

# **"Which Parent Should Get Custody of the Children?" How the Custodial Parent Is Selected**

**By Charles Greenly – Straight Divorce Attorney**

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Rarely does anything cause as much contention as child custody cases. Because custody of minor children (under 18 years of age) often presents major issues, after the divorce, custody of the minor children may have to be divided between the spouses. That division could result in anything from 60/40 time-sharing to a 50/50 time-sharing, to only weekends and summer vacations. If the couple cannot agree on the custodial parent, the court will order a shared arrangement that is appropriate for the children.

## **The Primary Caretaker**

In custody cases, the primary caretaker becomes an important factor, as the bond between a child and his or her primary caretaker is critical to the child's successful passage through developmental states. Psychologists strongly encourage the continuation of the "primary caretaker"- child relationship after divorce, as they believe it is vital to the child's stability. When determining which parent has been the primary caretaker, courts focus on direct care-taking responsibilities, which include grooming, dressing, meal planning, health arrangements and teaching of various skills.

## **When the Court Makes the Decision**

While many couples are happy to be ending their marriages, they are in great stress about losing the day-to-day enjoyment of their children. In fact, custody and visitation rights are the most stressful part of a divorce. If parents are able to come to terms regarding visitation and custody, a court generally honors the custody agreement. But if custody is disputed, the courts will determine child custody. In the majority of cases, one parent is usually preferred over another but the reasons vary from case to case. When a court makes the decision as to which parent should have custody, it's usually based on factors that include moral fitness, the child's preference if over 12 years of age, the child's age, the child's health and other factors. And although courts are not supposed to assume that a child is automatically better off with the mother or father, according to the American Bar Association, the father becomes custodial parent in only 16% of child-custody cases, in the United States. This calculation is based on the U.S. Census Bureau figures. And while rules vary from state to state, the court always has the child's best interests at heart.

## **What Do Courts Consider?**

To determine what is best, the court will address physical custody, day-to-day care, legal custody and legal rights regarding the child's upbringing. Very often courts presume that children of tender years will be better off when placed with the female parent. Tender years usually means from birth to about 7 or 8 years. In most cases, when children are young, the mother usually wins custody, which triggers many male custody battles. And while not a typical outcome, in some cases when the arrangement is not disputed, an agreement can be made between husband and wife where the husband gets custody, but the wife still has liberal visitation and other rights.

## **Can A Child Custody Decision be Change?**

Today, courts in general favor shared child rearing, but they also take into account where it is most practical for the child to live and where the child will flourish. But if couples have problems with visitation rights, the court intervenes and allows visitation schedules to the non-custodial parent visitation one night a week, every other weekend, some portion of school nights and summer holidays. The only time a parent can change court ordered custody is if they show a significant adjustment to their circumstances. In some states, the only time a court will even consider modifying custody is if the child is in danger. If a non-custodial parent has a history of violent or destructive behavior toward the child, the court often requires that visitation between that parent and child only occurs with supervision and the court that ordered the supervised visitation must approve of the adult chosen to supervise. Because some parents try to get rulings changed by moving to another state, some states only look at custody amendments if the child has lived in the state for at least six months or longer.

### **About the Lawyers at Straight Divorce**

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