

Child's Preferences Do Not Override Court-Ordered Visitation

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Appellate Court Reverses Lake County Trial Court, Determines Mother Cannot “Shift the Blame” to her Children for her Failure to Comply with Court-Ordered Visitation.

It is widely believed that children of divorce, as they near the age of majority, have the freedom to choose whether they want to spend time with one or the other of their divorced parents. In fact, some courts shy away from a formal custody determination for such children, reasoning that no one can tell a 16- or 17-year-old whom they are going to live with; at that age, it is pretty much up to them. But such thinking on the part of a parent can lead to trouble, as one mother learned recently when the Illinois Appellate Court held that her failure to force her children to visit their father against their wishes constituted contempt of court and visitation abuse and ordered her to pay the father's attorney fees. *In re Marriage of Charous*, 855 N.E. 2d 953, 2006 WL 2798537 (Ill. App. 2d Dist. September 13, 2006).

In *Charous*, the parties had two children. The Judgment of Dissolution of Marriage granted the mother, Jodi, sole custody of the children and granted the father, David, visitation, including overnight visits on alternating weekends. In addition, the parties' parenting agreement contained fairly typical provisions requiring them to work together to reschedule missed parenting time and to consult with each other before planning extracurricular activities for

the children. The parenting agreement prohibited the parties from discussing visitation, support or other issues in the presence of the children and from making disparaging remarks about the other parent or attempting to “poison the child's mind” against the other parent; it also required the parents to cooperate in making the children's school records accessible.

Shortly after the Judgment of Dissolution was entered, when the couple's son and daughter were 15 and 10 years old, respectively, David filed a petition with the court, alleging that Jodi had interfered with David's rights to visitation with his children. One year later, David filed an additional petition pursuant to Section 607.1 of the Illinois Marriage and Dissolution of Marriage Act alleging that Jodi was engaging in visitation abuse. The allegations in the second petition closely mirrored those in the first and alleged that the children had not spent a single overnight at David's home since the entry of the Judgment of Dissolution. David further alleged that Jodi condoned and encouraged the children repeatedly to miss visits with their father, and willfully and without justification acted to deprive David of his parenting time.

Testimony revealed that Jodi's obstructions to visitation were legion. On the first overnight visit after the entry of the Judgment, the children called their mother from David's home, and she went to David's residence and demanded he allow the children to leave with her. Thus began

a lengthy and acrimonious battle for emotional control of the children. In the ensuing months, the children never spent the night with their father and often canceled their visits, saying they had homework, extracurricular activities, or had made other arrangements for that time. One of Jodi's more egregious acts took place when David went to pick up their son for visitation on David's birthday. Jodi waved a subpoena she had received in regard to the court proceedings at David and said to her son, "Ask your father why he is doing this." The son then refused to visit his father that day. Similar instances occurred with the couple's daughter, who refused to visit her father because she had been told he refused to pay for her school trip. Jodi also directed her daughter's school to remove David as a contact person and legal guardian from the school's registration information.

The Children's Representative appointed by the court testified that Jodi told him she did not think David should be involved in the children's lives at all. He further testified that he had met David on several occasions and saw nothing in his demeanor or character that indicated he was a danger to the children.

The trial court's *in camera* interview of the children apparently revealed that the children felt their father was distant and uninvolved in their lives, that he was not interested in doing things they wanted to do during visits, and they did not wish to visit him. Nevertheless, the trial court ordered the children to fully comply with the visitation schedule set forth in the parenting agreement. However, the court did not find Jodi in contempt or liable for visitation abuse. In rendering judgment, the trial judge admonished both Jodi and David as "bad parents," and seemed particularly troubled by a telephone voice message from the son that strongly indicated he was being coached by his mother. But the trial court found the children's other

statements sufficiently persuasive to avoid holding Jodi in contempt. David filed a timely appeal.

On appeal, David argued that he had shown by a preponderance of the evidence that Jodi had failed to comply with the terms of the parenting agreement and that her failure to comply was willful. Jodi, in turn, argued that her children's strident refusal to visit David, coupled with their busy extracurricular schedules, excused her failure to compel the children to visit their father as ordered.

The Appellate Court agreed with David. The Court stated that if the children's schedules had made it impossible to abide by the parenting agreement, Jodi's remedy was to seek a modification of the visitation order, rather than to unilaterally fail to abide by its provisions. The Court went on to note that although the trial court found that David's parenting skills may have been a contributing factor in the children's refusal to participate in visitation, that reason "did not provide Jodi a lawful justification" to violate the parenting agreement. The Court further reasoned that "a custodial parent may not disregard the visitation requirements of a dissolution judgment merely because his or her children do not want to visit the noncustodial parent." In addition, the court noted that a parent cannot "shift the blame" for her failure to enforce visitation terms to her children, and cited case law in reasoning that "[A] parent must comply with court-ordered visitation even where the child has expressed hostility toward the other parent." See *In re Marriage of Reed*, 100 Ill. App. 3d 873, 877 (1981) ("visitation affords members of a family the opportunity to communicate with each other and thus diminish hostilities and foster an atmosphere in which a renewal of affection may take place.") The Court further ordered that Jodi pay for David's attorney fees.

Comments: *This case highlights some of the worst consequences of a “bad divorce.” While the Appellate Court’s opinion never mentions the word “alienation,” it ascribes just such an improper motive to Jodi’s actions. One wonders how a parent, when faced with extreme circumstances such as this, should be expected to deal with the situation. The Court’s opinion gives little guidance to parents, notwithstanding its general pronouncements about the importance of forcing children to visit a parent they clearly do not want to see. Often children will align with an alienating parent in an attempt to protect what they see as that parent’s fragile emotional state. In the most severe cases of alienation, one parent actually conditions his or her relationship with the children on their rejection of the other parent. The children are then faced with the inevitable loss of one parent altogether. However, even in the best divorces loyalty conflicts may present themselves, and the potential exists for creating a devastating emotional dynamic. The literature on this subject unanimously recommends that lawyers and other professionals identify a parent’s alienation tendencies early in their involvement with a case and guide the parties and children to the appropriate resources before the situation becomes entrenched. ■*

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