

Allocation of Parental Responsibilities-Parenting Time

On January 1, 2016, changes to the Illinois Marriage and Dissolution of Marriage Act as well as the Parentage Act were put in place.

Q: How has the new law changed “visitation”?

A: One of the biggest changes in the new statute is the construction of Allocation of Parental Responsibilities, which replaces what was formerly known as “custody” and “visitation.” What formerly was known as “visitation” is termed “parenting time” under the new law. There is no automatic preference for the child to live with either parent. Additionally, there is no requirement that a parent receives more or less parenting time based on the amount of child support that he or she pays.¹

Though the terms have changed, there are few dramatic alterations between the former visitation provision of the law and the parenting time provision under the new statute. Importantly, both parents are presumed fit, unless evidence is presented that the exercise of parenting time by one parent would “seriously endanger” the physical, mental, moral, or emotional health of the child.

As always, the Court is required to allocate parenting time between the parents according to the child’s best interests. The best interest factors for allocating parenting time are outlined specifically as follows: (a) the wishes of each parent; (b) the wishes of the child, dependent upon the age and maturity level of the child; (c) the amount of time each parent spent performing caretaking functions within the two years prior to the filing of the petition; (d) any prior agreement between the parties; (e) the interaction and interrelationship of the child with both parents and siblings or other significant parties; (f) the child’s adjustment to home, school, and community; (g) the mental and physical health of everyone involved; (h) the child’s specific needs; (i) the distance between the parents’ residences and any transportation or scheduling issues; (j) whether any restriction on parenting time is appropriate; (k) any threat of physical violence in the home; (l) the willingness and ability of each parent to put the child’s needs first; (m) the willingness and ability of each parent to encourage a relationship with the other parent; (n) any abuse in the home; (o) whether either parent is a sex offender or resides with a sex offender; (p) the terms of any military family-care plan, if applicable; (q) any other factor that the Court finds relevant. The Court will not consider any conduct of a parent that does not affect his or her relationship to the child.

Furthermore, a new requirement exists under the statute that both parents must offer a proposed parenting plan to the Court within 120 days of service or filing of a petition for allocation of parental responsibilities. The parents have the option to file a proposed plan

¹ As a caveat, in parentage cases (non-married parties) if the child remains with the parent who is the primary caretaker and the primary caretaker receives child support from the other parent, then there is a legal presumption that he or she will have the majority of decision-making and the majority of parenting time without the need to file any petition. The payor of child support still has the option to file a petition to modify.

jointly, which is often accomplished best with the help of mediation or the negotiation of attorneys. Absent an impediment to mediation, as determined by the Court, parents are required to attend mediation to determine a parenting plan. If the parties are able to come to an agreement regarding the content of a parenting plan, then the Court will enter such plan unless the Court finds it to be legally unconscionable. Otherwise or when necessary, the Court will conduct an evidence-based hearing to determine the best interests of the child and to decide which proposed parenting plan maximizes the child's relationship with both parents.

Lastly, the statute includes a new provision that a parent can face legal problems if he or she fails to exercise parenting time allocated to him or her. The Court has many options in this situation, including requiring the parent to pay lost expenses associated with the un-exercised parenting time or even holding the parent in contempt of court. Additionally, if a party brings the petition alleging the other parent's failure to exercise his or her parenting time and prevails, then the other parent will be required to pay attorney's fees and court costs.