

Step-Parents: The Unexpected Impact They Can Have On The Primary Parent's Decisions Regarding The Children

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Recently, I was having lunch with a colleague, who told a story about a client who insisted on inserting language into his Property Settlement Agreement that stated if his wife (who was appointed the primary parent in the Agreement) remarried or cohabitated then custody and parenting time would be immediately revisited. The father's objective for including this language was to ensure that if a stepparent or significant other became part of his child's life then the father would continue to have more influence over decisions regarding his child than the stepparent.

That discussion prompted the writing of this article. Many times when drafting a Property Settlement Agreement parties do not question who is going to be designated the primary parent. However, this decision is often made without understanding the full impact the appointment of the primary parent can have on future decisions regarding the children's health, education, and/or welfare. The purpose of this article is to discuss what type of decisions a court may defer to a primary parent and how a stepparent can influence those decisions.

In 1981, the seminal case, *Beck v. Beck*^[1] addressed joint custody arrangements. In pertinent part, Justice Clifford writing for the court held:

*Under a joint custody arrangement, legal custody -- the legal authority and **responsibility for making major decisions regarding the child's welfare -- is shared at all times by both parties.** Physical custody, the logistical arrangement, whereby the parties shared the companionship of the child and are responsible for 'minor' day-to-day decisions maybe alternated in accordance with the needs of the parties and*

their children. (Emphasis added).

It was clear from the language in this decision that it was the New Jersey Supreme Court's intention to ensure that both parents "remain decision-makers in the lives of their children."^[ii]

Over a decade later, in the 1995 New Jersey Supreme Court *Pascale v. Pascale*^[iii] it appears at first glance that the Court echoed the philosophy in *Beck*. However, a closer look at *Pascale* reveals that that Court was slowly changing its view on the equal decision making power of the primary parent and secondary parent. In *Pascale* the Court coined the phrase "primary caretaker" and "secondary caretaker."^[iv] This distinction alone can easily be perceived as diluting the secondary caretaker's status as a decision maker in the parties' children's lives.

Contrary to the *Beck* holding, over the course of the last 15 years, case law has evolved that provides the primary parent with superior authority over the secondary parent when making major decisions regarding their children's health, education, religion and/or welfare, even if a joint custodial arrangement exists. Thus, what one parent believed to be joint decision making power is turning into an unequal playing field. More alarming, however, is that no one can predict how a third party (i.e. stepparent) can influence the primary parent's decisions.

Imagine this scenario: Father (Catholic) and Mother (Catholic) reach an amicable resolution regarding custody and parenting time of their daughter (age 3); the parties agree to joint legal custody and the Mother is designated the primary parent; the parties' Property Settlement Agreement is silent in regard to the child's religious upbringing but both parties have no reason to believe that their daughter would not be raised Catholic. Three years later, the Mother, marries a Jewish man and decides to convert to

Judaism. She also wants her child to be raised Jewish. The father strongly objects. Without researching the issue, it is likely that a practitioner would believe that the child would continue to be raised Catholic and the stepparent's religious influence would be irrelevant to the biological parent's preference. This may not be the case.

In *Feldman v. Feldman*^[v], the Appellate Division held:

*We hold that the **primary caretaker has the sole authority to decide the religious upbringing of the children** and the secondary caretaker shall not enroll the children in training and education classes but programs in a different religion over the primary caretaker's objections when exercising visitation rights.*^[vi] *(Emphasis added).*

"The law is clear that the primary caretaker has the right to determine the religious upbringing of the children in his or her charge."^[vii] "The courts will not interfere with the selection by the custodial parent on religious training."^[viii] Therefore, what would appear an amicable resolution where both parents had preconceived notions that their child would continue to be raised Catholic could be drastically altered by the stepparent's influence over the primary caretaker.

A stepparent's influence over the primary's parent's religious preference is not the only place where a secondary parent's input maybe disregarded. It can happen when medical decisions need to be made as well. In *Brzozowski v. Brzozowski*^[ix], the core issue before the court was whether a father, who shared joint legal custody of the child, could prevent the mother, who was the residential parent, from authorizing nonemergency surgery for the child.^[x] Despite that opinion, the court found that the residential parent had superior decision making authority over the nonresidential parent.^[xi] Specifically, the court held:

. . . any court should be reluctant to substitute whatever limited expertise it may have for the _____ knowledge and day-to-day experience of a parent with whom the child lives, except where there is a clear showing that an act or remission will contravene the best interest of the child. Here, no such showing has been made.[\[xii\]](#)

This decision raises an array of issues. First, why does a secondary caretaker have less input than the primary caretaker when it involves making medical decisions regarding their children? In this case the secondary parent obtained a second opinion that undisputedly disagreed with the proposed surgery. [\[xiii\]](#) Why is that opinion given less weight? Second, assuming the primary parent was re-married, isn't it likely that the primary parent would rely on the stepparent's judgment in making medical decisions for the children rather than discuss the advantages and disadvantages of the proposed surgery with the biological parent. What if the stepparent has a completely different philosophy of medical care than the secondary parent? Why does the secondary parent's input, who is the child's biological parent, become irrelevant?

Another practice point to consider when drafting a Property Settlement Agreement is stipulating to the child's last name. Rarely, do Property Settlement Agreements state that a child's last name will not be changed. This can cause a great deal of heartbreak for the secondary parent in light of the line of cases that hold there is a presumption in favor of the primary parent choosing the surname of a child[\[xiv\]](#).

More specifically, in the New Jersey Supreme Court case *Ronan v. Adely*[\[xv\]](#) the court held:

When the primary caretaker seeks to name or adhere, change the surname of a child, there is presumption in favor of the primary caretaker that the name selected is in the best interest of the child.[\[xvi\]](#) *In fact, the Supreme Court held that "neither the trial court nor the Appellate Division addressed the presumption in favor of the primary caretaker's choice of surname."*[\[xvii\]](#)

Therefore, if a party remarries and takes the name of the stepparent and wants his or her children to also take the surname of the stepparent, the presumption is in favor of the primary parent that changing the child's name from the biological parent's surname to the stepparent's surname is in the child's best interest.

A stepparent's influence does not only affect decisions regarding children's health, education, or religion, it can also affect how a parent disciplines his or her child. In the case *Pogue v. Pogue*^[xviii], the trial court was asked to determine whether the parties' son should be enjoined from playing baseball as a result of his poor grades.^[xix] The trial court held that:

The parent to whom custody is awarded must logically and naturally be the one who lawfully exercises the greater control and influence over the child. The [residential parent], who lives with the child more than six days a week, as contrasted with the [nonresidential parent's] limited visitation . . . is the one who actually rears the child and shapes its moral, mental, emotion and physical nature.^[xx]

The Pogue court held that it "will not interfere, by hold a hearing or otherwise, with day-to-day discipline of the custodial parent unless some basic problem involving the welfare of the children is involved."^[xxi]

The point of this article is to prompt practitioners to think about language they may want to include when drafting Property Settlement Agreements. Many times parents underestimate a third party's influence in their children's lives or do not or cannot even consider it at the time of their divorce. Therefore, having an understanding of the law in regard to primary parent's decision making authority can help both parties have realistic expectations for what may lie ahead.

[i] 86 N.J. 480, 486-487 (1981).

[ii] 86 N.J. at 486.

[iii] Pascale v. Pascale, 140 N.J. 583 (1995).

[iv] Pascale v. Pascale, 140 N.J. 583 (1995).

[v] 378 N.J. Super. 83 (App. Div. 2005).

[vi] id.

[vii] Esposito v. Esposito 41 N.J. 143, 146 (1963).

[viii] Wojnarowicz v. Wojnarowicz 48 N.J. Super. 349, 354 (Ch.Div.1958).

[ix] 265 N.J. Super. 141 (Ch.Div. 1993).

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[xi]

[xii] id. at 147.

[xiii]

[xiv] 140 N.J. 120 (1995).

[xv] 182 N.J. 103 (App.Div. 2004).

[xvi] id.

[xvii] id. at 111.

[xviii] 147 N.J. Super. 61 (Ch.Div. 1976).

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[xx] id. at 146 (Citations omitted).

[xxi] id. at