



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Amy L. Archer, Research Analyst  
Reviewer: Ralph D. Clark, Division Chief

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## Parenting Time and Companionship or Visitation Orders

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 companionship or visitation rights if the parents terminate their marriage or are unmarried, or one of them dies. Local courts have considerable discretion in granting parenting time and companionship or 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 Brief uses the Franklin County Domestic Relations Court to illustrate local court rules.

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## **Granting parenting time and companionship or visitation**

### **When married parents terminate marriage or separate**

In a divorce, dissolution, annulment, or legal separation proceeding involving a child for whom the court does not issue a shared parenting decree, 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>1</sup>

Grandparents and other persons may request companionship or visitation rights by filing a motion while the proceeding is pending or at any time after the final order is issued in the case. The court may grant reasonable companionship or 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 companionship or visitation is in the child's best interest.<sup>2</sup>

### **When parents are not married**

If a child is born to an unmarried woman, her parents or other relatives may file a complaint asking the common pleas court of the county where the child resides to grant them reasonable companionship or visitation rights. The child's father may file a complaint requesting reasonable parenting time 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. Any of the father's relatives may file a complaint for reasonable companionship or visitation rights if the father's paternity has been so acknowledged or determined. The court may grant parenting time or companionship or visitation rights if it determines that doing so is in the child's best interest.<sup>3</sup>

### **When a parent dies**

If the father or mother of an unmarried minor child dies, the common pleas court of the county where the child resides may grant the deceased person's parents and other relatives companionship or visitation rights during the child's minority. The parents or other relatives must file a complaint requesting companionship or visitation rights, and the court must determine whether companionship or visitation is in the child's best interest.<sup>4</sup>

### **About the terms: "parenting time," "companionship or visitation"**

Legislation that took effect in 2001 renamed what was termed "visitation" by a nonresidential parent as "parenting time."<sup>5</sup> Note that parenting time orders are not issued in conjunction with shared parenting decrees. This is because a shared parenting decree already

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<sup>1</sup> R.C. 3109.051(A).

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

<sup>3</sup> R.C. 3109.12.

<sup>4</sup> R.C. 3109.11.

<sup>5</sup> S.B. 180 of the 123<sup>rd</sup> General Assembly.

allocates parental rights and responsibilities for the child's care between the parents and requires them to share the child's physical and legal care. (But *the amount of time* that the child is physically located with either parent under a shared parenting order is commonly referred to as a parenting time order for purposes of provisions addressing, for example, a parent called to active military duty.)<sup>6</sup>

For nonparents, Ohio's Domestic Relations Law provides for "companionship or visitation" rights.<sup>7</sup> But some provisions of that law governing, for example, enforcement of those rights, refer only to "visitation" rights,<sup>8</sup> and courts commonly refer to orders granting companionship or visitation rights to grandparents as "visitation" orders.<sup>9</sup> This Members Brief, to address this statutory language anomaly, refers to "companionship or visitation" even where the law refers only to "visitation."

## Factors the court must consider

Before issuing a parenting time or companionship 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 and distance of that person'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;
- The child's prior interaction and interrelationships with parents, siblings, other relatives, and the person requesting companionship or visitation;
- With respect to companionship or visitation by a nonparent, the parents' wishes and concerns, 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>10</sup>

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<sup>6</sup> R.C. 3109.04(A)(2) and 3109.051.

<sup>7</sup> R.C. 3109.051, 3109.11, and 3109.12.

<sup>8</sup> See R.C. 2705.031(B)(2) and 3109.12; *Erwin v. Erwin*, 2009-Ohio-4007 (3<sup>rd</sup> Dist., Marion Cnty., February 2, 2009).

<sup>9</sup> See *Brown v. Heitman*, 2017-Ohio-4032 (3<sup>rd</sup> Dist., Marion Cnty., May 30, 2017) and *In Re Newsome*, 2008-Ohio-2132 (11<sup>th</sup> Dist., Ashtabula Cnty., May 2, 2008).

<sup>10</sup> R.C. 3109.051(C) and (D).

## Guidelines

The Revised Code does not prescribe specific guidelines for courts to follow in establishing parenting time and companionship or visitation schedules and determining other related matters. Instead, it requires each common pleas court to prescribe guidelines for 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>11</sup>

In Franklin County, the Domestic Relations Division of the Common Pleas Court has a model parenting time schedule to use as a guideline for parenting time. The parties have a responsibility to tailor the schedule to meet their child's best interest.<sup>12</sup>

## Denial of parenting time and companionship or visitation

If a person whose request for parenting time or companionship or visitation rights 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. The Civil Rules require the request to be filed before the entry of judgment or not later than seven days after the party filing the request is given notice of the court's announcement of its decision, whichever is later. The Civil Rules, however, do not prescribe a deadline for the court to issue its findings and conclusions.<sup>13</sup>

## Modifying parenting time and companionship or visitation

A court that issues an order granting parenting time or companionship 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>14</sup>

Motions to modify a parenting time or visitation order must be filed in accordance with local court rules. In Franklin County, as an example of a common pleas court, the moving party must file a memorandum of fact and law with the motion. Guidelines in the court rules state that parents also should attempt in good faith to renegotiate an appropriate and beneficial parenting time schedule when one parent moves.<sup>15</sup>

A court, in its sound discretion, may modify a parenting time or a companionship 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 companionship or visitation rights.<sup>16</sup>

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<sup>11</sup> R.C. 3109.051(F)(2).

<sup>12</sup> Domestic Division Rule 27.1.

<sup>13</sup> R.C. 3109.051(F)(1), 3109.11, and 3109.12(B); Ohio Civil Rule 52.

<sup>14</sup> See R.C. 3105.65(B).

<sup>15</sup> Domestic Division Rules 13(C) and 27.1.

<sup>16</sup> *Braatz v. Braatz*, 85 Ohio St.3d 40, paragraphs 1 and 2 of syllabus (1999).

## **Enforcement through contempt proceedings**

Any person with parenting time or companionship or visitation rights or subject to a parenting time or companionship 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 companionship or visitation to the person whose rights were affected.<sup>17</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 the nonresidential parent (1) 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) 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>18</sup>

### **Access to child's activities**

A nonresidential parent 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>19</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:

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<sup>17</sup> R.C. 2705.031(B)(2), 2705.05(A), and 3109.051(K).

<sup>18</sup> R.C. 3109.051(G).

<sup>19</sup> R.C. 3109.051(H) to (J).

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 require 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. In determining whether a delegation of parenting time is in the child's best interest, the court must consider all relevant factors, including the statutory factors for granting parenting time or visitation.<sup>20</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 companionship or visitation rights to any other person.<sup>21</sup> However, with respect to granting visitation to relatives of a child born to an unmarried woman, some appellate courts have held the authority unconstitutional as applied to cases of parents who later marry each other.<sup>22</sup>

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<sup>20</sup> R.C. 3109.051(M).

<sup>21</sup> R.C. 3109.051(E), 3109.11, and 3109.12.

<sup>22</sup> R.C. 3109.12; *In re K.M.-B.*, 2015-Ohio-4626, ¶ 21, 37-40 (Sixth Dist., Lucas Cnty., November 6, 2015); *Rugola-Dye v. Dye*, 2009-Ohio-2471, ¶ 21 and 22 (Fifth Dist., Delaware Cnty., May 22, 2009); and *Nicoson v. Hacker*, 2001-Ohio-8717, at \*5-6, 8-10 (Eleventh Dist., Lake Cnty., December 14, 2001).