Book Reviews

_The Custody Wars: Why Children are Losing the Legal Battle and What We Can Do About It_
By Mary Ann Mason, Ph.D., J.D.

Rarely is so much good sense found reflected in a single book. Mary Ann Mason tackles the difficult issue of how our society treats children in all types of custody matters, including divorce, disputes between unmarried parents or same-sex couples, contests between parents and third parties, and others. Based on numerous case examples, Dr. Mason sets forth principles derived from a child-centered framework for decision-making and makes recommendations about how many types of cases should be resolved. The book is written to be accessible to lay audiences, and it will be of serious interest to professionals from all the disciplines concerned with child custody, particularly law and social work.

Dr. Mason’s conclusions and recommendations will not please everyone. Most likely to be displeased are those who favor joint legal and physical custody of young children and groups advocating the custody rights of fathers. The child custody mediation movement also comes in for serious critique. Most likely to find themselves in agreement are those who work with domestic violence and high-conflict couples, and those involved with step-families, adoptive families, gay and lesbian parents, kinship care givers, and other less traditional families.

The themes that run through Dr. Mason’s work can be summarized into a few principles. Probably the first among them is that children should have a right to be heard in the custody disputes affecting them. The author, who illustrates her points with highly readable case vignettes, presents case after case where court decisions fail to consider children’s wishes. Her proposed solutions are more involvement of children in custody me-
diation and legal representation for children in court, proposals that have
been made by others, but rarely so persuasively. The child’s voice in cus-
tody matters would become louder, so to speak, with age.

A second major theme is that the history of parenting should matter
more than biology in deciding child custody, a position similar to that
taken by Goldstein, Freud, and Solnit (1996) in their seminal work, which
Dr. Mason cites. Dr. Mason applies this principle, not just to situations like
divorce, but also to disputed adoptions and to contests arising out of surro-
gacy. The theme that parenting deserves more recognition than biological
ties is probably least controversial in situations such as biological fathers
who have never lived with the child or the mother, or adoptions contested
by birth parents years after an adoption. It becomes much more controver-
sial with respect to divorcing parents who have not been equally involved
in parenting. Dr. Mason favors the ”primary parent” in custody disputes,
primarily because of persuasive arguments that joint custody has come into
favor out of greater concern for the equal rights of adults than for chil-
dren’s needs. This position, though not as extreme as that taken earlier by
Goldstein, Freud, and Solnit (1996), who would have made all visitation
with noncustodial parents at the discretion of those with custody, will
probably never-the-less evoke the same sort of firestorm as their work did
when first published. Dr. Mason seems well aware of the controversial na-
ture of her positions. They fly in the face of many of the legal strides of the
past 50 years, including parental rights of unmarried fathers, joint custody,
child custody mediation, and open adoption. Dr. Mason is not opposed to
any of these innovations, but she does argue that children have not been
well served by conventions derived by adults concerned primarily with
their own rights.

This book is organized into chapters that consider custody disputes
and related issues, such as visitation, arising out of divorce, unmarried par-
enthood, step-families, gay and lesbian parenthood, and families brought
about by birth technologies ranging from artificial insemination to (poten-
tially) cloning. It is highly readable, engaging, and persuasive. Its flaws in
no way detract from the power of Dr. Mason’s arguments, but there are
two issues that deserve comment. Dr. Mason is an attorney and historian
who teaches at the University of California- Berkeley, and her perspective
is rooted in the legal profession. Though many of her positions about the
developmental needs of children will strike cords with social workers and
other human service professionals, she does not think highly of the voices
of social science experts in the courtroom. In advocating for a stronger
voice for children in child custody matters, she places a great deal of faith in the workings of a legal system that has been known to fail individuals despite legal representation. To her credit, she also argues for legal reforms, primarily the family court concept, which would adapt the legal arena to respond better in matters of family law. The only other blind spot in the book is that it does not summarize Dr. Mason’s principles and proposals at either the beginning or the end. They must be gleaned from the various chapters and assimilated by the reader. You will have to read the whole book.

References


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