



Child Care and Contact Q&A

Kate Oosthuizen, Senior Associate, Child & Family Law department at Shepstone & Wylie Attorneys

I am getting divorced, who will get care of my children?

Generally, the arrangements that are made in respect of care and contact will depend on whether or not you and your former spouse can reach agreement, and then whether or not the court approves said arrangement. If the parents are not able to agree, the court will then have to make the final decision with a view to the best interests of the children.

What is a parenting plan?

The Children's Act, 38 of 2005 states that "the co-holders of parental responsibilities and rights in respect of a child may agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child." Co-holder must attempt to seek agreement through this parenting plan before seeking the intervention of a court.

The Act further states that, when preparing a parenting plan, the parties may seek the assistance of a suitably qualified person. The court will still need to ratify a parenting plan, and it will do so with the best interests of the children in mind. Parenting plans do not only concern care, they may also determine any matter in connection with parental responsibilities and rights, including where and with whom the child is to live, the maintenance of the child, contact between the child and

any of the parties / any other person, and the education and religious upbringing of the child.

What happens if my ex and I share care, but he/she removes my child from my care without my consent?

If you and your ex share care, but he/she removes your child from your care without your consent, there are a few options that you can consider. One is approaching the South African Police Service, and another is lodging an (urgent) application in court. That being said, the correct course of action is often dependent on the facts of each situation and the severity of the matter.

South Africa is a signatory to The Hague Convention, which provides that, if a parent removes a child from his/her habitual place of residence without the other parent's consent (where such consent is required), then the country to which the child has been removed must immediately return that child to his/her country of habitual residence. This is only applicable in circumstances where both countries are signatories to The Hague Convention. One of the very few exceptions to this rule, however, is that if a child has become settled in his/her environment, then the court is not obliged to return the child.

For any queries on the above, please contact:

Kate Oosthuizen
Senior Associate in the Child & Family Law department
Shepstone & Wylie Attorneys
koosthuizen@wylie.co.za
+27 82 042 0848