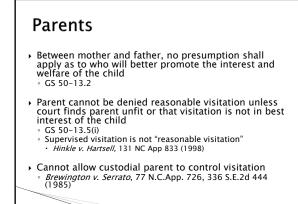


## GS 50-13.2

- Custody must be awarded to "such person as will best promote the interest and welfare of the child."
- Court may grant:
  - $^{\circ}$  Joint custody to the parents
  - Exclusive custody to one person
  - $\,\circ\,$  Custody to two or more persons

## GS 50-13.2

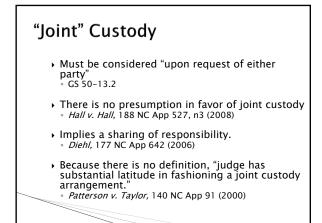
- Order shall include such terms, including visitation as will best promote the interest and welfare of the child
  - But court's authority is limited. See Kanellos v. Kanellos, 795 SE2d 225 (NC App 2016)
- Visitation is a "lesser form of custody"
  Clark v. Clark, 294 NC 554 (1978)
- Order should establish the time, place and conditions for exercising visitation.
   Ingle v. Ingle, 53 NC App 227 (1981)





#### What is custody?

- "Physical custody" means the physical care and supervision of a child
  - GS 50A-102(14)
  - "Visitation" simply is a lesser form of physical custody
  - Davis v. Davis, 229 NC App 494 (2013)
  - Physical custody allows party to make decisions about the child's routine but not matters with "long-range consequences"
    - Diehl v. Diehl, 177 NC App 642 (2006)
- "Legal custody" means the right and responsibility to make decisions with important and long-tem implications for a child's best interest and welfare. *Diehl*
- "Joint custody" means "a relationship where each party has a degree of control over , and a measure of responsibility for, the child's best interest and welfare." *Diehl*



### Joint Legal Custody

 If award joint legal, cannot "split" decisionmaking authority without specific findings regarding need to split

• *Diehl,* 177 NC App 642 (2006)

- Hall v. Hall, 188 NC App 527 (2008) (inability to communicate insufficient)
- MacLagan v. Klein, 123 NC App 577 (split upheld based on conflicts over religion and evidence of impact on child)

#### Standard Visitation?????

- "A fairly common visitation schedule for unrestricted visitation with school age children is every other weekend, one weekday evening per week, four weeks in the summer, and alternate holidays."
  - $^\circ$  Lee's Family Law,  $5^{th}$  edition, pp. 13-95
  - ${\scriptstyle \circ}\,$  NOT required by law

# ALI Principles of Family Dissolution (Restatement)

- Each parent must submit "Proposed Parenting Plan"
- Goal of court should be to reasonably approximate pre-separation caretaking responsibility as much as possible
- Allocate decision-making authority based on listed factors