

Robert J. Durst
Shareholder/Chair
Stark & Stark Divorce Group
993 Lenox Drive
Building Two
Lawrenceville, NJ 08648
609.895.7342
rdurst@stark-stark.com

There are cases in which one of the parents has abandoned their parental responsibilities, suffers from various addictions, suffers from a significant mental or emotional condition or are otherwise unfit to assume either physical or legal custody. In such cases, the specific facts must be carefully analyzed. In such circumstances, one party may have limited parental rights, supervised visitation may be required or a Parenting Coordinator may be utilized.

Supervised visitation means that a person cannot be in the presence of their child without appropriate adult supervision. A Parenting Coordinator is utilized to facilitate decision making when the parents are incapable of doing so themselves. These alternatives should be used only when absolutely necessary and only as solutions of last resort.

Absent such extenuating circumstances, New Jersey law regarding custody of children can be summarized in the simple principle that the parenting arrangement must be in "the best interest of the child." Notice that the operative words are "in the best interest of the child"; not necessarily the best interest of either or both parents.

Whatever the parenting arrangement, it must address two basic areas of responsibility: physical and legal custody. Physical custody determines where the child will reside, how many days with each parent and at what times: weekdays, weekends, holidays and vacation periods. Legal custody involves decision making regarding the child. Decisions such as elective medical care, religious training, schooling decisions and extra curricular activities are the typical discretionary decisions which are a part of legal custody.

In order to determine what parenting arrangement is "in the best interest of the children," the Court must apply specific statutory criteria. Those criteria include:

- (a) a parent's ability to agree, communicate and cooperate in matters relating to the child;
- (b) a parent's willingness to accept custody of the child;
- (c) any unwillingness on the part of either party to allow visitation or contact with the child with the other parent;
- (d) the relationship of the child with the parent;
- (e) any history of domestic violence;
- (f) the safety of the child;
- (g) the preference of the child, when the child is of sufficient age so as to form an intelligent decision;
- (h) the needs of the child;
- (i) the stability of the home environments of the respective parents;
- (j) the quality and continuity of the child's education;
- (k) the fitness of the parent;
- (l) the geographic proximity of the parents' home;
- (m) the extent and quality of time that each parent spent with the child either prior to or subsequent to this separation of the parties;

Robert J. Durst
Shareholder/Chair
Stark & Stark Divorce Group
993 Lenox Drive
Building Two
Lawrenceville, NJ 08648
609.895.7342
rdurst@stark-stark.com

- (n) each parent's employment responsibilities;
- (o) the age and number of children.

In most cases, the primary objective should be to maintain a continuing relationship between each parent and the child. The Court will attempt to craft a physical custody arrangement whereby each of the parents will enjoy meaningful parenting time with the child at regular intervals and a legal custody which allows both of them to participate in the decision making responsibility for the child.

There are many books discussing the impact of divorce upon children and the theories espoused in such books are as numerous as the books themselves. However, there is one common theme in almost all of the reliable literature: the greater the conflict between the parents, the more the negative the impact of the divorce will be upon the child.

Psychological studies show that there are certain types of parental behavior which almost always adversely affect children. Such behavior should be recognized by both parents and each should avoid falling into such behavioral patterns regardless of their reason for doing so.

Such behaviors include:

- Denigrating or criticizing of your spouse in the presence of your children;
- Seeking to make your child your ally or confidant;
- Involving your child in discussions regarding your divorce;
- Blaming your spouse for your own short comings. If you are unhappy, frustrated or depressed, seek competent psychological counseling; do not tell your child that you would be fine if it were not for your spouse, or your spouse's conduct;
- Engaging in verbal confrontation with your spouse in the presence of your children;
- Any physical confrontation in the presence of the children;
- Using your child as messenger between you and your spouse.



Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney.

Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.