

By: Andrea L. Johnson, Esq.

January 18, 2010

Focusing on the children...the children of divorce.

Much to some parents dismay we have a new structure in place in Florida that addresses all parenting issues in divorce with a detailed parenting plan, reference to timesharing between parents and an even more detailed statute. Check out the factors that a Florida Family law Judge will review in determining parental responsibility, a parenting plan and timesharing:

The pertinent portion of *Florida Statutes* § 61.13 (3) reads as follows:

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

To see the Statute in its entirety or any Florida Statute for that matter please visit www.leg.state.fl.us/

Though lengthy, the legislature is **determined** to force parents to focus on their children and to **“get real”** about equal and fair timesharing for both parents, as long as, it is in the child's best interest. The **“get real”** factor is a reference to some parents desire to have “primary custody” or “sole custody” (which are references that have been removed from Florida Statutes) simply because the view their ex as having a character flaw, not being an adequate caretaker, not doing laundry as often as they should, having a new girlfriend/boyfriend, or the litany of excuses that I hear to justify why timesharing should be limited for an ex.

Now that's not to say that there are not situations that warrant keeping the child safe where there is physical or sexual abuse, addiction and the like, but I will save that article for another time. The **“get real”** factor is also a reference to the majority of cases I see where there is no abuse, addiction or neglect and no true detriment to the child, just simply one parent's severe dislike of the other. Setting aside this

dislike and contempt for one another is critical in developing a healthy timesharing and parenting plan for both parents and the minor child.

Right out of the gate, look at subsection FSA § 61.13 (3)(a) – “The demonstrated capacity and disposition of each parent to **facilitate and encourage a close and continuing parent-child relationship**, to honor the time-sharing schedule, and **to be reasonable when changes are required.**” This is good stuff. When I have a high conflict divorce with children or a high conflict paternity matter, I am always sure to pass a copy of the statute along to my client to make sure that they are familiar with this section, as even though it seems lofty and ambiguous, this section can be critical in a Judge’s decision making.

Then in Subsection (c) again the legislature hits on this critical area: FSA § 61.13 (3)(c) – “The **demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.**”

Again, it is this lofty consideration that is sometimes difficult for parents of divorce to wrap their brain around. And that’s not to say that the parents aren’t intelligent, caring and thoughtful individuals. But sadly, when it comes to divorce sometimes reasonableness and understanding go out the window. As you can see from the other factors, most of them are straightforward and easy to determine (i.e.: schedule feasibility, geography, school, consistency, substance abuse, domestic violence, health, etc.)

So how does a Court determine if a parent is meeting the obligations of subsection a, c, l & r? While I cannot speak for the Court, it is my experience that in reviewing the other factors it becomes obvious which parent is able to do these things. It is usually painfully obvious when one parent wishes to control timesharing and other aspects of the child’s life, even if they attempt to sound reasonable. If the client cannot push aside the anger for the ex and they are using the child as a controlling piece of the puzzle, it usually comes through on even a basic question about bedtime, drop off time or homework.

When I represent a parent that is struggling with this (make no mistake, it is both men and women) and I am worried that their behavior may be harmful to the child, and that the Judge will look poorly on them for being in a controlling or unreasonable posture, I will usually refer them to a mental health professional or refer them to certain articles and books that can help them understand that their behavior will only 1) harm their child and/or 2) harm their chances of a Judge awarding them fair and reasonable timesharing.

Just remember...if there are children involved in the divorce...the focus of all considerations and all the positive energy you can muster must be on them.

If you have a specific question related to the factors stated above and how they might affect your specific circumstances please feel free to contact me. The above commentary is based solely upon my opinion and knowledge from the cases I have handled over the years. Should you require a legal opinion or if you need advice on a particular situation please be sure to contact either myself or another family lawyer to discuss your specific situation.