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Child Custody and Older Children: "Best Interests of the Child" Remains the Standard

There is a perception that when a divorce or other contested child custody situation, the children involved can automatically decide which parent they would like to live with if they are 14 years or older. This perception may not be entirely accurate, as the court will take into account many factors beyond the desires of the child.

In some cases, a judge may not be particularly persuaded by the desires of a child older than 14 due to immaturity, the fitness of the parents, the environment of the child's desired home and numerous other factors depending upon the situation. Likewise, the family court judge may consider the desires of a child younger than 14 based upon many of the same factors.

There are many reasons why this issue is not clear cut. To begin with, New Mexico courts are guided by a "best interests of the child" standard when evaluating child custody. While the goal of this standard is to provide for the child's needs in the best way possible, this standard is somewhat ambiguous and thus subject to varying interpretations.

Typically under the "best interests" standard, the judge considers the child's age, the relationship he or she has with both parents, the living conditions of both parents, the willingness of both parents to support a relationship with the child and the other parent, the relationship that each parent had with the child before the divorce, the fitness of the respective parents and finally the child's preferences.

More weight may be given to a child who demonstrates more maturity, but this is not guaranteed. Instead, a judge may examine the reasoning behind the child's desires, as in an instance where a child speaks of how much they are needed by one parent. Custody would certainly be challenged if the child appears to be more of a parent than the parent requesting custody. They may also call into question situations where the child has been promised certain gifts or rewards for choosing one parent over another, or where the child may prefer the parent who makes more money.

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Perhaps most common of all, a teenage child may prefer the household with the least supervision and the most freedom. The courts are very reluctant to place a child in an unsupervised setting despite the attraction that this may hold for teenage child.

Ultimately, even the most articulate and perceptive child is still considered a minor by law. They cannot make legally binding decisions. So, while the courts may consider the wishes of children in child custody cases, it will probably not be the deciding factor. The courts simply will not rely entirely on a child to decide what is or is not in the child's best interests.

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