

FREE LEGAL SEMINAR

ON

**Child Custody & Visitation
in Nevada**

September 2010

A Washoe County Law Library Community Service Program

Speaker: Muriel Skelly, Esq.

Date: Thursday, Sept. 30, 2010

**Location: Washoe County Law Library
75 Court St.- Old Courthouse**

Time: 5:00 – 7:00 PM

*Due to limited space please sign up ahead of time by
contacting the Washoe County Law Library at*

328-3250

CUSTODY AND VISITATION CLINIC

September 30, 2010

Presented by:

Washoe County Law Library

and

Muriel R. Skelly, Esq.

CUSTODY AND VISITATION IN NEVADA

Where to find the Law:

NRS - Nevada Revised Statutes - basic Nevada law enacted by our Legislature

“Case Law” - the Nevada Supreme Court’s interpretation of basic laws in the NRS
found in Nevada Reporter or Pacific Reporter

Cannot read statutes - (laws) - alone

Must read the Nevada Supreme Court’s interpretation of the laws

Must be the most recent Supreme Court’s decisions

The basic law changes somewhat each time the Legislature meets

The Supreme Court changes it’s mind and over-rules its own
prior decisions

Some custody law is different for married parents and unmarried parents

Some is the same

FIRST CONSIDERATION - JURISDICTION

Jurisdiction (authority) for a court to enter or modify (change) a custody order (NRS 125A)

Same for married parents or unmarried parents

For first order - child must be a resident of the State for at least 6 months or,
if under age of 6 months, born in the State

To change (modify) custody order - must be out of the court that entered it

Or

If not out of this court, case must be transferred to this court

(Are emergency circumstances for temporary orders)

ONCE JURISDICTION ESTABLISHED - GO TO THE NEXT STEP
ESTABLISHING CUSTODY AND VISITATION

Kinds of Custody

Joint physical, joint legal

Primary physical, joint legal

Primary physical, sole legal

Sole physical, sole legal (rarely granted)

Many other combinations that can be made and ordered by the Court

NO SUCH THING IN NEVADA AS "FULL CUSTODY"

Two parts to the custody issue and both must be addressed in any documents
(married and unmarried the same)

Physical custody and legal custody and they are different.

Legal custody: Involves the major decisions in a child's life

Education - what school child attends, subjects child takes, etc.

Medical decisions - child's doctor, dentist, etc.

Other kinds of decisions: child care, tattoos, haircuts, ear piercing

Usually parents are granted joint legal custody of the children

Very seldom does one parent get sole legal custody

Physical custody: Involves with whom the child lives and the every day decisions a parent makes when the child is living with them

What a child wears - caution can become a major decision

Joint physical custody means a child shares time with both parents

But does not have to be equal time with the parents

Supreme Court has held that a 60 - 40 shared time is joint physical custody
(Rivero Case)

Primary physical custody means a child lives with one parent over 60% of the time
and visits with the other parent less than 40% of the time

Calculated over the year or even over two years

Nevada a joint legal, joint physical custody preference State (Supreme Court Decisions)
State's policy is that both parents share the responsibility of raising their children
(State policy: NRS 125.460)

Here is where there is a difference in married and unmarried parents and how custody
is viewed by the statutes

UNMARRIED PARENTS:

If paternity not established by court - Mother automatically has primary physical
Once paternity established - share jt. custody just as married parents until further
order of a court

Certain circumstances Father has primary physical custody - 6 weeks abandonment by
mother - leaves in Father's care *with intent not to return*

Father must prove "intent" through paternity action

Procedure to establish paternity - either a private paternity case through lawyer

Or

District Attorney's Office Family Support Unit must help establish (NRS 126.071 (3))

Once paternity established then custody is decided on the same factors as custody is decided for married parents.

MARRIED PARENTS:

Share equally joint physical and joint legal custody of the children until a court order states otherwise (NRS 125.465)

Just living apart does not automatically give one parent "custody" of a child

CUSTODY CASE IS FILED (DIVORCE, SEPARATION, UNMARRIED CUSTODY)

MANDATORY MEDIATION

Some exceptions - have to get permission from the Court to waive

Mediation is confidential - if no agreement reached, cannot testify as to what went on in Mediation

If agreement reached - submitted to the Court and becomes the order of the Court

No mediated agreement - goes to trial and the Court makes the decision

Advantage of coming to an agreement in mediation:

You, as parents make the decisions for your children

Court doesn't know your children but will make the final decisions for them

WHAT COURTS MUST CONSIDER WHEN MAKING A CUSTODY DECISION

BEST INTERESTS OF THE CHILD

Both parents start on an equal plane

Things that shift the balance

BEST INTERESTS OF THE CHILD AS DEFINED IN THE STATUTES

NRS 125.480 whole list of things

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, *among other things*:
1. (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody. (*Children DO NOT get to "choose" which parent they are going to live with.*)
 - (b) Any nomination by a parent or a guardian for the child.
 - (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
 - (d) The level of conflict between the parents.
 - (e) The ability of the parents to cooperate to meet the needs of the child.
 - (f) The mental and physical health of the parents.
 - (g) The physical, developmental and emotional needs of the child.
 - (h) The nature of the relationship of the child with each parent.
 - (i) The ability of the child to maintain a relationship with any sibling.
 - (j) Any history of parental abuse or neglect of the child or a sibling of the child.
 - (k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
 - (l) Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

Domestic violence and the rebuttable presumption against primary or joint physical custody

Must be an evidentiary hearing - just a TPO won't due

Isolated incident ?

Were both parents involved?

Was one arrested?

Misuse of the TPO process

Custody can be granted to someone other than a parent (NRS 125.500)

If neither parent is able or fit to care for child - Court must find

EXCHANGE AND VISITATION

Once custody is established then look at custodial exchange or visitation plan

MUST BE VERY SPECIFIC (NRS 125C.010)

Absolute terms - no "reasonable visitation"

Must address both regular visitation/exchange and holiday visitation/exchange

Time and place where exchange going to take place

Who is going to provide transportation

Leeway for exchange times

Deliberately withholding child from visitation - misdemeanor crime

And civil contempt of court under the divorce or separation or custody order

Non-custodial parent gets make - up time

Reunification plans

Supervised visitation and the Peace Center

MODIFYING CUSTODY AND VISITATION ORDERS

The basis for modifying such orders found in cases from the NV Supreme Court

Primary physical from one parent to the other

OR

Primary physical from one parent to joint physical to both parents

Ellis v. Carucci case from NV Supreme Court in 2007

1. Must be a substantial change of circumstances affecting the welfare of the child
- AND
- 2, Child's best interests are served by the modification (NRS 125.510)

From joint physical to primary physical

Truax v. Truax case from NV Supreme Court in 1994

Best interests of the child

Change of custody cases are not simple.

They are complicated and require a full blown hearing with
Testimony and evidence to support your position

Often sent to mediation first to see if a Parenting Plan can be worked out

RELATIVE VISITATION RIGHTS AND RIGHTS OF OTHERS

(Also known as "Grandparent Rights")

This statute covers grandparents, other relatives, siblings, step-parents, step-siblings

Anyone who has resided with, and has a meaningful relationship with the child
(NRS 125C.050)

Only becomes effective if:

- parents are divorced or separated
- parents have never been legally married and are separated
- parent has legally relinquished their parental rights
- parent has had parental rights legally terminated

IF PARENTS ARE LIVING TOGETHER - THERE ARE NO VISITATION RIGHTS FOR OTHERS

Parents get to choose who has contact with their children if living together

DOMESTIC PARTNERSHIPS

Registered Domestic Partners have same rights and responsibilities to their adopted and natural children as do married parties

A WORD ABOUT CHILD SUPPORT AND CUSTODY

There are formulas for how child support is to be figured and they are based on the physical custody designation - not the legal custody designation

When one parent is the primary physical custodian the formula is in the Statutes

Percentage of non-custodial parent's *gross* income

If non-custodial parent married, spouse's income is not taken into account under the formula

When the parties share joint physical custody the formula is in a case from the Supreme Court

There are basic formulas as set out and then there are deviations that can be considered by the Court that are set out in the Statutes and in case law from the Supreme Ct.

Again, both the law and the cases from the Supreme Court must be read together to figure out the child support

RELOCATION STATUTE NRS 125C.200

The Supreme Court cases MUST be read to follow when relocation is denied and when it is granted - and on what basis there was denial or a granting

Basically, if the parents cannot agree that the child can relocate with one parent, a hearing must be held and the Court makes the decision

Parent who wants to locate files a Motion with the Court for permission to relocate
The Parent who does not want the child removed from the State then files for a change of custody and opposes the relocation motion

Bottom line that the Court must answer is:

Is the child better off here with the parent that is going to remain here or better off with the parent who is going to relocate

CAUTION:

THERE IS A LOT MORE TO RELOCATION THAN THE BOTTOM LINE !!!

It is a complicated issue and the help of an attorney is highly recommended.