



Representation of children's views in court hearings about custody and parental visitations – A comparison between what children wanted and what the courts ruled

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ABSTRACT

Purpose: Following the UN convention on the rights of children, a shift in policy towards greater emphasis on child participation in child protection case processing has occurred. A growing body of research has emerged concerning participation processes in child protection cases and the experiences of children in child protection cases. Very few studies have looked into if and when children get what they want, however. The aim of this study is to assess children's views about living arrangements and visitations in dependency court hearings and to compare these views with the rulings of courts.

Method: The study uses a retrospective cohort design. Cases where child welfare board rulings are in line with the wishes of children are compared to cases where rulings differ from the wishes of children. Data were collected from regional social welfare board archives. The study included 151 cases that were randomly drawn from a total population of 2481 cases. Simple and multivariate logistic regression was used to identify factors associated with the rulings being in accord with the child's wishes in each sample case.

Results: A child advocate was appointed in almost 95% of the cases ($n = 142$). Fifty-nine percent of the children did not want a change in care. Rulings about care were in line with the wishes of the child in 39% of the cases. Rulings about care were most likely to be what the child wanted, if the child was presently living in public care and did not want to move. Children wanted more visitations with their mothers in 60.5% of the cases and with their fathers in 39.8% of the cases. Whether children wanted more visitations with their mothers was associated with more visitations being granted. What a child wanted was not associated with the ruling on visitations with the child's father.

Conclusion: The impact of children's views on visitations on dependency court rulings depends on what a child wants and how these desires coincide with what is proposed by child protection services. Children's views can be quite effective in blocking certain decisions but are less effective if the child requested a specific change. If a child does not want to stay with his or her birth parents, then the odds that the birth parents will be granted custody is minimal.

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1. Introduction

Having a say about care placement and about contact with birth parents and family members is considered important by children facing the prospect of entering public care (Bessell, 2011). Child participation in the decision-making process in care and protection cases has an instrumental value in facilitating better outcomes for children (Cashmore, 2002; Vis, Strandbu, Holtan, & Thomas, 2011), but this participation is also considered valuable in and of itself. In 1989, the United Nations Convention on the Rights of the Child (UNCRC) established participation as a fundamental right alongside provision and protection. Since then a growing body of research (Buckley, Carr, & Whelan, 2011)

concerning participation processes and how these processes are experienced by children during case processing in child welfare has emerged; see also Gallagher, Smith, Hardy, and Wilkinson (2012) for a review. Very few studies have looked into the issues of if and when children get what they want, however. The aim of this study is to assess children's views about living arrangements and visitations in dependency court hearings and to compare these views with the actual rulings made by courts.

Advocacy for children in public care is recognized as a means of countering disempowering experiences of exclusion from decision making. In Norway, the ratification of the UNCRC was followed by changes in child welfare legislation. Specifically, the age limit of 12 years of age for allowing children's views to be taken into consideration in child protection and dependency cases was lowered to seven years. Because children below the age of 15 have not been formally recognized as a party in Norwegian foster care hearings, an advocacy

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service was introduced in 1994 designed specifically to ensure the inclusion of children's views in court. The service was modeled on the British Guardian ad Litem (GAL) program but differs substantially from how that program works in both the UK and the US. The most important difference is that the mandate is not to conduct an investigation into the case. Instead, the service is restricted to reporting what the child wants. A brief description of the Norwegian systems for child representation in child welfare dependency hearings is therefore provided for context.

In Norway, the municipal Child Protection Services (CPS) is responsible for investigating cases and for providing social services for children within the child protection service. If CPS decides that a child needs to be placed in out-of-home care, the case has to be petitioned to the regional social welfare board. A board hearing is led by a judge, and negotiations are conducted in the same manner as in an ordinary court. A child below the age of 15 is usually not present at board hearings and does not have independent legal representation. The board is however required to take a child's views into consideration, and the judge may appoint a children's advocate specifically for this purpose. This process is regulated as a layman service, and the child advocate is not supposed to be an expert in child welfare (Child Welfare Act, Section 7–9). The advocate will meet with the child outside of court, usually once, and ask the child what the child wants. The advocate then submits a report and is called to the board as a witness during the hearing. The children themselves are usually not present. The child advocate is not supposed to form an independent opinion about the case, and the advocate usually is not given the necessary information to do so. The interview is not meant to be an investigation into the facts of the case but rather focuses on eliciting a child's views about care arrangements and visitations. Unlike in the UK and the US, there is no legal requirement for periodic review of care plans; thus, the board will only see the case again if a petition to change the last ruling is submitted. Depending on availability, a different advocate may then be appointed.

1.1. Research on child participation in court

An evaluation of the Norwegian advocacy service for child welfare boards was carried out five years after the introduction of the service (Moldestad, Havik, & Backe-Hansen, 1998). This study found that an advocate was appointed in about 15% of cases in which the board was asked to rule about care arrangements and visitations, indicating a serious lack of child representation in dependency hearings. Since then, a shift in policy towards greater emphasis on child participation in child protection case processing has occurred in Norway (Willumsen & Skivenes, 2005), in the UK (Landsdown, 2010; Winter, 2006), and in the US (Weisz, Wingrove, Beal, & Faith-Slaker, 2011). We thus expect that children's advocates are more frequently used today compared to 15 years ago.

Studies have found that even though children are being given choices and opportunities to participate in meetings and reviews in earlier stages of CPS case processing (Gallagher et al., 2012; Thomas & O'Kane, 1999), there is still little knowledge about how and when children's views are being considered (Coad & Shaw, 2008; Leeson, 2007). One Norwegian study (Vis & Thomas, 2009) found that children's participation affected CPS decisions in about half of the cases, but this study did not specify how decisions were affected, i.e., whether it was the content of the decision that was affected or the manner in which it was set into effect. In an observational study from 60 cases in the Scottish Children's Hearings system, Murray and Hallett (2000) found that children's contributions were frequently monosyllabic or single line expressions and that less than half of the participating children expressed an opinion about what should happen. The researchers did however conclude that when children asked for foster care or a supervision order, these requests generally translated into the eventual outcome.

Based on interviews with seven judges, Moldestad et al. (1998) concluded that a child's wishes could affect a ruling when the board was in

doubt about how to proceed but that the child's wishes were less likely to do so in more serious cases of abuse or neglect. In such cases judges think that child safety would take precedence. A German study involving 80 child protection cases randomly assigned cases to either expert assisted case management or a control group with standard case management (Goldbeck, Laib-Koehnemund, & Fegert, 2007). Certainty with respect to the selected interventions was increased in the expert-assisted group but the involvement of children in planning decreased. This finding indicates that when certainty in case planning is increased, children's views may be considered less important and may be assigned less weight. The weight that courts assign to children's views is thus likely to be affected by the certainty with which it can be determined that the child is at risk and what sort of risk the child has been exposed to. Based on observations of children's hearings in Scotland, Murray and Hallett (2000) found that when children's asked for a supervision order or to be placed in foster care, this was likely to be the outcome of the case. That study did not report the exact fraction of cases in which decisions were affected by children's views. We may however assume that if the child's view supports a claim that it is not safe for the child to stay with a biological parent, it will carry more weight compared to cases where the child does not acknowledge CPS' concerns.

Litzelfelner (2008) conducted a survey among social workers, parents and judges about Court Appointed Special Advocates (CASAs) in the US. The study included both CASAs within the Guardian ad Litem model (GAL), in which case the CASA was also the GAL, and a 'friend of the court' model where the CASA was an impartial observer who conducted investigations and made recommendations to the court. The study found no difference between parents, social workers and judges with regard to their assessments of how much the CASAs influenced court decisions. Overall, CASAs' influence was rated from an average of 3.1 on a four-point Likert scale, ranging from strongly disagree to strongly agree. A score of three indicated that all parties think that CASAs influence court decisions, although the study does not explain how often, in what decisions, or in which cases the influence exists.

We were not able to identify any studies that have looked at the content of child advocate, CASA or GAL reports regarding children's wishes and compared those reports with case rulings. We did however find a few studies that looked at either child's wishes during dependency cases or outcomes at dependency hearings.

1.2. What children want

Lundström and Sallnäs (2009) asked children aged 13 to 18 years living in out-of-home care in Sweden to rate their agreement with the statement 'I would rather live with my biological mom/dad.' They found that about 25% of the children did not want to live with their parents. Although this implies that about 75% of the children would rather move back with their parents, the report did not publish exact numbers. This result coincides with findings from a U.S. study (Block, Oran, Oran, Baumrind, & Goodman, 2010) in which researchers interviewed 85 children aged seven to 10 years who had participated in dependency court hearings. These researchers found that of the children in their sample, 64% wanted to go home immediately and that an additional 7% wanted to go home if some conditions were met, such as "make my mom stop using drugs" or "kick my father out of the house." The remaining children would not go home and wanted to stay in foster care, expressing other specific desires, such as "have my sister and my mom come visit me," "make my mommy stop beating me," or "put my mom in jail" (Block et al., 2010, p. 665). Lundström and Sallnäs (2009) found that more frequent visitations from parents increased the likelihood that a child would rather live with his or her parents.

It is well documented that children are more likely to have visitations with their mothers compared to their fathers when living in out-of-home care. In a Norwegian sample, Holtan (2002) found that 90% of children had contact with their mothers, whereas only 57% had contact with their fathers; similarly, in a Danish sample (Nielsen, 2002),

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