

GUARDIANSHIP RIGHTS OF THE UNMARRIED PARENT



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Q. The father of my five year old son whom I am separated from is bringing me to court seeking guardianship of our son. I don't think that he is a good influence on my son. He drinks too much and takes drugs. Someone told me that if he gets guardianship, he will be entitled to full custody of my son if I was to die. I don't want this to happen. I want my mother to have him. Can I stop him getting guardianship?

A: In Ireland, if a child is born to parents who are married to each other, then both Mother and Father are recognised by law as being joint guardians and have equal rights in respect of the child.

However, for children born outside of marriage in Ireland, only the mother has automatic rights to guardianship. The fact that the father's name may be registered on the child's birth certificate will not give him any guardianship rights.

If the mother agrees, the father can become a joint-guardian if both parents sign a "statutory declaration". A [copy of the statutory declaration](#) is available from the National Information Service of Treoir or from your Solicitor.

If the mother does not agree, which is the case here, the father must apply to court for guardianship.

If the Court does appoint your sons father as a joint guardian, then his consent will be required for certain things relating to your son's general welfare and other items. For example, his signature will be required on your sons' passport application.

The court will take your views into account but ultimately the Judge will base his decision on what is in your sons best interest. You don't indicate if there is a court order in place in respect of access or whether your child's father has access. Normally when a father applies for guardianship, he also applies for access. The Judge will take a number of factors into account when making a decision on guardianship. Does your sons father have criminal convictions for public order offences, drug offences etc and has access been inconsistent and contentious. If the answers to these questions are yes, then in my experience, the Judge tends to adjourn guardianship applications for a



number of months to see how access proceeds prior to granting guardianship. However, ultimately the court will not deny the father guardianship unless there is very good reason to do so.

You should have a Will drafted and signed immediately. Your Will should appoint your mother as guardian. In this way, the father of your child will not become the sole guardian of your son in the event of your death. He will still be entitled to apply to court for custody of his son but again; the courts will take into account the best interests of your son when making such a decision.

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