

**Misunderstanding “Primary” and “Sole” Custody**  
**By: Ehren Lohse, Attorney at CSG, Inc.**

Sometimes after parents separate and obtain a custody order or enter into a custody agreement concerning their children, confusion arises over what “primary physical custody” and “sole legal custody” mean. Parents sometimes mistakenly believe that “primary physical custody” or “sole custody” entitles them to have their children 100% of the time to the complete exclusion of the other parent. This belief is contrary to Alaskan law. There is no such thing as “sole physical custody.”<sup>1</sup> When the Alaska Legislature amended our former custody statute in 1982 it specifically found that:

it is generally desirable to assure a minor child frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing. While actual physical custody may not be practical or appropriate in all cases, it is the intent of the legislature that both parents have the opportunity to guide and nurture their child and to meet the needs of the child on an equal footing beyond the considerations of support or actual custody.<sup>2</sup>

This sentiment also finds expression in a statute governing temporary custody awards during lawsuits. “Unless it is shown to be detrimental to the welfare of the child . . . the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody . . . .” Therefore, when one parent is awarded “primary physical custody,” the other parent usually has liberal visitation with the child.<sup>3</sup>

But if the other parent suffers from drug or alcohol abuse, or if the other parent has engaged in domestic violence, then a court may impose “supervised visitation” on the other parent, meaning a third party must be present during all of that parent’s parenting time. “[A]n order requiring that visitation be supervised must be supported by findings that specify how unsupervised visitation will adversely affect the child’s physical, emotional, mental, religious, and social well-being and the other interests set out at AS 25.24.150.”<sup>4</sup> When supervised visitation is imposed on one parent, the court must specify a plan by which that parent can obtain unsupervised visitation, and the plan cannot permit the other parent to decide when a visitation restriction ought to be imposed.<sup>5</sup>

Primary physical custody simply means that one parent has the child for at least 70% of the year based on overnights; it does not mean that the parent with primary physical custody can exclude the other parent automatically from exercising visitation with the child, either through in-person visits or by telephone or video calls.

A similar misunderstanding sometimes occurs around the concept of “sole legal custody.” Legal custody means the ability to make decisions regarding major events in a child’s life, such as schooling, medical, legal, monetary, and religious issues. Legal custody is usually joint, meaning the parents reach a decision together, so long as they demonstrate an ability to communicate effectively in their child’s best interests. Sole legal custody is only awarded to one parent when there is a complete breakdown in communications between the parents such that it would be impossible for them to make joint decisions. Sometimes shared legal custody with tie-breaking authority to one parent is granted. Under this hybrid form of legal custody, the parents must cooperate in good faith to address major issue’s in their child’s life, but if no agreement is reached, then one parent has the final say.<sup>6</sup>

Because the policy in Alaska is for joint custody (legal and physical) whenever possible, and because parents have a constitutional due process right to the “care, custody, and control” of their child,<sup>7</sup> “sole legal custody” does not mean that the parent who exercises it can keep the other parent from accessing the child’s school, medical, and other related records.

One factor a court must consider when deciding custody disputes is a parent’s willingness and ability “to facilitate and encourage a close and continuing relationship between the other parent and the child.”<sup>8</sup> If one parent is not doing this because of a misunderstanding of what “primary physical custody” or “sole legal custody” means – or for any other reason – the aggrieved parent may have a successful case to enforce or modify the custody order through the Alaska court system.

Each individual’s circumstances is different. If you would like more information on your specific circumstances contact CSG, Inc. for a consultation.

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<sup>1</sup> Assuming the other parent has not died or the Office of Children’s Services (OCS) has not terminated the other parent’s parental rights.

<sup>2</sup> Ch. 88, § 1, SLA 1982.

<sup>3</sup> *J.F.E. v. J.A.S.*, 930 P.2d 409, 413-14 (Alaska 1996) (“[T]he best interests of the child standard normally requires unrestricted visitation with the noncustodial parent.”).

<sup>4</sup> *J.F.E. v. J.A.S.*, 930 P.2d 409, 413-14 (Alaska 1996).

<sup>5</sup> *Yelena R. v. George R.*, 326 P.3d 989, 1003 (Alaska 2014); *Monette v. Hoff*, 958 P.2d 434, 437 (Alaska 1998).

<sup>6</sup> *Ronny M. v. Nanette H.*, 303 P.3d 392, 404 (Alaska 2013).

<sup>7</sup> *Ross v. Bauman*, 353 P.3d 816, 830 (Alaska 2015).

<sup>8</sup> AS 25.24.150(c)(6).