SHARED PARENTING TIME IN DUAL INCOME FAMILIES

As working parents’ roles in the lives of their children evolve with the demands of the modern economy, so too do their parental rights as divorced parents.

Traditionally, a child’s custodial parent would be the primary residential parent and child support recipient and the non-custodial parent would pay child support and be granted “visitation.” Those of us raised in the 1970’s and 80’s remember the “one evening per week and every other weekend” schedule as the de facto visitation for all the divorced fathers we knew. Expanded parenting time, or even joint legal custody (the right to an equal say in the major decisions affecting a child’s life), were reserved for the most amicable of divorced parents.

Oh how times have changed. In today’s negotiations, more non-custodial parents are asking to expand their weekends to include Thursdays and/or Mondays, so that they too can participate in the children’s school routine, whether that be helping with homework, packing lunches, or just staying involved in the day-to-day lives of their children. Overnights on school nights, extended weekends and the like are much more prevalent today than in the past.

Our traditional model of parenting time was predicated on the notion that most families were single income earning families. Mom was staying home with the kids and Dad was out working 9:00 to 5:00 Monday through Friday. That is not the world we live in anymore, and our parenting schedules are reflecting that trend. In today’s economy, two income earner households are the norm and more married parents divide responsibilities for the children. If the parents in dual income families divorce, the allocation of shared responsibilities established during the marriage may lend itself to a shared parenting time schedule post-divorce.

But shared parenting time is not a given for even dual income families. It takes the highest degree of cooperation and trust between the divorced parties to make shared parenting time work. First, the parents must live in the same school district so as to have immediate access to schools, extracurricular activities and the like. Second, both parents need to share in the logistical obligations necessary to maintain such a schedule. If one parent travels for work every week, or works long burdensome hours, he or she may not be consistently available to do his or her share of the school pickups and drop offs. Working spouses must be flexible in their work schedules and make sacrifices in order for a shared parenting time schedule to work effectively.

Third, effective communication and coordination between the divorced parents is a must. With the children splitting their time between two homes, cooperation in getting homework done and coordination of transportation responsibilities is essential. Inevitably, emergencies will arise when a parent is stuck at the office and the other must fill in, even though it may not be his or her scheduled time. The failure to effectively cooperate and coordinate in a shared parenting time schedule will harm the children first and foremost.

Importantly, a parent should not use a shared parenting schedule as a basis to...
Today, people are marrying later and later in life. In 1950, the average age of a groom was 23 years old while the average age of the blushing bride was 20. Today, on average, a man marries for the first time at the age of 28 and a woman marries for the first time at the age of 26. Often at this stage in their respective lives, each party has obtained a higher education degree, started his or her career, put a small nest egg in the bank, and purchased a home. Alternatively, parties are entering into their second or third marriages having each accumulated substantial wealth and property.

Many people would probably assume that a home purchased prior to the marriage in the sole name of one of the parties is non-marital property that will not be divisible should the parties separate. Not so, the First District Appellate Court recently held in *In re Marriage of Weisman*, 2011 Ill App (1st) 101856-U.

In *IRMO Weisman*, the parties, Larry and Lauren, became engaged in January 1997. Lauren began looking for a house in which they and their respective children from previous marriages could live. Within 10 days of the parties’ engagement, Lauren found a home she liked. She worked with the architect to redesign almost every room to accommodate their family. Larry invested $1.272 million of his nonmarital funds into the property, closed on it, and titled it in his name only. In March or April of 1997, Lauren and her children moved into the home Larry was living in while the marital residence was being constructed. The parties were married in June 1997. In October 1997, Lauren and her children moved into the marital residence and Larry moved in full-time sometime in 1998. In 2006, Larry filed a Petition for Dissolution of Marriage. The trial court found that the marital residence was Larry’s nonmarital property and Lauren appealed.

The appellate court reversed. The court reiterated the well-accepted rule that property acquired before marriage is generally not considered marital property unless it was acquired “in contemplation of marriage.” In determining whether property was acquired in contemplation of marriage, a court examines the totality of circumstances to discover the parties’ intent, including the source of funds used to acquire the property, the identity of the person who signed the contract, the amount of time between the purchase and the marriage, and the name in which the title was held.

In applying these factors to *IRMO Weisman*, the court found that the house was purchased with the idea that it would be the marital residence, both parties had been looking for houses and had viewed the marital residence together, Lauren made changes to the design of the house to accommodate the parties’ children, and the parties were engaged when they began looking for a house, the house was purchased only three months prior to the marriage. Larry was paying Lauren’s rent at the time of the purchase, and Lauren moved into Larry’s home while the marital residence was being constructed. Therefore, the appellate court found that the marital residence was marital property and divisible between the parties upon their dissolution.

So, how can you avoid having what you believe to be your non-marital residence divided between you and your ex-spouse? If you are not yet married, you and your significant other should enter into a prenuptial agreement specifying who gets what property should the marriage dissolve. If you are already married, you and your spouse can enter into a postnuptial agreement dividing the property.

If you do not wish to enter into any formal agreement, although not guaranteed to bring you success, these tips should help nix the balance in your favor.

- Purchase the home with your non-marital funds and, if possible, continue to pay the mortgage with your non-marital funds after the marriage. Title the home in your name only. Do not imply to your significant other that you will jointly own the home.

- Often times, the largest single investment any person will make is his or her house – protect your investment!

**SHARED PARENTING TIMES IN DUAL INCOME FAMILIES** *(Continued from cover)*

avoid the obligation to pay child support. Custodial and financial rights and obligations are not tied together under the law, and the designation of a custodial (i.e. child support recipient) parent is predicated on a variety of facts that do not necessarily include the allocation of parenting time between the parents. Too many non-custodial parents attempt to leverage parenting time against their obligation to pay child support, and a court will not be receptive to a parent’s argument for shared parenting time if the court believes that parent’s motivation for seeking such shared time is financial.

Extended parenting time allows both parents to remain intimately involved in the daily lives of their children. For those parents who are willing to cooperate and make the necessary concessions to stay involved in the lives of the children, extended parenting time may be possible.
In Illinois, parents have a duty to support their children, including an obligation to provide for their reasonable and necessary physical, mental, and emotional health needs. Generally, courts determine a parent's child support obligation by using set guidelines: a parent of one, two or three children pays 20%, 28%, or 32%, respectively, of her or his net income. “Net income” is broadly defined to include “the total of all income from all sources,” minus particular deductions including state and federal income tax, social security (FICA payments), mandatory retirement contributions, union dues, health/hospitalization insurance premiums, and expenditures for repayment of debts incurred for certain purposes.

Unfortunately, the statute fails to define “income,” itself. The Illinois Supreme Court has defined income as (1) “something that comes in as an increment or addition...a gain or recurrent benefit that is usually measured in money...the value of goods and services received by an individual in a given period of time,” and (2) “[t]he money or other form of payment that one receives, usually periodically, from employment, business, investments, royalties, gifts and the like.” Courts nonetheless continue to wrestle with the practical application of the definition. For example, two courts held that disbursements received from an individual’s IRA account are properly deemed income at the time those disbursements are paid, regardless of whether those funds were awarded to the individual as part of a property settlement upon dissolution of marriage. A third court disagreed, noting that IRA’s are ordinarily self-funded and thus comparable to savings accounts: Only the interest and/or appreciation earnings from the IRA represent a gain (income).

Recently, the ambiguity and controversy inherent in the definition of “income” has expanded. In June 2011, the Illinois Court of Appeals held in In re Marriage of McGrath that “regularly liquidated assets used to fund expenses,” including an individual’s withdrawals from her or his savings accounts, may constitute income for the purpose of calculating that individual’s child support obligation. The court arrived at this conclusion when an ex-wife petitioned for child support from her former spouse, who was unemployed and lived off of assets that had been awarded to him in the dissolution proceeding. Each month, the ex-husband drew approximately $8,500 from his savings accounts to defray his expenses. Based on that amount, the trial court ordered the ex-husband to pay $2,000 per month as child support.

The Court did not specify the repercussions that would have attached had the ex-husband drawn irregular amounts or only sporadically made withdrawals. More importantly, while the McGrath court included within the definition of income only regularly liquidated assets used to fund expenses, the child support statute refers to the total of all income—not merely all regular income. In calculating net income for purposes of child support, courts have counted, for example, gifts from parents or an employee’s bonus in a single year, regardless of whether such benefits were certain to be received in the future, because the statute provides no deduction for nonrecurring income. McGrath now introduces the possibility that the proceeds of any liquidated asset represent income. In effect, McGrath’s holding proposes to base the calculation of child support on an individual’s net wealth, rather than on that individual’s net income.

Accordingly, it is important to note that monies withdrawn from an IRA or a savings account may be used as a basis for calculating child support.
Schiller DuCanto & Fleck LLP was recognized by U.S. News & World Report - Best Lawyers® in its 2011-2012 list of “Best Law Firms” as a First-Tier Family Law Firm.

Arnold B. Stein was recognized in the “Top 10 - Family” lawyers listing by the Leading Lawyers Network. Mr. Stein was also profiled in the October 2011 Consumer Edition of Leading Lawyers Magazine.

Karen Pinkert-Lieb, Tanya J. Stanish and Anita M. Ventrelli were listed in the “Top 50 Women Consumer” lawyers listing by the Leading Lawyers Network.

Carlton R. Marcyan, Jane D. Waller, Neal A. Simon and Joshua M. Jackson were recognized by the Lake County Bar Association for their Pro Bono work in the 2011 Volunteer Lawyers Program.

Timothy M. Daw became president of the board of directors of Court Appointed Special Advocates (CASA) of DuPage.

Dorothy A. Voigt was awarded a Master of Laws Degree, with honors, in Employee Benefits from The John Marshall Law School on January 15, 2012.

Karen Pinkert-Lieb was selected as a Woman Leader by Legal Balance, an online community of women attorneys.

Anita M. Ventrelli will be speaking at the American Bar Association Section of Family Law Spring Continuing Legal Education conference in Miami Beach, Florida on the topic “How to Impress Judges: Analytical Steps to a Well Organized, Concise and Engaging Trial.” The conference is April 18-21, 2012.

Jason N. Sposeep spoke on “Collaborative Law as a Form of Alternative Dispute Resolution” to the Chicago Bar Association Young Lawyers Section on January 25, 2012.

Tanya J. Stanish spoke about prenuptial agreements at the 3rd Annual “Meet the Experts” bride event at the Chicago venue Room 1520 on January 19, 2012.


Thomas F. Villanti and Evan D. Whitfield write a monthly column on family law issues pertaining to professional athletes for the Chicago Daily Law Bulletin.

Shannon R. Burke taught Appellate Advocacy at DePaul Law School during the Fall 2011 semester.

Benjamin S. Mackoff, was invited to participate as a judge at the international mediation competition held at BPP Law School in London, England.

PREVIOUS EVENTS

Karen Pinkert-Lieb, Co-Editor / Shannon R. Burke, Co-Editor / David Young, Layout/Design


Meighan A. Harmon spoke at the Chicago Estate Planning Council on the topic "Five Things Trusted Advisors Need to Know About Divorce" on December 15, 2011.

Anita M. Ventrelli spoke at the Evidence Boot Camp Webinar on December 7, 2011.

Karen Pinkert-Lieb moderated a panel discussion on “Prenuptial Agreements: Drafting and Analysis for Family Law and Estate Planning” at Illinois Institute for Continuing Legal Education on November 18, 2011.

David H. Hopkins and Erika N. Walsh spoke to the DuPage County Bar Association Family Law Section on the topic of “Fee Issues in Family Law Cases” on November 15, 2011.

Claire R. McKenzie and Neal A. Simon presented “Ten Apps in Ten Minutes” to the American Academy of Matrimonial Lawyers on November 5, 2011.

David H. Hopkins spoke on the topic “Making the Most of Your Legal Career in Family Law” on November 2, 2011. Eric R. Pfanenstiel, Vice-Chair of the Domestic Relations Committee, was a moderator.

Burton S. Hochberg spoke at the Chicago Bar Association on the topic “Welfare of Pets in Dissolution Cases” on October 20, 2011.