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Literature Review: Children's Rights Within Custody Battles in the United States

Introduction

Close your eyes and imagine you're sitting in a court room; a judge is sitting in front of you and your parents are sitting on opposite sides of the room. Those three people are deciding how the next few years of your life are going to look like including which parent gets you on holidays, summers, and on a weekly basis. As the child, you want to speak up and state your opinion on where you want to go, but you can't. Instead, you sit there quietly and wait for your fate to be determined by the judge you barely know. In this literature review, I will first discuss how judges determine which parent gets custody, the meaning behind a judge saying, "best interest of the child," and how age effects children's roles within custody battles.

How Judges and Courts Determine Which Parent Gets Custody

Within custody battles in the United States, the judge gets the final say in which parent gets sole custody of the child. There are many factors that go into determining which parents gets custody of the child or children, but the most important factor is the child's safety, "Judges will look at whether one or both parents are able to handle a child's special education, medical, mental health, and other needs" (Doskow). Other than that, the judge looks at which parent the child or children have a better relationship, the stability of either parent, or sometimes take in account the child's opinions. In some custody battles, parents dislike each other so much to

where that they will do anything to get sole custody of the child just to get back at their spouse. Judges take this into consideration when determining which parent gets custody by looking at the relationship between the two parents and how that will interfere with the custody rules placed by the judge.

Meaning of Judge Saying “Best Interest of the Child”

When the judge is making his/her decision on the custody rules in a custody battle, they always take into consideration the best interest of the child. The importance of this is to think about how this custody dispute will affect the child and how one decision can affect the child's entire life, “This standard is meant to protect the mental, emotional and physical well-being of a child, and ensure their parents are fit to provide them with the best possible upbringing” (*Custody Change*). The previous quote provides a foundation of what “best interest of the child” means, but it is also important to include the factor that is which parent will give the child the best life they can. In a Ted Talk by Susan Shofer titled “Parental Alienation,” she talks about how parents sometimes don't think about the best interests of their child, and only think about how to get back at their ex-spouse. Shofer does a great job on providing images and explaining what parental alienation means and how it does not give the best interest of the child, “For the children who are suffering we have not acted in the best interest of the child because none of this was their fault none of this was okay. Eliminating parental alienation now that's in the best interest of the child” (Shofer).

How Age Effects Children's Roles Within Custody Battles

From ages zero to two, the court mainly investigates how the child will be affected by separation from one parent and how this will affect his/her long-term memory, “An infant or

toddler can lose an attachment with a parent quickly if there is not a consistent or frequent level of contact” (Lowe). Ages three to five is an important age because this is where the child develops motor functions, and the child is old enough to begin the idea of spending nights with either parent, and ages six to eleven is when the child is beginning to mature and can, “Handle back-and-forth visitation between each parent’s home with relative ease” (Lowe). Where things get tricky is when the child becomes a teenager because the brain is more developed, and this is when problems of mental health come into consideration. With the child being older and can easily understand what is going on, “Parents are encouraged to keep their own issues separate from their teens and avoid using them as messengers” (Lowe). Also, “As the children get older, their opinions about living arrangements will likely matter more. While parents should make the final decisions, the child should be allowed to have a voice in the process as well” (Lowe). Some courts take into consideration the opinions of the child at a certain age, but some judges don’t view the child as an adult, so they continue the case without looking into what the child wants. This creates tension between everyone because with the factors of parental alienation and potentially placing the child in a home she doesn’t want to be in causes mental health problems.

Conclusion

These three topics that I have discussed are essential to my argument and provides a background to what a custody battle looks like and the factors the judges take into consideration when determining the outcome of the case. What some lawyers try to get parents to do is try to settle custody agreements outside of court because it, “Gives you more control over the outcome of your case, you know what the outcome will be, unlike a trial, and if you don’t like what is being offered, you still have the option of going to trial” (*CustodyxChange*). What happens with most parents is that they don’t want to settle without a court, so they spend the money, time, and

emotions on disputing on which parent gets custody, and this is where the three topics I have discussed come into play. Overall, it is important to understand how judges determine which parent gets custody, the meaning behind a judge saying, “best interest of the child,” and how age affects children’s roles within custody battles.

Work Cited

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