



Seven Mistakes to Avoid in a Child Custody Battle  
*By James L. Lane, Esq.*

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## ABOUT THE AUTHOR

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Jim brings nearly 20 years of experience to his work in domestic relations and family law, serving hundreds of families on matters such as divorce, child custody, dissolution, alimony and child support issues, juvenile court proceedings for unwed parents, prenuptial agreements and adoptions.

Jim's work often involves complex cases marked by high conflict and emotion, so he is valued by his clients for his empathy, listening skills and his ability to help them clearly understand the process. Whenever possible, he pursues amicable resolution out of court, but Jim also is known as a fierce and dogged advocate for his clients when litigation is necessary to protect their parental and property rights.

Jim is one of only a few attorneys in Ohio to receive the designation of Certified Family Relations Law Specialist by the Ohio State Bar Association. He is married with two young boys, and his own experience with fatherhood has further enhanced his understanding of the struggles his clients face, especially in cases involving child custody.

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**HIGH CONFLICT** child custody cases can be brutally difficult and severely stressful. Parents who are fighting for custody of their kids are thrown into a daunting legal vortex while facing the nightmare of losing custody of their children. This incredibly emotional process can bring out the worst in some parents.

Unfortunately, many attorneys who do this type of work focus on the procedural and legal aspects of the case and fail to coach their clients on how to actually win the case. They offer precious little advice to parents about procuring evidence and making a favorable impression upon the judge. This void of information and advice may lead clients to make avoidable mistakes with negative consequences.

While every child custody matter is unique, there are some universal truths that apply to all cases. Our extensive experience litigating custody cases over the past seventeen years has revealed the seven most common mistakes parents make when fighting for custody. By identifying and discussing these mistakes we hope to help parents avoid these pitfalls and increase their chances of obtaining a positive outcome in their case.

While discussing this topic, we will presume the child custody case is occurring within the context of a divorcing couple. However, many child custody battles occur between couples who were never married. The advice contained within this article applies equally to parents who were never wed.

## Parental Mistake #1: Failing to Control Their Emotions:

The inability of parents to consistently control their emotions, and avoid emotional decision making, is the most common mistake we see in child custody cases. The reason: it is such an easy mistake to make, and so pervasive in all aspects of the case. Child custody matters, by their very nature, are emotional proceedings that are bound to cause parents some amount of anxiety and stress. It is only natural to become angry and frustrated with a spouse who makes poor parenting decisions and violates court orders, or with a judge who issues orders you disagree with. Unfortunately, that anger and frustration can cause a parent to make emotional decisions which are not in the best interest of their children, or in the best interest of their custody case.

Emotional decision-making can infect nearly every aspect of a child custody proceeding, and often leads to regrettable outcomes. Why do some parents violate temporary visitation schedules when they have been advised by counsel to follow the court order? Invariably, it is because they are angry at their spouse and overly emotional about the "safety" of the children. Why do some parents say negative things about their spouse in front of the kids when they know that doing so is harmful to the children and their custody case? Almost always, it is because they were emotional and blurted something out without thinking it through. Why do some parents insist on seeking sole custody of their kids when logic and evidence dictate that shared custody is the most likely outcome of the case? Almost without exception, it is because that parent is making an emotional decision and ignoring logic, reason and the advice of counsel.

Avoiding emotional decision-making seems like

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the easiest advice to accept and put into action. However, experience proves it is consistently the most difficult mistake for parents to avoid in a custody fight. There will come a time in every high conflict case in which the litigant will be placed into an impossible situation by their spouse, and they have every right to take the "low road". It takes a tremendous amount of courage, integrity and focus on the part of a child custody litigant to consistently take the "high road" and avoid emotional decisions. Those who do are well on their way to winning their child custody case.

### Parental Mistake #2: Failing to Support the Spouse's Relationship with the Child:

One of the key factors Family Court Judges consider when determining custody is the ability and willingness of each parent to support the relationship between their spouse and the child. Frequently, this factor alone determines the winner of a child custody case.

Certainly, there are situations in which it is inappropriate for the children to have unsupervised contact with a parent. Some cases involve physical or sexual abuse. Other cases involve a parent who has substance abuse problems, or severe mental health issues. In these circumstances, it may not be in the best interest of the kids to have regular parenting time with a parent. However, these situations are relatively rare. In the vast majority of cases, both parents are entitled to play an active role in their children's lives.

Research has proven that children have the best chance to grow into productive, healthy adults when both parents play an active role in raising them. Conversely, when children are coached to reject one of their parents (i.e., parental alienation), research shows these children are at a much greater risk of developing psychological and emotional problems as adults.

There are many ways a parent can support their child's relationship with the other parent. The simple act of speaking kindly about their spouse when conversing with the child goes a long way to support that relationship. Making sure that phone calls, texts and emails from the spouse get through to the child is helpful. Most importantly, each parent should make sure they facilitate regular visitation between their spouse and the child (per the visitation schedule), and refrain from making negative comments about their spouse in front of the child.

It is important to remember that children are incredibly perceptive, even at a very young age. They pick up on subtle body language and sarcastic comments. It takes a significant amount of vigilance and willpower to consistently avoid sending children the wrong message. Here are some tips for parents to help them demonstrate support for their spouse's relationship with the child:

- Purchase presents and/or greeting cards for your spouse to be given as gifts from your child for birthdays and holidays;
- Keep a picture of your spouse in your child's bedroom, and in your family room (most parents have a hard time with this one);
- Facilitate a phone call from your child to your spouse when the child has reached a developmental milestone or achieved a victory at school in order to share in the celebration (Facetime or Skype is even better);
- Communicate to your spouse all information about the kids in a timely fashion, following the golden rule (provide as much information as you would want to receive if the roles were reversed);
- Listen to complaints expressed by the children about your spouse with empathy and concern, but refrain from voicing condemnation or judgment of your spouse in front of the kids. Maintaining a

united front is one of the keys to effective co-parenting. Of course, if the children are complaining of abuse or neglect, action must be taken to determine the validity of those complaints;

- Maintain a reasonable level of flexibility when requests are made for minor adjustments to the temporary visitation schedule. Extreme adherence to the schedule will only serve to prove to the court how unreasonable you are;
- When speaking to a child custody evaluator or GAL, be sure to express your support for your spouse's relationship with the child. Do not directly attack your spouse or their parenting abilities, but express your reservations or complaints about your spouse within the context of your concern for the health and safety of the children.

### Parental Mistake #3: Failing to Comply With Visitation Orders:

Few things will infuriate a Family Court Judge more than a parent who violates visitation orders. Absent extraordinary circumstances, parents should allow visitation to occur in accordance with the court-ordered temporary visitation schedule.

A number of pervasive myths exist with respect to visitation orders which must be explained and dispelled. First, custodial parents often believe that if their spouse has failed to pay child support he is not entitled to visitation with the kids. This is not true. Child support is not directly tied to visitation rights in most states. In fact, failing to allow court-ordered visitation between a child and your spouse is one of the quickest ways to lose custody of that child, regardless of the status of child support payments.

Second, some custodial parents believe they have a right to withhold a child from visitation if the child says she does not want to go on the visit. Again, this is not true. In almost all states, the child's opinion regarding visitation is not controlling. Judges will consider a child's opinion when making a final custody determination, but that is only one factor amongst many they weigh when crafting a visitation schedule that is in the best interest of the child. The days of a child choosing who to live with once they reach a certain age are long gone. Legislators smartly determined that forcing a child to choose a residential parent was harmful to the child, as doing so necessarily requires the rejection of the other parent.

Failing to comply with visitation orders, or any type of parenting time schedule, is a double whammy for the offending parent. Not only are they disrespecting the Judge by failing to follow his or her orders, but they are also interfering with their spouse's relationship with the child. Parents who make this mistake often find themselves on the losing end of child custody battles.





#### Parental Mistake #4: Failing to Take Advantage of Parenting Time:

If a parent is seeking primary or joint custody of their child, the first step in that process has to be exercising all available court-ordered parenting time during the pendency of the case. Failing to consistently show up for visitation is a sure-fire way to lose a custody fight. There are few things sadder than watching a child stare out a window in vain for a parent who never shows up for visitation. That feeling of rejection can stick with a child for a lifetime.

It is also vitally important for parents to be on-time for visits, and make the most of the parenting time. A Judge will not be pleased with a parent who consistently shows up thirty minutes late for visits with the child. The same is true for the parent who exercises visitation by leaving his kids with a babysitter while he goes on a date with a new girlfriend. A big part of being a good parent is simply being there for your kids. If a parent cannot make themselves available to their child when the opportunity arises, they shouldn't expect to win a custody fight.

Further, it is not enough for a parent to spend time with their kids during visitation and then check out of their life when the kids are with the other parent. Each parent should have regular phone or Skype contact with their kids when not with them. Further, each parent should be intimately involved in the child's school, including attendance at parent-teacher conferences and school functions. Both parents should attend pediatric appointments when possible, and if the children are in therapy, both parents should have regular contact with the therapist.

Finally, both parents should make an effort to set up play dates with their child's friends so that each parent is entwined in the child's social life. If you want a child to feel at home with you, one of the fastest ways to get there is to let them invite their friends over.

#### Parental Mistake #5: Failing to Make Good Parenting Decisions:

Nearly every aspect of good parenting can be broken down into a three-step process:

- (1) Identify the child's needs;
- (2) Prioritize the child's needs over your own needs; and
- (3) Consistently take action to meet the child's needs in a timely fashion.

The parent who can master this process of identifying, prioritizing and meeting their child's needs, on a consistent basis, is likely to be an excellent caregiver. Parents who fail to consistently follow these three steps when making parenting decisions are rarely granted custody of their kids.

The three-step process to parental decision making is often intuitive, and



frequently does not take much thought to accomplish. A simple example of this process occurs when a child gets sick. A good parent quickly identifies the child's need for assistance. In this case, that need might be to see a doctor. Next, they might prioritize that need above their own by taking time off work to bring the child to the doctor, or canceling dinner plans with friends to care for the sick child. Finally, the parent takes appropriate and timely steps to meet the child's needs by taking him to the doctor, getting a prescription filled, and ensuring that he rests and takes the medicine as prescribed. Most of this is intuitive and simple, but it is surprising how many parents cannot consistently follow through on these steps.

A more complex example of this process occurs when a child is having trouble at school, with poor grades and behavioral problems. A parent making good parenting decisions might have to work hard to identify the child's real need, speaking to teachers, guidance counselors and classmates to diagnose the problem. The child might have to be tested to determine if there are learning disabilities. Next, the parent must prioritize the child's needs above their own. This might entail financial sacrifices to hire a tutor or therapist for the child, or sacrifices related to time in order to offer more help with homework. Finally, the parent must take appropriate action to meet the child's needs by not only getting him the necessary assistance but by also following up with teachers, counselors, tutors and therapists to make sure the problem is solved.

Judges make custody determinations based upon a "best interest of the child" standard. A significant part of that process is determining which parent consistently makes sound parenting decisions for their child. Most parents can occasionally make

good parenting decisions. What separates the great parent from the mediocre parent is consistency. The parent who can consistently identify, prioritize and meet their child's needs, in all aspects of the child's life, is the one most likely to be named the residential parent and legal custodian.

Here are a few tips for parents to follow in order to demonstrate good decision-making ability:

- Help with homework whenever possible, making sure it is completed and turned in each day;
- Make sure the kids get to school on-time, every day. If a child is going to be absent from school because of illness, inform the other parent;
- Do not forget to take children to their therapy or tutoring sessions, as well as extra-curricular activities. Do not forego the kids' extra-curricular activities simply because you feel it is an intrusion on your parenting time. Do what is best for them, not you;
- Make sure young children are properly fastened into car seats when driving, and that anyone transporting the children is a licensed and insured driver;
- Keep guns locked in a safe;
- Do not abuse drugs or alcohol during the litigation process, and certainly not when you are responsible for caring for your children;
- Do not leave the children unsupervised for any length of time unless they are at least 12 years old. After age 12, do not leave the kids alone for extended periods of time;
- Monitor your children's social media habits and Internet usage, restricting access when necessary;
- Do not sleep overnight in the same bed with your child, as every expert will tell you this is unhealthy for both the child and the parent;



• If you must date during your divorce, do not introduce your kids to your new romantic interest until the custody case is over;

• Do not pull your children into the middle of the custody conflict by asking them who they want to live with. Do not make them feel guilty when they leave for visitation by telling them how much you are going to miss them and how lonely you will be without them (a very common occurrence, this is subtle parental alienation at work);

• Avoid creating a symbiotic relationship with your child in which you must constantly experience the same emotional states of being. Just because you are sad doesn't mean your child should be sad, and vice versa. Just because you are angry at your Husband doesn't mean your child should be angry at his Dad. Symbiotic relationships between parent and child often lead to significant emotional problems for the child;

• Educate yourself. There are many great books available on the topic of helping your child through a divorce or custody change. A simple Amazon search will turn up dozens of such titles. Take the time to read at least one.

#### Parental Mistake #6: Failing to Procure Evidence:

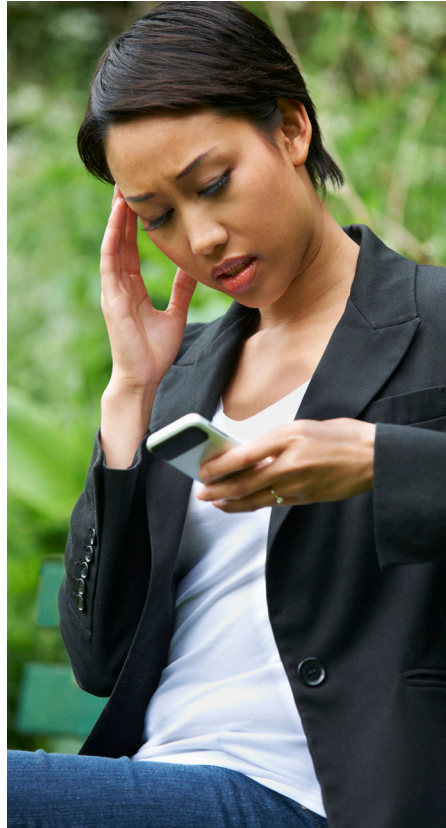
Child custody cases, like all litigation, are about what you can prove, not what you know. To a certain extent, every child custody case is a he said/she said affair. The litigant who can supplement their claims with hard evidence is the one with the best chance to win.

In some cases it may be worthwhile to hire a private investigator to dig up evidence. There is nothing quite as powerful in court as the presentation of a video depicting a parent doing something awful (i.e., Dad drinking in a bar while his kids sit alone in the car). Private investigators can obtain this type of dramatic evidence, but they are expensive. Many parents cannot afford the cost of a P.I., and must look for alternative options.

Fortunately, it is relatively easy for parents to gather valuable evidence on their own. The advent of the smart phone and personal computer has made all of us into capable amateur investigators. The smart phone, especially, is an incredibly valuable tool for gathering evidence. Having the ability to take photographs and make audio and video recordings at a moment's notice, with an easily concealable device, is an incredibly powerful tool for gathering evidence.

Clients often complain when their spouse says something nasty to them during an exchange, or sends a profanity-laced text message. However, they should be thanking their lucky stars that their spouse is dumb enough to reveal his true self during a

custody battle. All the client has to do is take advantage of this misstep and preserve that text message, or record that conversation, then let their attorney offer it into evidence. Many custody cases have been won with a recording of a parent screaming at their spouse in front of the child.



Here are some suggestions for parents to help their attorney gather evidence in a child custody case:

- Prepare a narrative summary of the facts surrounding your marriage and parenting issues at the beginning of the case, including a detailed description of all complaints and concerns about your spouse;
- Provide a list of key witnesses (including address and phone number);
- Maintain copies of all emails and texts from your spouse, and provide relevant messages to your attorney at regular intervals. Clients should know that all texts and emails they send during a custody case, to any person, may end up being used as evidence against them. They should also assume that all Internet activity during the pendency of their case will be revealed to the Judge, and proceed accordingly;
- Alert your attorney to any social media postings by your spouse which may be of value in the case. Take screenshots of the postings, or print them out, to make sure they are preserved;
- Maintain an accurate journal or diary of interactions with your spouse and

children, including visitation pick-up and drop-off times. Especially important is the frequency of the journal entries with an eye towards submission as an exhibit in court. The more frequent the entries, the more valid the journal becomes;

- Use your cell phone or tablet to record face-to-face interactions with your spouse to preserve inappropriate statements for the record. In cases where there is a history of violence or overt threats, it is a good idea to have a friend or family member videotape all child exchanges between parents.

- Consider recording your phone calls with your spouse for the same reasons. Be sure to consult with your attorney to determine the legality of recording phone calls in your state. For example, both Federal and Ohio law allow for the recording of your own telephone conversations, but recording someone else's phone conversation with a third-party is illegal.

#### Parental Mistake #7: Failing to Hire an Experienced Family Law Attorney:

Choosing the right family law attorney to handle a child custody case can make all the difference in the world. It is important to look for an attorney who not only has prior experience handling custody cases, but specializes in family law matters. It is also vitally important that the attorney and client be able to communicate effectively with one another.

Parents should feel comfortable with their attorney, and confident in his or her abilities. Litigants have a right to be treated with respect by their attorney and the court, to have their questions answered in a timely fashion, and to be kept up-to-date on the status of their case. Most importantly, they have a right to a skillful, zealous prosecution of their case in court.

However, even if a parent has hired the best family law attorney in town they still need to play an active role in preparing and prosecuting the custody case. No matter how skilled the attorney, he or she will never know the facts of the case as well as the client. Nor will the attorney know about important events that occur during the pendency of the case unless the client communicates that information to the attorney. Parents can dramatically increase their chances of success, and decrease their attorney fees, if they take the time to assist their attorney in preparing the case.

Finally, it is important to remember that child custody cases are usually won by the parent who maintains their integrity, supports their spouse's relationship with their child, and places the child's needs above their own. The burden is on the client to avoid emotional decision-making and follow the attorney's advice. The selection of the right attorney can help make these efforts worthwhile. ♦