

What if your child wants to live with the non-custodial parent?

By Nancy M. Perry

If you have primary custody of your child, can your child choose to live with the other parent? Many states have a statute that states the age a child can choose to live with the other parent. For example, in Texas, children can make the choice at age 12. What does this mean? Assuming Mom is the primary parent with custody, can your child simply state he or she wants to live with Dad and that's the end of it? It's not that open and shut. The child can state his preference, but the court will take into consideration all of the factors of the case, including the child's preference, but not *just* the child's preference. This is especially true when the child is younger. As the child becomes an older teenager, the court will place a greater weight on his preferences, especially since it's difficult to force a visitation schedule on a teen in the first place.

If Mom disagrees with the change and a court battle ensues, what's next? The parties will need to conduct discovery of each other's cases to find out exactly why it is that the child desires to live with the other parent. If a social study is done, the caseworker for the social study will talk with the child and the parents to find out why the child wants to live with the other parent. The judge may also want to interview the child alone in chambers. The child may also have a counselor who could weigh in on his preference. Obviously, the child isn't old enough to testify in court as to his preferences and you can't place the child in that position to testify for or against his parents. In fact, you need to be very careful when relying on the child's preferences and how you handle this issue because it forces the child to choose one parent over the other and the courts don't want to put a child in that situation.

Many times through this process the real reason comes out as to why the child really wants the change. It could range from one end of the spectrum that the child is tired of Mom's rules and discipline and he perceives the grass to be greener on the other side at Dad's house to the other spectrum that Mom has serious issues such as abuse, neglect, or drug abuse and the child wants out of that environment. Usually, the truth will come out as the case unfolds.

The court ultimately has to decide only what's in the best interest of the child. This requires looking at all of the facts surrounding the case and applying it to the law to arrive at a ruling that is in this particular child's best interest. It may be easier in the long run to go ahead and allow the move on a temporary basis only to see how the child handles the change and then determine whether this change should be made permanent. After all, if the child truly thrives better under the other parent's care, then isn't that what's most important?