

No. A05-0310

State of Minnesota

In Court of Appeals

Thomas Carroll Rubey,

Petitioner/Appellant,

vs.

Valerie Ann Vannett,

Respondent.

BRIEF OF *AMICUS CURIAE* CENTER FOR PARENTAL RESPONSIBILITY

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INTRODUCTION¹

The Center for Parental Responsibility was initially granted leave to participate as *amicus curiae* in this appeal by Order of Chief Judge Edward Toussaint dated March 2, 2005, on motion duly made. The appeal was dismissed for procedural reasons by Order of this Court dated March 22, 2005. The Supreme Court reversed and remanded that Order, and the appeal was reinstated by Order of this Court dated May 4, 2006. By Order filed May 19, 2006, this Court granted the Center for Parental Responsibility leave to participate as *amicus curiae* in the remanded proceedings. By Order of this Court filed May 24, 2006, briefing was stayed pending Appellant's motion for rehearing in the Supreme Court. Counsel for *amicus* understands that a decision on that motion has been made. Consistent with its original motion, *amicus* will address only two issues in this brief: (1) the nature and legal effect of a stipulation for joint legal custody; and (2) the rationale for joint custody.

¹ The Center for Parental Responsibility is a non-profit, tax-exempt 501(c)(3) organization formed under the laws of the State of Minnesota. It has only a public interest in this proceeding. This brief was authored entirely by counsel for the Center for Parental Responsibility, Thomas B. James. No part of this brief was authored, either in whole or in part, by counsel for any of the parties to this proceeding. No person or entity, other than *amicus*, its members or its counsel, have made a monetary contribution to the preparation or submission of this brief.

DISCUSSION

1. The nature and effect of an agreement to share joint legal custody

The facts in this case with respect to the parties' stipulated agreement do not appear to be in dispute. As set forth in the Findings of Fact portion of the Judgment and Decree, the parties entered into a stipulation to share joint legal custody of their child. At the time they entered into that stipulation, each party was represented by competent, independent counsel of their own choosing. No finding of mistake, duress or fraud was made. The district court, however, chose to disregard the parties' stipulation, awarding sole legal and physical custody to the Respondent instead.

The use of stipulations in divorce proceedings has been approved by this Court on numerous occasions. *See, e.g., Shirk v. Shirk*, 561 N.W. 519, 521 (Minn. 1997); *Ayers v. Ayers*, 508 N.W. 2d 515, 520 (Minn. 1993); *Karon v. Karon*, 435 N.W. 2d 501, 503 (Minn. 1980); *John v. John*, 322 N.W. 2d 347, 348 (Minn. 1982.)

Stipulations are not only approved, but they are actively encouraged in dissolution cases. As this Court has put it:

Courts favor stipulations in dissolution cases as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties.

Shirk, *supra*, *citing* Anderson v. Anderson, 225 N.W. 2d 837, 840 (Minn. 1975).

Stipulations also promote the principles of fairness and self-determination:

In marriage dissolution cases, ‘when a stipulation fixing the respective rights and obligations of the parties is central to the award, the trial court...should view it as an important element because it represents the parties’ voluntary acquiescence in an equitable settlement.’

Moylan v. Moylan, 206 N.W. 2d 658, 665 (Minn. 1973), *quoting from* Claybaugh v. Claybaugh, 312 N.W. 2d 447, 449 (Minn. 1981); *see also* Ramsay v. Ramsay, 233 N.W. 2d 729, 731 (Minn. 1975.)

Judicial recognition and enforcement of stipulations also helps promote certainty:

[W]here no fraud or bad faith is shown,...if we were to allow a settlement made in open court to be reopened many months later at the whim of either party, it would create uncertainty, chaos, and confusion as to the effect of settlements in future cases. This would be an injustice both to the courts in which settlements were made, and to the litigants involved, who depend on the reliability of such settlements.

Rogalla v. Rubbelke, 112 N.W. 2d 581, 582 (Minn. 1961), *quoted with approval* in Ryan v. Ryan, 193 N.W. 2d 295 (Minn. 1971)

These principles apply as much to the resolution of custody issues as to other issues that may be involved in a dissolution. *See, e.g.,* Ayers, *supra*, wherein this

Court held that stipulated custody provisions “must be accorded a good deal of deference” and that where two parents stipulate to joint legal custody, “they will be bound by it.” *Ibid.* at 520. They apply with even more force when, as in this case, both parties were represented by competent counsel at the time they entered into the stipulation. Ryan, *supra*; Anderson, *supra* at 841; Hellman v. Hellman, 84 N.W. 2d 367, 371 (Minn. 1957); Tammen v. Tammen, 182 N.W. 2d 840 (Minn. 1970.)

For all of these reasons, stipulations – including stipulations pertaining to legal custody of a child in a dissolution proceeding – “are therefore accorded the sanctity of binding contracts.” Shirk, *supra* at 521; *see also* Ryan, *supra* at 297. As such, they cannot be repudiated or withdrawn except for such cause shown as would be sufficient to vitiate any other legally binding contract. Shirk, *supra* at 522; Gran v. City of St. Paul, 143 N.W. 2d 246, 249 (Minn. 1966); *cf.* Petersen v. Petersen, 206 N.W. 2d 658, 659 (Minn. 1973)(extreme emotional and financial distress sufficient to vitiate otherwise binding stipulation.)

Since no finding of fraud, mistake, duress, bad faith or any other contract defense was made in this case, the stipulation should have been given the force and effect of a binding contract and adopted by the district court as part of the judgment and decree unless doing so would clearly have been detrimental to the child’s best interests. A court may refuse to adopt a custody stipulation that is

clearly detrimental to a child's interests. *See, e.g., Frauenshuh v. Frauenshuh*, 599 N.W. 2d 153, 158-159 (Minn. 1999), where the court noted that “the paramount consideration is the welfare and best interests of the children.” *See also Petersen, supra* at 659; *Hellman, supra* at 371; *Tammen, supra*; *Sydnes v. Sydnes*, 388 N.W. 2d 3, 6 (Minn. App. 1986.)

While the best interests of children is “the paramount consideration,” courts must also be careful to avoid the temptation to substitute their own opinions for those of the parents. Unless a finding is made that a particular parent is unfit to raise children, parents are presumed to act in their children's best interests. *Parham v. J.R.*, 422 U.S. 584, 602-603 (1979)(“natural bonds of affection lead parents to act in the best interests of their children”); *Troxel v. Granville*, 530 U.S. 57 (2000)(“there is a presumption that fit parents act in the best interests of their children.”) In view of the constitutional dimension to this issue, a district court “must accord at least some special weight to the parent's own determination” regarding their child's custody. *Troxel, supra*. Counsel for amicus anticipates that the constitutional issues will be addressed more fully in other briefs to be submitted herein. It will suffice to note here that because of the fundamental constitutional right of fit parents to determine the custody of their own children, a district court cannot simply substitute its own best-interest judgments in place of the custody decisions that have been made – knowingly, voluntarily and with the

advice and assistance of counsel - by two parents neither of whom has been found to be unfit to raise children.

A stipulation regarding legal custody acquires even more force when it provides for joint legal custody. In that situation, and consistent with the presumption recognized by the U.S. Supreme Court that fit parents are presumed to act in their children's best interests when exercising their fundamental right to make decisions regarding their children's upbringing, our statutes provide for a presumption that joint legal custody is in children's best interests. Minn. Stat. §518.17, subd. 2. Accordingly, when a stipulation addressing custody provides for joint legal custody to both parents, it should become entitled to a great deal of deference.

Consistent with constitutional and statutory requirements, such an agreement really gives rise to two distinct presumptions: (1) that joint legal custody is in the child's best interests unless each of the factors laid out in the statute are present (inability to cooperate, etc., as set out in Minn. Stat. §518.17)²; and (2) that the parties' own determination, between themselves, to share joint legal custody of their child is in the child's best interest, in the absence of a finding that one or both

²In this connection, it should also be borne in mind that the mere existence of disagreements and hostility between the parties to a divorce is not sufficient, in itself, to rebut the presumption in favor of joint legal custody. Rosenfeld v. Rosenfeld, 529 N.W. 2d 724, 726 (Minn. App. 1995.)

of the parents is unfit to make that kind of decision for the child. It appears that the district court's Order in this case addressed the first set of issues, but not the second. Without a determination that either or both parents is unfit to make decisions regarding custody, however, the court should not have even reached the question whether the parties' agreement satisfied the criteria set out in Minn. Stat. §518.17. In the absence of a finding of unfitness, the parties' stipulation concerning legal custody should have been accorded the sanctity both of a binding contract and of an exercise of a parent's fundamental right to made decisions concerning the custody of his or her own children.

2. The rationale for joint legal custody

From a legal point of view, the most important rationale for joint legal custody is that it is the best way to protect each parent's natural right to make decisions concerning the custody and care of his or her own children. Indeed, it may be the only way to give effect to both parents' equal rights to make such decisions, consistent with the requirements of the Fourteenth Amendment. Counsel for *amicus* will defer to other counsel to address the constitutional issues, however, and will provide here, for the Court's edification, an exposition of the historic and policy underpinnings of custody law.

A. Historical origins and underpinnings of custody law

The laws of almost every jurisdiction within the United States have always

authorized awards of child custody to either mothers or fathers. *See* Bishop, J., COMMENTARIES ON THE LAW OF MARRIAGE AND DIVORCE 518, 520 (1852). Rather than deciding on the basis of sex, early American courts decided custody cases on the basis of marital fault, with the innocent party being the one presumptively entitled to sole custody of the couple's children. *Ibid.* at 520 ("The children will be best taken care of and instructed by the innocent party.")

The Industrial Revolution of the mid-nineteenth century, with its specialization of the sexes in separate spheres, and the concomitant Victorian reverence for Motherhood, wrought a major change in that paradigm. In one particularly high-profile case in the 1840's, Ellen Sears d'Hauteville sought custody of her infant son notwithstanding she was the one who was found to have been at fault for the breakdown of the marriage. Her argument was that children of tender years have a special need for their mothers that fathers cannot fulfill, and that this need should be regarded in law as outweighing any marital misconduct on the mother's part.³ She won, and her victory heralded the beginning of what would become known in the law as the "maternal preference," that is, the belief that custody of children should ordinarily be awarded to the mother, rather than to the

³ Minnesota courts, like those of other states, adopted the tender years doctrine. *See Meinhardt v. Meinhardt*, 261 Minn. 272, 111 N.W. 2d 782, 784 (1961)("[O]ther things being equal, the welfare of children of tender years is best served by their being left in the care of their mother.")

father, unless the mother is proven to be completely unfit to parent.⁴

By the early twentieth century, the maternal preference had evolved into the doctrine that a court must award custody of children of *any* age to their mothers unless there is some compelling reason to order some different arrangement. As described by one commentator:

Courts tended to interpret the best interest standard through a cultural lens that focused on women's and men's [supposed] essential differences. Judges adopted presumptions based on gender stereotypes that reflected the division of labor in the middle-class family. The welfare of children...was linked to the nurturing, stay-at-home mother. Influenced by the same cultural norms, mothers retained custody in the vast majority of divorces.

Woodhouse, Barbara Bennett, *Child Custody in the Age of Children's Rights: The Search for a Just and Workable Standard*, 33 FAM. L. Q. 815, 818 (1999).

Significant challenges to sex-role stereotypes were made in the 1970's. The courts of several States, applying the rationale of U.S. Supreme Court decisions declaring sex-based discrimination unconstitutional, have ruled that sex-based custody laws or rules of decision are unconstitutional. *See, e.g., Devine v. Devine*, 398 So. 2d 686 (Ala. 1981); *Pusey v. Pusey*, 728 P. 2d 117 (Utah 1986.) The

⁴ Minnesota courts followed suit in *Flint v. Flint*, 63 Minn. 187, 65 NW 272 (1895). For a full account of the Sears d'Hauteville case and the development of the "tender years" doctrine, *see* Grossberg, Michael, A JUDGMENT FOR SOLOMON (1997).

Minnesota legislature enacted a statutory prohibition against gender preferences in custody decisions in 1969. Act of June 6, 1969, ch. 1030, §1, 1969 Minn. Laws 2081, codified in Minn. Stat. §518.17 (1969). In Minnesota, the maternal preference was replaced by the best interests of the child standard, according to which custody of children is to be determined on the basis of what is in a child's best interests rather than the sex of the parent.

B. *Policy reasons for the joint custody presumption*

A considerable body of research has grown up around the question of what kind of custody arrangement is in a child's best interests. It is now known, for example, that when parents are awarded joint custody of their children, they tend to maintain more contact and greater involvement with them. Arditti, J., *Differences Between Fathers with Joint Custody and Noncustodial Fathers*, 623 AM ORTHOPSYCHIATRIC ASSOC. 186, 187 (1992); Ferreiro, B.W., *Presumption of Joint Custody: A Family Policy Dilemma*, 39 FAM. REL. 420, 421 (1990). Joint custody also tends to produce greater overall family cohesion. Crosbie-Burnett, M., *Impact of Joint vs. Sole Custody and Quality of Co-Parental Relationship on Adjustment of Adolescents in Remarried Families*, 9 BEHAV. SCIENCES & THE L. 439-449 (Fall, 1991).

In addition, a positive correlation has been found between joint custody awards and child support compliance. Only about one-half of fathers who are denied access to their children comply with their child support obligations, and less

than half (46%) of mothers with sole custody receive all court-ordered payments of child support over the course of a year. By contrast, the highest level of child support compliance has been found to occur in situations where the parties have been awarded joint custody of their children. Scoon-Rogers, L. and Lester, G.H., *Child Support Custodial Mothers and Fathers: 1991*, CURRENT POPULATION REPORTS P60-187, U.S. Department of Commerce, Bureau of the Census (August, 1995); Furstenberg, F. and Zill, N., *Supporting Children After Divorce: The Influence [of] Custody on Support Levels and Payments*, 22 FAM. L. Q. (Fall, 1988).

On the average, sole custody mothers reported receiving 63 percent of what they were owed. For joint legal/maternal residential custody and joint residential custody parents, the percentages were 81 and 95 percent, respectively.

Pearson, J. and Thoennes, N., *Supporting children after divorce: The influence of custody on support levels and payments*, 22 FAM. L. Q. 319, 330 (Fall, 1988). Pearson and Thoennes found that there is “no evidence that joint custody [is] harmful to the economic interests of women and children.” *Ibid.* at 325, 335. Moreover, “the best payment patterns [are] exhibited by those with joint residential and joint legal arrangements. Patterns for absent fathers with sole maternal custody arrangements [are] the least favorable....” *Id.* at 335. As another commentator has put it:

Joint custody is an effective policy alternative for ensuring that child support payments are met. The available research shows that under joint or coparenting conditions, post-divorce relationships of fathers, children and mothers produce better adjusted people who feel as if they are being treated more equitably.

Salkind, N.J., *The father-child postdivorce relationship and child support*, in THE PARENTAL CHILD SUPPORT OBLIGATION (1983).

Presumptive joint custody also has the advantage of reducing the incentive to divorce. Data from the National Center for Health Statistics show a decline in divorce rates following a State's adoption of laws mandating or encouraging joint custody awards. "States with higher levels of joint custody had an average four-year decline in the divorce rate approximately double that for states with medium levels of joint custody" and the percentage decline in the divorce rate over the same period was eight times greater in States with high levels of joint custody awards as compared to the percentage decline in divorces in States with low levels of joint custody awards." Kuhn, R. and Guidubaldi, J., *Child Custody Policies and Divorce Rates in the United States*, paper presented at the 11th Annual Conference of the Children's Rights Council, Washington, D.C., October 23-26, 1997.⁵

Next, joint custody is correlated with better outcomes in terms of parental

⁵ The data are from National Center for Health Statistics, 43 MONTHLY VITAL STATISTICS REPORT 13 (October 23, 1995) and U.S. Census Bureau, STATISTICAL ABSTRACT OF THE UNITED STATES, 1993.

health. In part because of the avoidance of custody litigation that is spawned by the need to fight for custody when it is assumed that only one parent can have it, joint custody parents experience less overall stress in their lives. Luepnitz, D., *A comparison of maternal, paternal and joint custody: Understanding the varieties of post-divorce family life*, 9 J. OF DIVORCE 1 (1986). Joint custody also eases the emotional and financial strain of raising children alone. Folberg, J., *JOINT CUSTODY AND SHARED PARENTING* (1984). By contrast, sole custody awards have the effect of generating feelings of inadequacy, often with the result that parents begin to feel awkward or ill at ease with their children. Donnelly, D. and Finkelhor, D., *Does Equality in Custody Arrangement Improve the Parent-Child Relationship?*, 54 J. OF MARRIAGE AND THE FAM. 837, 838 (November, 1992), *citing* Stewart, J., Schwebel, A. and Fine, M., *The impact of custodial arrangement on the adjustment of recently divorced fathers*, 9 J. OF DIVORCE 55 (1986). Overall, parents who are awarded joint custody experience less emotional loss, depression, grief, anger and role discontinuity. Steinman, S., *The Experience of Children in a Joint-Custody Arrangement: A Report of a Study*, 5 AM. J. ORTHOPSYCHIATRY 403, 404 (1981); Steinman, S., *Joint Custody: What we know, what we have yet to learn, and the judicial and legislative implications*, 16 U.C. DAVIS L. REV. 739 (1983). Joint custody respects both parties' rights and equal dignity as parents, without destroying either party's self-esteem.

While the health and happiness of a parent certainly does not override considerations about what is in a child's best interests, it generally can be expected that children tend to thrive and become better adjusted and healthier when their parents are healthy and well-adjusted.

In cases where joint custody has been ordered, both mothers and fathers have generally expressed satisfaction with it. Pearson and Thoennes, *supra* at 336. "Parents in...joint custody situations feel better about themselves, feel better about each other and, as a result, they feel better about the child." Singer, J.B. and Reynolds, W.L., *A Dissent on Joint Custody*, 47 MD. L. REV. 497, 500-501 (1988); *see also* Canacakos, *Joint Custody as a Fundamental Right*, 23 ARIZ. L. REV. 785, 787 (1981). 84% of parents with joint custody report overall satisfaction with it. Ahrons, C.R., *Joint Custody Arrangements in the Postdivorce Family*, 3 J. DIVORCE 189, 192 (1980); Arditti, J.A. and Madden-Derdich, D., *Joint and Sole Custody Mothers: Implications for Research and Practice*, 78 FAMILIES IN SOC'Y: J. CONTEMP. HUM. SERVICES 36, 43 (1997).

Because joint custody treats both parents as equals, rather than as victor and vanquished, joint custodial parents tend to treat each other with more respect and less resentment. Meanwhile, 50% of their counterparts in sole custody situations actively try to sabotage the other party's relationship with their children.

Wallerstein, J. and Kelly, J., *SURVIVING THE BREAKUP* (1980), at 125.

Presumptive joint custody also helps promote responsible fatherhood. According to federal lawmakers, “Responsible fatherhood includes active participation in financial support and child care” and States should be encouraged to adopt legislation promoting responsible fatherhood. Responsible Fatherhood Act of 2003, Sec. 2(9), S. 604, 108th Cong. (2003). This is significant recognition of the fact that responsible parenting means more than earning and paying financial support. It also means taking part in the care of the child. Since responsible fatherhood means “active participation in child care,” federal policy encourages states to adopt joint custody as the norm in every case in which abuse or neglect is not a factor. The presumption of joint custody encourages the best in all citizens, declaring that as a society we expect both parents to be actively and substantially involved in their children’s development.

Joint custody entails a number of additional, significant advantages for children in terms of adjustment and development. For example, children raised by a divorced single parent are significantly more likely than average to develop problems in school, while children raised in families in which both parents are actively involved in parenting demonstrate better academic performance. They get better grades than children in single-parent families and score dramatically higher on college entrance examinations. Amato, P.R., and Keith, B. *Parental divorce and the well-being of children: A meta analysis*. 100 PSYCHOLOGICAL BULL. 26 (1991);

Guidubaldi, J., Cleminshaw, H.K., Perry, J.D., and McLoughlin, C.S. *The impact of parental divorce on children: Report of the nationwide NASP study*, 12 SCHOOL PSYCHOLOGY REV. 300 (1983); Hetherington, E.M., Cox, M., and Cox, R. *Effects of divorce on parents and children*, in Lamb, M.E., ed., NONTRADITIONAL FAMILIES (1982); Christensen, B.J., *America's Academic Dilemma: The Family and the Schools*, 2 THE FAM IN AMERICA (June 1988); McLanahan, S.S., *Father absence and the welfare of children*, in E.M. Hetherington, ed., COPING WITH DIVORCE, SINGLE PARENTING AND REMARRIAGE: A RISK AND RESILIENCY PERSPECTIVE 117-49 (1999); Amato, P.R. and Gilbreth, J.G., *Nonresident fathers and children's well-being: A meta-analysis*, 61 J. OF MARRIAGE AND THE FAM. 557 (1999); Biller, H., PATERNAL DEPRIVATION: FAMILY, SCHOOL, SEXUALITY AND SOCIETY (1974); Nord, C., D. Brimhall and J. West, FATHERS' INVOLVEMENT IN THEIR CHILDREN'S SCHOOLS, U.S. Department of Education, National Center for Education Statistics, Washington, D.C., (1997), at viii-ix; Carlsmith, L., *Effect of Early Father Absence on Scholastic Aptitude*, 34 HARV. EDUC. REV. 3-20 (1964); Sutton-Smith, S., et. al., *Father-Absence Effects in Families of Different Sibling Compositions*, 39 CHILD DEVEL. 1213-21 (1968).

Because joint custodians experience less depression, anger and stress, and because it is in sole custody situations that parents actively try to sabotage each other, it can be expected that the increased use of joint custody will result in less

domestic violence between separated parents.

The presumption of joint custody also has the benefit of reducing litigation, thereby reducing the strain on court resources and the stress on children. It has been found that it is the sole custody situation, not joint custody, that generates more litigation and relitigation of issues. Ilfeld, Ilfeld and Alexander, *Does Joint Custody Work? A First Look at Outcome Data of Relitigation*, 139 AM. J. PSYCHIATRY 62 (1982); Ferreiro, B.W., *supra* at 422; Shepard A., *Taking Children Seriously: Promoting Cooperative Custody After Divorce*, 64 TEX. L. REV. 687, 717 (1985). The notion that joint custody creates or exacerbates conflict is wrong. The American Psychological Association reports that joint custody couples actually experience *less* conflict than sole-custody parents. Willenz, Pam, “Children likely to be better adjusted in joint vs. sole custody arrangements in most cases, according to review of research,” *Press Release*, Am. Psychological Assoc. Public Affairs Office (March, 2002). This makes sense, given that it is only the sole custody arrangement that requires one parent to be the winner and the other parent to be the loser. It also stands to reason that this would be the case because joint custody enables a shift of focus from one’s own interests to those of one’s child, thereby encouraging mature behavior and discouraging divisive, childish conflict. Potash, Marlin S., *Psychological Support for a Rebuttable Presumption of Joint Custody*, 4 PROB. L. J. 17 (1982).

Mindful of the fact that equality of parenting privilege will be the cornerstone of court decisions, parents are likely to be far more cooperative in pre-trial mediation, and may avoid litigation all together. If on the other hand, either of the potential litigants forecasts an advantageous position in court, their involvement in meaningful mediation may be severely compromised, and the efforts of even the most skilled mediators may be thwarted.

Guidubaldi, J., MINORITY REPORT AND POLICY RECOMMENDATIONS OF THE UNITED STATES COMMISSION ON CHILD & FAMILY WELFARE 8 (July, 1996). It is sole-custody couples who report the higher levels of current conflict. Bauserman, R., *Child adjustment in joint-custody versus sole-custody arrangements: A meta-analytic review*, 16 J. OF FAM. PSYCHOLOGY 91, 98 (2002). See also Schepard, A., *supra*; Carbone, J., *The Missing Piece of the Custody Puzzle; Creating a New Model of Cooperative Parental Partnership*, 39 SANTA CLARA L. REV. 1091 (1999); King, V. and Heard, H.E., *Nonresident father visitation, parental conflict and mother's satisfaction: What's best for child well-being?* 61 J. OF MARRIAGE AND THE FAM. 385 (1999).

Finally, and most important, there is overwhelming evidence that children adjust better to their parents' separation or divorce when joint custody is awarded. See, e.g., Ferreiro, B., *supra*; Glazer, S., *Joint custody: Is it good for the children?* 39 EDITORIAL RES. REP. 58 (1989); Pearson, J. and Thoennes, N., *Custody after divorce: Demographic and attitudinal patterns*, 60 AM. J. OF ORTHOPSYCHIATRY

233 (1990); Wolchik, S., Braver, S. and Sandler, I., *Maternal versus joint custody: Children's postseparation experiences and adjustment*, 14 J. OF CLINICAL CHILD PSYCHOLOGY 5 (1985); Shiller, V.M., *Loyalty Conflicts and Family Relationships in Latency Age Boys: A Comparison of Joint and Maternal Custody*, 9 J. DIVORCE 17, 37 (1986). Children of joint custodians tend to feel less rejected by their parents and report feeling more loved by both parents and attached to both parents. Cowan, D.B., *Mother Custody Versus Joint Custody: Children's Parental Relationships and Adjustment*, doctoral dissertation, University of Washington (1982); Lehrman, I., *Adjustment of Latency Age Children in Joint and Single Custody Arrangements*, summarized in 50 DISSERTATION ABSTRACTS INTERNATIONAL 8 (February 1990); Leupnitz, D.A., CHILD CUSTODY: A STUDY OF FAMILIES AFTER DIVORCE (1982); Leupnitz (1986), *supra*.

Mothers and teachers both report significantly fewer emotional and behavioral problems in children from joint physical custody homes than in children from sole custody homes. Children in joint custody situations are also better able to accept the reality of their parents' divorce and less preoccupied with fantasies regarding potential parental reconciliation. Shiller, V., *Joint Versus Maternal Custody for Families with Latency Age Boys: Parent Characteristics and Child Adjustment*, 56 AM. J. OF ORTHOPSYCHIATRY 486 (1986); Shiller, V., *Loyalty Conflicts*, *supra*

Overall, research studies show that children of joint custodians are better adjusted than children of sole custodians on each of the following measures: general adjustment; family relations; self-esteem; emotional adjustment; behavioral adjustment; and divorce-specific adjustment. Bauserman, *supra* at 97. At a time when men have become much more involved in child-raising⁶ than they were when women were full-time stay-at-home child-raisers, it really no longer makes sense to ascribe them no role in the parenting of their children, or to relegate them to the status of mere “visitors” in their children’s lives.

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⁶ See Maccoby, E.E. and Mnookin, R.H., *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (1992)