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TESTIMONY TO SENATE JUDICIARY COMMITTEE
March 4, 2019

RE: Opposing Senate Bill 157: An act creating a presumption of equal parenting time as part of temporary orders.

Chair Sen. Rick Wilborn, Senate Judiciary Committee:

Please consider this written testimony as opposition to Senate Bill 157 because I view the proposal of a presumption of equal parenting time for temporary orders in child custody cases as inconsistent with the best interests of children.

My name is Milfred D. Dale, Ph.D., J.D. I have been a licensed Ph.D. psychologist in Kansas since 1989. I have also been a licensed attorney in Kansas since 2009. My dual training as a psychologist and attorney has allowed me to serve children and families in numerous different ways. As a psychologist, I have treated: children of divorce – both boys and girls; mothers, fathers, and step-parents in divorce situations. I have performed couples therapy, cooperative parenting therapy, and family therapy in divorce cases. For eleven years, I co-taught a psycho-educational class for families in high conflict parents and their children in Shawnee County, Kansas. I have also conducted evaluations in contested custody matters. As an attorney, I have mediated and litigated custody disputes in Kansas courts. I have also served as a domestic case manager in high conflict custody cases. And finally, I have presented in Kansas and in numerous forums across the United States and have written extensively about children and families of divorce and parental separation.

"Don't Forget the Children." The best interests of the child standard in child custody and the requirement for individualized decision making is the most powerful protection children have during periods when the conflicts and decisions of their parents place them at risk.¹ We should pay close attention to the notion that we should not forget that children are especially vulnerable when parents separate and divorce. This is a period of heightened conflict and risk. The period when separations are occurring is an emotional one often fraught with a myriad of emotions for all involved. Anger, a sense of betrayal, or a lack of trust are a few of the many emotions making this period especially difficult for the parties. In instances of abuse or domestic violence, this period is more dangerous and carries heightened risks for increases rather than decreases in violence. Bullying, coercive control, and power dynamics are often part of the disagreements that led to the divorce and make

¹ Milfred D. Dale, *Don't Forget the Children: Court Protection from Parental Conflict is in the Best Interests of Children*, 52(4) FAM. CT. REV. 648 (2014).

finding solutions more difficult. Imposing an equal time parenting plan on children during one of the most vulnerable times of their lives is not in the best interests of children. It instead places them at heightened risk for behavioral, emotional, and psychological problems and stresses, particularly when the dispute of the parents involves conflict, disagreement, and abuse or violence.

The available social science research does not support equal parenting time as best for all children. Since testifying last year before the Kansas House Judiciary Committee, I have systematically reviewed the claims by the father's rights and equal parenting presumption advocates. These claims have included the impossible notion that the research demonstrates that joint physical custody "causes" positive child adjustment. This is simply not true.

The research does show that children of divorce or parental separation do better when both parents are involved. It does show that the way children are treated by their parents matters and that authoritative parenting, where parents are involved in their children's lives and have positive relationships, is good for children. But the research also shows that not all parents are good parents, not all of them have been involved with their children in positive ways, and not all parents can relate to their children in ways that benefit the children. In short, parents can positively influence their children, but whether they do is a fact-specific issue.² Social science research continues to show that children of divorce and separated parents often score lower (as a group) than children of married parents or intact families.

Most child custody experts believe shared or equal parenting time approaches have their place and should be considered under the right circumstances. In 2013, I participated with more than thirty other child custody experts in a national Think Tank About Shared Parenting sponsored by the Association of Family and Conciliation Courts (AFCC). This group spent three days extensively reviewing the scientific literature, the social policy debates, and the needs of children and families in relation to shared parenting. It issued two papers about shared parenting. Please note, the term "shared parenting" in the professional literature references parenting plans where the nonresidential parent has the child at least 35% of the time. SB 157 is talking about "equal time." In summarizing the literature on shared parenting time, this Think Tank provided five conclusions:³

1. The most effective decision making about parenting time after separation is inescapably case specific.
2. Statutory presumptions prescribing specific allocations of shared parenting time are unsupportable because no prescription will fit all, or even the majority of, families' particular circumstances.
3. Social science research strongly supports shared parenting (i.e., frequent, continuing,

² Milfred D. Dale, *Of course, quantity AND quality of nonresidential father involvement matters ... as part of every individualized best interests of the child determination: Commentary on Adamsons 2018 article*, J. CHILD CUSTODY (2019).

³ Marsha Kline Pruett & Herbie DiFonzo, *Closing the Gap: Research, Policy, Practice, and Shared Parenting*, 52(2) FAM. CT. REV. 152 (2014); Volume 52, Issue 2 of the 2014 Family Court Review is devoted to the debate about the drawbacks, effects, and impacts of shared parenting.

- and meaningful contact) when both parents agree to it. There is also empirical support for shared parenting under broader conditions (e.g., some forms of parental conflict or disagreement) for children of school age or older.
4. There is no “one-size-fits-all” shared parenting time even for the most vulnerable of families. [There is no conclusive research evidence about the impact of overnights on long term parent-child relationships and child well-being. Shared parenting in the midst of high conflict is generally not in the children’s best interests. And family violence usually precludes shared parenting.].
 5. A majority of the Think Tank participants supported a presumption of joint decision making, while a substantial minority espoused a case-by-case approach.

One expert commenter wrote against shared custody presumptions, particularly when parents could not resolve things themselves, noting:

Entering a courthouse to ask a judge to decide a parenting plan for children communicates an inability for one or both parents to work together in the best interests of children. . . . [B]y the time most parents face a judge, one can safely assume that they have had access to many friends, family members, counselors, lawyers, parent education programs, or mediators who have told them to work out their differences. Countless people would have told them that, while they are separating as intimate partners, they will be parents forever. Many people have told them that conflict hurts children. By this stage of appearing in court, the average parent should be starting to appreciate the emotional and financial costs of litigation.⁴

There is research that parents who choose to do shared parenting are healthier (and so are their children)⁵ and wealthier,⁶ but this data does not demonstrate shared parenting “causes” or “produces” healthier children. The research does reflect that children do better in shared parenting plans when the parents are more child-centered and when the parents are capable and willing to make the extra effort the arrangement requires.⁷

Shared and equal time parenting schedules create high demands for high levels of parental engagement, when the research shows that as many as 40 percent of divorced families eventually settle into parallel parenting arrangements where parents have little interaction with each other.⁸ Most estimate that between 25 and 30 percent of families accomplish truly engaged and shared parenting. The remaining 20 to 25 percent have difficulties with varying levels of parental conflict, abuse, alienation, mental illness, and

⁴ Peter Jaffe, *A Presumption Against Shared Parenting for Family Court Litigants*, 52 FAM. CT. REV. 187 (2014).

⁵ Linda Nielson, *Joint Versus Sole Physical Custody: Outcomes for Children Independent of Family Income and Parental Conflict*, J. CHILD CUSTODY 1 (2018); Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16(1) J. FAM. PSYCHOL. 91 (2002).

⁶ Marygold S. Melli & Patricia R. Brown, *Exploring a New Family Form – The Shared Time Family*, 22 INT’L J.L. POL’Y 231 (2008).

⁷ CHRISTY M. BUCHANAN, ELEANOR E. MACCOBY & SANFORD M. DORNBUSH, *ADOLESCENTS AFTER DIVORCE* (1996).

⁸ Matthew J. Sullivan, *Coparenting and the Parenting Coordination Process*, 5(1) J. CHILD CUSTODY 4 (2008).

substance abuse. There is also the unfortunate reality that many fathers have no contact with their children.⁹

But the most important rationale against shared parenting is that it shifts the focus from meeting the children's needs to the desires and rights of the parents. The strongest argument for individualized parenting plans for every child is that

... each recommendation, each decision made, considers the individual child's developmental and psychological needs. Rather than focusing on parental demands, societal stereotypes, cultural tradition, or legal precedent, the best interest standard asks the decision makers to consider what this child needs at this point in time, given this family and its changed family structure. There is no other way to address a child's best interest. The best interest standard represents a willingness on the part of the court and the law to consider children on a case-by-case basis rather than adjudicating children as a class or a homogeneous grouping with identical needs and situations. Even though time-consuming, it is society's way of acknowledging that children's needs are important and unique.¹⁰¹¹

In 2018, I wrote about the importance of quantity and quality of nonresidential father involvement in response to an article that proposed shared or equal parenting time. The title of this article is: "Of course, quantity AND quality of nonresidential father involvement matters ... as part of every individualized best interests of the child determination: Commentary on Adamsons 2018 Article." I noted that Justice Sandra Day O'Connor famously noted in *Troxel v. Granville*, a famous case about parental rights to the care, custody and control of children, that:

"The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household."¹¹

My response was that, "If there are no 'average' fathers and no 'average' families, we should remain committed to the idea that there are no 'average' children. As the standard for child custody issues, the best interests of the child embraces the notion that there is no average child(.)"¹²

I support the individualized decision-making found in the best interests of the child standard as what is best for children. This should be the criteria throughout the process. It is the social policy that will best serve children and families. For the reasons above, I oppose the equal parenting premise of Senate Bill 157 and advocate against its passage.

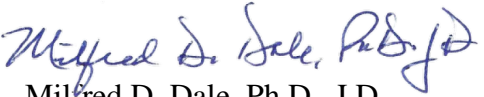
⁹ For a review of living arrangements and father involvement, see Pew Research Center website: <http://www.pewsocialtrends.org/2011/06/15/chapter-1-living-arrangements-and-father-involvement/>.

¹⁰ Joan B. Kelly, *The Best Interests of the Child: A Concept in Search of Meaning*, 35(4) Ass'n Fam. Concil. Cts. 377, 385 (1997).

¹¹ *Troxel v. Granville*, 530 U.S. 57, 63 (2000).

¹² Milfred D. Dale, *Of course, quantity AND quality of nonresidential father involvement matters ... as part of every individualized best interests of the child determination: Commentary on Adamsons 2018 article*, J. CHILD CUSTODY (2019).

Respectfully submitted,


Milfred D. Dale, Ph.D., J.D.



Of course, quantity AND quality of nonresidential father involvement matters ... as part of every individualized best interests of the child determination: Commentary on Adamsons 2018 article

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ABSTRACT

Adamsons uses two prominent meta-analyses to argue that “time (of father involvement) is a necessary but not sufficient factor” in predicting child adjustment after parental separation. Quantity of contact between nonresidential parents and their children does not, by itself, predict child adjustment or well-being. Adamsons points out the ingredients for positive child adjustment include father involvement in activities, forming quality father–child relationships, and authoritative parenting. She also notes there are instances when contact can be negative and adversely impact the child’s adjustment. Scholars and practitioners should not be surprised by these findings, which illustrate the complexity of the task of deciding what is best for children and the need for individualized determinations. Adamsons provides a cogent argument against making decisions based on “averages” and notes the need to consider moderating variables when predicting child adjustment. She easily defeats one strawman presumption argument (e.g., time does not matter), then seems to miss how that the logic of her arguments also undermines the argument for an equal time presumption. The individualized best interests of the child standard is never mentioned in her article, but it remains the approach that best fits the task and the data.

KEYWORDS

Child custody; joint custody; sole custody; presumptions; meta-analysis; father involvement

In *Quantity versus Quality of Nonresident Father Involvement: Deconstructing the Argument that Quantity Doesn’t Matter* (Adamsons, 2018), Adamsons uses the findings of two prominent meta-analyses to argue child well-being requires consideration of both the quantity and quality of nonresident father involvement. She notes clear findings showing children substantially benefit when nonresident fathers are involved with their children in positive ways. In the first meta-analysis, Amato and Gilbreth (1999) found the effect sizes for authoritative parenting and child support payments were associated with child well-being, but frequency of contact was not. In the second meta-analysis, Adamsons and Johnson

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found father involvement in activities and father–child relationship quality were positively associated with overall child well-being, but financial provision and contact were not (Adamsons & Johnson, 2013). Adamsons also notes a certain amount of parenting time, above a minimum of one night per week and every other weekend, is necessary for the kinds of beneficial parenting fathers can provide their children. She concludes both meta-analyses “confirmed that nonresident fathers can *and do* positively influence their children, but that contact in and of itself does little to benefit children” (Adamsons, 2018, p. 30). I agree fathers *can* positively influence their children, but whether they *do* is a fact-specific issue, a fact Adamsons first clearly recognizes but then minimizes in her conclusion.

Adamsons’ article challenges what she believes is an inappropriate interpretation of the data included in the two meta-analyses. She views it as inaccurate to interpret the available data from these two meta-analyses as supporting a view that “fathers do not need time with their children, or at least, that the amount of time spent is irrelevant” (Adamsons, 2018, p. 30). She views this data as insufficient to support any social policy against joint physical custody, noting “Scholars, policymakers, and practitioners must be vigilant that they do not fall into the trap of misinterpreting average effects in the presence of substantial variation” (Adamsons, 2018, p. 33). She concludes, “When it is known that father-child contact is positive under some conditions and negative under others, to only conclude and report that, on average, father contact is not important for children’s well-being, is both inaccurate and misleading” (Adamsons, 2018, p. 30). I agree.

The gravamen for Adamsons’ (2018) argument against using “averages” and group aggregate research to determine either policy or the outcome of any case should be familiar to child custody professionals. It is an argument for individualized determinations.

For example, Adamsons (2018) notes,

Although it is true that, on average, father contact is not associated with child well-being, taking the average as representative of the whole, however, epitomizes the ecological fallacy of assuming all individual constituents of a group exhibit the group’s average qualities. The findings of both sets of heterogeneity analyses demonstrate the invalidity of this conclusion. In reality, *some* kinds of father contact appear to be helpful, whereas other kinds are irrelevant or problematic, and possibly in differential ways depending upon the aspect of child well-being being examined. This is where quantity and quality become intertwined and difficult to examine in isolation from one another (*italics in original*) (p. 30).

I agree with Adamsons (2018) when she advocates for the need to investigate when and how contact is beneficial:

[I]t should not be assumed that fathers do not need time with their children or that the amount of time spent does not matter, but rather, we should investigate and

outline the conditions under which time spent is beneficial or harmful and the types of activities in which fathers should engage during the time they have with their children (p. 31).

While noting the benefits for children of positive fathering behaviors, Adamsons (2018) also notes the possibility that certain fathering behaviors can have an adverse effect on a child:

One can easily imagine a scenario where a nonresident father spends a great deal of time with his child, but exhibits poor parenting strategies, is not close to the child, demonstrates little warmth, is neglectful, and engaged in harsh discipline practices. Such fathering behaviors likely would have an adverse impact on that child's well-being, and time spent with this father would be a negative thing (p. 30–31).

However, Adamsons (2018) concludes, “Fathers should be given equal parenting time and encouraged to spend that time with their children in a variety of positive ways” (p. 32). I disagree. Adamsons does not remain faithful to the logic of her own arguments and statements against using “averages” or taking into account “known” differences in the impact of fathers on children's well-being. After making several arguments against a presumption or social policy that is unsupported by the available research data, Adamsons argues for a presumption or social policy that is again unsupported by the available research data. In these situations, the underlying structure of logic used against a disfavored or unattractive presumption (e.g., time does not matter) cannot be abandoned as if it did not also apply to a proposed replacement presumption (e.g., fathers should get equal time). Adamsons argues that “time is a necessary but not sufficient factor for positive father involvement,” (p. 31) a truism impossible to rebut but of minimal practical utility unless one knows the context within which it must be applied.

Adamsons (2018) notes that, “Authoritative parenting, feelings of closeness and high-quality father–child relationships, involvement in children's activities, and maintaining multiple forms of involvement are things that require time with children to achieve” (p. 31). This statement is certainly true, but it too must be placed in context. The importance of the amount and frequency of father involvement depends upon, among other things, individual circumstance, context, history, and goals or objectives. Differing amounts of parent–child contact would be recommended for different goals or objectives. For example, is the case-question one of establishing, reestablishing, maintaining, or improving the parent–child relationship? Is the history of the parent–child relationship positive or negative? Are there case-specific facts (e.g., adverse events) or factors (e.g., age or special needs of the child) influencing any time schedule? What are the practical considerations around contact? An endless number of factual permutations can easily be constructed.

The term “best interests of the child” does not appear in the article, even though it is the legal standard for adjudication of custody disputes in every American jurisdiction (Elrod & Dale, 2008) and in most instances around the world (UN General Assembly, 1989). The best “interests of the child” in child custody cases is something to be decided separately for each individual child. Defining the “average” American family is impossible, a fact that reinforces Adamsons comments regarding the fallacy of “taking the average as representative of the whole” (Adamsons, 2018, p. 30). In *Troxel v. Granville*, Justice Sandra Day O’Connor wrote, “The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household” (*Troxel v. Granville*, 530 U.S. 57, 63, 2000). If there are no “average” fathers and no “average” families, we should remain committed to the idea there are no “average” children. As the standard for child custody issues, the best interests of the child embraces the notion there is no “average” child with the guarantee, at least in principle, that

... each recommendation, each decision made, considers the individual child’s developmental and psychological needs. Rather than focusing on parental demands, societal stereotypes, cultural tradition, or legal precedent, the best interests standard asks the decision makers to consider what this child needs at this point in time, given this family and its changed family structure. There is no other way to address a child’s best interest. The best interest standard represents a willingness on the part of the court and the law to consider children on a case-by-case basis rather than adjudicating children as a class or a homogeneous grouping with identical needs and situations (Kelly, 1997, p. 385).

Conclusion

Ironically, Adamsons (2018) provides a cogent argument about the need for the individualized best interests of the child standard in child custody. Unfortunately, she does not mention this as a logical conclusion from her article. Group aggregate research can inform decision-making processes in individual cases, but it cannot answer the question of what is best for any individual child in any situation. Nor should weak and limited group aggregate research findings get molded into presumptions for broad, indiscriminate application, either for or against any parent. I do agree with Adamsons that emphasizing only the quantity of father-child contact is incomplete and misguided and that “encouraging and tracking the quality and types of father involvement and the overall father-child relationship” are central issues for child well-being (Adamsons, 2018, p. 33). It is my opinion, however, that these issues already fit within the individual best interests of the child analysis and there are numerous other factors deserving of consideration. I also believe the research data does not support

either of the presumptions discussed in the article and that the notion of a presumption of equal time for both parents, while a blessing for some, would be a curse for others.

Disclosure statement

The author of this article has no financial interest or personal relationship that might bias the work being submitted.

Ethical standards and informed consent

This was a review of an article and did not involve human subjects.

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