

Help Yourself by Taking a Broad Family View

By: Kim Douglas Sherman, Esq.

www.shermanlegal.com

I am a dad, and I am an attorney practicing family law in Florida for over thirty years. In those years I have seen some colossal battles over children. Most of the time, when emotions are running high, one of the parents decides that the best way to inflict pain on their soon-to-be ex-spouse is through the children. That decision is one of the WORST that a divorcing parent can make. This article contains some effective strategies, and couple of reasons to avoid the urge to use the kids as a weapon.

Sure, you have heard of “what goes around comes around.” I tell my clients that it is truer than you can imagine. It is not just that the mother will have a chance at some time later to take her shot back—but in the many years following the divorce, while the children grow into adulthood, then parenthood— their mother will have many chances to get even. Children want to love their parents and respect them. It seems that as the children grow, they figure out what really motivates their parents’ actions, and then they take the hostility personally.

Family court judges are used to seeing through parental manipulations. They pay attention to clear changes of parenting patterns. If the father did not spend lots of time with the children during the marriage, the court questions the motivation behind a change during the divorce process. It should never be too late to become active in your child’s life, but I suggest that you only request the time and contact with which you can and will abide. If you ask for forty percent of the overnights, but you end up using a sitter or not taking the children, the judge will see that your actions speak louder than your words.

I am not saying to be docile about your fatherly rights. Florida is a progressive state that takes the position that both parents are equal in the eyes of the law—until the Court is shown otherwise. Dads hurt their own cause and their continuing long-term relationship with their children by failing to take a broad family view. Simply put, that means making decisions motivated by what is in the best interests of the children.

If your lawyer or your “gut” is pushing you to fight, first try to get a long term prospective. Slow down on the quick emotional responses and look for some help. There are many qualified family psychologists and specialists in child-sharing issues. Consider going to a certified mediator, trained to work through family issues.

If you think that your spouse has the willingness to give a best effort at out of court resolutions, try finding lawyers who are trained Collaborative Lawyers. With Collaborative Lawyers, you get a team approach to problem solving, with your professionals committed to achieve resolutions that every member of the family can live with and work with for the long term. How about this for a progressive approach: you sit down with your spouse and your lawyers right off the bat. Together, as a team, you identify the points of agreement and those in conflict. You hire on additional professionals to assist the progress towards an amicable divorce. If an accountant, an appraiser, an expert in child issues, or an expert in mental health issues is needed, the team makes those arrangements.

Hiring one neutral expert instead of each party hiring an expert biased towards their own view often saves money. The concept recognizes that, if the matter were to go to court, the judge would end up finding a more neutral middle ground. The trained collaborative lawyers recognize that divorce and the splitting of one household into two is usually a new and foreign concept to the parents. By bringing in a trained mental health professional with an independent point of view and with experience in child-sharing issues, the parents can have valuable help in crafting a fair, workable parenting plan.

Recently, I had a dispute that was easily resolved through the collaborative process. After splitting up, but prior to filing for the divorce, the dad had made an arrangement with the mom to split their child's overnights roughly forty percent for the father and sixty percent for the mother. The dad then heard from friend that he is "supposed" to get fifty percent. So the dad threw a fit and was prepared to spend money that neither parent had on a big fight in court. After some analysis, it was clear that the father would have had to hire a baby-sitter for most of the extra time he thought he wanted. The mother had a flexible job and was able to personally provide the care for the full sixty percent of time. In addition, the mother was historically very accommodating to every special request for time or coverage made by the father. In this circumstance, a judge applying the "best interest of the child" approach would NEVER mechanically impose fifty-fifty. When the parties and their team of advisors got together to address the dad's concern, resolution, without resort to the court, kept the long term and broad family view preserved.

A key to the collaborative approach is that the parties and their attorneys sign a contract that prohibits the attorneys from being the court lawyers in the event that the divorce is not settled. The principle of the practice gives assurance to the parties that the lawyers will not be invested in creating unnecessary controversies. After more than 33 years of litigation, I appreciate a respectful, out-of-court resolution process. For more on Collaborative Law in Southeast Florida check out: www.collaborativefamilylawfl.com. In other areas check out the International Academy of Collaborative Professionals: www.collaborativepractice.com.

Mr. Sherman was born and raised in the Chicago area. He graduated from the University of Wisconsin in Madison, and he received his law degree from Northwestern University. Trained as a criminal prosecutor, when he left public service in 1977 to practice civil law, Mr. Sherman developed a reputation for aggressive court litigation. He has taught law and has had several legal articles published about practical law subjects for real people.