

family matters

Legal News for Mental Health Professionals

Welcome to the Fall 2006 issue of *Family Matters*, a newsletter created to educate mental health professionals about issues surrounding family law. Created by Randall Pitler, an attorney experienced in family law matters in the State of Michigan, *Family Matters* will share information that can help you and your clients deal more successfully with divorce through amicable and collaborative methods.

In the Fall 2006 Issue:

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news of interest to:

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● Divorce Myths

Myth: At 14, a child is old enough to decide which parent to live with.

Nearly every week someone calls our office to ask how old a child has to be before they can decide which parent they want to live with. The answer is 18.

In making a custody determination, the reasonable preference of the child is one of the 12 “best interest” factors used by the court. If the court determines that the child is old enough to state a preference, the court will hold an “in camera” interview with the child. This is a private interview with the child. The transcript is sealed and can only be opened on appeal. This prevents the child from being in the awkward position of having to openly choose sides.

Further, the court will inquire as to why the child wants to live with a particular parent. Obviously, younger children can be swayed by a parent who buys a lot of toys and older children usually want to live with the parent who is more permissive and is less of a disciplinarian.

In future issues of *Family Matters* we will address more myths about divorce you need to know.

If you know someone who would be interested in receiving our quarterly newsletter, *Family Matters*, please call 248 584 0400 or email us: info@pitlerlaw.com



● Treating Children When Parents Have Joint Legal Custody

I am frequently asked whether a parent with joint legal custody has the right to request psychological treatment for a minor child without the consent of the other parent. Unfortunately, the Michigan Child Custody Act and applicable case law provide very little guidance on this issue.

The Child Custody Act provides somewhat contradictory language regarding the authority of each parent with joint legal custody. The Act states that “[D]uring the time a child resides with a parent, that parent shall decide all routine matters concerning the child.” However, in the same provision of the Act, joint custody is defined as cases where “the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.”

Disputes frequently arise over these types of definitions. Many parents argue that therapy is a routine matter which they may decide to employ when the children are in their care. Others would argue that therapy is a major decision in which the parties should consult and agree on a course of action and the therapist.

So how do the parents decide? If one parent has sole physical custody do they have the right to make this decision?

Surprisingly, considering the frequency that this issue seems to arise, there are no Michigan cases that specifically deal with this issue. However, in *Lombardo v. Lombardo*, a case involving a dispute over which school a child attends, the Michigan Court of Appeals completed an analysis which can easily translate to the present issue. In *Lombardo*, the circuit court held that absent any law on the subject, the parent who is the primary physical custodian should make the decision. The Court of Appeals reversed.

In its decision, the Court of Appeals first held that by permitting the primary physical custodial parent to resolve any disputes concerning decisions regarding the welfare of the children, the Circuit court was permitting the primary physical custodial parent to violate the Child Custody Act which clearly states that parents shall share this authority.

The Court of Appeals then held that child custody disputes are to be decided in the best interests of the minor children, and that the parties cannot usurp the court's authority to make determinations in the children's best interests. Thus, if parents who have joint legal custody are unable to reach an agreement regarding important decisions affecting the welfare of the child, the court should make the determination based on the best interest of the minor children.

Therefore, mental health professionals should use caution in treating a minor child without consent from both parents when the parents share joint legal custody, even when one parent has sole physical custody. The other parent retains the right to file a Motion with the court and ask the Judge to cease the therapy or to request a different therapist.

For a fully annotated version of this article, please visit my website at www.amicabledivorce.com and click on the link for Articles.



Randall B. Pitler is a family law attorney specializing in amicable divorces in Oakland, Macomb and Wayne Counties. A family law attorney for 13 years, he is a court approved domestic mediator in Oakland County and has been certified in Collaborative Divorce, a unique method of divorce in which the parties agree not to litigate.

In addition to mediation and collaborative divorce, he has developed a One Lawyer Divorce, where he can assist both parties in processing the divorce when the parties already agree on how they want to divide their assets and co-parent their children.

For more information please visit: www.amicabledivorce.com.



Invite me onto your couch. I am always looking for therapists for client referrals. I would be happy to spend a few minutes on your couch and learn more about you and your practice and to give you some more information on how I practice family law. **Please contact me at 248 584 0400. I look forward to hearing from you.**