

BC FAMILIES IN TRANSITION

formerly Separation and Divorce Resource Centre

THE 'EX' FILES

****This is for information purposes only. It does not constitute legal advice.****

Age Appropriate Visitation for Infants/Toddlers

It is not uncommon for courts to order, or for parents to agree to, visitation arrangements for infants and toddlers that involve regular overnight stays of one to several nights duration with the non-residential parent. The support for this type of arrangement comes from the desire to ensure an infant's frequent and continuing contact with both parents.

There is no scientific basis for preferring sole custody by the primary attachment figure, usually the mother. However, one study has shown that overnight visitations for infants can disorganize a child's attachment strategies. A different study found that more frequent transitions between the parents helped to ensure continuity of both relationships and the child's security and comfort.

The decision that a court makes for visitation is fact driven by the particular case. While there is no cohesive approach taken by the courts in awarding access to the non-primary parent for children under 3 years of age, the courts do seem willing to order overnight access to the father for very young children, more often than one would have thought.

THE GENERAL RULE: Frequent but shorter visits

- Infants still breastfeeding - no overnight visits at all
- 2 years old - earliest possible overnight stays
- 3 years old - most common age for earliest overnight stays

One of the principles most often advanced by experts in consultation with the courts and/or counsel is that there should be continuity of care and contact with the infant's "primary attachment figure" or "primary psychological parent," which is most often the mother. Some of the more common court recommendations regarding custody are based on this concept, including:

- an infant should be in the sole custody of one parent;
- no overnight visitation with the non-custodial parent; and
- no change in custody should be permitted once a permanent custodial arrangement is established for the infant.

Designing parenting plans for infant children involves a determination of the following points:

- nature of the child's attachments to each parent;
- the child's comfort level with each parent;
- the parents' ability to soothe and stimulate development as well as provide basic physical care-taking;
- the length of time the child can endure separation from each parent, given the child's primitive sense of time and understanding, without undue stress or an undermining of each parent-child relationship;
- the child's ever changing age specific and related developmental needs.

In BC the Family Relations Act states that a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:

- the health and emotional well being of the child including any special needs for care and treatment;
- if appropriate, the views of the child;
- the love, affection and similar ties that exist between the child and other persons (parents, grandparents, other relatives and non-relatives);
- education and training for the child;
- the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.

WHEN ONE PARENT LIVES IN ANOTHER CITY

To have a joint custody arrangement work well, there must be cooperation, a certain civility and the capacity to give and take.

- sending pictures of the child by e-mail (when age appropriate);
- providing telephone access (when age appropriate);
- providing e-mail contact (when age appropriate);
- providing web-cam communication (when age appropriate); and,
- sending videotapes periodically.

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