

Creating Parenting Plans

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:
 - Joint custody to the parents
 - Exclusive custody to one person
 - 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)

Parents

- ▶ Between mother and father, no presumption shall apply as to who will better promote the interest and welfare of the child
 - GS 50-13.2
- ▶ Parent cannot be denied reasonable visitation unless court finds parent unfit or that visitation is not in best interest of the child
 - GS 50-13.5(i)
 - Supervised visitation is not "reasonable visitation"
 - *Hinkle v. Hartsell*, 131 NC App 833 (1998)
- ▶ Cannot allow custodial parent to control visitation
 - *Brewington v. Serrato*, 77 N.C.App. 726, 336 S.E.2d 444 (1985)

Public Policy Regarding Parents

See GS 50-13.01(2015)

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-term 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” Custody

- ▶ Must be considered “upon request of either party”
 - GS 50-13.2
- ▶ There is no presumption in favor of joint custody
 - *Hall v. Hall*, 188 NC App 527, n3 (2008)
- ▶ Implies a sharing of responsibility.
 - *Diehl*, 177 NC App 642 (2006)
- ▶ Because there is no definition, “judge has substantial latitude in fashioning a joint custody arrangement.”
 - *Patterson v. Taylor*, 140 NC App 91 (2000)

Joint Legal Custody

- ▶ If award joint legal, cannot “split” decision-making 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.”
 - Lee’s Family Law, 5th edition, pp. 13-95
 - 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
