

The Family Courts: What is an ideal Judgment? (Dealing with difficult scenarios)

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Abstract & Summary

This article attempts to probe deeply into scenarios where a child who had had a good relationship with a now absent parent refuses to have good contact with that parent. This situation occurs due to the implacable hostility of one or both parents towards one another following divorce and separation. Why custodial parents behave as they do is explained. Its effect on the child is also delineated. In some cases a parent, for a variety of reasons, has had a poor or pathological relationship with the child, and such a parent should not be in contact with the children. However, if there has been a good relationship with the parent, further contact with the child should occur. Why it does not take place is discussed. The view of one expert witness is expressed and how this view may influence the Judiciary.

Introduction

I am frequently engaged with being an Expert Witness in the Courts dealing with families as I would term it "in turmoil". I always hope as a result of my assessment of the various individuals involved, the children and the adults, that an ideal solution can be found following the break-up of a marriage or relationship. Such break-ups involve conflict which results from the implacable hostility between the parents.

My main concerns always, are the children involved, but followed closely behind the welfare of the two natural parents who have created these children. The main problem appears to be contact disputes between the two parents in relation to the children and who they are with, or when and how frequently, or not at all! The main difficulty appears to be when there is an acrimonious relationship between the parents which is usually exacerbated by separating or divorcing and the hostility which ensues and has probably been present in the past. This impinges on the emotional security of the children. The children, if not before, certainly following, the parting of the parents are aware of the hostility which exists between the parents and this is of great concern to children.

One of my articles published recently in the Expert Witness Institute Newsletter, Summer

2012, was on the subject of the “Important Parent Friendly Doctrine and the Judiciary (a response and solution to implacable hostility leading to parental alienation) “. This article presents two cases: one which ends in a harmonious relationship between the parents as they both accept this is in the ‘best interest of the children” that they work together to bring these children up in the best possible way; the second scenario concerns when this does not occur. The article that follows now is in a similar situation where the parents are at odds and suffer from implacable hostility on both sides or on one side only. This leads to problems with contact, or at least good contact, between children and the now absent parent.

Parents who have such problems with one another are increasing as divorce rates are increasing also. In these scenarios the parents are more concerned about expressing their hostility towards the other parent than being concerned with what is in the best interest of their children. I will now consider when it is unlikely that one of the parents should have contact with a child followed by when such a parent should have contact.

When should a parent not have contact with a particular child following divorces and separation?

There are cases where the children have had a poor relationship with the now absent parent and this has led to them not wishing any, or very little contact with the now nonresident parent. The source of the problem may have been that the child was physically, emotionally, or sexually abused or that he/she suffered from neglect and lack of appropriate parenting.

In these situations it is not likely to be of benefit to the child to have contact with such a parent and it may well be better for that parent not to play a role in the child’s life. Some parents who have had a poor relationship in the past with their children may be helped, through therapy, to improve in their attitude and behaviour towards the child/children in question. Other parents are unlikely to benefit. A parent who practices paedophile activities or is violent towards the child is unlikely to be of value to that child.

It is the role of the expert witness and others to attempt to identify such problems and in such instances it is probably best, at least immediately, for there to be as little contact as possible between that parent and the child unless it is supervised and unless the child him/herself wishes it. Eventually, there may be a rehabilitation of a parent who has failed the child in some way, and hopefully the child will respond to this in a favourable way, as should the custodial parent.

When should a child/children have contact with their absent parent?

It is the view of the current expert witness that children who have had a good relationship with a parent in the past, and there has been no abuse either physical, emotional, sexual or otherwise, good contact with that parent is of great value to the present and future of the child. This is of course sometimes opposed by the custodial parent, as already explained due to their hostility towards the now absent parent.

The good relationship which the child has experienced before the break-up of the marriage should be a guideline as to whether future contact will be of benefit to the child. When the child has been manipulated or influenced by the custodial parent to have as little contact as possible with the now absent parent, then the child him/herself may be in a conflict situation. They may well feel that having lost one parent following the break-up of the relationship between the parents, the child may also lose the current custodial parent. This sometimes leads to the child allying him/herself with the remaining parent and sharing to the views of that custodial parent. That means, essentially, that the child has lost the now absent parent, despite having had a good relationship with that parent in the past, and does not also wish to lose the care of the remaining parent.

Such manipulation by one parent, due to the animosity he/she feels towards the other parent, is frequently termed “parental alienation”. Many do not accept this particular term and I would prefer therefore to use the term “parental manipulation” based on implacable hostility towards and absent parent. Such alienating is most often carried out by the custodial parent, but could equally be exercised by the noncustodial parent.

The Judiciary and the expert witness

An expert witness is appointed via the Judiciary for the purpose of advising on what is the best course of action in relation to a child and contact with an absent parent. The expert witness must base the evidence that is presented to the Court on what is discovered about the child’s apparent wishes as well as the reason for those wishes. As already stated before many children refuse to have contact, or wish to have very little contact, something has happened with the absent parent. Despite a good relationship having existed in the past, due to the manipulation or influence of the custodial parent against the now absent parent a child often refuses contact with the nonresident parent. It is for the expert witness to present the reason why a child has decided to have little or no contact with the now absent parent in cases where there has been a good relationship between the child and that parent.

Expert witnesses, much as anyone else, despite the fact that they are “independent” have certain views about what they feel is an ideal solution to the problem of children who have been manipulated or alienated into not wishing to have contact with an absent parent. The current expert witness is no exception. It is the view of the current expert that it is in the best interest of children now and in the future to have two good loving, caring and guiding parents who are working together for the benefit of the child. The question is: “How can this be achieved?” especially when the child wishes to have no contact with the absent parent.

The Judiciary will frequently be aware of the different ages of the child/children involved in seeking to make a decision. It is frequently the Judiciary’s view that older children, say over the age of 10, have a will of their own and have a view of their own which must be taken into consideration. It is the expert witnesses’ role however to always present reasons why an older child does not wish contact with the once loved and now absent parent.

The Judiciary frequently seeks to change the view of children, whatever age, by providing them with therapy, since in the past that child has had a good relationship with the now absent parent. It is the role of the therapist to obtain the child’s support and interest in seeking eventually to have good contact with the now absent parent. This is not an easy matter!

Parents who manipulate children are in a very strong controlling position and have a great deal of influence which is difficult to oppose even through the best of therapy approaches. Psychologists and others are aware that children react to the influence that is upon them, and in some cases, this is a form of emotional abuse by the controlling custodial parent taking advantage of their position to strongly influence the child’s future behaviour. Seeking justice and fairness in what is in the best interest of a child is not an easy matter, and the Judiciary are frequently placed in a role of making decisions that are not always viewed as just, fair or right.

The child who states, whatever their age, that he/she does not wish to have any contact with the absent parent may well feel that it is in the best interest of the child to have no contact, or very little contact, with the now absent parent with whom they enjoyed an excellent relationship in the past. The question the Judiciary must ask itself is: “Is such a decision truly the best decision, considering the child has now been deprived more or less of a good parent due to the influence of the other parent?”

Once therapy has been used to seek to change the view of the child/children, and it has not succeeded, then a decision needs to be made as to whether some form of coercion should be involved. It is frequently clear to the Judiciary that if the custodial

parent were to insist, and truly insist, that the child have good contact with their absent parent, such contact would in fact ensue. Frequently, a parent such as this, will claim to have made every possible effort to get the child to have contact with the absent parent but the child/children firmly refuse to do this.

This occurs when after a period of intensive manipulation or indoctrination has been successful and cannot be reversed easily. This is especially the case with older children. Many custodial parents are extremely shrewd in the way they pay "lip-service" to what the Court wishes to happen but then does everything possible for preventing it occurring i.e. good contact between the child and the now absent parent. How is the Judiciary to know whether in fact the parent has really made a sincere, definitive, and firm encouragement that the child should have contact with a now absent parent and that this contact should be most positive and constructive?

As already mentioned members of the Judiciary recommend some form of therapy for the child and possibly for the alienating parent. This is sometimes effective but more often or not it fails also, or no funding is available for such therapy to take place. It is the role of the expert witness to provide evidence to the Court as to why the child has failed to wish contact, or indeed why the custodial parent has failed to insist that such good contact take place.

Expert witnesses vary as to what they consider to be the next best step forward if indeed there is one. It is the view of the author that under such circumstances there may be a need for very definitive or firm reaction to make certain that all is being done to get the child to be in the presence and under the influence of the now absent parent. This may mean fining or otherwise punishing the parent who has indoctrinated the child against the absent parent. In some cases it will be necessary to remove the child and changing the residence of the child to a neutral centre such as a children's home or to the absent parent. In this way the alienated parent can renew their relationship, which has been unjustly prevented by the action of the custodial parent.

On the whole the Judiciary is reluctant to use such draconian methods claiming that this is harmful to the child in question and the child's emotional security. Rationalisation for such action is frequently that the child will or may in due course hopefully seek to make contact with the absent parent when that child is older or when he/she is no longer under total control and influence of the custodial and manipulating parent. Although this occurs from time to time it is not a certainty by any means. Many children lose permanent contact with the absent parent and sometimes the absent parent either moves away or indeed dies. Many absent parents also start new families and although they are ready to welcome the alienated child, if that child wishes to have contact with them, this again is an impediment to good contact with the child.

The long term effects on children who have been alienated are well documented. Many children develop educational, psychological, and behavioural problems and have difficulties in their relationship with others in the future. Many have learned bad habits such as lying and deception from the custodial parent and they will continue in this behaviour. Many are known to suffer in the future from psychological problems of various kinds including depression. This is frequently not considered by the Judiciary judging a current case although expert witnesses are fully aware of the strong possibility that children when older become maladjusted in various ways due to the experience of having been alienated from a good parent.

The Judiciary is often unable to find an ideal judgment and then take a realistic or pragmatic view of the situation by finding a solution which in their eyes which is least harmful, initially at least, to the child in question. Frequently, the Judiciary does not like to consider long term effects of children who have been separated from a good parent and are more concerned with the immediate situation and how to resolve the problem to their best ability. Perhaps the Judiciary hope that there will be no long term effects on a child who has been unfairly emotionally separated from a good and loving parent. This however, may be wishful thinking!

It is almost certain that once a child has had an opportunity of resuming contact with an

absent parent, despite the period of alienation against that parent by the custodial parent, the good relationship can resume between that absent parent and that child and this is to the benefit of the child. It could also be considered a just and the right solution.

It is the view of the current psychologist and expert witness that any parent who manipulates a child against another parent is committing a form of emotional abuse which should be considered a good reason why that parent should not have custody of that child. Often if an emotionally insecure parent who has been alienating a child against another. They realise that they may well lose contact with or custody of the child. This fear may sometimes lead to the cooperation of the alienating parent by sincerely encouraging the child to have good contact with the absent parent. Sometimes warnings such as this, or threats are ineffective, in these circumstances it is probably best to remove that child from the environment where the emotional abuse is taking place. This, it is realised, is a drastic step which not many members of the Judiciary are willing to undertake. It has however, been tried and been found effective in many cases, and is ultimately in the best interest of a child now and in the long term.

It should be reiterated that the current psychologist believes in making every possible attempt to avoid having to utilize such drastic methods and that some form of therapy could well be of value, which could provide an opportunity for the child to have good contact eventually with the absent good parent. It is however, when this is ineffective that the current expert feels fairly firm and decisive action is necessary for the Judiciary to right the wrong that has been done to the child as well as to the absent parent

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