

# The Divorced Parents' Guide to Avoiding Summer Madness

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Children's well-being and the relationship with their parents are arguably the most important issues addressed in divorce cases. Custody and parenting time related issues may overwhelm the parties and result in unnecessary stress for the children. While parents tend to significantly focus on the parenting schedule that will be in place during the school year (often referred to as the "regular parenting time schedule"), the summer parenting time schedule is often overlooked, but equally important. During the summer months, many children are out of school and have more time to spend with parents. As a result, there is more of an emphasis for the children to spend significant quality time with each parent. However, since summer months are typically less structured than the school year, parents may find themselves at a cross-roads when determining how to allocate quality time between each parent and their children, while at the same time keeping their children busy with age-appropriate activities (which, preferably, does not involve Netflix binging, TikToking or playing video games).

Accordingly, when parents discuss the summer parenting time schedule in the context of a global custody and parenting time agreement, there are certain variables that inevitably should be taken into consideration, such as: each parent's employment responsibilities, summer camps, extra-curricular activities, vacations and, even a child's employment. In considering these issues, parents often ask the following, non-exhaustive, list of questions: Will the schedule be different from the regular school year parenting schedule, or will it be the same? Will the schedule during the summer months be the reverse schedule from the school schedule, where the parent of alternate residence has most of the parenting time? Will each parent be responsible for childcare during their respective parenting time, or will the parties need to reach an agreement as to childcare during the summer? Will the children attend summer camp? Who will be responsible to pay for it and how will the costs be allocated? How much vacation time will each parent have

during the summer and when will the vacations take place so everyone can plan appropriately? Will a child be able to work during the summer or be required to work during the summer? These are just some of the questions that should be discussed while working out a summer parenting schedule. It is our duty as advocates to advise our clients of these issues and attempt to specifically address these issues when reaching a resolution.

## Summer Parenting Schedule

N.J.S.A. 9:2-4(c) and caselaw provide that the overriding principle in determining custody and parenting time is the best interest of the child. Indeed, N.J.S.A. 9:2-4(c) provides, in relevant part: "the legislature finds and declares that it is in the public policy of this State to assure minor children of 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 in order to effect this policy."<sup>1</sup>

Since the best interests of the child are the guiding force in determining custody and parenting time, both "regular" and "summer" parenting time are analyzed pursuant to the factors set forth in N.J.S.A. 9:2-4(c) as follows:

1. The parents' ability to agree, communicate and cooperate in matters relating to the child;
2. The parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse;
3. The interaction and relationship of the child with its parents and siblings;
4. History of domestic violence, if any;
5. The safety of the child and the safety of either parent from physical abuse by the other parent;
6. The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision;
7. The needs of the child;
8. The stability of the home environment offered;

9. The quality and continuity of the child's education;
10. The fitness of the parents;
11. The geographical proximity of the parents' homes;
12. The extent and quality of the time spent with the child prior to or subsequent to the separation;
13. The parents' employment responsibilities; and
14. The age and number of the children.

All but one of these factors (quality and continuity of the child's education) should be considered in determining the summer parenting schedule. Since each case is unique, New Jersey courts determine both the "regular" and "summer" parenting time schedule on a case-by-case basis. By way of example, in *Hallberg v. Hallberg*, the Appellate Division determined that a father exercising two weeks of parenting time with the children during the summer months was reasonable, unless it could be shown that it was not in the children's best interests.<sup>2</sup> More recently, in *Rosenthal v. Whyte*, the Appellate Division affirmed a trial judge's denial of a mother's request to modify the father's five continuous weeks of parenting time with a 3-year-old child that was set forth in the parties' Property Settlement Agreement.<sup>3</sup>

In *Cipriana v. Fontana*, the Appellate Division addressed summer parenting time for a young child, who was also 3 years old.<sup>4</sup> However, unlike *Rosenthal*, the parties did not have a settlement agreement which set forth the summer parenting time schedule. After the trial court permitted the child's father to have an eight-week block of parenting time during the summer, the mother filed an appeal.<sup>5</sup> During the appeal, the mother filed a motion seeking a remand to conduct a hearing on the issue of summer parenting time.<sup>6</sup> The Appellate Division granted the motion for a remand for that limited purpose. On remand, a different judge determined the father could exercise six weeks of summer parenting time in three blocks of two consecutive weeks.<sup>7</sup> On appeal, the original award of eight consecutive weeks of parenting time was found to have been a mistaken exercise of discretion. The Appellate Division noted that while the remand was pending, the parties should continue to utilize the summer parenting schedule where the father had three blocks of two consecutive weeks.<sup>8</sup>

Depending on the age of the child, parents may consider input from the child as to a summer parenting time schedule. For example, the preference of the child may be relevant, not only for the summer parenting schedule, but also whether the child wants to attend a specific camp or activity or wants to work during the summer.

If custody is a contested issue, courts are authorized, *sua sponte* "...or at the request of a litigant, to conduct an in-camera interview with the child(ren). In the absence of good cause, the decision to conduct an interview shall be made before trial. If the court elects not to conduct an interview, it shall place its reasons on the record."<sup>9</sup> In *DA v. RC*,<sup>10</sup> the Appellate Division noted that the decision whether to interview a child is left in the discretion of the trial judge and must be guided by the best interest of the child.<sup>11</sup> When courts consider whether to interview the child(ren), they must consider the child's "feelings and desires concerning where and with whom he should live..."<sup>12</sup>

Since the parties cannot predict with certainty how a court will decide any issue, including summer parenting time, the goal is for parents to settle and resolve their summer parenting time schedule without having the court decide. When engaging in discussions or negotiations regarding a summer parenting time schedule, parents should discuss, and agree on, any foreseeable matters which are specifically tailored to their family, including but not limited to summer camp, vacations, employment, work-related child care, and so on.

## Summer Camp

One of the common decisions parents must reach when determining a summer parenting time schedule is whether the children will attend summer camp. The two basic questions relating to summer camp that should be addressed are:

1. Will the child(ren) attend summer camp?
2. How will the camp be paid?

First, whether the child attends the camp will likely depend on whether they attended similar camps prior to the divorce, whether the child has a need to attend the camp because of a certain activity they participate in during the school year, and how the camp will impact the summer parenting time schedule. As is set forth above, depending upon the age of the child, the child's input may be relevant on this specific issue. If appropriate, the court may even interview the child.

Should a parent oppose a specific summer camp for their child, it is often for one of two reasons: 1) the camp will adversely impact their parenting time; or 2) they do not want to contribute to the cost of the camp. There are several factors that may impact how this opposition is addressed. For example, the duration of camp attendance. Because many camps are only one week, it is often

difficult for the parent opposing the camp to claim that it will adversely impact their parenting time. However, in extreme situations, or in situations where the parent who wants to have the child attend camp has limited parenting time, that parent has been forced to use their own vacation time for the given week of camp, to ensure the child can attend. The more common scenario, however, is where the parent objecting to the camp does so because they do not want to pay the costs.

If both parents work full time, the child often must attend some type of camp or other work-related childcare arrangement during the summer months if neither parent is available to care for the child. The New Jersey Court Rules provide that work-related childcare costs are supplemental costs to child support, and therefore may be considered an expense added to basic child support.<sup>13</sup> Although the New Jersey Child Support Guidelines expressly permit the cost of summer camp to be treated as a form of work-related daycare for child support purposes, if the actual costs are not known when child support is calculated, the parties may agree to each pay camp expenses directly to the provider. If the camp expenses are paid directly, unless the parties agree to a different arrangement, they should be paid in proportion to each party's respective incomes as set forth on line 7 of the New Jersey Child Support Guidelines. That is the amount each party would pay if the costs of summer camp were added to the Child Support Guideline calculation.

The payment for a child's attendance at summer camp may be considered differently, *e.g.*, as entertainment or activity, if the camp is not work-related childcare. The allocation of cost of the camp relates to whether it is considered an extraordinary activity expense that should be paid by both parties separate from basic child support. The Appendix of the Child Support Guidelines specifically provides that "entertainment," which is included in child support, to include "[f]ees, membership and admissions to sports, recreation or social events, lessons or instructions, movie rentals, televisions, mobile devices, sound equipment, pets hobbies, toys, playground equipment, photographic equipment, file processing, video games and recreational, exercise or sports equipment."<sup>14</sup> There is an argument to be made, depending on the specific circumstances, that some summer camps may fall under entertainment and are included in basic child support. Certain courts have concluded that camp expenses are included in child support.<sup>15</sup>

The parents should first discuss the different camp

options and the costs for the camp. Generally, there are three camp options to consider: half-day, full day/extended day, or overnight/sleep away camp, which can be from a few days to as long as eight weeks. Depending on the type of camp, the cost can widely range from a few hundred dollars to tens of thousands of dollars. If the summer camp is not work-related childcare, the parties may agree to each pay camp expenses directly to the provider in proportion to each party's respective incomes as set forth on Line 7 of the New Jersey Child Support Guidelines or based on some alternative sharing of these expenses.

The Appendix to the New Jersey Child Support Guidelines provides for certain expenses to be added to basic child support or considered extraordinary expenses. This includes special needs of gifted children.<sup>16</sup> Certainly, depending on the type of camp it may be considered "special" or extraordinary in the event a child is considered gifted. By way of example, for a child who has an extraordinary talent in a sport, a specialized sports camp may be appropriate and both parties should contribute. For a child who is considered gifted in a specific academic field, an enrichment camp in that academic field may be considered an extraordinary expense and both parties should contribute.

In summary, when addressing the cost of the camp, the first step is to determine whether the camp would be work-related childcare. If it is not, the next step is to determine if it is included in the basic child support amount. If the argument is that it is not included in the child support amount, the next step is to determine whether it is a special or extraordinary expense and whether the camp is necessary for the child. The court's analysis of this would be based on whether the child previously attended or participated in a specific activity or camp (or whether a sibling or parent did so), or if there is need for the child to attend, and whether the parents can afford to pay for these expenses.

The best way to handle summer camp is to address it in as much detail as possible in the settlement agreement. If the matter cannot be settled, and as is the case with most decisions affecting children, the court will decide these issues on a case-by-case basis and in the child's best interests. If you represent the parent who wants the child to attend the camp, discuss whether they are willing to pay for the camp, whether they are willing to schedule it on their own time, or whether it will impact the other parent's time and whether they are looking to share the cost.

## Summer Employment for Teenagers and Parenting Time

As practitioners, we address (or at least we should) events, such as college, that may occur in the distant future, even if only to set forth a manner for calculation and resolution to be reserved for future consideration. Rhetorically, why not address summer employment? It may be hard to imagine a 3-year-old having a job some day, but the lack of specificity in an agreement or order now, may detrimentally impact parents (your client) in the future. It will benefit your client to answer as many as possible in the agreement and to provide a mechanism for resolving future issues that have not been addressed. Some considerations include but not are limited to the following: Where will a child find the funds to do so if they are not permitted to work and moreover, should the parent preventing the child from employment then be required to pay more toward college or expenses? Should teenagers (who are eligible)<sup>17</sup> work during the summer? What about during the school year? Should we consider the amount of the child's schoolwork or their other activities in regard to whether they should be required or allowed to work? Should we consider whether the parents worked as teenagers or what the family would have done if it were intact (similar to part of the analysis for college contribution)?<sup>18</sup>

Clearly, there are endless potential varying factual scenarios and countless questions. The answers to many, if not all, of the questions may be unknown at the time of the divorce. However, the unknown should not preclude discussions about potential, future scenarios that we should have with our clients.

## Drafting Agreements and Resolving Disputes

When drafting settlement agreements that (should) address summer parenting time, vacations, and whether a child will have employment, the following non-exhaustive list of issues should be addressed:

- Summer schedules of parenting time, with specifics and clarity
- Is child support stagnant or modified
- Set forth dates for the exchange of vacation dates and have a method for who has first choice each year, or a tiebreak in the event parents select the same week.
- Recognize deadlines for registration for camps and activities, certain camps require registration as far in advance as one year before attendance.
- Do the parents want/need/agree to restrictions on travel? International? Hague Convention? Contiguous

48 states, and so on. Are there different parameters depending on the travel?

- Can a parent object to a locale and if so, how does that get resolved? What is the definition of a dispute and can vacation time be vetoed?
- Can a parent obtain a passport for a child?

By addressing the above examples of potential issues that may arise, you may circumvent a last-minute summer parenting time dispute, especially when the dispute does not arise until immediately before the summer parenting time schedule commences. At that point, it may be too late to file a motion, (depending on the county), as it will be heard after the vacation is supposed to take place. Due to the time sensitivity of summer parenting time and the limited duration to resolve disputes, we should be cognizant of options and inform our clients accordingly.

Parties may consider the following language when parents are unable to agree (not only as to summer parenting time or employment) and want to provide a method of resolution:

- Whenever possible the parents shall discuss the issues and attempt to reach an agreement based on what is best for the child/ren at that time.
- If the parents are unable to reach an agreement on an important issue about the child/ren after discussing it with the other parent, either parent may initiate dispute resolution by:
  - Arranging for the parents to meet with a counselor to discuss and try to reach agreement.
  - Arranging for the parents to meet with a mediator to try to reach an agreement.
  - Notification of a desire to institute dispute resolution processes shall be made in writing by certified mail. ... The parents shall share the cost of the mediation or counseling service equally. ... If the dispute cannot be resolved within \_\_\_\_ days, either parent may initiate legal action to seek judicial resolution. These provisions shall not be applicable if immediate court action is necessary in an emergency situation to protect the child/ren or one of the parents. (Name) has agreed to be an arbitrator and after each of the parents presents what he/she thinks is best for the child/ren the arbitrator.<sup>19</sup>

In sum, many potential disputes involving the summertime and children can be easily resolved if attorneys alert their clients to these issues in advance, rather than punting those issues only to deal with them in the

future. In the event that the parties are not able to agree on what should happen during the summer at the time they are negotiating the agreement, either because of the ages of the children or simple divorce exhaustion, the least we can do is propose language as to how the dispute will be resolved and set forth an appropriate mechanism for a decision to be reached. Even if dissatisfied with the ultimate result, the clarity in understanding how and when to handle a dispute will be appreciated. ■

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## Endnotes

1. N.J.S.A. 9:2-4
2. *Hallberg v. Hallberg*, 113 N.J. Super. 205 (1971)
3. *Rosenthal v. Whyte*, 2011 WL 6014020 (App. Div. 2011).
4. *Cipriana v. Fontana*, 2014 WL 1660371 (App. Div. 2014).
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. *Ibid.*
9. R. 5:8-6.
10. *D.A. v. R.C.*, 438 N.J. Super 431, 455-56 (App. Div. 2014),
11. *Id.*
12. *Id.* at 458.
13. *Ibid.*
14. Pressler & Verniero, *Current New Jersey Court Rules*, Appendix IX-A to R. 5:6A, gannlaw.com (2021).
15. *Spiegler v. Spiegler*, 2009 WL 1257680 (App. Div. 2009)
16. Pressler & Verniero, *Current New Jersey Court Rules*, Appendix IX-A to R. 5:6A, gannlaw.com (2021).
17. N.J.S.A. 34:2-21.1 et. seq.
18. *Newburgh v. Arrigo*, 88 N.J. 529 (1982)
19. [sullydoc.com/wp-content/uploads/2011/01/The-AAML-Model-for-A-Parenting-Plan.pdf](https://sullydoc.com/wp-content/uploads/2011/01/The-AAML-Model-for-A-Parenting-Plan.pdf)