

Child Custody, Parenting Plans, and Best Interests of the Child

By Scott David Stewart

Whenever there is a child involved in a couple's break-up, major decisions on custody need to be made in that child's best interests.

The custody issues that unmarried parents encounter in Arizona differ in some ways from those faced by their married counterparts. When unmarried parents have a child, but paternity, custody, and parenting time have not yet been established, then the instability and unpredictability of each parent's access to the child can be very detrimental for everyone in the family.

Although an informal parenting agreement between unmarried parents may work for a while, it is inadequate for the long term. Remember that the long term is 18 years, unless the child is emancipated earlier. Informal parenting arrangements can be helpful for some couples in the interim, but they won't help resolve problems when a parenting conflict arises.

Whether the couple is married or unmarried, either parent may seek to gain primary custody of the child. When the custody action is initiated, the court begins assessing what is in the best interests of the child.

Requirement of a Parenting Plan.

A court-ordered parenting schedule provides a defined, predictable custody arrangement that delineates the terms of access that both parents must abide by, and upon which the child learns to depend. The court's order is enforceable, so the parties are not reliant on each other's good will to strengthen and maintain a solid parent-child relationship.

The well-devised parenting plan is made a part of the child custody orders that render it fully enforceable. When a custody proceeding is pending and the court is asked to order joint custody, or shared parenting, three requirements must be met:

- 1) *Both parents agree to joint custody.*
- 2) *Joint custody is in the child's best interests.*
- 3) *A written parenting plan is submitted to the court.*

With Arizona's co-parenting model, when the parties seek joint custody, they are required to submit a written parenting plan to the court. Under A.R.S. § 25-403.02, the minimum plan requirements must include a section addressing each of the following:

1. *Each parent's **rights and responsibilities** for the personal care of the child and for decisions in areas such as education, health care and religious training.*
2. *A **schedule** of the physical residence of the child, including holidays and school vacations.*
3. *A **procedure** by which proposed changes, disputes and alleged breaches may be mediated or resolved, which may include the use of conciliation services or private counseling.*
4. *A **procedure** for periodic review of the plan's terms by the parents.*
5. *A **statement** that the parties understand that joint custody does not necessarily mean equal parenting time.*

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The court may also examine other factors that might improve the child's "emotional and physical health." Whenever the parents are unable to agree on any aspect of the plan, the judge will decide the parenting issue for them.

Specific to the Child's Needs.

Parenting plans must be child-specific to pass muster. Each parent must be prepared to demonstrate how he or she will accomplish the following:

- Properly care for the child while away at work.
- Make adjustments to the work schedule as needed.
- Be flexible with needed care for the child.
- Transport the child to activities and events.
- Be as involved in the child's life as the parent claims he or she wants to be.

Although the parents may choose their own words in describing their agreements, they should choose those words very carefully. The parents may agree to associate specific definitions to words written into the parenting plan. For example, they could agree that "a day" shall mean "24-hours" and not less. The agreed upon terms and their respective definitions would be written into, and become a part of, the parenting plan – those terms are very important to interpretation and implementation.

When the parties do not define any terms specific to their parenting plan, the court will apply default meanings in its interpretation, for example:

- A "day" is eight consecutive hours or less.
- A "weekend" starts at 5:30 p.m. Friday and ends at 6:00 p.m. Sunday.
- A "mid-week" visit is from 5:30 p.m. to 8:00 p.m. on Wednesday (not overnight).
- The "holidays" includes Spring break, Thanksgiving, and Christmas.

In preparing a parenting plan, both parties are best served by analyzing every possible situation that could reasonably occur in the child's life, and plan how best to deal with each of those situations. By going through that process, as involved as it is, they will reduce the likelihood of the family court making parenting decisions for them.

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