
Amy Edwards

FAMILY LAW

Family Matters

e-Newsletter

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FAMILY LAW

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**Designated as a Board Certified Specialist in Family Law
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Welcome to another issue of Family Matters e-Newsletter. This monthly divorce e-Newsletter is brought to you by Amy Edwards Family Law and Divorce Magazine. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please use the unsubscribe feature at the end of this e-mail. Please visit us online at www.GreenvilleLaw.us and see our archives for [past issues](#).

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Legal Term of the Month

Complaint

This is the document that generates the lawsuit in a civil case, along with a summons that gives the court the power to make rulings in cases.

Web Site of the Month

[National Center for Post Traumatic Stress Disorder](#)

Associated with Veterans Affairs, this site explains what PTSD is, treatment options and referrals, and tips for family members and loved ones of the

Three's a Crowd: The Invisible Adoption Rights of Some Fathers in North Carolina



By Amy A. Edwards

This is part two of an [article](#) featured in the November 2014 issue of Family Matters.

Is a Father's Consent Necessary?

Adoption law has a long and uneasy relationship with biological fathers, and our state's paternity

statutes are a messy patchwork of old laws defined in part by marital status. The law presumes a married man is the legal father of the child born to the wife. If a parent is not married, a father (or mother) must prove paternity of a child if they do not formally agree.

In an adoption case, a father's rights include either giving consent to, or objecting to, the adoption. His consent is not required if he has been convicted of rape resulting in the birth of the child, or if one of several other unique exceptions apply. Otherwise, on paper at least, a father has a legally protected status as a parent, and his consent is necessary for an adoption to proceed.

If for any reason the father is not a part of a child's life or he has failed to participate in the pregnancy and birth phases, his rights are limited. This focus of this article is rights in *those* circumstances, when the parents are not married, don't live together and no court order is in effect.

The Legal Debate: Right to Object

There is strong and heated debate in the legal community about what a man must do legally, and how quickly he must do it, to protect his parental rights in adoptions. The standards change as the cases are appealed to appellate courts. My own interpretation of the current law in effect as of January 2015* is that a father must somehow know the mother is pregnant and immediately act accordingly, even if he is unaware of an actual pregnancy or no longer knows where the mother is after one isolated act of intercourse with her. It appears the notice of his right to object to the adoption is created merely because he had intercourse with a woman because he knows an act of intercourse might result in pregnancy.

Tip of the Month

Find Zip Codes

On the US Postal Service web site you can get zip codes for all states, and use a zip code to do a reverse look-up to find a city when you enter a zip code.

Did You Know?

Millers

First enacted in 1777, NC Gen. Stat. §73-2 says:

All millers of public mills shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if the water will permit, and shall take no more toll for grinding than one-eighth part of the Indian corn and wheat, and one-fourteenth part for chopping grain of any kind.

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Suggestions For Future Newsletter Topics

Is there a topic you would like to see featured in a future newsletter?

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Quick Links

Supporters of the current law say the most important policy is to create a permanent home with adoptive parents as soon as possible, especially if a man has not exercised his rights and responsibilities related to the mother and/or child. Critics of the law call it the "sex is notice" [of a pregnancy or birth] law, arguing the law is unfair to fathers who may not be aware of their rights until after those rights are extinguished. Sometimes, the parental rights not exercised by fathers are denied before the child is even born, if the man can even show he is the father.

Rights of Fathers During Pregnancy

During the pregnancy, a man has no legal rights at all until a baby is born. He cannot object to, or consent to, abortion. Nor can he file any child custody/visitation claim until there is a surviving child delivered. Even a claim to prove paternity cannot be filed until after a child is delivered. As I interpret adoption laws in North Carolina, a father who is not married to (or living with) the mother may become a bystander of the legal process until it is too late.

Pre-Birth Determination of a Fathers' Rights to Object

If at least six months have passed after the date of conception, the pregnant mother, an adoption agency or a person the mother has chosen to adopt the child may file a request for the court to rule on whether the father must give his consent to the adoption. However, fathers are denied the right to file this request on their own behalf. If he has been served with legal notice of this proceeding, the father does have the right to respond and be heard by the court within a specific time period. A father cannot file a paternity claim, proving he is the father, until the child has been born.

Fathers' Rights to Object After a Child is Born

Unless the father's consent was deemed unnecessary at the pre-birth determination or he consents to the adoption, he is generally entitled to be served with legal notice of the intended adoption itself. Notice allows him to file various claims, including a request that the court recognize his right to object to the adoption.

One of the most controversial examples of when a court will protect the father's right to object involves actions he must take *before* the adoption petition is even filed. One such example is acknowledgement and support by the father before the adoption petition is filed or before he even knows the woman is pregnant. He is entitled to give or withhold consent when he has "acknowledged his paternity" and he is "obligated to support the minor under written agreement or by court order." Or, he can acknowledge paternity and provide "reasonable and consistent payments" to the mother and/or child. The law doesn't say what amount of support is enough, or what proves he has "acknowledged his paternity." The court decides whether the father has acknowledged the child on a case-by-case basis. Acknowledgment may be done in writing,

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orally or even by a father's acts/behavior.

Paternity and adoption laws are complex and change frequently. Only a small handful of specific situations are mentioned in this article. For legal advice about father's rights and/or adoptions in North Carolina, consult an attorney who will analyze your particular facts and give you legal advice based on those facts.

* [In re: Adoption of S.D.W.](#), 758 S.E.2d 374 (2014). See opinion and strong dissent of several justices on constitutional grounds. [N.C. Gen. Stat. 48-3-601](#).

Amy A. Edwards is an attorney in Greenville who is licensed in the state of North Carolina. www.GreenvilleLaw.us (c) 2014.

Who Keeps Your Friends When You Split?



Who Keeps Your Friends When You Split?

By Amy A. Edwards

Find Out Who Your Friends Are

People may not think about it until after the fact, but what happens to your relationships with other people when a couple splits? It can be hard to decide who keeps a friend, or worse yet, friends who function as a couple, after you separate, especially when you have been together for many years. You can probably make an easy call when it comes to your long term co-workers, assuming you and your ex don't work together, and pre-marital friends (like pre-marital separate property you owned before the marriage). Another safe guess might be family friends who have known your parents or other family members for years or decades. The more difficult choices are parents of your child's friends, your church family, or neighbors. The court can't award friends to the husband or the wife as it can with a bank account. You would be wise to do more listening than talking when you are in their presence.

The Problem: The Spy

Think twice about which "friend" you tell sensitive information about your separation, divorce or your new dating life. People are sometimes surprised to find the friend couple stuck with their ex, or the parents of their child's friends. I call this type of friend "The Spy." Spies stake out which person they will keep in the divorce, but they make it a point to stay involved with the other person to glean information they think would be helpful to the other person in court. For example, because the spy has continued access to your Facebook page that is unavailable to your de-friended ex, the spy may give your ex the printout to make a trial exhibit of you saying nasty things about him or her. Photos of someone doing something unflattering for purposes of a custody case are also popular with the spy types. They spy is also alert when you or the kids make inadvertent comments that could be construed as being about your new "boyfriend" or "girlfriend" and then shows up in court unexpectedly to testify against you. Maybe the spy testifies that your house was messy when they dropped by unexpectedly. You get the idea. For any "friends" reading this article, beware. Gossip and the scope it travels may mean a sheriff walks up to you and hands you a subpoena. Another word of caution relates to family members of your ex.

Family Members

In a small percentage of cases I've had, a spouse may rely on the family of the other spouse for advice, perhaps filling the void in his or her own family. When a client tells me to subpoena the family members of the other party to testify on his or her behalf, I tell them that is a bad idea. There are exceptions, but don't tell them intimate details of your life. Family is a lot like jurisdiction. In school, they told us that jurisdiction is based on someone's permanent address; when you are down on your luck and have nowhere else to go, they are family and they "have to" take you back. Don't put your ex's family members in this situation because it is hard to have divided loyalty. Keep in mind who your friends are.

Amy A. Edwards is a family law attorney licensed in North Carolina.

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Are Bad Parents Rewarded in Custody Cases?



By Amy A. Edwards

Court and the Real World

In the real world, people's morals form the foundation of their beliefs, of right and wrong. If someone does something wrong, there is an expectation of consequence or penalty. A parent punishes a child for bad behavior.

Or, relatives might disown each other and spend decades estranged from one another because one of them wronged the other. Paying someone back, or washing your hands of him or her for "bad" behavior may be totally justified in the real world. In fact, that is usually the reason a couple separates.

Judges in custody cases look at things differently. It helps to think of court as its own little eco-system. Courts are based on the law, plodding through a checklist of legal considerations that must be made. These considerations are not necessarily based on right and wrong. Judges start from the premise of no-fault, similar to no-fault divorces. Why you separated is irrelevant to the judge if you obtain a divorce in North Carolina. Bad behavior of one parent matters little unless it relates to the safety and well-being of the child.

How Bad is Bad?

As with most of the matters in family cases, it is a matter of degree. Clients sometimes ask if the court will deny visitation or terminate the other parent's rights. The answer is no, in the vast majority of cases. The degree of bad behavior that is required to do so is extreme. The courts will not deny visitation because the parent is mediocre, or because he or she is a poor parent. It is likely he or she will have visitation and the question becomes a matter of how frequently and for how long. If the other parent behaves poorly, the judge may try to fix it. For example, a judge can order a parent not to smoke in the home or car when the child is there. A judge might also require the parent to have no alcohol in the home, or go to counseling to address anger issues, depression, or other mental health concerns. A judge can require supervised visitation, depending on the family circumstances.

Do Judges Reward "Bad" Parents?

Bad behavior will not help the other parent's case, but don't expect the judge to say he or she blew it, and therefore, visitation is denied. Judges want children to have both parents if at all possible. For example, a parent who has not played an active role in a child's life may return a few

years later and persuade a judge to give him or her a second chance to gradually create some sort of relationship. This doesn't mean a judge will give that parent custody, just the opportunity to see if a bond can be created or renewed. To the judge, the estranged parent isn't being rewarded even though it feels like it. You will always be a parent and you will also be loved. But the judge's goal is to see if the other parent can successfully play some role and give the child two parents.

Amy A. Edwards is an attorney licensed in North Carolina. www.GreenvilleLaw.us (c) 2014.



Thank you for reading our newsletter.

Sincerely,

Amy A. Edwards

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