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Court Holds Parent in Contempt for Shared Custody Bad Behavior

By James M. Lynch | April 13, 2017

[Family Law](#) [Child Custody](#) [Contempt](#)

Attorney James M. Lynch reviews recent Appeals Court contempt case addressing bad parental behavior in shared custody arrangements.



In the aftermath of a [divorce](#), the animosity that the spouses feel for each other can trickle into their parenting choices and abilities. Unfortunately, this can have a negative impact on their children, which is something that courts strive to great lengths to avoid.

This tension is especially prevalent after a divorce court grants the parents shared physical custody over their children. The more that divorced parents have to transfer their children to each other, the more opportunity there is for conflict to arise. Parties occasionally agree to use parenting coordinators (PC) to limit conflict, but such professionals can be expensive and are limited to the powers the parties agree to grant the PC. Moreover, it can be difficult for courts and third parties to identify and address a parent who creates conflict through a bad attitude and poor communications rather than clear violations of parenting orders.

Recently, an appellate court in Massachusetts recognized the problem and stepped in to help.

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Conflict in Shared Physical Custody Arrangements

In the last ten years, family law attorneys across the United States have seen a surge in shared physical custody arrangements, particularly as more states ([not including Massachusetts](#)) have adopted laws making [shared \(50/50\) custody presumptive](#). This shift in the law moves things away from courts reflexively assuming that a child's mother should be granted primary physical custody. More women are in the workforce, and the nature of the roles of that adults play in a family, has been evolving for decades. Additionally, social science research has found that a [child benefits in numerous ways](#) when both parents are involved in their life after a divorce.

However, there are instances where [shared physical custody is not appropriate](#), such as when the parents involved are still emotional from the divorce. Poor communication between the parents involved in a shared custody relationship is all too common, and many attorneys agreed that high-conflict behavior is on the rise, as the barriers to shared physical custody become lower, and 50/50 parenting plans more prevalent. Courts frequently see text messages or emails that are inappropriate in volume (numerous times per day), content (profanity, name calling, etc.), and tone (conflict oriented, lack of boundaries), or inappropriate subject matter (arguments about new significant others or matters unrelated to the children).

Ironically, the concept of [parental alienation](#) has grown more widely accepted as shared physical custody has increased. However, for many judges, parental alienation seems to be a problem that only [afflicts parents with primary physical custody](#) of children. Once shared physical custody has been granted, the mindset seems to be: except in [extreme circumstances](#), parents must simply deal with the bad behavior of a former spouse. The feeling among attorneys is that some probate and family courts have stopped examining whether a parent is willing or able to co-parent before entering a custody order. Positive co-parenting behavior, once considered an asset in custody cases, is now taken as a given, while bad co-parenting is frequently viewed as an inevitable and incurable feature of post-divorce life.

Unfortunately, the attitude among attorneys and judges sometimes seems to be that a parent must simply live with negative, conflict-driven behavior from the other parent. Few judges seem to enforce the type of conduct encouraged by the mandatory [Parent Education Program](#). As we have discussed before,

most of the benefits associated with two-parent involvement in a child's life are offset or eliminated [if the child is exposed to significant parental conflict](#) in the process:

[T]here is [persuasive science](#) demonstrating that children who have positive and active relationships – including substantial parenting time – with both of their parents develop into healthier adolescents, teenagers and adults. On the other hand, there is an equally deep and persuasive [body of science](#) demonstrating that children who are exposed to parental conflict – in the form of bickering, disputes over parenting time, and verbal and physical confrontations between parents – suffer greatly from the feelings of instability, guilt and fear they experience.

A recent Massachusetts case, though, took a more active approach.



The advertisement features a dark blue background with a city skyline. On the left, the logo 'L&O' is displayed in a large, white, serif font, with 'DIVORCE & FAMILY LAW ATTORNEYS' in a smaller, white, sans-serif font below it. To the right of the logo is a portrait of James M. Lynch, a man in a dark suit and red tie. Below the portrait, the text 'Need a Family Law Lawyer? Hire the Best' is written in a white, italicized, serif font. To the right of the portrait, the text 'Need a Child Custody Attorney?' is written in a white, italicized, serif font. Below this text is a dark blue button with the white text 'CONTACT JAMES TODAY!'. At the bottom right, the name 'James M. Lynch' and title 'Managing Partner' are written in a white, sans-serif font.

Appeals Court Addresses Negative Co-Parenting Behavior

In *Leon v. Cormier*, the Appeals Court was called on to review the Probate and Family Court's contempt of court finding. The Probate Court held the mother in contempt after it found that she had failed to follow the recommendations of the Parent Coordinator, whom the parties had agreed would have binding, decision-making authority in their parenting agreement. Under the parties' agreement, the Parent Coordinator had made two rules for the divorcing couple to follow. The first was that "emails between [the parties] should still occur during the designated Tuesday email time. The ONLY exceptions are in case of significant emergency or a necessary change in logistics that must be established for something that is to occur prior to the next Tuesday email time." The second required the children to be dropped off by the mother at the Chelmsford Police Station, where the father could pick them up.

Reviewing the lower court's finding of contempt, the Appeals Court held:

Regarding the e-mail communications, the judge concluded that “on seventy . . . separate occasions between December 23, 2013, and February 25, 2013,” the mother had violated the order. With regard to the custody exchanges, the mother likewise committed violations “on fifteen . . . separate occasions between September 3, 2014, and December 30, 2014,” by “consistently delivering the children to the Pepperell Police [s]tation instead” of the Chelmsford Police station as ordered.

In addition, the Court “noted that many of the e-mail messages sent by the mother were ‘written in all capital letters and reference[d] ‘MY CHILDREN’ demonstrat[ing] the [mother]’s ongoing urge to struggle with the [father]. The hostile and dictatorial tone of the emails is counter-productive to effective co-parenting of the minor children.’”

As a result of the violations, the lower court had held:

[I]f the mother continued to violate the parent coordinator’s order relating to e-mail communications, her parenting time might be suspended until she addressed her behavior with a family therapist. The father was allowed to make up twelve days of parenting time, and the mother was to reimburse him a total of eighty-eight dollars for the costs associated with the service of process.

In the end, the Appeals Court of Massachusetts decided that holding the mother in contempt of court was a proper response to the issue. This decision is a big step in how the legal system deals with contentious parents in shared custody situations, because it shows an increased judicial awareness that negative parenting is a problem that needs to be controlled if the best interests of the child are to be pursued.

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Schedule a consultation with [James M. Lynch](#) today at (781) 253-2049 or send [him an email](#).

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