

INTRODUCTION

Child custody disputes can entail any number of emotionally wrenching circumstances. The prototypical case involves married parents who separate and, in the heat of divorce, cannot reach an agreement about where and how their children should live. In other cases, a marital or cohabiting relationship dissolves before a child is born and parents must negotiate custody without the benefit of a shared history of parenting. Custody disputes also can surface years after a break-up, for example when a parent relocates, an adolescent wants to change living arrangements, or parents have problems with a difficult child.

Child custody disputes also are not limited to conflicts between biological parents. Grandparents may dispute custody of their grandchildren with their own children, birth parents may contest custody in the context of adoption, or same-sex couples may dispute custody with each other or a biological parent. Finally, infidelity and genetic testing, as well as technological and social innovations in conception and childbearing, can create nightmarish scenarios in which biological and social parents can end up disputing custody (Schwartz, 2003). Our focus here is on child custody disputes between parting parents, whether married or not, but many of the same issues and concerns apply across these different circumstances.

Our initial mission for this monograph was simply to critique the psychological science underpinning child custody evaluations. We make such a critique in the section titled “The (Limited) Science of Custody Evaluations.” However, the subject of child custody disputes is complicated by many emotional, practical, and legal issues that are of interest and relevance to psychologists. We therefore have broadened the scope of the report to consider these more general issues, particularly developments in child custody law, alternative dispute resolution, ethics, and societal values about family life. Of course, psychological science is our primary focus, and one of the strongest findings of basic research in this area is that children fare better in separation and divorce if parental conflict is minimal or at least contained and if children maintain a good relationship with at least one, and preferably both, of their parents (Emery, 1982, 1999b, 2004). In other words, the process of family dissolution and the nature of continuing family relationships are more important to children’s mental health than is the structure of any particular custody arrangement.

This finding, together with our analysis of the context of custody disputes, leads us to call for three sets of reforms. First, we encourage continued efforts to promote the private settlement of child custody disputes through education, good-faith negotiation, and alternative dispute resolution. Private settlement of custody disputes can reduce conflict; it can encourage more cooperative, ongoing relationships between coparents; and it can facilitate positive relationships between children and both of their parents. Second, we support efforts to make child custody law more clear and determinative, in order to substantially

reduce the number of custody disputes. Third, in disputes that remain contested, we would limit mental health expert testimony only to opinions clearly supported by psychological science, a circumstance that unfortunately does not characterize some of today’s practice. This final point is not so much a call for a reform as a recommendation that expert witnesses in custody evaluations conform to existing standards for expert testimony.

The Deer-Doe Case

We invite the reader to begin to consider the many emotional, legal, empirical, and value conflicts involved in child custody disputes with a hypothetical case. We revisit this case at points throughout the monograph to illustrate and anchor our discussion.

Jane and John Deer-Doe, both 39 years old, have two children: Isabella, a 10-year-old girl in the fourth grade, and Carlos, a 3-year-old boy who attends preschool but spends most of the day at home with his mother. Jane continued to work full time as a certified public accountant after Isabella was born, but, with John’s reluctant agreement, she quit work after Carlos’s birth. John, a moderately successful computer engineer and self-described highly involved father, says that he had expected Jane to return to work after a year or two at home with the children.

Jane and John agreed that they had longstanding conflicts about parenting, finances, and sexuality. John tried repeatedly to get Jane to address their unhappiness by seeing a marriage therapist. Jane was open to therapy but also accepting of an imperfect marriage. Jane’s acceptance ended, however, when she learned of John’s

2-year-long affair with a coworker. She immediately contacted an attorney, and shortly thereafter, John left the house at her request.

In their subsequent negotiations, Jane indicated her desire for a divorce, and John agreed. He hoped to remarry soon and wanted the children with him half of the time. Jane countered that John should have the children no more than every other weekend, consistent with his “minimal” involvement during their marriage, and she further insisted that their children have no contact with his “friend.”

In the 3 months after her parents’ separated, Isabella refused to see her father except on a couple of occasions. She continued to do well in school but was extremely angry with her father for “cheating on my mother.” Carlos asked for his father repeatedly in the days and weeks after the separation but did so less after seeing his father only sporadically during this time. His preschool teachers complained that Carlos had become very aggressive in school and had begun to wet and soil himself again.

How can psychological scientists help families like the Deer-Does? As we will review in this monograph, there is good research to help us better understand children, divorce, and custody conflicts, and there is some reasonably strong evidence on some successful interventions. Unfortunately, very little research has been conducted directly on legal issues in the custody context, including child custody evaluations.