

Custody Modification Discussion Problems

- 1) When the children were 9 months old, a “permanent” custody order was entered giving Sara and David joint legal and joint physical custody of their twin boys. Things worked well until David’s girlfriend moved into his house when the children were 2 years old. The children now are 3 years old and Sara has filed a motion to modify the custody order. She claims that the children are emotionally upset and confused about the girlfriend, and she argues that primary physical custody should be given to her to protect the children from additional harm in the future. She testifies that Alex seems to be doing fine, but Aaron has been having “temper tantrums” on a regular basis, he cries much more than Alex when moving from her house to David’s house, and he is not talking as much as Alex. She thinks that neither boy is talking as much as they did before the girlfriend moved in with David. She also is extremely concerned that neither boy is completely potty trained. Both have frequent nighttime “accidents” and Aaron has on a number of occasions refused to use the restroom during the day and ended up soiling his clothes.

David testifies that the children are doing very well with the current schedule. He thinks tantrums are “normal for little boys” and he tells you that both boys also cry when leaving his house for Sara’s house. He is not worried because the boys become happy very quickly after Sara leaves them at his house, although he admits that it takes Aaron quite a bit longer to “adjust.” David also testifies that his girlfriend helps care for the boys and that they seem to enjoy being around her. He is of the opinion that Sara is “overly obsessive about this potty training stuff.”

1. Is this evidence sufficient to establish a substantial change in circumstances? What findings would you make to support your conclusion? Is there other information you would like to have?
2. Assuming you find a substantial change, you must then determine whether the original custody arrangement needs to be changed to meet the best interest of the children. Is there additional information you would like to have before resolving

the modification motion? Assuming you learn nothing negative about the are taking ability of either parent, what type of parenting plan would you be likely to enter in this case?

- 2) Now assume that the first judge gave primary physical custody to David when the boys were 9 months old. Both Sara and David are architects, but Sara works a lot and she spends much more time at the office than does David. The twins are now 10 years old. David has remarried and the boys get along well with the stepmother. Sara has a very good relationship with the boys even though she spends less time with them than does David. She sees the boys 3 to 4 times each week and they spend the night at her house at least twice each week. Sara frequently attends school functions and extracurricular activities, and she keeps in close contact with the boys' school teachers. She talks to the boys every day by telephone. Sara's extended family lives in Raleigh, and the boys are very close to Sara's parents as well as to the young children of Sara's two brothers. Alex and Aaron are both involved in sports, do well in school, and are active in their church. David's parents also live in Raleigh and have a strong relationship with the boys.

David was fired from the kitchen design firm 6 months ago, and he has not been able to find a job in Raleigh. He was offered a very good job (one he would consider a significant advancement) in California. He is not excited about leaving North Carolina but he feels this is the only way to maintain the family's current standard of living. He does not believe he will be able to find work at all in the Raleigh area due to "problems" he experienced with his colleagues at the Raleigh firm. He told Sara he planned to accept the California job and take the boys with him. Sara then filed a motion to modify custody, asking that primary physical custody be transferred to her if David moves to California.

- a. You must first determine whether David's move to California with the boys would be a substantial change in circumstances affecting the welfare of the children. Would it? If so, what finding would you make to support that conclusion? And, what type of evidence do you need from the parties in order to support your findings?

- b. Once you determine that the move will affect the boys, you must determine how to arrange custody and visitation in a way that will best promote the interests and welfare of the children. What additional information do you need in this case?

Assuming no other significant information, what type of parenting arrangement would you likely create in this situation?