

How Has The Global Pandemic Affected The Already Thorny Issues Surrounding Co-Parenting And Custody Exchanges Between Separated And/Or Divorced Parents?

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In these emotional and frightening days since the tri-State area has awakened to the living nightmare of COVID-19, it was not at first apparent how many aspects of life would change. Divorce and family law attorneys are now dealing with an increasing number of issues concerning the transfer of children from one parent to another. Issues of blended families, stepparents, and even parents' jobs as essential employees, have come into high focus. Fear inspires emotion and blame. After all, what can be more fundamental than the well-settled liberty interest in the care, custody, and affection of one's children? However, the novel coronavirus does not care about our court orders, our divorce judgments, or our desire to be with loved ones. The Courts have long ago established that the paramount consideration in these controversies is the "best interests of the children."

These are difficult decisions for the Court to make in light of the pandemic, especially in situations where there are heightened risks to the child(ren)'s health. How does a Court decide what is in the best interests of the child in a situation where a primary residential parent insists on following stay-at-home orders, because the child has respiratory issues, and the other parent, who continues to travel in and out of New York City, wants to enforce the existing parenting time schedule?

In another example, what if the parties previously relied upon ride share services or public transportation for parenting exchanges? In the age of COVID-19, are these forms of transportation still reasonable?

Or in another scenario, imagine a shared custody arrangement, where the father's new wife exhibits "symptoms" of the coronavirus, and the mother objects to following the parenting time schedule, given that one of the children suffers from asthma. The father insists on enforcing the parenting time

schedule, arguing that his new wife's symptoms have subsided. Does the mother, in this case, have the right to keep the children away from the father until it is confirmed that the new wife tests negative for coronavirus? If there is not yet an Order for custody and parenting time, the mother is not violating any Order by withholding the children until a reasonable amount of time or other requirements are met. For example, a 14-day quarantine and two negative tests for the virus, might be a valid contingency. If an Order for custody and parenting time is in place, arguably, a custodial parent may still justifiably "violate" the terms of the Order due to these extraordinary circumstances and because it is in the "best interests of the child." However, the father still has a right to enforce an existing custody and parenting time schedule and can certainly argue that he has the child's best interests in mind and will take precautions. The child, too, has the right to be with both parents, especially during a time of crisis. How does a Court weigh the competing rights of the parents and the children against any danger or harm that may exist?

Courts have a duty and obligation to act in the best interests of the children, as *parens patriae*. There are any number of examples of controversies that can arise, and certainly a primary custodial parent could also be required to forego contact with a child for a variety of reasons. Every case is fact-dependent and unique.

There are alternatives available to a parent who is denied parenting time until COVID-19 restrictions are lifted. For example, increased telephone and video communication, such as, via Facetime, Skype, Zoom, or other applications, can be used. Yet, these forms of communication will never feel adequate to the parent who is unable to give their children a hug or tuck them in at night. Parents should remain open to negotiating "make-up" parenting time at a later, safer time. Again, make-up time in the future is going to be inadequate solace to the parent, who is away from their child.

One thing is certain, and that is that there is no "one size fits all" solution, and each case must be evaluated on its specific facts.