



The Truth About Custody

By J.E. Chanen



Shelby Williams always harbored suspicions that her ex-husband was abusing drugs. There were his drastic weight fluctuations. The odd conversations. And his increasing forgetfulness.

Since their divorce, Williams maintained an amicable relationship with her former spouse and shared joint custody of their daughter. She didn't want her qualms to get in the way of their child's well being, so she put them aside.

But then she got the call.

Her ex was at a local Kinkos and needed her help. "He told me he had been driving around for hours because four men in a dark car were following him," recalls Williams of McKinney.

The story didn't make much sense to her because he didn't have a car at the time. Nonetheless, she ran to his aid. When she arrived at the copy shop, Williams says she found her child's father in a disheveled state, brandishing a knife. "By then I was sure he was on meth," she strains to share.

She was also sure that her daughter should no longer be around the man who was once so familiar and now so foreign.

Williams paid a visit to her attorney and presented the mounting evidence, including, she says, a DUI arrest and subsequent jail time for drug use. She asked her lawyer to get the court to change their arrangement to sole custody — her custody.

But, Williams' lawyer was anything but optimistic. "My attorney basically said that the Dallas courts are extremely reluctant to breakup any parent-child relationship, and for them to do that they would have to be convinced [of his drug use] beyond a shadow of a doubt," Williams remembers.

"We had evidence. He had jail time for a failed drug test," Williams declares, still sounding shocked.

In the end, Williams' attorney obtained a restraining order against Williams' ex-husband, but the court only kept it in place for three months. "I gave up after that. I spent over \$10,000 and I was only able to protect my daughter for three months," the mother laments.

The judge overseeing their case reinstated joint custody after her ex-husband found new work and an

apartment.

‘A bad husband doesn’t necessarily make a bad dad’

Williams’ story, while a bolt from the blue, is certainly not unique among divorced parents in Dallas. Just ask and you’ll get an earful from Dallas mothers and fathers alike about how judges, when making custody decisions, seemingly overlooked or ignored evidence of their former spouse’s drug or alcohol problems, mental illnesses or wrong doing.

But Dallas family lawyers say there is more to this picture than meets the untrained eye.

Despite the sometimes-questionable outcomes, judges must follow the law. And in Texas, the law requires them to put the best interests of the child first.

Attorneys say that the law can be hard for some divorcing parents to swallow, especially when the marriage was tainted with cheating, drug abuse or domestic violence. “A bad husband doesn’t necessarily make a bad dad,” stresses Heather King, a partner in the Southlake office of Koons, Fuller, Vanden Eykel & Robertson, a Dallas-area family law firm. “But it is very difficult for someone going through the emotions of a custody dispute to remember that it’s about their kids.”

In Texas, the law presumes that it is in the best interest of the children for the parents to have joint managing conservatorship over their children, explains Charlie Hodges, a partner in the Dallas office of Koons Fuller.

Unless the splitting couple agrees otherwise, the law also establishes a possession schedule where, except in more extreme circumstances, parents will most likely get equal time with their children, states Hodges.

Attorneys caution that spouses calling it quits are given the opportunity to work out custody arrangements, child support and other issues for themselves, before the courts intervene. In Dallas, the family courts require divorcing couples to mediate prior to any final court proceedings, and the vast majority of couples are able to settle their differences, asserts Hodges.

He estimates that close to 90 percent resolve their divorce disputes through mediation. But sometimes warring partners may be so dug in or so emotional or convinced that their former spouse is unfit that the dispute goes to court where either a judge or a jury decide who gets the kids.

And because judges are concerned about the children’s best interests, parents may not like the courts’ decisions. “Family lawyers try really hard to avoid going to court, because the court is trying to do what is best for these children,” says King. And that may not be what the client thinks is best. “But once you have warned your client about how bad the court decision could be and they move forward, then you have to do your job,” he concedes.

‘It never occurred to me that they’d give him any type of custody’

And divorcing parents often find themselves gobsmacked at the outcome.

Take the case of Dallas-area mom Heather Curry. The mother of two young children, her husband began to use crystal meth during their marriage.

As the drug abuse grew worse, Curry begged him to seek help. When that failed, she filed for divorce.

Initially the court granted a restraining order against Curry’s ex-husband that barred him from seeing the couple’s children — unless he presented the court with a clean drug test. Curry says her ex repeatedly

violated the restraining order by coming to their house, but the police rarely responded to her calls for help and the judge did not seem to give it much credence.

To make matters worse, her husband often failed the drug tests, but, says Curry, the judge always gave him the benefit of the doubt. “It never occurred to me that they’d give him any type of custody,” she says. “He’d walk into the courts with drug tests off the charts.”

Curry claims that the judge would ask her husband if he was trying to work on his drug problem and, as long as he answered affirmatively, the magistrate would lift the restraining order — despite the failed tests.

Before it was over, she spent \$300,000 on her divorce and ended up settling in mediation because she could no longer afford to fight. Curry now shares custody with her former husband. The split is 60-40 — in his favor.

‘Courts cannot stay in people’s lives forever’

Paula Larsen, a former family law judge in Dallas and now a partner at Dallas family law firm Goranson, Bain, Larsen, Greenwald, Maulsby & Murphy, says it is very common for parents to be anxious about the safety of their children with a former spouse when they know that their ex has been abusing drugs or drinking.

On a temporary basis, as was the case with Williams and Curry, courts will often act to restrict interactions or require the parent to get treatment and even order random drug or alcohol screens. “So there will be a period where everyone is under the microscope,” affirms Larsen.

And if the addicted parent continues to fail the drug or alcohol tests, the courts may intervene further. But courts cannot stay in people’s lives forever. “Judges have to make a final order. They cannot be hauling people into court every few months,” she admonishes.

Similarly, divorcing parents may be thunderstruck by the actions of the courts when one parent suffers from mental health afflictions.

Dallas dad Allen Conte initially won custody of his daughter because of his ex-wife’s battle with bipolar disorder.

But at the final divorce proceedings, Conte says his wife denied the psychological condition. He could not afford the fight in court to prove his claims and the court dictated a shared agreement instead.

Currently, he is saving money to go back to court over his continuing concerns about his ex-wife’s mental stability in the hope that he will secure sole custody over their daughter.

But lawyers say that Conte might want to just save his money.

Mental health problems do not always render a parent unfit. If the problem can be controlled through medicine, courts view that positively for the afflicted parent.

Larsen’s firm recently represented a case where one parent was bipolar. The other parent was very concerned about the stability of the bipolar parent, but the judge allowed visitation as long as the parent presented the court with regular tests showing that he was taking his medication.

Hodges cautions that it is very difficult for one parent to be able to demonstrate that the other parent

displays a mental illness. Even if a diagnosis can be obtained, judges still try to look out for the best interest of the children by protecting each parent's relationship.

'Evidence of domestic violence is hard to come by'

It is equally hard to lob allegations of domestic violence against a divorcing parent as a reason to limit custody. One Dallas mom, who asked to remain anonymous, says the abuse in her marriage went from verbal to physical. She didn't call the police, because she did not want her children to be exposed to the violence that she had been hiding from them. But she did go to her doctor to document her injuries.

Regardless, the family law court judge would not entertain any evidence of the domestic violence — which to her signaled confirmation of her husband's temper problems and unfitness to be a parent — because she had not filed police reports.

Dallas family lawyer Jimmy Verner says acceptable evidence of domestic violence is hard to come by. "There rarely is a witness and often there is very little physical evidence other than a bruise and that is hard to photograph," he says.

The Dallas mother was so disturbed about her former husband's rage that she spent hundreds of thousands of dollars battling him over guardianship. In the end, a judge awarded them joint custody.

Then, to her dismay, she had to learn how the courts deal with child support and alimony.

'It's not a lot of money to raise children on in Dallas'

And she is not alone. Family lawyers say many parents, especially women who have stayed at home to raise their children, find the financial aspects of divorce and custody to be especially troubling.

Unless divorcing parents agree otherwise, Texas law dictates the amount of child support. Under state law, the child support guidelines apply to the first \$7,500 of income per month, and depending on the number of children, will be approximately 20 percent or 30 percent of income. And that often translates to about \$1,500 a month of child support, says Larsen.

"It's not a lot of money to raise children on in Dallas," emphasizes the Metroplex mother.

Texas law also provides for minimal spousal support in certain circumstances, typically for the stay at home mom who has left the work force. The maximum amount one spouse can obtain from the other is \$2,500 per month for three years, informs Hodges.

The money is intended to help bridge the gap during the transition of going back to work. That's right. Even parents, who have given up their career to focus on childrearing, find themselves in a position of dusting off the resumé.

North Dallas mother Andi Sacher says the lifestyle shift can be jarring. She returned to the workforce after her divorce and admits that money is tight.

She continues to have skirmishes with her former husband over their children's needs, and confesses, in hindsight, that she wishes she was not in such a hurry to get her divorce over with because she would have fought for every last penny she feels her children deserve. "Refuse to sign the papers until you get what you need for your kids, because it is hard to go back," advises Sacher.

'One parent is clearly engaged in damaging the other parent'

Other parents argue that the minimal child support often creates two very different lifestyles for their children when one parent is a higher wage earner than the other. That dichotomy can lead to a dangerous temptation on the part of the dependent parent to bad mouth the other parent because of the disparate living situations the divorce creates.

Lawyers and other specialists warn that fighting can create a poisonous environment, where children turn against a parent with whom they previously had a loving relationship. The predicament is known as parental alienation, and lawyers say their clients are coming to them with increasing frequency and asking to have custody arrangements changed to ameliorate their relationships with their children.

Dallas psychologist Dr. Richard Warshak is a nationally known expert on the subject and the author of two books on it, including his latest, *Divorce Poison: Protecting the Parent-Child Bond from a Vindictive Ex*. He says the poisoning often begins with some kind of theme like a dad saying to his kids that their mother left them because she doesn't care about us, or that their dad loves his girlfriend more and that's why he won't give them enough money to live on, Warshak explains.

The goal — intentional or not — is for the kids to rebel against the other parent who they are made to feel is denying them something or abandoning them, adds Warshak.

While some kids resist the pressure to alienate the other parent, others succumb and begin to resent the parent in question. Warshak says those children often have no good reason for why their feelings have changed toward a parent and the ill will can seep into extended family relationships.

The concept of parental alienation is still new and controversial in Dallas area courts, reports Verner. But parents need to be aware of it. If the mudslinging gets bad enough, a parent could lose custody because of the damage he or she is doing to the children's relationship with the other parent.

Verner ticked off several recent cases in his practice where courts reviewed custody decisions because of parental alienation. In one memorable instance, a mother was stripped of custody because she had turned her children against their father.

“The decision can seem drastic, depending on your perspective,” says Warshak. “In some of these families, neither parent is focused on what is best for the child. In others, one parent is clearly engaged in damaging the other parent.”

“These are difficult cases for judges, because they are weighing the long-term benefit of keeping the kids with a parent who allows them to form healthy relationships versus one who does not,” he adds.

“But when a court tells children that they are no longer allowed to make those decisions,” assures Verner, “it is remarkable how quickly children adjust.”

(The names of Williams and Curry have been changed at their request to protect their families).

Do you have a divorce story you'd like to share? Send an email to: editorial@dallaschild.com and we'll post your experience at Dallaschild.com.

Sidebar

Help Your Kids While You're Still Hurting

After a bitter divorce, it can be painful to hear your child speaking highly of your spouse — despite your

best efforts to embrace co-parenting. For some parents, this results in (sometimes unknowingly) lashing out with a negative attitude towards the other parent. Perhaps it's time to introduce a non-biased listener to your little one's changing world.

“A therapist can help parents protect children from their own conflicts and can increase their child's chances of coping effectively with the divorce,” explains Dr. Richard Warshak, author of *Divorce Poison: Protecting the Parent-Child Bond From a Vindictive Ex*. “A good therapist can bring a needed neutral perspective to the family's conflicts.”

Children of divorce can feel torn between parents, so much so that their own home is no longer a place of security. “A therapist's office, however, can be a safe harbor in which a child can his express feelings,” adds Warshak. “Here, a child can learn how to maintain love for both parents despite pressure to align with one against the other.” –Gretchen Sparling

Warshak's tips for combating divorce poison:

- If your child rejects your authority as a parent, be patient and don't be provoked.
- Even in light of negative attitudes or behaviors, maintain contact with your child. “In some cases of divorce, absence does not make the heart grow fonder; it makes the alienation more profound,” he notes.
- Avoid debating reasons for your child's rejection.
- Continue to express your love to your child despite behavior.
- Remember that your children are victims of a process that they do not understand.
- Get coaching from an experienced professional about how to best manage the situation.

Sidebar #2

Get Support — Despite Your Income

Co-Parenting Solutions, Inc.
Metroplex 972/448-8797

DivorceCare
Metroplex 800/489-7778

Parenting Partnerships
Metroplex 972/897-0440

The Family Place
Metroplex 214/941-1991

Rainbow Days
Metroplex 214/887-0726

Collin County Children's Advocacy Center
Plano 972/633-6600

Sidebar #3

Defining the Big “D” in Big D

Texans like everything big, including their divorce and child custody terminology. Here are some key terms:

Sole Managing Conservatorship: One parent controls the decision-making authority over the child or children. Children typically live with the managing conservator.

Joint Managing Conservatorship: The parents will share, allocate or apportion parent rights and duties. These include selection of the child's or children's place of residence, healthcare providers and schools. It also can extend to the representation of a child in legal proceedings; consent to marriage of underage children; and consent to enrolling in the armed forces for underage children.

Possession of the Child: A person with rights to possession of children may exercise possession and control to the exclusion of all others.

Possessory Conservator: The parent who does not have possession of the child but has visitation rights through standard visitation.

Access to the Child: This term has replaced visitation in Texas legal lingo but generally means the same thing: A person with rights of access to a child can approach, communicate and visit with the her but cannot take possession and control of the child away from the managing conservator.

Domicile: The legal home of the child.

Mediation: A non-adversarial process where a divorcing couple work with a neutral mediator – and not their lawyers – to hash out their differences and come to an agreement on any outstanding issues related to their divorce, including custody.

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