

Children's Wishes Are Considered in Custody Matters

Q: How does a court decide whether to order shared parenting or order one parent to have custody of the children when a marriage ends?

A: One or both parents may file a pleading or motion requesting shared parenting and a proposed shared parenting plan. To determine whether shared parenting is in the best interest of the children, the court considers many factors, including:

- * the parents' ability to cooperate and make joint parenting decisions;
- * each parent's ability to encourage contact and the sharing of love with the other parent;
- * any history of, or potential for, child or spousal abuse or other domestic violence, or parental kidnapping by either parent;
- * where the parents live in proximity to each other (for practical shared parenting reasons); and
- * the recommendation of the child's guardian ad litem, if applicable.

For cases in which shared parenting is not in the best interests of the children, the court will select a parent (the "residential parent") to have custody of the children. The court will grant parenting time rights to the other parent.

Q: I am going through a divorce. At what age can my seven-year-old son choose whether he wants to live with me or with his mother?

A: Ohio law does not specify an age at which a child may choose his or her own living arrangements. Rather, the court looks at the custody issue on a case-by-case basis, and custody determination is based on a number of factors, including:

- * the wishes of the child's parents;
- * the wishes of the child;
- * the child's relationship with parents, siblings, and any other person who may significantly affect the child's best interest;
- * the child's adjustment to home, school and community;
- * the mental and physical health of all those involved;
- * the parents' likelihood of honoring and facilitating court-approved parenting time rights or visitation and companionship rights;
- * failure of either parent to make any past child support payments;
- * either parent's previous conviction or guilty plea for a criminal offense involving an abused or neglected child or domestic violence, or evidence that either parent has acted in a way that resulted in a child's abuse or neglect;
- * denial by either parent of the other parent's right to parenting time;
- * either parent's establishment of a residence, or a plan to move, outside the state.

The court is not allowed to give a parent preference because of that parent's financial status.

Q: How and under what circumstances may a child choose which parent will have custody?

A: As always with regard to children, the court must determine what is in the child's best interest. The child's living arrangement preference is only one of many factors that may be considered by the court in determining what is in the child's best interest. A parent may ask the court to interview the child to find out the child's preference, and the court will conduct an in-chambers interview. The interview is not done in open court, but rather, in the judge's or magistrate's chambers. The child meets with the judge or magistrate and other court personnel as appropriate, but the child's parents are not present at the meeting. The court, in its discretion, may, and upon the motion of either parent, will appoint a guardian ad litem for the child.

Q: What, if any, guidelines are followed during an interview with a child “in chambers”?

A: The court (judge or magistrate) will first determine the reasoning ability of the child. If the court determines the child does not have sufficient reasoning ability, then the child will not be asked his or her wishes with regard to custody. If the court decides the child does have sufficient reasoning ability, the court must then decide if there are any special circumstances that would suggest the child's wishes should not be considered. Assuming the child has sufficient reasoning ability and there are no special circumstances, the court will then ask the child about his or her own wishes regarding custody.

Q: Does the court always follow the child's wishes?

A: Not necessarily. The court still must determine whether it is in that child's best interest for custody to be granted to the parent chosen. The court also must consider many other factors to determine what is in the child's best interest. The wishes of an older, more mature child are often weighed very heavily unless there is a negative reason why the child prefers one parent over the other (e.g., lax rules or supervision, substance abuse issues, etc.).

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This Law You Can Use legal information article was provided by the Ohio State Bar Association. It was originally prepared by Sylvania attorney Pamela Manning, and updated by Cleveland attorney Laurel G. Stein.

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