Broward County Bar Association 2023 Nuts & Bolts of Family Law

The Times They Are A-Changin': Timesharing in Florida Following the 2023 Legislative Changes

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Historical Summary of Timesharing in Florida

- Prior to October 1, 2008, Florida was a "custody" State.

- Florida applied labels in their custody cases.

Historical Summary (cont.)

- Florida law on parenting issues was rooted in the "tender years doctrine."
- This doctrine is an archaic belief that only a mother could properly care for the children, and it created a presumption that the mother should receive "custody."
- Where did this doctrine come from?

Historical Summary (cont.)

- In 1982 and again in 1991, amendments to Section 61.13, *Fla. Stat.*, tried to modernize timesharing in Florida.
  - Language was added to provide that a father was to receive equal consideration irrespective of the age and sex of the child.
  - Labels were changed from custodial parent and non-custodial parent to primary residential parent and secondary residential parent.

The End of Custody in Florida

- In 2004, the Family Law Section of The Florida Bar undertook the task of investigating the merit of revamping the custody statutes in Florida.
- The label system of primary and secondary residential parent was causing much costly litigation.
- After two years and hundreds of hours of volunteer time, the Family Law Section approved what became known as the 2007 Parenting Bill.

The End of Custody (cont.)

- Unfortunately, the bill did not make it off the ground in 2007, but was revived again, presented in 2008, and passed.
- The bill was made Florida law effective October 1, 2008.
- Numerous changes were made to Ch. 61 of the Florida Statutes, as well as many other chapters, as a result of the nomenclature changes of the revised statute.

The End of Custody (cont.)

- First State to do away with custody.
- Reformation and expansion of the factors the court will examine in deciding parenting issues.
- Introduction of shared parental responsibility.
- Introduction of the concept of a parenting plan.

Parenting Plan

- General outline of the overnights and timesharing the children will spend with each parent, including holidays, summer recess from school, and other special occasions.
- The parenting plan will also outline parental responsibilities of each parent. Depending on the acrimony in the case, the parenting plan may also detail decision-making authority and other issues.
- The parenting plan will account for which parent's address is the appropriate one to determine school enrollment, as well as resolve issues relating to the children's involvement in extracurricular activities and other non-school related activities.

Parenting Plan (cont.)

- The parenting plan will also provide jurisdictional information to comply with the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act and the Hague Convention.
- Although not statutorily required, the plan may also include parameters for:
  - information sharing;
  - Timesharing exchanges;
  - Transportation; and
  - even resolution of future parenting dispute

Public Policy Behind 2008 Changes

- Statute literally said there was no presumption that one parent have a particular timesharing schedule or that one kind of parent receive more timesharing.
- Public policy in Florida that children have frequent and continuing contact with mom, and frequent and continuing contact with dad.
- Each family was like a ‘snowflake’

2023: House Bill 1301

- On June 27, 2023, House Bill 1301 was signed into law and revised Section 61.13, *Fla. Stat*.
- Effective July 1, 2023, there is now a rebuttable presumption that equal timesharing is in the best interests of minor children.

Florida Statute 61.13(2)(c)1.

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. **Unless otherwise provided in this section or agreed to by the parties, there is a rebuttable presumption that equal time-sharing of a minor child is in the best interests of the minor child. To rebut this presumption, a party must prove by a preponderance of the evidence that equal time-sharing is not in the best interests of the minor child.**

View from the Bench

- In light of the implantation of an equal timesharing presumption, how are you approaching contested parenting cases?
- How do you feel about the use of Court-appointed experts?
  - Guardian ad Litem
  - Social Investigator
  - Parenting Coordinators

2023: House Bill 1301 (Modifications)

Prior to July 1, 2023:

A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child.

- House Bill 1301 removed the language regarding unanticipated change.
- What is the reason for this change?
- Are there potential pitfalls?

View from the Bench

- In light of the modification language in the Statute, how are you approaching your modification cases?
- Do you believe the removal of "unanticipated change" will lead to increased litigation?
- Does the equal timesharing (rebuttable) presumption apply to modification cases?

2023: House Bill 1301 (Glitch Fix)

House Bill 1301 also added the following language to the modification paragraph:

If the parents of a child are residing greater than 50 miles apart at the time of the entry of the last order establishing time-sharing and a parent moves within 50 miles of the other parent, then that move may be considered a substantial and material change in circumstances for the purpose of a modification to the time-sharing schedule, so long as there is a determination that the modification is in the best interests of the child.

2023: House Bill 775 (Natural Guardians)

- On June 9, 2023, House Bill 775 was signed into law. It became effective July 1, 2023.
- Under Florida law existing at the time that the bill was signed into law, paternity may be established for a child born to an unmarried mother in multiple ways, whether by adjudicatory hearing, by voluntary acknowledgement, or by the Department of Revenue. Additionally, paternity may be established by court order in response to a Petition to Establish Paternity. However, without a court order specifically establishing a timesharing schedule and parental responsibility, an alleged father may be left without defined rights relating to his relationship with the child.

House Bill 775 (cont.)

Under the newly revised Fla. Stat. §744.301 (the natural guardian statute), "The mother of a child born out of wedlock *and a father who has established paternity under s. 742.11 or s. 742.10* are the natural guardians of the child and are entitled and subject to the rights and responsibilities of parents." This has essentially placed fathers on equal footing with mothers if they followed one of the above methods for establishing paternity (as if, for example, they had a child during an in-tact marriage).

House Bill 775 (cont.)

- Fla. Stat. §742.10 sets forth the procedures for the determination of paternity for children born out of wedlock. The procedures/methods for establishing paternity are as follows:

1. **Adjudication**
   a. In administrative proceedings by the Dept. of Revenue under Chapter 409;
   b. In an adjudicatory hearing brought under statutes governing inheritance, or dependency under worker's compensation or similar compensation programs; and
   c. In Chapter 39 and 63 proceedings.

2. **Affidavits**
   a. By executing an affidavit acknowledging paternity, signed by both parties and filed with the clerk of court.
   b. By both parties executing an affidavit.

3. **Acknowledgment of Paternity**
   a. A notarized voluntary acknowledgement of paternity
   b. It must be witnessed by 2 individuals and signed under penalty of perjury
   c. OR—by signing the Dept. of Health Form DH432 (see attached form)
   d. After a 60 day period, a signed voluntary acknowledgment of paternity shall constitute an establishment of paternity (and may be challenged in court only on the basis of fraud, duress, or material mistake of fact).

Birth Certificate Issue

QUESTION:

If the father's name is on the birth certificate, is that sufficient to establish the father as the legal father of the minor child at issue?

Birth Certificate (cont.)

- Fla. Stat. §382.013 (attached), provides, in pertinent part, as follows:
  - (2)(c) If the mother is not married at the time of the birth, ***the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father***. The facility shall give notice orally or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor, any rights afforded due to minority status, and responsibilities that arise from signing an acknowledgment of paternity, as well as information provided by the Title IV-D agency established pursuant to s. 409.2557, regarding the benefits of voluntary establishment of paternity. ***Upon request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2)***.

View from the Bench

- How would you handle the birth certificate issue?

Birth Certificate (cont.)

- Based on the above statutory language, if a father's name is on the birth certificate (and the parties are not married), a logical conclusion is that the parties signed an affidavit/acknowledgment of paternity provided by the hospital.
- I believe a valid argument can be made that the birth certificate represents an indirect establishment of paternity, however, under our existing statutes there is nothing that provides that the birth certificate is dispositive as to paternity.

Thank you!