Parental Gatekeeping in Custody Disputes: Mutual Parental Support in Divorce

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A common statutory best interest factor in many states concerns the issue of how well each parent can support the other parent's relationship with the child, or to promote the continuing involvement with the child.[1] This factor is found in the language in legislative declarations[2] on the value assigned to both parents being substantially involved with the children following separation and divorce. Practitioners know that mutual support often becomes the focal issue in litigated cases as parents in conflict often make allegations against each other for not being supportive, impeding parenting time, or even trying to "alienate" the child. When there is evidence of an unsupportive mother, for instance, who is a strong candidate to be the custodial parent it may open the door for the father to be awarded substantial or even equal parenting time. In this case, the mother's attorney may assert there were sound and rational reasons for her not to be very supportive, for example that the father abused alcohol, used harsh discipline, or was a perpetrator of intimate partner violence.

With parental misconduct the child may experience "negative social capital."

Support for the other parent-child relationship (i.e., SOPCR) often is weighted heavily in custodial evaluations by the court-appointed expert in the role of custody or parental responsibility evaluator. Evaluators should be familiar with the research literature that shows the contributions of noncustodial parents/fathers to children's adjustment. Courts, then, may end up ordering a parenting plan that is responsive to evidence on this important factor. If a custodial/residential parent is designated, it may be the one the court believes will be more supportive of the other parent and more likely to facilitate the other parent's involvement with the child.

RESEARCH ON PARENT INVOLVEMENT AND SOCIAL CAPITAL

Three decades of research on the effects of divorce on children provides scientific support for the social policy of encouraging meaningful parental involvement by both parents. Early research concluded that frequency of a child's contact with

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nonresidential fathers following divorce did not seem to affect the child's adjustment.[3] Hence, a limited about of parenting time for fathers, e.g., every other weekend and no overnights until 3 years old, seemed not only justified but supported by science.[4] However, early research was methodologically flawed due to reliance on only the reports of mothers in survey studies. Subsequent high quality research demonstrated the importance of fathers for child outcomes[5] and that children from divorced families showed the best long-term development when there had been quality relationships with both parents.[6]

There is not any research on paternal gatekeeping.

A general and compelling explanation for why children of divorce do better with regular and meaningful involvement by both parents comes from the concept of social capital.[7] It is defined as the psychosocial resources that emanate from the important relationships in the child's life – parents, grandparents, siblings, teachers, friends, coaches. It takes the form of teaching values and skills, trust, role models, nurturance, etc. The concept of social capital is used widely in the social sciences to explain a wide range of behavioral outcomes and quality of life.[8] Researchers have pointed to differences in the quality and amount of social capital available to children in explaining why some children of divorce show better adjustment than others.[9] Parental social capital is viewed as the richest and most important source for children's long-term development assuming there are two competent and committed parents. Children also benefit from resources associated with other important relationships: grandparents, siblings, peers, and teachers. When there has been parental misconduct (e.g., substance abuse, harsh parenting, major mental disorder, alienation, partner violence) then the child may encounter "negative social capital" so that a parent's access to the child needs to limited.

PARENTAL GATEKEEPING

This article introduces the concept of parental gatekeeping as a useful tool for courts and parenting evaluators to understand the process of coparenting and mutual support when the facts show there is a pattern of either positive or negative coparenting, or functional vs. dysfunctional coparenting relationships. In custody litigation, coparenting is more likely to be dysfunctional than functional, and the cause may lie mostly with one parent in a high conflict divorce.[10] Gatekeeping concerns how parents try to exert influence over the other parent's involvement with the child, or the flow of parental resources and social capital to that child. My experience as an evaluator is that attorneys and judges find the concept of gatekeeping very useful in trying to understand the behaviors of parents who cannot agree on a parenting plan and end up in court. In litigation, it is common for attorneys to question the expert, during direct and cross-examination, about how supportive each parent is of the other. Gatekeeping helps frame this analysis and testimony for the court, and once introduced by the expert as educational testimony, may become the primary focus of direct and cross-examination. For example, in a relocation case the court will want to know how supportive the motivated the moving/custodial parent will be in keeping the other parent involved with the child.

CONCEPT OF PARENTAL GATEKEEPING

Gatekeeping has been defined as "mother's preferences and attempts to restrict and exclude fathers from child care and involvement with children."[11] Another proposed definition is, "maternal gatekeeping is a collection of beliefs and behaviors that ultimately inhibit a collaborative effort between men and women in family work by limiting men's opportunities for learning and growing through caring for home and children."[12] In intact families, gatekeeping is part of the process of coparenting where parents create an implicit or explicit division of labor on family work, including sharing parental responsibilities. Gatekeeping can be viewed in global terms as representing the overall level of parental involvement with the child, or parents may carve out areas where each is chiefly responsible (e.g., inside vs. outside chores, nightly rituals, meal preparation, school transportation) and areas where they co-participate and share responsibility (e.g., homework, attending school activities and planning vacations).

Gatekeeping can vary along a hypothetical continuum from very restrictive on one end to very inclusive, proactive, or facilitative in trying to involve the other parent.[13] In other words, gatekeeping attitudes and behaviors range from very

positive (facilitative) to very negative (inhibitory). Gatekeeping research in the field of family studies has almost exclusively studied maternal gatekeeping,[14] but researchers anticipated the concept could be broadened to include gatekeeping behaviors by both parents.[15] Recent articles suggest the idea of paternal gatekeeping, or mutuality in gatekeeping behaviors, is especially necessary when the analysis involves parents who live in separate residences.[16]

GATEKEEPING RESEARCH

Research has found that about 20% of mothers in intact families are restrictive gatekeepers, 42% of mothers showed an intermediate level of gatekeeping (coparenting), and 37% were very cooperative and inclusive.[17] These frequencies are similar to those found in a respected study on post-divorce families on the types of coparenting relationships that develop over time.[18] It is expected that there will more restrictive gatekeeping behaviors between divorced parents, and research confirms this to be the case.[19] Research has not been conducted on the frequency of allegations of restrictive gatekeeping among litigating parents, but there is reason to believe that it would be extremely high.

The primary caregiver may be threatened by equal sharing of parental time.

Research on gatekeeping and coparenting has focused on factors that increase paternal involvement with children. A consistent finding is that mothers' support for fathers' involvement results in more paternal involvement and more satisfaction by fathers.[20] Mothers are more likely to be supportive when they view the father as competent.[21] Mothers who view the coparenting relationship as important are more likely to be facilitative gatekeepers.[22] Negative gatekeeping attitudes are associated with making access and involvement difficult.[23] Mothers' satisfaction does not depend on the father's level of involvement, research showing that it is related more to the level of conflict and payment of child support by the father.[24]

While involvement of both parents is important, courts and evaluators are most interested in child adjustment following divorce. Research shows child outcomes are related to the quality of father involvement. Cooperative coparenting predicts more frequent father-child contact and a higher quality in father-child relationships.[25] There is not any research on paternal gatekeeping. While there is only limited research on the issue, it is clear that restrictive gatekeeping, or merely the perception of it, is one of the main sources of parent conflict in the context of divorce.[26] Researchers have noted the issue of parents' distorting or exaggerated perceptions of the other parent's competency because of a motivation to bolster one's legal case.[27]

ATTITUDES VERSUS BEHAVIORS

It is important to distinguish between gatekeeping attitudes and behaviors. As mentioned, most of the research has assessed mother's gatekeeping attitudes about father involvement. It is assumed that restrictive attitudes will lead to "gate closing behaviors" and facilitative attitudes to "gate opening behaviors." This is probably true in intact families. In the context of divorce, and especially among litigating parents, negative attitudes about the other parent and his or her parenting competency is expected, or normative. Evaluators and judges need to assess the parents' behaviors in a discriminating manner so they can discern which parents can be supportive of the other parent in their actions, even if they hold a negative attitude towards their ex-partner. The basic challenge for parents is to continue to see value in the other parent in the midst of divorce and the process of renegotiating parental responsibilities. In other words, litigating parents need to be able to compartmentalize their negative feelings and attitudes about their former partner from their coparenting behaviors. The limited research on gatekeeping with divorcing parents shows that, even with restrictive gatekeeping attitudes, a highly involved father results in children who are better adjusted.[28] A common mistake by evaluators is to view a parent as nonsupportive, even to a point of alienating the child, when the parent merely holds a critical attitude. The important issues are if the parent can avoid impeding access to the child, cooperate with the parenting plan, share information, etc.

GATE CLOSING VERSUS GATE OPENING BEHAVIORS

Examples of gate closing behaviors would be being late to or showing hostility at exchanges; not facilitating phone contact; derogating the other

parent in front of the child; and being rigid or inflexible when there is a need to alter the parenting time schedule. Examples of gate opening behaviors are the converse, or making exchanges go smoothly; talking positive about the other parent to the child; and being flexible on schedule, changes, make-up time.

Parenting disputes by definition concern gatekeeping issues because the dispute concerns the amount, pattern, and terms of each parent's access to and involvement with the child. In one sense of the term, the parents' respective legal positions on how parenting time and decision making should be allocated represents their gatekeeping attitude. For example, if a parent is proposing that the other parents should have only every other weekend for parenting time and not share in decision making, then this would suggest restrictive gatekeeping. If there are sound reasons for restrictive gatekeeping attitudes and gate closing behaviors, then this prospective protective gatekeeping may be quite defensible in the eyes of the court.

PARENTAL IDENTITIES IN THE CONTEXT OF DIVORCE

Parents develop identities of themselves as parents and it becomes an important part of their self-identity.[29] Parenting is a highly valued role even when there may be a traditional marriage and the stay-at-home mother is handling most of the day-to-day responsibilities of child rearing. The less involved father, when asked, may nevertheless say that being a parent is the most important part of his life. When parents separate, then much stress is placed on these parental identities. If the mother has been a primary caregiver or the lead parent, she is likely to feel very threatened if the father is requesting to have an equal share of parenting time. Similarly, the father may feel there is an attempt to marginalize him if the mother thinks he should have only every other weekend from Friday after school until Sunday at dinner time. He may be accustomed to seeing and spending time with the children every evening and weekends. Parents need to renegotiate how time and responsibilities will be shared so their respective insecurities can be assuaged.

PROTECTIVE GATEKEEPING

There will be circumstances where there are rational and valid reasons for one parent to not be supportive of the other's ability to competently or safely care for the child. Situations involving parental misconduct, such as substance abuse, harsh parenting and past intimate partner violence, may warrant a conservative, or even restrictive approach to time sharing. The concept of protective gatekeeping[30] applies to such situations. Evaluators need to carefully investigate the reasons for restrictive or inhibitory gatekeeping before coming to conclusions about the issue of supporting the other parent-child relationship. One researcher[31] found that mothers usually provided justifications for their inhibitory behaviors on grounds of poor parenting or abuse, and also, that the fathers always denied the allegations or concerns. Commentators have criticized courts for assigning much weight to this factor when allegations of domestic violence have been corroborated.[32] Another researcher advocates rejecting the "friendly parent doctrine" in such circumstances, but each case requires investigation to establish the credibility of such allegations.[33] These cases often ultimately required a judge's determination of the credibility of the allegations because the evidence is often of the "he/said - she/said" variety.

PRACTICE IMPLICATIONS FOR ATTORNEYS AND EVALUATORS

To be mindful of gatekeeping issues and potential weaknesses in one's case, attorneys may want to consider the following for their clients who are involved in litigation:

- Comply with any court ordered parenting plan on access to the child and be flexible as needed.
- Present to an evaluator the recognition of the other parent's competence and value to the child as a parent despite the hurt and hostility that may be present.
- Describe to an evaluator how you can act as a facilitative or responsible gatekeeper.
- If the parent has not been very involved, then that parent should be encouraged to take a parenting class and start the "learning curve" for assuming more parental responsibilities.
- Describe for the evaluator how you can compartmentalize your negative attitudes from

parenting behaviors in cooperating with a parenting plan and supporting the other parent.

- Show awareness of the need to shield the child from any parent conflict.
- Have a plan for sharing information with other parent even if there is hostility and conflict, e.g., through the use of e-mail.
- In a relocation case, propose a realistic parenting plan that will maximize the opportunity for the other parent's involvement.

Evaluators may want to incorporate gatekeeping into the custody evaluation protocol as follows:

- Assess the pattern of past pattern of involvement by each parent.
- Assess the type of gatekeeping that occurred during the marriage and after separation.
- Distinguish between gatekeeping attitudes and behaviors.
- Determine if the negative gatekeeping attitudes seem to reflect short-term and litigation-related distress, or is it likely to become part of a pattern of enduring conflict and entrenched gatekeeping behaviors.
- Ascertain if the parents can meet the basic challenge of seeing value in the other parent despite their negative attitudes and feelings towards their ex-partner, or can they compartmentalize feelings from coparenting behaviors?
- Be mindful that litigating parties' reports of gatekeeping behaviors may be distorted and exaggerated.
- Look for corroborative collateral data to confirm gatekeeping behaviors.
- If restrictive gatekeeping attitudes and/or behaviors exist, does the data show such attitudes are justifiable?
- Expect to see protective gatekeeping in cases involving allegations of intimate partner violence.
- Distinguish between protective gatekeeping and alienating behaviors.
- Evaluators will want to carefully consider and heavily weigh gatekeeping in relocation cases because the key to a child's successful relocation will be how well the moving parent can promote and maintain the child's relationship with the non-moving parent.

NOTES

1. See, e.g., C.R.S. § 14-10-124(1.5)(a)(VI): "The ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party." See also, in Oregon, O.R.S. § 107.137(f): "The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child."

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14. Allen & Hawkins, *supra* n. 12; M. F. DeLuccie, "Mothers as Gatekeepers: A Model of Maternal Mediators of Father Involvement," 156 *J. Gen. Psy.*, 115-131 (2001); Fagan & Barnett, *supra* n. 11.

15. Allen & Hawkins, *Id.*

16. Trinder, *supra* n. 13; Adamsons, *supra* n. 13; M. K. Pruett, L. A. Arthur and R. Ebling, "The hand that rocks the cradle: Maternal Gatekeeping after Divorce," 27 *Pace Law Review*, 709-739 (2007).

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32. M. K. Dore, "The "Friendly Parent" Concept: A Flawed factor for Child custody," 6 *Loyola J. Pub. Interest L.*, 41-56 (2004).

33. W. G. Austin, "Assessing credibility in allegations of martial violence in the high-conflict child custody case," 38 Fam.Ct.R. 462-477.