

## FACTOR #3 IN MINNESOTA'S BEST INTEREST STANDARD.

I've given some time in the past to what exactly are Minn. Stat 518.17 [Best Interest factors](#) and I've discussed the 13 different factors, but in order to avoid writing a book, I really gave only a quick look at each factor due to space consideration. Now, I'm going to spend a little time on each of the 13 Best Interest factors.

Remember of the 13 factors, there is not one "magic factor" that is dispositive of custody. In fact, the statute specifically states that one may not be used and all the rest ignored. So to paraphrase Orwell "All factors are equal, but some factors are more equal than others."

Looking at what many attorneys (and Judges) view as the (unofficial) most important factor is who is the child's primary caretaker. The first thing you may be thinking is "what is a primary caretaker?" Well, the statute doesn't actually tell us what it is. We do have over 30 years of case-law that helps us figure out what it is, some of the factors the court will look are who did the following:

- Prepare and Plan Meals
- Bathe, Groom & Dress The Child
- Purchase and Care of Clothes
- Setting Up Medical Care
- Arranging Play Dates
- Putting the Child To Bed At Night
- Disciplining The Child
- Education
- Teaching Elementary Skills

While this is a nice start, the list really can be broadened into any sort of care taking duties. This is why your lawyer should ask about these questions and you should be prepared to answer these questions.

Some tips that you might find useful are to get the medical records of your child's well-baby visits as they will show who was actually present at the checkup. If you are the one who always purchases the child's clothes, start getting dates when you did this through receipts. Another tip: start logging who puts the child to bed at night, who reads stories, and who makes meals? If you start writing down the details now, it will make it much easier if you need this information when you go to court.

What about if you haven't filed for divorce, but are considering it? Well, it's never too early to start planning for the custody battle. If you traditionally don't put the kids to bed, start doing it. You need to start taking a more active role in the caretaking of the kids or else this factor (and it's a big one!) will be used against you.

Ok, what if you truly do one-half of the caretaking and you can prove it? Well, in some recent cases the court has looked at who can continue to provide those needs in the future and the future changes that will

be occurring with the child (and the parent). Examples might if the parent is going to be laid off or changing between daycare and elementary school and the associated changes in the schedule.

There you go, a look at Factor #3 under Minn. Stat. 518.17 Subd. 1(a)(3) The Child's Primary Caretaker. I'll be looking the other 12+ factors over the next few weeks. (Hint: Next week is #4 Interaction of the child with a parent, sibling or other person!)

If you have any questions or comments, feel free to email me at [Jkohlmeier@rokolaw.com](mailto:Jkohlmeier@rokolaw.com) or go to [www.Rokolaw.com](http://www.Rokolaw.com) for our main site.

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As always, this was not legal advice, just commentary on the law. For legal advice you need to sign a retainer with a lawyer and pay them.