

Top Ten Common Myths in Family Law

by Natalie Gregg

1. I want “full custody” of the children.

In Texas, the magic legal words are “conservatorship” and “access.” *Conservatorship* is the bundle of rights and duties that accompany being a parent; for example, the right to make educational decisions or the duty to pay child support. In the world of family law, *access* refers to a period of time when the non-custodian parent has exclusive visitation time with the child(ren) separate from the other parent.

When my clients ask for “full custody,” that is code for conservatorship. If you want to have the kids the majority of the time AND make the most important life decisions for them, you want to be primary managing conservator. There is no legal definition for “full custody.”

2. I bought it in “my name” so it’s mine.

Simply purchasing a car, house, boat or other real property under your name does not mean that you have 100% ownership.

Names are important in matters of financing a home or a vehicle, as they are usually the source of credit for such purchases. However, just because the property title reads: “Jane Smith,” it does not necessarily mean that Jane Smith owns it outright. If Jane was married to Joe when she purchased the item, Joe is potentially entitled to 50% of the ownership of that item. So don’t assume that names = ownership.

3. Because he’s not paying child support, I don’t have to let him see the kids.

Life is not fair. In a “fair” world, when Daddy is not paying child support, he should not get to see the children that he is not supporting. However, we do not live in a vigilante justice world. Only the judge gets to decide what ultimately should happen at visits.

Two wrongs do not a right make: you cannot disregard the Court’s orders for visitation simply because the child support account is two months or even two years delinquent. It does not make sense why a parent who says that they love and care for their children would not want to provide resources for the children, but you must follow the law and provide access even when the other parent is delinquent in child support payments.

4. My friend got (fill in the blank)_____ in her divorce, so I want that too.

Every case is unique, with many facets and variations from the other so that you cannot compare apples and oranges. Results are different based on the judges, the parties, the experts, the children, the money (or lack thereof) and the attorneys. Just because your friend got spousal maintenance and had a factually similar situation does not necessarily mean that you will also be awarded spousal maintenance.

Even if you have the same attorney, you need to understand that theories of recovery and positive/negative facts about the parties play equal roles as legal advocacy in the Courtroom. Given the same factors but two different cases, a result may differ based on even the slightest change. Just be open. Don't pre-judge and be realistic about your results.

5. We have been “legally separated” in Texas for years.

The concept of “legal separation” is a fabrication. In some countries just by muttering the words “I divorce you” three times, you are divorced. But in Texas, if you don't have a divorce decree, then you don't have the golden ticket. Legal separation does not exist.

6. If I don't like the orders, I'll just move with the kids back to my hometown in Alaska.

You can't outrun the orders of a Court. Often in Dallas County orders, we include language that restricts parties to “Dallas and contiguous counties,” (meaning Dallas and the touching counties). The reasoning behind keeping parties from a divorce or Suit Affecting Parent-Child Relationship in the Dallas area is to promote co-parenting. The court acknowledges that it would be unnecessarily difficult to co-parent children in Dallas from Alaska.

Once again, you must respect the Court's decision. If your order has a residency restriction, you **MUST** adhere to it. The only way to relocate against this residency restriction is to file a modification with a compelling reason to move with the children such as once-in-a-lifetime education, family or work opportunity.

7. If she cheated on me, I should get everything.

Infidelity is grounds for divorce in Texas. Some may even argue that it will get you a disproportionate share of the marital estate. Nonetheless, cheating does not usually result in a full-on wipeout of the cheater's portion of the division of the estate.

While the Code of Hammurabi may dictate an "eye for an eye," we do not live in an era when the Court's decisions are based purely on moral issues. Unless you are exposing the children to the alleged cheating in highly inappropriate situations – such as sexual activity in front of the children, calling lovers "mommy" or "daddy" or jeopardizing the health, safety or welfare of the children while cheating – infidelity has little bearing on property division.

8. We'll just call the kids at trial as witnesses and ask them what they think!

Putting children in the middle of litigation is only going to accomplish two things, and one will **not** be winning. First, you are going to really anger the judge by inserting your child in this mud-slinging contest over custody. Second, you are going to damage your children by asking them to be witnesses against their own parents. While it seems reasonable to ask the children to choose where they want to live, most kids will answer under coercion in exchange for an iPod, a new Mustang or even twenty dollars cash.

There are Affidavits of Choice that children 12 and older can sign to designate the parent with whom they wish to reside primarily, but they are no guarantee. Likewise, there is a Motion to Confer with Children that may be used to accomplish the goal of judges interviewing children and discovering their opinions prior to making orders. Under the Texas Family Code, the judge shall meet with the children if such a motion is made. In reality, some judges may outright refuse to interview the children, or order them to be interviewed by Family Court Services or a psychologist who can then report back to the judge.

9. If the kids don't want to go to visitation with the other parent, then a) it is proof that he is a bad parent and b) I shouldn't "make" them go.

Some kids would eat chocolate cake for every meal if given the choice. Does that mean that you should serve your five year-old chocolate cake for breakfast, lunch and dinner? Obviously not. So, take kids' reactions to visitation with the other parent with a grain of salt. They may simply be echoing your negative comments about the other parent or they may be trying to please you by "siding" with you.

You must make sure that your children attend all court-ordered visits. Some judges can and will throw you in jail as a parent for preventing the other party from exercising access to the children. So, unless you like orange jumpsuits and glowering, disapproving looks from the judge, take charge, be the parent, and make your kids go to visitation. Even if that is not their preference, that is a better outcome than them having to see you go to jail.

10. If you left the house due to domestic violence or other intolerable behavior without the children, that constitutes "abandonment."

Victims of domestic violence who flee in the night with only the clothes on their back and "leave" their three kids at home have not abandoned their family. Abandonment is a cause of action and a basis for termination that requires: a) failure to support children for six months or more; or, b) living apart for two years or more.

Temporarily fleeing with the intent and follow-through of getting the children to safety is not abandonment. However, please be careful and note the risks of leaving without your children. If you choose to leave your children with an abusive spouse, this act undermines any argument later that the abuser should have supervised access or be denied access altogether. Also, leaving in such a manner means that your children are left in a dangerous living environment and no longer have you to defend them. If you and your children are at risk from an abuser, you should consider calling 9-1-1 to secure immediate physical protection and then seek legal representation to secure a protective order.