

What are Levi Johnston's rights? Experts weigh in on Bristol Palin's ex and other unwed dads

By Rosemary Black

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Bristol Palin and Levi Johnston's baby son lives with Mom at Grandma Sarah Palin's house right now. Just how much face time he's likely to have with his father remains to be seen: Bristol won't even let him take the baby to his house because she doesn't want him around "white trash," Johnston's sister told Star magazine.

But unmarried dads have rights, too. Just because a couple never tied the knot doesn't mean the father can't have frequent visits with - and maybe even custody of - his child. In New York State, unmarried fathers have the same rights and privileges as married ones, says matrimonial and family law attorney Sari Friedman.

"The biggest mistake fathers make is that they think if their name is on the birth certificate, that establishes them as the father in New York State," Friedman says. "That is not true. If you aren't married to the baby's mother, you must have your paternity established in order to have rights."

The easiest way to do this is to sign an acknowledgment of paternity in the hospital when the baby is born. If that didn't happen, the dad can file a court petition and the court can issue an "order of filiation" that will establish his paternity, Friedman says.

Once one of these is in hand, a father can seek either custody or visitation, and Family Court will decide which he gets. Generally, custody goes to the mother and the father gets visitation rights, Friedman says.

"The law says that custody is awarded on a gender neutral basis based on the best interest of the child," Friedman says. "But the mother usually gets custody."

Joint custody's a possibility if both the mother and the father are agreeable to it, Friedman says. The parent who has sole custody makes the decisions on issues like where the child will go to school and who the pediatrician will be.

In the case of an infant, it's unlikely the father would get custody, says matrimonial attorney Dan Clement. "If the mother is in some way unfit, or if the mother was unreasonably preventing the father from seeing the child, then this could lead to a loss of custody for the mother," he says. "But it would be a rare stretch for a father to get custody of a newborn."

Courts look at the fitness of each parent, and then make a decision on what is best for the child, says Michael Markowitz, lawyer and legal expert on JustAnswer.com.

The living arrangements for the child are definitely examined by the court, he says. Would the fact that Levi Johnston's mother was busted in an undercover drug sting and charged with six felonies come into play when a court's considering whether to let Levi take the baby to his house?

"If the grandparents live in California and the two parents live in New York, the courts probably would not look at the grandparents," Markowitz says. "But if the baby's father is living in the same household as his parents, the court is going to look at the grandparents."

An unmarried dad can't just sit back and do nothing if he wants to see his baby, says Lynne Marie Kohm, John Brown McCarty Professor of Family Law at Regent University School of Law in Virginia.

"A father has an equal protection right to have a substantial relationship with his child but that means he needs to get his rights established, and then assert his rights," she says.

In the long run, it's really in the child's best interest for parents to try to work it out themselves.

"Going to court is time consuming and expensive," Kohm says. "I always encourage client communication, and trying to work it out, rather than letting a judge who doesn't even know you make decisions about your relationship with your child."