

Religion and Custody

My office receives many calls from people who are divorcing asking about decision-making on religious matters. While courts formerly entered orders granting authority to “pick” the religion for their children, they now recognize the Constitutional nature of these choices, and generally do not become involved in religious decision-making.

“Well, how do decisions get made?” you might ask. Today courts are leaving the parents on their own in this area, and generally provide that the parent with the children (the “residential parent”) on the day of a church function will be the parent to decide whether the children should attend, and where they should attend. As residential time for the children varies, so will decision making authority. What this means is that, for some days the father will decide to take the children to church, or not; on others the mother will make that decision.

This simple answer cannot handle the wide range of issues arising over religious upbringing. For instance, some religions require a many-month-long course of education before a child may advance or receive a sacrament. Trouble begins when the child has educational courses on evenings when a “resisting” parent has custody. Things can become more complex than this example. Often parents need to return to court, but they need to consider the best interest of the children, limiting wrangling to “big” matters.