

ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

They Think With Their Feet: When Do Courts Consider or Give Deference to a Child's Wishes When Setting a Parenting Plan?

BY LYNETTE PACZKOWSKI • MAY 24, 2024

Every attorney who litigates custody disputes has had a client say, "But my child wants to be with me; doesn't the Court care?" The short answer is: sometimes.

Strictly speaking, the Court has jurisdiction over parenting plans until a child turns 18. That means that, technically, even a 17-year-old is subject to the Court's determination of when that child should be with which parent. That said, divorce and custody practitioners also frequently hear a judge saying (usually about a child age 16 and up), "Isn't the child going to vote with their feet," meaning that, especially for children with driver's licenses, it is difficult, if not impossible, for a parent or the Court to strictly enforce a parenting plan; the child can, to varying degrees, walk or drive away from a parent's home to spend time with the other parent.

Under certain circumstances, the Court may go a step further and proactively hear a child's input by appointing an attorney for the child through the Attorneys Representing Children ("ARC") program. ARC attorneys volunteer their time to meet with the children and appear in Court to advocate for their wishes. While there is no strict age minimum for an ARC appointment, the reality is that the child should be of an age where the child can provide meaningful input and feedback to the attorney. Otherwise, ARC counsel can be found in Court representing that their client wants Fridays off from school and cotton candy for breakfast on Sundays.

At the end of the day, parents should recognize that the standard the Court needs to apply in making custody and parenting plan decisions is one of the best interests of the child. Children are constantly developing and evolving and may not always know what is in their own best interests. They may also be suffering the emotional effects of the divorce, may have appropriately or inappropriately sided with one parent or the other, may be swayed by the wishes of another sibling, or have strong opinions for any number of reasons. As a result, it is best practice to consult with an attorney who can advise you on whether the Court is likely to consider or give deference to your child's wishes and to what extent those wishes align with what is in the child's best interests.

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