

§ 46b-56. (Formerly Sec. 46-42). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.

Connecticut Statutes

Title 46B. FAMILY LAW

Chapter 815J. DISSOLUTION OF MARRIAGE, LEGAL SEPARATION AND ANNULMENT

Current through P.A. 1 of the 2014 Legislative Session

§ 46b-56. (Formerly Sec. 46-42). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening

- (a) In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party to the action, including, but not limited to, grandparents.
- (b) In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child.
- (c) In making or modifying any order as provided in subsections (a) and (b) of this section, the

court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers.

- (d) Upon the issuance of any order assigning custody of the child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the child with his or her parents prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the best interests of the child, including the child's health and safety.
- (e) In determining whether a child is in need of support and, if in need, the respective abilities of the parents to provide support, the court shall take into consideration all the factors enumerated in section 46b-84.
- (f) When the court is not sitting, any judge of the court may make any order in the cause which the court might make under this section, including orders of injunction, prior to any action in the cause by the court.

- (g) A parent not granted custody of a minor child shall not be denied the right of access to the academic, medical, hospital or other health records of such minor child, unless otherwise ordered by the court for good cause shown.
- (h) Notwithstanding the provisions of subsections (b) and (c) of this section, when a motion for modification of custody or visitation is pending before the court or has been decided by the court and the investigation ordered by the court pursuant to section 46b-6 recommends psychiatric or psychological therapy for a child, and such therapy would, in the court's opinion, be in the best interests of the child and aid the child's response to a modification, the court may order such therapy and reserve judgment on the motion for modification.
- (i) As part of a decision concerning custody or visitation, the court may order either parent or both of the parents and any child of such parents to participate in counseling and drug or alcohol screening, provided such participation is in the best interests of the child.

Cite as Conn. Gen. Stat. § 46b-56

Source:

(P.A. 73-373, S. 15; P.A. 74-169, S. 8, 18; P.A. 75-530, S. 12, 35; P.A. 77-488, S. 2; P.A. 78-230, S. 27, 54; 78-318, S. 28; P.A. 80-29; P.A. 81-402, S. 1; P.A. 84-42; P.A. 93-319, S. 3, 4; P.A. 99-137; P.A. 01-186, S. 12; May 9 Sp. Sess. P.A. 02-7, S. 35; P.A. 03-19, S. 105; P.A. 05-258, S. 3.)

History. P.A. 74-169 made minor changes in wording; P.A. 75-530 replaced reference to filing date of complaint with reference to return day of complaint; P.A. 77-488 added provision authorizing court to make orders re visitation rights for third parties such as grandparents; P.A. 78-230 divided section into Subsecs. and restated provisions; P.A. 78-318 qualified court's power to make orders re care, custody and visitation by adding "if it has jurisdiction under the provisions of Ch. 8150"; Sec. 46-42 transferred to Sec. 46b-56 in 1979 and references to other sections within section revised as necessary to reflect their transfer; P.A. 80-29 authorized assignment of joint custody in Subsec. (a); P.A. 81-402 amended Subsec. (a) to provide that the court is subject to the provisions of Sec. 46b-56a in assigning custody and changed the order of possible custody assignments so that "to the parents jointly" is listed first, and amended Subsec. (b) to provide that the court may consider the causes for the dissolution or legal separation if the causes are relevant in a determination of the best interests of the child; P.A. 84-42 added Subsec. (e) re access of noncustodial parent to academic, medical, hospital or other health records of minor children; P.A. 93-319 added a provision in Subsec. (b) requiring the court to consider whether a party has completed a parenting education program when making or modifying a custody or visitation order, effective January 1, 1994, and applicable to actions pending on, or filed on or after, that date; P.A. 99-137 added Subsec. (f) re order of psychiatric or psychological therapy for a child if it would be in the best interests of the child and would aid the child's response to a modification of custody or visitation; P.A. 01-186 added Subsec. (g) re court-ordered participation in counseling and drug or alcohol screening; May 9 Sp. Sess. P.A. 02-7 amended Subsec. (b) to add provision requiring the court upon issuance of any order assigning custody of the child to the Commissioner of Children and Families, or not later than sixty days thereafter, to make a determination whether the Department of Children and Families made reasonable efforts to keep the child with his or her parents prior to the issuance of such order and, if such efforts were not made, whether such

reasonable efforts were not possible considering the best interests of the child, effective August 15, 2002; P.A. 03-19 made technical changes in Subsec. (a), effective May 12, 2003; P.A. 05-258 amended Subsec. (a) by deleting "at any time" and replacing "education and support of the children and of care, custody and visitation" with "custody, care, education, visitation and support of the children" re court making or modifying proper order, replacing "assign the custody of any child to the parents jointly," with "assign parental responsibility for raising the child to the parents jointly, or may award custody" and replacing "third party" with "third party to the action" re visitation rights, amended Subsec. (b) by replacing former Subdivs. (1) and (2) and other provisions re custody or visitation order with provisions re consideration of rights, responsibilities and involvement of both parents and new Subdivs. (1) to (4) re provisions that may be included in orders, added new Subsec. (c) re best interests of the child and factors that court may consider, designated provisions of existing Subsec. (b) re order assigning custody to Commissioner of Children and Families as new Subsec. (d) and made a technical change therein, and redesignated existing Subsecs. (c) to (g) as new Subsecs. (e) to (i) and made technical changes therein.

Case Notes:

Annotations to former section 46-42:

Cited. 171 C. 433; 172 C. 341. Decision of trial court with respect to custody and care of minor children must stand unless court has abused its discretion. 173 C. 161. Discussion of ante nuptial agreements relating to property rights upon dissolution of the marriage. 181 C. 482.

Annotations to present section:

Cited. 177 C. 47. Court has no authority to issue an order of support against a husband as neither the biological nor adoptive parent of the child. 180 C. 114. Court did not exceed its authority by setting aside certain personal property for the use of the minor children. *Id.*, 528. Cited. 181 C. 622; 182 C. 545. Restrictions on visitation rights discussed. 184 C. 36. Cited. 185 C. 275. Until entry of final decree, the court has discretion to modify custody without first finding material change of circumstances since previous award. 186 C. 118. Cited. *Id.*, 709; 190 C. 345. Statute read together with Secs. 46b-61 and 46b-93 provide that it is permissible under certain circumstances to award child support even though child is not within this jurisdiction. 191 C. 92. Cited. 196 C. 10; *Id.*, 260; 201 C. 50; 212 C. 441. Temporary custody order is final judgment for purposes of appellate review; Appellate Court's dismissal of appeal reversed. 224 C. 749. Sec. 46b-56 et seq. cited. 236 C. 582. Cited. 239 C. 336. Trial court had subject matter jurisdiction to order pendente lite child support, regardless of whether child at issue is considered a "child of the marriage". 248 C. 487. In order to uphold constitutionality of section, court imposed a standing requirement that a third party allege a parent-like relationship with the child for third party custody awards and third parties seeking intervention in existing custody proceedings. 285 C. 24.

Cited. 2 CA 472; 4 CA 94; 8 CA 50; 13 CA 300; 14 CA 296; 18 CA 622; 19 CA 146; 22 CA 802; 25 CA 693; 35 CA 421; 37 CA 397; 41 CA 716; 42 CA 583; *Id.*, 651. Substantial modification of visitation order requires evidentiary hearing to determine best interest of child. 54 CA 50. Court had sufficient evidence to modify custody order even without the benefit of prejudgment psychological evaluation of defendant. 61 CA 175. Trial court properly decided parental relocation with child pursuant to statutory best interest of child standard because the interests and

circumstances of the parties at the postjudgment stage differ from those existing at time of the dissolution. 68 CA 173. Central to courts' review of modifications of custody orders under section is the concept that courts must be guided by best interests of the child. 72 CA 528. Although both parties to marital dissolution action agreed to unrestricted authority of the arbitrator-attorney for the minor children in the event of a controversy by binding arbitration with no express language restricting the breadth of issues, no reservation of explicit rights and no contingency for court review, the very limited review runs afoul of statute which requires that court exercising its equitable jurisdiction re custody assure itself that its judgment will serve best interests of the child and was an improper delegation of judicial authority. 83 CA 115.

Cited. 35 CS 237; 41 CS 258; *Id.*, 429. Does not confer parents, acting as grandparents, whose son's parental rights have been terminated, the authorization to bring a habeas corpus petition to seek custody of a grandchild. 47 CS 273.

Subsec. (a):

Cited. 183 C. 353; 185 C. 249; 201 C. 229; 207 C. 217. In a custody proceeding pursuant to section, the third party must prove by a fair preponderance standard that the party has a parent-like relationship with the child, parental custody would be detrimental to the child and third party custody would be in the child's best interest. 285 C. 24.

Joint custody discussed. 5 CA 649. Cited. 7 CA 745; 41 CA 861; judgment reversed, see 241 C. 490; 43 CA 327. Trial court properly determined that in the absence of controversy before the court involving custody or care of minor children, section does not provide an alternative statutory basis to Sec. 46b-59 so as to allow grandparents to pursue an action for visitation. 103 CA 125.

Subsec. (b):

Court not obligated to interview each child before decision on custody. 178 C. 254. Cited 179 C. 287. Court did not abuse its discretion by awarding custody to mother in accordance with 13-year-old child's wish despite mother's failure to appear at the hearing. 180 C. 132. While the rights, wishes and desires of the parents must be considered it is nevertheless the ultimate welfare of the child which must control the decision of the court. *Id.*, 533. Statute which vests discretion in trial court to determine the best interest of a child in awarding custody without objective guidelines is not unconstitutionally vague. *Id.*, 705. Neither applicable statutes nor case law recognize any presumption in custody matters. 181 C. 622. Cited. 183 C. 353; 201 C. 229; 207 C. 48; *Id.*, 217; 212 C. 63; 224 C. 776; 235 C. 82. Subdiv. (1) cited. 241 C. 767.

Court must resolve issue of custody in the best interests of the child whatever agreements have been made between the parents. 1 CA 356. Cited. 5 CA 649; 23 CA 509; 24 CA 426; *Id.*, 804; 38 CA 263. Visitation by respondent mother was not in child's best interest when respondent had not been consistent in maintaining visitation with the child, scheduled visits had not gone well, the child had become attached to her aunt and uncle, respondent had not related naturally or interacted appropriately with the child and respondent's visits had been upsetting to the child. 63 CA 493. Court improperly incorporated parties' prior stipulated agreement into its final decree without making a best interests determination re children 17 months later at time of final decree. 98 CA 63.

Cited. 38 CS 37.

Subsec. (c):

Cited. 186 C. 191.

Plain meaning of section, read within context of related statutes within Ch. 815j, makes clear that Subsec. is intended to apply only in dissolution of marriage, legal separation and annulment actions. 103 CA 746. The language of Subsec. does not compel the consideration of any particular factor or factors when determining the best interest of a child; rather, the court is free to consider the factors it determines to be most appropriate given the facts of each individual case. 108 CA 813. Subdiv. (12) is not unconstitutionally vague as applied to facts of case because it is clear that the core meaning of Subdiv. permits a court to consider a disability or health issue when making a custody determination, as long as such disability or health issue is not determinative, or to use such disability or health issue as a determinative factor if it is in the child's best interests to do so. 130 CA 411. Subdiv. (7) authorizes court to consider parental alienation syndrome, specific acts of coercion and manipulation on part of defendant when making or modifying an order pursuant to section. 135 CA 337.

Subsec. (e):

Cited. 201 C. 229.