



CHILD CUSTODY – A BIRD’S EYE VIEW

In divorce and paternity cases, the court determines legal custody and parenting time arrangements. Under Arizona law, if the parents have children together while married, the parents have joint legal custody over that child/children and their parental rights are equal. Each parent has an equal right to the child when they physically separate. Unless and until there is a court order, the parents may be embroiled in the classic tug-of-war as to which will have physical custody of the child. Most law enforcement agencies will not get involved in removing a child from one parent’s residence, unless there is a specific court order regarding custody, parenting time, and authorizing law enforcement to remove the child from the residence.

When determining the home in which the child will reside, the court attempts to reach a decision in “the best interest of the child.” Determining the best interest of the child requires the court to consider the following factors:

1. The child’s wishes;
2. The wishes of the child’s parents;
3. The interaction and interrelationship of the child with the child’s parent or parents, the child’s sibling, and any other person who may significantly affect the child’s best interest;
4. The child’s adjustment to home, school, and community;
5. The mental and physical health of all individuals involved;
6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent;
7. Whether one parent, both parents, or neither parent has provided primary care of the child;
8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.

If the parties have joint legal custody, neither parent has the right to unilaterally make decision regarding the child’s education, religious upbringing, or healthcare. Joint legal custody requires the parents to co-parent. In some situations, after reasonable attempts have been made to reach a decision, one parent may be granted final decision making authority. Another option if the parties have joint legal custody and are unable to reach a decision, is that the parties may be required to submit their dispute to a parenting coordinator. A parenting coordinator is typically either a mental health professional or an experienced family law attorney who will mediate disputes regarding parenting of the children. The parenting coordinator will then submit recommendations in a report to the court, which the court may adopt after the parties have been given an opportunity to object to it.

Temporary custody orders grant custody of the child to an individual during the divorce, separation, or paternity proceeding. Sole legal custody provides one parent with all custody rights to the exclusion of the other parent. Temporary orders are also known as “interim orders” that can be subject to change in trial. Sole legal custody is unusual and is reserved for those cases where one parent has an alcohol or drug issue, or has committed acts of domestic violence. Additionally, the court may award sole legal custody where a parent is unreasonable and refuses to cooperate in allowing co-parenting.

In certain situations, the court may award custody of a child to a third party, where that third party has sought custody, including a grandparent or other close relative.