



4-1-1980

# Psychological Well-Being: Key Factor in Child Custody

Terri Anne Davis

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>

### Recommended Citation

Davis, Terri Anne (1980) "Psychological Well-Being: Key Factor in Child Custody," *University of Baltimore Law Forum*: Vol. 10: No. 2, Article 2.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol10/iss2/2>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

## Psychological Well-Being: Key Factor in Child Custody

by Terri Anne Davis

In child custody disputes the court looks to the "best interests" of the child in determining the child's placement. In past years, the best interests meant only the physical well-being of the child. Today, courts are beginning to look at the psychological well-being in conjunction with the physical well-being in determining what is in a child's best interest. Some of the factors used by the Maryland courts include: 1. fitness of parent seeking custody or adaptability of the custodian to the task; 2. age, sex, and health of the child; 3. the physical, spiritual, and moral well-being of the child; 4. the environment and surroundings in which the child will be reared; 5. the influence likely to be exerted on the child; 6. whether the child is old enough to make a rational choice or preference; 7. potentiality of maintaining natural family relations; 8. material opportunities affecting the future life of the child; 9. residence of the parents and opportunity for visitation; 10. length of separation from the parent; and 11. prior voluntary abandonment or surrender. *Kramer v. Kramer*, 26 Md. App. 620, 623, 339 A.2d 328, 331-332 (1975). *Montgomery County Dept. of Social Services v. Sanders*, 35 Md. App. 406, 420, 381 A.2d 1154, 1163 (1978).

Should the psychological well-being be given equal weight with other factors used in determining the child's best interests? Should the presumption in favor of the natural parent in custody disputes between biological and third party parents be eliminated? The Maryland Court of Appeals noted in *Ross v. Hoffman*, 280 Md. 172, 372 A.2d 582 (1977), that even if there is no abandonment or persistent neglect by the parent, the psychological trauma of removal of the child is grave enough to be detrimental to the child's best interest. 280 Md. at 191 A change in conditions affecting relative desirability of custodians is not to be accorded significance unless advantages of a change in custody outweigh the essential principle of continued and stable custody of children. *Id.*

The Maryland legislature has also given weight to the psychological well-being of the child as seen in the Maryland foster care adoption statute, MD. ANN. CODE art. 16, §75. The statute creates a presumption in favor of the third party. If the child has been in continuous foster care for two years under the custody of an authorized agency, the best interest of the child requires granting guardianship to the agency with right to consent to adoption or long term care, without consent of the biological parent. The burden is put on the biological parent to show by substantial proof that he will be able to resume parental duties within a reasonable period of time or that



he has played a constructive role in the child's welfare during the time the child has been in foster care.

If the best interest of the child is truly controlling in child custody proceedings, the trend of judicial and legislative recognition of the importance of considering the psychological well-being of the child is not too soon in coming. Joseph Goldstein, Anna Freud, and Albert J. Solnit in their book, *Beyond the Best Interests of the Child* (Free Press: N.Y., 1973), emphasize the importance in the physical and mental development of the child for the unbroken continuity of affection and stimulating relationships with an adult. *Id.* at 7. The instability of the mental processes during the child's development must be offset by stable and uninterrupted support from external sources. Smooth growth is arrested and disrupted when upheavals in the external world are added to internal ones. *Id.*

A child's social reactions are determined by his or her emotional, intellectual and moral capacity that develop within the family relationship. *Id.* at 10. Children change constantly from one growth period to another. *Id.* at 11. Thus a child's mental make-up differs from that of an adult. A child's time sense is based upon the urgency of their instinctual and emotional needs. A child experiences time periods not according to actual duration but according to his subjective feelings of impatience and frustration. *Id.* at 41. This results in intolerance for postponement of gratification or frustration and intense sensitivity to the length of separation of the parent. *Id.* at 11. An infant will latch on quickly to an adult who, as a potential psychological parent, cares for his physical needs. *Id.* at 40-41. The significance of parental absences depends upon the duration, frequency, and developmental period during which they occur. The younger the child, the shorter the interval of leave-taking by the parent will be experienced as permanent loss accompanied by feelings of helplessness and profound deprivation. The child's sense of time



is directly related to his capacity to cope with breaches in continuity and becomes a factor in determining the urgency with which the law should act. *Id.* at 42.

Children experience events in reference to themselves. *Id.* at 11. They are governed in their actions by primitive wishes and desires. *Id.* at 12. They will freely love more than one adult only if those adults feel positively towards each other. *Id.* Children have no conception of blood relationships until later in their development but are aware of the day-to-day interactions with adults who take care of their needs and who become parent figures to which they become attached. *Id.* at 13. A child needs to be accepted, valued, and wanted as a member of a family unit. *Id.* at 14.

The importance in giving weight to the psychological well-being of the child lies in the fact that inadequate parental care may result in defects in the child's mental growth when there is a change of parental figure or any other hurtful interruption in the mental development process. The child's vulnerability and fragility become evident and the child may regress mentally. *Id.* at 18. If a positive environment is missing from the start, the consequences become obvious in later childhood and adult life. The child decreasingly cares for the well-being of his own body and physical appearance. His image presented to other humans also decreases. *Id.* at 20. His capacity to love and care for others is damaged as well as his social reactions with other members of society. This could be especially harmful to the child's future family. *Id.*

The role of the psychological parent, the person the child relies upon for gratification of his physical needs and of his psychological needs for stimulating intimacy, can be fulfilled by any caring adult, not just the biological parent. It can never be fulfilled by an absent inactive adult no matter what his biological or legal relationship to the child. *Id.* at 19. In the absence of the parent, ties of blood weaken and ties of companionship strengthen by lapse of time. 280 *Md.* at 189.

Goldstein, Freud and Solnit suggest three guidelines for decision-makers which are based upon the belief that the child should be placed with adults most likely to become psychological parents. *Beyond the Best Interests of the Child*, *supra* at 31. The first guideline is that placement decisions should safeguard the child's need for the continuity of relationships which is so essential for the child's normal development. *Id.* at 31-32. Second, placement decisions should reflect the child's sense of time based on the urgency of their physical and emotional needs. *Id.* at 40-41. Finally, these decisions must take into account the court's incapacity to supervise interpersonal relationships and the limits of knowledge to make long-range predictions. It is possible, though, to predict who is or has the capacity to be a psychological parent, i.e., the adult with whom the child continues to have an affectionate bond. *Id.* at 51.

In sum, the authors believe that placement should provide the least detrimental alternative for safeguarding the child's growth and development. The least detrimental alternative is "that specific placement and procedure for placement which maximizes, in accord with the child's sense of time . . . , the child's opportunity for being wanted and for maintaining on a continuous basis a relationship with at least one adult who is or will become his psychological parent." *Id.* at 53.

With the increasing realization of the instability of a child's mental growth process and that the repercussions of this turmoil in the child's external environment could adversely affect his/her adult life, the courts are beginning to give weight to psychological considerations. The Maryland Court of Appeals has not condoned nor condemned the psychological parent doctrine, but considers it as one factor to be considered equally with the factors previously mentioned in determining the child's best interest.

A major barrier to express adoption of the psychological doctrine in custody disputes between the biological and third party parent is the presumption favoring the natural parent. If the psychological parent doctrine replaces the natural parent presumption, a potential constitutional problem arises. The U.S. Supreme Court has held that the right to conceive and raise one's children is a fundamental right and that absent a showing of unfitness by the parent, the State's interest in interfering with a natural parent's right to custody is *de minimis*. *Stanley v. Illinois*, 405 U.S. 645 (1972). The Court reasoned that if the parent's rights were subordinate to the welfare of the child as determined by the state, nothing could prevent the state from deciding whether parents or some other person could best promote the child's welfare. In light of this potential constitutional dilemma, it is this writer's opinion that the automatic presumption in favor of the natural parent should be abolished and should be considered as a factor equal with the other factors listed in *Ross* as was done in the foster care adoption statute.

There are policy reasons for doing away with the presumption in favor of the natural parent and adopting the psychological parent concept. By statute, once the state has stepped in and the state juvenile adjudicatory system has determined placement of the child in a disposition hearing, it has to provide for the care, protection, and wholesome mental and physical development of that child. MD. CTS. & JUD. PROC. CODE ANN. §3-802. Continuity is important in the normal growth and development of the child and when that continuity is broken by the child's being taken from the security and warmth he has known, there is a detrimental effect upon the child's future psychological development. This detrimental effect spills over into society, as well as shaping the child's future social reactions with society in general and his future family.

By putting the burden on the third party who may have