

# legal lines

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Lawyers

## Married (or not)...with Children

By Bob Wrigley and Dan Moore

In an earlier issue we explored the rights and responsibilities of children. (A reprint of that article is available upon request.) This time, we are looking at the rights and responsibilities of parents and how these may impact on family members or others who may find themselves in short or long term caregiving rolls for others' offspring.

Because the law treats them differently, we must look at three parent/child relationships: The first is the traditional husband and wife who have brought a child into the world, and are "married with children" or at least a child. The second situation began like the first, but is now a broken marriage. The third should probably be divided into two subgroups. In both cases the parents' relationship lacks the sanction of marriage. In the first subgroup, it may look for all the world like the first category - married with children. The second subgroup most often involves a man and woman who, through a very temporary liaison, have brought a child into the world.

► In the traditional family, the first category above, the complete care and control of children rests with the parents. The law presumes that such parents have the complete interest of each of their children at heart and that they will take whatever action is necessary, within their capabilities, to see to the nurture of their children. It is further presumed that this common interest will lead them to accord in making decisions as to the development of each of their children.

► This presumed accord may not always be present. The lack of it may be either a primary or secondary cause of what becomes our second category - the broken marriage. The discord can run from the child's duties in the family, whether love is to be tough or tender on to religious or other moral upbringing. The opportunities for discord increase as the child grows older and the sphere of peers broadens. These can lead to open hostility between the mother and father which not only adversely affects the child but also confounds and sometimes places in the middle other family members such as grandparents, aunts or uncles who may be involved in some caregiving of the child.

You can see how the first category - married with children - can thus slowly slide, or sometimes quickly

hurtle toward the second category which is normally proclaimed through a judgment of dissolution of the marriage. The dissolution order will usually provide the relative rights of the mother and father concerning custody and nurturing and financial support responsibilities as to the children of the marriage. Both parents and any other persons who perform any caregiving functions for a child of a dissolved marriage should be fully aware of the provisions of the judgment of dissolution as to that child's custody and recognize and follow those orders unless and until they are modified by the court.

The court order may include a joint parenting agreement. This could muddy the waters for a part-time caregiving grandparent, aunt or uncle (or even an unrelated caregiver) of a child who is the subject of a joint parenting agreement. In the event of a dispute between such parents, the judgment order which authorized the arrangement should provide how such disputes will be resolved. Of course, where one parent has been given full custody and control (subject to reasonable visitation rights) the

helping caregiver should follow only the custodial parent's directions. Visitation rights can also become a problem for the child's caregiver assisting the custodial parent. To minimize

this, such a caregiver should demand that the custodial parent never put him or her in a position of either restricting or aiding the exercise of visitation rights.

Normally a joint parenting agreement under court order provides who the primary caregiver of the child will be and that parent in most cases would have superior right as to the decisions involving health, education and welfare of the child. In some joint custody orders, the actual care and responsibility for the child may be expressly divided up between the parents.

► The rules change if the mother and father are not married to each other when a child is born to them. Even if they jointly declare the man is the father and his name is on the birth certificate, the father's relationship to the child is not established. To establish that relationship and the father's right to custody and control, along with the child's mother, a formal declaration must be made under the rules of the Illinois Department of Vital Records or a

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paternity action brought in court. Even then, the father's only rights would be those granted him by the court order in the paternity action. As with the marriage dissolution, any caregiving family member or non-related caregiver must look to the terms of the court order to be certain who has what authority over the child's custody and control.

Regardless of marriage, or whether divorce has occurred, custody rights can be altered by the court where a child is abused or neglected. When the Court is petitioned by the Department of Children and Family Services, or by one parent against the other, the court may change custody, for the best interests of the child. If neither parent is found fit, DCFS may get custody. Again, anyone in a caregiver relationship to such child must be aware of and follow the court's order.

Whether it is the well-meaning mother and father, working together for the nurture of their child, regardless of whether there has been a marriage, or it is a court called upon to alter the natural parental custodial rights, in a marriage dissolution proceeding, a guardianship or adoption proceeding, a paternity suit or an abuse or neglect case, the over-riding concern is always to be what is in the best interest of the child. This standard sounds plain and simple and states a goal seemingly beyond argument. Yet, finding what is truly in a child's best interest, in any of these situations - from a mother and father agonizing over a young teenager's plea for some new freedom or a court's deliberation over the state's request to remove a child from his or her parents, is not an easy matter.

It may not take a village to raise a child, but it does take caring parents or other dependable caregivers. If this support system breaks down, the "village" - represented by our legal system - comes into play. Although children are the primary responsibility of their parents, in the end we're all responsible to them. *They are our future!*

## A HEADS UP FOR PARENTS OF MINORS

The lead article in this issue of Legal Lines brought to mind another important consideration for parents of minor children. Sometimes even the best parents are not available to make important decisions in behalf of their minor children. Take, for example, the case of parents who leave their children with friends or relatives while they take off on a much-needed getaway. Even in this day of cell phones, Fax and e-mail, times arise when we are unavailable when needed. If your child becomes suddenly ill, who is going to authorize his or her care, in your absence?



Two possible solutions can be found in Illinois statutes: First, it is possible under the Powers of Attorney for Health Care Law to say, by special language in your own health care power of attorney, that your agent should have the same authority to make decisions as to your minor children's health care, should you be unable to make those decisions for them. The second way to provide for such emergencies is found in the Guardianship of Minors article of the Probate Act. There it is possible to designate a short-term guardian of a minor child.

Taking one of these important steps before leaving ones children in the care of others, or before parents are, by reason of health difficulties, unable to make decisions for their children is just a common sense part of being good parents.

## New Sanctions on Under 21 Drivers

Effective January 1, 1998 Illinois increased the sanctions on under 21 drivers. Previously, a driver could receive a suspension of her license if she received three moving violations within one year. Now drivers under 21 at the time of arrest will receive a suspension of driver's privileges if they are convicted of two moving violations within two years. This new law may be a surprise to some teens. One way to lessen the impact of the new law is to seek Court supervision which, if successfully completed, avoids having a guilty plea to a moving violation reported to the Illinois Secretary of State. There are complications in receiving court supervision, and it is not always available in all counties. Therefore, employing competent legal representation is always the most prudent course. Our firm provides full service in traffic and DUI law.

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