

The Custody Battle

By Bruce Coane

Deciding which parent a child should live with is one of the most difficult decisions for a court to make. Although this is never a final decision, the courts must protect the best interests of the child when deciding custody. Texas does not recognize the “Tender Years” Doctrine, which states that children are better suited to live with their mother. In fact, the law in Texas neither favors the mother nor father but rather looks at several factors, with the predominant one being the best interests of the child.

First, there are several different types of custody. Temporary Custody is custody awarded to one parent while waiting for a court hearing or trial. Usually, the court will grant one parent temporary custody of the child once a divorce petition has been filed. Temporary custody can change before the final hearing should the court believe the change to be in the best interests of the child. The court will usually award temporary child support to the temporary custodial parent as well.

Sole Custody of a child means that the custodial parent has both legal and physical custody. The custodial parent has the right to make decisions for the child concerning education, religious training, discipline, non-emergency medical care and other matters dealing with the child’s welfare. Physical custody means that the child resides with the custodial parent who has the right to make decisions regarding the child’s daily needs. Courts will usually grant sole custody to one parent when the non-custodial parent’s parental rights have been terminated, the non-custodial parent has been proven to be absent from the child’s life or when there has been a finding of domestic violence.

Joint Custody is also called Joint Managing Conservatorship. This type of custody entails both parents sharing the right to make decisions for the child while the child resides with one parent and the other parent has regular visitation. This is usually done by an agreement between both parents and is embodied in the final divorce decree. Most courts prefer this type of custody as it benefits children to have healthy relationships with both parents and promotes strong family ties.

Besides the best interests of the child, the courts will also look at both parents' fitness to raise the child, financial resources and stability of both parents, the child's relationship with both parents, the age and number of children involved, the custodial parent's proximity to the child's school and the child's preference. In Texas, a child twelve years of age or older may file a written preference with the court stating which parent the child prefers to live with. This preference, however, is not automatic and is always subject to the court's approval. The Judge may request to interview the child in chambers before honoring the child's preference.

Remember, child custody is never final and can always be modified upon a showing of a substantial change in circumstances and, of course, the best interests of the child.

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