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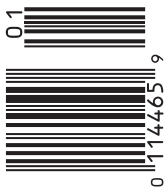
MAGAZINE TM

Tampa Bay Magazine



January / February 2014

\$3.95
January/February 2014



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CHILD EMERGENCIES IN FAMILY LAW

By K. Dean Kantaras and Jennifer H. Cavill

WHAT A PARENT CONSIDERS a child related emergency in family law is not always the same as what the Court considers an emergency. While a parent may consider the other parent's failure to return the child to the parent after timesharing; the failure of a parent to cooperate in registering the child in a particular school or extracurricular activity; or moving a child to another state without notifying the other parent to all be emergencies that require immediate action, a Court may not.

All of the above-described circumstances are stressful and traumatic for the parent, but the Court will not necessarily consider them an emergency without something more. Generally, for the Court to consider a matter an emergency, there must be a possibility of physical harm to the child or the removal of the child from the state. See *Loudermilk v. Loudermilk*, 693 So.2d 666 (Fla. 2nd DCA 1997). This does not prevent a parent from filing a motion to address the above circumstances; this just means that it will not be set for hearing as an emergency, but will instead be calendared in the same manner as all other non-emergency matters.

Both parties have a due process right to a notice of hearing and the opportunity to be heard. Typically, when an emergency hearing is scheduled, it is done so with very short notice to the other party and, in turn, very little time to prepare for the hearing, if any. If the matter being heard is not a true emergency, i.e. where the child is in harms way or will be removed from Florida, the lack of reasonable notice of the hearing deprives the other party their constitutional due process rights. Accordingly, true emergencies in family law matters are usually limited to those cases in which a child's physical safety is at risk.



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Unfortunately, there are some circumstances in which an ex parte emergency motion might be necessary. This is where an emergency motion is filed without any notice to the other party. Circumstances warranting an ex parte motion exist if the child's physical safety is at risk if the other parent learns of the motion. This can occur if the child may be harmed in any way if the other parent has notice of the requested relief. If so, the Court may hear the matter on an ex parte basis and provide notice to the party after the Order is entered. If the Court does grant a parent's ex parte motion and temporarily modifies timesharing, the Court should soon thereafter schedule another hearing which allows both parents notice and an opportunity to be heard on the matter. This will better provide the Court with more evidence for which the ex parte emergency order was entered. See *Wilson v. Roseberry*, 669 So.2d 1152 (Fla. 5th DCA 1996). Failure to schedule another hearing after the entry

of the ex parte emergency order could result in the order being reversed upon appeal.

If a matter does not qualify as an emergency, but requires attention from the Court as soon as possible, one could file an expedited motion. Titling a motion as expedited informs the Court of your desire to have a hearing as soon as possible, without it being deemed an emergency. However, expedited Motions should be limited to circumstances which truly do require accelerated attention. Another useful tool is a case management conference. This is a conference, not a hearing, which will allow the Court and all parties to get on the same page for the required "next steps" in the case. ■■■

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