

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP

Answers to pressing questions on Family Law.

What Should Santa Do?

Question: I am legally separated but we don't have a separations agreement and my wife has residential care and control of our two children. My wife is refusing to give me access from Christmas Eve to Christmas day at 1 p.m. for my two kids, aged seven and nine. My kids are heart-broken. She had them for the same period last year. I was going to take them to their grandparents for turkey dinner in Orillia, where there is a big family gathering. I was supposed to be Santa Claus. She's really being cruel. Is there anything I can do?

Answer: You can commence an application for custody or, in alternative access, in any local family court and then immediately bring an emergency motion for Christmas access before a judge on any "motions" day on four days written notice to your wife. Explain the circumstances in a written affidavit sworn before a lawyer or other notary public that must be personally served on her. Simply outline the facts and when I court explain the unfairness of the situation. Tell the judge you have no intention of denying your wife the enjoyment of Christmas with the children as you would return them by Christmas day 1 p.m. and that she had them for the same time period in the previous year. Unfortunately, the paperwork and court procedures can be intimidating to a non-lawyer, but court staff can be helpful. Three quarters of people going to the courts these days are often there without the benefit of lawyers and depend on the court's staff and duty counsel to assist them. This puts undue pressure on judges to assist such people though hearing, which is not supposed to be their job. Often, unfair results occur when people show up with improper or no evidence to support their position. For instance, if "Santa" here comes without having served a properly sworn affidavit with all the necessary facts within the time prescribed in the Family Law Rules, he will have wasted his and the court's time and money. Moreover, it is also almost impossible to get a timely legal aid certificate for people with little money for such access motions on short notice, so trying getting a legal aid lawyer to assist you for Christmas access is usually a waste of time. If possible and if Christmas access means that much too you, get off your sleigh and into the office of a competent family law lawyer-and do it fast.

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