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Maintaining a Child Focused Perspective

When engaged in any activity whether it be as simple as driving to work or planning for retirement we envision an objective – set a goal. It is important that the pursuit of that objective not be blind to conditions that may necessarily alter the course we undertake. That is, to use the oft overused cliché - expect the unexpected. Equally important is that our incidental objectives are consistent with our greater life objectives. Thus ensuring that your immediate objectives don't undermine the long-term. It is with this admonition that I provide some guidance on maintaining a child-focused perspective.

Maintaining a child-focused perspective is not limited to concentrating on the interest of or effect on the children with respect to your actions. It must also include looking at the adult world through the lens of children across the age spectrum. In this presentation I will be focusing primarily on the child-focused perspective as it relates to parental separation, absence, and discord.

From birth children rely upon their parents for everything from basic needs to social conditioning. A more thorough review can be gleaned from the observations of Maslow. But when this supportive structure becomes broken it can have a significant detrimental impact upon the child. A twenty-five year longitudinal study of the effects of divorce on children was undertaken by Judith Wallerstein^[fn1]. Much of what I will say about that will reflect a composite of both her findings, my observations and the opinions that judges have expressed to me.

The initial response, and often ongoing for years, of children to parental separation is a quest for reunification. This desire has been demonstrated across a wide array of familial settings including those in which the children observed repeated acts of Domestic Violence between the parents. So it is necessary when going forward that we understand that children are reticent to change in the familial structure regardless of the negative impact that may have which we see from the adult perspective, but to the children, is a lesser negative than the separation.

The adversarial forum of finalizing parental separation and matters of responsibilities and custody of the children is an improper venue. But as it is what has been established we must work within that and mold our actions to conformity therewith.

Parents, often guided by attorneys, are quick to pursue 'their rights' and establish a strong legal position early in the process. What this necessarily entails is that initial efforts fall within the realm of “digging up dirt” on the other parent as well as establishing a bulwark impeding Shared Parenting. For some parents the separation is perfunctory and they notice little difference in their interactions or parenting while for others it spirals into a downward series of attacks and hostilities. Neither should seek the bulk of our attention or be ignored. In addition some parents may undertake a protector role in the parent-child relationship. The implicit effect is often that of saving the child from the other parent – alienating the child from that “dangerous” parent.

While it may seem great when parents reach agreement on the issues and

communicate effectively this does not mean that their resolution to their problem has been child-focused. To the child it is often his problem and is more likely to be internalized inversely correlated to age.

This is not to say that agreements cannot or should not be reached independent of judicial interpretation. However, no agreement is binding upon the court as the court must find custody and parenting time agreements to be in the best interest of the child [fn2]. This is not an undertaking that judicial officers embrace. Many perhaps fear to tread into usurping the wishes of the parents. Judges, knowing that they have no familial connection to the children, have not observed their development nor reactions to parental conflict, and don't possess a lifetime of love and affection for the child, welcome parental agreements.

But as noted, the trial courts cannot simply wash their hands of making these “Solomon-like decisions in complex and sensitive matters” just because the parents reach an accord[fn3]. As one judge found, Indiana law “expressly encourages” divorcing spouses to reach agreements thus, “the provisions of the Agreement are automatic and have taken effect and the primary physical custodian has changed from Mother to Father, as provided in the Agreement, and [the] trial court could not rewrite the terms and impose a different result.” But the Indiana Court of Appeals found otherwise[fn4].

As another judge has expressed, “Things that happen in the past, that’s in the past. Let’s get on with living our lives in the future with this child as a common denominator in our lives and how we’re going to parent this child, raise [him] to be a productive young . . . human.” That is the essence of maintaining a child-focused perspective – the long-term well-being of the child.

And as children grow toward maturing into being that productive human it is essential that child custody and parenting time orders be reviewed to ensure that the needs of the child are being met. From the adult perspective the divorce is final and life moves on. New routines are established and followed, new adults may be brought into the picture as subsequent spouses, and a settling of emotions may lead to complacency about the effects of the dissolution. The child though, at any age, is still developing. His or her needs are changing with age and that may impact parenting time arrangements. A schedule for an elementary school child which alternates weeks or provides for shifting weekday evenings may have been satisfying to all parties and developmentally appropriate – at that time. The new opportunities and constraints that are a part of the typical high school experiences may conflict with an existing parenting time order.

Parents need to be attuned to the wishes of the child. Like Wallerstein, I have “rarely met a child who felt best served by the judicial system.” “The visiting schedule, which the children deem arbitrary and oppressive, is made without their wishes and interest in mind.” As children became more active outside the home “the court-ordered visiting that worked when they were little became a major burden.”[fn5]

It is essential that all parties keep a child focused perspective when making decisions regarding the care, custody and control of child subjects of custody litigation.

[fn1] Judith S Wallerstein et al, “The Unexpected Legacy of Divorce” Hyperion (2000)

[fn2] While parents may craft their own agreements the court may reject an agreement if it finds that the agreement is not in the “best interest of the child.” IC 31-17-2-8. “No agreement between parties that affects custody, regardless of whether it is in the first instance or upon modification, is automatically binding upon the trial court.” In *In Re Paternity of K.J.L.*, 725 N.E.2d 155, 158 (Ind. Ct. App. 2000)

[fn3] *Speaker v. Speaker*, 759 N.E.2d 1174, 1179 (Ind. Ct. App. 2001)

[fn4] *Mundon v. Mundon*, 703 N.E.2d 1130, 1134 (Ind. Ct. App. 1999)

[fn5] Judith S Wallerstein et al, *Two Wrongs Don't Make a Right*, p181 “The Unexpected Legacy of Divorce” Hyperion (2000)