

Should Children Have a Voice in Custodial Placement?

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Should Children Have a Voice in Custodial Placement?

Abstract

The aim of this paper is to bring to attention the custodial placement of children with divorced parents. Essentially, this paper looks at the importance of involving the child in the process of deciding on a parenting schedule. This is done by examining how children are personally affected by this decision and arguments made to not involve children. Upon examination of these ideas, it becomes clear that during a divorce case children should be given the opportunity to share their opinion on the parenting schedule.

Keywords

custodial placement, divorce, children

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ABSTRACT

The aim of this paper is to bring attention to the custodial placement of children with divorced parents. Essentially, this paper looks at the importance of involving the child in the process of deciding on a parenting schedule. This is done by examining how children are personally affected by this decision and the arguments made to not involve children. Upon examination of these ideas, it becomes clear that during a divorce case, a child should be given the opportunity to share their opinion of the parenting schedule.

“You do not know what you want” and “you are too young to understand” are statements that children have heard for years and years. Society has always viewed children as unable to make their own decisions because they are too young to know what they want and cannot understand situations. This commonly held belief is not completely true for every child, especially when they become older. When children’s parents go through a divorce, one element that has to be discussed is the parenting schedule, also known as the custodial placement of the child. While this decision is being made, it is common for the child’s opinions and views to be ignored and brushed to the side. George Cohen explains that upwards of “one million children experience the divorce of their parents” a year (Cohen 1019). Since divorce affects so many children, it is important for children to have a say in the parenting schedule.

When parents get a divorce, they have to go through the court system to make it official. In many states such as New York, “custody and visitation must be decided before the divorce is granted” (“Children in a Divorce Case”). When deciding the custody and visitation schedule, individuals from the court, such as a judge, speak to both of the parents and review the case as a whole. In order to decide a

parenting schedule, twelve factors including the health of the parents and the parent-child relationship are used to decide on a schedule in the best interest of the child (“Custody and Parenting Time”). Although the decision is created in the judge’s opinion of the best interest of the child, very rarely does it involve the opinion of the child.

Custodial placement is an important decision that directly affects and involves the child since it is their life. When considering a parenting schedule, it is important to remember that the outcome is what the child’s life will revolve around for years. In typical custody cases, the people who are deciding the schedule are individuals who are not directly affected by the decision, like the judges. Connie Beck and Lynda Frost say that “the individuals primarily interested in the outcome should be the ones directly involved in the decision, including the child” (Parsons 10). Beck and Frost are recognizing that children are the ones who are affected by this decision and because of that, they should be included in the decision-making process. This does not mean that the children should have the deciding vote in the decision, but instead, they should be given the opportunity to express their opinion on the matter.

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Along these same lines, the book *Children of Divorce: Stories of Loss and Growth*, written by Dr. John Harvey and Dr. Mark Fine, shares different stories from children who have experienced the divorce of their parents. In one of these stories, a man describes his feelings when he was younger after being told of his parents' divorce. In this story he says, "I had built up anger inside me, so much that I did not know what to do. My grades went to hell. I started to cause trouble" (Harvey and Fine 34). Through this passage, we are shown how painful divorce can be for children. This is especially true when children are not given the opportunity to voice their opinion regarding custodial placement. When children are able to have a voice in this process, it can reduce negative effects of their parents' divorce because the child feels like they are able to express themselves.

Many adults believe that children do not want to state their opinion because they would feel like they are choosing between their parents. Although it is important for children not to be placed in the middle between their parents, they should still be able to share their views about the situation. Dr. Jonathan Gould and Dr. David Martindale explain that "several studies have shown that children want their voices to be heard and taken seriously" (304). Through these studies, one can see the majority of children hope for the opportunity to share what they want the parenting schedule to be. Since children desire the chance to share their views and this decision directly affects their life, it is important to understand the child's wishes.

The judge who is in charge of the custodial placement case is the one who is ultimately deciding what the parenting schedule will be. The problem with this is that court does not have the ability to see

what is actually happening in the home on a regular basis. Since the court does not see everything that happens, children should be able to voice their opinion in order to share their own perspective. Dr. Denise Parson acknowledges the fact that there have been reports of children being neglected, abandoned, and even injured because of poor custodial placement (4). The news is filled with countless stories of a parent driving drunk with the child in the car, a parent and/or step-parent beating their child, or a child not being fed by their parent. In situations such as these, if the children would have been given the opportunity to share their views of the living conditions at each parent's house, then these incidents may have been avoided. There have been many cases where one parent acts completely different than they normally would at home when they are in front of the judge. To avoid any misguided decisions being made, judges should meet with the child one on one and ask the child how they feel about each parent. Gould and Martindale say that there is a "need for evaluators to spend more time interviewing and assessing children's view of their life with each parent" (308). Doing this will allow the children to have an impact on the decision-making process as well as ensuring that the best schedule is being chosen.

Along these same lines, it is very common that a child and their parents will have different perspectives on their family life. When this occurs, judges will normally throw out the child's side of the story and focus only on what how the parents see the situations. In the same article, Gould and Martindale state that "children's accounts of family life frequently were overshadowed by their parents' interpretations" (308). The reason for this is that adults tend to "underestimate children's abilities and capacities" (Gould

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and Martindale 314), so they discount anything that they say. Even though some children are unable to make decisions, they all can explain how they feel and give their own interpretation of a situation. Children see and experience situations that judges and evaluators do not know about. Since children have a different perspective of the situation and must live with the consequences of the decision being made their views should be taken into consideration.

Additionally, when children are able to voice their opinions about their custodial placement, they are more successful later on in life. Children being able to express themselves in this process allows them to gain confidence in their ability to share their feelings as they grow up. Parsons writes that “children whose input is considered and who are allowed to participate in the overall decision-making process of placement will become more successful and adjusted adults” (13). When children learn how to express themselves at a young age, they are able to carry this ability into adulthood with them. Through this, these adults know the importance of not keeping their feelings bottled up inside of them. Relationships with significant people and experiences are a crucial part of a child’s development which means that the way children are treated and how they interact with others will determine their personality as an adult (Gould and Martindale 314). In order to help children become well-adjusted adults, it is important to give them a chance to share their views on a parenting schedule.

While taking the previously stated factors into consideration, one counter-argument that is commonly presented is the idea that children are unable to make reasonable decisions themselves. Alison Burke, Ph.D. in Criminology, shares that the majority of

scientists will agree that a child’s brain continues to develop until they reach their early 20s (382). Since a child’s brain is not fully developed, some argue that children are not capable of making decisions such as custodial placement. Jenna Gallegos says that “a fully developed brain is necessary for actions that adults take for granted, such as risk assessment” and decision-making skills (Gallegos). Children are unable to make decisions on their own because they often think in the spur of the moment and therefore are unreliable. It is not unusual for a child to change their mind from one day to the next or even one hour to another. In the article, *Including Children in Decision Making about Custodial Placement*, it is stated that “children are not often rational or objective in their decision making” (Parsons 310). This shows that it is unreasonable to expect a child to make such a large decision such as a parenting schedule, so the court should not involve them in the process.

Even though this argument is relevant in some cases, it does not apply to every child and every case. Involving children in the decision-making process should be on a case to case basis, not based on an assumption of all children’s abilities. By stating that all children are unable to make reliable decisions because of their age is stereotyping their decision-making abilities. Since every child is different, it is important to involve children in the custodial placement process based on their age and ability instead of based on an assumption of all children. When a child is very young, such as eight years old or younger, it would be unreasonable to create a parenting schedule completely based on the opinions of the child. Since the child is very young, they do not have the ability to make this decision by themselves and their opinions are often

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likely to charge. By allowing children under eight years old the freedom to make a parenting schedule, they are being offered “freedom before [they are] ready to accept it” (“Independence”). On the other hand, at twelve years old, many states recognize that the child is able to make decisions. For example, in Massachusetts “a child who has attained age 12 is able to offer statements on his or her own behalf if the [department says the] child is capable and willing” (“Determining Best Interests” 14). This means that Massachusetts recognizes children’s ability to have a say in custodial placement once they reach the age of twelve. Even though it is accurate that children are unable to make reasonable decisions, it is important that there are limitations to that argument. Although young children are unable to make decisions alone, when children reach the age of twelve they have the ability to make decisions such as custodial placement.

According to Centers for Disease Control and Prevention, in 2016 there were

827,261 divorces and a divorce rate of “3.2 per 1,000 population” (“Marriage and Divorce”). Since divorce has become a common occurrence, it is important for all courts to have a standard procedure to allow children to have a voice during the custodial placement decision. In some states, an attorney for the child is assigned to every case whose job is to share the opinion of the child. By having this attorney available to every child, it would allow children to be able to voice their opinion and feelings in a private manner instead of saying their views in front of their parents. This will allow the child to not be put in the middle between their parent’s and create a safe place for them to share their honest opinion. In order to make sure that every parenting schedule is decided with accurate information, every child should have the opportunity to express their views. It is important for evaluators to hear the perspective of every family member involved, even children, to ensure that the best decision is made for all people involved.

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