

Can the judiciary do more?

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I am frequently instructed to give an opinion to help family courts to resolve child contact issues. My advice is based on what I feel is in the best interest of the children, now and in the future, and of both parents.

Both parents should have the opportunity of playing a role in the child's life providing, of course, that neither parent is an abuser, sexually, physically or emotionally.

The judiciary is faced with the problem of making the best possible decisions in often very complicated and emotional cases. The central issue, of course, is to determine what is in the best interests of the child. Judges are often fully aware of the harm that has been done by the ploys used by the custodial parent to prevent access and contact between the child and a former loving parent. Judges must weigh up the short and long term consequences of any action they take and there are rarely ever perfect solutions

I would like to present a possible solution or remedy, via a therapeutic intervention, where a child refuses contact with a former loving parent via a therapeutic intervention. This spares the child from having to take sides or to make decisions which no child should ever have to make.

The Problem

There has been much criticism levelled at family court Judges. Warring parents are the main hindrance to Judges seeking to make the best decisions for the benefit the child/children. The view that the child will in future seek out the absent parent against whom the child has been alienated is untrue.

Acrimonious divorce and separation are the principle causes of loss of contact by the non custodial parent. Many fathers and mothers eventually give up seeking contact with a child due to the implacable hostility to such contact by the custodial parent. The animosity, for whatever reason, which the custodial parent feels towards the now absent parent borders at times on a mental illness. The main symptoms are paranoid ideations, and extreme hostility towards the now non-resident parent. The family of the absent parent are often included in this hostility.

While one is aware of the causes and consequences of contact issue disputes, making the right decisions is often extremely difficult for the judiciary. The child in these cases is the main casualty, especially when that child has had in the past a warm loving relationship with the now absent parent.

As a result of that parent's absence, the child is frequently bombarded with negative statements and recollections via the custodial parent who seeks to ally the child with him/herself.

The objective is to forget or castigate the absent parent. This is illustrated by an actual case.

Influence

Mrs X won custody of child Y after an acrimonious divorce. She was eager to eliminate her former partner in the life of Y. She intended eventually to have another partner and let that partner become the father figure in the child's life. She refused all contact between the absent parent, Z, and the child aged 10, who had in the past had a loving relationship with Z. Z and Y were affectionate towards one another and generally enjoyed each other's company. Over time, Y was influenced totally by X. Y eventually said that she no longer wished to see Z, believing what she was being told about him. Y simply could not, or would not be allowed, to remember the past, wonderful days she had enjoyed with him with parent Z.

The expert witness in the case expressed much sympathy for Y who had failed, despite great efforts and numerous court appearances, to have regular contact. The court threatened sanctions against X if she did not co-operate with the ruling of the court in relation to contact. What the court did not do, however, was to carry out the sanctions against X, who now claimed that it was not she was causing the problem but the fact that the child Y did not wish to have any further contact with Z. It was not difficult to see why this had come about.

The Judicial Dilemma

The example shows the problem faced by the judiciary seeking to make decisions in the best interest of the child.

Many Judges consider there to be great difficulties involved in changing the mindset of the child, despite knowing what has caused that attitude.

Judges are often unable or unwilling to respond by punishing the perpetrator of the problem. This is because the child ultimately becomes the main victim.

The advice given by at least one psychological expert witness is to remove the child from the emotionally abusive influences of the alienating parent. Few Judges heed this advice. They consider such actions not to be in the best interest of the child. This is because the child is unaware of how the implacable hostility of the custodial parent has succeeded in destroying the child's love for the now absent parent and turning it into hostility toward that parent.

What numerous Judges do is to find a "fine line" and "balanced position". They are aware of how an innocent child has been manipulated by a hostile custodial parent. They also consider the harm they will do by imprisoning the custodial parent for failing to abide by contact arrangements. Judges are also aware of the harm they may do by removing the child from a loving but emotionally abusing parent. Judges rarely, if ever, take this course and place that child with the abused non custodial parent. This, however, is necessary to seek to renew the relationship with the absent parent who has been alienated and demeaned by the implacably hostile custodial parent. It is also necessary to stop the child from being further emotionally abused.

Judges, therefore, sometimes make decisions on the basis of "here and now" evidence. The facts as they exist are often:

1. The child has been manipulated to the point where the child rejects the now absent parent;

2. The Judge will tend to comply with the wishes of the child, despite knowing why the child has refused contact with a former loving parent;
3. Judges are aware of the difficulties of removing the child from the custodial parent against the wishes of the child;
4. They consider that this is likely to be detrimental to the child who has now only one parent with whom a strong, if not, total bond exists. The result is the child remains with the custodial parent while the absent parent has no contact. The longer this situation exists the more it harms the prospect of any future contact with the absent parent.

Advising the Judiciary

In cases of implacable hostility leading to a contact dispute between a custodial and non custodial parent what is most beneficial to the child is of primary importance. On this issue both the Judiciary and the psychological expert witness are in total agreement. However, while the Judiciary will consider what is currently in the best interest of the child, the psychological expert is concerned with the long-term implications of lack of contact.

It must be added that when there has been a refusal of contact with the absent parent, this is, through no fault of that rejected parent. The child had a good relationship in the past with the now absent parent. The child's decision not to have contact with the absent parent is due to a process of harmful influence. Such influence can only have become via the custodial parent and/or the custodial parent's family.

We should never forget that there was a good relationship between the child and the absent parent in the past. Instead of encouraging this to continue, the custodial parent has undermined this in subtle and direct ways by disregarding the former partner and thereby reducing or eliminating good contact. Is this in the best interest of the child? The opposite is true, with short as well as long term damage resulting from such abuse.

The judiciary are likely to be aware of this, but as already stated, the child's refusal to have contact with the absent parent puts the judiciary in a conflict situation. The question asked is: "What is more damaging to the child? Is it to accept the child's desire not to have contact because such contact has been undermined and the absent parent has been discredited or should or could contact be forced upon the child?"

Even psychological experts differ in their views when this occurs. Some will concur with the judiciary. Other experts, of whom I am one, who are in the minority, consider the harm done to a child by accepting the *status quo* is most damaging to the child. On the whole, the judiciary side the view of psychological experts who seek not to disturb the relationship between the custodial parent and the child, by punishing the custodial parent or by removing the child from his/her care.

It is my view that there is a better course of action, once numerous legal ways have been tried and have failed, to establish good contact between the child and the now noncustodial parent. A middle approach is possible which could well have positive results. This consists of removing the child/ children from the continuing emotional abuse promoted by the custodial parent based on his/her implacable hostility towards the former partner.

The child needs to be moved into a "neutral environment". Here the negative influences and hence the emotional abuse can no longer continue. It provides the opportunity for all parties, including the child, to receive therapeutic input which is both positive and constructive. Initially the custodial parent should be warned that this is being considered, unless he/she actually encourages or insists that the child will participate in structured and regular contact with the now absent parent.

Should this fail, the removal of the child is imperative and for as long as necessary, until all parties realize and act in accordance with what is truly in the best interest of the child/ children, which is to have good contact with both parents. Both parents should encourage this

and work towards this end.

In the interim, the parents in the therapeutic environment can be seen separately and ultimately together if possible in order to establish a working relationship which can encourage contact with both parents. This is indeed in the best interest of the child. This should be carried out via social workers and involve CAFCASS, as well as a clinical psychologist who is in overall charge and who understands the problems and has the therapeutic skills to overcome the negative influences and truly establish what is in the best interest of the child. Meetings between parent and child should be observed and supervised by staff. A written record should be provided and presented to the court.

To achieve this, the child and the custodial parent must accept what is being done and for as long as it may be necessary. The animosity of the custodial and non-custodial parents must give way to active co-operation in adhering to the decision of the Family Court over the arrangements of contact times. This again is in the best interest of the child.

If either parent fails to co-operate, or seeks to continue with the emotional abuse, he/she should be removed from contact with the child until this ceases. At the same time, the non abusing parent should have good contact with the child in the "neutral environment". In this way the previously warm relationship with the now absent parent can be rebuilt.

This approach in contact disputes is fair, just and therapeutic, as well as possible. It does not give in to the *status quo* of no or poor contact with an absent parent. It also prevents further emotional abuse of the child by the custodial parent and is best for the child, both in the short and the long term.

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