

PATERNITY AND RIGHTS TO TIMESHARING

By K. Dean Kantaras and Jennifer H. Cavill

IF A PETITION TO ESTABLISH Paternity has been filed, requesting that the Court adjudicate temporary and permanent timesharing with the child, among other things, first, Paternity of the child must be established; then, the most important consideration will be the best interest of the child. The Court must then decide if the child is to spend a majority of the time with its Mother, its Father, or if time should be shared equally.

To establish Paternity prior to a trial, both parties can acknowledge and agree that the Putative Father is the natural and biological Father of the child, or the parties can stipulate to the entry of a Bifurcated Final Judgment that adjudicates the Putative Father as the natural and biological Father of the child, thereby establishing the Father's legal rights to the child, but reserving jurisdiction to later address the other issues such as timesharing and child support. Once that Bifurcated Final Judgment is entered by the Court, both parties have equal rights and responsibilities of child rearing and Florida Statute 61.13 indicates that there is no presumption for or against the Father or Mother or for a timesharing schedule.

If the parties do not stipulate to a Bifurcated Final Judgment, but both parties acknowledged in their pleadings that the Putative Father is the Biological Father, then either party may move for Summary Judgment on the issue. Depending on the pleadings, there would be no justiciable issue of the fact that the Putative Father is the Biological Father of the minor child. If granted, the parties would then have equal rights and responsibilities for the rearing of the child.

However, in the event the child's paternity is questioned by either party, pursuant to Florida Statute 742.12, either party may file a Motion with the Court requesting a paternity test. A paternity test may also be ordered pursuant to the Court's own Motion. Regardless of who requested the paternity test, it must be



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conducted by a qualified testing facility and the results must be filed with the Court. Any objection to the test results must be filed with the Court at least 10 days prior to the paternity hearing. See the full text of Florida Statute 742.12 for more information regarding paternity testing.

Importantly, Florida Statute 744.301(1) states that the Mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise. For the Putative Father, this means that he has no legal right to timesharing with the child until the Court enters an order stating otherwise. However, that does not mean it is not in the child's best interest

to spend time with the Father until ordered by the Court, or that the Mother should deny timesharing with the Father simply because the Court has not yet held a hearing on timesharing. In fact, the Court will consider both parties' demonstrated capacity and disposition to facilitate and encourage a close and continuing relationship between the child and other parent, among other factors set forth in Florida Statute 61.13, when determining a timesharing schedule that is in the child's best interest. Ultimately, both parties should consider the best interest of the child, the importance of a child's bond with both parents and the quality time desired with each parent, regardless of whether the court has yet ruled. ■■■

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