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Impact of the Coronavirus Crisis on Custody Matters

UPDATE as of Wednesday, March 25th.

I have an addendum to my recent post on custody in the coronavirus situation. A question that has come up frequently in the last few days concerns custody exchanges in light of a Shelter in Place or Stay-at-Home order: Am I free to leave my house to exchange custody?

Although he might not have authority where you live, the Mayor of Philadelphia has said that a custody exchange is a necessity trip and, therefore, allowed under a Stay-at-Home order. The same sentiment has been expressed by family court judges from both Bucks and Montgomery Counties in Pennsylvania. While some of these cases may be more complicated fact-specific, that answer is the consensus among family law attorneys in Pennsylvania.

Original Post:

Coronavirus has permeated every aspect of our lives. Everything from going to work, grocery shopping, getting the kids to school or even going to a park has now taken on a new dynamic. More simply put, just about everything we took for granted is now called into question. This is doubly true for custody cases.

I personally have been involved in four such incidents already. These incidents seem to fall into specific categories. The first involves childcare. While most daycares around the Commonwealth are closed, not all are. Workers on the front lines, especially those in the healthcare field, are still required to attend work. What if Mom is a nurse and needs childcare? Does Dad have the right to stop Mom from using the parties' usual childcare provider because of coronavirus fears?

The second situation is one parent has supervised custody. In some cases, supervision is provided by either a government agency or a non-profit. What if the facility is not open during the current crisis? Does that mean that the parent gets no visits until the current situation passes? That could be months.

Then there is the third situation where custody is exchanged in a public place. With so many closures across the state, what if that public place is no longer open or one parent becomes suspicious that the child or the parent could contract coronavirus in that public place? Does that mean no custody exchange?

Now the fourth situation, what happens if one parent has been exposed to someone who has tested positive for coronavirus? Does that mean that the parent loses his or her upcoming periods of physical custody?

Finally, traveling, One parent has access to a house at the New Jersey or North Carolina shore, and the children have at least two weeks off from school. If they start to drive the primary custodial parent crazy, can that parent take the children to the shore for a few days?

Like most custody questions, every situation is fact-specific, so there are no simple answers. I will, however, offer a few thoughts or guiding principles. The first one is, communicate with the other parent. If you have been exposed to coronavirus, tell the other parent. If you want to take the kids to the shore for a few days, tell the other parent. If you are suspicious of the cleanliness of the convenience store where you exchange custody or the public building where you exchange the children is closed, let the other side know. The sooner the other side knows all the facts, maybe the two of you can work it out before going to lawyers or the courts.

My second guiding principle is to use some common sense. If you have been exposed to coronavirus, what

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is more important, a few days with your kids, or not exposing them to something that the medical community does not yet fully understand? Same thing for traveling. You might have a house at the shore but, do the local authorities of the beach town in New Jersey want you there? In the daycare scenario, if you need childcare, you need childcare. Assuming the other parent cannot or will not step up and take the child, you have to utilize the daycare.

With supervised custody, some custody orders specify the supervisors, some generally order supervision. If an agency-type supervisor is not available and domestic violence is not a significant issue, maybe the custodial parent supervises the custody of him or herself with or without another person. If I am representing the person subject to the supervision order, I am telling the person these are unusual times, and some time with your children is better than no time with your children.

The final suggestion is basic lawyer stuff when there is a custody dispute, read the order and do what it says. If it says the parties use a specific daycare, then they must use that daycare. If nothing is preventing Mom from taking the kids to the shore during her weekdays and it does not infringe on Dad's time, it might not be the best choice, but Dad cannot stop her. If the order says Visitation Station supervises custody, and they are not available, and nothing else can be worked out, too bad.

The lawyer's last recourse in all of this is either an emergency petition or a contempt petition. Considering that the Courts around the state are mostly closed but for emergencies, my guess is that the definition of a custody "emergency" will be pretty strict over the next few weeks. I practice primarily in Chester County, Pennsylvania, and in a bit of gallows humor, custody emergencies follow the "severe bloodshed rule"; anything short of serious bloodshed is not an emergency. My guess is that rule will be more widely applied throughout the state for the time being.

On custody contempt, when the Courts reopen there will probably be a rash of custody contempt filings, but the hearing officer who handles the first round of custody contempt filings in Chester County says his job is to call "balls and strikes" and he considers himself to be a "strict constructionist" when it comes to the language of custody orders. If the order says one side is supposed to do something and he or she does not do that, the hearing officer finds contempt; however, he also looks for an element of spite in the person accused of contempt. If someone is backed into a corner and makes a rational decision and did it because he or she had to and was not trying to deliberately hurt the other side, he is not finding contempt — something to remember going forward when considering a custody contempt.