

THE DOWNFALL

Although a man might not technically have rights to custody or visitation over the child, unreasonable refusal to allow the actual father visitation rights may harm the mother in a future action for visitation or custody. Under Missouri law, one of the factors that courts consider (when determining custody and visitation rights) is which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent. Even absent the presumption of paternity or a finding of paternity, a mother who unreasonably refuses to allow the father contact with the child may face difficulties with a court in determining custody and visitation. As with most things in the family law area, if the mother has a justifiable reason for refusing contact between the father and the child, a court may overlook the mother's prior refusal and may find that it was reasonable.

Thus, although a particular man may not have the legal right to visitation with a child, absent special circumstances, the court may look at that unreasonable refusal to allow visitation and award custody and visitation with that fact in mind.

REMEMBER: IF YOU HAVE QUESTIONS, IT IS ALWAYS BEST TO SEEK LEGAL ADVICE FROM AN ATTORNEY.

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NON- MARITAL CUSTODY AND VISITATION



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Missouri law regarding the rights of parents can be difficult for lawyers and non-lawyers alike. This pamphlet will attempt to help you understand Missouri law as it relates to a parent's right of visitation and custody.

Marriage and the Presumption of Paternity

Missouri law presumes a man to be the father of a child when *one* of the following four conditions is met:

- The man is married to the mother at the time of the child's conception or birth, or the child is born within 300 days of the divorce of the man from the child's mother.
- Before the child is born, the man attempts to marry the mother, although the attempted marriage may be declared invalid by a court or was invalid by law, and the child was born during the invalid marriage or within 300 days after the marriage is declared invalid or the parties' ceased cohabitation.
- After the child is born, the man marries or attempts to marry the mother, although the attempted marriage may be declared invalid AND
 - a) The father files an acknowledgement of paternity, with the Bureau of Vital Records, OR

- b) The father is voluntarily named on the birth certificate, OR
- c) The father is obligated to pay support under a written voluntary promise.

- An expert establishes through blood tests that the individual is not excluded from the pool of persons who could be the father.
- A signed acknowledgement of paternity form shall be considered a legal finding of paternity.



Presumption of Paternity Not Decisive

The fact that a man falls within one of those categories does not mean that he is in *fact*, the father. Rather, it just creates a presumption. As with most legal presumptions, this is rebuttable and may be challenged with convincing evidence. Thus, even though a man may be presumed to be the father, he may be found not to actually *be* the father.

Presumptions Create Rights/Responsibilities

A person presumed to be a father has certain rights and responsibilities under Missouri law. Primarily, the father has

the duty to care for the health and well being of the child. In situations where the parents are divorced or separated, this means that the parent without custody may have to pay child support, provide medical insurance, and provide for educational expenses, among other things.

It is important to note that child support and visitation are separate: there is no right to withhold one for lack of the other. As an example, a parent who is responsible for paying child support may not automatically have his or her visitation denied because the parent has not paid child support as mandated by the court.

There are also certain rights that each parent has. Each parent has an equal right to petition a court for custody and visitation rights.

Rights Granted by Finding of Paternity

If a man is not legally presumed to be the father, he must establish paternity through the court or through an acknowledgement filed with the Bureau of Vital Records.

If a man is not the presumed father (as described above); and paternity has not otherwise been established, he does not have a legal right to custody of, or visitation with, a child. If the presumptions or finding of paternity do not exist, he does not have rights over the child.