

# Custody Battles and the Best Interest of the Child

By Margaret H. Oliver, Esquire, of Hodes, Pessin and Katz, P.A.

“I just married Andrew. Both of us had been married before, and we had children from our first marriages. A couple of months before our wedding, we began including our children in some of our activities. The kids were great! Before the wedding, Andrew’s ex-wife began calling when his children were with us. She wanted to know everything that we were planning, asked to speak with the children, and often hung up if I answered the telephone. Since our wedding, matters involving his ex-wife have caused tension between us. What can I do?”

Every year, more than one million couples become divorced in the United States and most of those divorces involve children. Custody and visitation disputes between parents are one of the most difficult



later issue.) In Maryland, a parent’s right may only be limited when a parent has been shown to be unfit or there are exceptional circumstances that allow the court to intervene.

When parents separate, the court’s primary responsibility is addressing the child’s best interests. The child’s interests have priority over those of the often-times competing adults, because the child is usually the most vulnerable during the break-up, and therefore, in need of


the court’s protection. The court considers many factors when determining the child’s best interests. Those factors include, among others: the fitness of the parents; the character and reputation of the parents; potential for maintaining family relations; material opportunities affecting the child; where the parents live; evidence of abuse; and the age, health and sex of the child.

When applying these factors, the court has significant discretion and often relies on its own value judgments, parenting philosophies, and childrearing theories. In contested cases, the unpredictable outcome encourages strategic and manipulative behavior by the parents in an attempt to persuade the court to rule in their favor. Despite efforts to protect children, the law inadvertently places parents in adversarial roles. Parents may try to influence the child, the child’s teachers, and others to see the other parent in a negative light. False allegations involving child abuse or assault may be filed by one parent against the other to influence the court. Experts are often called to strengthen one parent’s case against the other. The child becomes a pawn in the battle to win.

The law in divorce only allows the court to solve the immediate issue of custody. Parents, however, can work together to reach agreements that provide for the child’s ongoing need for stability. Parenting plans should anticipate the child’s future needs, possible disruptions, and provide a process for defusing and resolving conflict. Some jurisdictions offer services that inform and educate the parents about the risks of divorce to children and

what steps they might take to reduce those risks. These services include parenting classes, family counseling, and classes for the children. Some even advocate that stepparents be included in counseling, parenting classes, and mediation.

A family law attorney can provide advocacy and guidance as you choose how to proceed. Gathering information regarding the child, any agreements between the parents regarding the child, the communication and decision-making pattern of the parents during the marriage, relationships with extended family, and any recent changes that may have caused a bread-down in communication will assist in determining which path to take.

Courts encourage parents to work together to reach resolutions that are in their child’s best interests. Parents are advised to communicate directly with each other in an effort to reach a resolution and avoid the use of third parties. When parents are unable to do so, the court will use its discretion and decide what it determines to be in the child’s best interests. 

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aspects of domestic law, and usually those disputes do not end with the divorce. One out of every three children will become a stepchild before they reach eighteen. The modern step family is complex.

Maryland law treats stepparents in most cases as interested third parties with no legal rights regarding the stepchildren. Societal deference to birth parents is significant. A child’s birth parents have comprehensive authority to make decisions for their children, because they are deemed to be looking out for their children’s best interests. In actuality, children are often cared for by adults other than their birth parents. These adults include stepparents, grandparents, parental partners, daycare providers, and friends. Traditionally, parenthood is an all-or-nothing status. A child can have only one mother and only one father, although this fact is changing with the increasing numbers of adoptions by same-sex couples. (We will discuss this further in a

From our Columbia office in Howard County Maryland

## Margaret H. Oliver, Esq.

and the Family Law Team at Hodes, Pessin & Katz, P.A. are ready to assist you with all of your domestic legal issues. From divorce to custody disputes to delinquent child support payments, HPK’s attorneys have the experience to resolve the issues and to help their clients rebuild their lives and the lives of their families.

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