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4 Mistakes Often Made During a Child Custody Battle

When two parents separate and they are unable to work out a mutually agreeable parenting plan for their family, they have no alternative but to go to Court seeking a child custody order. When that happens, the parents are putting the decision of their children's future into the hands of a family law judge who must now decide what plan will be in the best interest of the children.

As one can imagine, such a determination is very difficult for the judge. Faced with allegations from each parent about how the other is unfit or neglectful, the judge must consider the evidence before him or her and come to a conclusion without having any actual firsthand personal knowledge or prior relationship with either parent or the children. To aid in their analysis, family law courts will often appoint child custody evaluators to assess each party's claims and to come up with a recommended custodial plan.

Unfortunately, it is all too common that good parents end up being classified as unfit or neglectful based upon the following four simple and avoidable mistakes that are often made by parents who are in the midst of a child custody battle:

1. Getting Arrested

One of the clearest ways in which a custody litigant can show a family law judge that he or she is not a fit parent is by getting arrested while the custody dispute is pending. If a parent is arrested for a violent crime, even if they are not convicted or charged, they provide the other parent with ammunition to claim that the arrested parent has an anger management problem or propensity for violence. Such a finding by the judge will almost ensure that the parent will not be permitted to have unsupervised custodial time with the children.

In turn, if there are allegations of alcohol and/or substance abuse, then a parent's arrest for a DUI/DWI or possession of narcotics will almost certainly confirm the allegation. And, if any of the children are present in the vehicle while the parent is driving while under the influence or in possession of the narcotics, then the violating parent's chances of prevailing in the custody battle are lost.

2. Disobeying the Court's Temporary Custody Orders

A common approach by the Court is to issue temporary interim custody orders at the onset of a divorce or paternity action, which will remain in place until there is a trial. Such interim orders can govern the physical timeshare of the children between the parties, the decision-making power of each parent, and other custody issues.

One of the worst mistakes that can be made by a parent is to disobey or disregard the Court's temporary orders. For example, a parent may fail to return the children by a specific time on a specific day. Or, a parent may remove the children from the state without permission of the other party or a court order allowing such removal. In either case, the other party will undoubtedly bring the matter to the Court's attention to show that the violating parent does not respect the Court's authority. Such a message is not well-taken by family law judges and will undoubtedly have an impact on their final decision.

3. Displaying Poor Judgment on Social Media

All too often, parents will turn to social media while in the midst of a custody battle to vent their frustrations, denigrate the other parent, or even just show their friends all of the fun they are having in their newly-single life. However, social media is "social" and is not private. Often, the information and images posted on social media are available to the entire general public (which includes the other parent and his or her attorney).

Some of the best evidence of a parent having a substance abuse or alcohol problem can be provided through a "selfie" of the parent looking visibly intoxicated or in the act of using drugs. Furthermore, any posts in which the parent speaks poorly of the other parent, the other attorney, and/or the judge provide excellent ammunition to be used in court.

A good rule of thumb when it comes to social media is to never post something on social media that you would not be comfortable having a judge read or display in open court.

4. Refusing to Reasonably Communicate and Co-Parent with the Other Party

The fourth most common mistake occurs when a parent in the midst of a child custody battle refuses to communicate with or co-parent with the other parent. If parents can not agree on joint legal custody, then the judge may look to see if one parent should have sole decision-making authority due to the other's refusal or inability to co-parent.

If that is the case, then a parent who refuses to communicate with the other about the children runs the risk of being deemed the “problem” parent who should not be given a say in the important legal custody decisions pertaining to the children.

The best course of action for a parent is to present him or herself as a cooperative and reasonable adult who is trying his or her best to work with the other parent, to maintain an open line of communication regarding the children, and to maintain an air of cooperation when it comes to making decisions about the children’s well- being.