

The Custody Battle is Always about Something Else

When parents fight over custody, underneath they are usually not fighting about the children, but rather about something else. Usually that something else is one of the prizes or assumed benefits that a parent believes flows from winning the custody label. As a mediator, it is your job to try to find out what they really want when they say they want custody of the children. What follows is a list of the prizes that people are most often fighting about when they say they want custody of the minor children.

- **Who gets the home?** In the initial stages of divorce, parents realize they must separate and they worry about who will get the home. They may talk to a lawyer who will tell them not to move out of the home because it might jeopardize their rights to custody. At a temporary hearing, the person who gets temporary custody of the minor children is also awarded the home. Therefore, the fight over custody of the children is often more about who gets the home.

Solution: Work in mediation on providing adequate residences for both parents.

- **Who gets the guidelines child support amount?** In all states as well as in Canada, the parent who wins temporary custody and becomes the parent who has the children the majority of the time will be entitled to child support from the other parent. Therefore, the fight over custody of the children is often more about who will get child support.

Solution: Unhook the money from the kids. Complete the budgets and show them that it is a bit more complicated than simply trying to determine what 30% of the net income of the non-custodial parent is.

- **Who will get to move out of state in the future?** In many states the parent who wins physical custody in the original divorce action is entitled to move out of state. Therefore, the fight over custody of the children is often more about preserving one's right to move with the children or trying to prevent the parent from moving in the future.

Solution: Consider an agreement about remaining in the same area. Establish success early on and one parent will not want to geographically escape the actions of the other parent. Both parents will recognize that it is important to be nearby to help each other with the parenting.

- **Who will be in charge of the schedule?** In Jurisdictions that allow for reasonable visitation instead of requiring a parenting schedule, the parent who wins custody is permitted to determine the other parent's visitation times. Therefore, the battle over custody of the children is often more about who will be in charge and who must ask to see the children.

Solution: Always create a parenting schedule. With a schedule, there will be no game playing because the schedule will displace the game, not one of the parents.

- **Who is trying to punish or hurt the other?** In every divorce, there is anger. In some divorces, the anger is so great that the custody battle is really about harassment. Even when the ruling is made, there continues a type of guerrilla war between the parents.

Solution: Ask parents to consider inviting a neutral therapist or child psychologist to mediation who will help the parents see the damage that their negative efforts cause the children. Ask the parents to consider marriage closure therapy to resolve the marriage emotions so they can get about the task of parenting the children.

- **Who is able to protect the children from the poor quality parenting (or drinking, or whatever) of the other parent?** When one parent raises special concerns about the other, they are told by their attorney that they need to win custody to prevent the other parent from having a bad influence on the children. This view is faulty because the so-called defective parent can create just as much harm for the children on two overnights per month as on 50-50 time sharing.

Solution: Focus on the real problem, whether it is alcohol or drug abuse, inattentive parenting, inconsistent discipline, or whatever the concern may be. Have the parenting plan specifically address these problems through ground rules about behavior. (see sample language section)

- **Who has the greatest fear of losing?** Often, the battle over custody is fueled by societal or cultural norms. A mother has more difficulty agreeing to joint custody because mothers are expected to have custody of their children. For many dads who want joint custody, they are wasting their time because mother's attorneys will advise her that joint custody is the first step towards losing custody.

Solution: Focus on building a parenting plan and building some trust so that they will not fear the worst from the other.