

Broken Love: The Intersection of Divorce and Therapy

A Legal Perspective by Dina Haddad, Esq., LL.M



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Here, at Families First Mediation, we want to wish you all a prosperous holiday season. In our last column, we took a look at the difficulties couples may encounter when in the divorce process, particularly litigation, and what you can do to help them. With the holidays upon us, I would like to explain how a detailed parenting plan is crucial in helping parents navigate unique custody scenarios to give their children the best opportunities to succeed, and provide you specific examples you can use right away!

What is a parenting plan? A parenting plan is synonymous with a custody agreement. This can be either an agreement by the parties, or an order by the court regarding the parents' custody and visitation responsibilities for their minor children. Generally, the parenting plan will detail the time-share (physical custody), and whether the parents will share in decision-

making regarding their children's medical, health and education (legal custody). You probably hear parenting time in percentages, such as "We have a 60/40 time-share," or "I want 50% custody." A parenting plan also includes details regarding holiday schedules, transportation and exchanges, and the amount of contact the parents might have with one another. Parenting plans, however, can be far more detailed.

The more detailed a parenting plan, the more helpful the plan is to the parents who are now navigating new roles as co-parents. When there are limited details, custody disputes are more likely to arise, and land the parents in court leaving a judicial officer to make decisions about the parents and their children's lives. Instead, a detailed parenting plan reduces the likelihood of future custody conflicts because the plan's guidelines set the rules that the parents are required to follow by court order.

I need some examples of a detailed parenting plan! Suppose you are seeing mom for individual counseling. She comes in very upset. This Thanksgiving, dad has custodial time of their 7 and 9-year old boys, but Dad needs to go to Detroit for a fam-

ily emergency – his mother is very ill and is not expected to make it through the weekend. Dad has already planned an elaborate Thanksgiving weekend for his sons with his now-wife, and wants them to participate in the festivities while he is away. Unfortunately, he cannot afford to take them with him, and believes the weekend might be too traumatizing for them as well. Mom wants the Thanksgiving time. What can mom do? She might be thinking that she should request an emergency hearing to be awarded the Thanksgiving time. This is unlikely to work for several reasons: only one being that the children are not in any harm at dad's home, even in his absence.

Instead, mom would have been best served if her parenting plan had details to cover this situation. For example, if her parenting plan had a "right of first refusal," she would have likely been able to receive the Thanksgiving time. A right of first refusal would require the custodial parent to offer the non-custodial parent his or her time if he or she was going to be away for a certain number of overnights, before using other child care options. If this were in play, dad

would have been required to ask mom if she wanted the Thanksgiving time.

Another provision in her parenting plan might have been carving out an exception for holiday time. In this situation, the parenting plan might have required that the custodial parent be present during the holiday time awarded to him or her. If the custodial parent cannot be present for more than X percentage of holiday time (i.e. 50% of the time), then the custodial parent forfeits the holiday time to the non-custodial parent. This provision would make sense since children should be with their parents for the holidays. If the custodial parent will not take advantage of that time, the other parent should have that precious time.

The parenting plan might also have a provision requiring the parties to attend a mediation session, counseling session, or work with a parenting coach to work through custody issues like these as they arise.

These are just a few examples of a countless number of provisions, which can be included in a detailed parenting plan.

Will It Hold Up In Court? This is a great question. It depends on what provision is being enforced. For most parenting issues, the court

will have jurisdiction (the authority to enforce the order). For some issues, such as adult children (over the age of 18), the court does not have jurisdiction. For example, if there is an agreement regarding the adult children's college expenses or custodial time, the expenses might be en-



forceable as a contract, but the custodial time has no enforceability.

Often parenting plans include that the parents shall not use any derogatory terms regarding the other parent in front of the children, or allow any third party to do so. However, a judge would not be able to enforce this agreement against any third-party, or hold the parent responsible for the actions of a third party. Nevertheless, having this rule in the parenting plan is a great one. Even though it is unenforceable, because it is written and the parents agreed to abide by this rule, it is more likely to be followed than if it were not in the agreement.

As a rule of thumb, more details are better. Keep in mind - when the parents agree to a detailed custody plan, the court will enter it as an order, and only when a provision is disputed will the issue of enforceability come into question, if at all.

How Can I Help My Clients? You can help your clients by encouraging them to work towards a detailed parenting plan. Some might argue that they are getting along fine and do not need an extensive plan. Encourage them that the plan is not for today, but for the future when questions and unplanned circumstances arise. You might also suggest to your client that he or she should discuss this with his or her attorney or mediator.

If you have a topic you'd like to see addressed, or comments and questions about this column, feel free to reach me at (408) 357-3486 or dina@ffmediation.com.

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