
Psychology and Family Law

Parents Should Think Twice Before Engaging in a Custody Battle Over Their Children

By Mark Bear, Esq.



When parents engage in custody battles over their children, they do so under the guise that they are fighting for their children's best interests, but is that generally true? Please don't misunderstand, I am not suggesting that parents don't sincerely *believe* that what they want is in the best interests of their children. I am, however, suggesting that not all *beliefs* are fact-based, regardless of how sincerely held such beliefs may be. According to legal expert Bill Eddy, "Much of today's legal disputes are about what I call Emotional Facts--emotionally-generated false information accepted as true and appearing to require emergency legal action."

Allow me to share a comment made by Frank P. Cervone, Esq. in a presentation at the American Bar Association this year, as part of a program titled, "The Preferences and Voices of Children--How Do You Protect the Child?" He said, "In *the adversarial construct*, an attorney's job is to advance their client's position--not to advance what is in the best interest of the child, which is the role of the judge." (Mind you, the exact same thing can be said for those parents who opt to represent themselves, not using an attorney.)

Not a day goes by in which at least one potential client doesn't contact me because they are looking to "get full custody" of their child or children. It's obvious that these folks are attempting to obtain 100% custody, as well as sole decision making authority. In essence, they want to eliminate the other parent from the child's life. Usually, the open question is, how can that be in the children's best interests?

While both parents battle each other, they spend their child's college tuition, exacerbate the conflict, increase the distrust between them, destroy their ability to effectively co-parent, and ultimately harm the child. As Mr. Cervone so astutely pointed out, when parents act in such a manner, the only person involved in the case ultimately responsible for assessing what's actually in the child's best interest is the judge. Furthermore, the judge has such limited knowledge of the family that his or her subjective determination may or

may not actually *be* in the best interest of the child.

Not only do judges handle a great many cases, and therefore not have the time or ability to develop a clear understanding of any given family, but their decisions are only based upon the "*legally relevant and admissible evidence*" submitted to the court. In other words, it is the job of a judge or jury to determine the facts based upon conflicting evidence, and then to apply the law to the facts. Significantly, such factual findings are based only upon the "legally relevant and admissible evidence" before them, *not all the facts*. Yet facts not admissible as evidence might be crucial to the child or children's best interests.

The job of an attorney is not to ferret out the truth, but to do everything legally possible to have facts that are *harmful to their client* excluded from evidence through legal technicalities, if at all possible, or to otherwise spin the evidence. Attorneys are gladiators who are brought on to effectuate a "win" for their client. Winning is not about the truth, even though people tend to believe otherwise. The law is not about right and wrong--It is about winning and losing.

As I have said before, it is a grave mistake to confuse "legal justice" with actual "justice."

In any event, Connecticut attorney and filmmaker Larry Sarezky has produced an award winning film about custody battles titled "Talk to Strangers," which explores the negative impact on children of the custody evaluation process, from the children's perspective. I am absolutely thrilled to see this film about child custody disputes being distributed by the American Academy of Matrimonial Attorneys. Sadly however, parents will likely continue ignoring such information because they all *believe* that what they want is in the "best interests of their children," no matter what the cost of the fight to any involved. The emotions which lead to these convictions are complex, and more in the domain of psychology than law.

For what it's worth, and even though I believe it will continue to fall upon deaf ears, parents, I would think twice before engaging in a custody battle over your children! Far better to work through the decision process outside the court system, and perhaps utilize a psychologist or professional mediator.

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