

CONSIDER THE CHILDREN FIRST

By K. Dean Kantaras

THE HOLIDAY SEASON, FROM Thanksgiving through New Years, should be a joyous, family-oriented time. For most of us, it is. For many, it is anything but. Since visitation issues arising out of divorce cases have historically been one of the most troubling and frustrating facets of divorce law, judges and lawyers alike have sought ways to minimize the conflicts and resolve the problems. It seems that no matter what is suggested, there remains a certain percentage of people who are bound and determined to be controlling. One of the most effective ways to achieve control, for some, is through the children. Worst of all, it works.

Fortunately, the vast majority of parents who have been through a divorce act reasonably responsible when it comes to their children. They appreciate the position in which children of divorce are put and that life is not easy for them. It is difficult enough when the family lives in close proximity to each other. However, when parents live in different states, the logistics and the problems obviously increase. Most work out the details. Some can't, or won't.

So, what happens when the parents don't cooperate with each other? The obvious answer is that some parents and some children miss out on the opportunity to be with each other. More than that, they each lose a portion of the parent-child relationship. Courts have said that the right of a parent to the love and companionship of children is so established in the law that it is older than the law itself. Unfortunately, some parents have said, "So what!" or "Too bad!" So it is that during these holiday times, lawyers are flooded with calls from old and new clients because visitation is being denied. The reasons are multiple. They vary from,



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the other parent is abusing the child to "My child just doesn't want to go with you," or "We've had to change our plans, and my child prefers to be with us."

When there is cooperation between the parents, changes in plans are usually worked out, and some substitute visitation arrangement is agreed upon. When there is no cooperation between the parents, the situation often becomes unsolvable. At times, there is no good solution for the immediate problem. There is always the remedy of filing appropriate motions with the court. If there is enough lead time, a hearing can be obtained, and the judge will enter what is more or less an appropriate order. At least the order will resolve the immediate conflict.

Often though, the crisis occurs at the very last moment. For example, the custodial parent calls the night before a child is

supposed to be on a plane and tells the visiting parent that the child isn't coming. There is no immediate solution to that scenario. The remedy has to be after the fact. But, there is a remedy long term. There are situations where the custodial parent is disparaging the visiting parent. Sooner or later the child will begin to rebel against visitation. Often the visiting parent has no idea why. However, eventually, it will come out. In those cases, lawyers representing parents who are claimed to be alienating the children should be aware of Florida cases which require parents to foster a close relationship between the children and the visiting parent. Those clients should be advised that they are putting themselves at risk of being held in contempt or, worse, having custody changed to the other parent.

Sometimes counseling can help. Sometimes it doesn't. No matter what, parents should always consider their children first, as a child is entitled to the love, affection and companionship with both parents, no matter what they may think of each other. ❏

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