

There has been a huge push by Fathers, Attorneys and the Florida Legislature to put Rotating Custody (or Equal Time-Sharing) on the same level playing field as other types of time-sharing arrangements. Florida Statute 61.13 governs time-sharing and parenting plans established by the court. To understand the issues with rotating custody we have to take a look back to 1997. In 1997, the Florida Legislature enacted section 61.121 which states as follows: "The court may order rotating custody if the court finds that rotating custody will be in the best interest of the child." But courts still found reasons not to give equal time-sharing a chance.

Most courts around Florida believed this to mean that the presumption against rotating custody had not been removed. There were a long line of cases that still found that rotating custody was still disfavored even after the statutory change: Ruffridge v. Ruffridge, 687 So.2d 48 (Fla. 1st DCA 1997), holding that Florida courts have recognized that rotating child custody is presumptively not in the best interest of the children; Langford v. Ortiz, 654 So.2d 1237 (Fla. 2d DCA 1995), holding that Rotating custody ... is presumptively not in the best interest of a child; Caraballo v. Hernandez, 623 So.2d 563 (Fla. 4th DCA 1993), adhering to rule that rotating custody is presumptively not in the best interest of the child; Wilking v. Reiford, 582 So.2d 717 (Fla. 5th DCA 1991), holding that generally, rotating custody is presumptively not in the best interest of children, but there may be special circumstances which justify rotating physical residence; Bienvenu v. Bienvenu, 380 So.2d 1164 (Fla. 3d DCA 1980), holding that it is well-settled Florida law that split-custody provisions ... are strongly disfavored and ordinarily may not be sustained.

The District Courts relied upon an analysis of several factors, often described as "particular circumstances," or "unique circumstances," in order to determine whether the presumption had been overcome. Even though the legislature had changed the language, the Courts continued to impose a higher burden on a parent seeking rotating custody, and improperly displaced the Legislature's decision with their own judicial policy preference. Finally, in 2008 Florida Statute 61.121 was repealed when the Chapter 61 had the last major overhaul.

But, finally a case came out from the Third District Court of Appeals examines all the negativity that Rotating Custody has gotten. The case of Corey v. Corey, --- So.3d ----, 2009, WL 5125084, Fla. 3rd DCA, 2009, finally break down the presumption against Rotating Custody step-by-step, holding that the right criteria to determine whether Rotating Custody is appropriate is the "Best Interest Standard." The Third DCA takes a look at legislative history, statutory interpretation, and recent revisions, and reaches a far different conclusion on what the legislature intended. The trial court should determine the initial custody of children in dissolution of marriage proceedings pursuant to the guidelines set forth in section 61.13, which require all matters related to the custody of a minor to be determined in accordance with the best interest of the child using the Wade v. Hirschman, 903 So.2d 928 (Fla.2005), standard.

The Corey Court specifically held, that they believed the trial court erred as a matter of law in requiring the father to overcome a presumption against rotating custody. On remand the Court mandated that the trial court a determination regarding time-sharing and parental responsibility based upon the best interest of the child.

I have seen in my own practice movement by the trial courts to award more equal time-sharing. Now rather than "guideline visitation," Dad's are getting 40% overnights most times and equal time-sharing the other times. Gone are the days of the "weekend Dad," which is far better for his children. In order for Dad's to be actively involved in his child's life, he needs to get more time-sharing than every other weekend!

If you have a time-sharing or custody issue, we can help guide you through the process. Please contact the Law Firm of Anne E. Raduns, PA for you free consultation at 352-840-9660 to discuss your legal options. Call or visit our website at www.ocaladivorcelaw.com