

Texas Divorce Law: Easing the Strain on the Children of a Marriage

Introduction:

Texas has experienced an increase in case filings involving the rights, duties and obligations of divorcing parents and their children. Divorce is a fact of modern society that greatly influences our nation's children. In fact, forecasters are predicting that 50 percent of all children born during the 1990's will spend some of his or her childhood in a single-parent household. I have dealt with hundreds of divorces that involve children. As an attorney I zealously represent my clients in divorce and domestic relations matters, I also encourage solutions that are optimal for my client's children during this tumultuous period. I find that, ultimately, my clients' long-term satisfaction is far greater when they know that they did not compromise the best interests of their children during the course of the divorce proceedings.

The best of divorces creates stress for the children of that marriage and the worst of divorces can leave life-long scars on the children born during the marriage. That is not to say that sometimes divorce is not the better, if not only, decision. The unfortunate reality of divorce, however, is that it symbolizes the end of a child's world, perhaps the only world he or she has ever known. The lack of stability and uncertainty about the future is very frightening for children. They may wonder whether their parents will still love and care for them in the new situation. Depending on his or her age, a child's emotions can range from extreme fear of abandonment to anger and blame directed towards one or both parents. Given these facts, the best thing parents can do is to reassure a child of their continued love and willingness to care for the child. There are some additional matters that parents and their attorneys can do to minimize the stress caused children by the break up of a marriage.

Child Custody:

First and foremost, as a parent you can assist in bringing custody disputes to the quickest possible resolution. The sooner your child knows what his or her future living situation will be like, the sooner the child will begin to reconstruct his or her world and regain some stability. If at all possible, you and your spouse should come to a compromise regarding custody prior to the time of trial. Contrary to popular belief, courts are not in the best position to determine who should have custody of your children, but rather you, the children's parents, are better equipped to make this determination. Courts only see a small glimpse of what you and your soon-to-be ex-spouse are all about. Further, once it gets to the point of a full-blown custody dispute in court, all sorts of interesting things start to happen. You may be surprised to learn that the smallest details of your life are dragged before the court and used to paint a picture of you as an unfit parent. This is because, for a court to make a custody determination, it must determine what is in the "best interest" of your

child. Although the standard varies from state to state, courts typically consider evidence regarding the following factors: Wishes of the child, if of age deemed reasonable for expressing a preference; Mental and physical health of the parents; Religion and/or cultural considerations; Need for continuation of stable home environment; Support and opportunity for interaction with members of extended family of either parent; Interaction and interrelationship with other members of household; Adjustment to school and community; Age and sex of child; Parental use of excessive discipline or emotional abuse; and, Evidence of parental drug, alcohol or sex abuse. Depending on the state, other factors may be considered as important when determining the child's best interests. Indeed such things as a parent's smoking status, current romantic relationship(s), and past working habits have all been raised in custody battles. Such considerations can needlessly drag out court battles, depleting financial resources that could have been used for your children's welfare. Even where the court reaches a determination that it believes is reasonable and fair, you may be completely unhappy with the result. It is then that people consider appealing the decision to a higher court. This further drags out the uncertainty for children and may create a huge financial burden for both parents. By reaching a reasonably satisfactory compromise with your spouse prior to trial, you can avoid rolling the dice before a judge and receiving a completely undesirable custody decision. Further, to minimize impact on your children, you should avoid using your children as a pawn to gain leverage in the division of your property or other financial disputes. Your children will be better off if you honestly admit to yourself and others the role you wish to play in your children's future lives. Additionally, avoid allowing your children (especially older children) to use you as a pawn to receive the "easier" living situation. After divorce, children still need limits and consistent discipline. As hard as it is, try to continue to maintain a uniform front with your ex-spouse regarding the expectations for desirable behavior and limits on unacceptable behavior for your children. In the long run, this too will help your child feel more secure. You should also take steps to ensure an atmosphere of cooperation with your ex-spouse. Often divorcing parents think (or at least hope) that the divorce will more or less rid them of their ex, however, because they have children together, divorcing parents will still have to deal with each other for at least the duration of their children's minority. Therefore, cooperation is essential and will help keep you out of the courts in the future. Finally, avoid criticizing your ex-spouse in the presence of your children. Instead, allow your child to have a good relationship with both parents. You have divorced (or are in the process of divorcing) your child's parent, but your child has not divorced the other parent. Even when their parents are no longer together, children benefit from the love and support of both parents. While no court can make you and your ex-spouse cooperate, the more you and your spouse strive for mutual cooperation, the better your children will weather the divorce, both now and in the years to come.

Child Custody Issues in Texas:

The best interests of the child are the primary consideration of the Court when deciding which parent or person should have custody of the child or children. In Texas, we do not have custody, we have conservatorships. There are basically three types of conservatorships:

Managing Conservatorship
Possessory Conservatorship
Joint Managing Conservatorship

Interestingly enough, the actual rights and obligations of each conservator are somewhat deceiving when you look at the title of the conservatorship. For instance, Possessory Conservator does not mean that the individual who has that conservatorship has custody. It means that this conservator has the right to possession at certain times and places accompanied by certain rights and obligations. A Managing Conservator, is the person who actually decides where the child or children reside permanently. Joint Managing Conservatorship means that more than one party has the right to make life management and care decisions about the child or children, but one of the Joint Managing Conservators will be awarded the right of domicile (the right to determine the permanent residence of the child). There is not a great deal of difference between the Joint Managing Conservator who does not possess the right of domicile and a Possessory Conservator. This individual will also generally have the obligation to pay child support and to provide health care for the child or children. The individual who will be required to pay child support is always a Possessory Conservator or a Joint Managing Conservator who does not have the right of domicile.

Parties in a contested custody situation should always attempt to cooperate, primarily for the benefit of the child or children. I always encourage my clients to use common sense and the golden rule when dealing with the other parent concerning visitation. The easier it is on the parents, the easier it will be on the children. The parties, whether they like it or not, will most likely have to deal with one another from now on concerning matters surrounding the child or children.

Separation and divorce are traumatic situations for the parties, and can be for the child or children as well. It would be in the best interests of the child or children to limit the amount of trauma sustained by the child or children, and whether you have custody or not, this is a duty that you owe your child. Whatever problems exist between you and the other parent, generally those are not the problems of the child, and the child should not be drawn into the disputes between the parents. There probably is nothing more traumatic to the parents and children than a contested custody case. The bridges are not just burned, the valleys over which they span are widened and deepened to the point of impasse.

Obviously, there are situations which demand a custody change, and this is up to the parent to make this call. The parent should not look at it from his or her standpoint, but from the standpoint of the child or children and what would be in the best interests of the child.

Conclusion:

Modern day life has seen many changes in the structure of family. The odds are good that most children today will experience the divorce of their parents. Although divorce is very difficult for children and can negatively impact children, parents can take steps that will help minimize that

impact. The more parents can work cooperatively on custody and visitation issues, the better off their children will come through the divorce. The divorce alone creates a great deal of emotional trauma in children's lives, a prolonged custody battle only increases the upheaval and, unfortunately, leaves everyone feeling dissatisfied. Over the years I have tried many contested custody cases throughout the State of Texas, and I can safely say the children always lose.

Child Custody Experience

Randy Wilson, Attorney at Law has tried numerous contested custody cases. If you desire to contact him for further discussion, you may contact him as follows:

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