

Nebraska Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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Custody Determination - Jurisdiction

NE ST § 43-1238:

“(a) Except as otherwise provided in section 43-1241, a court of this state has jurisdiction to make an initial child

custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 43-1244 or 43-1245, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (a)(2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 43-1244 or 43-1245; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (a)(2), or (a)(3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state. In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such factual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.”

NE ST § 43-1241:

“(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under the Uniform Child Custody Jurisdiction and Enforcement Act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 43-1238 to 43-1240, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under such sections. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under such sections, a child custody determination made under this section becomes a final determination, if it so provides, and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under the act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 43-1238 to 43-1240, any order issued by a court of this state under this section shall specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under such sections. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 43-1238 to 43-1240, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to such sections, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.”

Custody Determination – Service/Notification Requirements

See Custody Determination Jurisdiction Section.

Paternity and Child Support Proceeding – Jurisdiction

NE ST § 42-705:

“(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of

this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with notice within this state;
- (2) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in this state;
- (4) The individual resided in this state and provided prenatal expenses or support for the child;
- (5) The child resides in this state as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage of a child in this state pursuant to section 43-104.02, 71-628, 71-640.01, or 71-640.02 with the Department of Health and Human Services; or
- (8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state shall not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support

order of another state unless the requirements of section 42-746 are met or, in the case of a foreign support order, unless the requirements of section 42-747.03 are met.”

NE ST § 42-709:

“(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

- (1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
- (2) even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state shall not exercise continuing, exclusive jurisdiction to modify the order if:

- (1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or
- (2) its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.”

NE ST § 42-710:

“(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

- (1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or
- (2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.”

NE ST § 42-744:

“A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 42-736 to 42-743 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.”

Paternity and Child Support Proceeding – Service/Notification Requirements

See Paternity and Child Support Proceeding Jurisdiction Section.

Child Abuse/Neglect Proceeding – Jurisdiction

NE ST § 43-291:

“Facts may also be set forth in the original petition, a supplemental petition, or motion filed with the court alleging that grounds exist for the termination of parental rights. After a petition, a supplemental petition, or motion has been filed, the court shall cause to be endorsed on the summons and notice that the proceeding is one to terminate parental rights, shall set the time and place for the hearing, and shall cause summons and notice, with a copy of the petition, supplemental petition, or motion attached, to be given in the same manner as required in other cases before the juvenile court.”

NE ST § 43-292:

“The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

- (1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;
- (2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;
- (3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;
- (4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;
- (5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;
- (6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;
- (7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;
- (8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;
- (9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;
- (10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or
- (11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28320.01 or a comparable crime in another state.”

Child Abuse/Neglect Proceeding – Service/Notification Requirements

See Child Abuse/Neglect Proceeding Jurisdiction Section.

Divorce and Legal Separation – Jurisdiction

NE ST § 25-536:

“A court may exercise personal jurisdiction over a person:

(1) Who acts directly or by an agent, as to a cause of action arising from the person:

(a) Transacting any business in this state;

(b) Contracting to supply services or things in this state;

(c) Causing tortious injury by an act or omission in this state;

(d) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;

(e) Having an interest in, using, or possessing real property in this state; or

(f) Contracting to insure any person, property, or risk located within this state at the time of contracting;

or

(2) Who has any other contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States.”

Note: In *Cummings*, the Court held that a person’s “act of sexual intercourse resulting in conception in Nebraska shows sufficient minimum contacts with the forum state for jurisdiction to attach” to the individual. *St., Dept. of Social Services v. Cummings*, 515 N.W.2d 680, 684 (Neb. App. Ct. 1994). The Court explained that an “act of sexual intercourse in Nebraska with a Nebraska resident was indeed a purposeful act within Nebraska which is of a nature that [one] should . . . reasonably anticipate[] being haled into a Nebraska court when [said person] had sexual intercourse in Nebraska, sired a child, and then failed to pay child support.” *Id.* at 685.

Divorce and Legal Separation – Service/Notification Requirements

See Divorce and Legal Separation Jurisdiction Section.

Adoption Proceeding – Jurisdiction

NE ST § 43-102:

“Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child shall file a petition for adoption signed and sworn to by the person or persons desiring to adopt. The consent or consents required by sections 43-104 and 43-105 or section 43104.07, the documents required by section 43-104.07 or the documents required by sections 43-104.08 to 43104.25, and a completed preplacement adoptive home study if required by section 43-107 shall be filed prior to the hearing required in section 43-103.

The county court of the county in which the person or persons desiring to adopt a child reside has jurisdiction of adoption proceedings, except that if a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. If a child to be adopted is a ward of any court or a ward of the state at the time of placement and at the time of filing an adoption petition, the person or persons desiring to adopt shall not be required to be residents of Nebraska. The petition and all other court filings for an adoption proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge and an order of the separate juvenile court in

such adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding.

Except as set out in subdivisions (1)(b)(ii), (iii), (iv), and (v) of section 43-107, an adoption decree shall not be issued until at least six months after an adoptive home study has been completed by the Department of Health and Human Services or a licensed child placement agency.”

NE ST § 43-293:

“When the parental rights have been terminated under section 43-292 and the care of the juvenile is awarded to the Department of Health and Human Services, the department shall have authority to consent to the legal adoption of such juvenile and no other consent shall be required to authorize any court having jurisdiction to enter a legal decree of adoption of such juvenile. When the care of such juvenile is awarded to an individual or association and the parental rights have been terminated by the juvenile court, such individual or association may consent, only when authorized by order of such juvenile court, to the legal adoption of such juvenile and no other consent shall be required to authorize any court having jurisdiction to enter a legal decree of adoption of such juvenile. An order terminating the parent-juvenile relationship shall divest the parent and juvenile of all legal rights, privileges, duties, and obligations with respect to each other and the parents shall have no rights of inheritance with respect to such juvenile. The order terminating parental rights shall be final and may be appealed in the same manner as other final judgments of a juvenile court.”

Pending Proceedings in other jurisdictions –

NE ST § 43-1243:

“(a) Except as otherwise provided in section 43-1241, a court of this state may not exercise its jurisdiction under sections 43-1238 to 43-1247 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction and Enforcement Act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 43-1244.

(b) Except as otherwise provided in section 43-1241, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 43-1246. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with the act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with the act does not determine that the court of this state is a more

appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

- (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
- (2) enjoin the parties from continuing with the proceeding for enforcement; or
- (3) proceed with the modification under conditions it considers appropriate.”

Adoption Proceeding – Service/Notification Requirements

See Adoption Proceeding Jurisdiction Section.

Domestic Violence – Jurisdiction

NE ST § 42-924 (Effective until Jan. 1, 2020):

“(1) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in subsections (2) and (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the

court may issue a protection order without bond granting the following relief:

- (a) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;
- (b) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;
- (c) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;
- (d) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;
- (e) Ordering the respondent to stay away from any place specified by the court;
- (f) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;
- (g) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or
- (h) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(2) Petitions for protection orders shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740. A petition for a protection order may not be withdrawn except upon order of the court.

(3)(a) A protection order shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(b) Any victim of domestic abuse may file a petition and affidavit to renew a protection order. Such petition and affidavit for renewal shall be filed on or after thirty days before the expiration of the previous protection order. Such renewed order shall specify that it is effective for a period of one year to commence on the first day following the expiration of the previous order and, if the court grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(4) Any person who knowingly violates a protection order issued pursuant to this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a protection order shall be guilty of a Class IV felony.

(5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.”

Neb. Rev. St. § 42-924 (Effective Jan. 1, 2020):

“(1)(a) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a protection order without bond granting the following relief:

- (i) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;
- (ii) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;
- (iii) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

- (iv) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;
 - (v) Ordering the respondent to stay away from any place specified by the court;
 - (vi) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;
 - (vii) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or
 - (viii) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.
- (b) The petition for a protection order shall state the events and dates or approximate dates of acts constituting the alleged domestic abuse, including the most recent and most severe incident or incidents.
- (c) The protection order shall specify to whom relief under this section was granted.
- (2) Petitions for protection orders shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740. A petition for a protection order may not be withdrawn except upon order of the court.
- (3)(a) A protection order shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.
- (b)(i) Any victim of domestic abuse may file a petition and affidavit to renew a protection order. Such petition and affidavit for renewal shall be filed any time within forty-five days before the expiration of the previous protection order, including the date the order expires.
- (ii) A protection order may be renewed on the basis of the petitioner's affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal if:
- (A) The petitioner seeks no modification of the order; and
 - (B)(I) The respondent has been properly served with notice of the petition for renewal and notice of hearing and fails to appear at the hearing; or
 - (II) The respondent indicates that he or she does not contest the renewal.
- (iii) Such renewed order shall specify that it is effective for a period of one year to commence on the first calendar day following the expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order and, if the court grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.
- (4) Any person, except the petitioner, who knowingly violates a protection order issued pursuant to this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a protection order shall be guilty of a Class IV felony.
- (5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.”

Domestic Violence– Service/Notification Requirements

See Domestic Violence Jurisdiction Section.

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