



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



MOTHER'S RIGHTS IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

CALL US FOR ALL YOUR FAMILY LAW NEEDS (281) 810-9760

INTRODUCTION

Thank you for downloading our special report: about Military Divorce, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

MOTHERS' RIGHTS IN TEXAS

PUT YOUR TRUST IN OUR HOUSTON FAMILY LAWYER

Parenting rights can be of a great concern for divorcing couples – who should be awarded custody? What rights do parents have? In the state of Texas, a child's mother is automatically seen as a legal parent. As your child's mother, however, you have the right to establish paternity on behalf of the child's father to collect child support.

If your rights are at risk of being violated, you should retain representation from the Law Office of Bryan Fagan, PLLC. Our firm is focused on family law matters, which allows us to give your case the personalized attention it needs. Attorney Bryan Fagan is a member of the Texas Bar College, which is an achievement that reaches only less than 10% of lawyers in Texas.

WHAT ARE MY CUSTODY RIGHTS?

It's important to remember that a divorce does not automatically grant the mother custody rights. Before a custody order is given, a judge will look at the case and decide what type of parenting arrangement would best suit the needs and interests of the child. Issues such as abuse, unverified paternity, and high-conflict separations can complicate the validity of mothers' rights – in these cases, a mother can file a protective order.

Seeking a protective order can do the following:

- Grant the mother custody
- Restrict the fathers' visitation privileges
- Order the father to pay child support for up to one year
- Terminating Parental Rights in Texas on the Absent Parent
- Can I get child support and custody of my kids in Texas if we were never married?
- Mom Versus Dad Who Gets the rights? - Custodial Rights Vs. Non-Custodial Rights in Texas

TAKE THE FIRST STEP WITH US TODAY

If your rights as a mother are at risk of being compromised, you should not hesitate in putting our Houston family lawyer on your side. We aim to resolve your matters through negotiations, but if we find that a favorable outcome cannot be secured, we are prepared to take your case to court. At the Law Office of Bryan Fagan, PLLC, we work tirelessly to ensure that your rights are not only understood, but are protected.

TERMINATING PARENTAL RIGHTS IN TEXAS ON THE ABSENT PARENT

Today I met with a potential client asking for advice on whether they could terminate parental rights of their child's other parent. In this case the parent had been absent for several years and had not provided any support. In today's blog I thought I would spend some time discussing this topic.



TERMINATING PARENTAL RIGHTS UNDER SECTION 161.001(2) OF THE TEXAS FAMILY CODE:

There are many different reasons that a parent's rights can be terminated but the applicable law in this situation under Texas Law, states that the rights of a parent may be terminated involuntarily if it can be demonstrated to the Court:

- ☑ doing so is in the best interests of the minor child and
- ☑ "voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months"

A cursory reading of the statute makes it clear that the potential client I met might have case for terminating the other parent's rights to the child.

THE PROCESS

The termination of parental rights can be a difficult process because Courts consider a drastic measure. Before a Court will terminate a parent's rights there must be good cause for a Court to legally remove a child's parent from its life and there is a process to completing a termination suit.

An involuntary termination of parental rights requires:

- ☑ A hearing in which a Judge or Jury finds that it would be in the child's "Best Interest" that the parent's rights be terminated and
- ☑ That one of the other requirements under section 161.001(2) have been met

BEST INTEREST OF THE CHILD

The Court will consider what are known as the "Holley Factors" when trying to determine what would be in the child's best interest. Those factors include:

- ☑ the child's desires;
- ☑ the child's present and future emotional and physical needs;
- ☑ the present and future emotional and physical danger to the child;
- ☑ the parenting abilities of the persons seeking custody;
- ☑ the programs available to the persons seeking custody to help promote the best interest of the child;
- ☑ the plans for the child by those persons seeking custody;
- ☑ the stability of the home or proposed placement;
- ☑ the acts or omissions of the parent which may indicate that the existing parentchild relationship is not a proper one; and
- ☑ any excuse for the acts or omissions of the parent.

THINGS TO CONSIDER

- ☑ The court may appoint an attorney to represent your child - Often called an "attorney ad litem", this attorney will gather facts, interview involved parties and witnesses, appear at hearings, and make recommendations to the Judge.
- ☑ Another attorney may be appointed to represent an absent or unknown parent.
- ☑ This type of case can be expensive. In addition to paying for an attorney to help you with the termination. You may also have to pay for the attorney for your child and to locate the absentee parent if this is unknown.

CAN I GET CHILD SUPPORT AND CUSTODY OF MY KIDS IN TEXAS IF WE WERE NEVER MARRIED?

I met with a mother recently that who had questions about custody and child support for her children. One of her concerns was whether the fact that she and the father were never married and if that would make a difference?

Today's blog post will be on child support and custody children in the State of Texas. Although child support and custody of Children is one of the things that a Texas divorce case handles. Marriage or divorce is not a requirement for getting court orders regarding children.



If not handled in a divorce they are handled in a spate cause of action called a Paternity Case or a Suit Affecting Parent Child Relationship "SAPCR."

FATHER'S RIGHT'S VS. MOTHER'S RIGHTS?

Sometimes you will hear a law firm marketing itself as being a father's rights or mother's rights law firm. Father's and mother's do not have any special treatment under the law. The new standard is "best interest of the child."

What father's and mother's do have under the law is right to ask the court to make orders regarding which of the parent's will get to make decisions regarding their child and what visitation is going to look like between them. You can read about this more in our blog "What rights does a father have in Texas?"

Before there are Court orders regarding a child in Texas both parents are in sort of limbo land in regards to the rights of the child. One example of this is when parent's start fighting it is not uncommon for one parent to withhold visitation from the other parent. This can become a very frightening occurrence in which police are often called.

Generally, it is sometimes after this when a parent will reach out to my office. Most of the time after the police have been called out they refuse to take any action because it is dispute between the parents and there is no Court order saying who has superior right to the child. The advice that police generally give both parents is to "get a lawyer."

In Texas, unmarried parents have the same legal obligations to their children as married or divorced parents do. If an unmarried couple separates, they also will need to go through the court system to get court orders regarding the children.

PATERNITY CASE OR A SUIT AFFECTING PARENT CHILD RELATIONSHIP

As mentioned earlier this process is through either Paternity Cases or Suit Affecting Parent Child Relationships. Both of these process are very similar cases. The main difference is that in a Suit Affecting Parent Child Relationship is that the father has already admitted paternity.

This could have been done through him signing what is called an "Acknowledgement of Paternity" either in the hospital or sometime after. In a Paternity Case one of the things that will need to be done is to establish the father's paternity by having him take a DNA test.

This is one way where marriage makes a difference in establishing the paternity of children. Under the Texas Family Code section 160.204 a man is presumed to be the father of the children "If the man is married to the mother and the child is born during the marriage."

CUSTODY OR CONSERVATORSHIP OF THE CHILDREN

In Texas we do not have custody we have conservatorship. They are similar and sometimes used interchangeably by Texas lawyers. However, when you get to court the Judge will be quick to remind you that in Texas it is called conservatorship.

When deciding who will be the "Primary Conservator" of the children (the parent who gets to say where the children live and to receive child support) a court looks at a number of factors. These factors include:

- ☑ The child's age and preferences
- ☑ The relationship between the child and parents
- ☑ The relationship between the parents
- ☑ The child's developmental, emotional, and health needs
- ☑ Each parent's financial situation
- ☑ The living situations of each parent
- ☑ The parents' health
- ☑ Any history of abuse or neglect



While the court's decision a Trial will determine who will be the "Primary Parent", that decision is not necessary permanent. Should there be a substantial change in circumstances, either parent may petition with the courts for a modification.

I like to tell my clients nothing is done in regards to the children until they turn 18 or graduate high school whichever comes later.

CHILD SUPPORT

The calculation for child support is not any different for a divorcing couple and couple who have never been married. Generally, the way it works when calculating child support is that it is 20% of the net resources for the first child then an additional 5% for every child after that who is before the court.

If the party paying child support has children from another relationship who they are supporting then they may be able to have a decrease in the amount of

MOM VERSUS DAD WHO GETS THE RIGHTS? CUSTODIAL RIGHTS VS. NON-CUSTODIAL RIGHTS IN TEXAS

WHO GETS THE RIGHTS TO THE CHILD?

In a typical Texas Divorce, the parents of a child will either agree to divide up the rights and duties each party has or a Court will order a division for them.

The details of each particular divorce notwithstanding, the starkest contrast between each parent is in regard to which parent is able to determine the primary residence of the child. This parent, known as the custodial parent, has the child under their roof more often than not. The other parent, known as the noncustodial parent, will follow a schedule of possession and access either set by the parties or the Court.

BEST INTEREST OF THE CHILD

The best interests standard is how a Court will determine visitation with both parents. Stability of the home, finances, school-related activities and the age of the child are all factors that are considered by the Court.

If the child is over the age of twelve, their preference is considered by the Court as well. Texas Courts have what's called a "Standard Possession Order" (often abbreviated as an SPO) or an expanded Standard Possession Order that will often times go into effect in a final order from the Court.

STANDARD POSSESSION ORDER

Without delving into too much detail, a Standard Possession Order or a SPO entails visitation for the child with the non custodial parent on the first, third and fifth weekends of each month typically from 6:00 p.m. on Friday until 6:00 p.m. on Sunday, thirty days of time in the summer and holidays that alternate each year.

An expanded SPO allows the noncustodial parent to have extended visitation with the child as compared to the normal possession order. Practically speaking this means being able to pick the child up from school to begin their weekend of possession and to take the child to school the following Monday.

While a noncustodial parent under an SPO has the right to visit the child from 6:00 p.m. to 8:00 p.m. on Thursday each week, the expanded order holds that the child may be picked up from school on Thursday and returned to school on Friday. While these expansions may seem minimal, taken over the course of the year it can amount to a substantial gain in time with the child for the non custodial parent.



ENFORCEMENT OF A COURT'S ORDERS

An important item to point out is that just because the custodial parent has physical custody of the child more often than the noncustodial parent, that doesn't mean he or she has the ability to deny the noncustodial parent visitation, possession or access to the child. Parents who are being denied visitation by a custodial parent have the ability to file for enforcement of the Court orders to ensure they are able to spend time with their child.





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WE'RE HERE FOR YOU

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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