

Be There

Written by Loretta Smith
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Divorce is a difficult, most often emotionally draining process. Some come to the mediation table, or the Courtroom, kicking and screaming, reluctant to the end, because "This is not what I signed up for. I married for life". Unfortunately, there are far too many individuals who "check out" and don't come at all. It is a story I hear all too often: "I did not want a divorce so I refused to participate in mediation or attend a hearing." "My spouse had an attorney and I didn't, so I was going to get screwed any way about it". "I hear this judge favors women, so nothing I could say would make a difference." "Her attorney presented me with a Settlement Agreement, but I wasn't signing anything." "I needed to work (or I was in jail), so I just didn't show up".

I hear variations on these stories for the first time usually after a temporary order or a final order has been granted, and the party who chose not to participate suddenly finds he has limited or no visitation with his child, her ex-husband will keep the lion's share of the marital assets, that thing that most concerned her in the divorce process was not addressed at all, his income was imputed at a level he has not earned in years and there is no way he can meet the obligation imposed, or he is stuck paying long-term alimony and his ex-wife's attorney fees as well. By then it is very often too late. It is extremely difficult, if not impossible, to get substantive changes to an order when a party could have but chose not to attend a hearing where the provisions in the order were decided.

One thing to keep in mind: refusing to show up at mediation and/or a hearing will NOT stop the divorce process. There are a number of legal grounds on which divorce can be granted in Georgia. The most common one is that the marriage is irretrievably broken with no hope of reconciliation. That makes Georgia basically a no-fault divorce state. It just takes one party filing for divorce and jumping through all of the procedural hoops of service and notice and then swearing to the Court that this marriage is irretrievably broken, and a divorce will be granted. Exceptions are almost nonexistent.

Moreover, in almost every case, there is more to be decided than just the granting of divorce. If there are children involved, determining custody, visitation, child support and related issues is a huge and critical undertaking. In the best case scenario, the parties reach an agreement on these issues on their own or through a mediator. In a worse case scenario, the judge will decide these issues, with or without the aid of a Guardian Ad Litem, in a way they may not completely please either party. In what has been the worst case scenario for the parties described above, the judge will decide all issues related to the children with no input from one of the parties. There may be testimony with which the absent party would disagree, but the judge can only weigh the evidence that is before her. More importantly, whether true or not, if you are not present for a divorce hearing, your absence will communicate to the Court that you are not interested in the welfare of your children, spending time with them is not high on your priority

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list, you may not be a dependable person for your children to spend time with, etc.

The same holds true for alimony and property rights. If a party is not there to present his side of the story, the other party is free to present evidence that supports her side, and that is all that the judge will see and hear. That rarely works to the advantage of the absent party.

The moral of this story is, "be there and be as prepared as you can be". Ideally, have a competent attorney with you who can present your case to the Court. However, even if you don't think you can afford an attorney, your presence and testimony will make a difference. The judge must look out for the best interests of your children, and your presence says you care and you are willing to fight for their best interests too. Your evidence, even as little as your most recent W-2 or paystubs, will be considered in determining child support, alimony, and attorney fees, if you are there and properly present it to the Court. When you are present for trial, I still can't promise you that everything will go your way. I can't even promise that anything will go completely your way. But I can promise you that you will have greatly increased your chances of a fair outcome to your case by being there to make sure your side of the story is told.