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## New York Divorce and Family Law Blog

### [A Non-Custodial Parent Retains Authority in Decision-Making: Dad is not a Potted Plant](#)

Posted on August 26, 2009 by [Daniel Clement](#)

A non-custodial parent is not stripped of his parental authority simply because he is not empowered to make decisions regarding the health, education and welfare of his children [ruled an Albany County Family Court judge](#).

Judge W. Dennis Duggan dismissed a contempt proceeding, against a non-custodial father who had changed the dosage of his fifteen-year-old daughter's medication during his parenting time. The father, a doctor, believed that his daughter's prescription was inappropriate.

Judge Duggan stated that "While it is the general principle that the custodial parent possesses the sole authority to make medical decisions for her child, this does not relegate a non-custodial parent to the status of a potted plant."

... Furthermore, he stated that the parent who is caring for a child, whether or not he has sole custody, "has a residual authority to make decisions in the child's best interest that are called for by the immediate circumstances--even if those decisions might overlap with or intrude upon the other parent's 'sole custody' authority.

Rather than unilaterally taking it on himself to change the prescription, the father, with the benefit of hindsight, probably would have been better off, at least demonstrating that he, at least, consulted with the mother and the child's treating physician before unilaterally acting. That said, over-medicating a child is an exigent circumstance, requiring immediate action.

Regardless, it is still refreshing to see a court recognize that a non custodial parent's voice and opinions must be heard in connection with important decisions regarding his children's health and safety. Though not legally empowered to make decisions, the non custodial parent still possesses the duty to protect his children's best interests.