

Texas Legal Zone

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Child Custody: How the Court Decides

The best interest of the child is always the court's primary consideration when determining the issues of conservatorship and possession of and access to the child. What does that mean? Over the years, the meaning of best interest of the child has evolved, and although courts have developed factors to help give it a universal meaning, it is still somewhat a subjective standard and may vary depending on the judge's opinion who has been assigned to your case.

What are the factors? The primary factors most judges consider when determining best interest of the child include: (1) the desires of the child; (2) the emotional and physical needs of the child; (3) emotional and physical danger to the child; (4) parenting skills and fitness of the parent; (5) the stability of the home; (6) who the child's primary caregiver was; and (7) cooperation between

the parents.

The desires of the child: When children are 12 years of age or older, the judge is required to interview the child to determine his or her preference. While what the child desires is important, sometimes it is not in the child's best interest, and is therefore not binding on the court. If a child is less than 12 year of age, it is up to the judge whether or not to inquire into the child's preference.

The emotional and physical needs of the child: As a parent seeking custody, it is imperative to show that you can meet the child's individualized needs. Obviously, you must be able to provide the necessities such as food, shelter, medical and child care. But, to be in the best interest of the child, the judge will normally want to see that you have time to help him with homework, take him to extracurricular activities, and simply be



able to adequately meet his emotional needs.

The emotional and physical dangers to the child: While the judge will obviously consider any past abuse or neglect, that is not the only "danger" this factor is meant to address. Basically, the judge is going to ensure that the child's emotional and physical needs are met (discussed in previous paragraph), and if they are not, then the judge will probably consider them to be in danger. Thus, even if the child is not in danger of abuse or neglect, based on

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Child Support: Simplified

Child support is often times just as sensitive of a topic as possession of the child. While many believe the two go hand-in-hand, they in fact have little bearing on one another. In other words, a court does not consider child support when determining possession of or access to the child. Likewise, the primary conservator cannot condition visitation on receiving child support payments from the other parent.

Who has to pay child support? While parental situations may vary, by and large, the non-primary conservator is almost always the one making child support payments to the primary conserva-



tor.

How often are child support payments made? Payments may be made monthly, semi-monthly, bi-weekly, or weekly. The payment scheme typically depends on how the obligor is paid at work. However, the monthly amount is always the same no matter when or how often the payments are made.

How much child support is paid?

Child support payments are computed by first using the obligor's gross annual income to determine his or her average gross monthly income. From there, the court uses a tax chart developed by the child support agency to calculate the obligor's net resources (see chart on page 2). Net resources include all wage and salary income, interest, dividends, royalty income, and all other income actually being received, such as retirement benefits, alimony, disability, unemployment, etc. The amount of child support is based on the child support guidelines detailed in the Texas Family

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EMPLOYED PERSONS
2013 TAX CHART

Social Security Taxes

Monthly Gross Wages	Social Security Taxes		Federal Income Taxes***	Net Monthly Income
	Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Hospital (Medicare) Insurance Taxes (1.45%)*,**		
\$100.00	\$6.20	\$1.45	\$0.00	\$92.35
\$200.00	\$12.40	\$2.90	\$0.00	\$184.70
\$300.00	\$18.60	\$4.35	\$0.00	\$277.05
\$400.00	\$24.80	\$5.80	\$0.00	\$369.40
\$500.00	\$31.00	\$7.25	\$0.00	\$461.75
\$600.00	\$37.20	\$8.70	\$0.00	\$554.10
\$700.00	\$43.40	\$10.15	\$0.00	\$646.45
\$800.00	\$49.60	\$11.60	\$0.00	\$738.80
\$900.00	\$55.80	\$13.05	\$6.67	\$824.48
\$1,000.00	\$62.00	\$14.50	\$16.67	\$906.83
\$1,100.00	\$68.20	\$15.95	\$26.67	\$989.18
\$1,200.00	\$74.40	\$17.40	\$36.67	\$1,071.53
\$1,256.67****	\$77.91	\$18.22	\$42.33	\$1,118.21
\$1,300.00	\$80.60	\$18.85	\$46.67	\$1,153.88
\$1,400.00	\$86.80	\$20.30	\$56.67	\$1,236.23
\$1,500.00	\$93.00	\$21.75	\$66.67	\$1,318.58
\$1,600.00	\$99.20	\$23.20	\$77.81	\$1,399.79
\$1,700.00	\$105.40	\$24.65	\$92.81	\$1,477.14
\$1,800.00	\$111.60	\$26.10	\$107.81	\$1,554.49
\$1,900.00	\$117.80	\$27.55	\$122.81	\$1,631.84
\$2,000.00	\$124.00	\$29.00	\$137.81	\$1,709.19
\$2,100.00	\$130.20	\$30.45	\$152.81	\$1,786.54
\$2,200.00	\$136.40	\$31.90	\$167.81	\$1,863.89
\$2,300.00	\$142.60	\$33.35	\$182.81	\$1,941.24
\$2,400.00	\$148.80	\$34.80	\$197.81	\$2,018.59
\$2,500.00	\$155.00	\$36.25	\$212.81	\$2,095.94
\$2,600.00	\$161.20	\$37.70	\$227.81	\$2,173.29
\$2,700.00	\$167.40	\$39.15	\$242.81	\$2,250.64
\$2,800.00	\$173.60	\$40.60	\$257.81	\$2,327.99
\$2,900.00	\$179.80	\$42.05	\$272.81	\$2,405.34
\$3,000.00	\$186.00	\$43.50	\$287.81	\$2,482.69
\$3,100.00	\$192.20	\$44.95	\$302.81	\$2,560.04
\$3,200.00	\$198.40	\$46.40	\$317.81	\$2,637.39
\$3,300.00	\$204.60	\$47.85	\$332.81	\$2,714.74
\$3,400.00	\$210.80	\$49.30	\$347.81	\$2,792.09
\$3,500.00	\$217.00	\$50.75	\$362.81	\$2,869.44
\$3,600.00	\$223.20	\$52.20	\$377.81	\$2,946.79
\$3,700.00	\$229.40	\$53.65	\$392.81	\$3,024.14
\$3,800.00	\$235.60	\$55.10	\$407.81	\$3,101.49
\$3,900.00	\$241.80	\$56.55	\$427.40	\$3,174.25
\$4,000.00	\$248.00	\$58.00	\$452.40	\$3,241.60
\$4,250.00	\$263.50	\$61.63	\$514.90	\$3,409.97
\$4,500.00	\$279.00	\$65.25	\$577.40	\$3,578.35
\$4,750.00	\$294.50	\$68.88	\$639.90	\$3,746.72
\$5,000.00	\$310.00	\$72.50	\$702.40	\$3,915.10
\$5,250.00	\$325.50	\$76.13	\$764.90	\$4,083.47
\$5,500.00	\$341.00	\$79.75	\$827.40	\$4,251.85
\$5,750.00	\$356.50	\$83.38	\$889.90	\$4,420.22
\$6,000.00	\$372.00	\$87.00	\$952.40	\$4,588.60
\$6,250.00	\$387.50	\$90.63	\$1,014.90	\$4,756.97
\$6,500.00	\$403.00	\$94.25	\$1,077.40	\$4,925.35
\$6,750.00	\$418.50	\$97.88	\$1,139.90	\$5,093.72
\$7,000.00	\$434.00	\$101.50	\$1,202.40	\$5,262.10
\$7,500.00	\$465.00	\$108.75	\$1,327.40	\$5,598.85
\$8,000.00	\$496.00	\$116.00	\$1,452.40	\$5,935.60
\$8,500.00	\$527.00	\$123.25	\$1,587.77	\$6,261.98
\$9,000.00	\$558.00	\$130.50	\$1,727.77	\$6,583.73
\$9,500.00	\$587.45*****	\$137.75	\$1,867.77	\$6,907.03
\$10,000.00	\$587.45	\$145.00	\$2,007.77	\$7,259.78
\$10,340.50*****	\$587.45	\$149.94	\$2,103.11	\$7,500.00
\$10,500.00	\$587.45	\$152.25	\$2,147.77	\$7,612.53
\$11,000.00	\$587.45	\$159.50	\$2,287.77	\$7,965.28
\$11,500.00	\$587.45	\$166.75	\$2,427.77	\$8,318.03
\$12,000.00	\$587.45	\$174.00	\$2,567.77	\$8,670.78
\$12,500.00	\$587.45	\$181.25	\$2,707.77	\$9,023.53
\$13,000.00	\$587.45	\$188.50	\$2,847.77	\$9,376.28
\$13,500.00	\$587.45	\$195.75	\$2,987.77	\$9,729.03
\$14,000.00	\$587.45	\$203.00	\$3,127.77	\$10,081.78
\$14,500.00	\$587.45	\$210.25	\$3,267.77	\$10,434.53
\$15,000.00	\$587.45	\$217.50	\$3,407.77	\$10,787.28

How the Courts Decide

(Continued from page 1)

the parent’s failure to meet certain needs, the judge may find the situation is not in the best interest of the child.

Parenting skills and fitness of the parents: The two understandably sound like the same thing, and while they somewhat overlap, there are some notable differences. For instance, parental fitness is based on the parent’s lifestyle and whether that lifestyle interferes with his or her ability to meet the child’s needs. Things like alcohol or drug abuse, sexual conduct, and criminal history are all parental fitness considerations. So, even though your child might be at home safe with a babysitter, the choices you make while away may affect the court’s decision. In contrast, discipline techniques, communication, and overall parenting style are more along the lines of “parenting skills.” For instance, it is not uncommon for the judge to specifically ask a parent what methods he or she uses to discipline the child when deciding what is in the best interest of the child.

Stability of the home: A very important goal of the court is to provide a consistent and healthy home environment for the child. This is often grouped with the next factor—who the child’s primary caregiver has been. Some judge’s are of the opinion that the parent

who has been the child’s primary caretaker can best provide the child with continuity and stability. Though some find this presumption unfair, it is the reality in many courts. But, every presumption has a rebuttal, and not having been the child’s primary caretaker in the past does not mean your chances for the future are lost. Ultimately, the court wants to see a safe, healthy, nurturing environment that has been and will remain constant throughout the child’s life.

Cooperation between the parents: Courts strongly encourage amicable and constructive co-parenting between the parties. Judges have very little tolerance for the feud that exists between divorcing parents, and paramount to most judges is parental alienation. Things such as insulting the other parent in front of the child, or otherwise interfering with their relationship can definitely affect the court’s decision. As hard as it may be, it is important to support your child’s relationship with the co-parent by responsibly and respectfully sharing in the rights and duties of raising your child.

What does this mean for me? If you were a stay-at-home parent prior to the divorce, the parenting skills/fitness factor and providing a stable home factor are probably easier to prove, while it may be harder to show that you can meet

the financial needs associated with caring for the child. Therefore, it is important to determine how you will support yourself and your child as a single parent.

In contrast, if you have been the working-parent, it is important to show the court that you are an essential part of the child’s life. For instance, that you take the child to extracurricular activities, you care for them on a daily basis, and that you can meet all of the child’s needs while still working full-time.

Finally, in addition to evidence and testimony presented by the parties, judges may also use a social study to help guide their decision. A social study is an evaluation of parents, their parenting styles, living conditions, employment, education, and relationship status. The process involves interviews with the child, parents, and family members, as well as in-home visits.

In conclusion, these factors are not exclusive and may not pertain to every case. Courts will always consider the best interest of the child on a case-by-case basis, which is why it is important to take into account the values and predispositions of the person who is deciding your child’s future. Therefore, having an advocate that is familiar with the court and judge assigned to your case is helpful.

Child Support

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Code, and are presumed to be in the best interest of the child. The guidelines are presented in the table below and as of September 1, 2013, only apply to the first \$8,850 of the obligor’s monthly net resources.

Number of Children	% of Net Resources*
1	20%
2	25%
3	30%
4	35%
5	40%

Can the court deviate from the guide-

lines? While the guidelines are typically strictly followed, the court may deviate if it would be inappropriate or unjust under the circumstances. In determining whether a deviation is appropriate, the court may consider several factors—the age and needs of the child, the ability of the parents to contribute to support of the child, financial resources available for support of the child, extraordinary educational, health care, or other expenses, the cost of travel to see the child, among others.

How long is child support paid? In the most common scenarios, child support is paid until the child is 18 years of

age or graduates high school, whichever occurs later. However, if the child gets married before turning 18 years old, or is otherwise emancipated, the obligation will terminate. Lastly, if the child is disabled, then support may continue indefinitely.

Child support issues come in many forms. It can be past due, not enough to meet the child’s needs, or you might simply be in need of child support for the first time. Whatever it may be, it is critical to consult with an attorney who will take the time to understand your needs and work diligently to resolve your issues.

*The percentages shown here apply when the obligor is only supporting children of the marriage. If the obligor has children from outside the marriage or otherwise has a duty to support other children, then the percentages will change.



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