



# The role of parental communication, child's wishes and child's gender in social workers' custody recommendations



Hani Nouman, Ph.D., Guy Enosh, Ph.D. \*, Pnina Niselbaum-Atzur, M.S.W.

School of Social Work, University of Haifa, Israel

## ARTICLE INFO

### Article history:

Received 9 June 2016

Received in revised form 28 September 2016

Accepted 28 September 2016

Available online 29 September 2016

### Keywords:

Custody  
Decision making  
Parents communication  
Child wishes  
Professional judgement  
Maternal bias

## ABSTRACT

Social-workers' custody recommendations are influenced by professional and personal factors. In this study, we examine three factors: parental-communication, child's-wishes, and child's-gender. An experimental-survey-design was implemented, using case-descriptions, as well as professional-characteristic of the social-workers. Data were collected from 120 Israeli social-workers. The study findings reveal that interparental communication plays a significant role in the social worker's decision. Whereas deficient interparental communication leads to bias in the decision to award parental custody according to the parent's gender, with a preference for the mother over the father, as hypothesized, intact interparental communication increases the likelihood of joint custody, but still gives preference to the mother. Social workers tend to consider the children's wishes as long as their preference is for maternal custody. When children express a paternal preference, their wishes carry no weight. Furthermore, child's gender does not influence social workers' parental custody recommendation. In cases where the preference for sole maternal custody may appear as biased or untoward, a preference was awarded to joint-custody rather than to paternal-custody. The findings highlight that traditional-social-norms impact social-worker's decision. We emphasize the importance organizational mechanisms and standards that provide more efficient and egalitarian decision-making.

© 2016 Elsevier Ltd. All rights reserved.

## 1. Introduction

With today's high divorce rates, many children around the world are caught in the custody conflict between parents. This dispute may be resolved as the parents come to an agreement. However, if an agreement has not been reached, in Israel, as in most other countries, the court is required to decide which parent will receive custody as well as dictating the rights of the non-custodial parent regarding contact with the child (*Legal Capacity and Guardianship Law, 1962*). This decision should, as far as possible, consider the best interest of the children and their rights, and reflect their psychological well-being (*Zafran, 2013*).

To assess the best interest of the child, according to Israeli law (*Legal Procedures Regarding Minors, Mentally Ill and Missing Persons, 1955*), the courts are authorized to appoint expert social workers to express their opinions on this issue in a review to be submitted to the court (*Ben-Ami, 2011*). These opinions serve the family courts on three levels (*Zafran, 2013*): (1) on the factual level, by describing the reality of the children and their familial and life circumstances (*Silman Committee, 2014*); (2) on the professional level, by providing an authorized interpretation of the reality (*Tippins & Wittmann, 2005*), namely an evaluation of parental efficacy and prediction of future parental functioning

based on parents' personal characteristics and past and present functioning (*Tzaddik, 2001*); and (3) on the recommendation level, by helping to channel the decision regarding custody as well as the extent of responsibility that will be given to each parent. Studies show that, in most cases, the court follows the social worker's recommendations (*Arkin, 2005; Frishtik & Yagelnik, 2007*).

### 1.1. Factors influencing social workers' decision making

The social workers' opinion regarding parental custody draws on the principle of 'best interest of the child', which anchors the range of the child's rights, needs, interests, and provides a benchmark for making decisions (*Silman Committee, 2014*). However, a major criticism undermines the use of this interpretive system due to the lack of clear definition and agreement on what is the best interest of the child (e.g., *Chambers, 1984; Sagi, 1987; Sagi & Dvir, 1993; Braver, Cookston, & Cohen, 2002; Warshak, 2011*). Those criticisms are summarized by *Warshak (2011)* in four arguments against the best interest standard: First, the "best interest" standard is inherently subjective by nature, open to personal interpretation, thus both parties may persuade themselves that they stand a chance of getting custody. Second, the lack of one decisive factor leads the parties to engage in character assassination of each other. Third, courts are left with no guidance or objective basis to choose between fit parents. Fourth, courts tend to depend too heavily on mental health professionals in their decision making processes.

\* Corresponding author at: School of Social Work, University of Haifa, Haifa 31905, Israel.

E-mail address: [enosh@research.haifa.ac.il](mailto:enosh@research.haifa.ac.il) (G. Enosh).

Braver et al. (2002) bring along a fifth concern – the gender bias. While some researchers claim that the system is biased against women who are relatively lacking in financial resources to engage in the custody battle, others claim that the system is biased against men and in favor of women as the more “fit” parents. Therefore, this view holds that the doctrine of the best interest of the child is subject to manipulation, abuse, and ethical bias according to the worldview of the determining authority and does not faithfully serve the child's needs (Rotlevy Committee, 2003). An additional criticism raises doubts about the possibility of forming a professional opinion based on this principle to determine parental efficacy and to decide on the optimal custodial arrangement (Tippins & Wittmann, 2005) due to the limited ability to predict future parental functioning (Schnitt, 1979; Ministry of Justice, 2011). Furthermore, researchers (e.g., Greenberg, Gould-Saltman, & Gottlieb, 2008; Martindale, 2005) have warned against the tendency to look for confirming evidence for one's beliefs and biases, while overlooking and dismissing disconfirming evidence (“confirmatory bias” and “confirmatory distortion”; Martindale, 2005), the possible influence of cognitive dissonance, and suggestibility of mental health professionals (Martindale, 2005; Strohmmer, Shivy, & Chiodo, 1990), and thus recommended self criticism and other checks and balances, including consultation with colleagues (Greenberg et al., 2008); comparison of notes taken contemporaneously with final reports, external inspection of documentation used in forming reports, and evaluation of strengths and weaknesses of the assessment-tools used (Martindale, 2005). Thus, this decision, which is supposed to be a rational consideration, unprejudiced, and take into account the implications of each of the outcomes for the child (van Bommel & Helder, 1997), is often influenced by heuristic factors, that lead to bias in professional judgment (e.g., Enosh & Bayer-Topilsky, 2015; Enosh, Nouman, & Anabtawi, in press; Enosh, Nouman, & Sharon, in press).

This question is sharpened against the background of research findings indicating that personal, professional (Lulu, 2000; Mattison, 2000), social, and cultural factors (Cohen & Segal-Engelchin, 2000; Hacker & Frenkel, 2005; Hall & Paradise, 2007) cause bias in social workers' professional discretion in situations in which they are required to predict future behavior. Previous research (Enosh, Nouman, & Anabtawi, in press; Enosh, Nouman, & Sharon, in press) indicated that cultural norms may cause bias in favor of the mother due to a tendency to reject untraditional models of joint custody or sole custody of the father (Crawford & Bradley, 2016).

The traditional models are anchored in the accepted legislative system in Israel based on the “Tender Years Doctrine” (Legal Capacity and Guardianship Law, 1962), according to which, preference is given to the mother for custody of children up to age six. The legislation is based on the social construction that sees the mother figure as more ideal than the father to fulfill the needs of the child at this age (Frishtik, 2005; Ministry of Justice, 2011; Schnitt, 1994) Although the “Doctrine” is limited to early ages, and the law does not declare anything specific regarding older ages, the traditional social norms that underlie this doctrine still persist in that the mother is considered the “natural” custodial parent even when dealing with older ages (Enosh, Nouman, & Anabtawi, in press; Perlman, 2012). The practices that prioritize traditional gender role models, by which the mother is considered the “natural” caretaker of the children, while the father is not, have been the target of much criticism (Crawford & Bradley, 2016; Fagan, Day, Lamb, & Cabrera, 2014). It has been claimed that this approach violates the children's right to a meaningful relationship with their father, hinders the court from making a decision appropriate for each individual child, and expresses a social gender norm according to which the mother is primarily responsible for raising the children (Crawford & Bradley, 2016; Perlman, 2012).

However, is joint responsibility possible without interparental communication? Moreover, are positive communication and mutual appreciation prerequisites for joint responsibility? (Fransson, Sarkadi, Hjern, & Bergström, 2016; Nielsen, 2015). Recent summary of 40 studies

(Nielsen, 2015) has demonstrated that the answer is not straightforward. Indeed, it is not clear that poorer communication and higher levels of conflict between parents are associated with poorer outcomes for children. Furthermore, Warshak (2014), relating to studies regarding timesharing and sleep-over of small children (four year old or younger) at the fathers' home, indicate a beneficial role and do not indicate any harmful influences. Thus, according to Warshak, time sharing among divorced parents should be considered even at very early ages, let alone older ones. These questions illustrate the complexity of the issue of “the best interest of the child” and require the social workers' assessment and critical reflexivity (D'Cruz, Gillingham, & Melendez, 2007; Schön, 1983) when forming a professional opinion. It seems that despite the divorcing parents' wish to jump the hurdle of separating parenthood from couple-hood, the post-crisis reality is often different. In many cases, the interpersonal conflict penetrates the child-parent relationship so that the children are intensively and chronically exposed to a tense family climate, which may even include severe verbal and physical violence (Hetherington, 1999).

The conflict is sometimes intensified if the parents are combating over custody and visiting rights in court (Kelly, 2002). Research shows that chronic interparental conflict that is rife with confrontations has negative implications for the children's behavior and emotional adjustment (Kelly, 2000; Kelly & Emery, 2003). Nevertheless, the breakup of the family unit sometimes ends in a less destructive fashion, accompanied by cooperative and mutually respectful interparental interaction. Even so, it is clear that the situation is not completely dispute-free and requires cooperation between the parents to create a safety-net for the children. The advantage of this partnership is in arrangements involving both parents to a large extent, so that the father also can provide significant support for the child's development (Kuehnle & Drozd, 2012).

The wishes and gender of the child in question are additional important components to consider when examining the best interest of the child in the process of determining custody in divorce cases. The UN Convention on the Rights of the Child (1989; Section 12) obliges the signatory countries to give any children, who are capable, the right to express an opinion freely on any issue pertaining to them, while giving appropriate weight to their opinions, in accordance with their age and maturity. Accordingly, in Israel, there is support for the approach that examines the child's wishes, and an examination of the child's viewpoint is anchored in the social workers' functioning within the framework of preparing the report to file with the court. According to the report of the last professional review in Israel by the “Schnitt public committee for the examination of the legal aspects of parental responsibility in divorce cases” (Ministry of Justice, 2011), in Section 9 dealing with “parental custody arrangements by courts in cases of separation”, it was declared that the court will take into account the child's wishes, contingent on the developmental faculties of the child as well as the willingness of the two parents to cooperate in fulfilling their parental responsibility, the parents abilities to fulfill such responsibility, the treatment given by the parents to the child, and the willingness and ability of each of the parents to facilitate the relationships. Furthermore, research indicates that social workers rarely tend to relate to children's wishes in various contexts, including family reunification (Davidson-Arad & Benbenishty, 2008), as well as custody disputes (Mantle, Leslie, Parsons, Plenty, & Shaffer, 2006; Prout, 2003; Skjorten, 2013; Smart, 2002).

Regarding the child's gender, the question is raised as to whether the gender context is relevant when assessing the best interest of the child. For the child's developmental requirements, is it preferable to award custody of sons to the father and custody of daughters to the mother? Previous research indicated that cultural norms may cause bias in favor of the mother due to a tendency to reject untraditional models of joint custody or sole custody of the father (Crawford & Bradley, 2016; Enosh, Nouman, & Anabtawi, in press; Enosh, Nouman, & Sharon, in press). Prevailing social policy emanates from the traditional

Download English Version:

<https://daneshyari.com/en/article/4936646>

Download Persian Version:

<https://daneshyari.com/article/4936646>

[Daneshyari.com](https://daneshyari.com)