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CHILD CUSTODY AND VISITATION IN MARYLAND: IN THE BEST INTERESTS OF THE CHILD

Kim H. McGavin

Considerable discussion has taken place recently over what is the real meaning of "in the best interests of the child" and whether this is an appropriate standard for making custody and visitation decisions. Much of this debate has focused on the highly divided interests of biological parents and those of third parties, adoptive parents, and biological grandparents. Fortunately, in Maryland there is some guidance for establishing priorities.

Maryland courts apply the "best interests" standard to custody and visitation determinations.¹ While various presumptions grant certain parties favored status in determining custody and visitation rights, the overriding mandate under the "best interests" standard is for courts to create a custody/visitation arrangement which will promote the welfare of the child. The most desirable aspect of the "best interests" standard is that it focuses the decision-making process on the child's psychological and developmental needs, "rather than on parental demands, societal stereotypes, or legal tradition."² The flexibility implicit in the standard enables courts to be more responsive to the particular needs of each case by permitting examination on an individual basis.

There is, however, a lack of uniformity in the application of the "best interests" standard. While, ideally, the child's developmental and psychological needs should be given paramount consideration under this standard, in reality those needs are frequently subordinated to parental rights as courts struggle both to honor legal traditions and respond to changing social norms.

Biological Parent Versus Biological Parent

In Maryland, as between biological parents, there is no presumption that either parent has a superior right over the other for the custody of their children.³ At early common law, fathers were entitled to the custody and

control of their minor children,⁴ though gradually over the nineteenth century many states either adopted the doctrine of "tender years," awarding custody of children under seven years of age to mothers, or enacted laws granting equal rights in custody to both parents.⁵ By the 1920's, various historical trends converged to further diminish the paternal preference.⁶ Society became increasingly concerned with the welfare of children during the industrial revolution, and family responsibilities became divided between "wage earner" and "child nurturer" as fathers sought work in cities away from the farm or village.⁷ Moreover, elevation of women's legal status during the nineteenth and twentieth centuries also contributed to the movement from "paternal" to "maternal" preference.⁸

Maryland adopted the maternal preference presumption, considering mothers to be the natural custodians of young children,⁹ and courts generally granted custody to mothers unless they were found to be unfit.¹⁰ Since 1974, however, the maternal preference doctrine has been abolished in Maryland¹¹ because it permitted the award of custody to the mother solely upon the basis of her sex.¹² Today, when determining custody between biological parents, each stands, at least initially, on equal footing before the court.

Parents may, of course, reach custody and visitation agreements outside of court. These private agreements may be advantageous because they allow parents to determine which arrangements will best serve the needs of the child, satisfy parental desires, and maintain family values while preserving the family's economic resources.¹³ Unfortunately, oftentimes parents create these agreements without knowledge of options available to them. Moreover, parents do not demonstrate much foresight in planning for long-term eventualities.¹⁴ In addition, such agreements are subject to modification by the court which will decide whether the provisions con-

tained therein truly are in the best interests of the child.¹⁵

Maryland courts consider a multitude of factors when determining whether any given custody/visitation arrangement will serve the child's best interest. Included among these factors are: abuse or neglect of the child,¹⁶ adultery,¹⁷ cohabitation,¹⁸ desires of the child,¹⁹ fitness of the parents,²⁰ character and conduct of the parties,²¹ age, health, and sex of the child,²² the desires of the natural parents and any agreements between them,²³ the potential for maintaining natural family relations,²⁴ material opportunities affecting the child's future,²⁵ and prior voluntary abandonment or surrender.²⁶ The court's most difficult task lies in ascertaining and weighing all of the pertinent factors. Maryland courts have wide discretion in determining, on a case by case basis, which factors will be considered and how much weight will be given any one of them. Although it appears from case law that no one factor, by itself, would be adequate for a denial of custody or visitation, it is difficult to know precisely what combination of factors the court would find sufficient.

Regardless of which parent is awarded custody, the noncustodial parent is usually permitted visitation privileges. The term "child visitation right" is used to denote a noncustodial, biological parent's natural and legal right to see his or her child.²⁷ This right, however, is not an absolute right in that (1) courts may refuse to uphold it when its exercise would be detrimental to the child,²⁸ and (2) it may be terminated pursuant to a confidential adoption.²⁹ Generally, a noncustodial parent's visitation right may not be terminated absent compliance with statutory procedures and a formal court decree,³⁰ nor may he or she be non-judicially deprived of it, by the custodial parent, for failure to pay child support or alimony.³¹

Private agreements forfeiting visitation rights may not be upheld if, in the court's determination, a resumption of the parent-child relationship is in the best interest of the child. Such agreements may even be held void as against Maryland's public policy that continuance of the parent-child relationship, absent extraordinary circumstances, is in the child's best interest.

Under Maryland law, a presumption exists that a child will benefit most by continued association with the noncustodial, biological parent. So strong is this presumption that, alone, none of the following conditions have been found to be so detrimental to the child as to preclude a parent from exercising his or her visitation

rights: sexual or other immoral conduct,³² failure to attend visitation sessions,³³ threats or acts of physical or sexual abuse,³⁴ alcoholism,³⁵ conviction of a serious criminal offense,³⁶ failure to pay child support and alimony,³⁷ abandonment or lapse of time between visits,³⁸ derogatory remarks made by one parent about the other parent,³⁹ removal of the child from the jurisdiction,⁴⁰ and differing religious views.⁴¹

Maryland courts have not, to date, completely denied visitation rights to a noncustodial parent. In the case of physical or sexual abuse, it seems paradoxical for a court to determine that a child is best served by continued association with his or her abuser, especially since courts claim to give paramount consideration to the welfare of the child when weighing the interests of each. Court decisions granting visitation to abusive, noncustodial parents are also troubling in light of the modest deference given to the desires of the child.⁴² While the principal reason for granting visitation is the perceived benefit to the child, forcing a reluctant child to visit an abusive parent may be detrimental to the child's emotional and psychological well-being.⁴³

At once, Maryland courts claim that (1) the child's best interest is of paramount consideration,⁴⁴ (2) parental rights "sink into insignificance" in relation to the child's best interests,⁴⁵ and (3) that a parent's right to visitation will be denied *only* under *extraordinary circumstances*.⁴⁶ Under this framework, courts contend that the interests of the parents are subordinate to those of the child, yet the child's interests actually become subservient to the parent's right to a continuing relationship. Often what is in the best interest of the child is severance of the parent-child relationship, but courts are so reluctant to terminate parental rights that they are, in fact, merely searching for the least detrimental alternative.

Courts in Maryland recognize that, generally, a child's best interest is served by continued association with his or her natural parent. Research has demonstrated "a positive relationship between a child's self-esteem and continued contact with the noncustodial parent; the greater the contact, the higher the sense of self-esteem."⁴⁷ The benefits derived from encouraging parent-child visitation go beyond the possibility of promoting a child's self-esteem or providing parental love and companionship. Rather, even in cases where the noncustodial parent is not a "good" parent, parent-child visitation should still be pursued inasmuch as

“sooner or later [the child] must see [the parent] in accurate perspective and eliminate whatever fantasies he may have had.”⁴⁸

To do justice under the “best interests” standard, courts must endeavor to learn what the actual interests of the child are rather than rely on various presumptions regarding those interests.⁴⁹ In balancing parental rights against the child's actual interests, courts need to be more concerned with assessing the practical impact of visitation, placing greater weight on the desires of an abused child in particular, and less concerned with upholding parental rights.

Biological Parents Versus Third Persons

Though in Maryland the custody claim of one parent is not given preference to that of the other, biological parents still enjoy superiority over claims made by third persons. A presumption exists that the child is best served by reposing custody in the natural parents.⁵⁰ Custody may, however, be granted to remote members of the family or to non-biological third persons when the court has found the natural parents to be unfit or if exceptional circumstances exist which would make placement with the natural parents detrimental to the child's welfare.⁵¹

Questions of parental fitness generally fall within the following categories: moral fitness;⁵² psychological or emotional fitness;⁵³ prior conduct affecting the child's physical, psychological, and financial needs;⁵⁴ and love and affection for the child including willingness and ability to care for the child.⁵⁵ Although historically courts took a moralistic view in examining parental conduct,⁵⁶ today such conduct seems to be considered only in light of its effect on the child. If a parent's conduct is not found to adversely affect the child or diminish the quality of care a child receives, then a parent will, most likely, not be deemed unfit.⁵⁷

Factors which may be of probative value in determining whether “exceptional circumstances” exist include: the length of time the child has been away from the natural parent, the age of the child when care was assumed by the third person, the period of time which elapsed before the natural parent sought to reclaim the child, the emotional impact on the child created by a change in custody, the sincerity and intensity of the natural parent's desire to have the child, the stability and certainty regarding the child's future if placed in the

custody of the natural parent, and the nature and strength of ties between the child and the third person.⁵⁸

In making custody decisions between biological parents and third persons, courts are frequently confronted with the concept of “psychological parent.” The “psychological parent” theory, advocated by Joseph Goldstein, Anna Freud, and Albert J. Solnit in their 1973 book, *Beyond the Best Interest of the Child*, suggests that once a child has been separated from his or her natural parents for a sufficient length of time, any bonds of love or affection between the child and his or her natural parents will weaken.⁵⁹ Simultaneously, a strong psychological tie will develop between the child and the third person.⁶⁰ The third person becomes the child's “psychological parent,” the person to whom the child looks for security, love, physical care, nourishment, and a sense of emotional well-being.⁶¹ Once this bond is formed, removal of the child from the “psychological parent” is thought to cause the child severe emotional trauma.⁶² Theoretically, a child under five years of age, separated from his biological parent for two months, will sever his emotional ties to his biological parent and forge an allegiance to his “psychological parent.” Separation from the “psychological parent” and return to the biological parent after this two month period, presumably, will be detrimental to the child's best interests.⁶³ Similar correlations factoring the age of the child, time apart from the natural parent, and formation of the “psychological parent” bond can be used as a basis for determining whether a return of the child to the natural parent's custody will serve the child's best interests.

Maryland courts have been reluctant to embrace the “psychological parent” argument in child custody cases. In *Montgomery County Dep't of Social Servs. v. Sanders*,⁶⁴ the court rejected the notion that its custody decision should be made on the basis of the “psychological parent” concept.⁶⁵ The court believed that acceptance of the “psychological parent” principle would be tantamount to adopting a mathematical process by which custody could be determined by measuring the child's age and time apart from his biological parents.⁶⁶ To do so would place the court in the position of “rubber stamping” determinations made by psychologists and psychiatrists utilizing this formula. “Custody cases involve too many people, conditions, and human emotions to be reduced summarily to a mere mathematical process.”⁶⁷

Consistent with the *Sanders* decision, the Court of Special Appeals of Maryland, in *Lipiano v. Lipiano*,⁶⁸ refused to distinguish between various degrees of third persons such as “natural” parents and “equitable” parents.⁶⁹ While rejecting these distinctions, the court, however, acknowledged that the closeness of the relationship between a child and a third person would be a factor to be considered in determining whether “exceptional circumstances” existed, thus warranting placement of the child in the custody of the third person.⁷⁰

In summary, as between biological parents and third persons, custody with the biological parents is presumed to be in the best interest of the child. It is a rebuttable presumption which places the burden on the third person to show that either the parent is unfit or that exceptional circumstances exist which make placement with the third person preferable.⁷¹

Should a child be returned to his or her biological parent, a third person may have difficulty in securing visitation privileges inasmuch as (1) there is no presumption, as with natural parents, that continuation of the relationship is in the child’s best interest, and (2) there is no statute granting visitation rights as is available for the child’s grandparents. However, since a court has the power to place custody with a third person when it deems it to be in the child’s best interest, that power may well permit a court to grant visitation to third persons under appropriate circumstances. On the other hand, when a child is taken from his natural parents and placed in the custody of third persons, visitation by natural parents may be granted by the court if it is deemed to be in the best interest of the child.⁷²

Grandparental Custody and Visitation Rights

As between biological parents and biological grandparents, Maryland courts prefer placing custody of children with their biological parents.⁷³ Maryland courts will only grant custody to a grandparent, over the desires of the natural parents, in exceptional circumstances.⁷⁴ An equity court in Maryland may, however, grant a petition permitting grandparents to visit their grandchildren if it is deemed to be in the best interests of the child.⁷⁵

Interestingly, effective October 1, 1993, an Amendment to section 9-102 of the Family Law Article of the Maryland Annotated Code deleted from the former statute the introductory phrase, “[a]t any time after the

termination of a marriage by divorce, annulment or death” and also deleted from subsection (1) the phrase “of a natural or adopted child of the parties whose marriage has been terminated” and inserted “of a grandchild” following “grandparent.” The revised statute states that “[a]n equity court may: (1) consider a petition for reasonable visitation of a grandchild by a grandparent; and (2) if the court finds it to be in the best interests of the child, grant visitation rights to the grandparent.” These changes seem to effect the result that grandparents now enjoy a separate right of visitation, for adopted or natural grandchildren, independent of the disposition of the marital union.⁷⁶

Prior to the change, significant ambiguity existed as to whether a grandparent only had standing to petition for visitation if it were in connection with the termination of a marriage by divorce, annulment or death. Maryland courts, however, refused to give such a narrow reading to the former statute and instead, in 1984, indicated that visitation *could* be permitted under these circumstances (termination of marriage by divorce, annulment or death), but that the statute “does not limit the power of a court as to custody and visitation by grandparents under *other circumstances*” (emphasis added).⁷⁷ This interpretation permitted courts to grant petitions to grandparents to visit their grandchildren whether or not the marital union terminated. Ostensibly, it also made possible the grant of petitions to grandparents for visitation with natural grandchildren who become adopted by third persons.

Such broad discretion was reigned in, however, when the Court of Special Appeals of Maryland ruled in *L.F.M. v. Department of Social Servs.*,⁷⁸ that when “the rights of the natural parents have been terminated and a child has been placed for confidential adoption, the courts of this state are not empowered to award visitation to the child’s natural family over the objection of the guardian with the right to consent to adoption and the prospective adoptive parents.”⁷⁹ Under this ruling, grandparents, who acquire their visitation rights through the child’s natural parents, are included in the court’s use of the phrase “child’s natural family.” Maryland courts then had no power, *despite the statute*, to grant grandparents visitation rights should their grandchildren subsequently become adopted.

On March 31, 1993, the Court of Appeals of Maryland remedied this dilemma by its ruling in *In re Adoption No. 92A41*⁸⁰ that “adoption does not auto-

matically vitiate the grandparental visitation rights,” and holding that section 5-308 of the Family Law Article of the Maryland Annotated Code only severs the rights of a living natural parent and does not affect the rights of the parent’s mother or father.⁸¹

The broadness of the language in the revised statute taken together with the ruling of *In re Adoption No. 92A41*, makes possible further challenges between the rights of adoptive parents and the visitation privileges of grandparents. Under present statutory and case law, it appears that if visitation by the grandparents would be in the best interests of the child, Maryland courts may be empowered to grant it even over the objection of the adoptive parents.⁸²

Biological Parents Versus Adoptive Parents

From a sociological viewpoint, adoptions are desirable mechanisms for providing children with opportunities to be raised in families capable of providing them with the love, care, support, and nurturing they need. Adoptions also provide biological parents with a means by which they may secure the care of their children when they themselves are either incapable, unfit, or unwilling to do so.⁸³ Moreover, adults who are otherwise unable to have children are permitted an opportunity to enter parenthood, gaining both the rights and responsibilities of natural parents.

To facilitate the achievement of these societal goals, state legislatures have enacted various laws governing adoptions. In Maryland, adoption does not exist at common law.⁸⁴ Instead, adoption is governed by section 5, subtitle 3 of the Family Law Article of the Maryland Annotated Code which seeks to protect the interests of the child, natural parents, and adoptive parents. Maryland statutes endeavor to (1) protect children from “unnecessary separation from their natural parents...and...[from] adoption by individuals who are unfit for the responsibility,”⁸⁵ (2) protect “natural parents from a hurried or ill-considered decision to give up a child,”⁸⁶ and (3) protect adoptive parents “by providing them information about the child and the child’s background . . . and . . . from a future disturbance of their relationship with the child by a natural parent.”⁸⁷

Under Maryland law, “[a]ny adult may petition a court to decree an adoption,”⁸⁸ and “[a]ny individual, whether a minor or an adult, may be adopted.”⁸⁹ Maryland courts have even permitted the adoption of a

child by one natural parent without the consent of the other.⁹⁰ Adoptions, however, may not be accomplished in Maryland absent compliance with statutory procedures and a formal judicial decree.⁹¹

Adoption Procedures

In order to grant an adoption, a Maryland court must generally have the consent of both natural parents as well as the consent of the individual to be adopted, if that individual is at least ten years of age.⁹² Natural parents and judicially appointed guardians may revoke their consent either within thirty calendar days after the filing of the consent or prior to the entry of a final adoption decree, whichever occurs first.⁹³ The individual to be adopted may withdraw his or her consent at any time before either an interlocutory or final adoption decree is entered.⁹⁴ Under certain circumstances, a court may order an adoption without the consent of the natural parents,⁹⁵ but because the consequences of adoption are so severe for natural parents, it will not do so unless clearly determined to be in the best interests of the child.⁹⁶

Once the formal court decree is issued, “each living natural parent of the individual adopted” is relieved of “all parental duties and obligations” and is also divested of “all parental rights.”⁹⁷ The adopted child becomes, for all intents and purposes, the child of the adoptive parents, and “is entitled to all the rights and privileges of and is subject to all the obligations of a child born to the [adoptive parents] in wedlock.”⁹⁸ A legal relationship is established between the adoptive parents and the child which serves as a complete substitute for the relationship the child had with his or her biological parents.⁹⁹ Accordingly, all rights and duties of the natural parents, including the rights of custody and visitation, become the rights and duties of the adoptive parents.¹⁰⁰ The rights of adoptive parents, however, like those of natural parents, are not absolute but must yield to the best interests of the child.¹⁰¹

Under Maryland Rule 625(a), courts have the power to revise or modify an adoption decree for thirty days after the entry of the final order. While interlocutory and final decrees or orders are appealable under section 5-330 of the Family Law Article of the Maryland Annotated Code, jurisdictional and procedural challenges to the validity of a final adoption decree must be filed within one year.¹⁰² After these periods have

elapsed, final adoption decrees may only be invalidated in Maryland on the bases of fraud, mistake, or irregularity in obtainment; otherwise, the decree is deemed final and binding.¹⁰³ The court record is then sealed and may only be opened by order of the court.¹⁰⁴

Privacy of Adoption Records

Foreclosing access to adoption records advances the goals of protecting natural parents from disclosure of the circumstances surrounding the child's birth, shelters most adoptees from the stigma of illegitimacy, enhances the opportunity for adoptive parents to raise the child unhindered by the natural parents,¹⁰⁵ assists with emotional and psychological closure for mothers who have experienced an unwanted pregnancy, and permits the natural parents to go on with their lives secure in the belief that the child will not return to invade their privacy.¹⁰⁶ Such a guarantee of confidentiality and anonymity, arguably, enhances and strengthens the adoption system,¹⁰⁷ and is consistent with the idea that the adoptive relationship is a complete substitute for the biological relationship. However, the concept of complete substitution is only a legal fiction as these relationships are only identical in the legal sense. Adopted children have shown a strong psychological need to learn about their biological origins.¹⁰⁸ Such children often experience greater difficulty in establishing a sense of identity.¹⁰⁹ Courts must begin to recognize the inherent needs of adopted children, respecting a child's right to know and preserve his or her true, biological identity.

Yet, courts have never recognized children's rights as being coextensive to those of adults. Children are especially vulnerable to exploitation and mistreatment, and children are unable to make certain decisions in a rational and mature manner.¹¹⁰ Denying access to information concerning the identity of the adopted child's natural parents may be justified while the child is a minor, but when an adopted child becomes an adult, he or she is no longer in need of the court's special protection.¹¹¹

Granting a child an opportunity to discover the identity of his or her natural parents is not necessarily detrimental to either the child or the adoption system. In cases other than adoption, when custody is reposed in persons other than the natural parent, the parent-child relationship is deemed to be so beneficial to the child

that visitation rights are not denied to even the most errant parent. Denial of access to the identity of natural parents after an adoption, therefore, seems incongruent and appears to place the interests of the natural parents,¹¹² adoptive parents,¹¹³ and the State¹¹⁴ above those of the child. These competing interests may, nevertheless, be protected, though subordinated to those of the child, by creating a system which would permit access to the adoption records by a third party intermediary once the child has reached the age of majority or, if while a minor, with the adoptive parents' consent. A determination may be made as to the actual desires of the biological parents, rather than assuming they want secrecy.¹¹⁵ Birth mothers often never come to terms with the emotional consequences of their decision to give up a child, and many natural parents are not adverse to a reunion with their children.¹¹⁶

Fears of adoptive parents may be allayed inasmuch as natural parents, by virtue of the adoption decree, have been divested of their rights to make decisions regarding the child. Furthermore, adoptive parents, exercising custodial rights, may chaperone as well as limit the number and duration of visits with the natural parents. Moreover, once adopted children reach majority, adoptive parents have realized their desire to raise their "child" without interference from the natural parents.

The State's interest in promoting and protecting the adoption system, by guaranteeing confidentiality to natural parents, is protected by giving natural parents an opportunity to maintain their privacy by refusing to consent to the opening of the sealed records. In such cases, disclosure of the natural parents' identity may be denied upon a balancing of the interests by the court.

In Maryland, absent a private agreement between the natural and adoptive parents,¹¹⁷ visitation between the adopted child and his or her natural parents ceases upon entry of the final adoption decree. Such private agreements will be upheld provided they are in the best interests of the child and are not violative of public policy.¹¹⁸ While Maryland courts will enforce these private agreements, they may not be able to order visitation because to do so may prove contrary to statutes severing parental rights¹¹⁹ as well as those protecting adoptive parents from interference by natural parents.¹²⁰

Recently, battles waged by biological parents seeking to reclaim custody of their adopted children have

surged to the forefront of family law. At issue in these cases is whether the child's interests will be best served by retaining custody in the adoptive parents or returning the child to the custody of his or her natural parents. In cases where a child has been in the custody of the adoptive parents for a significant length of time and is receiving proper care, the need to provide a high degree of certainty to final adoption decrees,¹²¹ most likely, outweighs any benefits to be derived by returning custody to the child's natural parents.¹²² For the most part, courts have found that a child has a greater interest in the stability of the adoption decree than in his or her relationship with either the biological or adoptive parents.¹²³

Interests of the Child and Parent

A child has fundamental interests in the love, nurturing, support, and society of both parents; continuity of family relationships; accessibility to both parents; freedom to love both parents; certainty and stability with regard to his or her home, school, and community; freedom from physical, psychological, and sexual abuse; freedom from exploitation; having and preserving an identity, a name, and a nationality; knowing his or her parents; and not being separated from his or her parents against their will.

Subject to the interest and authority of the State to protect children from abuse and neglect,¹²⁴ each natural parent has an interest in the love and companionship of his or her child; the custody of his or her child;¹²⁵ the services and earnings of the child;¹²⁶ raising the child free of interference by third persons;¹²⁷ and the right to visit the child if deprived of custody.¹²⁸

In fashioning custody and visitation arrangements, courts should take into consideration each of these interests under the mandate of the "best interests" standard. There is a wonderful freedom for courts, under this standard, to do what is best for the child at what is probably the most difficult time in the child's life. "Precedents and theories should never control the decision of a custody or adoption case since the answer to the question of what is for the best interests and welfare of the child necessarily depends on judgment applied to a set of facts and circumstances which, like the proverbial will, has no twin brother."¹²⁹

About the author:

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Note from author:

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ENDNOTES:

¹*Robinson v. Robinson*, 328 Md. 507, 615 A.2d 1190 (1992)(divorce); *Krebs v. Krebs*, 255 Md. 264, 257 A.2d 428 (1969)(divorce); *Raible v. Raible*, 242 Md. 585, 219 A.2d 777 (1966)(divorce); *Haney v. Knight*, 197 Md. 212, 78 A.2d 643 (1951)(children out of wedlock); *Monroe v. Monroe*, 88 Md. App. 132, 594 A.2d 577 (1991), cert. granted, 325 Md. 18, 599 A.2d 90 (1991), vacated, 329 Md. 758, 621 A.2d 898 (1993)(children out of wedlock); *Hicks v. Prince George's County Dep't of Social Servs.*, 281 Md. 93, 375 A.2d 558 (1977)(adoption); *Lippy v. Breidenstein*, 249 Md. 415, 240 A.2d 251 (1968)(adoption); *Palmisano v. Baltimore County Welfare Bd.*, 249 Md. 94, 238 A.2d 251 (1968), cert. denied, 393 U.S. 853 (1968)(adoption); *Beltran v. Heim*, 248 Md. 397, 236 A.2d 723 (1968)(adoption); Md. Code Ann., Fam. Law § 9-102(2) (1991 & Supp. 1994)(grandparents); *Fairbanks v. McCarter*, 330 Md. 39, 622 A.2d 121 (1993)(grandparents); *Evans v. Evans*, 302 Md. 334, 488 A.2d 157 (1985)(non-adoptive stepparents).

²Joan B. Kelly, *The Determination of Child Custody, The Future of Children, Children and Divorce*, Vol. 4, No. 1, Spring 1994, at 128.

³Md. Code Ann., Fam. Law § 5-203(c)(2) (1991); *Koger v. Koger*, 217 Md. 372, 142 A.2d 599 (1958).

⁴*DeGrange v. Kline*, 254 Md. 240, 254 A.2d 353 (1969); see also *Piotrowski v. State ex rel. Kowalek*, 179 Md. 377, 18 A.2d 199 (1941)(holding that fathers have a natural right to the custody of their children).

⁵Kelly, *supra* note 2, at 122.

⁶M. A. Mason, *From Father's Property to Children's Rights: The History of Child Custody in the United States* (1994).

⁷Kelly, *supra* note 2, at 122.

⁸*Id.*

⁹*Cornwell v. Cornwell*, 244 Md. 674, 224 A.2d 870 (1966); *Glick v. Glick*, 232 Md. 244, 192 A.2d 791 (1963); *Townsend v. Townsend*, 205 Md. 591, 109 A.2d 765 (1954).

¹⁰*Roussey v. Roussey*, 210 Md. 261, 123 A.2d 354 (1956).

¹¹Md. Code Ann., Fam. Law § 5-203(c)(2) (1991 & Supp. 1993); *McAndrew v. McAndrew*, 39 Md. App. 1, 382 A.2d 1081 (1978).

¹²*Elza v. Elza*, 300 Md. 51, 475 A.2d 1180 (1984).

¹³Kelly, *supra* note 2, at 125.

¹⁴*Id.*

¹⁵Md. Code Ann., Fam. Law §§ 8-101 & 8-103(a) (1991); *Heinmuller v. Heinmuller*, 257 Md. 672, 264 A.2d 847 (1970).

¹⁶Md. Code Ann., Fam. Law § 9-101 (1991); *see Arnold v. Naughton*, 61 Md. App. 427, 486 A.2d 1204 (1985), *cert. denied*, 303 Md. 295, 493 A.2d 349 (1985).

¹⁷*Cornwell v. Cornwell*, 244 Md. 674, 224 A.2d 870 (1966); *Palmer v. Palmer*, 238 Md. 327, 207 A.2d 481 (1965); *Swain v. Swain*, 43 Md. App. 622, 406 A.2d 680 (1979), (commenting on *Davis v. Davis*, 280 Md. 119, 372 A.2d 231 (1977), *cert. denied*, 434 U.S. 939 (1977)).

¹⁸*Queen v. Queen*, 308 Md. 574, 521 A.2d 320 (1987).

¹⁹*Wallis v. Wallis*, 235 Md. 33, 200 A.2d 164 (1964); *Hild v. Hild*, 221 Md. 349, 157 A.2d 442 (1960); *Young v. Weaver*, 185 Md. 328, 44 A.2d 748 (1945); *Shapiro v. Shapiro*, 54 Md. App. 477, 458 A.2d 1257 (1983); *Goldberg v. Goldberg*, 96 Md. App. 771, 626 A.2d 1062 (1993).

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- ²⁰*Cornwell v. Cornwell*, 244 Md. 674, 224 A.2d 870 (1966); *Hild v. Hild*, 221 Md. 349, 157 A.2d 442 (1960).
- ²¹*Robinson v. Robinson*, 328 Md. 507, 615 A.2d 1190 (1992).
- ²²*Pratt v. Pratt*, 245 Md. 716, 228 A.2d 611 (1967); *Sellman v. Sellman*, 236 Md. 1, 202 A.2d 372 (1964); *Alden v. Alden*, 226 Md. 622, 174 A.2d 793 (1961); *Oliver v. Oliver*, 217 Md. 222, 140 A.2d 908 (1958); *Sullivan v. Sullivan*, 199 Md. 594, 87 A.2d 604 (1952).
- ²³*Breault v. Breault*, 250 Md. 173, 242 A.2d 116 (1968); *Colburn v. Colburn*, 20 Md. App. 346, 316 A.2d 283 (1974).
- ²⁴*Lippy v. Breidenstein*, 249 Md. 415, 240 A.2d 251 (1968).
- ²⁵*Thumma v. Hartsook*, 239 Md. 38, 210 A.2d 151 (1965).
- ²⁶*Dietrich v. Anderson*, 185 Md. 103, 43 A.2d 186 (1945).
- ²⁷*Shapiro v. Shapiro*, 54 Md. App. 477, 458 A.2d 1257 (1983).
- ²⁸*Courtney v. Richmond*, 55 Md. App. 382, 462 A.2d 1223 (1983).
- ²⁹Md. Code Ann., Fam. Law § 5-308(b)(2) (1991).
- ³⁰*Carroll County v. Edelmann*, 320 Md. 150, 377 A.2d 14 (1990)(a circuit court has no power to terminate the parent-child relationship other than through a decree of guardianship or adoption); *McGarvey v. State*, 311 Md. 233, 533 A.2d 690 (1987).
- ³¹*Stancill v. Stancill*, 286 Md. 530, 408 A.2d 1030 (1979).
- ³²*Ferster v. Ferster*, 237 Md. 548, 207 A.2d 96 (1965).
- ³³*Maddox v. Maddox*, 174 Md. 470, 199 A.2d 507 (1938).
- ³⁴*Arnold v. Naughton*, 61 Md. App. 426, 486 A.2d 1204 (1985), *cert. denied*, 303 Md. 295, 493 A.2d 349 (1985).
- ³⁵*Heaver v. Bradley*, 244 Md. 233, 233 A.2d 568 (1966); *Roberts v. Roberts*, 35 Md. App. 497, 371 A.2d 689 (1977).
- ³⁶*Radford v. Matszuk*, 223 Md. 483, 164 A.2d 904 (1960).
- ³⁷Md. Ann. Code art. 16, § 28 (1957); Md. Code Ann., Cts. & Jud. Proc. § 3-602 (1989); *Stancill v. Stancill*, 286 Md. 530, 408 A.2d 1030 (1979); *Dunnigan v. Dunnigan*, 182 Md. 47, 31 A.2d 634 (1943); *McCann v. McCann*, 167 Md. 167, 173 A. 7 (1934). *But see Raible v. Raible*, 242 Md. 585, 219 A.2d 777 (1966).
- ³⁸*Maddox v. Maddox*, 174 Md. 470, 199 A. 507 (1938); *see, e.g., Radford v. Matszuk*, 223 Md. 483, 164 A.2d 904 (1960).
- ³⁹*Hild v. Hild*, 221 Md. 349, 157 A.2d 442 (1960).
- ⁴⁰*Sewell v. Sewell*, 218 Md. 63, 145 A.2d 422 (1958).
- ⁴¹*England v. Meager*, 145 Md. 574, 125 A. 731 (1924).
- ⁴²*Radford v. Matszuk*, 223 Md. 483, 164 A.2d 904 (1960)(a child's preference not to see a parent is not controlling but may be considered).
- ⁴³Under Md. Code Ann., Fam. Law § 9-101 (1991) if a court finds, in a custody or visitation proceeding, reasonable grounds to believe that a child has been abused or neglected by a party, the court must deny custody unless it "specifically finds that there is no likelihood of further child abuse or neglect by the party." The court must also either deny visitation or provide for supervised visitation "that assures the safety and the physiological, psychological, and emotional well-being of the child." *See Arnold v. Naughton*, 61 Md. App. 426, 486 A.2d 1204 (1985), *cert. denied*, 303 Md. 295, 493 A.2d 349 (1985)(father found to have sexually abused one of his children was granted supervised visitation). No other victim of a crime is compelled to continue association with the perpetrator. Yet, in the parent-child relationship, where the child is in the greatest need for the court's protection, the legislature seems to focus more on not depriving the parent of his or her rights than on what, realistically, best serves the child.
- ⁴⁴*Robinson v. Robinson*, 328 Md. 507, 615 A.2d 1190 (1992)(divorce); *Krebs v. Krebs*, 255 Md. 264, 257 A.2d 428 (1969)(divorce); *Raible v. Raible*, 242 Md. 585, 219 A.2d 777 (1966)(divorce); *Haney v. Knight*, 197 Md. 212, 78 A.2d 643 (1951)(children out of wedlock); *Monroe v. Monroe*, 88 Md. App. 132, 594 A.2d 577 (1991), *cert. granted*, 325 Md. 18, 599 A.2d 90 (1991), *vacated*, 329 Md. 758, 621 A.2d 898 (1993)(children out of wedlock); *Hicks v. Prince George's County Dep't of Social Servs.*, 281 Md. 93, 375 A.2d 558 (1977)(adoption); *Lippy v. Breidenstein*, 249 Md. 415, 240 A.2d 251 (1968)(adoption); *Palmisano v. Baltimore County Welfare Bd.*, 249 Md. 94, 238 A.2d 251 (1968), *cert. denied*, 393 U.S. 853 (1968)(adoption); *Beltran v. Heim*, 248 Md. 397, 236 A.2d 723 (1968)(adoption); Md. Code Ann., Fam. Law § 9-102(2) (1991 & Supp. 1994)(grandparents); *Fairbanks v. McCarter*, 330 Md. 39, 622 A.2d 121 (1993)(grandparents); *Evans v. Evans*, 302 Md. 334,

488 A.2d 157 (1985)(non-adoptive stepparents).

⁴⁵*Ross v. Hoffman*, 33 Md. App. 333, 364 A.2d 596 (1976), *modified*, 280 Md. 172, 372 A.2d 582 (1977).

⁴⁶*Shapiro v. Shapiro*, 54 Md. App. 477, 458 A.2d 1257 (1983).

⁴⁷*Clawar, One House, Two Cars, Three Kids*, 5 Fam. Advoc. 14, 15 (1982).

⁴⁸*Watson, The Children of Armageddon: Problems of Custody Following Divorce*, 21 Syracuse L. Rev. 55, 85 (1969).

⁴⁹Robert M. Horowitz & Howard A. Davidson, *Legal Rights of Children* 416 (1984).

⁵⁰*Ross v. Hoffman*, 33 Md. App. 333, 364 A.2d 596 (1976), *modified*, 280 Md. 172, 372 A.2d 582 (1977); *Newkirk v. Newkirk*, 73 Md. App. 588, 535 A.2d 947 (1988)(prima facie presumption that an award of custody to the child's natural parent, rather than a third party, best serves the child's welfare).

⁵¹*Melton v. Connolly*, 219 Md. 184, 148 A.2d 387 (1959); *Trenton v. Christ*, 216 Md. 418, 140 A.2d 660 (1958); *Trudeau v. Trudeau*, 204 Md. 214, 103 A.2d 563 (1954); *Kartman v. Kartman*, 163 Md. 19, 161 A.2d 269 (1932); *Howard v. Gish*, 36 Md. App. 446, 373 A.2d 1290 (1977).

⁵²*Kirchner v. Caughey*, 326 Md. 567, 606 A.2d 257 (1992)(causal relationship must be found between religious practices and probable harm to child); *Davis v. Davis*, 280 Md. 119, 372 A.2d 231 (1977), *cert. denied*, 434 U.S. 939 (1977), *reh'g denied*, 434 U.S. 1025 (1977)(no presumption of unfitness on part of adulterous parent); *Levitsky v. Levitsky*, 231 Md. 388, 190 A.2d 621 (1963)(religious views of parent may bar custody if serious danger to life or health of child results).

⁵³*Pastore v. Sharp*, 81 Md. App. 314, 567 A.2d 509 (1989), *cert. denied*, 319 Md. 304, 572 A.2d 182 (1989)(mother unstable; child learned obscene gesture while in her presence; persuaded child that he did not like his day care center; mother living partially on welfare; mother entered false information in court documents); *Kramer v. Kramer*, 26 Md. App. 620, 339 A.2d 328 (1975)(mother found unfit pursuant to repetitive episodes of mental depression, suicide attempts, alcoholism).

⁵⁴*Andrews v. Andrews*, 242 Md. 143, 218 A.2d 194 (1966)(father's tastes and hobbies becoming part of his character not indicative of fitness except to the extent they influence legal relationships); *Shapiro v. Shapiro*,

54 Md. App. 477, 458 A.2d 1257 (1983)(father failed to keep and pay for child's appointments with doctor and psychiatrist); *Kramer v. Kramer*, 26 Md. App. 620, 339 A.2d 328 (1975)(lack of maternal supervision, involvement in interests and emotional development of daughters).

⁵⁵*Hoder v. Hoder*, 245 Md. 705, 227 A.2d 750 (1967)(mother found unfit due to her character, temperament and past attitude toward children); *Cockerham v. Children's Aid Soc. of Cecil County*, 185 Md. 97, 43 A.2d 197 (1945)(parent with means and ability to provide proper care of children found unfit for failure to do so). *See also Oster, Custody Proceedings: A Study of Vague and Indefinite Standards*, 5 J. Fam. L. 21, 26-37 (1965).

⁵⁶Horowitz & Davidson, *supra* note 49.

⁵⁷*Robinson v. Robinson*, 328 Md. 507, 615 A.2d 1190 (1992)(mother not unfit though she allegedly engaged in an adulterous relationship and permitted child to be present in bed with her and her lover as there was no evidence of adverse effect on child).

⁵⁸Md. Ann. Code art. 72A, § 1 (1957); *Ross v. Hoffman*, 33 Md. App. 333, 364 A.2d 596 (1976), *modified*, 280 Md. 172, 372 A.2d 582 (1977).

⁵⁹Joseph Goldstein, et al., *Beyond the Best Interests of the Child* 41 (1973); *see Montgomery County Dep't of Social Servs. v. Sanders*, 38 Md. App. 406, 381 A.2d 1154 (1978).

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.*

⁶⁴*Montgomery County Dep't of Social Servs. v. Sanders*, 38 Md. App. 406, 381 A.2d 1154 (1978).

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Lipiano v. Lipiano*, 89 Md. App. 571, 598 A.2d 854 (1991), *cert. denied*, 325 Md. 620, 602 A.2d 710 (1992).

⁶⁹*Id.*

⁷⁰*See Ross v. Hoffman*, 33 Md. App. 333, 364 A.2d 596 (1976), *modified*, 280 Md. 172, 372 A.2d 582 (1977)(recognizing that a child may be in the custody of a third person for such a length of time that the psychological trauma created by the removal from that relationship may be grave enough to be detrimental to the child's best interest); *Newkirk v. Newkirk*, 73 Md.

App. 588, 535 A.2d 947 (1988)(where exceptional circumstances existed so as to overcome the presumption favoring biological parents; granted custody of teenage children to 29 year old half-brother rather than to biological father upon the death of the custodial mother).

⁷¹*Pastore v. Sharp*, 81 Md. App. 314, 567 A.2d 509 (1989), *cert. denied*, 319 Md. 304, 572 A.2d 182 (1990); *Ross v. Hoffman*, 33 Md. App. 333, 364 A.2d 596 (1976), *modified*, 280 Md. 172, 372 A.2d 582 (1977).

⁷²*Townsend v. Townsend*, 205 Md. 591, 109 A.2d 765 (1954); *In re Jessica M. and Joseph M.*, 72 Md. App. 7, 527 A.2d 766 (1987).

⁷³*Ross v. Hoffman*, 33 Md. App. 333, 364 A.2d 596 (1976), *modified*, 280 Md. 172, 372 A.2d 582 (1977).

⁷⁴*Skeens v. Paterno*, 60 Md. App. 48, 480 A.2d 820 (1984), *cert. denied*, 301 Md. 639, 484 A.2d 274 (1984); *Boothe v. Boothe*, 56 Md. App. 1, 466 A.2d 58 (1983).

⁷⁵Md. Code Ann., Fam. Law § 9-102 (1991 & Supp. 1994).

⁷⁶*Fairbanks v. McCarter*, 330 Md. 39, 622 A.2d 121 (1993).

⁷⁷*Skeens v. Paterno*, 60 Md. App. 48, 480 A.2d 820 (1984), *cert. denied*, 301 Md. 639, 484 A.2d 274 (1984); *see Evans v. Evans*, 302 Md. 334, 488 A.2d 157 (1985).

⁷⁸*L.F.M. v. Department of Social Servs.*, 67 Md. App. 379, 507 A.2d 1151 (1986).

⁷⁹*Id.* at 397; *see also John O. v. Jane O.*, 90 Md. App. 406, 601 A.2d 149 (1992).

⁸⁰*In re Adoption No. 92A41*, 95 Md. App. 461, 622 A.2d 150 (1993).

⁸¹*Id.* Biological grandparents, but presumably if the biological mother or father had been adopted, then their adoptive parents also.

⁸²*See Beckman v. Boggs*, 337 Md. 688, 655 A.2d 901 (1995).

⁸³Children's Rights in America: U.N. Convention on the Rights of the Child Compared With U.S. Law 260 (Cynthia Price Cohen, et al. eds., 1990).

⁸⁴*Atkins v. Gose*, 189 Md. 542 (1948).

⁸⁵Md. Code Ann., Fam. Law § 5-303(b)(1) (1991).

⁸⁶Md. Code Ann., Fam. Law § 5-303(b)(2) (1991).

⁸⁷Md. Code Ann., Fam. Law § 5-303(b)(3) (1991).

⁸⁸Md. Code Ann., Fam. Law § 5-309(a) and (b) (1991); *see also In re Adoption No. 90070222/CAD*, 87 Md.

App. 630, 590 A.2d 1094 (1991)(person petitioning for adoption is not required to be married at the time the petition is filed).

⁸⁹Md. Code Ann., Fam. Law § 5-307(a) (1991).

⁹⁰*Bridges v. Nicely*, 304 Md. 1, 497 A.2d 142 (1985)(child born out of wedlock adopted by the natural father).

⁹¹*McGarvey v. State*, 311 Md. 233, 533 A.2d 690 (1987).

⁹²Md. Code Ann., Fam. Law § 5-311(a) and (b) (1991 & Supp. 1993). If the rights of the natural parents have been terminated pursuant to a judicial proceeding, the consent of the "executive head of the child placement agency that has been awarded guardianship" is required.

⁹³Md. Code Ann., Fam. Law § 5-311(c)(1) (1991 & Supp. 1993).

⁹⁴Md. Code Ann., Fam. Law § 5-311(c)(2) (1991 & Supp. 1993).

⁹⁵Md. Code Ann., Fam. Law § 5-312 (1991 & Supp. 1993).

⁹⁶*Dawson v. Eversberg*, 257 Md. 308, 262 A.2d 729 (1970).

⁹⁷Md. Code Ann., Fam. Law § 5-308(b)(2) (1991). This section only severs the rights of a "living natural parent." *See supra* text accompanying note 80.

⁹⁸Md. Code Ann., Fam. Law § 5-308(b)(1) (1991).

⁹⁹*L.F.M. v. Department of Social Servs.*, 67 Md. App. 379, 507 A.2d 1151 (1986).

¹⁰⁰*Falck v. Chadwick*, 190 Md. 461, 59 A.2d 187 (1948).

¹⁰¹*Courtney v. Richmond*, 55 Md. App. 382, 462 A.2d 1223 (1983).

¹⁰²Md. Code Ann., Fam. Law § 5-325 (1991).

¹⁰³*Falck v. Chadwick*, 190 Md. 461, 59 A.2d 187 (1948); *Venables v. Ayres*, 54 Md. App. 520, 459 A.2d 601 (1983).

¹⁰⁴Md. Rule D80(c) (1993). Restricting access to adoption records has withstood challenges under the United States Constitution. *Alma Society v. Mellon*, 459 F.Supp. 912 (S.D.N.Y. 1978), *aff'd*, 601 F.2d 1225 (2d. Cir. 1979), *cert. denied*, 444 U.S. 995 (1979); *Schechter v. Boren*, 535 F.Supp. 1 (W.D. Okla. 1980).

¹⁰⁵Horowitz & Davidson, *supra* note 49.

¹⁰⁶Cohen, et al., *supra* note 83.

¹⁰⁷Horowitz & Davidson, *supra* note 49.

¹⁰⁸*Id.*

¹⁰⁹Marshall A. Levin, *The Adoption Trilemma: The Adult Adoptee's Emerging Search For His Ancestral*

Identity, 8 U. Balt. L. Rev. 496 (1979).

¹¹⁰Cohen, et al., *supra* note 83.

¹¹¹Horowitz & Davidson, *supra* note 49.

¹¹²Confidentiality and freedom from invasion of privacy.

¹¹³Freedom from interference by the natural parents and fear of alienation of the child's affections.

¹¹⁴Promotion and protection of the adoption system.

¹¹⁵Horowitz & Davidson, *supra* note 49.

¹¹⁶Levin, *supra* note 109.

¹¹⁷In these "open adoptions," adoptive parents permit the natural parents to retain visitation rights.

¹¹⁸*Weinschel v. Strople*, 56 Md. App. 252, 466 A.2d 1301 (1983).

¹¹⁹Md. Code Ann., Fam. Law § 5-308(b)(2) (1991).

¹²⁰Md. Code Ann., Fam. Law § 5-303(b)(3)(ii) (1991).

¹²¹*Qureshi v. Director, Prince George's County Dep't of Social Servs.*, 11 Md. App. 615, 276 A.2d 675 (1971), *quoted in Bridges v. Nicely*, 304 Md. 1, 497 A.2d 192 (1985); *In re Adoption No. 85365027/AD*, 71 Md. App. 362, 525 A.2d 1081 (1987).

¹²²*Ross v. Hoffman*, 33 Md. App. 333, 364 A.2d 596 (1976), *modified*, 280 Md. 172, 372 A.2d 582 (1977); *Newkirk v. Newkirk*, 73 Md. App. 588, 535 A.2d 947 (1988); *Dietrich v. Anderson*, 185 Md. 103, 43 A.2d 186 (1945)("[T]ies of blood weaken, and ties of companionship strengthen, by lapse of time ...").

¹²³*Qureshi v. Director, Prince Georges County Dep't of Social Servs.*, 11 Md. App. 615, 276 A.2d 675 (1971).

¹²⁴*Townsend v. Townsend*, 205 Md. 591, 109 A.2d 765 (1954); *Dietrich v. Anderson*, 185 Md. 103, 43 A.2d 186 (1945).

¹²⁵*Kartman v. Kartman*, 163 Md. 19, 161 A. 269 (1932).

¹²⁶Md. Code Ann., Fam. Law § 5-205 (1991).

¹²⁷*Meyer v. Nebraska*, 262 U.S. 390 (1923).

¹²⁸*Roberts v. Roberts*, 35 Md. App. 497, 371 A.2d 689 (1977).

¹²⁹*Ex parte Frantum*, 214 Md. 100, 133 A.2d 408 (1957), *cert. denied*, 355 U.S. 882 (1957) (Hammond, J., dissenting).

