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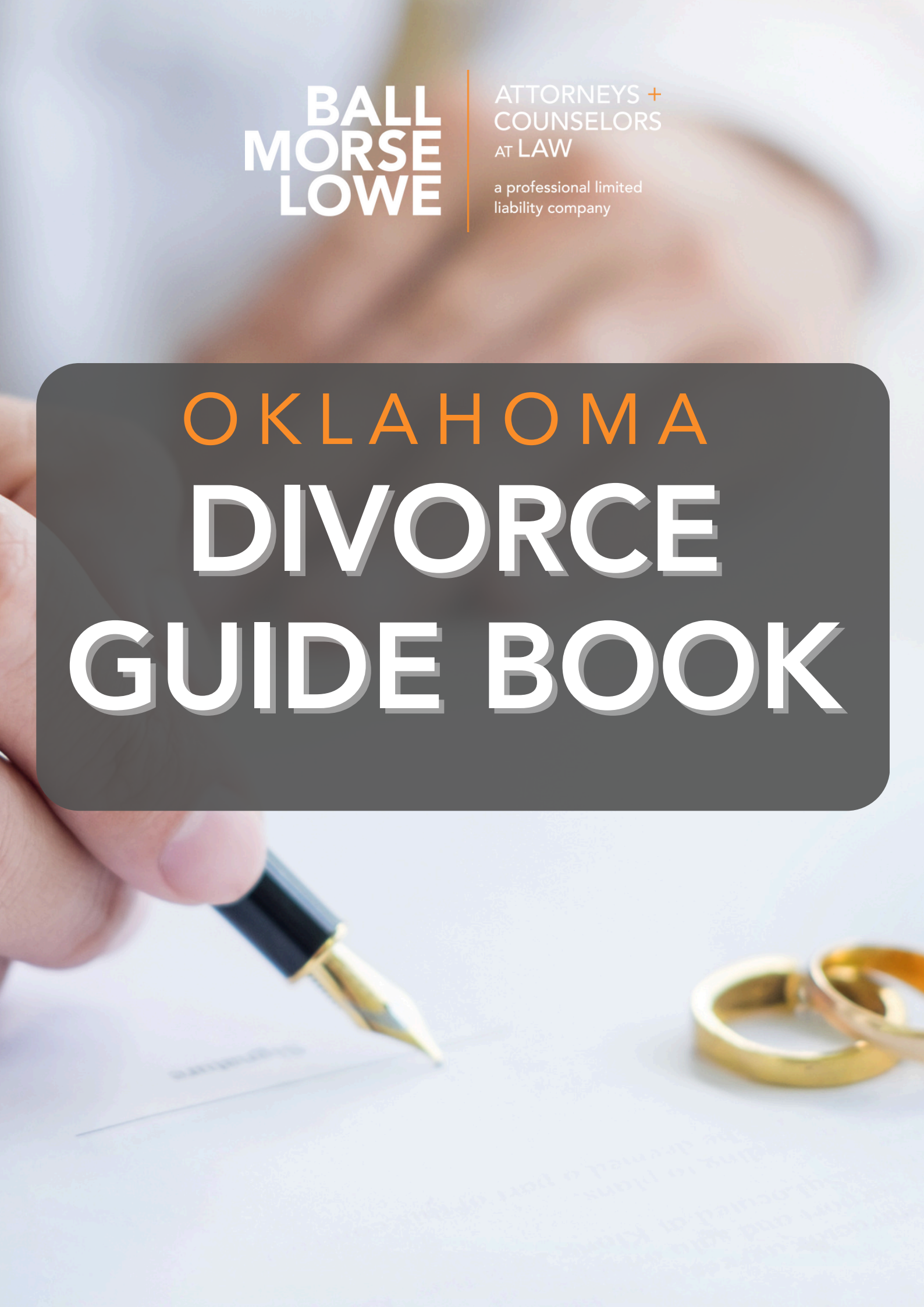


OKLAHOMA DIVORCE GUIDE BOOK

CHAPTER 1

You're Getting a Divorce

How it happens?

Love is never the issue that leads to divorce. Falling in and out of love is to be expected in any relationship. Levels of love are relative to the time of your relationship. What costs most relationships is the inadequacy of the individuals involved. Individuals divorce, not couples.

When a spouse is supporting the career of another spouse without feeling appreciated or fulfilled in their own way, divorce is on the table. When a spouse isn't heard by the other, divorce is on the table. When a parent feels unappreciated or alienated by the other when it comes to the children, divorce is on the table. When intimacy is lacking whether emotion or physical, divorce is on the table.

I say that divorce is on the table because divorce isn't inevitable in any of the above scenarios, however, the marriage is in trouble if the parties are not equally invested, fulfilled, and yoked together in a way that allows them self-actualization within the confines of a marriage. Both parties must find fulfillment, however, both parties must also understand that thus is the nature of life to not always find fulfillment in the anticipated outcome of their life. You may have planned on being the CEO of a publicly traded company, but find yourself the manager of a local car dealership. You may have planned on being a managing partner at a major law firm, but instead you're a solo practitioner in your rural hometown. You may have planned on being a college professor, but instead you're teaching middle school English. On their face, these tradeoffs may appear to be failures, but in reality, they may prove to be the only mech- anism to sustaining a life together.

Most parties that come to the table seeking a divorce are doing so after a good faith effort to avoid the outcome. They have tried to save the marriage in the best way they know how, but their efforts have proven unfruitful. This isn't the fault of any one party, but is simply the accu- mulation of events and circumstances.

My job as attorney is to help my client navigate this unfortunate event in the healthiest most efficient manner possible. Getting clients to the other side of this period so they can see the light at the end of the tunnel is the most rewarding part of my job. I hope you find that the information contained herein is helpful in your effort to work through the circumstances of your own family law issue.

Divorce Terminology

Attorneys use terms that are not familiar to most people and are not common to conversations most people have every day. We use terminology more befitting a correctional institution than a parent-child relationship. Terms such as visitation, custody, etc., create a perception that the parent, in most cases father, is simply fortunate to get any time relating to his children, much less a substantive relationship equivalent to that of the other parent. Please understand that it is a byproduct of the profession and not an attempt to minimize the emotional circumstances of any client's case.

If you have a question about any word or terminology, don't hesitate to ask your attorney about that word or phrase. There are no dumb questions when going through a divorce. This is one of the most emotional events of your life, don't go through it uneducated of the terminology your attorney is using.

How to manage the **Stress of Divorce**

Is a divorce more stressful than doing a prison term? According to the Holmes and Rahe Stress Scale (The Stress Test), divorce is only trumped by the death of a spouse on the level of stress experienced. And yes, Divorce scores 10 points higher than a Jail Term on the index. Not to be left behind a Marital Separation also scored above jail in terms of its stressful impact. These scores are referenced by T.H. Holmes and T.H. Rahe within *"The Social Readjustment Rating Scale,"* published in the *Journal of Psychosomatic Research* in 1967. Not much has changed in the 43 years since the scale was published. Divorce is still stressful, but what can be done to navigate it more successful- ly, so you don't have the negative health impact that comes with such stress?

01 Why is Divorce so stressful?

Attachment bonds with other human beings are the most significant element of our humanity, and our spouse is the most intimate relationship of them all. A divorce kills that bond and is tantamount to death. The safety, security, and bond of intimacy that was believed to have been in place is now lost. In their book Second Chances, Judith Wallerstein and Sandra Blakeslee state, "Divorce is deceptive. Legally, it is a single event, but psychologically, it is a chain – sometimes a never-ending chain – of events, relocations and radically shifting relationships strung through time, a process that forever changes the lives of the people involved." A divorce can also be the end of extended relationships with friends that were friends of the couple, in addition to potentially strong bonds with in-laws and extended family. Further- more, the lost relationship is compounded when children are involved and the parent-child bond is disrupted by the separation. Divorce often results in one party arguing for complete control and access to the children, leaving the other parent essentially fighting for the sur- vival of the relationship with their children. This can feel like a war is going on around you creating untold stress.

02 What can be done to reduce the stress levels?

We are already chronically stressed as a society, and a divorce can be like pouring gasoline on that fire. There are however, a few steps one can take to attempt to alleviate the stress generated by family law litigation.

Compartmentalize

Our brains don't know the difference between an invented story and a real event. Therefore, the unknowns of a divorce can create more stress than what is actually known. And don't let anyone tell you that the unknowns aren't reality, they are. If it is a source of stress, it's reality. Stay in the present moment as much as possible. Keep in mind that the future is unknown for us all because as you navigate this process, it can feel as if you are alone in the uncertainty of what your life is going to look like on the other side.

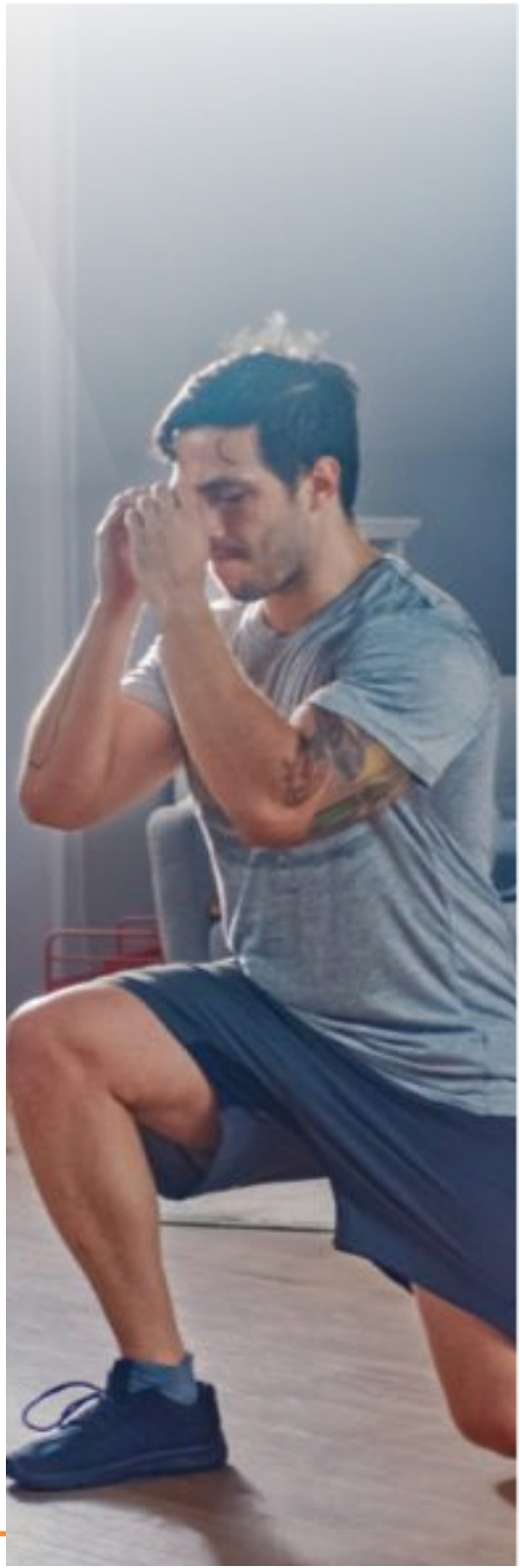
Some practical ideas to help stay in the moment:

Exercise

Nothing is more helpful for dealing with the stress and anxiety of tomorrow than exercising today. Exercise produces endorphins which act as natural anxiety killers and also help with sleep, which in turn also reduces stress. Other options are meditation, yoga, acupuncture, or even getting a massage. The key is that science has established that aerobic exercise decreases overall levels of tension, improves sleep, self-esteem, and elevates and stabilizes mood. There's nothing better for someone going through a divorce than to physical activity.

Revisit a hobby or skill from the past

Marriage and children minimize margin for personal hobbies and interests that were personal to you when you were single. Take advantage of the opportunity to revisit these things (so long as those things were healthy). If you like to paint, pick up a brush. If you were into marathon training 30 hours a week, get back on the road. If you were working on that novel that was a quarter finished on your wedding day, get back to writing. The key is that you see the opportunity that is before you as opposed to the thing you've lost.



Date someone

Yes, that's right, I'm telling you to get a boyfriend. I realize it may be too soon, it may be the last thing on your mind, but anecdotally I think it may help. Based on experience it seems that divorces get a lot easier when both parties are dating someone. It gives them light at the end of the tunnel and an idea that life will go on after this and they will be fine. Be smart about it, and if you have questions about how to date, check out this blog post, or give me a call.

Organize

Disorganization can contribute to anxiety levels if it is chronic and unaddressed. When you meet with me in a consult the first time, I'm going to encourage you to organize your docu- ments for the divorce process. Know your expenses, create a budget, understand income for both parties, and maintain all pleadings and correspondence in your case. Staying organized with what you know helps eliminate one potential stressor from the process.

Communicate

The unknown stressors can be minimized by good communication with your attorney. This is the responsibility of both parties. Lawyers must communicate the laws, what to expect in court, even what to wear and how to speak. Some of the most stressful aspects of this pro- cess are often minimized by the attorney because they do this every day, clients don't. Therefore, what will happen the day of the hearing, where to park, how early to get there, how much time to take off work, or who's going to watch the kids are all very stressful in the eyes of the client, but can sometimes be minimized by the attorney.

The family law attorneys at Ball Morse Lowe are going to make sure you have all your questions answered. Whether you prefer communicating by email, phone, in person, or via our mobile app, we want to lower the barrier of accessibility for you to get the answers you're looking for and stay informed about your case.

The health impact of divorce and separation can be significant, but it doesn't have to be. Approaching the process with a wholistic intent to manage the stress wisely and with legal counsel that cares for your well-being will help get you to the other side of the process and ready for the next chapter of your life.

2 CHAPTER

PROPERTY DIVISION

What happens to the marital home?

After all the hard work you have put into purchasing and maintaining your family's home, it can be difficult to let it go after your divorce. Although you might think of your house as your greatest asset, it might not be the prize you think it is when you get divorced. For many, the family home can be become a financial sinkhole that is best left for someone else to handle. Below, we explain a few things you can do to limit your financial liability for your family home after you have been divorced.

01 Sell Your Home

This is usually the simplest way to break away from an asset you no longer want to own. The money from the sale can be divided with the other assets in your estate when your divorce is settled. Doing this will enable you to find a home that is better suited to the needs of your new financial situation.

02 One Spouse Keeps the Home

If it makes financial sense for one of you to keep the home, you should definitely consider the option. However, the person who decides to keep the home will essentially be purchasing the second half of the house from the other spouse. Selling the home won't remove you from the mortgage. Instead, you will need to refinance to sort out your debt responsibilities.

03 Wait to Sell at a Later Time

Sometimes, it's better to wait for the market to improve before you try to sell your home. However, you should remember that if you choose to wait to sell, the ownership of your home should be treated as a business partnership between you and your former spouse. You can also rent out the home while you wait to sell or you can have one spouse live in the house as tenant.

04 What If There Is a Trial for My Divorce?

Sometimes the court awards one spouse exclusive use and occupancy of the family home. This usually occurs if there is one of the following things present in the case:

1 Domestic violence or abuse against a spouse or children A
2. documented history of fear or intimidation One spouse left
3. the home and is now living elsewhere

If your divorce goes to trial and you want to keep your family home, you should consider the following things

1. Obtain evidence of your home's value by getting expert testimony from an appraiser.

2. Provide the court with valid reasons why it would be in the interests of your children to remain in the family home. Established personal and business relationships can be used to show why it is so important for you and your children to keep the home.

3. Get proof that you are able to refinance the mortgage in your name. If there is equity, you need to show that you can afford to buy out the other spouse's interest.

How are student loans accounted for?

Hubbard v. Hubbard, 1979 OK 154, the working spouse is entitled to a return on her investment to prevent the educated spouse's unjust enrichment. The supreme court found that a professional decree or license is the intangible and indivisible "property" of its holder and no other person has a vested interest therein.

Therefore, the "value" of a degree or license is not part of the marital estate, however, on equitable grounds the working spouse is entitled to an award of restitution which would partake of the attributes of property division alimony.

Jackson v. Jackson, 1999 OK 999 (OK 1999), the Oklahoma Supreme Court vacated a resitutionary alimony award noting that there was no unjust enrichment to the doctor spouse because the working spouse had reaped her return on her investment which could be realized by dividing the marital estate. There is no indication from the court as to how long the parties must remain married nor how to necessarily determine the return on investment. The case does indicate however that at some point the court will deter- mine that it is more appropriate to direct its attention to the parties' marital estate as opposed to the unjust enrichment of the degree-spouse.

There must be an exhibitable sacrifice on the part of the requesting spouse before restitutionary support alimony will be awarded. Ellesmere v. Ellesmere, 359 N.W.2d 48 (Minn. Ct. App. 1984), stating that the husband was not entitled to an equitable award because he had not sacrificed anything for his wife's education.

Heintzelman v. Heintzelman, #95,209 (Okla. Ct. Civ. App., Tulsa 2002)(unpublished), "Here the marital estate was not drained by the wife's education. There is a sizable marital estate, much of it apparently acquired while the wife was in school. Husband did not place his professional or personal ambitions on hold while the wife was in school; indeed, his earning capacity grew significantly during that time, due in part, according to the wife, to her non-financial support at home. Finally, even with her education [the wife] is still in a position to earn substantially less than husband; she will not be unjustly enriched by the divorce.

Method of Calculation of Restitution = Cost value method. The supporting spouse receives restitution for the value of his or her contributions. The goal is a return on the supporting spouse's investment so as to avoid any unjust enrichment by the educated spouse. Hubbard.

Question to ask

Has the nonlicensed spouse already realized a financial benefit from his or her investment in the form of the other's earning capacity?

Question to ask

Is there conventional marital property with which to work equity through its division?

Harris v. Harris, #74,193 (Okla. Ct. Civ. App., OKC 1991)(unpublished), The trial court found that there was no specific formula to measure a Hubbard award. Instead, it found that there were five factors that should be considered: 1) the length of the time the husband was in school, but not the time spent attempting to acquire a license, and the contribution of each party when he was in school; 2) the length of time the parties were married after school; 3) other educational decrees obtained by the wife; 4) acquisition of marital possessions during the marriage; and , 5) relative success of the spouse with the law decree. The Oklahoma Court of Civil Appeals affirmed, and stated that the trial court has great discretion in measuring the amount of restitutionary alimony.

If the husband was not long in school so there were few payments, or if the parties have accumulated sufficient property, or if there has otherwise been a return on the investment because of the length of marriage, there is no entitlement to reimbursement. Spector, Robert, Oklahoma Family Law – The Handbook.

Forristall v. Forristall, 1992 OK CIV APP 64 (Okla. 1992). The appellate panel upheld the trial court's classification of the student loan debts as marital property. One debt was co-signed by the wife, the others were not. The court rejected her argument that the debts were the husband's separate property by saying that the husband's medical education was a joint goal of the parties during the marriage and is inconsistent with the wife's view that she contributed to and should benefit from the husband's education. According to Professor Robert Spector, "The decision appears to be anomalous. If the degree is separate property, then the loans that were taken out solely so that the hus- band could obtain his separate property degree should also be considered separate property." Spector. Oklahoma Family Law – The Handbook. 2010.

The Forristall case is inconsistent with Hubbard. If the degree itself is the separate property of the educated spouse, and therefore the loans associated with the degree are the separate property of the educated spouse.

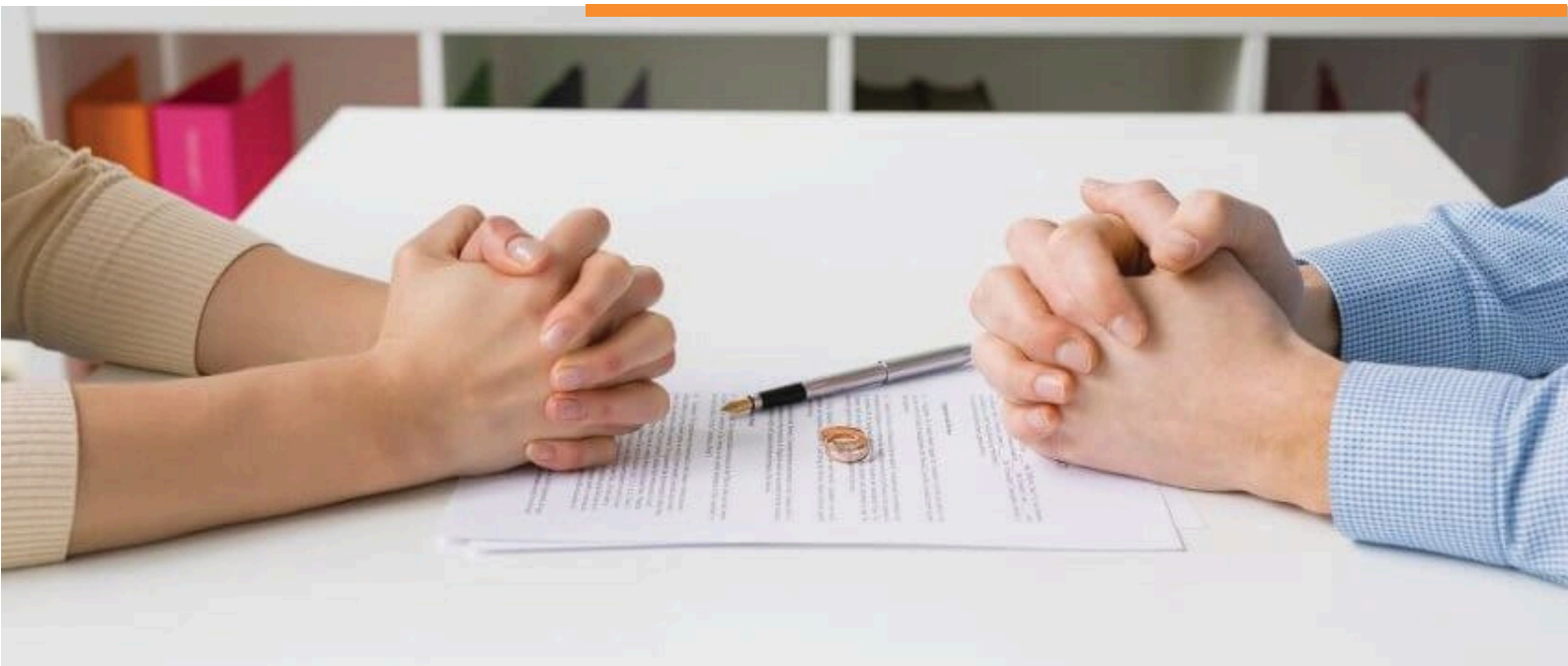
How are retirement benefits divided?

When you choose to pursue a divorce, you'll have to divide the property you and your spouse have obtained during your marriage. While most people think this includes things like their marital home, cars, furniture, and financial assets like their bank accounts, what they don't often consider is their extended assets, including investment portfolios and retirement savings accounts that could be substantially large. When you consider that you not only have to divide the assets already accrued but possibly the ones you will also accrue later, you can imagine this division process is complicated. On this blog, we'll try to clarify how this division process works to help you better prepare for it.

01 Why Dividing Retirement is Important

In terms of value, a retirement account could be the largest asset a married couple owns, particularly if they've been aggressive with their savings and built it up over a considerable amount of time. It could even be larger than the value of the family home. So as you can imagine, it's important not to forget this asset when going through the property division process.

But how do you divide something that's not only that substantial, but is also locked away in a specialized account and has substantial tax implications looming over it? If you don't handle these assets properly, you could wind up losing a bundle of value to the govern- ment when they levy a heavy tax burden on you, so there are a few things you can and should do: have an Oklahoma City divorce attorney on your side who can guide you around these potential tax pitfalls, and utilize a Qualified Domestic Relations Order.



02 QDROs

A Qualified Domestic Relations Order (QDRO) is the most valuable tool for protecting your interests in the continual accrual of assets into a retirement account. To put it simply, a QDRO (sometimes pronounced "quad-row") is a court order that protects your interests in retirement accounts.

These orders are what employers, creditors, and other institutions need in order to set up an arrangement for distributing retirement account assets. Essentially, using a QDRO, you can take an equitable portion of the already-existing retirement accounts and transfer them into your possession, most likely in to an account in your name of the same type. This same QDRO can then order your spouse's employer to deposit a portion of their retirement benefits into your account if the court orders such an arrangement.

It's important to note that QDROs only work for plans that are IRS tax-qualified and cov- ered by the Employee Retirement Income Security Act. They cannot be used to divide things like military and government pensions, IRAs, or SEP assets. However, that doesn't mean these assets are "divorce-proof;" they can and are still divided during a divorce, just utilizing a different set of laws.

03 What If Both Spouses Have Retirement Funds?

It's becoming more common for both spouses in a marriage to have built a substantial career, and that means it's not uncommon for both spouses to have accumulated assets into a retirement account. When this is the case, both spouses are entitled to a portion of the other's assets that were accumulated during the marriage. Because this can become complex quickly, it's strongly advised you reach out to an attorney for assistance to avoid making any potentially serious mistakes that could wind up costing you tons in tax liability or lost assets.

What about our family business?

Business owners often wonder how they may avoid losing half their business in a pending divorce. The answer to this question is always prefaced with a series of questions to the business owner. However, in the end, most business owners walk away with a better idea of what they are facing, and this knowledge creates peace of mind.

Parties must consider these 4 issues when evaluating their business' exposure in the pending case:

1. Can your spouse actually own any of the business?

Some businesses create unique ownership issues for divorced couples. For example, a non-lawyer can't own a law practice, therefore, maintaining ownership of the practice by a divorced non-lawyer spouse isn't an option. If your business prohibits non-licensed parties from owning an interest in the practice or business, then cash value is the only thing of worth in your divorce.

2. Were you married when you started the business?

If your business started prior to your marriage, the value of the business prior to marriage is your separate property. If you started the business while married, then this issue is irrelevant because the business is a marital asset. If any of your business can be considered separate property from before the marriage, you will want to ensure the value of the premarital business is accurately appraised and you're given full credit for the amount in the current valuation of the marital interest.

3. What is the fair market value for the business if you sold it today?

The most prominent issue, and the most often disputed, is the current value of the business. If you sold your business, what would the sales price be? This is often a debatable number, but utilizing a qualified third party to appraise the business is critical. Your Oklahoma divorce attorney should retain an expert in your case and the valuation will be used as evidence at trial. Do not obtain your own valuation without consulting your attorney first.

4. What other assets in the marriage could be used to offset the business?

The divorce court will divide the entire- ty of your marital estate, including your business, marital residence, real prop- erty, personal property, and retirement and investment accounts. It is not uncommon to offset any claim for a spouse's interest in the marital business by utilizing other marital property.

If you have a business worth $1 Million, and home worth $1 Million, then granting one party the business and one party the home may be an equitable division of the marital estate. Just because the business is a marital asset, does not always mean you're going to have to liquidate it in the divorce.

3

CHAPTER

CHILDREN

Introduction to Children and the Courts.

The well-being of children in the legal process is critical, and there are key considerations for children in divorce cases. Divorce can be a difficult issue to resolve amicably. The children in divorce are too often placed in the middle of the parents' breakup in a way that creates anxiety for the children. This should be avoided at all cost. When considering a divorce where child custody will be an issue, consider the following:

Never involve the children in divorce without the direct supervision of a mental health professional.

Parents may want to discuss the divorce process with their children. This should be avoided. It may backfire if one parent has that conversation with the children solo. The other parent may make an issue out of the conversation being had without their input. They may even go so far as to suggest that the other parent is coaching the children into forming an opinion as to the other parent. For this reason, it is best to avoid these conver- sations without the involvement of a counselor.

See the relationship between the other parent and the child from the eyes of your children.

A father may be the hero of his young son's own story regardless of whether or not the mother sees the dad as a bum. As adults we get to choose our partners. Children are stuck with us as parents. Litigants should always try to make the most of their children's relationship with the other parent so long as the relationship is not harmful to the child.

Accept the reality of the legal process

Child custody and visitation are based exclusively on what is in the best interest of the minor child in the view of the judge. A host of factors enter into this determination, including work schedules, your past relationship with the child, likelihood that the parents can work together, and who is likely to best facilitate the relationship between the child and other parent, among others. Keep in mind that you will begin with joint custody and visitation being the starting point. You will have to convince the judge why it shouldn't be this way.

Nothing can create more vitriol in a divorce like a custody fight. Nothing can cost more time, money, and anxiety either than children in divorce cases. The family law attorneys at Ball Morse Lowe approach every case with an eye toward avoiding this if at all possible, while always protecting the health, safety and welfare of the minor children. We prepare for every legal scenario, but work toward the client's best case scenario. We're here to help when custody is at issue.

01 What Do Oklahoma Laws Say About Parental Rights?

Are you facing a bitter custody battle or worried that your parental rights might be stripped away? Parents in Oklahoma have reason for hope. Oklahoma courts regularly stick up for parental rights. The Oklahoma Supreme Court and others in the state have repeatedly ruled that parental rights are paramount and deserve a high level of protection from government interference. However, you aren't necessarily guaranteed to have your parental rights protected just because your case is being han- dled in an Oklahoma court. You will need experienced family lawyers on your side to advo- cate and fight for you and make sure you are treated fairly.

02 Parental Rights Are a Fundamental Right

Parental rights have long been considered a fundamental liberty in the United States, and it is no different in the state of Oklahoma. In the 1972 case of Stanley v. Ill., 405 U.S. 645, 651, the United States Supreme Court ruled to protect parental rights. The Oklahoma Supreme Court has also ruled that parental rights are vastly important and to be treated with deference. In the 1986 case of Bass v. Justus, the Court ruled that "parents have a fundamental, constitutionally protected interest in the continuity of the legal bond between themselves and their children. The integrity of familial status is a value and to be regarded with great solicitude." In the 2011 case of Johnson v. Wingert, the Oklahoma Supreme Court recognized that "the relationship of parents to their children is a fundamental, constitutionally protected right," and applied this truth to a custody modification case. This is good news for parents facing child custody arrangements or modifications. Oklahoma courts understand that child custody arrangements have the potential to step on parents' fundamental, inalienable rights and have demonstrated a commitment to making sure that doesn't happen. Citing another related case, the Oklahoma Supreme Court stated, "A custody modification involves the health, safety, and well-being of a minor child. At the same time, it impacts the 'right of a parent to the care, custody, companionship and management of his or her child [which] is a fundamental right protected by the feder- al and state constitutions."

What is child custody and how is it awarded?

In any family law dispute or divorce, questions most always arise when issues of child custody, visitation, and child support surface. This is not surprising, though, as everyone, including the court, is expected to act in a way that reflects a child's best interests during divorce. It is only natural for there to be plenty of questions and contention about what to do. Getting a better understanding of the issues ahead of time can help keep everything in perspective and minimize conflicts. In this first blog entry of three, our Oklahoma City family law attorneys focus on child custody and some of the questions that might have crossed your mind already as a divorcing parent.

01 Deciding Custody Based On Specific & General Factors

Custody and visitation are mutually exclusive items and do not necessarily go hand-in-hand. Custody is about decision making authority as it relates to the child, while visitation is about parenting time. It is important to understand that just because a parent has the child for the majority of the time does not necessarily mean that that parent has exclusive decision-making authority. The primary question in your case is who gets custody and how is it determined? While Oklahoma statute 43 O.S. § 109(A) requires the court to consider the child's physical, mental, and moral welfare when determining custody, there are a plethora of cases indicating specific factors the court should consider in looking at the best interest of the child. Taking these cases in mind, and the numerous Oklahoma statutes as a whole, the following factors give a general guideline for what a court considers when awarding custody.

02 The factors considered by the court to assign custody include

- The preference of the child's parent or parents.
- The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent.
- The interactions and interrelationship of the child with their parent or parents, siblings, and any other person who may significantly affect the child's best interest, as well as the stability of the home.
- The child's adjustment to their home, school, and community.
- The mental and physical health of the child and all proposed custodians.
- Which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent.
- Whether there is evidence of past child abuse, domestic abuse, stalking, or harassment.

03 The factors considered by the court to assign custody include

The preference of the child may also be considered in certain child custody cases. Oklahoma law (43 O.S. § 113) states that if the child is 12 years or older then there is a rebuttable presumption that they are old enough to articulate a clear and intelligent preference, but a court must look at whether the best interest of the child is served by allowing them to express a preference. The court only has to consider the preference, and it does not have to adopt the preference as the order of the court. The court may also appoint a Guardian ad litem, whose sole purpose is to advocate for the best interest of the child and investigate matters concerning their relationship with their parents. What is discussed between the child and the Guardian ad litem is usually confidential in order to protect the child's wishes.

04 Various Forms of Custody

Custody can be awarded as either joint, joint with a designation of primary, or sole. Joint custody means both parents have equal rights and responsibilities regarding major decisions concerning the child, including decisions as to the child's education, healthcare, religious upbringing, and so forth. Courts also have the option to grant one parent primary custody, which includes final decision-making authority in the event the parents cannot agree. Alternatively, sole custody is awarded when it is shown the parents cannot commu- nicate, live far apart, or have been operating under a sole custody arrangement prior to the entry of an order by the court.

05 Can Custody Orders Be Modified in Oklahoma?

Once custody has been awarded, it is extremely difficult to have it modified. The test of when a custody order may be modified is set out in the Oklahoma Supreme Court case Gibbons v. Gibbons, 1896 OK 77, 442 P.2d 482 which states: "[T]he burden of proof is upon the parent asking that custody be changed from the other parent to make it appear: (a) that, since the making of the order sought to be modified, there has been a permanent, sub- stantial and material change of conditions which directly affect the best interests of the minor child, and (b) that, as a result of such change in conditions, the minor child would be substantially better off, with respect to its temporal and its mental and moral welfare, if the requested change in custody be ordered." (Gibbons v. Gibbons, 1896 OK 77, 442 P.2d 482, 485 (emphasis added.)) Generally speaking, there must be some significant change in the circumstances sur- rounding the child and affecting both parents, and due to that change, the child would be "substantially" better off for a modification to take place. The Oklahoma courts are usually opposed to modifying a custody plan away from joint but can under 43 O.S. § 109, when it is in the best interest of the child. The best interest and welfare of the child is the paramount question in a custody dispute, and courts must be guided first by what appears to be for their temporal, mental and moral welfare, Okla. Stat. tit. 30, § 11. Jackson v. Jackson, 1948 OK 122. Change of custody is justified when the case falls into one of two categories: (1) when circumstances of the parties have changed materially since the prior custody order, or (2) when material facts are revealed which were either unknown or could not have been ascertained with reasonable diligence at the time the last prior determination was made. Carpenter v. Carpenter, 1982 OK 38, 645 P.2d 476, 1982 Okla. LEXIS 205 (Okla. 1982).

Trial court did not err in modifying an award of custody by awarding custody to the father under the provisions of former Okla. Stat. tit. 12, § 1277 (now Okla. Stat. tit. 43, § 112), because the mother's open and acknowledged homosexual relationship with another woman was a sufficient change of condition to warrant modification of the child custody order. P. v. P., 1982 OK 13. Where a divorced mother who sought to change the custody of her minor children from her ex-husband to her made no showing that a change of custody would improve the children's temporal, mental, and moral welfare, a judgment changing custody was reversed because the 1961 version of former Okla. Stat. tit. 30, § 11 (now Okla. Stat. tit. 43, § 112), which provided that custody of a child of tender years should be given to the mother, did not apply, and the 1971 version of the statute provided that the court should be guided by what is in the best interests of the child in respect to its temporal, mental, and moral welfare. Mullaney v. Mullaney, 1974 OK CIV APP 39.

Express authority for a court, in a divorce case, to modify or change its prior order concerning the custody of minor children of the marriage, including orders made subsequent to the final decree of divorce, was contained in former Okla. Stat. tit. 12, § 1277. Gib- bons v. Gibbons, 1968 OK 77. Pursuant to ***Okla. Stat. tit. 43, § 112***, a visitation order may be modified if the moving party shows a change in circumstances that adversely affects the best interest of the child such that the temporal, moral, and mental welfare of the child would be improved by the change. Scott v. Scott, 2001 OK 9.

Trial court effectuated the public policy of Oklahoma by allowing a father frequent and continuing contact with his children pursuant to Okla. Stat. tit. 43, § 110.1, and Okla. Stat. tit. 43, § 112C(1)(a). The trial court awarded visitation with the father every Wednesday and every other weekend. Redmond v. Cauthen (In re Marriage Redmond), 2009 OK CIV APP 46. When joint custody is terminated and primary custody is awarded to one parent, a trial court applies the "best interests of the child" test just as it would do in a first instance custody determination. Okla. Stat. tit. 43, § 109(A) (Supp. 2001) provides that in awarding custody of a minor child, the court shall consider what appears to be in the best inter- ests of the physical and mental and moral welfare of the child. On the other hand, when custody is modified from one parent to the other (without there having been joint custody), the trial court must find a permanent and material change of conditions and that the child would be substantially better off with the custody change. Johnson v. Wingert, 2011 OK CIV APP 128.

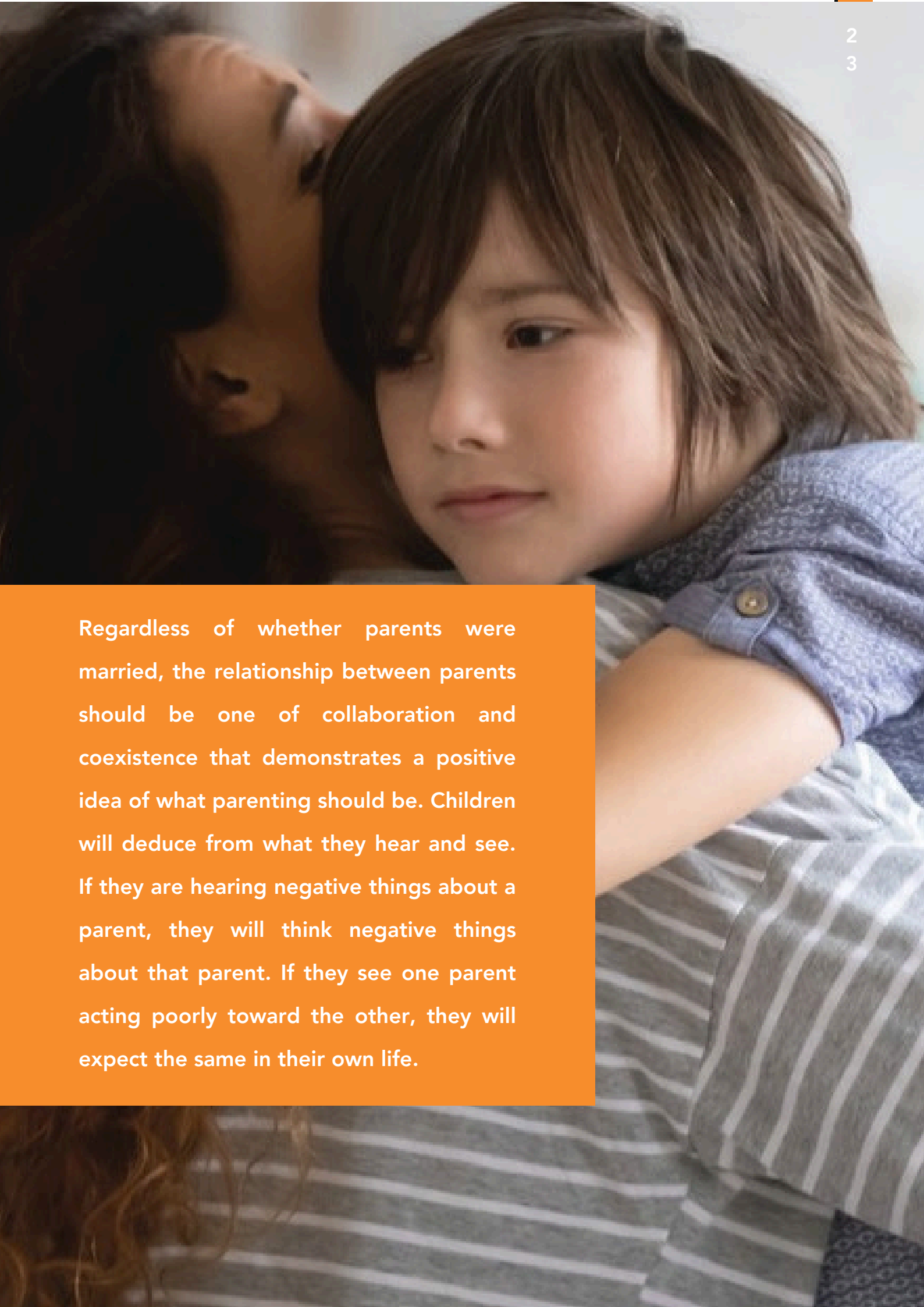
What about custody arrangements in paternity cases when the parents weren't married?

As the rate of marriage has decreased, childbearing and coupling have not. The unwed birthrate has dramatically increased in recent years, and by 2010 it was at 40.3%.[2] Many parents who are living outside a marriage relationship may not share child-rearing responsibilities comparable to a married couple, therefore domestic courts are left to structure a parenting plan which may not have any familial precedence to look to for guidance, and in other cases the parenting plan may be created at the birth of the child leaving the creation of the parenting plan to the biases, whims, and judgments of the court without any evidence to support the parenting style of either parent.

It may be common sense, but the relationship between the mother and father is a fair predictor on parent-child involvement. Better relationships between parents were associated with consistently high versus low involvement. Better relationships with each others' extended family also predicted remaining highly involved and increasing involvement over time. Parents' romantic relationship status was closely associated with patterns of involvement.

Because unwed parents often operate without court intervention, Mothers in such relationships often dictate the relationship between Father and child in terms of time and opportunity. Each relationship is unique and some parent-child relationships outside of marriage never need a court's intervention, however, many require the oversight that a judge can provide in facilitating a relationship between parent and child. It is without question that custody arrangements that help facilitate a relationship between both Mother and Father is critical for the development and well-being of the child.

Researchers agree that, on average, children growing up in fatherless families are disadvantaged relative to their peers growing up in two-parent families with respect to psychosocial adjustment, behavior and achievement at school, educational attainment, employment trajectories, income generation, involvement in anti-social and even criminal behavior, and the ability to establish and maintain intimate relationships. The ideal situation is one in which children have opportunities to interact frequently with both parents in a variety of functional contexts (e.g., feeding, playing, disciplining, basic care, limit-setting, putting to bed, etc.).



Regardless of whether parents were married, the relationship between parents should be one of collaboration and coexistence that demonstrates a positive idea of what parenting should be. Children will deduce from what they hear and see. If they are hearing negative things about a parent, they will think negative things about that parent. If they see one parent acting poorly toward the other, they will expect the same in their own life.

Oklahoma Advisory Guidelines for Visitation with Young Children

Oklahoma Advisory Guidelines for Standard Visitation provides that "the key factor in creating an appropriate visitation schedule is to determine the ability and willingness of each parent to learn basic care giving skills such as feeding, changing and bathing a young child; to diagnose and treat common infant illness; and to demonstrate the ability to maintain an infant's basic sleep, feeding and waking cycle." Other factors to consider include the age of the child, parental work schedules, and the geographic distance between the parents. Interestingly the advisory guidelines provide that "fathers are just as capable of parenting infants as are mother. It is not the sex of the parent that is the issue, but rather a parent's desire to be [and history of actually being] responsibly involved in the care and development of their child." The Guidelines provide standard expectations and guidance for children of all ages. [6] For children up to 5 years of age it provides in summary:

- **Birth to Nine Months:** Noncustodial parents should have frequent weekly contact with the minor child which provide ample opportunity for the parent to demonstrate care-giving functions such as feeding, playing, bathing, soothing and putting the infant to sleep, whether that's a nap or an overnight. These visits are important for the parent and child to bond and develop familiarity. Non-custodial parents can begin overnights at this stage if they have been active and involved in the caregiving of the minor child. It is important that parents be provided the opportunity to provide such caregiving at this stage, otherwise the court should order is so.

- **Nine to Eighteen Months:** Predictability and consistency remain important during this time. Each parent should maintain frequent contact with the child and have the opportunity to participate in daily routine such as feeding, bathing, napping and playing. Parents should establish similar routines in each home and create consistency. Parents should work toward increased overnights for the non-custodial parent during this time.

- Eighteen to Thirty-six Months: Attachments will begin to increase during this time period and caregivers need to consistently be there for the children. Expect to hear the word "no" much more from children as they begin to demonstrate their independence. Parents should work together to create a consistent mechanism for discipline within each house. Children will also become more sensitive to tension between the parents, therefore parents should be mindful and work to avoid unwarranted anger and violence in the parental relationship. Overnight visitation at this stage may increase and even equalize between parents if both parents have demonstrated an ability and desire to be a caregiver. Telephone contact between parent and child is recommended and can be reassuring for the child. Children at this age can begin to be away from each respective parent for 2 or 3 days at a time.

- Three to Five Years: In the event a parent has failed to be involved in the child's life in a full way up to this point, visitations between parent and child a few times a week, including a full day on the weekend can help to develop that relationship. Keep in mind at this stage, children will begin to have nightmares at times and will tell the parent what they believe that parent wants to hear. If both parents are work- ing outside the home, they may wish to consider splitting weekend so each parent has ample time with the child each week. If one parent is at home with the child, and the other parent works, the working parent should be provided ample time during the weekend and additional time during the week.

It is critical to any paternity case, that the parents wishing to establish a relationship with their child[ren] demonstrate an ability to provide care for the child, a desire to be involved, and a willingness to build the relationship from the very beginning. If a rela- tionship has been prevented by one parent, it is important to seek help from the courts to establish consistent opportunity to parent the child. Know that the court is going to look for a parent prove their ability and desire to parent over a course of time, even if it seems unfair. Courts are in the difficult position of protecting the best interest of the the children, but that also includes providing the child with a relationship with both parents to the fullest extent available.

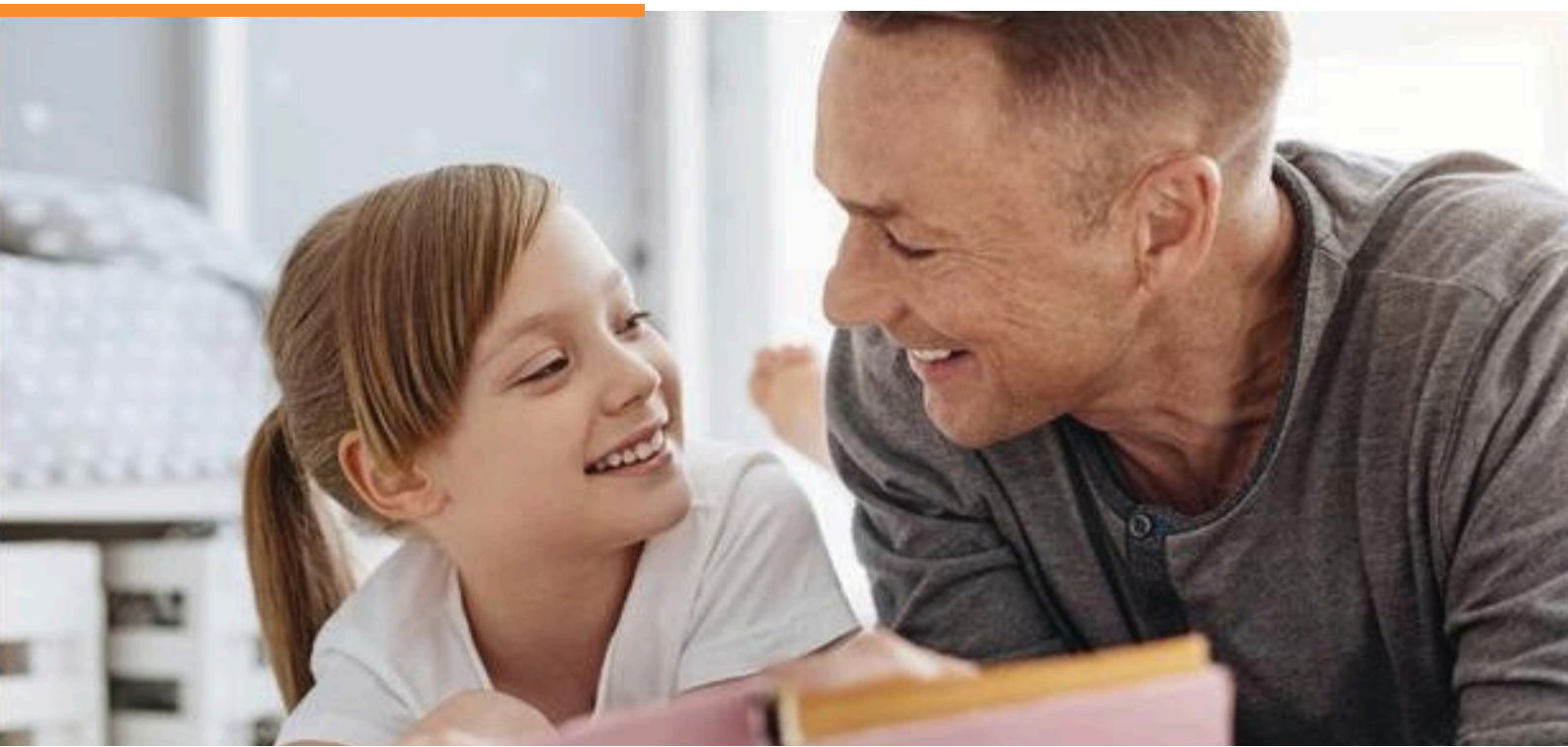
The parent-child relationship is the most important relationship that is addressed within any family law court, but it begins at birth with both parents working to provide the child with the needed love and care that should be provided to every child born.

How is child visitation determined?

As a divorcing parent, you might have already anticipated what to do about child custody and child support. But if you are like so many other parents going through a divorce in Oklahoma, you may have almost overlooked visitation rules. In our final installment of this blog series about what parents should know when divorcing, our Oklahoma City family lawyers take a closer look at visitation and everything it entails.

01 Deciding Visitation to Benefit Your Child

Visitation, in contrast to custody, deals with the contact or time spent with the child by a parent. Like most of the decisions involving a minor child, visitation is determined by considering the best interests of the child. 43 O.S. § 111.1 states any court order for visitation of a non-custodial parent must provide a specified minimum amount of visitation and encourages "additional visitations of the noncustodial parent and the child in addition encourage[s] liberal telephone communications." The succeeding statute 43 O.S. § 111.1A further authorizes the development of standard visitation schedules for each respective county to assist parties in setting a visitation schedule. Each county's schedule may be a bit different than the next, so it is always best to seek a copy of the standard schedule before agreeing to it within your custody order. Courts are not required to follow these standard visitation schedules, but it is common practice for the local standard schedule to be used when another schedule could not be agreed upon.



02 When Visitation is Not Granted

Oklahoma courts have historically committed to visitation being awarded unless there are exceptional circumstances, usually involving domestic violence or abuse, or extreme substance abuse, where visitation would pose a risk of serious harm to the child. (Bussey v. Bussey, 1931 OK 32, 296 P. 401.) The mere fact the two parents do not get along is not enough to deny visitation with the child to the other parent. For example, in Clark v. Clark, 177 OK 542, 61 P.2d 28, a mother had attempted to deny the father visitation and had accused the father of "extreme cruelty" and "gross neglect of duty," but the Court found that the father still had a right to visitation due to a lack of any evidence that visitation with the father would be detrimental to the child. (Id at ¶3.) The Court's reluctance to deny a parent's time with their child is best illustrated by Harmon v. Harmon, 1970 OK 150, 477 P.2d 383, in which the noncustodial parent was imprisoned, and the Supreme Court still found that visitation with the parent was proper. Oklahoma courts have long held that a parent's right to a relationship with their minor child is a natural right. The Oklahoma Supreme Court in In re McMenamin, 1957 OK 67, 310 P.2d 381 stated: "A parent possesses certain natural rights with respect to his child whose custody is given to the other parent. The right to visit the child is one. This natural right should not be denied him unless the evidence conclusively shows that his conduct is of such nature that he has forfeited the right to access to the child."

03 Underlying Importance of Visitation Schedules

In re McMenamin, 1957 OK 67, ¶ 9, 310 P.2d 381, 383, visitation between a parent and child is a fundamental desire in any divorce involving children. Time with children should rank at the top of any hierarchy of needs as it relates to your divorce. Your conduct before, during, and after your divorce will impact the visitation schedule, which is ultimately agreed or provided for by the court. With this in mind, you should make sure to consider your children when considering your choice of actions outside the presence of the court and consult with a qualified family law attorney regarding protecting your right to a relationship with your chil- dren.

Father's and Children

The Supreme Court of Oklahoma affirmed a decision to modify a custody and visitation schedule in favor of the father by stating that the father's argument was supported by recent studies indicating that "the best alternative for a child in a post-divorce situation is to be able to maintain a meaningful relationship with both parents." Hornbeck v. Hornbeck, 702 P.2d 42, ¶15 (Okla. 1985). The Hornbeck Court concluded that where the factors affecting the child's welfare favor the allowance of a joint custody arrangement, which will further a meaningful relationship with both parents, this arrangement may be found to substantially advance the child's welfare. Id. at ¶18. The court affirmed the custody scheme, stating it allowed the child to fully develop relationships with both of his parents while at an early and impressionable stage and that the order was supported by evidence showing that the development of such relationships is to the benefit of the child. Id. at ¶23. The Hornbeck Court cited published data to support its decision, including The Disposable Parent by M. Roman & W. Haddad. In a published paper by the same name, Dr. Melvin Roman, Ph.D., states, "Children are not only deeply pained by their father's absence, but they interpret it as abandonment; as a consequence, they feel devalued and guilty." See Roman, Melvin, The Disposable Parent, Conciliation Courts Review, Volume 15, Number 2; December 1977. Roman goes on to state that "that is, those children who fared best after the divorce were those who were free to develop loving and full relationships with both parents." Id. at 7. Citing a study by Judith Wallerstein, Roman states that children who saw their fathers very frequently - and for some real length of time - were all satisfied with the new family arrangement. See also Judith Wallerstein, & Joan Kelly, The Effects of Parental Divorce: Experiences of the Pre-School Child, Journal of the American Academy of Child Psychiatry, Vol. 14, No. 4, 600-616 (Autumn, 1975). Furthermore, in an article for the Review of General Psychology following their review of approximately 200 combined works on the subject, Ronald Rohner and Robert Veneziano, state that the vast number of empirical studies show the powerful influence of the relation- ship with father on children's and young adults social, emotional, and cognitive develop- ment and functioning. Ronald P. Rohner, and Robert A. Veneziano, The Importance of Father Love: History and Contemporary Evidence, Review of General Psychology, Volume 5(4), at page 382405 (December 2001).

Rohner and Veneziano opine that paternal acceptance/rejection, i.e. relationship with father, is heavily implicated not only in children's and adults' psychological well-being and health but also in an array of psychological and behavioral problems, including psychological adjustment problems, issues of negative self-concept, negative self-esteem, emotional instability, anxiety, social and emotional withdrawal, and aggression; conduct problems, including externalizing behaviors and delinquency; drug and alcohol abuse; cognitive and academic difficulties; and forms of mental disorder such as depression, depressed affect, and borderline personality disorder. Id. Moreover, the relationship with the father may affect offspring development at all ages, from infancy through at least young adulthood. Every parent-child relationship is important to the development and well-being of the child, however, it cannot be discounted that the father-child relationship is vastly import- ant to the well-being of the minor child. It is our firm's position that, absent exigent circumstances, a substantial relationship with both parents post-divorce is in the best interest of minor children and should be attempted if possible.

4 CHAPTER MONEY

Divorce will have an impact on your accumulated wealth and cashflow. Whether you're the breadwinner in the family, or the supportive spouse, or both, taking your current income and supporting two households cannot help but reduce disposable income. Overall, both men and women experienced dramatic relative wealth declines with negligible gender differences. It's not about income, it's about the disruption of wealth accumulation processes. The separation and divorce process will divide resources such that asset accumulation is hindered, and those assets accumulated are divided. But what monthly payments will courts consider ordering paid in a divorce such as child support, support alimony?

How is child support determined?

Raising a child as a married couple is expensive. Raising a child after divorce is all the more strenuous on your finances. Oklahoma allows the creation and enforcement of child support orders to help the divorced parent of lesser income make ends meet after their marriage ends. In this section, we discuss what every divorcing parent should know about child sup- port in Oklahoma.

01 How Oklahoma Calculates Child Support Amounts

Child support is more rigid in its legal application than custody and visitation because Oklahoma law prescribes the amount of child support, which will be mandated based on numerous variables. Oklahoma law [43 O.S. § 118 (A)(1)] dictates that during a divorce the court "shall make provision for guardianship, custody, medical care, support and education of the children." Understanding how that "provision" is determined is critical to understanding how child support will pan out in your divorce.

Child support is constructed by a complex calculation set out by Oklahoma Statute 43 O.S. § 118. This calculation — called the Oklahoma Child Support Guidelines — is based on the concept that the child should receive the same proportion of parental income that they would have received if the parents lived together. This determination is based on each par- ent's "gross monthly income," which includes any income from both active and passive sources, unless excluded specifically by the statutes. Within those statutes we are able to define the core elements to a child support calculation:

- Each parties' gross monthly income;
- Are there any statutory adjustments applicable to either parties' income;
- The monthly health insurance premiums paid by either party for the minor children or cash medical if the child(ren) are on SoonerCare;
- Are there any continuing monthly health care costs outside of the monthly premium;
- The work and/or educational related child care expenses of either party;
- The number of overnights the child(ren) spend with each party (known as shared par- enting credit);

Active and passive sources of income considered in child support include:

1. Monthly income before taxes
2. Overtime pay
3. Supplemental income
4. Disability benefits
5. Unemployment insurance
6. Social Security benefits
7. Bonuses
8. Monetary gifts
9. Miscellaneous sources of income

02 What is Pro Rata Percentage of Income?

The total income considered for child support amounts is adjusted by certain expenses each parent spends throughout the month for the child, which are typically split based on a parent's pro rata percentage of income. The pro rata percentage is each parent's percent- age of the total combined income earned. For example, if one parent makes $6,000.00 per month in total income and the other parent makes $4,000.00 per month in total income, the combined gross income would be $10,000. Expenses are then split according to the per- centage of income each parent contributes to the total. Therefore, the parent making $6,000.00 per month would be responsible for paying 60% of the child care expenses and the parent making $4,000.00 per month would be responsible for the remaining 40%.

03 Visitation Can Alter Child Support Amounts

The amount of child support owed is impacted by the number of overnight visits each parent exercises with the child. Oklahoma law provides for what is called a "Shared Parent- ing Credit" that reduces the child support obligation of the payer if certain overnights visits are exercised. The adjustment is available to a noncustodial parent who receives in excess of 120 overnights with the child each year. The more overnights you exercise with your child the better, but your child support will not be impacted until the visitation schedule provides for at least 121 overnight visits.

04 Petitioning for a Fair Amount of Child Support

Child support can be modified at any time following the entry of the original child support order if there is a change in circumstances that justifies the modification. A change in circumstances would be justified if either party's income changes substantially, or if the number of overnights exercised with the children changes dramatically from what was contemplated in the original child support computation. Not confident in the income amount your ex-spouse reports? You are entitled to the other parent's income information each year following April 15th by making a written request to the other parent for their previous year's W-2 forms, 1099 forms, or other wage and tax infor- mation.

How is support alimony determined?

Support alimony must be based on several factors, including demonstrated need during the post-matrimonial economic readjustment period. Forristall v. Forristall, 1992 OK CIV APP 64. The Court in Laster v. Laster, 1962 OK 89, found "an alimony award to wife in a divorce action under former Okla. Stat. tit. 12, § 1278 (now Okla. Stat. tit. 43, § 134) was excessive in view of the parties' circumstances including the extent of the husband's estate, his earning capacity and his future job prospects. Laster v. Laster, 1962 OK 89, 370 P.2d 823, 1962 Okla. LEXIS 326 (Okla. 1962). The Court in Ford v. Ford, 1992 OK CIV APP 123, cited Forristall in its holding that ability to pay is not the sole criterion for an award of alimony. Ford v. Ford, 1992 OK CIV APP 123. Support alimony must be based on several factors, including demonstrated need during the post-matrimonial economic readjustment period. Id., See also Johnson v. Johnson, 674 P.2d 539 (Okl.1983). The Court in Wilson v. Wilson, 1999 OK 65 (Okla. 1999), found that 43 O.S. § 134(D) provides for the modification of support alimony upon a showing of a "substantial and continuing" change in circumstances, and that it was error for the court to only consider Okla. Stat. tit. 42, § 134 C, which addressed modification of spousal support under the grounds of cohabita- tion and not consider Okla. Stat. tit. 42, § 134 D, which addressed modification on the issue of "substantial and continuing" change. Wilson v. Wilson, 1999 OK 65 (Okla. 1999)

An award of alimony must not be excessive. The Court in Laster v. Laster, 1962 OK 89, found "an alimony award to wife in a divorce action under former Okla. Stat. tit. 12, § 1278 (now Okla. Stat. tit. 43, § 134) was excessive in view of the parties' circumstances including the extent of the husband's estate, his earning capacity and his future job prospects. Laster v. Laster, 1962 OK 89. The Court in Wilson v. Wilson, 1999 OK 65 (Okla. 1999), found that 43 O.S. § 134(D) provides for the modification of support alimony upon a showing of a "substantial and continuing" change in circumstances, and that it was error for the court to only consider Okla. Stat. tit. 42, § 134 C, which addressed modification of spousal support under the grounds of cohabita- tion and not consider Okla. Stat. tit. 42, § 134 D, which addressed modification on the issue of "substantial and continuing" change. Wilson v. Wilson, 1999 OK 65 (Okla. 1999) The Court in Epperson v. Epperson, 1998 OK CIV APP 188, found that the trial court could termi- nate or modify maintenance payments where one party showed a change in conditions. Epperson v. Epperson, 1998 OK CIV APP 188, 972 P.2d 362, (Okla. Civ. App. 1998).

Can I get my attorney's fees paid by my ex?

It is common to meet with a client facing a complicated and often expensive **divorce case** who asks "Can I have my spouse pay my attorney's fees for this case?" The answer to the question is more complicated than the simple "yes" the client is hoping for, and it stands to benefit parties to know from the beginning what it takes to get attorney's fees in a divorce case in Oklahoma. The short answer that we commonly give is "don't bank on it" because attorney's fee awards in family law cases in Oklahoma are like prizes in a Cracker Jack box: you ca hope for a good one but too often they are disappointing.

The American Rule for Attorney's Fees

The topic of attorney's fees begins with an understanding of what has been commonly been referred to as "The American Rule" in courts across the United States. The rule, which is more a default rule than a blanket mandate, provides that each party in a lawsuit should be responsible for paying their own legal fees in a case. The question of an attorney fee award was analyzed by the Oklahoma Supreme Court in the case of Thielenhaus v. Thielenhaus. In that case the Court stated as follows:

Many times clients anticipate that if they "win" their case, they will get their attorney's fees paid for; however, it is hard to advise clients when even the Court considers the answer to the client's question "folklore." Prevailing parties are not entitled to having the other party pay their fees as a matter of right. The court will consider a number of factors that are not always clear when determining whether to award attorney's fees in a case.

The Oklahoma Court of Civil Appeals stated in the case of Husband v. Husband that:

"Widespread courthouse folklore — that either the prevailing party in the case or the principal spousal provider is under a duty to pay counsel fees in matrimonial litiga- tion — is not the law in Oklahoma. It is a hard-to-repress legal myth. The terms of 43 Okla. Stat. 1991 § 110 plainly provide that either spouse may be required to pay 'rea- sonable expenses of the other in the pros- ecution or defense of the action as may be just and proper considering the respective parties and the means and property of each.' Counsel-fee allowances, which never depend on one's status as prevailing party in the case, must be granted only to that litigant who qualifies for the benefit through the process of a judicial balancing of the equities."

"An award of attorney fees does not depend on any one factor such as status as the pre- vailing party or the financial means of a party. In considering what is just and proper under the circumstances, the court in the exercise of its discretion should consider the totality of circumstances leading up to, and including, the subsequent action for which expenses and fees are being sought. Such circumstances should include, but not be limited to: the out- come of the action; whether either party unnecessarily complicated or delayed the pro- ceedings, or made the subsequent litigation more vexatious than it needed to be; and finally, the means and property of the respective parties."

So when you're sitting at the table evaluating the cost involved to litigate your divorce, keep in mind that the judge in your case is going to look to see if one party unnecessarily compli- cated or delayed the proceedings, or made the litigation more vexatious than it needed to be, before they award attorney's fees to either party. "Vexatious" is defined by Meriam-Web- ster as lacking sufficient ground and serving only to annoy or harass when viewed objec- tively. Black's Law Dictionary defines the term as "without reasonable or probable cause or excuse; harassing; annoying." It's not uncommon for clients to feel like the other side's actions in a case easily fit into this description. In fact, every client in a contested case will feel this way at some time; however, judges may not see it as anything other than a hard-fought litigation strategy. Frustration and anger doesn't result in an attorney fee award.

How Other Awards in the Divorce Weigh In

If both parties are awarded enough assets in the divorce to pay their attorney's fees, it is more likely than not that the court will expect each party to pay their attorney's fees. The trial court isn't necessarily trying to be harsh, they're just following the understood law in Oklaho- ma. In the case of Ford v. Ford, the trial court actually ordered the husband to pay the wife's attorney's fees of $19,856.25 and expenses of $5,362.35. The Court of Appeals vacated the judgment for such fees and costs and the Oklahoma Supreme Court upheld the ruling. In the Oklahoma Supreme Court's ruling statement:

"In light of the division of property and substantial amount of cash available to the wife we find the trial court's order for fees and litigation expenses to be an abuse of discretion. Each party is able to pay its own attorney fees and litigation expenses and should do so."

It has long been the case that each litigant in a case should bear their own costs, yet Oklahoma did change that rule in 2017 for a brief time, which would have required courts to award a prevailing party their attorney's fees. This would have been an extreme application of law that would have had a negative impact on anyone wishing to resolve a dispute in court.

5

CHAPTER

Tips to consider before hiring a family law attorney

Hiring an attorney to represent you in your family law matter is often an intimidating process. Most potential clients have no experience talking to an attorney, much less hiring one; and making the initial call to a lawyer to discuss your own divorce can present a very high emotional barrier that is only minimized with experience and information. To help, I've identified 6 tips to assist you in the purchase of your family law services.

01 Ask questions

Silence is not recommended, even if you think it could offend the consulting attorney. As the client, you are entrusting the attorney with helping you get through an incredibly emotional period of your life. For some, it is more painful than the death of a loved one. When children are involved, you are entrusting the lawyer to help you maintain the clos- est possible relationship with your kids. The least you can do is ask the questions on your mind about who this person is, their approach to cases, and why you should entrust your case to them. Some questions you may want to ask:

"How many family law cases have you had in the past 5 years that involved trials?"
"How do you approach your cases? Do you have a philosophy?"
"Who will I interact with at your firm, and how should I communicate with you?"
"How will you help me get through this difficult time?"
"Could you quote me a flat rate for the services I'm asking you to provide?"
"What do you need from me to help make my case more efficient?"

02 Be prepared

Staying with the tip to ask questions, don't be afraid to call and ask the attorney's office what they need from you to help make your time more productive. This demonstrates to the attorney that you are serious about your case, and gives you an opportunity to see if the attorney's office is organized enough to explain to you what they need you to provide. The more information you can provide at the initial consultation, the more productive that time will be.

03 Meet with your attorney before proceeding

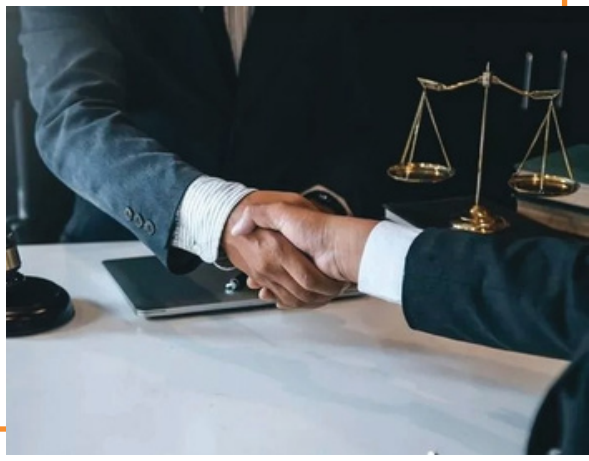
Your initial consultation is the most important time you will have with your attorney. Few meetings with your lawyer are as important as the first, so make sure you're meeting with the person who will be the primary attorney on your case, not a "consultation attorney." A popular business model for some law offices is to have one lawyer conduct all consulta- tions and then pass clients off to another lawyer to handle the day-to-day. If you discover you're in a law office like this, treat it as a red flag. The first meeting sets the tone and provides you and the attorney an opportunity to get to know each other. Most importantly, it is the best opportunity for the lawyer to understand your goals and objectives for your case. They won't be able to do that if they aren't in the consultation, and if they don't understand your goals for the case, whose objectives are they working to achieve?

04 Don't be intimidated

This is what family law attorneys do every day. Good ones love nothing more than to help fearful individuals who are intimidated by the legal process prevail through optimism and compassion. I often tell clients there is nothing they can tell me that will impact my opinion of them. My job is to help people through the most difficult periods of their lives, and if I am successful at that I'll get a thank you on the other side. Those "thank you's" mean more than you know, and we only get them by helping folks - who started the process fearful and intimidated - find success entering the next chapter of their lives.

05 Relationships matter

Many cases do not require extensive litigation and therefore interaction with your attorney may be more limited. However, the more litigious the family law case, the more your relationship with your attorney matters because you're going to be spending more time with them than you want. Make sure the person you hire is someone you feel comfortable with. Hiring a lawyer who comes recommended, but does not put you at ease, often results in conflict between you and the attorney as your case proceeds.



06 You get what you pay for

You often get what you pay for in family law matters. Good attorneys find themselves in higher demand and, like any finite resource in high demand, typically demand higher prices. Many attorneys simply raise their hourly rate based on years of practice, while some raise it when the level of service they provide is reflected in the demand on their time. This is why a very good young lawyer may charge as much or more than an attorney with many more years of experience. Keep this in mind when shopping for an attorney. The price of the service is often a reflection of the demand on the attorney's time. And lawyers in demand have typically proven themselves in the marketplace.

How can I save myself money during litigation?

Saving money during litigation sounds impossible, huh? Having worked in a law office for as long as I have, you are bound to pick up some tricks that I am sure your attorney doesn't want you to know about. You can regain a little control over the billable hour as a client and here is how:

1. Communicating with your attorney costs money! That means, every phone call, every email, and every time you drop to drop off documents and have a few ques- tions that you want to ask your attorney will cost you money. My recommendation is save up your questions! Sure, most attorneys aren't going to charge you for answering a quick text but, if they have to answer a hand full of them they are definitely going to remember the first text and lump it in with the others. So make an agenda of the things that you need to discuss, stick to the agenda and get the answers you need. Whether you call or you meet in person the attorney's hourly rate stays the same. Pick the way that you feel best suits your ability to communicate. A few quick emails a day is probably the fastest way clients make their own cost go up.

2. Organization and copies! When you provide documents to your attorney make sure that they are grouped together in categories and chronologically, otherwise the attorney and then the support staff will get involved in the organization process. What might take you hours at home to organize could take double at your attorney's office. This is because they're not familiar with your various bank accounts and properties. An extra way you can save money, make copies of original documents. You'll save on the copy charge and the time that it takes to make copies.

3. Work with associate attorneys or the support staff! It's hard when you build a relationship with an attorney to trust someone else. But, chances are that you will receive some of the best help (and most cost-effective help) from the support staff or an associate attorney. The support staff isn't going to know the law, but they have access to your documents and can often simplify complex issues into a quick question to the responsible attorney.

Family law attorneys of Ball Morse Lowe are prepared to assist you in navigating your family law matter. For more information or to speak with someone regarding your divorce or family law questions, con- tact us at 877-508-4265.

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