

CONTENTIOUS CUSTODY

**Is It Really in the Best
Interest of Your Children?**

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SECTION I

Why Is Child Custody a
Monster Problem?



CHAPTER 1

The Greatest Fight of Your Life: Protecting Your Children During Divorce

“There is no system ever devised by mankind that is guaranteed to rip husband and wife or father, mother and child apart so bitterly than our present Family Court System.”

— Judge Brian Lindsay, Retired Supreme Court Judge,
New York

In child custody cases, parents do not always have their children’s best interests at heart. Parents want what they want. This leads to contentious custody battles. As a custody evaluator in Colorado for twenty years, I have witnessed the devastation when parents and professionals engage in a highly contentious process. But there is a better way.

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I will never forget the day sixteen-year-old Victoria (not her real name) walked into my office. Although it had been five years since her parents' divorce, I recognized her the minute I saw her.

"I don't know if you remember me," began Victoria, "but you worked with my family several years ago. I hated you when you were working with my family."

I assured her that I was aware of those feelings on her part. We met when she as an eleven-year-old girl who had two eight-year-old twin sisters. During the divorce, Victoria had become "parentified," which is our term for a child who has to fill a parent's role. Victoria took care of the younger girls much of the time while the parents were engaging in various activities of their own.

But perhaps even more damagingly, Victoria had become a confidant to both of her parents throughout the separation and divorce process. Both parents shared adult information with Victoria, such as tales of bar-hopping escapades from her father, and news of a couple of extramarital affairs from her mother. Victoria knew all the adult issues that no child this age should know.

I finally got the parents to see how harmful this was to their child, but I did not expect for Victoria to be so adamantly opposed to not hearing all of the sundry

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details of her parents' new lives as single people. I brought Victoria and her parents into my office with the intent of telling Victoria that her mother and father were not going to be sharing all of the details of their lives anymore.

Victoria was not happy with me. After informing Victoria that her parents were not going to be telling her everything anymore, Victoria grabbed hold of the arms of the chair she was sitting in, leaned over the table, stared right at me, defiantly, and said, "But I need to know what's going on in my parents' lives; I *need* to know!"

I responded, "No, you don't. You need to worry about who you're going to ride bikes with when you get home; you need to be allowed to be a child."

Five years later, Victoria walked into my office and told me she'd hated me back then. But she went on to say, "I want to thank you, because you were the only person throughout my parents' divorce who allowed me to be a kid."

This is the greatest gift that we can give children in these situations. Regardless of what is going on, we need to keep them out of the middle of their parents' conflict.

Keeping the Conflict Going for Profit

The only people who profit from a divorce are attorneys. Parents are not focused on the children, but are focused on winning at all costs. Often, parents are angry at each other because of infidelity or being rejected.

The story I am about to share is not an isolated incident; in fact, it is far from it, as I have had many such incidents happen, I am disheartened to say. But this was the first and most blatant incident of this nature that had ever happened in which I was involved directly, and it was the first glimpse I had into how pervasive this problem can be in terms of the handling of these cases by the attorneys on the case.

I met with two divorcing parents (let's call them Ben and Katie) one evening in my office, the night before required mediation between the parties. The meeting had come at the request of the mother, Katie, who felt that the case could be resolved if the parents could simply talk with one another. Katie felt that it would be useful, however, for someone like myself, who was a neutral party in the case, to be present. Katie reported that the parties often got off track when talking alone with one another, and one party or the other would start bringing up past hurtful behaviors and topics that did not need to be discussed. She

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asserted that with the presence of a third party, the parties were more likely to stay on track with the discussion and stick to the matter at hand.

Katie started off the discussion, apologizing for placing a restraining order on the father, stating that she never really had been afraid of father. Katie stated that she knew Ben was not a danger to herself or to the children, and that she had filed the restraining order at the direction of her attorney, who had suggested that the restraining order would give mother the “upper hand” in the divorce situation, especially when it came to parenting time.

Katie went on to say that she was going to have the restraining order dropped and apologized for things she had done during the marriage that were harmful to the relationship. Ben followed suit and apologized to Katie for things that he had done during the marriage. The parties agreed on a 50/50 parenting-time plan, also agreeing on what the specific schedule for parenting time would be. The meeting ended with the parties hugging one another, and all of us were in tears. These were tears of joy for two parents who had found their way back to a relationship of peace, in the best interest of their children. Both parties expressed that they knew this was best for their children, committing to maintaining a relationship of mutual respect from that point on.

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Knowing that the parties had mediation scheduled for the next day, I told Katie and Ben I would go over to the mediator's office, which was located in the courthouse, the next day to let the mediator as well as the attorneys know that the parties had worked out the issues related to parenting time.

When I arrived, the mediator was there, along with Ben. Katie and her attorney had not yet arrived. I was in the middle of explaining to the mediator that I had made his job really easy, as the parties had reached an agreement the night before, and that I was just there to tell him what the agreement was so that he could write it up in a stipulated agreement, when I heard someone walking purposefully down the hall.

I looked up to see Katie's attorney, who caught the last few words of what I was saying—primarily that the parties had reached an agreement—and the attorney said, "No, the parties *do not* have an agreement!"

Quizzically, I looked at the attorney and asked what had happened to the agreement the parties had reached the night before. The attorney replied that the father and I had bullied his client into an agreement, and that they no longer agreed (meaning Katie and her attorney, or, in actuality, her attorney; *the attorney* was the party who did not agree, if truth were known).

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After asserting to the attorney that he did not know what had happened in my office the night before because he was not there, and explaining that it actually had been his client who had come up with the parenting plan on which the parents agreed, the attorney informed both the mediator and me that the parties did not have an agreement, that Katie would be seeking a supplemental evaluation, something that is permitted in the state of Colorado in family law cases, and that there was no reason to go forward with mediation that day because the parties were not going to come to any type of agreement on parenting time for their children.

Several months and many thousands of dollars later, the supplemental evaluator's report was completed, recommending the same parenting time as my evaluation had recommended, and the same parenting-time plan that the parties had agreed to that night in my office. Katie and Ben, as well as their children, had to go through another evaluation; the parties' and their children's lives were put on hold that much longer, precluding their ability to get on with life following the break-up of the parents; and the parties were much poorer following this unnecessary and, in my mind, unethical delay in finding closure to the new family scenario.

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I told this story to another attorney after all was said and done. This attorney, who knew the mother's attorney on a personal basis, told me that mother's attorney had "failed to plan very well for retirement," as she put it, indicating to me that the attorney intentionally kept cases going and perpetuated conflict between the parties in order to do so, in order to earn more money at a time when the attorney was approaching retirement and was ill-prepared for it.

I would love to be able to say, as mentioned previously, that this was an isolated incident, and that this type of thing does not happen very often in the family law arena. But the truth of the matter is that it happens all the time; *all the time*.

Another similar story involves a mother who decided to leave a marriage that was abusive, but in order to get out of the marriage, she was going to have to leave the children with father for a period of time while she got on her feet. When the mother left the family home, the father involved the older child, who was only four years old at the time, by saying things like, "Tell your whore mother goodbye. Say 'goodbye, whore mommy' to your mother," which the child tearfully repeated. Father then said, "Tell her to have fun sleeping for her supper," which the child again tearfully repeated. Father, of course, meant to imply that mother would have to sleep around in

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order to have food and shelter for herself. Although the child did not know at age four what these things meant, he knew enough to know that things were bad between the parents and mommy was leaving, not knowing if or when she would return. The father continued with a few other such statements, which are too graphic to share here, but which the child dutifully repeated, as his father told him to do.

The amazing thing about this story, however, is that several years later, when the mother now had the children a significant amount of the time, mother was heard encouraging the child to enjoy his time with daddy, even when the child did not want to go. Mother stated, “But daddy wants to spend time with you, too. He loves you too, you know. You’ll have a good time.” When I asked mother how she could rise above the things that had been done to her and encourage time spent with father, the mother stated, “It’s still his father, and it does no good for me to put him down. That only hurts my son and makes him feel badly about himself.” This mother got it!

Regardless of what her ex had said or done to her, this was a mother who recognized that the child needs his father and needs to feel positively about his father, and the mother was able to facilitate the sharing of love and affection between the child and his father.

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And it didn't end there for this mother. As she encouraged the child to enjoy the time he was going to spend with his now-stepmother, I could not help but ask how she was able to uphold her in the middle of all of this, as the father had certainly not behaved the same when it came to the child spending time with his stepfather, whom the father had told the child was the reason the parents did not get back together, because mother had "chosen stepfather over keeping the family together." Mother stated, "He can't have enough adults in his life who love him," speaking of the child benefitting from having loving adults in his life. In this instance, mother was able to love her child more than she disliked the actions of his father, and this is something that many parents are unable to do.

It is important to understand the needs of our children through the divorce and custody resolution process, and their needs will vary from stage to stage in the developmental progression through childhood and adolescence. The following Developmental Stage Chart helps to identify the needs of the children at different ages in the context of their parents' divorce or separation:

The Developmental Stages and Needs of Children

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When parents are divorcing, here are some guiding principles to consider:

- No matter how much pain you are going through yourself, minimize the child/ren's sense of loss.
- Make small changes.
- Make changes gradually.
- Remember that children have not yet developed complete logic. They make conclusions from incomplete information.
- Remember that children are egocentric. They unconsciously believe they cause life's difficulties.
- Remember, also, that you and your children are individuals. What works for other families may not work for you and your family.

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Age Range	Developmental Tasks	Needs	Helpful Parental Behavior
Birth to 2.5 years	Trust and bonding Self-awareness	Love and affection, predictability and consistency	Frequent, regular contact with both parents Follow similar routines Protect baby's "personal environment" Never criticize other parent in front of child Communicate with one another Attend to and respond to baby's cues
Preschool 2.5 to 5 years	Independence Gender identification Sense of identity Language and concept development	Love and affection, predictability and consistency Routines and structure Limits and consequences Freedom to explore safely Playing with other children Intellectual and physical stimulation	Same as for birth to 2.5 Establish family rules as consistently as possible Discuss child's feelings with him or her Check with other caregivers without biasing them to discover child's adjustment
Early elementary 5-8 years	Developing friendships Mastering school skills, social skills, and physical skills	Same as 2.5 to 5 Parent-school interaction Extrafamilial activities Opportunities for success in school, home and extra activities	Same as 2.5 to 5 Keep children out of communication loop Keep open lines of communication between parents, school, sports, and other group leaders Both parents attend child's events Encouraging friendships
Late elementary 9-12 years	Learn logical and problem-solving Develop peer relationships Athletics and other interests gain importance	Continue from above Greater peer contact Guidance in problem-solving Extracurricular activities to discover interests	Same as above Continued communication with others who are involved in child's life Establish activities for personal enrichment with child's input; however, do not over-plan the child's life Encourage continued social development Allow some privacy
Adolescence	Individuation and separation Gender identification Sexual maturation, understanding & awareness Work ethic	Loyal friendships Opportunities to be successful in school, craft, sport, work, etc. Development of social skills in peer interaction & dating relationships	Same as above Less rigid parenting schedules to accommodate friendships & activities Allow child to have greater input into parenting-time plan

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The thing that is important to remember is that all children are different, not only in their ages and levels of maturity, but in regard to such things as resilience, temperament, and other aspects of their personalities, as well as individual traits and characteristics that affect their responses to their parents' divorce or separation. Taking the individual needs of a child into consideration is a must in helping them to cope effectively with the change in their family structure.