

The Importance of Putting Your Children First in Texas Divorce Cases

Putting yourself first in a divorce proceeding is tempting. Whenever a husband (dad) and wife (mom) decide to dissolve their marriage, the heartache can be overwhelming. Of course, the torrent of emotional and legal problems multiplies exponentially when children are involved. Your adult problems will impact innocent and precious people who did not have a voice in your decision to give them two separate homes. Child custody (or child conservatorship as it is called in Texas) becomes one of the most important areas to resolve when finalizing the divorce details. With knowledge of Texas state laws guiding your decisions, and a willingness to work with your spouse, you can make this life transition as smooth as possible for your kids.

The state of Texas encourages divorcing parents to enter into a joint managing conservatorship whenever the circumstances allow.¹ This means that the same parental duties and rights will continue for both mom and dad, but that they will be allocated based on the separate lives they are now living. Texas Courts presume this to be in children's best interest. If this determination can be made at the beginning of the process, subsequent decisions regarding the children likely will be more amicable. Of course, where domestic violence, substance abuse, or instability in the home plays a part, Texas courts and judges will not encourage the joint conservatorship.

The Court will want one parent to establish primary residence for the children. It will then establish reasonable visitation for the non-custodial parent. For example, a standard visitation may involve every other weekend (or 1st, 3rd and 5th weekend of each month) and one evening during the week with the non-custodial parent. In Texas, a child can state a preference concerning which parent he or she would like to live with, but this request may not be approved by a judge who has discretion as to the best interest of the child.² The Court may also interview a child who is at least ten years old to gain more insight into the best home situation for the children involved. While not clearly defined in the law, Texas courts might even consider the desires of grandparents to see their grandchildren and their visitation rights can be written into the parenting agreement.³

After deciding where the children will live and how often the other parent will be able to visit, the other primary issue of concern is the child support obligation of the non-custodial parent. The Texas Family Code establishes specific computations for payors' whose monthly income is \$7500 or less. The amount of monthly support is based on the number of children involved—20% of income for one child, 25% for two children, etc.⁴ These amount may be modified if the parent paying child support also supports other

¹Tex. Fam. Code Ann. § 153.131(b).

² Radtke v. Radtke, 521 SW2d 749 and In re Marriage of Walker, 2005 WL 3488931.

³ "Grandparents' Rights," Conner & Lindamood, P.C., <http://www.lawcl.com/PracticeAreas/Grandparents-Rights.asp>, 2011.

⁴ Tex. Fam. Code Ann. § 154.125.

children from outside the marriage involved in the divorce.⁵ If the payors' monthly net resources are higher than \$7500, the Court may order additional amounts of support and will generally follow the same percentage guidelines.⁶ The payor must also maintain a health insurance policy for his or her children.⁷ This financial support continues until the child reaches the age of eighteen or until high school graduation if the child reaches his or her eighteenth birthday before finishing school.⁸ Texas does not require the non-custodial parent to assume any obligation regarding the costs associated with college as college is a special advantage, not a "necessity of life" under the Family Code.⁹

Thanks to a state law passed in 2005, all of these decisions regarding the best interest and needs of the children can be made with the assistance of a parenting coordinator. If both parties decide to enlist this extra help, they will both pay for the services.¹⁰ The parenting coordinator acts much like a mediator, serving as an impartial third-party who can help work through difficult points of negotiation. All of the issues related to parenting responsibilities and other child custody details are written into a comprehensive parenting plan that becomes part of the official legal documentation submitted to the Court.

Either party may eventually request modifications to the entered child custody agreement. In order for the Court to grant changes to custody or visitation, it must have evidence that the changes are in the best interest of the child or the circumstances of one of the parties involved has changed materially and substantially. If fewer than twelve months have passed since the original order was approved, the Court will need to see that the child is in physical or emotional danger or that the person claiming the child's primary residence is voluntarily agreeing to a change in the plan.¹¹ Regarding a possible change in child support payments, the amount ordered can be increased or decreased if there has been a substantial change in income for one or both parents or if at least three years have passed since the original order and the amount paid would change by at least 20% or \$100 a month.¹² Parents can enlist the help of an attorney to modify such agreements in court.

⁵ Tex. Fam. Code Ann. § 154.128.

⁶ Tex. Fam. Code Ann. § 154.126.

⁷ Tex. Fam. Code Ann. § 154.064.

⁸ Tex. Fam. Code Ann. § 154.001-002.

⁹ Woodruff v. Woodruff (Civ. App. 1972) 487 S.W.2d 791.

¹⁰ "Texas Child Custody Issues," 2008.

¹¹ "Modification of Court Orders," TXAccess.org, Office of the Attorney General of Texas, <http://www.lanwt.org/txaccess/modiorder.asp>, 2011.

¹² Carol, Christopher, "How to Modify Child Support in Texas," eHow.com, http://www.ehow.com/how_7583975_modify-child-support-texas.html, December 1, 2010.

Making decisions regarding the best interest of your children can be a difficult challenge to face when you are struggling with the pain and other emotions of a divorce. A plan to which you may agree during a difficult moment may not seem as wise or appropriate several months later. If you want someone to advocate you and your children, an experienced family law attorney can guide you through these issues with compassion and patience.