



Kids Come First Courtesy, Communication, and Common Sense are Vital When Placement is an Issue

By Daniel P. Bestul

Like most lawyers, I am asked many questions that begin with “What are my rights?” Because I practice family law, the question I hear most often is “What are my rights to time with my kids?”

The answer under Wisconsin law is: “none.” That’s because Wisconsin’s placement focuses on the child, not the parent.

Section 767.24 of the Wisconsin Statutes deals with custody and physical placement, and says “A child is entitled to periods of physical placement with both parents unless...the court finds that physical placement with a parent would endanger the child’s physical, mental or emotional health.” The law also says that the court must allocate placement so the child has regularly occurring, meaningful periods of placement with each parent and that maximizes the time the child spends with each parent. (Recent appellate decisions have held that this provision does not necessarily mean equal placement.) This law stems from a wealth of research showing children tend to do better socially, intellectually and emotionally, both as children and as adults, if they have a meaningful relationship with both parents. While no good parent intentionally hurts his or her child, it is amazing how many good parents put their child in harm’s way by undermining the child’s relationship with the other parent.

Many Wisconsin courts insist that parents in a custody dispute participate in training to help them gain a better understanding of their child’s needs, and how they can protect their children from the stress and anxiety that comes with every custody dispute. Some courts have gone a step further, adopting a “Children’s Bill of Rights”, which is used to remind parents that the child is the focus of custody and placement determinations, not the parents.

The Dane County Family Court Counseling Service, for example, has adopted a 10 point Bill of Rights. Among other provisions, the Bill provides that each child has the right:

- To a continuing relationship with both parents, to their continuing care and guidance, and to know and appreciate the good in each parent without one parent degrading the other.
- To know that the child is not to blame and is not responsible for the parents decision to live separately, and to honest answers to questions about the changing family relationships.
- Not to be a source of argument between the parents

These are excellent, general guidelines. Some versions of a Bill of Rights contain more specific directions.



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Don't ask a child to choose sides.

Don't ask a child questions about the other parent. Children should never be used as "informants" in the battle between parents.

Don't believe everything the child says. Children have a tendency to get things confused, and they also have a tendency to tell grown ups what they think the grown up wants to hear, even if it isn't the truth.

Don't use the child as a messenger. This puts the child squarely in the middle of any conflict.

Don't sabotage the child's time with the other parent by "forgetting" to send appropriate clothing, medications, athletic gear or other items necessary to make the child's time with the other parent successful and meaningful.

Don't deny the child the opportunity to communicate with the other parent by telephone.

While most guidelines are aimed at parents, these rules apply to friends and relatives as well. It can be very damaging for a child to hear a maternal grandparent cutting down the child's father, for example.

One family court commissioner reminds parents that it is not only their duty to refrain from denigrating the other parent, it is also their job to protect children from others who might speak ill of the other parent. The placement law says a court must take a look at how each parent encourages or interferes with the child's relationship with the other parent when it makes a placement order.

This reflects an important point: treating the other party with courtesy, dignity and respect is not a sign of weakness. The best thing a parent can do for their child also happens to be the sort of thing a court looks at favorably in a custody dispute.

Even though the parents may have disagreements, they must communicate about their children. One writer suggests that each child is entitled to parents who are willing to set aside at least 20 minutes a month to talk together about the child's progress and problems in school, activities and social development.

These simple, common sense rules do not guarantee that a child be immunized from a dispute between parents; human beings, and human relationships, are far too complex for any guarantees. However, parents who ignore these rules, and who cannot put their children's needs ahead of their own, are modeling poor behavior and greatly increase the risk that the child will suffer because of the parent's dispute.

