

## Court Responsibility and Parental Privilege in Child Custody Cases

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### Family Law

Call it what you will: Visitation period. Caregiving opportunity. Custodial episode. Child timeshare. The percentage of a child's time assigned to the care of one or another of a child's divorced parents is routinely more dearly valued than any property, asset or fund. Negotiations stall, mediations fail and hearings become impossibly protracted when bitterly contentious parents dispute ownership of every quarter-hour of each twenty-four hour period of every week of their children's time.

### Whose time is it, anyway?

Divorced parents file through my office, the offices of my colleagues in mental health and family law and through courtrooms throughout the country indignant and enraged at their co-parents, chanting the familiar complaint, "But that's *my* time!" This is the universal rejoinder when any event impinges on what the parent perceives as his (or her) exclusive time with a child whose time is shared in joint legal custody. It hardly matters whether it's a doctor's appointment, dance class, religious school, soccer game or any number of other child-centered extra-curricular activities. The child's time has been cast as belonging to the parent like a toy to a small child and, seeing himself as injured, he becomes enraged, seeks compensation and guarantees that the egregious trespass will never occur again.

The fallacy, of course, lies in the belief that custodial time is the parent's time with a child. In fact, custodial time is the child's time in a given parent's care. The emphasis must always remain on meeting the child's needs, not the other way around. It is not the parent's turn to have fun in a never-ending competition to determine which parent can be more entertaining, buy more stuff or play more games. It is not the parent's turn to get his needs fulfilled by the child. It is the parent's turn to carry the torch. It is a changing of the guard. It is a transfer of the mundane and quotidian, the messy and boring and loving and fun responsibility of caregiving from one adult to another.

The roots of this fallacy grow out of history and remain embedded in our vocabulary. There was a time when both wife and child were indeed the property of the husband/father. In those grand old days of chattel, a child (read: *unpaid worker*) was no different from any other possession. In the decades since that time, our society has learned not only to recognize children as individuals with rights and needs, but also to put children's needs first and foremost above those of their parents.

Why then do we persist in speaking of a child's time as if it belonged to one or another parent? Why do custodial orders refer to a plaintiff's and a respondent's respective custody of the child? Why do we accept the premise of ownership implicit in the indignant parent's complaint, "But that's *my* time!" by responding with a rationale for the percentage of time that he gets and explanations of the complimentary percentage of time that the child's other parent gets?

We must educate separated and divorced parents that the time at issue belongs to the child, never to the parent. We must acknowledge that children's needs always trump parent needs. We must learn to speak of custody as that period during which the parent accepts responsibility to meet the child's needs.

In reality, custodial time means changing diapers and giving baths, helping with homework and enforcing limits, chauffeuring to lessons and hosting play dates. These are the things that our children need.

We must cease and desist all references to a child's custodial time as if these periods were owned by one or another parent, the way one might "own" a week in a Caribbean timeshare. Perhaps the better phrase is "custodial responsibility." In this sense, a doctor's appointment can never be an intrusion on a parent's time but is, instead, simply a part of that parent's responsibility in the course of meeting the child's needs. In this sense, there is never a question about whether the child can attend her play rehearsal or open house at school just because it falls during one parent's time.

### **But what about the parent's needs?**

This is not to say that parents don't need or shouldn't want to spend time with their children. This is not to say that the parent-child separation that routinely accompanies the dissolution of a marriage might not be a traumatic loss for the parents involved as much or even more than it is for the child. But as adults, parents have a responsibility to get their needs fulfilled from other adults. From friends and neighbors, colleagues and clergy, therapists and lovers and the new millennium requires that I mention online chat rooms. The parent-child relationship is largely a one-way street: Parents fulfill their children's needs. Not vice-versa.

Beware the parent who needs time with a child in the service of his own mental health. The parent who considers his child his best friend, who treats his child like a peer, is walking on thin ice and bound to drag the child along when he falls through. This parent feels cast adrift, alone and lonely when the child is absent. He might fill the void with drugs or alcohol or similarly self-destructive escapes, all the while communicating to the child his neediness. As a result, the child may become parentified. She takes on the role of parent to her own parent. In the short term this can feel like a privilege to the child. "Daddy needs me!" she exclaims. She may resist visits with her other parent, avoid developing friendships and miss opportunities for learning and growth all in the interest of fulfilling her parent's needs.

In the medium and long terms, however, the parentified child comes to realize that she is not free to grow up. That taking care of a parent is a burden. Guilt and anger collide within her. Depression and rage and difficulties with future relationships can result. The parentifying parent needs psychotherapy early in the course of the marital separation in order to recognize and find the means to change his unhealthy dependence on his child. Failing that, the parentified child needs individual and family psychotherapy to help her cope with her explosive feelings, to learn how to separate from each of her parents and how to develop healthy boundaries in future, mature relationships.

### **The chameleon child.**

Perhaps worse than the fate of the parentified child is the fate of the child who has become a chameleon. This child has discovered that her time in each of her divorced parents' homes is indeed the parent's time, not her own. She is responsible to be who each parent expects her to be. Her role is as parent-pleaser, parentified perhaps, but implicitly required to change her colors to suit each of two very distinct environments.

Dad needs her to be a sports fan, for example. He needs his child to be his best buddy at all the games, conversant in all the statistics and records, the players, their numbers and affiliations. No matter that mom wants the same child to be a scholar. In mom's home, grades and tests and quizzes and homework are the key to the kingdom. Sports are nothing. Academic success (and no other) earns praise and love and warmth.

When parents are focused on their own needs and interests to the exclusion of the child's needs and interests, the child loses. Children can and do adapt to these schisms as a means of winning critically valuable acceptance, approval and affection -they become chameleons- but they do so at the cost of their own identity. The chameleon child grows up empty and angry and confused, forever seeking acceptance and at high risk for anger, depression and self-destructive choices.

The chameleon child needs first and foremost parents who are child-focused, who value her thoughts and feelings and encourage their healthy expression. The court system cannot make self-centered adults miraculously into child-centered parents. Some combination of education and psychotherapy is necessary (even if not always sufficient) toward achieving that goal. The court system can, however, change its language to model a child-centered focus. Speaking of custody as a parent's responsibility to the child's needs is just one small step in this critically important direction.

### **Toward more child-centered outcomes.**

What else can the court system do to encourage conflicted, separated and divorced parents to remain focused on their children's needs? Some steps are already being taken. Others challenge us to make controversial changes in support of our children's future. Among these:

- The collaborative law movement is child-centered to the extent that it diminishes the animosity that can become inbred between parent-litigants, animosity that inevitably impacts the child negatively. Any process that emphasizes the child's needs and the participants' immutable standing as co-parents even as the status of the marriage is dissolved and the property divided is a step in the right direction.
- An adult-focused court system entertains parents' arguments over percentages of a child's time assigned to each of two disputing parties. A child-centered court system eschews these picayune power struggles in favor of dictating care schedules that meet the child's needs. For example, much as a custodial schedule would never require that a child be awakened in the middle of the night simply so that each parent gets his fifty percent of the custodial schedule, the continuity of other aspects of the child's life should be of equal priority. Religious training. Flute lessons. Nap schedule. Summer camp. Bedtime. Does this mean that mom or dad might be assigned less than fifty percent? Yes. Does this mean that a child's needs might better be met? Yes.
- Mediators, Guardians *ad litem*, marital masters and judges involved in divorce and post-divorce actions have a responsibility to understand the child's needs and to hold these needs as superordinate to the parents' needs and wishes. This reasonably calls for additional training in the form of CLEs and/or the development of constructive, child-centered collaborations with child development and family systems professionals. This need is most pronounced when the children involved have unique educational needs, developmental differences, and compromises of their physical health and/or psychopathology.

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