Child Custody, Co-Parenting and Decision-Making

By Amy Wechsler, Esq.

In a divorce or separation, parents ask: “Who gets the children?” But children are not possessions to be bargained for or won. Consider asking a different question: “What do the children get?” The answer to that question requires a focus on what children need, which in family law is referred to as the children’s “best interests.” New Jersey law seeks to assure that children have frequent and continuing contact with both parents, and the public policy of our State encourages parents to share both the rights and the responsibilities of child rearing.

None of us are born experts in child-rearing. It’s a trial and error process in which we inevitably make mistakes and hopefully have opportunities to learn from them. Parents who separate have to figure out how to raise their children, just like married parents do. All couples have disagreements and most parents – married or not – are capable of compromising to make decisions and coordinate responsibility for health care, education, discipline, involvement in extra-curricular activities and other important aspects of a child’s life. Intact families do not have written rules for how this happens. But when couples divorce, that’s not the case. Instead, parents find themselves establishing written schedules, rules, and guidelines. When they cannot agree, judges decide for them. As smart or as understanding as some judges may be, they aren’t born child-rearing experts either. They know that families are better off when the parents, not the judge, decide how to raise a child.

When establishing child custody, most people focus on the time children will spend with each parent. Whatever the schedule, it may be equally or even more important to focus on how decisions will be made about a child’s development and well-being. This is referred to as “legal custody.” Most parents choose joint or shared legal custody so both can have on-going meaningful input into how their children will be raised.

Shared decision-making works when parents are either able to agree or willing to compromise. But what happens when parents can’t agree and the issue is important for the child? Returning to court every time there is a disagreement is simply not possible. Divorce agreements aimed at serving a child’s best interests can be thoughtfully drafted to include detailed provisions about decision-making. For example, in some instances, one parent may have the last say about an issue because that parent is more knowledgeable or because that parent is more involved in managing the day-to-day impact of the decision. Many agreements require parents to go to mediation or counseling before resorting to court intervention.

Parents who need on-going assistance can turn to other processes to help resolve child-rearing disputes without focusing on blame or producing a win/lose result. Licensed mental health professionals experienced in helping couples make decisions can serve as parenting coaches or child specialists. Trained legal and mental health professionals can serve as parenting coordinators, making recommendations, teaching parties better communication, and helping parents reach their own solutions. In any of these roles, the professional can be a valuable resource for parents to consult with when issues arise over time, addressing the evolving needs of the child and the interests of the family in a timely, supportive and efficient way.