

Is This the Time to Fight?

When Divorce Is Complicated by Serious Medical Concerns

By MELISSA R. GILLIS, Esq.

Divorce, parenting time issues, and full-blown custody battles are not easy. In fact, they are stressful, to say the least. But what happens when one parent is not only battling with an ex-spouse or other parent, but also battling a serious or even life-threatening medical condition?

In the context of a divorce, the award of rehabilitative alimony for a period of up to five years may be appropriate if the sick parent is likely to recover; otherwise, an award of general alimony may occur. In the context of a modification, or in the case of never-married parents, it may just be an issue of child support and/or parent time.

However, one would like to think that, if anything can stop people from fighting, it's the reality of mortality. Unfortunately, sometimes, for particularly contentious parties, this type of scenario is seen as an opportunity.

Before walking into a court, standing before a judge, and saying, "I should have custody or more time with our children because their mother or father is sick and/or dying," think about how that will be perceived.

Are you really going to convince the judge that a sick parent shouldn't see their own children, or isn't in need of financial support? Will you come across as vindictive, cruel, malicious, or concerned? What kind of sympathy will the judge have for the sick parent? Did you even attempt to discuss your concerns and issues with the sick parent before running to court? Will the judge think that you are trying to take advantage of a parent's illness? The fact that you are standing in front of the judge, without the ability or willingness to make arrangements with the sick parent, will

speaking volumes alone.

Hiding behind a mask of 'concerned parent' in this instance will likely be easily transparent. The court will not buy an argument that your co-parent cannot care of their children, because, frankly, the fact that they are contesting the case to begin with says that they probably



Trying to use a disease or medical condition against your co-parent will only show that you don't have your children's best interest in mind. A judge will likely believe that, if a parent is so sick that they can potentially die, it is critical for children to spend as much time as possible with the sick parent to deal with the impending future.

can. Remember that a parent is free to make whatever child-care arrangements they choose during their time, so if they have family or friends to help care for the children, no change will be made.

Additionally, this is when a judge will likely be disappointed you are incapable of getting over your bad feelings or experiencing resentment for the other, sick parent during this very difficult and personal time. Trying to use a disease or medical condition against your co-parent will only show that you don't have your children's best interest in mind. A judge will likely believe that, if a parent is so sick that they can potentially die, it is critical for children to spend as much time as possible with the sick parent to deal with the impending future. To try to take your children away

from their sick parent is highly damaging, confusing, and inappropriate.

Instead, humanity, understanding, and compassion are best for your children and for the other parent. Additional parenting time may be necessary. A swap of time to cover doctor's appointments, surgeries, and treatments may be necessary. Remaining

flexible and accommodating with schedules is necessary and expected on the part of the healthy parent. There is simply no need for anything else, especially fighting, threatening to take children away, or involuntarily reducing time.

During this time, the sick parent needs to focus on treatments, recovery, healing, and spending calm, quality time with their children. Each parent needs to focus on making sure that their children have both parents in their lives and are dealing with impending

loss or grieving the inability of a parent to function in the way that they previously did.

When a healthy parent's anxiety over the situation is misplaced by litigating for custody or more parent time, judges are dismayed and disappointed in this type of behavior. Before submitting this type of case to a judge, carefully consider the impact on your children and your family unit, and really ask yourself why it is necessary to litigate this issue at this particular moment. A truthful look within will usually dictate that this type of domestic litigation should not occur. ❖

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