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THE END OF CUSTODY IN FLORIDA: NOW PARENTS ARE JUST PARENTS

Charles T. Boyle

January 2009



Effective October 1, 2008 there has been a fundamental shift in the Florida Divorce Statute (Chapter 61 of the Florida Statutes) relating to parenting. The labels of "primary residential parent" and "secondary residential parent" have been removed. The concepts of custody and visitation have also been removed. Parents, post-divorce, will simply be called "parents."

The statute now requires both parties to propose a "Parenting Plan." If the parties cannot agree to a Parenting Plan then the court will, after a trial, adopt a Parenting Plan. Any Parenting Plan approved by the court, or ordered by the court, must, at a minimum, describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of a child, the timesharing schedule arrangements that specify the time that the minor child will spend with each parent, a designation of who will be responsible for any and all forms of healthcare, school related matters, other activities, and the methods and technologies that the parents will use to communicate with the child.

Intact from the prior version of the statute is the public policy of the State of Florida to ensure that each minor child has frequent and continuing contact with both parents after the parties separate, or the marriage of the parties is dissolved, and to encourage parents to share the rights and responsibilities, and joys, of childbearing. There is no presumption for or against the father or mother of a child when creating or modifying the Parenting Plan of the child. Further, the statute still requires that the court shall order that the parental responsibility for the minor child will be shared by both parents unless the court finds that the shared parental responsibility would be detrimental to the child.

The statute recognizes the changes which have occurred in the demographics of the family and that there are many two income families with both parents working outside of the home. The stereotypical "one parent at home while the other is the breadwinner" family is no longer the norm. Roughly 60 to 80% of children are living in homes where both parents work full time. As a result, the old stereotype that there is a parent who performs as the "primary residential parent" has disappeared, and there is a recognition that, although there has not been achieved across the board a 50/50 division of parenting tasks, more and more of the responsibility is being shared.



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As before, the statute sets forth specific factors that the court has to look at in determining the Parenting Plan and the timesharing. However, a major change is that the factors now tend to look at how the family will operate after the entry of the final judgment as opposed to how the family was operating before the parties separated. The expansion of the statutory factors in this area is critical as it now allows parents who, historically, were not able to provide day to day care for the children due to their commitments as a breadwinner to be able to adjust their lives to provide for the division of responsibilities involving the children after a divorce.

In sum, it is a "Brave New World" with regard to the issue of parenting and divorces. Since the statute is so new, there are no cases which have interpreted the significant changes to the statute. Make sure that any attorney you utilize with regard to the determination of parenting responsibilities is experienced and well-versed in these changes to the statute and has the requisite background in family law litigation to enable him or her to give you the best advice as to how to proceed in this critical area.

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