

## **Custody Awards and 'Zones of Decision-Making'**

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*By Bari Brandes Corbin and Evan B. Brandes*

### ***Part Two of a Two-Part Article***

We continue herein our discussion of the situations in which New York courts have found it desirable to award one parent or the other decision-making authority over certain types of child-rearing issues. These are the so-called "zones of decision-making."

#### **Where One Parent Cannot Make Appropriate Decisions**

In *Matter of Frize v. Frize*, 266 AD2d 753 (3d Dept. 1999), Family Court granted the father sole decision-making authority regarding the education of the parties' child, who was 12 years old and multiply disabled. The father had petitioned for sole custody after the mother refused to enroll the child in school, having home-schooled him the previous year. The Appellate Division affirmed, finding that, despite her good intentions, the mother's role in the boy's education had at times been a hindrance.

In *Tran v. Tran*, 277 AD2d 49 (1st Dept. 2000), per the parties' agreement, the mother had been given sole custody of the child. That agreement also contained a provision requiring the child to receive therapy. However, two weeks after voluntarily signing the agreement, the mother unilaterally discontinued the child's therapy. The court decided, based on the mother's actions, that she clearly preferred not to have the child in therapy, and that she would likely pull the child out of therapy again if given the opportunity. It therefore modified the parties' 1999 custody and visitation agreement by granting the father authority over the question of whether the child should continue receiving therapy. The Appellate Division affirmed.

#### **Maintaining the Respective Roles of Each Parent in the Child's Life**

In *Nimkoff v. Nimkoff*, 74 AD3d 408 (1st Dept., 2010), the Appellate Division affirmed Supreme Court's grant to the father of final decision-making authority over, inter alia, the selection of the child's summer camp. It also affirmed the lower court's ruling prohibiting the mother from enrolling the child in a religious day school, secular private school or boarding school without the father's consent, finding that despite the parents' intolerance for

each other, the division of authority between them was appropriate to maintain the respective roles of each parent in the child's life.

#### **Equalizing or Maintaining Each Parent's Involvement In the Child's Life**

In *C.C.W. v. J.S.W.*, 15 Misc.3d 1140(A) (N.Y.Sup., 2006), the trial court noted that the objective of "zone" decision-making is to permit otherwise capable, active parents who are not good candidates for joint decision-making to retain meaningful input in the lives of their children. Finding that the mother was the more capable and/or involved in the children's religious education and financial matters, it awarded her decision-making authority in these areas, among others. The court found that both parties would be equally good at making decisions concerning medical care, educational needs and after-school activities, but awarded these zones of decision-making to the father, primarily in an effort to equalize each parent's involvement in important decisions.

In *D.Z. v. C.P.*, 18 Misc.3d 1123(A) (N.Y.Sup.), the court found that each parent, if given full decision-making authority over the child, would eventually isolate the child from the parent without such authority. The only way that the child would have a meaningful relationship with both parents was if each had significant amounts of time with the child, and significant zones of decision-making authority.

#### **Taking Advantage of a Parent's Child-Rearing Strengths, Abilities and Interests**

In *F. v. F.*, 10/19/ 2001 N.Y.L.J. 21, (col. 5) (Sup. Ct , Kings Co., Paniepinto, J.), the court found that each parent had grave weaknesses as a sole custodial parent that could only be remedied by the court's balancing these weaknesses with the other parent's strengths. It awarded the parties joint legal custody, modified by an award of split decision-making. With such an allocation of responsibility, the court determined not only that the child would be better cared for, but also that the child's needs would be likely remain the parties' focus, rather than their animosity toward each other.

In *Ring v. Ring*, 15 A.D.3d 406 (2d Dept. 2005), the record established that both parties were adequate and loving parents, yet both evinced certain deficiencies. Family Court determined that it would be in the best interests of the child to award joint legal custody to the parties, giving the mother ultimate decision-making authority over his day-to-day educational and religious issues and the father ultimate decision-making authority over the child's major medical and financial concerns. The appellate court affirmed.

In *C. v. C.*, 8/26/2008 N.Y.L.J. 26, (col. 1) (Sup Ct., Lobis, J), the court indicated that the virtue of awarding zones of decision-making is that it fosters the continued involvement of both parents in parenting, without actually requiring co-parenting in all aspects of the children's lives. The court gave the father final decision-making authority on religion, since his religious views were an extension of what the family observed earlier in the marriage, and on mental-health decisions, because he had been more receptive to involving mental-health professionals. The mother was given final decision-making authority on health-related issues (excluding mental health), education, summer activities, and extra-curricular activities, as she had been constantly involved

in these areas of the children's lives since they were very young. She had shown an ability to make good choices regarding these activities.

#### **Where One Parent Will Foster the Other's Parent/Child Relationship**

In *Damien P.C. v. Jennifer H.S.*, 57 A.D.3d 295 (1st Dept. 2008), the Appellate Division found no fault with the lower court's determination that the parties were equally qualified to take custody, with one exception: The mother would be the better parent to facilitate the relationship between the children and the noncustodial parent. The court had based its decision on evidence that the mother invited the father to the children's birthday parties and encouraged him to visit on numerous occasions while she had custody. In contrast, the father withheld information about the children's schooling and refused her admittance to the apartment when the children were with him. Thus, the First Department affirmed the order granting the mother full residential custody of the children, and the father final decision-making authority as to the children's extracurricular activities.

#### **Conclusion**

As the case law shows, the reasons for awarding zones of decision-making are as varied as the factors considered by courts in making a custody determinations. Judges award parents zones of decision-making where it appears that joint custody is inappropriate, but where there is no reason why one parent should be given the right to make all decisions respecting the health, education and welfare of the child. New York's courts have awarded parents zones of decision-making: 1) where it appears that joint legal custody is inappropriate; 2) where it appears that neither parent can be trusted not to obstruct the other parents relationship with or access to the child; 3) where it is apparent that one parent is incapable of or unable to make appropriate decisions with respect to certain aspects of the child's life; 4) to maintain the respective roles of each parent in the child's life; 5) to equalize each parents involvement or maintain each parent's a meaningful involvement in the child's life; 6) to take advantage of the strengths, demonstrated ability, or expressed interest of the noncustodial parent with respect to a particular dimension of child-rearing; and 7) where one parent will facilitate the relationship between the other parent and the child.

Those parents who do not get full or residential custody have traditionally felt relegated to the sidelines. However, when courts can be persuaded to carve out zones of decision-making to be allotted to each parent, they involve the noncustodial parent in the life of the child in a significant and meaningful way. Knowing the circumstances under which courts will make such awards can help the attorney to advocate for this type of arrangement, where necessary.

Bari Brandes Corbin maintains her offices for the practice of law in Laurel Hollow, NY. She is co-author of *Law and the Family New York, Second Edition, Revised, Volumes 5 & 6* (Thomson-West). Evan B. Brandes maintains his office for the practice of law in New York. They both co-author, with Joel R. Brandes, the annual supplements to *Law and the Family New York, Second Edition, Revised*.

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