



Understanding Children's Best Interests in Divorce

Conclusions of the Third International Conference on Shared Parenting

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The Third International Conference on Shared Parenting recently concluded, co-sponsored by the National Parents Organization and the International Council on Shared Parenting. The theme of this year's conference related to the concept of the "best interests of the child" in divorce, the source of protracted debate within both the academic and professional practice communities. Many years ago, Hilary Rodham, then a family lawyer, declared that children's best interests are nothing more than an empty vessel into which adult prejudices are poured. Since that time, however, family scholars have taken a much more child-focused approach to the study of children's needs and interests, a "best interests of the child from the perspective of the child" perspective.

Thus the question, "Have we reached a watershed in understanding the best interests of children in situations of family separation and divorce?," was placed front and center during conference deliberations. Specifically, it was asked, have we reached the point where we can conclude with some confidence that the best interests of children are commensurate with a legal presumption of shared parenting responsibility for children and families, rebuttable in cases of family violence and child abuse? Are we at a point where the scientific evidence points in the direction of mandating that shared parenting becomes the foundation of family law?

The answer to these questions was distilled by Dr. Sanford Braver, a leading expert on the best interests of children of separation and divorce, at the conclusion of the conference, which featured presentations by the world's leading experts, from 25 countries, on children and divorce: "To my mind, we're over the hump...we've reached the watershed. On the basis of this evidence...social scientists can now cautiously recommend presumptive shared parenting to policy makers." He further added, "I think shared parenting now has enough evidence...[that] the burden of proof should now fall to those who oppose it rather than those who promote it."

It was acknowledged that there remains an urgent need for research in two areas in particular, parental alienation and intimate partner violence, and their intersection with shared parenting. Recent research on parental alienation has demonstrated that it is more common and debilitating to children than previously believed. Several presentations on parental alienation underlined the fact that shared parenting serves as a bulwark against parental alienation.

Several presenters focused on family law reform in their respective countries, and it was noted at the conclusion of the conference that numerous jurisdictions have moved in the direction of establishing a rebuttable legal presumption of shared parenting. A recent Council of Europe resolution, for example, encourages member states to adopt shared parenting as the foundation of family law, as an outgrowth of the emerging consensus in the scientific community on the benefits of shared parenting.

It was also noted that a key to family law reform is replacing the current discretionary best interests of the child legal standard with a non-discretionary, child-focused, evidence-based "best interests" standard. Presentations and discussions focused on the following:

- The limitations of the current discretionary standard and the harms resulting from such an approach
- The need for an evidence-based and child-focused approach as an alternative to the present system
- The importance of including the views of children and parents themselves

-The two main factors of shielding children from conflict and maintaining meaningful relationships with both parents, and how shared parenting best accomplishes this outcome.

Other highlights from the conference included the following presentations:

-Dr. Linda Nielsen presented her conclusions from analyzing 52 studies of shared parenting in English-language journals, noting the beneficial effects of shared parenting on a wide range of measures of child well-being

-Dr. Richard Warshak spoke about the development of his consensus paper on the benefits of shared parenting on infants and young children, endorsed by 110 scientists worldwide

-Dr. William Fabricius spoke on the benefits of shared parenting and increased father-child involvement on the mother-child relationship. His second paper focused on children whose mothers relocated, decreasing fathers' parenting time, resulting in damage to the father-child relationship. These children were shown to have more delinquency and drug and alcohol abuse, and greater incidence of depression and anxiety

-Dr. Sanford Braver took on – and dispatched – the hoary notion that studies demonstrating better child outcomes in shared parenting arrangements are simply artifacts of self-selection. He also pointed out that the benefits of shared parenting increase with every increment in shared parenting time

-Dr. Kari Adamsons looked at quality time for fathers versus the quantity of time they have with their kids, noting that fathers need sufficient time with their children in order to enjoy quality time

-Dr. Irwin Sandler also highlighted the necessity of quality time for both parents that robustly predicts better outcomes for children. Without shared parenting, the opportunity for quality time with both parents is lost

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-Dr. William Austin spoke about social capital, and the larger network of adults and kids available to children who live in shared care arrangements. Social capital is an important buffer against the many “slings and arrows” of high conflict divorce and can be a source of important positive relationships and opportunities for kids throughout their lives. He also discussed the concept of parental gatekeeping, pointing out that both restricting contact with a parent and relocations can be forms of restrictive gatekeeping

-Dr. Patrick Parkinson spoke about his research on relocation and its effects on children and parents, noting that court-sanctioned relocations often have profoundly negative consequences on children and their relationship with the “left” parent. Of the parents who weren’t allowed to move by the court, almost all got on with their lives and had fairly positive attitudes about the situation with their children and exes

-Prof. Hildegund Sunderhauf from Germany presented a legal perspective on the European Convention on Human Rights and the United Nations Convention on the Rights of the Child, which guarantee the rights of children to relationships with both parents

-Sweden's Malin Bergstrom presented the results of her longitudinal study of children in shared parenting arrangements, concluding that children in sole care have almost twice the physical and mental health problems as do those in shared care arrangements, which is now the norm in Sweden

-Michael Lamb took on the issue of overnights for young children with their fathers. He pointed out that literally hundreds of studies demonstrate that parental separation can be hard on children or they can adjust reasonably well. The critical factor in which result obtains is whether the child maintains healthy relationships with both parents

-Edward Kruk examined the intersection of shared parenting and parental alienation as a form of emotional abuse of children, noting how shared parenting acts as a bulwark against parental alienation.

According to Ned Holstein, president of the National Parents Organization, shared parenting should be implemented as a rebuttable presumption in a manner that creates incentives for parents to cooperate in raising a child. He believes that, "Mental health professionals can play a very positive and satisfying role in this transition. They should already be counseling their patients in troubled relationships that their children will more likely do better with shared parenting, as hard as that may be for the parent to accept given the anger and hurt during separation and divorce. Professional efforts currently devoted to identifying a sole custodial parent on the basis of small differences in parental abilities may instead be used to help parents navigate cooperative parenting or parallel parenting. It will be far more satisfying to help families make the adjustments that result in more harmonious post-nuclear-family relationships, and to see happy children as a result, than to assist the court in picking winners and losers. Any shared parenting legislation should provide for the financing of post-court family counseling services, which in one way or another can replace the funds currently used for custody evaluations."

The next International Conference on Shared Parenting will take place in Strasbourg, France, in December, 2018.