

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

‘We become what we behold’

Question: Regarding custody: My daughter deals with her mother's emotional nonsense much too frequently for an eleven-year-old girl. I'm not sure its normal for a mother/ex-wife to bad mouth and trash- talk her ex-husband. My daughter wants nothing more than to live with us. Is there an age when a child can decide on their own?

Answer: No, there is no such age. Nonetheless, by age 16, if a teenager moves with her feet, no court is going to stop her. No statute or court has ever drawn a line in the sand because with children, everything depends upon individual facts and their best interests. And a child's best interest first depends upon who's telling the story and secondly upon who's listening. Even if one parent indicates where the child says she “wants” to live, a judge might well suspect the child is saying the exact same thing to the other parent. Why would a child do that? First, the child may not wish to hurt the other parent's feelings. Secondly, a child may well want to manipulate the situation. It's not unusual for a child to "play" one parent off the other.

What one child then "says" and another parent actually "hears" can cause tremendous pain to both. For this wise reason, a child's age is not the only legal test because the true wishes of a child may not be the best criteria, especially when the child doesn't want to be asked or might be planning meticulously for a PlayStation 3. And if the 12-year-old child is immature, then the child's chameleon wishes the next day may be a trip to Disneyworld, if properly coached. Maybe child support is consistently late and mom can't pay the bills. Should her ill-advised bursts of frustration now really translate into a change of custody? My strong advice: Take the pressure off the child. Sit down with your ex and start compromising for the child's sake. If you can't get past your mutual distrust, hatred and anger get help from a mediator or a therapist. No rules about “when that kid turns 12 she's moving in with me and that will show her” is going to turn your daughter into a better person, a moral woman, a loving individual with a peaceful soul. When she's older you want her to say “my daddy did the right thing.” Remember also the words of William Blake: “we become what we behold.” So set an example – lest your bitter child develops her own troubled relationships.

John T. Syrtash, Associate
GARFIN ZEIDENBERG LLP
Yonge-Norton Centre
5255 Yonge Street, Suite 800
Toronto, Ontario, Canada M2N 6P4
Phone: (416) 512-8000 ext 410; Direct (416) 642-5410
Fax: (416) 512-9992
email: jsyrtash@gzlegal.com

John Syrtash is an associate and family law lawyer with the Toronto firm of GARFIN ZEIDENBERG LLP. Neither GARFIN ZEIDENBERG LLP nor John Syrtash is liable for any consequences arising from anyone's reliance on this material, which is presented as general information and not as a legal opinion.