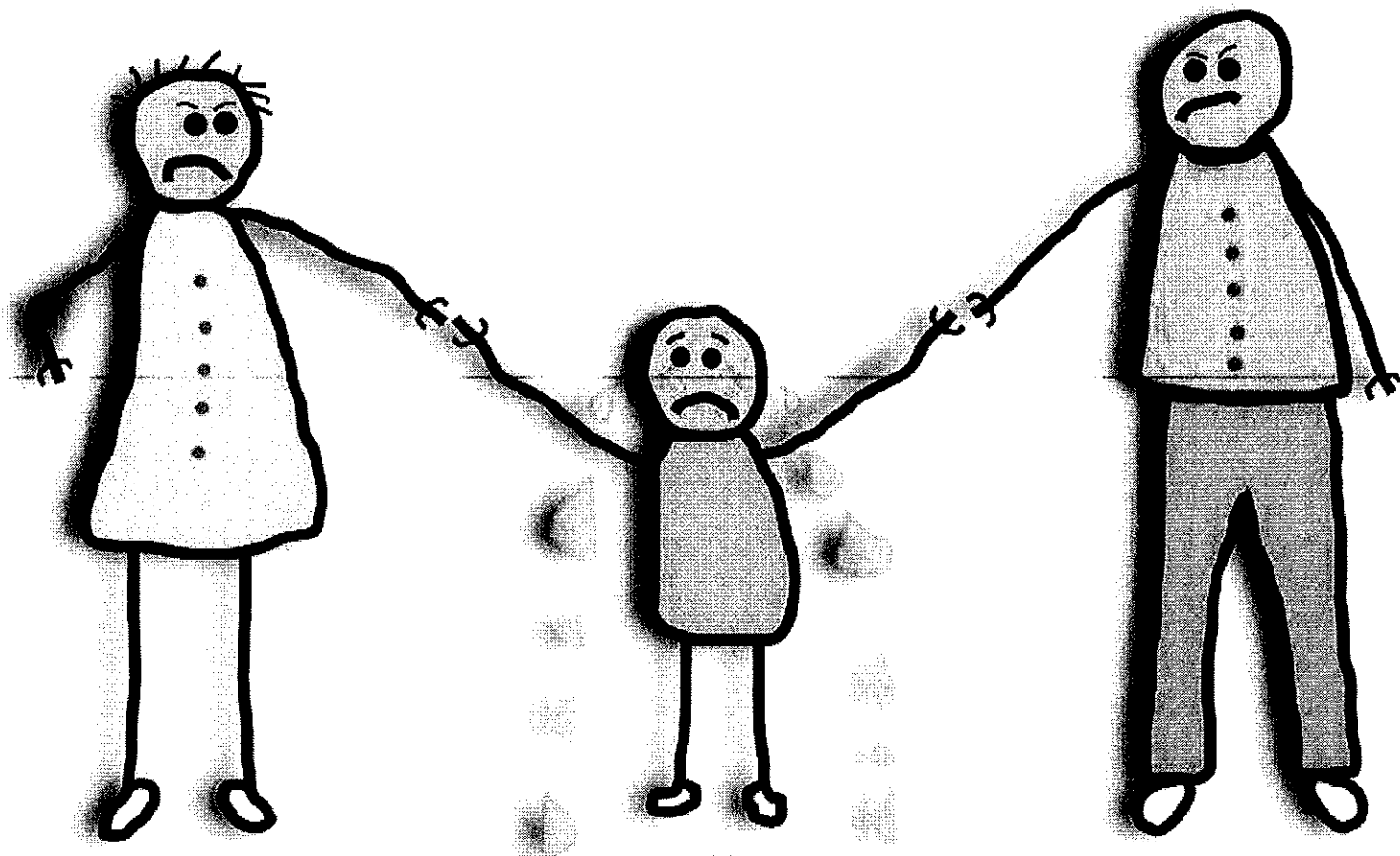


Parenting Decisions and Court Intervention

By David Weinstock, J.D., Ph.D.



*W*ithin the context of a divorce, there are often conflicts between parents regarding individual parenting decisions. Legal custody decisions are clearly dictated by the Court's application of sole and joint custody. However, when non-legal parenting decisions arise additional conflicts often exist.

Parents may argue about a variety of issues, including bed times, spanking, helmets on quads or horses, daycare facilities, pool fences, and watching particular television shows or movies.

With some decisions, one must consider whether a parent's motive to disagree goes beyond the child's best interest. For example, arguing against introducing a new significant other to the child might be couched in terms of concern about the child's well-being, yet might really be motivated by his/her individual psychological difficulty with the other parent "moving on." Attorneys, judges, Parenting Coordinators and other court professionals are periodically asked to weigh in and resolve these emotionally-charged conflicts.

Most professionals agree that the best approach is to encourage each parent to accept respective differences. Whether one promotes co-parenting or parallel parenting, each parent retains the right to make non-legal household decisions with regard to the children. Nonetheless, some decisions do warrant intervention by the court. When determining if a decision justifies court intervention, professionals seem to take a "you know it when you see it" approach. Unfortunately, such a subjective approach risks inflaming an already emotional situation. Unlike obscenity assessments, "unbiased" professionals are potentially determining how a parent should act within his or her household, which can result in an unfortunate intrusion on an otherwise private realm. As such, the following two-pronged objective approach is offered as a guideline for consideration.

FOLLOWING THE LAW

The first prong is to inquire whether the decision at issue violates a court order or Arizona law. To make such a determination, it is imperative that the professional be privy to prior court orders that arise out of parental agreement or judicial discretion which relate to the parenting plan. Periodically, judges create

provisions to shape parental decision-making. Beyond the individual court orders, Arizona law speaks to some parenting decision conflicts. Some examples of questioned areas include the necessity of car seats (A.R.S. §28-907), helmets on motorized vehicles (A.R.S. §28-964), and pool fences (A.R.S. §36-1681). It is also important to be aware of other rules, such as town ordinances that might have an impact on parenting decisions.

OBJECTIVE DETRIMENT

Beyond issues that violate the law, the second prong examines whether this is a decision that appears to be objectively inappropriate. Essentially, there is a continuum with regard to the propriety of parenting decisions, ranging from those that are clearly appropriate decisions to those that are clearly inappropriate. The "I know it when I see it" assessment can be applied to the extremes, without likely conflict. Within the continuum lies a somewhat large gray area. These are the decisions that might call for an objective resolution, again guided by something beyond the professional's subjective opinion. The second prong of intervention is related to parenting decisions that implicate research about such decisions.

Lawyers, judges, and mental health professionals should remain abreast of laws and research regarding such parenting decisions. For example, meta-analyses have been recently published regarding the detrimental impact of spanking. Other research avenues to consider are the impact of second-hand smoke, concerns about the introduction of significant others, sleep hygiene research, and bedtime consistency.

The need for more objective intervention impacts professional practice in multiple ways. Attorneys who question particular parenting decisions might seek consultation with a mental health professional who can provide empirical support for intervention. When seeking court intervention about a parenting decision, do not presume the judge will agree with your client's individual perspective, as subjectivity is unpredictable. Many judges also do not like to intervene with non-legal parenting decisions, thus the assistance of objective data might bolster the argument. Finally, when considering the selection of a Parenting Coordinator, seek those who are appropriately apprised of current research and able to identify objective information when intervention is needed. ■

about the author

David Weinstock is a licensed psychologist in Arizona. He is also a licensed, non-practicing attorney admitted to the New York and Massachusetts bar. He is a partner at Forensic Counseling and Evaluations (www.fcande.com), a group of psychologists and psychiatrists focused on both behavioral counseling and mental health assessments. Dr. Weinstock is a member of the Maricopa County Superior Court's mental health subcommittee, a member of the State of Arizona's Domestic Relations committee and a former co-chair of the Arizona Psychological Association's forensic committee.