



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1981 | Issue 1

Article 46

1-1-1981

Domestic Relations; Child Support-Assignment of Wages and Assessment of Fees

Univeristy of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

Univeristy of the Pacific, McGeorge School of Law, *Domestic Relations; Child Support-Assignment of Wages and Assessment of Fees*, 1981 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1981/iss1/46>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

risdictional requirements are met.¹⁷

Second in order of statutory preference to joint custody is an award to either parent.¹⁸ One of the factors the court must consider is which parent is most likely to allow the child to have frequent associations with the noncustodial parent.¹⁹ Preference for one parent over the other for the sole reason that the parent is either the mother or the father is prohibited.²⁰ Furthermore, when custody is awarded to one parent, access to records and other information pertaining to the child cannot be denied to the other parent merely because he or she does not have custody.²¹

When neither joint custody nor sole parental custody is considered to be in the best interest of the child, custody is awarded, first, to any persons in whose home the child has been living and who have provided a wholesome and stable environment²² or, second, to any other person the court finds suitable and able to provide proper care and guidance for the child.²³ Any nomination of a guardian for the child made by either parent must be considered by the court.²⁴ Prior to awarding custody to any person other than a parent, however, the court must find that parental custody would be detrimental to the child and that the best interest of the minor mandates awarding custody to a nonparent.²⁵ No allegation other than the ultimate fact that parental custody would be detrimental to the child may appear in the pleadings;²⁶ the court also may exclude the public from a hearing on this issue.²⁷

17. See generally *id.* §§125A.010-125A.250 (Uniform Child Custody Jurisdiction Act).

18. See *id.* §125.— 3(a).

19. See *id.* §125.— 3(a)(2).

20. Compare *id.* §125.003 2 with STATUTES OF NEVADA 1979, c.269, §2, at 368 (amending N.R.S. §125.140). See also *Arnold v. Arnold*, 95 Nev. 951, 604 P.2d 109 (1979) (overruling the "tender years doctrine" of maternal preference enunciated in *Peavey v. Peavey*, 85 Nev. 571, 573, 460 P.2d 110, 111 (1969)).

21. See N.R.S. §125.— 2.

22. See *id.* §125.— 3(b).

23. See *id.* §125.— 3(c).

24. See *id.* §125.— 4(b).

25. See *id.* §125.— 1.

26. See *id.* §125.— 2.

27. See *id.* §125.— 3.

Domestic Relations; child support—assignment of wages and assessment of fees

N.R.S. §31.— (new); §§31.463, 31.467, 126.291, 130.100, 130.115, 130.160, 130.190, 130.210, 130.280, 130.290 (amended).

SB 253 (Committee on Judiciary); STATS 1981, Ch 420
AB 246 (Dubois); STATS 1981, Ch 418

Under existing law, when the parent who is responsible for the support of the child does not make timely support payments, the court is permitted to order an assignment of wages.¹ Chapter 418 requires a court to order an assignment when a written and verified application has been filed and the applicant has proven that the responsible parent has failed to make the equivalent of two monthly support payments in any twelve-month period.² The applicant must send notice to the responsible parent stating that the assignment will go into effect within ten days.³ The responsible parent, however, may request a hearing anytime before the assignment becomes effective to determine if the assignment should be ordered.⁴ If the court receives a request, it will schedule a hearing and stay the effect of the assignment until after the hearing.⁵ Chapter 418 provides that if the responsible parent establishes at the hearing that payments were made substantially at the time and in the amounts required by the support order, the court will rescind the order of assignment.⁶ If the court finds that the responsible parent has failed to comply with the support order, an assignment becomes effective immediately after the hearing or, if no hearing is requested, ten days after notice of the assignment has been mailed to the responsible parent.⁷ In addition, court costs and reasonable attorney's fees may be assessed against the responsible parent.⁸

Existing law requires that the employer be served a copy of the assignment order for the assignment to be binding.⁹ Chapter 418 specifies that a copy of the order must be served by certified mail, return receipt requested, for the assignment to be binding on the employer.¹⁰ This procedural change also applies to service on any public entity other than the federal government.¹¹ Additionally, Chapter 418 allows the employer to charge the employee a three dollar fee for every payment made pursuant to the assignment.¹² When an employer complies

1. See N.R.S. §31.463.

2. *Id.* §31.463 1.

3. *Id.* §31.463 2.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* §31.463 3(a), (b).

8. *Id.* §31.463 3(b).

9. *Id.* §31.463 4.

10. *Id.*

11. *Id.* §31.467 2.

12. *Id.* §31.463 4.

with the assignment order, the employer is no longer liable to the employee for the portion of the wages affected by the assignment.¹³ Refusal to honor an assignment will subject the employer to a fine equal to the amount of the assignment.¹⁴ Finally, Chapter 418 incorporates the federal policy against garnishment discharge¹⁵ by prohibiting an employer from discharging or disciplining any employee because the employee's wages have been assigned to enforce an order of child support.¹⁶ Any employer who violates this provision will be required to make full restitution to the employee, including reinstatement and back pay.¹⁷

Chapters 418 and 420 modify several of the procedural requirements concerning enforcement of child support.¹⁸ Chapter 420 also affects procedural requirements in actions to determine paternity.¹⁹ Prior to the enactment of Chapter 420, an applicant who filed an action to compel child support or to establish paternity could not be charged any fees for bringing or maintaining the action.²⁰ Under Chapter 420, the district attorney may require the payment of a \$20 application fee.²¹ When the *state* files an application to compel support or to determine paternity, however, no application fee may be imposed.²² Existing law allows a court to assess usual filing fees and court costs against the non-supporting parent.²³ Under Chapter 420, a nonsupporting parent also may be required to pay a reasonable collection fee.²⁴ When payment of the collection fee would cause undue financial hardship, the court may permit the fee to be paid in monthly installments.²⁵ Finally, in an action brought under the Reciprocal Enforcement of Support Act²⁶ to compel support, the district attorney may request that the responding

13. *Id.* §31.463 7.

14. *See id.* §31.463 6.

15. *See* 15 U.S.C. §1674 (policy of discharging an employee when wages were garnished found to be discriminatory and prohibited under Title VII of the Civil Rights Act of 1964).

16. *See* N.R.S. §31.—.

17. *Id.*

18. *Compare id.* §130.100 and §130.190 with STATUTES OF NEVADA 1969, c. 346, §7, at 601 and §12, at 603; *compare* N.R.S. §130.210 and §130.280 with STATUTES OF NEVADA 1969, c. 346, §15, at 604 and §17, at 605; *compare* N.R.S. §130.290 and §130.160 with STATUTES OF NEVADA 1969, c. 346, §23 and §24, at 607.

19. *See* N.R.S. §126.291 2.

20. *See* STATUTES OF NEVADA 1979, c. 599, §35, at 1280. *See also* STATUTES OF NEVADA 1969, c. 346, §12, at 603.

21. *See* N.R.S. §§126.291 2, 130.160 1.

22. *Id.*

23. *Id.* §126.291.

24. *See id.* §§126.291, 130.160 (all fees collected must be deposited in the general fund of the county and an equivalent amount allocated to the county program for the enforcement of support obligations).

25. *Id.* (the monthly installment cannot be more than 25 percent of the support obligation for each month).

26. *See id.* §130.010.

court²⁷ collect the application fee from the nonsupporting parent.²⁸

Prior to the enactment of Chapter 418, all hearings for the enforcement of child support obligations were governed by the rules of evidence.²⁹ Chapter 418 provides that strict adherence to the rules of evidence no longer is required,³⁰ but those rules of evidence prescribed in the Administrative Procedure Act must be followed.³¹ In addition, Chapter 418 permits the affidavit of an obligee³² not present at the hearing to be admitted into evidence.³³ Finally, Chapter 418 authorizes the district court to appoint a qualified person to act as special master³⁴ at the hearing³⁵ for any case brought under the Reciprocal Enforcement of Support Act.³⁶

27. *Id.* §130.043 (definition of responding court).

28. *Id.* §§130.160 1, 126.021 2 (definition of nonsupporting parent).

29. *See* STATUTES OF NEVADA 1969, c. 346, §17, at 605 (amending N.R.S. §130.210); NEV. R. CIV. P. 43 (establishes evidence rules).

30. *See* N.R.S. §130.210 1.

31. *See id.* §233B.123 (providing for testimony under oath, cross-examination not limited by direct, judicial notice, receipt of copies of relevant evidence, and exclusion of irrelevant evidence).

32. *Id.* §130.042 (definition of obligee).

33. *Id.* §130.210 1.

34. *See* NEV. R. CIV. P. 53 (definition of special master).

35. N.R.S. §130.115 2.

36. *Id.*

Domestic Relations; termination of parental rights

N.R.S. §128.— (new); §§62.197, 128.005, 128.010, 128.012, 128.014, 128.018, 128.020, 128.030, 128.050, 128.090, 128.100, 128.105, 128.110, 128.120 (amended).

SB 654 (Committee on Judiciary), STATS 1981, Ch 718

AB 626 (Committee on Judiciary), STATS 1981, Ch 553

Chapter 553 augments the process for handling a child who has been removed from the home because of neglect, delinquency, or lack of supervision or other care.¹ Chapter 718 concerns termination of the fundamental right of parents to custody and control of their minor children,² expanding and defining the procedure and making it consistent with criminal statutes for child abuse and neglect.³

1. *Compare* N.R.S. §62.197 with STATUTES OF NEVADA 1973, c. 705, §15, at 1349.

2. *See* N.R.S. §128.— 3 (definition of a child). *See generally* 59 AM. JUR. 2d *Parent and Child* §§9-10, 39-40 (1971).

3. *Compare* N.R.S. §128.— 4 with N.R.S. §§200.501, 200.5011.