Chairman's Message

Editor's Message

Submitting Articles and News

Maximizing Your Chances of a Fee Award in a Family Law Case
   By Brian M. Hirsch

Duck ... Duck ... Goose! Chaotic Applications of De Facto Parenthood Doctrine Without Statutory Guidelines Leave Children Wondering, "Who is 'It' now?"
   By Stephanie S. Reidlinger

Overnight Visitation for Young Children: Pros and Cons
   By Ronald R. Tweel

News Notes

   Glen Allen Family Law Practitioner Recognized For Lifetime Achievement
   Advocate for Women and Children Receives Family Law Service Award
   This Newsletter Now Available Online
   AAML Chapter Sponsors Collaborative Law Training
   2010 Family Law Student Book Award Recipients

Notes on Recent Appellate Cases

Legal Quotation of the Quarter

Board of Governors Roster
OVERNIGHT VISITATION FOR YOUNG CHILDREN: PROS AND CONS

By Ronald R. Tweel, Charlottesville

This article is not intended to demonstrate my creativity, knowledge, or expertise about overnight visitation for young children (0-5); rather it is a compilation and analysis of some of the leading mental health professionals' (MHP's) views on overnight visitation by non-custodial parents (usually fathers). This problem occasionally confronts us in our negotiations, litigation, and discussions with MHPs who are performing custodial evaluations or are treating our clients and/or their children.

The structure of this article is to provide first the current scientific data (but not all of it); thereafter, I will present the conflicting MHP opinions. This should provide counsel with the authoritative information and citations to make an educated argument on behalf of the client, regardless of the side of the argument on which one finds himself/herself in one of those unusual cases where overnight visitation is a disputed issue.

In this article, I will use “positive” for good, favorable, or pro; I use “negative” for bad, unfavorable or con.

I. SCIENTIFIC DATA ON OVERNIGHT VISITATION

In 2004 an article was published by Marsha Kline Pruett, Rachel Ebling, and Glendessa Insabella in the Family Court Review titled “Critical Aspects of Parenting Plans for Young Children” (1). I could be in error but I believe that this is the most recent and most thorough scientific investigation into overnight visitation for young children in a separation/divorce context. Hopefully, this article will summarize their findings in a somewhat different format from the one used by the authors. This is done in order to make it more readable and valuable to laymen family lawyers (that’s us). I will not even attempt to describe their methodology for this study because I would just confuse all of us. What follows are their findings and conclusions.

Divorce is likely to produce ongoing disruption in the nurturing domain at the time of development when the stabilizing aspects of children’s cognitive, social, and emotional worlds are crucial to their well-being. The younger the child the more his/her life is subsumed by the divorce period. How do overnight visits away from the primary caretaker affect the child? This debate was primarily sparked by Goldstein, Solnit, and Freud in Beyond the Best Interest of the Child (2) in 1973 when they opined that the young child...
should remain in the care of the primary caretaker, thus avoiding overnights with the other parent. Research and practice have caused a split among MHPs, which is explored herein.

II. FAMILY RELATIONSHIP FACTORS AND CHILD OUTCOMES

Preliminarily, some methodological information from the 2004 study is needed:

1. 75% of the children experienced overnights
2. 31% of the children experienced one overnight per week and 44% experienced more than one.
3. 59% had 2 predominant caretakers across the week.
4. 33% experienced 3 or more caretakers.
5. 83% had consistent weekly residential schedules.

With this background what was discovered? Two important and critical family relationship variables were examined:

- Negative changes in parent-child relationships.
- Parental conflict.

Mothers and fathers did not always have identical views on these and other issues, and I will endeavor to highlight the differences where I can as set forth in the research. Both parents reported that when parent-child relationships were more negative, the children experienced more:

- Emotional problems
- Social problems
- Externalizing behaviors.

**Mothers** — it caused child thought problems, sleep problems, and higher levels of internalizing behavior.

**PARENTAL CONFLICT:**

**Mothers** — more sleep problems and somatic complaints.
**Fathers** — greater internalizing behavior and destructive/delinquent behavior.

Consequently, these two factors were strong predictors of a wide array of problems and are much more significant than overnight visitation. These and other variables discussed below are what the authors of this study believed to be the primary causative factors for overnight visitation problems, and not the overnight in and of itself.
III. OVERNIGHTS, PARENTING PLAN SCHEDULES, AND CHILD OUTCOMES

A. OVERNIGHTS:

Children who had overnights had fewer problems (crux of the debate).
Mothers — children with overnights had fewer attention problems and thought problems.

B. NUMBER OF CAREGIVERS:

Mothers — children with more caretakers had fewer social problems and fewer attention problems; however, they had more sleep problems and were more anxious/depressed.
Fathers — reported no significant factors with the number of caregivers.

C. SCHEDULE CONSISTENCY

A consistent care-giving arrangement was associated with fewer social problems and less anxiety/depression.
Fathers — reported less internalizing behavior.

IV. EFFECTS OF GENDER AND AGE IN OVERNIGHT OUTCOMES

This data was used to test whether gender and age moderated:

1. Occurrence of overnights.
2. Number of caretakers.
3. Schedule consistency.

A. EFFECT OF GENDER:

1. There is a significant interaction between gender and overnights according to both parents. Girls showed less withdrawn behavior, whereas for boys the relationship was non-significant.

2. “Both Parents” — reported significant interactions between gender and the number of caretakers, i.e., internalizing behavior.

3. Mothers — boys exhibited greater internalizing behaviors as the number of caretakers increased, but not so for girls. Girls had fewer thought problems as number of caretakers increased, but not so for boys.

4. Fathers — the pattern was reversed, i.e., girls showed fewer internalizing problems, but not so for boys. As for interaction between gender and consistency of weekly schedules, there were increased externalizing problems, but boys had fewer externalizing problems.
5. “Summary” — Parents agreed that with more caretakers girls tend to show fewer internalizing problems and boys showed greater internalizing behaviors. The girls were less withdrawn with overnights.

B. EFFECT OF AGE:

1. The 2 groups tested were (0-3) and (4-6). Mothers — significant effect in relations between parenting plan variables and age. Overnights had slightly more impact on 0-3

2. There were significant effects found between age and overnights re:
   - Anxiety/depression
   - Withdrawn behavior
   - Somatic complaints
   - Aggressive behavior.
   - Destructive/delinquent behavior

3. Age, however, did not impact:
   - Attention problems
   - Thought problems

4. For older children, overnights caused fewer:
   - Problem behaviors
   - Withdrawn behaviors
   - Somatic complaints
   - Aggressive behavior
   - Destructive/delinquent behavior
   - Thought problems

5. For younger children (0-3) relationship between overnight and above issues is non-significant.

6. Younger children exhibited greater internalizing behaviors as the number of caregivers increased, but not so for older children.

7. Significant interaction between a child’s age and number of caretakers for:
   - Anxious/depressed behavior
   - Withdrawn behavior
   - Somatic complaints
   - Aggressive behavior
   - Destructive/delinquent behavior
   - Attention problems
8. **Mothers** — older children had fewer problem behavior with more caregivers (see above), but not so for younger children. Younger children had higher anxiety/depressive behavior with more caretakers, but not so for older children. The interaction between age and “schedule consistency” was observed. For older children there were fewer thought problems, but not so for younger children.

9. **Fathers** — significant interaction between age and number of caretakers in predicting “externalizing symptoms”. Younger children had fewer externalizing symptoms w/ more caregivers, but not so for older children.

V. **PREDICTIONS FOR OVERNIGHTS**

A. **Mothers** — Parenting plan variable accounted for variance in 3 types of problem behaviors beyond the impact of age and gender and quality of family relationships:

- Anxious/depressed behavior.
- Social problems.
- Attention problems.

B. **Fathers** — for the same issue they reported:

- Withdrawn behavior.
- Social problems.

C. Overnights as single predictor according to fathers explained variance in social problems, but no other dependent measure was affected.

D. **Number of Caregivers** — as lone predictor it made significant contribution in:

- Social problems
- Attention problems
- Destructive/delinquent behavior

E. **Consistency of Schedule** — significant in predicting:

- Internalizing behavior.
- Social problems.

VI. **CONCLUSIONS**

Overnight visitation plays an important role in child adjustment in some limited respects. It is not overnights alone that is most important. One must take into account the “circumstances that surround the arrangement and basic characteristics of the child”. Problems in parent-child relationships are most powerful indices of child problem behaviors. Parental conflict is a strong second.
The results indicated that children with overnight visitation and those with more caregivers had social problems, whereas children with inconsistent schedules had more social problems. Therefore, inconsistent schedules and numbers of caregivers “may” create problems.

Mothers — children with overnights and more caretakers had fewer attention problems, but more caretakers was also associated with sleep disturbance and depression/anxiety.

Both Parents — children with inconsistent schedules had more internalizing symptoms.

Girls — Because they develop verbal and social skills at an earlier age, they may be better able to parlay stresses and joys of overnights and multiple caretakers into a positive situation. Girls are better able at an earlier age to ascertain and state their needs and wishes.

Boys — Parenting arrangements “may” require more of them emotionally and tap into their vulnerability.

Paternal Role — The father can orient his children toward a wider social world and its expectations of them. Overnights offer opportunities for “adaption” to differing household routines, differing parenting styles around bedtime, meals, etc, that may help foster the external world orientation for daughters. Therefore, the overnight visit alone is not of great concern to some MHP.

Prior research has focused on “attachment” of children to parents after divorce (see below), whereas this research focused on “behaviors” as indices of children’s adjustment. However, these MHP believe that attachment represents but one aspect of the relationship between parent and child which changes and evolves during stressful family transitions. They focused on the balance of developmental opportunities and risks that shared parenting and dual homes present and how best to help parents introduce and manage these structural changes.

VII. OVERNIGHTS: A SOMEWHAT NEGATIVE VIEW

This viewpoint generally comes from the MHP who focus on attachment theory (3). The leading proponents of this view are Judith Solomon, Reynep Biringen and Carol George (4). They read the same literature as did Marsha Kline Pruett, et al., but arrived at different conclusions because they have a different psychological orientation (voir dire questions for all MHP). This should not be surprising, but it is still problematic. Is one group right and the other group wrong? Can their opinions be reconciled? That is beyond the scope of this article but is deserving of analysis.

What are the basics of attachment theory? Briefly, and without doing it justice, it was started by an English psychologist named John Bowlby and refined by Mary Main, Mary Ainsworth and others (Robert Marvin at U. Va.). Attachment is believed to constitute an essential building block for the young child’s social and emotional development. Attachment bonds develop from familiarity with particular individuals in the context of predictable interactions.
Differences in the “security” of attachment are captured in attachment classifications. These patterns reflect the child’s adaption to differences in caregiver sensitivity:

1. **Secure attachment** — the caregiver is sensitive and responsive over time. The infant shows that he/she can readily use that caregiver as a haven of safety when distressed, and as a secure base from which to explore the wider environment.

2. **Insecure/avoidant attachment** — the caregiver is cool and distant and the infant is likely to show insecure and avoidant interaction.

3. **Insecure/ambivalent attachment** — caregiver is inconsistently available and tends to emphasize negative “affect” and dependency in interaction.

4. **Disorganized/disoriented attachment** — infant is unable to form an organized view of the relationship with the attachment figure.

These MHPs believe that most infants and young children form an attachment to the mother, be it secure or insecure. Although the quality of the mother-infant interaction largely determines the attachment category, there is an attachment whenever the child has spent a reasonable amount of time in the care of the mother. They cite several studies that tend to show that the time father spends with his infant is unrelated to his child’s attachment security with him. Not only the time father spends with the infant, but also the extent to which the father engages in actual caregiving, are unrelated to the security of the infant’s attachment to him. Further, paternal sensitivity is not as predictive of father-infant attachment as is maternal sensitivity.

This underlying psychological reasoning no doubt gives one an insight as to how they view overnights with fathers. The basics are:

1. Fewer, rather than more, transitions are best for young children.

2. Overnights visitations away from the mother can be harmful to the attachment for young children.

3. In times of stress infants prefer the primary caregiver.

4. Repeated overnight separations present greater challenge to development of organized primary attachments.

5. In high conflict separations, frequent transitions can exacerbate interparental conflict.

6. Neither overnights access nor frequent transitions has a positive effect on father-infant attachment.

7. If parental conflict is high and parent communication is low, overnight separations from the primary caregiver should be avoided until age 3.
VIII. OVERNIGHTS: A MORE POSITIVE VIEW

Under proper circumstances there are numerous well known MHPs who have written positively about overnights visitation for young children (Michael Lamb and Joan Kelly; Richard Warshak; Jonathan W. Gould and Philip Stahl; Robert Emery, etc.) (5). Some of their thinking will be summarized below. There is a veritable “professional dogfight” with other noted MHP which was described above. In brief, the positive view:

1. Most infants form attachments to both parents at roughly the same age. Most infants in the first year of life develop preferential relationships with the primary care providers, but the amount of time that infants spend with their two parents does not affect the security of either relationship.

2. The quality of parental behavior is associated with the security of infant-parent attachment. However, mothers do have an advantage. Children are better adjusted when they enjoy warm positive relationships with two actively involved parents.

3. Marital conflict is harmful to children and affects behavior of both mother and father, including parental behavior which has an impact on the attachment to the child.

4. When parents separate the best interest of children is served by: a) avoiding psychological separation from either parent; b) maintaining positive relationship with both parents. To keep fathers involved they need to feel that their status as parents is recognized and be able to play active roles in care, supervision and guidance of their children.

5. Both parents must have adequate parenting skills or the capacity to learn them.

6. Child adjustment is enhanced if both parents are involved in:

   - Discipline and limit-setting
   - Recreation
   - Feeding
   - Supervision of contact with peers
   - Homework
   - Bathing
   - Bedtime stories
   - Putting to bed
   - Responding to night terrors
   - Getting child up, fed and dressed

OVERNIGHTS PROVIDE THESE OPPORTUNITIES

7. Overnight separation strengthens rather than harms attachment relationships. Brief regular separations from mothers do not foster insecure attachment to mother.

8. The above contrary view provides no scientific data to support it re overnights.
9. If it is harmful for a child to be away from the mother as an attachment figure, the same is true for fathers. Even if fathers are “secondary” attachment figures, the attachment is meaningful to the child.

10. When setting up an overnight visitation, one must take into consideration the following:

- Look at the parenting history of the child. If there has been joint caretaking, has the child shown little, if any, difficulty? Have both parents been actively involved with the child?

- Examine the attachment history between the child and each parent. Explore the parenting skills of each parent, both positive and negative.

- What are the different strengths and weaknesses of each parent? Are they complimentary?

- What is the temperament of the child? Does this child need more stability and consistency than other children?

- How well do the parents communicate? It is easier for overnights if they do this well, regardless of the form or method of the communication.

**CONCLUSION**

There is none. It is up to you.

**ENDNOTES**


