

## Ch. 50 Custody and DSS Visitation in Times of COVID-19

Friday: October 9<sup>th</sup> – 9:00 - 10:30 a.m.

### Discussion Questions

#### Chapter 50 (1 hour)

1. Existing custody order provides that mother has primary physical custody and dad has visitation every other weekend and one evening each week. Mother files a motion to modify and requests an ex parte emergency custody order to prohibit dad from having contact with the child. Mother's verified complaint alleges father tested positive for COVID-19 and child has asthma.
  - a. Do you grant mother's request for ex parte emergency temporary custody?
    - i. Yes
    - ii. No
    - iii. Maybe
  - b. How will you conduct a hearing following service on dad?
    - i. I will not schedule a hearing until he has recovered
    - ii. I will hold a virtual hearing
    - iii. I will schedule an in-person hearing as usual. How I proceed will depend on dad's response
  - c. Instead of alleging dad tested positive, mom alleges visitation must be suspended because father is a physician currently assigned to work the COVID-19 unit at the local hospital. Do you grant mother's request for ex parte emergency temporary custody?
    - i. Yes
    - ii. No
    - iii. Maybe
  - d. At the temporary custody hearing, dad testifies he has a safety plan that includes him always wearing a mask at home and always maintaining a safe distance from the child when the child is in his home. Will you grant mother's request to suspend all visitation?
    - i. Yes
    - ii. No
    - iii. I would do something else
  - e. Instead of having COVID or being a doctor, mom's motion for suspension of visitation is based on her contention that dad does not "believe in" the virus and refuses to take precautions himself or to instruct the child to take precautions. Dad is particularly opposed to wearing a mask and refuses to allow child to wear one while the child is in his custody. Do you grant mother's request to suspend all visitation?
    - i. Yes
    - ii. No
    - iii. I would do something else

2. Existing custody order requires weekly exchanges of the children to occur at school. On exchange days, one parent takes the children to school in the morning and the other picks them up after school to make the exchange. Since the children stopped attending school, the parents have not been able to agree to an alternative method of exchanging the children. Both have filed contempt motions alleging the other kept the child longer than allowed by the custody order.

Assume both have technically violated the terms of the order by not taking the children to the school building to exchange as required by the order, what do you do?

- a. Hold them both in contempt and order them to comply with the terms of the existing order
  - b. Hold neither in contempt; direct them to comply with the terms of the existing order
  - c. Send them to mediation
  - d. I would do something else
3. Terms of custody order requires child to travel by airplane to visit mother in another state. Dad files a motion to suspend visitation based on his concern that it is not safe for the child to fly during the pandemic. Mother strongly objects to any suspension of visitation. What do you do?
- a. Deny father's request and instruct him to comply with custody order
  - b. Grant father's request and suspend mother's visitation until the end of the pandemic
  - c. Order an alternative form of visitation
  - d. I would do something else
4. Existing custody order provides joint legal custody. Mother files a motion to modify and requests a temporary order changing the allocation of legal custody to allow her to make decisions regarding where the child attends school and regarding the child's extracurricular activities. The local schools have suspended all in-person classes and mother wants to send child to a private school that is conducting in-person classes but dad disagrees. Mother also wants child to participate in soccer but dad refuses to consent due to his concern about the child's contact with other children. What do you do?
- a. Grant mother's request
  - b. Deny mother's request
  - c. Send them to mediation
  - d. I would do something else

A/N/D Visitation (30 minutes)

The A/N/D case is past adjudication and in the dispositional phase, where the child is placed in a foster home. Reunification efforts have not been ceased. The most recent dispositional order provides for the parent and child to have supervised visitation for a minimum of 2 hours one day each week. Under the order, DSS is to arrange for or approve the supervisor. The order is silent regarding location.

1. The county DSS adopted a blanket policy that suspended all in-person visitation for children in its custody. DSS's position is that G.S. 7B-905.1(b) authorizes it to temporarily suspend all in-person visitation because it is contrary to the children's health and safety due to COVID-19. DSS does not expeditiously file a motion for review. Instead, the parent's attorney files a motion for review. Assume neither the parent nor child have any underlying conditions. What relief would you grant? Choose all that apply.
  - a. Visitation continue as ordered
  - b. Visitation be restricted to electronic only (as requested by DSS)
  - c. Make up visits as well as visitation continue as ordered
  - d. A show cause for DSS
  - e. A finding of no reasonable efforts
  - f. Other
  
2. DSS has lifted its in-person visitation suspension but has adopted policies that restrict what a parent may do during visits. Children and parents must wear masks, must socially distance, may not be able to hug/touch/sit on laps, and may not eat or drink together. In your order addressing visitation, what do you do regarding the DSS restrictions? Choose all that apply.
  - a. Do not address them
  - b. Order specific types of restrictions only
  - c. Order no restrictions apply absent an order from the court
  - d. A finding of no reasonable efforts
  - e. Other
  
3. What if DSS has not adopted any policies restricting visitation but in the case before you, the visits were converted by DSS to electronic visitation only. DSS's position is that the foster parents were not willing to have the child remain in their home if the child saw his/her parent because they were concerned about COVID-19 exposure. What do you order?
  - a. Visits continue
  - b. Visits be held electronically
  - c. A new placement for the child
  - d. A finding of no reasonable efforts
  - e. Other