

The Friendly Parent Concept: A Flawed Factor?

It has long been argued that the parent who is more likely to encourage the child's relationship with the other parent should be the parent who is awarded custody. This is commonly known as the "Friendly Parent" doctrine and is actually codified in many jurisdictions. But is this approach really in the child's best interests?

One family law attorney doesn't think so! Margaret Dore penned a scathing indictment of the idea in her article "The Friendly Parent Concept: A Flawed Factor for Child Custody?" The entire article is available at this URL:

http://www.margaretdore.com/ch_custody.htm

Basically, she argues that the Courts are operating in a "reward and punishment paradigm" by employing the Friendly Parent concept. One parent is essentially being punished by being denied custody or parenting time. Dore contends that the child's needs are thus being subjugated to these penalties. Moreover, parents are in effect being encouraged to escalate the hostilities by showing how the other parent is being uncooperative. This may even lead to "setting up" the other parent.

The Friendly Parent concept places litigating parents in what Dore calls a "Catch 22" situation: a parent wants to gain custody and thus presents reasons why the other parent is not the right choice. But in presenting that information, the first parent is obviously being negative and thus runs the risk of being perceived as "unfriendly" him/herself!

Dore also contends that this concept "puts children and their protective parents at risk because it encourages the courts to view evidence of violence, abuse and neglect as mere 'conflict.'" And Parental Alienation Syndrome (PAS) also can cause many similar problems: the more evidence is brought to light regarding abuse, the more likely it is that the child is being "alienated." Thus, actual abuse may not be addressed, but simply dismissed as yet another example of how the less-friendly parent is being difficult. Ducote, quoted in Dore's article, succinctly observes "the increased existence of valid evidence of true...abuse leads (PAS author) Gardner...to more

ferverently diagnose 'PAS.' Thus, 'PAS' is the criminal defense attorney's dream, since the greater the proof of the crime, the greater the proof of the defense." In sum, even the substantiated criticism of the other parent for harmful behaviors towards the child opens the door to accusations of PAS and even potential custodial transfer.

And the Friendly Parent concept increases the odds of protracted litigation, with all its attendant emotional and financial stressors. The possibility of more litigation may compel the custodial parent to allow concessions to which s/he would not otherwise agree. Dore contends that the Friendly Parent concept thereby contributes to the impoverishment of children and their custodial parent.

In the concluding paragraphs of her article, Dore presents a case that Friendly Parent concept is actually unconstitutional.