

When Parenting Time Conflicts with Extra-Curricular Activities: Keeping Kids Out of the Middle

by Daniel R. Victor

Defining “Parenting Time”

When a child’s extra-curricular activities and a parent’s regularly scheduled parenting time conflict, the issue of what should take precedence is one that appears frequently as more and more parents divorce, and as the children of those divorces become involved in a greater number of after-school activities. This article will explore that issue in an attempt to justify the conclusion that, despite its name, “parenting time” occurs during an individual child’s schedule. Thus, it must not only be sensitive to that schedule, but should, in most cases, be secondary in nature to the paramount interest of encouraging children and young adults in their pursuits and activities that occur after school and often overlap with a parent’s “parenting time.”

Before two parents are divorced, all of a parent’s time is “parenting time” regardless of whether the parent is at work, at home, or out of the country. Married parents are never officially off-duty. However, the implementation of a parenting time schedule after a divorce, where one parent is with the children while the other is not, means that each parent is technically not responsible for where the child needs to be and may decide whether or not the child goes to a function or activity, if that parent decides that an individual activity is less important than time spent elsewhere.

Baseball tryouts, soccer practices, dance lessons, hockey games, piano lessons, academic tutors, confirmations, bar mitzvahs and track meets. When it comes to extra-curricular and social activities for children, the endless number of time-consuming academic, competitive, and community and family gatherings in which children are involved can often take up more of a

child's time than the hours per week that the child spends in the classroom and on the playground. Weekends are oftentimes less of a break for parents and children, and more of an intense car-pooling shuffle of "off to there" and then "off to somewhere else" from the time the bell rings on Friday afternoon until the long drive home late on Sunday night from a kick-boxing tournament in Cleveland. For an "intact" family, these extra-curricular activities are difficult to plan, difficult to attend, and sometimes, impossible to justify. But every day, parents sacrifice their own free time and balance the responsibilities of these schedules with each other for the sake of their children's extra-curricular educations and the benefits that come from learning outside of the classroom.

Turning Regular Parenting Time Into Normal "Good Parenting"

Children whose parents are willing to sacrifice their own time off from work to accommodate their kids' busy schedules are rewarded, however, with more than the pride that comes with sitting on the bleachers in the rain, the mess that comes with loading up a weekend's worth of hockey equipment in the van, or the financial strain that comes with paying thousands of dollars per year for the myriad activities in which their children participate. What is it that prompts parents to sacrifice the time and money in order to provide their children with these benefits? For some, it is the blessing of being able to provide their children with the extra, experiential education that they did not receive when growing up. For others, it is a chance to encourage a specific talent or promise in a unique field of expertise that makes the child feel like a success and, in turn, gives his or her parents a similar feeling of pride. But aside from a parent's attempt at making the next generation of one's family brighter and more capable than the last, there is something about watching a child learn how to do something she enjoys that stokes the memory of being back in the delivery room, looking at that newborn baby and

dreaming of all that child was capable of becoming – and how there was nothing in the world that could come before giving that child every opportunity imaginable to be a success at whatever she chose to do with her life.

But even though a parent's desire to give the earth, the moon, and the stars to a child can last forever, marriages don't always last that long. And when parents get divorced, everyone's schedules change, including the children's. In the blink of an eye, kids go from spending every Saturday morning on the soccer field playing with friends to spending what is now known as "parenting time" – time when parents receive their children and the chance to do with them what they wish before it is time to be separated once again. The time that used be the child's time – when parents' plans were sacrificed for the good of giving their child the chance to play and learn with friends – is now called the parent's time, and the sacrificing party is no longer the parent. That is, and will continue to be, the reality for children whose parents are not counseled in the practice of how to be a divorced parent.

Granted, there is no manual for how to be a married parent. But for some reason, most married parents do not feel competition resulting from time away from their child that is imposed by countless hours of practices, tutors, games, coaches and events. It is only when, as a result of the divorce, parents have something at stake – something to gain or lose – that the inability to sacrifice for their children develops. When one parent only sees his child for a total of 24 or 30 waking hours in an entire week, accommodating a child's desire to be at a practice, tournament or party, where that parent's only contact with his child will be the drive to and from the activity and then waiting in the parking lot for it to end, can feel like an unreasonable expectation. And many parents are unwilling to make that sacrifice.

Preemptive Resolutions to Timing Conflicts

In a recent divorce case handled by my law firm where there were four children between the ages of seven and 16, I was asked to devise a parenting time schedule for the parties that did not conflict with the children's extra-curricular activities. This request turned into an opportunity to create a schedule that actually revolved around the children. Included in the Judgment was the following parenting time provision:

That the minor children's extra-curricular activities including, but not limited to, sporting practices, games, tournaments, and competitions shall take precedence over both parents' parenting time, meaning that if such an activity takes place during either parents' parenting time, said parenting time shall be comprised of that activity during that time and no make-up parenting time shall be awarded.

To date, this provision has been followed by the parties and has not needed to be interpreted by the Friend of the Court or the judge assigned to the case.

However, there are several ways that, despite an unambiguous provision like the one above, the parents can still create a world of trouble for themselves and their children. For example, many parents view extra-curricular activities and social events as benefits and privileges, rather than as entitlements. This begs the question, "What if one parent takes away an extra-curricular activity as a form of punishment?" Or, what if one parent cancels the activity entirely because he or she never liked the fact that the child was enrolled in that activity by the other parent? Or even worse, what if a parent forces the child to choose between spending time with her, doing what the parent wants, and participating in the activity in which the child was previously enrolled? There are no short answers to these serious and very real scenarios.

When The Friend of Court and Judges Intervene

When these problems require solutions, it is the Friend of the Court that is called upon to mediate these and similar issues. Suzanne Bolton, Friend of the Court referee for the Honorable James Alexander, says that when it comes to extra-curricular activities, “Parents need to support what is important to the child.” Despite the fact that it is called “parenting time,” the time that we are talking about is really “kid’s time,” she says. Mary K. Neumann, family counselor for the Honorable Michael Warren, says that during a non-custodial parent’s parenting time, that parent ultimately has the final say in what the child does during that time. However, she adds that when the custodial parent disagrees with the non-custodial parent’s decision to keep the child from the scheduled activity, there are reasonable solutions that can be arranged. If the issue ultimately comes before the judge, “Most judges will try to accommodate the child’s desire,” says Neumann.

When deciding what is in the child’s “best interests,” it is usually in the child’s best interests to maintain the regularly scheduled activity and either provide the non-custodial parent with parenting time on a different date, or try to convince that parent that it really is in the child’s best interest for the parent to attend and encourage participation. It is Neumann’s belief that parents must be encouraged to accommodate their children’s schedules, rather than forcing children to rearrange their plans or to choose between one and the other.

It seems as if the biggest problems occur when children are given the choice between parenting time with a non-custodial parent and an activity in which he or she is enrolled. When it comes to telling a child that he or she has the power to choose an activity over what the non-custodial parent wants to do during his or her parenting time, the effects created by putting too much potential for emotional conflict in the hands of the children can lead to the child sacrificing

what he or she really wants to do (and what is probably healthier for him or her) as opposed to being rightfully selfish. When children are forced into the position of choosing between something they do for recreation and time that is now allocated to a divorced parent, unfortunately many children will sacrifice their own fun for the benefit of the non-custodial parent, who is often portrayed as the “loser” in the divorce. If the child has grown up feeling sorry for the non-custodial parent for not “winning” the child in the divorce case, the child will try to make that parent happy. In one case, two parents had been divorced for 11 years, each of them splitting the child’s summer vacations equally. After the divorce, the child was consistently reminded when one parent or the other was dissatisfied with the parenting time arrangement, and he felt capable of remedying his parents’ emotional insecurities by giving to the parents the thing that he recognized made them most happy: his time. When the child was given the chance to attend summer camp for the whole summer, he called his parents to ask whether he could stay. Both parents allowed the child to choose, but the parent whose time with the child would have been most limited told the child that she would really like for him to come home rather than stay at camp for an additional four weeks. The child came home to give the parent her parenting time.

As absurd as it sounds, there is no escaping the reality that “parenting time” naturally occurs during a “child’s time.” And when those two overlap and conflict, something’s got to give. Throw into the mix that one parent may generally be in charge of planning the child’s extra-curricular activities, or one parent may be the car-pooling parent, or one parent may have never wanted to – and now doesn’t have to – pay for a certain extra-curricular activity, and it is the children who suffer as a result. It is a complicated mess that begins with the desire to help a child learn a skill, develop a talent or attend a party, and it ends up with a phone call to a lawyer

or the Friend of the Court because two parents can't agree on what is best for the child during a parent's parenting time.

Conclusion

It is this author's opinion that, more often than not, a child's only release from the traumatic and unnecessary drama of divorce is the self-expression that is gained and encouraged during extra-curricular activities. Regardless of the activity – whether it is in the family of the fine arts, academics, athletics, or a part of the child's social life – the odds are that when engaged in that activity, the child will have a chance to be free from thinking about the divisiveness of the divorce and the breakup of their family. Add to that the confidence born from mastering a unique skill such as pitching a fastball, winning a writing contest or landing a triple lutz, and there is little excuse for a parent who decides that his or her time with the child is more important than sitting on the sidelines cheering, or even sitting in the parking lot reading.

Courts and court personnel should make it their policy to inform attorneys and clients that they should do everything within their power to keep children from being forced to choose time with their parents over their extra-curricular activities. Our laws instruct judges and referees to base their decisions on the "best interests of the child." Generally speaking, it is in the best interests of children to be involved in extra-curricular activities. It is in the best interests of children to learn outside of the classroom. It is in the best interests of children to develop skills that give them confidence from successes and lessons from mistakes, and it is in the best interests of children for judges and referees to tell parents that if they cannot agree on a way to make sure that a child's experiential and extra-curricular learning is maintained, the courts will do it for them.

Attorneys are able to serve in a unique capacity when it comes to protecting children from being forced into the position of choosing how to spend their parents' parenting time. Attorneys usually receive the first phone call about there being a problem in a parenting time dispute. Therefore, family law attorneys are often called upon not only as legal advocates, but also as counselors and advisors. This means that we may sometimes have to remind clients that, despite feeling as if they are losing something by not spending time with their children in a one-on-one type of circumstance during parenting time at the home, they actually have a special chance to act like a parent in an "intact" family who was never divorced by playing the same role that the sacrificing parent plays when driving to and from extra-curricular activities. When a client calls and says that he or she shouldn't have to do what the other parent wants during his or her own parenting time, remind that client that he or she has the choice – and that by choosing to encourage and participate in the extra-curricular activities that might take the child away from that parent for a portion of that parent's parenting time, the client has a very fortunate opportunity to learn about their child and what makes him or her excited about life.

Believe it or not, some of the best parenting time actually takes place in the car on the way to or from a child's activity. That is the time when a parent really has a chance to engage their child, instead of just watching television or going to a movie. It is a chance to tell stories, teach lessons and demonstrate love by sacrifice, which will serve to create a bond that is stronger than anything the child could have created if forced to choose how to spend that time by him or herself. And ultimately, it will be what the divorced parent does when it comes to parenting time that will influence the child when it is time for that child to have children of his or her own.

Daniel Robert Victor is an a partner at the Law Offices of Richard S. Victor, PLLC in Bloomfield Hills, Michigan, specializing in family law. He is a graduate of the James Madison College at Michigan State University and the Vermont Law School. Prior to practicing law he clerked for Michigan Supreme Court Chief Justice, Conrad L. Mallett, Jr. and former Chief Judge of the Oakland County Circuit Court, Joan E. Young. He was a panel speaker at ICLE's annual family law seminar in 2003, and is a participating volunteer speaker for Oakland County's SMILE program. He is co-author of the brief on behalf of the appellants in the grandparent visitation case, *DeRose v. DeRose*, and donates his time to the non-profit Grandparents Rights Organization. Mr. Victor also teaches family law at DCL at Michigan State University.