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NATIONAL PARENTS ORGANIZATION | Preserving the Bond Between Parents and Children

THE "ALASKA/KENTUCKY APPROACH" TO TEMPORARY CUSTODY

The temporary orders period, during which the court is trying to encourage parents to resolve their disagreements and to determine what is in the children's best interest, is often the most crucial period for children experiencing the divorce of their parents. Citing the groundbreaking work by Judith Wallerstein and Joan Kelly, Dr. Edward Kruk makes the point this way: "There is a critical period that strongly influences the nature of postdivorce father-child relationships: the transition period from the point of … [separation] to approximately six months to one year after, a time when multiple stresses and adjustments impinge on all members of the divorcing family, legal processes have their greatest impact, and access patterns are established and consolidated" ("The Disengaged Noncustodial Father: Implications for Social Work Practice with the Divorced Family," *Social Work* 39(1994)1, p. 21).

In many jurisdictions, during this "critical period," children are routinely deprived of a full parent-child relationship with one of their parents. This parent is *automatically* moved into a "visitor" mode with extremely limited parental rights and painfully restricted parenting time with the children. This decision is *not* based on an analysis of what arrangement would be in the best interest of the children. It is made prior to the court having examined the case and is typically based only on unchallenged affidavits or very brief and cursory hearings. While temporary orders do not establish a *legal* presumption, they function much as if they did. As Kruk points out, access patterns are established and consolidated during this time. Furthermore, if the children are doing reasonably well during this period, many courts are reluctant to "rock the boat"—a curious reluctance since often the issuance of sole custody temporary orders was a maelstrom in the family's life, depriving the children of a full relationship with one of their parents.

When it comes time to reach a decision concerning permanent custody, many jurisdictions leaves courts to guess about whether substantially equal parenting is in children's best interests in any given case. When parents can't agree concerning parenting time and responsibilities, courts have to decide whether the parent who is arguing for more time and responsibility is sincere in his or her expressed desire to parent the child more. Some courts fear that divorcing parents may argue for more time with the children and direct responsibility for them in order to reduce their child support transfer payments to the other parent or out of motives of spite or a misplaced concern for formal equality. Courts are left largely to conjecture about the parents' motives and intentions—and, so, about the ultimate prospects for a substantially equal parenting arrangements.

Alaska pioneered a better approach to temporary custody orders. Alaska's temporary custody statute states: "Unless it is shown to be detrimental to the welfare of the child … , the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody" (AS 25.20.070).

Recently, Kentucky followed Alaska's lead and enacted a similar law (KRS 403.280). The legislative effort was spearheaded by National Parents Organization Kentucky Chair Matt Hale and the bill passed

both houses of the Kentucky legislature *unanimously* (97-0 in the House; 38-0 in the Senate). (Kentucky has since passed, by an overwhelming vote, a presumption of equal parenting for permanent orders.)

The Alaska/Kentucky approach has two distinct and important benefits over the approach taken by most states:

1. ***Setting a Better Status Quo:*** The provision for equal parenting if requested by a parent during the temporary orders period sets up what is in the vast majority of cases a more appropriate and desirable parenting pattern. It helps to reassure parents that they will not be deprived of a full parent-child relationship if they continue to responsibly parent their children. More importantly, this sort of equal parenting reassures children during an emotionally tumultuous time that both parents are fully engaged in their lives—they are not being abandoned by either parent.
2. ***A Crucible for Testing Parents:*** The employment of equal parenting during temporary orders allows the court to review the behavior—not just the stated intentions—of both parents. It provides, as one family law attorney described it, a crucible for testing the parents' commitment to, and capacity for, equal parenting. Temporary orders often last between one to two years. This is a long enough period for courts to determine whether the stated desires of a parent for equal parenting are sincere and credible.

Domestic relations courts attempt to make custody decisions that are in the best interest of the children. However, when temporary orders are set, judges and magistrates know next to nothing about the nature of the family, the parenting practices of the two parents, the wishes of the children or any of the other factors that are relevant to determining the best interests of the children. Nevertheless, based on no real evidence, family courts routinely declare one parent to be "noncustodial," which results in that parent being deprived of the authority to sign parental permission forms, to give consent to medical procedures, or to make other significant decisions concerning the raising of the children. That parent is typically restricted to visiting his or her children every other weekend and one evening a week, though some counties provide more parenting time and some less than this. This severely damages many existing parent-child relationships and causes what one child psychologist has described as "terror" in both parents and children.

Ohio should enact legislation similar to Alaska's AS 25.20.070 and Kentucky's KRS 403.280. Such action would reduce parental conflict during divorce and, as a result, minimize the damage done to Ohio's children by the divorce process. It would create a more appropriate *status quo* upon which to base final custody orders, after the court has had a chance to review the case. Finally, it would provide a valuable testing period during the period of court scrutiny of the parents' behavior, when it is still easy to make adjustments to the custody arrangement.

Our children deserve a better chance of having both parents fully and actively involved in their lives. Our state legislatures can give that to them.