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Issues to consider with shared custody

A number of states are moving toward some form of "shared" or "joint" custody as a baseline when determining parental arrangements after divorce. In other states, these may be arrangements that a judge decides upon or which parents agree to. Either way, the trend is toward some kind of shared parenting arrangement. But it might not be the right thing for every family. Here's a rundown on what's happening across the country and some things you might want to consider when figuring out the custody arrangement you plan to seek.

One major trend right now is states passing laws that actually set joint custody as the standard. For example, Missouri is currently considering a new law which would make 50-50 parenting time the starting point in *all* custody cases. Of course, this isn't absolute. The law would set a "rebuttable presumption" that equal parenting time is the best arrangement for the kids, which means that if a parent opposes a 50-50 arrangement he or she can challenge the presumption through evidence.

The idea behind this bill is to take gender bias out of the system and create a more level playing field for fathers, many of whom claim they haven't been given a fair shake in the courts. The proposed law is also intended to provide a benefit for children. Proponents point to studies



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that show kids are much better off when both parents are as involved in their lives as possible. About a dozen other states have laws like this already, though they may vary (for example, they may not all define "joint custody" as a 50-50 split). In all those states, the law only becomes an issue when parents can't agree.

Other states, like Alabama, Connecticut, California, Mississippi and Nevada, have a presumption in favor of joint custody if both parents

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Is absent spouse an ‘abandoning’ spouse?

When a person dies “intestate,” that means they’ve passed away without ever making a will. If that happens, their property is doled out to surviving family members according to that state’s “intestate succession law.” This means the state is pretty much creating a will for you according to its idea of how most people would set one up, typically with a surviving spouse first in line, followed by kids, grandkids, parents, siblings and so forth.

But what happens with a spouse who just hasn’t been around for a long time? Usually a spouse who’s abandoned the marriage has no right to inherit in this situation. But it’s not always clear what should be considered “abandonment.”

Take a case currently pending before the Michigan Supreme Court. James Erwin Sr. died intestate in 2012, leaving six children from his first marriage and four children from his second marriage. A dispute broke out in his family about whether his second wife, Maggie, was entitled to a surviving spouse’s share of his estate, since while she and James had been legally married for more than 40 years she hadn’t actually lived with him since 1976.

That year, Maggie moved out of the marital home, sought child support and remained separated from James until he died.

One of the kids from James’s first marriage was appointed the personal representative of his estate and asked a family court judge to rule that Maggie wasn’t entitled to a share of his estate because she’d been “willfully absent” from the marriage. (Michigan law disinherits someone who’s been willfully absent for at least a year before his or her spouse dies.)

The judge ruled, however, that Maggie could still get her share because she and James had stayed in contact and maintained a relationship.

The Michigan Court of Appeals agreed, noting that despite living apart, James had gone to court to keep Maggie on his employee health plan and she had kept him as her life insurance beneficiary.

Now the state supreme court will decide for sure. But the law does differ from state to state. So if you’ve been living separately from your spouse for a long time, talk to an employment lawyer to find out whether you might be forfeiting important rights and how you might protect them.

Stepdad who fought for shared custody must now pay support

Do you know the old saying, “With privileges come responsibility?” A Pennsylvania case illustrates that this is particularly true in custody disputes, especially when you’ve fought really hard for parental privileges.

In that case, a man married a woman with twin boys from a prior relationship. Four years later, the couple separated. The stepdad had developed a bond with the twins and the ex-couple informally shared custody. But three

years later, the mother finished law school and decided to move to California.

At that point, the stepdad went to court seeking custody and an order blocking her from moving.

He claimed he stood “in loco parentis” (in place of the parents) since the biological dad hadn’t been involved in the kids’ lives.

A trial judge granted him shared legal and physical custody and blocked both mother and stepfather from relocating with the children.

The mother responded by seeking child support. The family court denied her request, telling her that because the stepdad wasn’t the kids’ biological parent he wasn’t obligated to support them.

But the Pennsylvania Supreme Court disagreed. The court didn’t go so far as to say that a stepparent’s effort in maintaining a relationship with his or her stepkids after a separation imposes an obligation to support them. But in a case like this, where the stepfather “relentlessly pursued” parental duties by going to court, he couldn’t then disavow his parental status just to avoid paying support, the court said.



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agree to it, but judges can order joint custody even if the parents don't agree if that's what the judge thinks is in the child's best interest. Some states don't have a presumption that favors joint custody, but it's an option judges can use at their discretion.

The issue over joint custody is also complicated by definitions. A lot of people think "joint" and "shared" custody mean the same thing. But "joint" physical custody refers to where the child physically spends his or her time, while "joint" legal custody refers to which parent gets to make important decisions about the child. When people talk about "shared" custody, on the other hand, they're usually talking about where the child spends his/her time.

Some people criticize the trend toward a presumption of joint physical custody, arguing that it may have a negative impact on kids, who bounce back and forth between "Mom's house" and "Dad's house" without developing a true sense of home anywhere. They say joint custody can be stressful for kids, who have to keep track of important possessions and clothes as they move back and forth, and point to all the time spent in transit when the parents don't live close to one another.

Still, joint custody arrangements can truly benefit kids by having both parents involved in their lives, which leads to better-adjusted kids in the long run. If you're looking at a potential joint custody relationship, either because of a legal presumption in its favor or because you think it will create the best situation for your children, the following tips will increase your chances of success:

- *Don't undermine the other parent.*

Try to work out your differences about your kids' health, education, rules, activities, etc., and maintain a

united front. Consistent rules and policies create stability for your children. That doesn't mean you should feel free to impose all your ideas on the other parent and seek to micromanage what happens when your kids are with him or her. While it's important to have broad agreements on major issues, it's probably a bad idea to create huge issues over your ex giving your kids a little more screen time or occasionally letting them eat fast food. That's just going to create tension and resentment that filters down.

- *Don't bad-mouth the other parent to the world.*

You may not particularly like the other parent, but keep that to yourself and maybe a few adult confidantes. Don't air out your grievances in public, especially on social media. That will create hostility that impacts your kids and it will hurt you if you want to go back to court to change your custody arrangement, since old posts are easily retrievable.

- *Don't bad-mouth the other parent to your kids.*

Their dad is still their dad (and their mom is still their mom) whether that makes you happy or not. Speaking badly of him or her, particularly when the kids spend half their time with that person, can cause harm. Either it will undermine their relationship with the other parent, which could cause them to resent you in the long run once they figure out what's happened, or it'll undermine their relationship with you because you're saying bad things about someone they love. Everyone benefits when you can rise above the situation and encourage loving, healthy relationships with both parents.



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Divorced parents don't need to pay emancipated daughter's tuition

In some states, family courts can order parents to pay their children's college tuition. But a recent New Jersey case shows that courts will set limits on this.

The case involved Caitlyn Ricci, a 23-year-old college student who went to court to become "emancipated" — in other words, legally independent — from her parents a few years earlier when she moved out of her mother's home to live with her grandparents.

After a family court entered the emancipation order, her divorced parents filed to end their support obligations. Caitlyn responded by seeking to undo the emancipation order and require her parents to pay her

\$2,000 tuition for community college. The judge ruled in her favor and ordered that they do so.

But before Caitlyn finished her associate's degree, she transferred to a much more expensive four-year college and asked that her parents be ordered to pay for that. A judge did so, but a New Jersey appellate court reversed the decision, finding that the lower court didn't examine the situation closely enough before determining that Caitlyn should no longer be considered emancipated.

Of course, results vary depending on the facts of a particular case. If you're dealing with issues like this, talk to a family attorney to learn more.

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Man owes ex-wife a chunk of his \$1M 'bad faith' settlement with insurer

Divorcing couples can agree to many different things in their separation agreements and property settlements. But sometimes those agreements extend further than expected.

This happened in a recent Missouri case.

In that case, Charles Baker and Kathleen Jo Weaver-Baker got divorced while Charles had a personal injury suit pending (he'd lost part of his hand when a truck hit his motorcycle a couple years earlier). As part of their separation agreement, Charles agreed to pay his wife 20 percent of anything he collected from the lawsuit, minus attorney fees. He ultimately secured a \$1.3 judgment. However, the truck driver's insurer only paid out the driver's policy limits of a little over \$100,000. In keeping with the agreement, Charles paid 20 percent to Kathleen Jo.

A year later Charles sued the insurer, claiming it acted in bad faith by not paying the whole judgment. The insurer settled with him for \$1 million. When his ex-wife heard about the settlement, she claimed Charles owed her 20 percent of

that too.

Charles disputed this, arguing that their agreement only applied to the personal injury suit itself and that he did his part by paying her 20 percent of the \$100,000.

But a state court of appeals disagreed. According to the panel, Charles wouldn't have had a case against the insurer

in the first place without the underlying personal injury judgment. The bad-faith suit he followed up with was simply the way he collected and enforced that judgment.

The court also rejected Charles's argument that the \$1 million settlement wasn't marital property because the money was meant to compensate him for lost wages and pain and suffering. According to the court, whether it was marital or nonmarital property didn't matter. The separation

agreement was what mattered, and he agreed to pay 20 percent in the agreement.

The law may differ from state to state, however, so talk to a family lawyer where you live.

