

Shared Parenting Serves Children's Best Interests

A. Holland Houston

Your kids might not be able to play team sports for the foreseeable future, but if you're a family lawyer or mediator, you can guide your divorce and custody clients or participants to be team players, albeit on what some critics have called "parenting teams," pulled from Swedish child psychologist Malin Bergström's book, *Divorcing with Children: Parents in Two Homes*.

Renown in equal parenting circles, Bergström has long studied the effects of various parenting arrangements on children's overall wellness who come from divorced families. Her latest book seems to implicate both the United Nations Convention on the Rights of the Child from 1989 and the Fourth Convention on Equal Parenting in 2019 wherein she uses evidence from her experiments following large numbers of children at different ages to advocate a global best interests of the child standard for parenting time, which so happens to be joint custody and equal parenting.

While one would think our Nordic neighbors founded the concept of co-parenting and joint custody as shown by their progressive policies around paid leave, gender equality and health care, to name a few, research around Bergström's studies would indicate Kentucky might have laid the groundwork for the presumption of joint custody and equal parenting time in KRS 403.270(2), as amended in 2018. Many credit the Swedes with a co-parenting arrangement called nesting—when the kids stay in the marital home and the parents move in and out of the nest. Yet, the Norse may not have that great of an edge on American family law, specifically Kentucky family law, where children's best interests are (and have been) the lodestar in custody and parenting decisions.

Kentucky's KRS 403.270(2) incorporates several of the Fourth Shared Parenting Conference's recommendations to ensure courts and legislatures focus on a child centered approach to custody. It has its detractors, though, who argue a presumption of equal time gives too much weight to the parent's wishes and prioritizes a parent's right to raise their children over parenting in children's best interests, which is by its invention, child-centered. The Shared Parenting Conference made recommendations as set out by Edward Kruk, Ph.D. in a *Psychology Today* blog in April 2019. To wit,

First, we call upon the UN Committee on the Rights of the Child, governments and professional associations to:

- identify shared parenting as a fundamental right of the child
- focus on the specific need of children of separated and divorced parents to know and be raised by both of their parents, and to endorse shared parenting as best ensuring that this need is protected
- respect the views of children of separated and divorced parents in regard to their stated preferences for post-separation living arrangement
- clearly define and operationalize the concept of the "best interests of the child"

in the context of parental separation, toward an evidence-based, child-focused understanding of "best interests"

- identify shared parenting as in the best interests of the child, as it maintains children's relationship with both parents and reduces conflict between parents
- ensure to the maximum extent possible the survival and development of children of separated and divorced parents, and to take all appropriate legislative, administrative, social and educational measures



to protect these children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including parental alienation as a form of emotional child abuse and family violence

The Shared Parenting Conference recommendations are an attempt to address and reduce Adverse Childhood Experiences (ACES) that result from high conflict divorce and break-ups and are antithetical to well-adjusted children. The bench, bar, psychologists and therapists know this. They are also keenly aware that children are spoils of war to entrenched parents who will stop at nothing to "beat" each other in a custody "battle."

Thankfully, the warrior method may be slowly losing its popularity, though, as celebrities and run-of-the-mill parent-vloggers go public with their break-ups and parenting misadventures. Mass disclosures of once verboten subjects like infidelity, non-specific sexuality, objection to marriage as patriarchal, or limiting and general dissatisfaction with one's partner or marriage, have normalized both cohabitation and divorce.

Combine evidence from Dr. Bergström and other longitudinal studies of kids of divorce and how well they are faring in two parent homes, with omnipresent confessional relationship essays, and breaking up is no longer either taboo, or really that hard. Creating

customized parenting plans doesn't have to be either. And that's where the teamwork can really play off. How do you get great? Practice. Practice. Practice.

Although our parenting statute, KRS 403.320, still contains the word "visitation" (as if a child is visiting a parent in prison or going to a pre-funeral service) lawyers and mediators have long since worked around it to devise parenting arrangements that work for kids. Kentucky family courts may not restrict reasonable parenting time unless they find after

too much deference to parental superiority versus what is best for the child. Dr. Bergström's approach (and the recommendations of the Shared Parenting Convention) are the more modern of the two, as they require parents to reframe ownership and entitlement that spring from inherent parental rights to children, in favor of a communal and state based (I know that's hard for Americans to grasp) duty to coparent for the good of the state's children.

For the trendiest approach to parenting altogether, one can usually count on Goop's founder, Gwyneth Paltrow. In 2014 or so, Paltrow announced publicly she and Coldplay's Chris Martin were consciously uncoupling. Paltrow borrowed the phrase reportedly from "lifestyle guru" Katherine Woodward Thomas, to describe a compassionate divorce that accounted for the privacy and psychic health of the two children of the mega stars. People roasted Paltrow.

At first.

And then the idea of a non-adversarial divorce or breakup that looked to the kids' futures and best health took off like wildfire stoked with medicinal herbs in a bespoke freestanding fireplace, with cedar blessed by Deepak Chopra somewhere in Santa Monica, or at least on Goop's website.

Not to be outdone as a coparenting pioneer, Paltrow, whose company was worth \$250 million in 2018 and whose personal net worth was at least \$100 million in 2018, is remarried and has offered her parenting schedule up for anyone who is:

- a) cohabiting or married
- b) whose partners each have kids from prior marriages or cohabiting arrangements, and
- c) who can afford it.

From an interview in the *Times of London*, Paltrow said she and Brad Falchuk, her husband, live together at her house four nights a week with her children from her marriage to Martin. The other three nights, Paltrow is with her children at her home without Mr. Falchuk, who spends those three nights with his children who aren't Paltrow's.

Such an arrangement should come in handy when Non Traditional Instruction (NTI), contained here in KRS 158.070(9), is replaced with in person school across the country during COVID-19, for those who don't have full time, in home, individual tutors, or gurus, if you will. Would Dr. Bergström approve of parents farming out their "duty" to instruct their children via NTI? I think she would. And if she didn't, perhaps she could be persuaded with a jar of Goop Glow, some ashwagandha supplements, a juicer and some nice chakra balancing oils.

Parental Teams: Power Up. This is your year.

A. Holland Houston is an Attorney at Law and vice-chair of the LBA's ADR/Mediation Section. ■

