

The Best Interests of the Child

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When deciding which parent should be awarded custody, a court will consider several factors. The overriding concern is the "best interests of the child."

The following factors are considered "positive factors". If you can show that these factors are in your favor, then you have a better chance of obtaining custody of your child.

1. Who has been the primary caregiver?
2. The availability of the parent to be the primary caregiver in the future.
3. The willingness to foster a positive relationship with the other parent.
4. The quality of the care that the parent has provided in the past and the quality of the care that the parent will most likely provide in the future.
5. The child's preference.
6. The ability to provide for the child's intellectual and emotional needs.
7. The nature and quality of the parent's home environment.
8. The stability of the parent's home life.

Of the factors listed numbers 1 through 5 are the most important. A brief explanation of the factors is listed below.

Establishing who has been the primary caregiver is typically an easy exercise. It is the parent who has been primarily involved in taking care of the child. Although, you can't change the past, you can show that in the future you will be available to be the primary caregiver. For example, you will be available before or after school or if the child is of pre-school age, that you can take care of the child for the entire day.

The court is very concerned that, if you are granted custody of the child, that you will foster a positive image and relationship with the other parent. This has to be more than "lip-service." You can demonstrate this by encouraging your child to spend a significant amount of time with the other parent.

The court will also review the quality of the care that you have provided in the past and the quality of the care that you will provide in the future. This typically means reviewing if you have attended parent-teacher meetings, the child's doctor appointments and the child's extra-curricular activities.

If the child is between the ages of 13 through 18, the court will heavily weigh the child's preference as where he/she wants to live. Although, the child does not get to pick which parent it will live with, this will be a major factor in the court's decision making. For children under the age of 13, their preference will be given less weight.

Although you do not have to be a teacher or a therapist if you can provide a better environment for the child's intellectual and emotional needs, then the court can consider this factor in your favor. In addition, although you may not be able to directly provide this environment, you may be able to demonstrate this indirectly. For example, perhaps you can

show that the school in your district is able to provide extra-help or other activities to meet your child's intellectual needs as compared to the school district where the other parent lives.

The nature and quality of your home environment and the stability of home life at your home can be related. For example, if you are constantly moving, then your home life would not be very stable and the quality of your home environment would also suffer.

The following factors are considered "negative factors". This means if you can show that the other parent possesses these factors then the court should grant you custody.

1. Abuse or neglect of the child.
2. Excessive discipline of the child.
3. Domestic violence (especially if the child witnesses it).
4. Unwillingness to foster a relationship with the other parent.
5. Interference with the other parent's visitation time.
6. Disregard of court orders.
7. Involving the child in the marital conflict.

If the other parent has abused or neglected the child, the court will consider this in your favor. Similarly, if the other parent has engaged in excessive discipline of the child, then this will be a negative mark on that parent.

If there has been any instances of domestic violence, that will be a negative factor for that parent. This is especially true if the child has actually witnessed the domestic violence.

If the other parent has been unwilling to promote a positive relationship with you, the court will consider this as a negative factor for that parent. An example of this would be the other parent's interference with your visitation time.

If the other parent has disregarded prior court orders, even if they do not directly involve child custody, the court may be inclined to believe that the other parent will not follow through with its child custody order.

You should not involve the child in your marital conflict. This means that you should not state negative feelings about the other parent to your child.

Obtaining child custody is very difficult and emotionally draining. You should hire an experienced attorney to help you in this area. The Badanes Law Office has assisted several individuals with child custody issues and can help you if you are involved in a "custody battle." Call the Badanes Law Office today at: 631-239-1702, email us at: dbattorney@optonline.net or visit our web site: www.dbnylaw.com.