

Creating “Parenting Plans”

Panel Discussion

Fall Conference 2008

Panelists:

Chief Judge Robert Cilley, Hendersonville

Judge Elizabeth Heath, Kinston

Judge Marvin Pope, Asheville

Billie Jo Garcia, AOC Child Custody and Visitation Program Administrator

Question 1:

How would you describe your general approach to creating custody and visitation plans in child custody cases? For example, do you have a “philosophy” that influences your custody and visitation orders? Are there principles you use to guide your decision-making process in addition to the principles and considerations required by statutes and case law?

Question 2:

- a) Consider a request for a temporary child custody order involving a 3 month-old child. Dad filed action for joint legal and physical custody of infant, alleging mom refuses to allow him overnight visitation with the child in his home. During the hearing for temporary custody, it is established that both mom and dad have been very involved in the care of the child. Both have cared for the needs of the child, both are fit and proper persons, both hold jobs with traditional hours (i.e. 9 am until 5 pm), and they live within 5 miles of each other.
 - 1) Is there other information you need in order to decide temporary custody? Please explain the importance of each additional piece of information.
 - 2) Assuming no other evidence is offered, what temporary order are you likely to enter in this situation?

- 3) Would you address legal custody at this point? If so, what would you order? If not, why not?
 - 4) What additional information do you want to see at the custody trial before you enter a final custody order? Why? Assuming both parents are as 'equal' as possible, what permanent order would you likely enter? Please address both physical and legal custody.
- b) How would your orders change if there was another child involved, one attending kindergarten? (same situation, just 2 kids instead of one. Parents always shared care-taking responsibility and they both have strong positive relationships with both children).

Question 3:

How would you schedule custody and visitation in the scenario set out in Question 1(b) above if mom is employed as a nurse and she primarily works the night shift – meaning 10 pm until 6 am – and she typically works Thursday through Sunday nights? Mom does not work Monday through Wednesday. Dad has a traditional day-time, Monday through Friday job?

Question 4:

- a) Kids are 11 and 13 years-old. Both parents work. Both are good parents. Before separation, mom did all household chores, took kids to doctor and dentist, and volunteered at school. Dad did yard work, helped kids with homework, and coached sports teams for both kids. Upon separation, dad moved to town 30 miles away for lower cost of living, so mom could stay in marital home with the kids. Dad files action for joint legal custody and requests extensive visitation. Mom asks that dad be granted one weekend a month because both children have church and extracurricular activities most weekends. Mom also requests sole legal custody, because she and dad have difficulty communicating.
What other information would you like to have before determining custody and visitation? Why?

Assuming no additional information, what custody/visitation arrangement are you likely to create in this case? Please address both physical and legal custody.

- b) How would the order be different if dad now lives in New York rather than just the next town? What terms would you include in your order, if any, to facilitate contact between the father and the children?

Question 5:

Custody case involves a 7 year-old girl. Mom has been the sole caretaker since the birth of the child, but mom now has a substance abuse problem. A babysitter alerted DSS when mom failed to pick up child from the babysitter two Friday evenings in a row. Both times, the babysitter took the child home on Saturday and found mom asleep with many empty liquor bottles throughout the house. As part of an agreement with DSS to avoid the filing of a neglect petition, mom has started a nonresidential treatment program. In addition, mom and 7 year-old girl now reside with mom's sister. Sister's home is a safe, good place for child. Dad filed custody case, asking for sole custody or at least significant visitation. Dad is fit and proper, and has a good home with new wife and a good job. However, dad has no relationship with 7 year-old child. He and mom were never married, and he has had no contact with mom since approximately 6 months after the birth of the child. He has sent money to mom from time to time during the years, but nothing regular.

- a) Assume sister is not an option for primary custodian. What would you do at a temporary custody hearing where dad is asking for sole physical and legal custody?

- b) By the time of the permanent hearing, mom has completed treatment and appears to be doing well. What additional information do you need to determine custody and visitation? Why?

- c) Assuming you receive no additional important information, what are you likely to do in a permanent custody order in this case? Please address both physical and legal custody.

Question 6:

This packet of information includes a copy of visitation guidelines adopted in the States of Texas and Indiana. Other states have adopted similar guidelines. Do you think the North Carolina General Assembly or Supreme Court should adopt parenting plan guidelines or visitation guidelines? Why or why not?