

Kids Need Both Parents When Possible

The General Assembly has made a statement regarding the allocation of parenting rights and responsibilities in child custody proceedings. Without changing the law that custody orders should promote the best interests of the child, legislators enacted a statement of public policy designed to “promote the encouragement of parenting time with children by both parents.”

Best Interest is the Polar Star

[G.S. 50-13.2](#) provides that custody orders entered in a Chapter 50 case must award custody of a child to such person or persons “as will best promote the interest and welfare of the child.”

Referred to as the best interest standard, appellate courts have interpreted this statute to mean that the “polar star” which guides the discretion of the trial judge in custody cases is the welfare and needs of the child. *In re Peal*, 305 NC 640 (1982).

The best interest standard requires that the court determine the environment that will “best encourage full development of the child’s physical, mental, emotional, moral and physical faculties.” *In re Peal*. In making this determination, the court must consider “all relevant factors,” *In re Shue*, 311 NC 586 (1984), and findings of fact should address all characteristics of the parties relating to their physical, mental and financial fitness to care for the child. *See Phelps v. Phelps*, 337 NC 344 (1994)(proper to consider age of parent as well as parent’s decisions regarding the education and religious upbringing of the child).

[GS 50-13.2\(a\)](#) requires that the court consider “all relevant factors” in making a custody determination, specifically “including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence from the other party.” Orders for custody must include findings of fact that reflect the consideration of all relevant factors and support the determination of best interest.

Joint Custody

[GS 50-13.2\(a\)](#) requires that the court consider “joint custody to the parents” if requested by either parent but the statute does not define ‘joint custody.’ The court of appeals has held that “joint custody implies a relationship where each party has a degree of control over, and a measure of responsibility for, the child’s best interest and welfare.” *Patterson v. Patterson*, 140 NC App 91 (2000). The court has held that there is no presumption in favor of joint custody, even if requested by a parent, and that the statute as written allows the trial court “substantial latitude in fashioning” what it considers to be a joint custody arrangement. *Diehl v. Diehl*, 177 NC App 642 (2006).

While there is no requirement that a court award joint custody to parents, [GS 50-13.5\(i\)](#) provides that a court cannot deny a parent a right of reasonable visitation without making a finding of fact that the parent is an unfit person to visit the child or that such visitation rights are not in the best

interest of the child. As with joint custody, the statute does not define either the term 'visitation' or 'reasonable visitation' or explain how visitation is different than joint custody. *But see Hinkle v. Hartsell*, 131 NC App 833 (1998)(this statute prohibits limiting a parent to supervised visitation without making these findings of fact because supervised visitation is not 'reasonable visitation' within the meaning of this statute).

S.L. 2015-278 (S 519)

Perhaps in response to this ambiguity regarding the meaning of joint custody and the expansive discretion granted to trial judges when crafting custody orders, the General Assembly enacted [S.L. 2015-278](#) titled "An Act to Promote the Encouragement of Parenting Time with Children by Both Parents." Effective October 20, 2015, the law creates new [GS 50-13.01](#) to set out the "policy of the State of North Carolina" with regard to custody orders. The new section specifies that it is the public policy of North Carolina to:

- Encourage focused, good faith, and child-centered parenting agreements to reduce needless litigation over child custody matters and to promote the best interest of the child.
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- Encourage parents to take responsibility for their child by setting the expectation that parenthood will be a significant and ongoing responsibility.
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- Encourage programs and court practices that reflect the active and ongoing participation of both parents in the child's life and contact with both parents when such is in the child's best interest, regardless of the parents' present marital status, subject to laws regarding abuse, neglect, and dependency.
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- Encourage both parents to share equitably in the rights and responsibilities of raising their child, even after dissolution of marriage or unwed relationship.
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- Encourage each parent to establish and maintain a healthy relationship with the other parent when such is determined to be in the best interest of the child, taking into account mental illness, substance abuse, domestic violence, or any other factor the court deems appropriate."

No Presumptions Between Parents

[GS 50-13.2](#) has long provided that as between a mother and father, there is no presumption as to who will better promote the best interest and welfare of the child. [S.L. 2015-278](#) also amends this

section to replace the phrase “as between a mother and father” with the phrase “as between the parents.” This change appears to be in response to the fact that because same-sex partners can marry, it is now possible for a child to have two parents of the same gender through adoption.

[See GS 48-4-101](#), *et. seq.* (step-parent adoption).

Does the amendment change anything?

The new law does not change the legal standard by which custody determinations are made; the best interest of the child remains the polar star. The new statute does make it clear, however, that custody decisions should be informed by and take into consideration the public policy in favor of keeping both parents actively involved in the life of the child. The policy statement confirms that custody cases are not about which parent wins and which parent loses. Rather, the task of the court is to create a parenting plan that meets the needs of the child by keeping both parents engaged as much as possible in the child’s life.