



FAMILY LAW: A PRIMER

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I often receive phone calls asking me questions such as: “My son’s ex-wife is wanting child support. How can she get more when he tells me that they have equal custody?” or “If I get a divorce, will my wife get any of my farm?” Unfortunately, divorce, and the subsequent squabbles that result afterwards, are a daily part of our society. It is a safe bet that each person reading this right now knows at least one person who has gone through a divorce at some point. What is interesting, though, is that for as common as divorces are in this country (and in Wisconsin), very few people understand the general “law” governing divorce, child custody/placement, child support, etc. Consequently, I thought it might be beneficial for me to provide a primer outlining basic family law concepts.

First, and foremost, many people believe that if one spouse “causes” the divorce (by cheating, for instance) that this entitles the other spouse to something – it does not. Wisconsin is a “no fault divorce” state, which means that it does not matter who caused the divorce or why the parties are getting divorced. All the court ultimately asks is “whether the marriage is irretrievably broken.”

Another common misconception is that when a couple divorces, the husband “gets his stuff” and the wife “gets her stuff.” Wisconsin is a “community property” state, which means, absent an enforceable prenuptial agreement, when the court ultimately conducts a hearing to divvy up the parties’ bank accounts, real estate, personal property, cars, etc., it will presume that all assets are to be divided equally between husband and wife. Thus, the fact that one spouse was unemployed and the other worked throughout the marriage and “paid for everything,” the law presumes that the unemployed spouse still gets half of everything, even if they “didn’t pay for it.” There are exceptions to this rule (primarily for gifts and inherited property), but as a general principle, upon divorce, the marital estate is presumed to be divided equally.

Many people inquire about “alimony.” The term alimony is commonly used to define payments of money made for a period of time by one spouse to another spouse after the divorce. Wisconsin does permit alimony; however, we call it “spousal maintenance.” There are no hard-and-fast rules for granting maintenance, but generally, the longer the marriage and the bigger the difference in income between spouses, the more likely a maintenance award will be given.

Turning to the children, one of the biggest misunderstandings in family law is the concept of “custody.” In some states, the term custody is used to define which parent the child lives with. In Wisconsin, this is not the case. The term “custody” in Wisconsin only refers to which parent has the right to make important decisions (like education and medical treatment) on behalf of the child. Thus, if one parent has “sole legal custody,” this means that only that parent gets to make decisions about the major issues in the child’s life. Conversely, if parents have “joint legal custody,” that means that both parents have a say in the important decisions. Custody has nothing to do with whom the child lives.

In Wisconsin, we use the term “physical placement” to define with whom the child lives with. Thus, if one parent has “primary physical placement,” that means the child lives almost exclusively with that parent. Whereas, if a child lives with both parents, we call that “shared physical placement.” As a general proposition, the law presumes that it is in the best interest of the child for parents to have equal custody and equal placement; however, each parent has the right to argue otherwise (and they generally do).

Finally, child support, unlike spousal maintenance, is a highly structured area of the law. Child support is essentially a payment of money by one parent to another parent to offset the cost of raising children. Child support is calculated based on a number of factors, including each parents’ income, the amount of time the child is with each parent, and the number of children. Legal custody has zero bearing on the amount of child support a parent is obliged to pay.

I do hope this information has provided some clarification on some the basic family law concepts in Wisconsin. I welcome any questions you may have on family law. You can reach me at 920-437-0476 or wpm@lcojlaw.com.