



Child Custody

by John D. Whitaker

I think most judges would agree that child custody decisions are among the very hardest decisions a judge must make. Predicting the future is a risky business, but we call upon our judges to do this almost everyday when we ask them to decide custody cases. So, the question is: How does the court decide which parent should get custody?

In Wyoming the court will decide the custody issue based upon what it finds to be in the best interest of the children. This is a standard that creates room for argument, and the court has broad discretion in deciding which factors to consider in coming to a decision.

Our legislature passed a law that requires courts to consider ten factors in deciding which custody arrangement will result in the best interests of the child. These factors include the quality of the relationship each parent has with the child; each parent's ability to provide care; the fitness of each parent; the willingness of each parent to accept the responsibility of taking custody; consideration of how the parents can best maintain a relationship with the child; consideration of how the parents can best communicate with the child; the custodial parent's ability to allow visitation with the other parent; the geographic distance between the parents; the child's current physical and mental abilities; and finally any other factor the court finds to be relevant. The legislature did not provide a cookbook approach to interpreting the weight to be given each of these factors. The ultimate decision is left to the judge.



Thankfully, most parents are able to come to an agreement on custody without submitting the issue to the court. Most divorce and paternity cases are settled by the parties prior to trial. This saves the children from living through a fist fight between the parents which inevitably results in hard feelings which can last a lifetime. These hard feelings are not just limited to the parents, as grandparents and other family members are also frequently impacted by this decision. It is hard to imagine how destructive this battle can be for a child caught in the middle if the parents can't agree and the issue goes to trial.

It is easy to blame the court or the lawyers when a custody decision turns out badly. A decision that results in a parent losing daily contact with a child will have terrible consequences even under the best of circumstances. No one can rejoice in a custody placement that separates a parent from the child. Even the parent that is awarded custody must be mindful of the consequences of such a drastic event in the child's life. This is truly a lesser of two evils evaluation by the court. The child must be given the best chance to thrive, no matter how painful the resulting parental separation may be. This is the only way the system can respond to the destruction of a family unit.

So if you are currently embroiled in a custody case please keep in mind that the pain resulting from these cases is the inevitable product of divorce, not a glitch in the legal system. Also remember that everything you do or say during the process should be based upon what is in the best interest of the children.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.