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Shared custody for my children ?

After several years together, you decide to separate from the father of your children. You believe that your children should stay with you most of the time while their father believes that they should split their time between your home and his. The homes in question, however, are a considerable distance apart. How will a judge rule on the shared custody of the children?

THE FACTS

A man and woman have lived together for several years and have two children together. Shortly after the birth of the second child, the couple decides to separate while the children are still young, that is, just 3 and 1 years old. The mother is asking for sole custody of the children and the father is asking for shared custody. Under certain circumstances, even before a case is heard, temporary orders may be issued to safeguard the rights of the children or the parties involved. In this case, the Court has already made an interim decision in granting custody to the mother and visitation rights to the father (every second weekend from Friday to Tuesday). Despite the fact that the mother has moved to Beauport with the children and that the father continues to live in Laval, the father demonstrates, during the hearing, that he has fully exercised his right to access. The mother invokes poor communications between her and the children's father, the considerable distance between the two homes, and the fact that shared custody necessitates two daycares.

THE ISSUE IN DISPUTE

In light of the facts, especially the 250-kilometer distance between the parents' domiciles, will shared custody be granted?

THE JUDGMENT

The judge awards the father and mother shared custody of their pre-school-age children, on a Friday-to-Friday basis.

THE REASONS

When it comes to family matters, each case must be evaluated on its own merits. Further, no particular custody arrangement has priority. The interest of the children is the single most important issue to guide the judge in his or her decision. In this case, both parents have excellent parenting skills. They are both involved in their children's lives and strive to meet their needs. Of course, they don't always see eye-to-eye on how to educate their children but generally, there are no major disagreements in this area. Despite the mother's efforts to portray the father in a bad light, the Court does not accept her version of the situation. The more serious obstacle to shared custody is the distance (250 kilometers) between the parents' residences. However, since the separation, the father has made the trip with his children on a regular basis and nothing would lead one to think that the children are inconvenienced in any major way. Further, the father has not missed one of his opportunities for access. Finally, he has made plans to eventually move to the Quebec City area in order to be able to maintain shared custody when his children start going to school. The judge orders that each parent pick up the children, at their expense, from the daycare in the other parent's city, on Fridays at 1 pm.

References

C.L. v. M.R., (November 22, 2002), C.S. 540-04-005454-027, (Laval), J.E. 2003-10.

Civil Code of Québec, S.Q. 1991, c. 64, art. 33.

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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