sup>16</sup> R.C. 3109.051(H) to (J).

<sup>17</sup> R.C. 3109.051(M).

<sup>18</sup> R.C. 3109.051(E), 3109.11, and 3109.12.

<sup>19</sup> *In re K.M.-B.*, 2015-Ohio-4626, ¶ 21, 37-40 (Sixth Dist., Lucas Cnty., November 15, 2015) and *Nicoson v. Hacker*, 2001-Ohio-8717, at \*5-6, 8-10 (Eleventh Dist., Lake Cnty., December 14, 2001).

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COMMISSION STAFF**

9th Floor  
Vern Riffe Center  
Columbus, Ohio  
(614) 466-3615

Director  
Mark Flanders

Deputy Director  
Jim Kelly

Contributing Author  
Chenwei Zhang  
LSC Attorney

Reviewer  
Ralph D. Clark  
LSC Division Chief

Layout & Design  
Linda Bayer