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## How are parental functioning and single parenthood associated with court outcomes? An analysis of child protection cases

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### ABSTRACT

Impaired parental functioning and single parenthood are considered risk factors for child maltreatment and being involved in the child protection context. Past research has shown that an impaired mental functioning and being a single parent are indicators of limited parenting resources. These risk factors are likely to be considered by family judges, which might lead to more intrusive court decisions concerning parental custody. To date, court data have rarely been investigated. The present study examined parental mental health and single parenthood using data from family law proceedings. The role of the fathers has been understudied and the few existing studies yielded contradictory results with respect to fathers' involvement as risk or protective factor. Therefore, the study included both fathers' data and mothers' data. A total of 220 child protection court files with 343 affected children were coded using a category system. Parental mental health was coded as parental functioning in daily life and was significantly associated with the court outcome. Multilevel mediation analyses showed a significant indirect effect of maternal functioning on the intrusiveness of the court decisions via child maltreatment. Single motherhood moderated the effect: The indirect effect was more pronounced for single mothers. This study contributes to a better understanding of the population getting before court and the judicial process. Psychological attributes do play a role in the decision-making of judges; and taking the role of the fathers into account is necessary.

### 1. Introduction

The recent years have witnessed rising numbers of child maltreatment risk assessments, takings into custody, and removals of parental custody in Germany. Risk assessments occur nearly twice as often compared to 10 years before (German Federal Statistical Office, 2017a). Researchers and all parties involved have a great interest to understand the underlying processes regarding child maltreatment and family court decisions. So far, little is known about the factors that family judges consider while judging. For sure, they base their decision on the legal background, for which they are the experts. But do psychological aspects also play a role in judges' decisions? Studies have underlined the relevance of parental mental illness and single parenthood as risk factors for child maltreatment, for being involved in the child protection context, and for out of home placements in family law proceedings (Dubowitz et al., 2011; Ensink, Berthelot, Begin, Maheux, & Normandin, 2017; Euser et al., 2013; Kohl, Jonson-Reid, & Drake, 2011; McConnell, Feldman, Aunos, & Prasad, 2011; Needell, Cuccaro-Alamin, Brookhart, & Lee, 1999; Stith et al., 2009). However, data derived from court files of family law proceedings have only rarely been investigated (for exceptions see de Bortoli, Coles, & Dolan,

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2013; Llewellyn, McConnell, & Ferronato, 2003; Taylor et al., 1991). Looking at this type of data can help to gain a better comprehension of the population getting before court. It also provides deep insights into the judicial process while avoiding the subjectivity which comes along with survey methods (Widom, Raphael, & DuMont, 2004). The present study investigates a sample of German family law proceeding cases. Parental psychological functioning and single parenthood are analyzed as predictors for child maltreatment and the judges' decisions.

### 1.1. Legal background and definition of child maltreatment

The German law specifies that „the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty” (Article 6 (2), Basic Law for the Federal Republic of Germany). According to §1697a and §1666 BGB German Civil Code, the state must intervene if parents are not willing or able to fulfill their parental care in the best interests of the child and if the well-being of the child is in danger. In cases of suspected child maltreatment, the first step contains the estimation of the risk potential. In Germany, this is usually done by youth welfare workers or child protection experts. Any measures taken should be constrained to a minimum of interventions necessary to ensure the well-being of the child. Public support measures include educational counseling or family assistance provided by social workers visiting the family at home for several hours a week. If public support assistances are not enough to avert the endangerment of the child's well-being or if the risk potential is high, family courts are called, usually by the youth welfare authorities. Judges then have to decide if further public support assistances should be obligated or if interventions concerning parental custody are necessary (Schindler, 2011). With increasing severity of child maltreatment, judges' decisions need to be more intrusive concerning parental rights.

In 2016, German family judges took measures concerning the child's safety in nearly 32,000 cases. Part or complete removal of parental custody were decided in 54% of the cases (German Federal Statistical Office, 2017c). These numbers should be viewed with caution because the collection of nationally representative data in Germany is still in the early stages. Presumably, there are even more cases of child maltreatment because of lacking statistical registration and an expected number of unreported cases (Bae & Kindler, 2017).

With respect to the legal definition in German law, child maltreatment is a so-called *indeterminate legal term*, which means that it depends on the judge's assessment whether there is an endangerment of the child's well-being or not. It is specified that the welfare of the child includes physical, mental, and psychological well-being as well as the child's property (§ 1666 BGB). This open definition offers the opportunity to deal with the complexity of the individual cases (Haavik & Menninger, 1981), but poses a challenge for research due to a possible lack of comparability (Litrownik et al., 2005). With respect to definitions in research, there is a wide range of theories and operationalizations showing that maltreatment includes psychological, physiological, and sexual maltreatment, and neglect (Manly, 2005). Besides actual injuries or harm, child maltreatment thus includes actions that are likely to result in harm as well as a lack of care or failure to meet the child's needs (Berger, 2004). Studies showed that these child maltreatment forms often occur together (Higgins & McCabe, 2001; McGee, Wolfe, Yuen, Wilson, & Carnochan, 1995; Pears, Kim, & Fisher, 2008).

### 1.2. Parental functioning and court outcomes

Mental issues are one of the three main reasons for child protection service (CPS) investigations (Simon & Brooks, 2017). If a parental mental impairment exists, the risk of having a child involved in the CPS is two to five times higher compared to families without impairment (Park, Solomon, & Mandell, 2006; Sidebotham & Heron, 2006). Similarly, more re-reports of maltreating behavior are observed (Casanueva et al., 2015; Jonson-Reid, Emery, Drake, & Stahlschmidt, 2010; Kohl et al., 2011) and the risk of a court application is nearly four times higher if parents are mentally ill (McConnell et al., 2011; Park et al., 2006; Sidebotham & Heron, 2006). Thus, family judges have to deal with this subgroup a lot, and consequently are confronted with mental illness. Still, they are no psychological experts and additionally have to include the individuality of the case. This challenging situation is also reflected by the fact that proceedings involving families with parental mental impairment tend to be more prolonged than proceedings without a mental impairment (de Bortoli et al., 2013). Looking at studies which investigated court outcomes, researchers found that family judges are more likely to order out-of-home placements and foster care in cases in which parents are mentally ill (de Bortoli et al., 2013; Kohl et al., 2011; Llewellyn et al., 2003; Park et al., 2006).

### 1.3. Parental functioning and child maltreatment

Parental mental illness is a risk factor for child maltreatment (Black, Heyman, & Smith Slep, 2001; Black, Smith Slep, & Heyman, 2001; Stith et al., 2009). This is consistent with the finding that families with mental issues are more often involved in CPS investigations, as described above. Numerous studies focused on depression or substance use disorders as significant predictors for abuse potential, overreactions, and reported child maltreatment (Barnhart & Maguire-Jack, 2016; Kelley, Lawrence, Milletich, Hollis, & Henson, 2015; Kotch et al., 1995; Stith et al., 2009; Wilson & Durbin, 2010). Other studies showed that a mental illness (regardless of the specific diagnosis) increases the risk of child maltreatment (Kohl et al., 2011; Mennen & Trickett, 2011; Taylor et al., 1991; Walsh, MacMillan, & Jamieson, 2002). According to current assumptions, the influence of mental illness on parental life is complex. Across diagnoses, mentally ill parents report more parenting stress (Barnhart & Maguire-Jack, 2016; Ponnet et al., 2013). In addition, mothers who are mentally ill show less supportive behavior (Lovejoy, Graczyk, O'Hare, & Neuman, 2000), and fathers with mental illness are rated as less warm and less involved in caregiving (Eiden, Edwards, & Leonard, 2002; Kirisci, Dunn, Mezzich, & Tarter, 2001; Leonard & Eiden, 2007; McMahon, Winkel, & Rounsaville, 2008). In line with this, Kane and Garber (2004) argued in their

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