

Family Matters e-Newsletter



Amy Edwards

Family Law

313 West 2nd St. • Greenville NC

(252) 758-3430

www.AmyEdwardsFamilyLaw.com

NEWS FOR JANUARY 2016

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What Do Judges Consider in Custody Cases?

By Amy A. Edwards

While no one can guarantee exactly what a judge will find critical in a custody case, there are numerous routine considerations. All judges want to know who lives in the home with the child, or sees the child frequently when he or she is in the care of that parent. This includes new spouses or significant others, siblings, grandparents, extended family members, etc. Judges want to know what kind of relationships other people have with the child. For children in school, a judge will the status of grades, attendance, behavior and other school-related matters to gauge the child's individual challenges or abilities.

Communications Between Parents

A major concern for the court is how the parents treat each other as it relates to the child. When a parent speaks badly of the other, or discourages the child from enjoying time around the other parent, it is harmful to the child and selfish of that parent. In fact, judges have the right to completely change custody if these facts exist. Children should never feel guilty for loving both mom and dad. On the other hand, as difficult as it may be, a parent who fosters the relationship between the child and the other parent is almost always acting in the child's best interest.

The Big Picture

Judges want to see what I call "a day in the life" of the child. When he or she is with mom, the routine might be to have lunch with grandma on Saturday and watch movies in the living room. At Dad's house, the routine might be to go bike-riding on Saturday afternoon and attend church on Sundays. How is homework handled with the parent who spends the most time with the child? Are there friends the same age in the neighborhood? Stability of each parent's home is a broad topic that includes the frequency of moves from one residence to the other, significant others or employment. Is the child a priority to the parent, or does he or she ignore the child and stay on the computer during the whole visit?

It all comes down to the legal requirement of what is in the best interest of the child, which is an elusive standard. Parents have different personalities, backgrounds and values, and so do judges.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the

NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of January 2016. www.AmyEdwardsFamilyLaw.com © 2016.



Going Through Your Case With a Fine Tooth Comb: Appeals

By Amy A. Edwards

Judges sometimes make a ruling the day of court, perhaps after

a child custody case. Other times, they take the case "under advisement" which means the judge is not prepared to make a ruling in court. Instead, the judge will consider testimony given by the witnesses, and sift through stacks of evidence and notes. Then, the judge usually makes a ruling by placing a letter to the attorneys in their courthouse boxes.

You Don't Like What Happened - Now What?

To appeal the ruling in your case, there must generally be some error in the way the judge applied *the law* in the case. If the judge ruled on the disputed facts in a case, the ruling is about *the facts* of the case, not the law. The judge decides the facts when there is a ruling that a person did something, or did not do something when there is a "he said, she said" situation. There are strict time limits for you to appeal, limits that begin on the day the order is officially filed. Temporary rulings are not typically eligible for appeal because they are later replaced by permanent orders entered when the entire case is done. At that time, the judge may choose to adjust the ruling to account for anything he or she feels should be addressed since the time the case was first filed.

Where Does Your Case Go and Who Handles It?

At the trial level, North Carolina family law cases are tried in District Court, the same court that handles traffic matters or misdemeanor criminal matters. Appeals from the trial court are heard by the North Carolina Court of Appeals in Raleigh. In rare cases, family law cases are then appealed to the North Carolina Supreme Court. Some family law attorneys handle appeals but many do not. There is a completely different set of rules and procedures for appellate cases. Such a case can easily take a

year or two for the appeal to be completed. The appellate court will affirm (uphold), reverse (overturn) or remand (send back to be tried all over again) the trial court's original ruling.

What Does All This Mean?

Any appeal takes a long time to wind through the system, just as a trial case does. And just like the lower court trial, an appeal is expensive and the stakes are high. In Eastern North Carolina, the cost of appeals makes them out of reach for many people. The trial level ruling is extremely important. Appeals are not the only option. If both parties agree, they can participate in alternative dispute resolution such as arbitration. If they participate in arbitration, they essentially hire a qualified decision-maker to make the decision for them.

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Hired Guns: Experts in Family Law Cases

Amy A. Edwards

In cases of marital property, child support, alimony and even child custody cases, an attorney may advise a client to hire an expert. In these types of cases, there are two types of experts, those who act as a consultant for the attorney and client, and those who testify in depositions or court as expert witnesses. Typical experts in family law cases include CPAs, business valuers, medical doctors or psychologists, appraisers or any number of professionals to shed light on the situation at hand.

Consulting Experts

When one or both parties are self-employed, a CPA might review

the case and advise the attorney what the true income is. Income for support is usually quite different from incomes claimed on tax returns, even when the tax returns are perfectly legitimate. The IRS looks at the tax code at things like deductions and depreciation. However, the judge in a support case is looking at the true income available to a party, which might include non-cash compensation such as a company car or other expenses paid by the company. Appraisers are not just used to value homes, but for anything from jewelry and collections of guns, to paintings or baseball cards. Occasionally, both parties may reach an agreement on a value when the expert gives his or her opinion. Other times, there is no agreement on what the expert says, so a trial is necessary.

Expert Witnesses

Non-expert witnesses testify about *facts* based on what he or she has seen or heard, and cannot give their opinion on those facts. By contrast, an expert gives his or her *opinion* about something. Although there are many types of experts, all must have "scientific, technical or other specialized knowledge" to help the judge understand the evidence. The expert generally has special skill, experience, training, or education. See Rule 702 of the NC Evidence Code.

For example, a psychologist may qualify as an expert to testify about what he or she believes is in a child's best interest in a child custody case. The psychologist meets with each of the family members several times and performs psychological testing on them before he or she prepares a report for the judge known as a child custody evaluation. It is then given to both parents so their attorneys can ask the expert questions or cross examine the

expert in court. Parents can request a child custody evaluation for any reason but they often request one when the child or parent has medical problems, anxiety, depression, substance abuse, or other mental health concerns. Expert witnesses may be chosen by agreement of the parties or one party may file a motion requesting the judge to appoint an expert by court order.

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Sincerely,
Amy A. Edwards

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