
Parenting & Best Interests

Child Custody Considerations

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The Basics

Pivotal Principle

The Best Interests Standard

The Progressive® Lawyer

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The best interests of the child remains as the “beacon” or guiding principle central to most issues of custody and parenting time.

Establishing or proving where these best interests lie can be both elusive and costly.

The Courts – if they are called upon to decide issues of custody and parenting time – must seek out sources to guide them in their determinations. In such cases, the tendency is for the Courts to send parties first to custody mediation; complimentary or otherwise. The increasing tendency in most New Jersey Counties is for the Courts to do everything possible to discourage custody disputes from going to trial.

When custody mediation fails to settle the parenting disputes – and walking away from attempts to resolve these issues without the Court’s direct decision-making involvement should not be taken lightly by the parties – other steps must be taken.

In cases where money is an issue, custody experts are often not affordable. If that is the case, the Courts will typically require that the parties and children to undergo a best interests evaluation by the County Probation Department. Qualifications and experience of

the individuals conducting these investigations vary. Judges also vary as to the stock they place in such investigations and the weight they assign to the content of the written reports of investigation they receive.

Many Judges prefer independently or jointly retained custody experts, who are typically more qualified to do the assessments in terms of level of education, training and experience than those employed by the Courts. Additionally, recently enacted changes restrict the probation department evaluator from making any ultimate recommendations at the conclusion of their written reports, which used to be the case. Regardless of who conducts the evaluations and prepares the reports of investigations, they must be subject to cross-examination should either party request the opportunity to do so.

Sometimes, Judges will appoint a child custody expert on their own. Courts may even choose to appoint an expert, even when both parties have independently retained experts of their own, and one or both of the parties will be responsible for paying for the Court-appointed expert as well as their own.

In any event, the custody experts or probation employees, or both will interview all family members including certain significant others in some cases, to establish a history of both parents. Where both parents agree on certain facts, the interviewers are permitted to assume that these uncontroverted facts are true, for purposes of the assessment. Parental history can include, for example, medical, psychiatric, drug, alcohol, parenting skills, etc. The children's school records, including grades, attendance, child study team evaluations and other pertinent information are also useful to obtain.

The children, depending upon their age and maturity, may be interviewed or otherwise observed. Even the Judge may conduct an interview of the children. With children seven years of age or older, the Judge must conduct a judicial interview if requested to by either parent. If children are under seven, Judges have discretion to conduct the interview.

Some Judges will tell you that they absolutely detest interviewing children. Some Judges like doing it and find it quite helpful. Still others fall somewhere in between, or feel differently depending upon the facts of the specific case. Children 14 and older are generally heard if a parent makes the request. As children grow older, their input is given greater weight, particularly where relocation may be in the works.

Generally, in assessing custody issues, the Court must consider the following factors as set forth in **N.J.S.A. 9:2-4**:

- (a) The parents' ability to agree, communicate and cooperate in matters relating to the child.
- (b) The parents' willingness to accept the custody and any history of unwillingness to allow visitation not based on substantiated abuse.
- (c) The interaction and relationship of the child with its parents and siblings.
- (d) The history of domestic violence, if any.
- (e) The safety of the child and the safety of either parent from physical abuse by the other parent.
- (f) The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision.

- (g) The needs of the child.
- (h) The stability of the home environment offered.
- (i) The quality and continuity of the child's education.
- (j) The fitness of the parents.
- (k) The geographical proximity of the parents' homes.
- (l) The extent and quality of the time spent with the child prior to or subsequent to the separation.
- (m) The parents' employment responsibilities.
- (n) The age and number of children.

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