

Factors Used In Determining Child Custody

When a custody dispute arises, there is much trepidation about the proceedings, mostly from a lack of understanding as to what will happen. A quick look at how courts actually make a decision when considering a question of custody will go a long way towards easing everybody's mind.

Best Interest of the Child

When determining custody the courts in virtually every state are charged with acting in the best interests of the child which sometimes, is not exactly what the parents have in mind. Most states leave the criteria for determining the best interest to the courts, but many have specific, statutory criteria, known as the "Best Interest Factors." These include:

- 1) The love, affection and emotional ties between the parties and the child
- 2) The parties capacity to give the child love, affection and guidance, etc.
- 3) Ability to financially support the child
- 4) Desirability of maintaining a continuous home environment for the child
- 5) Moral fitness, mental and physical health
- 6) Reasonable preference of the child, if of sufficient age
- 7) Willingness to encourage the relationship between the child and the other party
- 8) Domestic violence
- 9) Other relevant factors

Consideration and Weight

In states where the 'Best Interest Factors' are enumerated the court is usually bound to consider and make findings of fact on each, but the weight given to any one factor is left to the judge's discretion. If one factor is given more weight than another, the court must state the reason why on the record. It is also essential that a parent be prepared to address every factor.

The Role of Child Support

It is important note that when the court makes a decision regarding custody it does so without any consideration of a party's past-failures to pay child support. Nevertheless, a court is free to consider any retaliatory actions the opposing parent may have taken because of unpaid child support, specifically a denial of parenting time.

The Question of Gender

Though the Supreme Court has yet to rule on the use of gender as a factor in determining custody, most every state has eliminated the bias of automatically placing children with their mothers. However, though the overt practice has been eliminated, fathers and their attorneys should be aware that from time to time it is still covertly employed.

Warning

It is important to understand that the law varies from state to state and anyone facing a custody dispute should always consult with a local, licensed attorney.

Sources

Michigan Compiled Laws 722.23

Illinois Compiled Statutes 750 ILCS 5/602

In re Marriage of Treshak, 297 N.W.2d 109 (Iowa 1980)

Freeman v. Freeman, 414 N.W.2d 914 (Mich. Ct. App. 1987)