

Temporary Custody Awards

Not all divorce cases are simple and fast. Some cases can last years. While the case is going on, decisions have to be made for the kids – school registrations, medical care, etc. Parents have to agree on these things. If they can't agree, they have to go to the judge for a decision. The judge, of course, doesn't want to get into the business of micromanaging the parenting of the couple's children. So, in cases where legitimate parental conflict jeopardizes the children's well-being, a judge may make an award of temporary custody to one parent for decisions that have to be made until the case is over.

In many other divorce cases, awards of temporary custody are sought to gain an advantage in later negotiations or at trial. In those situations, one parent -- usually the mother -- goes to court very early (usually within a week of filing) and seeks to obtain temporary custody¹ of the children. The argument goes like this:

"These parents fight a lot and can't agree on anything and decisions have to be made for the children (like school registration, baptisms, medical treatment, etc.). Who will make those decisions? They can't work together right now. We need a custody order, judge, just a temporary one to be in effect only while the case is still going on."

The problem with "temporary" custody orders is that they tend to evolve into permanent custody awards. Most attorneys don't object to temporary custody awards. Their acquiescence stems from a misunderstanding of the law. Illinois law specifically states that in divorce cases, certain "temporary" orders are just that – they are temporary; and any injustice may be corrected later in the case. Temporary orders for child support, maintenance (alimony), injunctive relief, and temporary attorneys fees can all be ruled on by the court and then modified, or even undone. For those matters, "temporary" truly means temporary. For example, "temporary" child support orders may be adjusted later in the case and the court may even go back and retroactively correct a support order that was too high, or too low. The law specifically gives the court the power to make "temporary" orders regarding child support, maintenance, injunctive relief, and attorney's fees.

When it comes to custody, however, although the law allows the court to make an award of "temporary" custody, the law does not say that such awards must not preclude or predetermine the rights of the parties. In other words, Illinois law implies that an award of "temporary" custody may oftentimes naturally mature into an award of permanent custody.

That is the legal, technical analysis. There is a more pragmatic reason supporting the phenomenon. The significant implication of temporary custody awards is that they establish a status quo. Divorce judges LOVE a stable, non-violent, status quo. In other words, once a temporary custody order is entered, it has a very good chance of gaining momentum and becoming the permanent custody award. The ("temporarily") non-custodial parent will be forced to either capitulate to an agreement of sole custody, or go to trial on the issue and try to convince a judge that an award of joint custody would be best. An award of joint custody would represent an altering of the status quo. More problematic, the trial itself would pit as adversaries the very parents whom the judge is being asked to force into a joint parenting arrangement... and one of those parents would be objecting to a joint parenting arrangement. At trial, of course, the old argument will be pulled out: "You see, judge, these two people can't agree on anything – not even on whether they should co-parent the children – that's why we did the temporary custody award in the first place.

It's not hard to see why temporary custody awards so frequently turn into permanent awards. From the outset of your case, every decision is critical. Be sure to work with one of our experienced attorneys to make sure you are aware of all of the strategies and tactics available.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.

