April 28, 2017

The Constitutionality of SB 1055

In drafting SB 1055 for the 2017 legislative session, the office of legislative council (LC) raised concern that awarding visitation with a third party over the objection of one parent could be unconstitutional. LC cited the rulings in Troxel v. Granville, 530 U.S. 57 (2000), Kennison v. Dyke, 280 Or. App. 121 (2016) and Husk v. Adelman, 281 Or. App. 378 (2016) in a letter dated April 3, 2017. These cases highlight the parental preference doctrine.

LC mischaracterizes the parties involved in SB 1055. SB 1055 permits the military *parent* to request the court grant visitation with a family member in his or her absence, it does not give any third party an enhanced right to seek visitation independently. Therefore, any dispute under SB 1055 would be between the deployed parent and the nondeployed parent. **The deployed parent has the same constitutionally protected custodial rights to their child as the nondeployed parent[1].** Since the dispute is between two parents, the parental preference doctrine is not appropriate[2].

Cases that are more useful to determining the constitutionality of SB 1055 are *In re Marriage of Rayman* (2002)[3], *In re marriage of DePalma* (2007)[4], and *In re Trotter* (2013)[5]. In these cases the courts granted temporary third party visitation with a family member during one parent's deployment despite objections from the nondeployed parent. The courts recognized the disputes as being between two parents and therefore the prevailing doctrine was the best interest of the child. These rulings confirm the constitutionality of SB 1055.

Without subverting either parent's constitutional rights, SB 1055 allows judges more discretion to craft visitation orders that fit each family's unique situation and better serve the best interests of the children involved. In *Trotter* the court explained that allowing the child "to continue the usual physical care schedule, maintain his relationship with his step mother and stepsister, and not relocate several states away" during the father's temporary deployment would be in the best interest of the child[5].

For a more detailed explanation of the constitutionality of SB 1055 please see the attached Uniform Law Commission's Memorandum dated April 1, 2014. This debate has long been settled in the 32 states that already allow courts to award visitation to family members when a parent is deployed in service to our country. It is vital that the state legislature pass SB 1055 before the next U.S. military conflict begins. Please show your support for Oregon's mothers and fathers in uniform by enacting SB 1055.

[1] ORS 109.119
[2] *In re Marriage of Nelson*, 34 Kan. App. 2d 879 (2006)
[2] In re Marriage of Rayman, 47 P.3d 413 (Kan. 2002)
[3] *In re Marriage of DePalma*, 176 P.3d 829 (Colo. App. 2007)
[4] *In re Trotter*, 829 N.W.2d 191 (Iowa Ct. App. 2013) (unpublished opinion, text in Westlaw)
[5] *Id.* at 574

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