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Preserving the Custodial Rights of the Unmarried Father

by Monica Rossi Baylis



It is estimated that 40% of children are born to unmarried parents each year. How does a father protect his rights and relationship with his child without being married to the child's mother? What rights does an acknowledgment of paternity allow him? What if the father separates from the mother after living with her and the child for a while, or in the alternative, was never living with the mother and child, how can a father obtain shared legal and physical custody of his child?

First, one should begin with establishing paternity of the child. What does legal paternity mean and how is it obtained?

As long as the child's mother is not married to another person when the child is born, a father

can establish paternity by both parents voluntarily acknowledging paternity in an Affidavit of Parentage, or with a court action that would involve a DNA test. When the father signs the birth certificate at the hospital, usually he is signing an Affidavit of Parentage as well which is acknowledged by the mother. If the father was not present for the child's birth, he and the child's mother can still obtain and sign an Affidavit of Parentage and have the birth certificate amended to include the father's name (if his name is not already on it.) Establishing legal paternity gives the child the right to financial support, health insurance, inheritance, social security benefits, and all benefits a legal child of the parent would receive. It gives the father of the child the right to medical information of his child and to ask the court for a custody and parenting time order. What it doesn't give the father is shared legal and physical custody of the child. Legal and physical

custody remains solely with the mother until an order is entered giving both parents shared legal and physical custody of the child.

There are situations where the couple is unmarried but in a happy relationship when the child is born. What if the unmarried couple live with the child as a family?

Issues over shared parenting, financial support, and legal custody of a child of an unmarried couple rarely become an issue as long as the couple are still together, living under the same roof, and raising the child together. However, even if the couple sign an agreement regarding joint legal custody, support, and anything else regarding the child, unless it is approved and ordered by the court in the county where the child lives, it is not legally binding. Even if the couple marry eventually, it is advisable that the father adopt his own child because the child was born prior to the marriage. The

adoption will give him the legal custody rights that he would have received from a custody order, or from having been married to the mother when the child was born.

For those situations when a father separates from the mother of his child, or never lived with her and the child after the child was born, how can a father assure his legal rights to his child?

Should the unmarried parents separate, or do not plan to cohabitate after the child is born, steps should be immediately taken, especially by the father, to protect his rights and relationship with his child. The father should file an action for custody, parenting time, and support. Before separating, or after the mother is released from the hospital with the baby, the parents should agree on a specific parenting time schedule to exercise during the pendency of the custody proceeding. This

schedule should be consistent with what the parents want to proceed with going forward. If there is any concern that the mother plans to move far away from the father, the father should ask the court for an emergency order to prevent her from moving the child far away or taking the child out of state or out of the country. If the father makes more money than the mother, upon separating, he should give her temporary child support that can be verified (like a check or a money order) that does not necessarily need to be a temporary order filed in the pending action. This will show the court how responsible the father is and will go a long way to obtain a 50/50 parenting time plan. Just picking up the tab on some things for the child, like clothes or food while they visit with the father, is not enough and is not considered child support. The mother will ask for support to be retroactive to the filing of the custody action, so

the father will not want to be in arrears by the time the judgment is entered.

Much consideration must be taken by an unmarried father when he chooses to have a child outside of marriage in order to protect his rights to have a strong presence in his child's life. Being proactive to protect those rights will make a huge difference in the outcome of a court proceeding determining how big of a part the child's life the father will be.◇

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