

ALBUQUERQUE DIVORCE LAWYER BLOG

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Increased Child Support Does Not Equal Increased Time-Sharing, and Vice Versa!

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Parties to a divorce or family law proceeding often will try to tie child support to child custody and/or time-sharing. Parties will often use child support offensively to try to gain some advantage in the child custody or time-sharing.

In New Mexico, child support and time-sharing are determined based on independent factors. Custody and time-sharing are determined based on the best interest of the child. In turn, child support is determined by the parents' gross income, along with the cost of work-related child care and health insurance coverage for the child. Child support is affected by whether there is joint custody and where the non-custodial parent has more than 30% time-sharing. Other than that, the two are largely independent.

The issue comes up in a variety of situations. Among the most common is the parent that feels that because he or she does not have custody or the level of time-sharing that they desire that they should be relieved of child support. This is wishful thinking. In fact, even if there is no contact with the child at all whether by order of the court, denial of contact by the other parent or simple disinterest on the part of the non-custodial parent, child support is still owed in its entirety as calculated under the New Mexico Child Support guidelines.

Just as common is the situation where the parent entitled to child support will try to cut off contact with the parent for shortages or delinquencies in child support payments. This is also not allowed. A parent will not be denied time-sharing with the child for failure to pay support. On the other hand, there are numerous other unpleasant and costly consequences associated with the failure to pay support. The worst case is a finding of contempt for willful non-payment of child support which can lead to arrest and de facto denial of contact with the child, at least for the period of incarceration.

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The less common, and perhaps the most surprising to the unsuspecting father, is the case where the father does not learn of the child until years after birth, sometimes many years. Though it does not occur often and depending on the age of the child, these fathers can be held responsible for child support back to the date of birth of the child despite the fact that the father was unaware of the child's existence and has gone on to build a family of his own. This can have financially devastating consequences, not to mention the emotional toll on the new family. However, the State of New Mexico's position is that the parents should pay for the support and maintenance of their children whatever the circumstances. Otherwise, as often happens, the costs falls upon the State.

In short, child support and child custody/time-sharing are essentially independent inquiries. One should not be used to manipulate the other. Nor can a parent avoid financial responsibility through non-contact with the child, even when the lack of contact is no fault of his or her own. If you are faced with a situation like this, chances are you have a bit of mess on your hands. These things can be quite complicated and difficult to straighten out. It would be wise to seek the guidance of an experienced divorce and family law attorney.

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