

Minor Children:

Who will have custody

By Audrey B. Schneiderman, Esq.

MORE OFTEN THAN NOT, when two parties divorce and there are minor children involved, the question arises as to who will have custody. All things being equal, the courts favor Shared Parental Responsibility, designating one parent the primary residential parent.

What is Shared Parental Responsibility?

Shared Parental Responsibility means that both parties will share equally in caring for their child despite living in separate households. The decisions shared between two parties include, education, medical and dental care, and other issues affecting the child's daily routine.

Where will my child live?

Often, Florida Courts will designate a primary residential parent. That is the parent with whom the child will live the majority of the time. The primary residential parent's address will be designated as the child's address for school, camp etc. This parent will be responsible for normal day-to-day decisions. The other parent will be designated the secondary residential parent. Although a child may spend a considerable amount of time with this parent at his/her home, the child will not consider the secondary residential parent's home his/her primary address.

On some occasions, the parents will share custody without a designation. This is not usual and with this comes certain restrictions, ie. the parties must live in close proximity to one another (in order to facilitate school).

Q. Who gets to be the primary residential parent?

A. In determining which parent receives the title of primary residential parent, a court considers factors relative to the "best interests" of the child, including:

- love, affection and other emotional ties existing between parents and child

- capacity and disposition of parents to provide a child with food, clothing, medical and remedial care

- length of time a child has lived in stable, satisfactory environment and desirability of maintaining continuity

- permanence, as a family unit, of existing or proposed custodial home

- moral fitness of parents

- mental and physical health of parents

- home, school and community record of child

- reasonable preference of child, but only if court finds child to be of sufficient intelligence, understanding and experience to express a preference

- willingness and ability of each parent to encourage close and continuing relationship between child and other parent

- evidence of domestic violence or child abuse

- any other factor court deems relevant

Q. If I am deemed the secondary residential parent, how much visitation will I get?

A. Courts determine what type of visitation schedule is appropriate on a case-by-case basis. However, court's in Palm Beach County favor what is called the Model Time-Sharing Schedule. This Model Time-Sharing Schedule is only a suggestion and not indicative of what every family ultimately uses. However, this schedule provides the secondary residential parent with long weekends and blocks of time during the summer months and the child's school vacations. The parties may also decide between themselves what is an appropriate visitation schedule.

Q. What if I want more visitation?

A. Florida courts provide for what is known as "substantial time-sharing." This provides for when the secondary residential parent has the child (including overnights) more than 40% of the



time. Ultimately deciding whether or not "substantial time-sharing" is appropriate is based on a number of factors including, each parent's work schedule, free time schedule, and the overall distance between each parents house. It should be noted that, when a parent qualifies for "substantial time-sharing," that parent's child support is calculated using a different formula taking into account the large amount of time the child spends with the secondary residential parent.

—Audrey B. Schneiderman has been practicing law in Palm Beach County for 11 years. She is a partner in the law firm of Feldman & Schneiderman, P.L., with emphasis on family law. She is rated a "Preeminent Family Law Attorney" by the Martindale-Hubbell attorney rating service. She is past Chairman of the Family Law Committee of the South Palm Beach County Bar Association. She is a graduate of the University of Wisconsin and Rutgers School of Law. Reach her at 561-392-4400 or at aschneiderman@feldmanlawoffice.com.