



Members Brief

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Allocating and Modifying Parental Rights and Responsibilities in Ohio

In Ohio, custody of a child is made in an order or decree allocating the parental rights and responsibilities for the care of a child. A domestic relations court may:

- Designate one parent as the child’s residential parent and legal custodian (sole custody);
- Provide for shared parenting under a shared parenting plan that is approved by the court (shared parenting); or
- Upon finding that neither parent is suitable, designate a relative to care for the child or certify the matter to the juvenile court to determine custody.

When allocating parental rights and responsibilities, the court must determine the best interest of the child based on factors provided in the Revised Code.

The court may modify or terminate a decree allocating parental rights and responsibilities. Modification requirements depend on the type of modification sought. Special provisions apply when a parent who is subject to an order allocating parental rights and responsibilities, or for whom an action is pending, is called to active military service.

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Introduction

In Ohio, custody of a child is referred to as the “allocation of parental rights and responsibilities.” The phrase “parental rights and responsibilities” is not defined in the Revised Code, but has been considered by the Ohio Supreme Court to be the equivalent of “custody and control,” the phrase it replaced. A person with “custody” of a child has “the right to ultimate legal and physical control of the child.”¹ A court may allocate parental rights and responsibilities for the care of a child in one of the following ways:

- Sole custody;
- Shared parenting;
- To a relative of the child; or
- Certify jurisdiction to the juvenile court to determine custody.

The court’s objective is to render a decision that reflects the best interest of the child. The court may not give preference to a parent because of that parent’s financial status. The court may modify an existing order or decree.

Methods of allocating parental rights and responsibilities

One parent as residential parent (sole custody)

A court may allocate the parental rights and responsibilities for the care of a child to one parent, designating that parent as the residential parent and legal custodian, and dividing the other rights and responsibilities for the child’s care between the parents. This arrangement is commonly referred to as “sole custody,” although that terminology is rarely used in the Revised Code. The other rights and responsibilities include financial support and the right of the parent who is not the residential parent and legal custodian to have continuing contact with the child.

One parent will be designated the residential parent and legal custodian when the designation is in the child’s best interest and one of the following applies: (1) neither parent files a pleading or motion requesting shared parenting, (2) at least one parent files a pleading or motion requesting shared parenting but does not file a shared parenting plan, or (3) at least one parent files a pleading or motion and a shared parenting plan but no plan is in the child’s best interest.²

If the parents were never married, Ohio law designates the child’s mother as the child’s sole residential parent and legal custodian, unless a court issues an order to the contrary. However, if the mother has been convicted of or pleaded guilty to rape or sexual battery and has

¹ *Fisher v. Hasenjager*, 116 Ohio St.3d 53, 57 (2007), citing *Braatz v. Braatz*, 85 Ohio St.3d 40, 43-44 (1999).

² R.C. 3109.04(A)(1).

been declared to be the parent of a child born as a result of that rape or sexual battery, she cannot be designated the residential parent and legal custodian of that child.³

Shared parenting

Shared parenting means that the parents share all or some aspects of the child's physical and legal care, in the manner set forth in the plan approved by the court. Shared parenting is commonly referred to as "joint custody."

Either or both parents may file a motion requesting shared parenting. A parent who files a request must also file a shared parenting plan. The court reviews each plan to determine whether it is in the child's best interest, and may require modifications if the plan is not. If the parents do not make changes or they propose changes that are not acceptable, the court may reject the request and proceed as if it were never made. A court may approve only one plan and must incorporate the approved plan into a final shared parenting decree.

A shared parenting plan must cover all factors relevant to the child's care, including physical living arrangements, financial support, medical and dental care, school placement, and the child's physical location during legal holidays, school holidays, and other days of special importance. When it is in the child's best interest, the court must require that a plan ensure the opportunity for both parents to have frequent and continuing contact with the child.⁴

In 2002, the Ohio Supreme Court held that the juvenile court has jurisdiction to determine if a shared custody agreement between a parent and a nonparent is in the child's best interest. In *In re Bonfield*, two women in a same-sex relationship were raising children together, but under Ohio law only one had legally recognized rights to the children. The women sought to enter into a shared parenting arrangement as a method of ensuring that, regardless of the couple's relationship, each would be involved in raising the children. Although one woman was not a legally recognized "parent" as defined in R.C. 3109.04, and so a shared parenting decree was not available, the Supreme Court recognized that a parent may enter into a custody agreement with a nonparent, subject to a judicial determination that the custodian is "a proper person to assume the care, training, and education of the child."⁵

Custody when the court finds neither parent suitable

If the court finds, with respect to a child under 18, that it is in the child's best interest to designate neither parent as the residential parent and legal custodian, the court may commit the child to the custody of a relative. The court also may certify to the juvenile court its finding that neither parent should be the residential parent and legal custodian. On certification, the juvenile court has exclusive jurisdiction to make custody decisions.⁶

³ R.C. 3109.042(A) and (B).

⁴ R.C. 3109.04(A)(2), (D), (G), and (K).

⁵ *In re Bonfield*, 97 Ohio St.3d 387, 393-396 (2002).

⁶ R.C. 3109.04(D)(2).

Parents have a fundamental right to the care, custody, and control of their child.⁷ Therefore, for a nonparent to gain custody, the court first must make a determination that the parents are unsuitable. Without a finding of unsuitability, the allocation of parental rights and responsibilities to a nonparent infringes on the parents' fundamental right.⁸

Best interest of the child

In determining the best interest of a child when allocating parental rights and responsibilities, the court must consider all relevant factors. While the court has discretion in determining what is relevant, the Revised Code lists specific factors that must be considered depending on the type of custody allocation.⁹

Factors for all custody allocations

When allocating parental rights and responsibilities, the court must consider the following factors:¹⁰

- The parents' wishes;
- If the child was interviewed in chambers, the child's wishes and concerns as expressed to the court;
- The child's interaction and interrelationship with parents, siblings, and others who may significantly affect the child's best interest;
- The child's adjustment to home, school, and community;
- The mental and physical health of all persons involved;
- The parent more likely to honor and facilitate court-approved parenting time rights or companionship and visitation rights;
- Whether the residential parent (or one of the parents subject to a shared parenting decree) has continuously and willfully denied parenting time to the other parent;
- Whether either parent has failed to make child support payments;
- Whether either parent has been convicted of or pleaded guilty to a criminal offense that resulted in a child being abused or neglected;
- Whether either parent, in a case in which a child has been adjudicated abused or neglected, has been determined to be the perpetrator of the abusive or neglectful act;

⁷ *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

⁸ *Hockstok v. Hockstok*, 98 Ohio St.3d 238, 242 (2002).

⁹ R.C. 3109.04(F)(1).

¹⁰ R.C. 3109.04(F)(1).

- Whether either parent has been convicted of or pleaded guilty to domestic violence, a sexually oriented offense, or an offense that caused physical harm, against a member of the parent's family or household;
- Whether there is reason to believe that either parent has acted in a manner resulting in a child being abused or neglected;
- Whether either parent has established, or is planning to establish, a residence outside Ohio.

Factors specific to shared parenting

A court considering whether shared parenting is in the child's best interest must consider all relevant factors, including those listed above, and the following additional factors:¹¹

- The parents' ability to cooperate and make decisions jointly concerning the child;
- Each parent's ability to encourage the sharing of love, affection, and contact between the child and the other parent;
- Any history of, or potential for, child abuse, spousal abuse, other domestic violence, or parental kidnapping by either parent;
- The geographic proximity of the parents;
- The recommendation of the guardian ad litem;
- Deviation factors listed in statute¹² that courts may consider when determining the amount of support under a child support order.

Modification

General procedure

A court may modify a decree allocating parental rights and responsibilities only if it finds, based on facts that have arisen since the decree, or that were unknown to the court at the time of the decree, that (1) there has been a change in the circumstances of the child, the residential parent, or either of the parents subject to a shared parenting decree, and (2) modification is necessary to serve the child's best interest.

The court must retain the residential parent designated by the decree, unless a modification is in the child's best interest and one of the following applies: (a) the residential parent in a sole custody situation (or both parents under a shared parenting decree) agrees to change the residential parent designation, (b) the child, with the residential parent's consent (or both parents' consent under a shared parenting decree), has been integrated into the family of the person seeking to become the residential parent, or (c) the advantages of a change in the child's environment outweigh the harm likely to be caused.

¹¹ R.C. 3109.04(F)(2).

¹² R.C. 3119.23.

Either or both parents under a decree that is not shared parenting may file a motion requesting that it be modified to a shared parenting decree. The court may do so if: (1) there is a change of circumstances, (2) shared parenting is in the child's best interest, and (3) the shared parenting plan complies with the legal requirements for the plans.

Parents under a shared parenting decree may jointly modify the court-approved terms. They may do so at any time by jointly filing the modifications with the court. The court must include the modifications in the plan unless they are not in the child's best interest. If the modifications are not in the child's best interest, the court may reject the modifications or alter the proposed modifications or the plan.

The court may modify the terms of a court-approved shared parenting plan on its own motion at any time if it determines that modifications are in the child's best interest.¹³

When a parent is called to active military service

When a parent who is subject to an order allocating parental rights and responsibilities, or for whom an action for an order is pending, is called to active military service, that parent must notify the other parent within three days of receiving notice of the activation. Either parent may then apply to the court for a hearing to expedite an allocation or modification proceeding so that the court can issue an order before the active military service begins.

The court must then schedule a hearing, to be held within 30 days after receiving the application, except under exigent circumstances. The court cannot modify a prior decree allocating parental rights and responsibilities unless the court determines that (1) there has been a change in circumstances of the child, the residential parent, or either of the parents, and (2) modification is necessary to serve the child's best interest. The court cannot find past, present, or possible future active military service to be a change in circumstances justifying modification, and must make specific written findings of fact to support any modification.

The court also may issue a temporary order allocating or modifying parental rights and responsibilities during the active military service. The temporary order must specify whether the military service is the basis of the temporary order, and must provide for its termination and resumption of the prior order within ten days after receiving notice of the termination date of the military service, unless the other parent demonstrates that resuming the prior order is not in the child's best interest. The parent called to active military service must provide written notice of the date of termination within 30 days after the service ends. At the request of the parent called to active military service, the court must allow the parent to participate in the temporary order proceeding and to present evidence by electronic means to the extent permitted by the rules of the Ohio Supreme Court.¹⁴

Change in circumstances

In 2007, the Ohio Supreme Court held in *Fisher v. Hasenjager* that based on statute, modifying the designation of residential parent and legal custodian is considered a modification

¹³ R.C. 3109.04(E)(1) and (2)(a) and (b).

¹⁴ R.C. 3109.04(I).

of a decree allocating parental rights and responsibilities, which requires a determination that a change in circumstances has occurred, as well as finding that the modification is in the child's best interest.¹⁵ A different 2007 Ohio Supreme Court case listed several factors that by Ohio courts have considered as potentially fulfilling the "change in circumstances" requirement. These include a new marriage that creates hostility by the residential parent and spouse toward the nonresidential parent, frustrating attempts at visitation; the child's advancement to adolescence; unruly behavior of the residential parent involving the police; and fights between the residential parent and a new spouse that required police intervention, along with the fact that the residential parent had frequently moved.¹⁶

Termination of shared parenting

The court may terminate a shared parenting decree on the request of one or both parents or whenever it determines that shared parenting is not in the child's best interest. If the parents attempt to jointly modify a plan that is the basis of a shared parenting decree and the court rejects the modifications, the court may terminate the decree if the court determines that shared parenting is not in the child's best interest. If it terminates a shared parenting decree, the court must issue a modified decree allocating parental rights and responsibilities for the child's care as if the court had not issued a shared parenting decree.¹⁷

A 2020 Ohio Supreme Court case, *Bruns v. Green*, held that, upon terminating a shared parenting decree and determining which parent to designate as the residential parent and legal custodian in a subsequent allocation, the court only needs to consider the best interest of the child—a change in circumstances determination is not required. The Court explained that under the Revised Code, when a court terminates a shared parenting decree, it must issue a modified decree for the allocation of parental rights and responsibilities as if no prior shared parenting decree had existed. A change in circumstances determination is not required here because such a determination is not required when issuing a new decree. The Court differentiated this case from *Fisher* in that *Fisher* dealt with a modification of a decree—for which the Revised Code requires a change in circumstances determination—and this case dealt with a termination of a decree.¹⁸

¹⁵ 116 Ohio St.3d 53, 60-61 (2007).

¹⁶ *In re James*, 113 Ohio St.3d 420, 424 (2007).

¹⁷ R.C. 3109.04(E)(2)(c) and (d).

¹⁸ 163 Ohio St.3d 43, 43-44, 48-50 (2020).