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PROTECTING THE WELFARE OF YOUR CHILDREN DURING A DIVORCE

By Nicole Whyte,

Partner, Bremer Whyte Brown & O'Meara LLP

FEW SITUATIONS IN LIFE CAN BE MORE HEART WRENCHING than the plight of minor children whose parents are divorcing. Issues that must be addressed concerning the minor children include custody, visitation and support. It is always best these issues are addressed promptly, preferably with both parents agreeing to the best course of action. When impossible, it is incumbent upon the court to make a decision.

California courts consider many factors in determining the custody and time sharing arrangements for the parties and their children. In so doing, California courts consider almost every aspect of the children's lives. California law requires that child custody and time share be awarded in accordance with the "child's best interests." This test is a flexible one. There is no one definition as to what is in a child's best interests. Essentially, it is the goal of the California legislature to ensure each child's health, safety and welfare are paramount in determining the child's best interests. Further, as a matter of public policy, it is the goal of the legislature to ensure minor children have frequent and continuing contact with both of their parents after separation (assuming both are fit parents). It is the legislature's goal to encourage equal responsibility of child rearing, unless doing so is not in the child's best interests, such as one parent has shown a tendency to being abusive or is otherwise unfit as a parent. Parents should try to reach agreement concerning an equitable time share arrangement.

When a child is of sufficient age and maturity to make an intelligent preference for one parent over the other, the court must give the child's preference due weight in making the custody decision. Most judges are reluctant to bring children into the courtroom as witnesses. Therefore, other means are usually allowed for determining the child's preferences. This can be done through a report from a mediator, minor's counsel or a custody evaluation.

When one spouse is about to initiate divorce proceedings, and temporary custody of minor children is at issue, the divorcing spouse should attempt to obtain immediate temporary custody as quickly as possible. Courts often loosely refer to one of the parents as the "primary parent," referring to that parent who is primarily in charge of the children's day-to-day existence, including transportation to and from school, preparation of meals, taking the children to and from the family doctor, purchasing clothing, etc. Once a divorce petition has been filed, the primary parent may file an application known as an initial Order

to Show Cause (O.S.C.), requesting that temporary custody be awarded to that parent as the primary parent. Obtaining temporary custody is helpful. Though such an order is temporary, the order usually remains in force until the time of trial, which may be a year or more away. Because courts generally favor preserving the status quo, it is more difficult to modify such an order once the divorce becomes final.

Regardless of whether a parent has won or lost initial custody of his or her minor children, it is important that he or she keep a journal of how visitations proceed, including significant incidents that may occur during those visitations. These may be important for subsequent hearings, particularly where there is an attempt to modify a temporary order.

Once custody and visitation arrangements have been ordered by the court, any modification requires a showing of a substantial change of circumstances. Generally, courts will not modify temporary custody and or visitation orders unless there is a specific reason to do so.

Hand in hand with the issue of custody is the issue of child support. When the support of the child is at issue, the court can order either or both parents to pay any amount it deems necessary for the support of the child. The amount of child support to be paid by the parents is based on a complicated formula set forth in the Statewide Uniform Guideline for Child Support. The formula takes into consideration each party's income and tax information, earning capacity, legitimate deductions from gross income, hardship deductions, time share of each parent, mandatory add-on expenses and discretionary add-on expenses. Similar to custody orders, child support orders are subject to subsequent modification upon a showing of changed circumstances and good cause.

With the assistance of skilled legal counsel and advice, what may begin as a heart wrenching and tragic situation involving minor children can be resolved promptly and expeditiously to allow for a time sharing and child support arrangement that best benefits the minor children. **GT**

Nicole Whyte is founding principal of Bremer Whyte Brown & O'Meara LLP, in Newport Beach. Admitted to the California State Bar in 1991 and the Nevada State Bar in 2000, Ms. Whyte has extensive litigation experience, including general liability, premises liability, construction defects, personal injury, intellectual property and family law.

