

Age-appropriate Time Sharing for Divorced Parents

In 1991, with the creation of the Commission on Family Courts, Florida began a process of substantially changing the way in which the courts deal with family law-related matters.¹ Over the years, in addition to streamlining the way related family law cases are handled, the concept of "therapeutic justice" has been woven into the fabric of the family court structure.² Part of the approval by the Supreme Court of the findings and recommendations of the Family Court Steering Committee noted that "[t]here will never be a 'one size fits all' model" for handling family law cases.³

Developmental research by psychologists has resulted in a wealth of information that can assist attorneys, judges, and other professionals involved in crafting time sharing plans. Our goal in this article is to provide the findings of the psychological research on age-appropriateness for time sharing between parents and children, together with statutory and case law that will be of use in implementing the plans from a perspective of child development research.

Over the past 20 years, there have been many articles written discussing the developmental and psychological needs of children prior to, during, and after the parents' marital dissolution. From infancy through adolescence, children will experience their parents' divorce differently, depending upon the age and developmental stage at the time of separation and divorce, the degree of conflict subsequent to this

event and thereafter, and whether parents have constructed healthy boundaries upon which to handle their time sharing and visitation issues. Since the majority of pre- and post-divorce conflicts revolve around child-related issues (*i.e.*, child support, visitation issues, philosophical differences with respect to parenting, remarriage, relocation, etc.), having attorneys who are sensitized to developmental issues can be of benefit to parents. Such guidance can be beneficial in understanding the inevitable changes children will undergo through their growing up years.

The Effects of Parental Conflict on Children

For the most part, divorce is a very painful and stressful event for all involved.⁴ For many years, mental health professionals have documented how ongoing parental conflict before and after a divorce is frequently associated with harmful outcomes for children.⁵ A child's capacity to adjust to his or her parents' divorce will be seriously compromised when the child is exposed to ongoing parental conflict.⁶ In fact, the two most damaging factors impacting children of divorce are ongoing parental conflict and destabilized parent-child relationships.⁷

However, researchers are also starting to propose that while the majority of children experience problems in the months immediately preceding and following divorce, if the family can appropriately

reestablish, some acute problems (*i.e.*, emotional and/or behavioral problems, academic difficulties, or family conflicts) can diminish with time.⁸ Of course, the key phrase is "if the family can appropriately reestablish," as that statement signifies the heart of the problem. Only within the last 10 years have divorce researchers started to move away from the assumption that divorce can only be a traumatic and devastating event to conceptualizing divorce as a stressful life event to which there is the possibility of positive outcomes.⁹

Influence of Psychosocial Factors on Children When Parents Separate and Divorce

This article highlights the first five stages of Erik Erikson's psychosocial theory of development¹⁰ in order to present how psychosocial factors affect children during the separation and divorce process. While Erikson's theory encompasses development throughout the entire lifespan, this article will examine the first five stages beginning in infancy through adolescence, since these are the years children are most affected by their parents' break-up. Another reason this theoretical model was selected was to highlight how important parental influences are in shaping personality development. Educating separated and divorced parents about this process is very important so they can comprehend how youngsters make sense of their parents' separation and divorce. In Erikson's theory, one conflict emerg-

es at each developmental stage and becomes the most significant one to resolve. Consequently, the relationship that exists between parent and child will be crucial in determining how each conflict is overcome. While reparations can be made at later times to heal what was not attained, whatever vulnerabilities persist can affect a youngster's self-perception, self-esteem, and relationships with others.

The Infant: Birth to One Year

• *Erikson's Psychosocial Development: Trust vs. Mistrust*¹¹

— Although an infant is too young to comprehend the parents' separation and divorce, an infant will be affected by changes and disruptions in their environment. Psychological concerns at this stage center on the infant's capacity to form secure attachment to both parents in the context of co-parenting arrangements.¹² Parents must try to balance their ability to provide emotional continuity (*i.e.*, voice tone, gestures, handling) with a stable environment in order to promote feelings of attachment, security, and trust.

• *Psychological Input Regarding Visitation* — Each parent needs to provide as much consistency as possible in his or her parenting, so the infant can form a global impression that the world is a safe and secure place. If the infant experiences an excessive amount of unpredictable, inconsistent, or untrustworthy caregiving, the infant is more likely to become a fearful, anxious, and frightened baby and experience the world as if it is an untrustworthy place.

While it would stand to reason that infants would benefit from primarily being in one location, the reality is infants whose parents are separated and/or divorced will be forced to experience changes in their daily routine. These changes are unavoidable as some parents may be forced to return to work or school and cannot remain home with their infant. Regardless, if parents are able to the best of their ability to maintain a schedule that

provides regularity, attention, and affection, this can help minimize feelings of mistrust. However, if ongoing disruptions exist in one or both environments, it is likely to affect an infant's daily schedule including eating, sleeping, and social patterns.

The Toddler: One to Two Years

• *Erikson's Psychosocial Stage: Autonomy vs. Shame or Doubt*¹³

— Developmentally, this is a phase centered on learning to assert one's will, knowing the toddler is still very dependent upon parental figures. Toddlers explore their environment by being active and learning to engage in activities such as self-feeding, dressing, and having control over bodily functioning.¹⁴ Parents may not realize this, but toilet training is an important bodily achievement since it involves teaching their youngster to conform to societal expectations. As a toddler succeeds in this area, a sense of self-confidence and self-control is achieved. On the other hand, if a toddler has great difficulty in mastering the developmental tasks of this stage, a heightened sensitivity to being shamed can result.

• *Psychological Input Regarding Visitation Schedule* — Just like infants, toddlers also need a visitation schedule that is predictable and reliable. Separated and divorced parents are strongly encouraged to share all aspects of their child's daily and evening functioning, including their feeding schedules, bedtime rituals, ways of soothing their toddler when ill, etc. Toddlers are too young to understand the visitation process, but they are sensitive and likely to show some distress during the times of exchange. What parents can do to ease their discomfort during these transitions is to act and speak in a calm and soothing manner. Furthermore, parents should bring with them a comforting, familiar, or soft object such as a teddy bear, blanket, or doll to help ease their toddler's distress. Over time, these inanimate objects become associated with providing

emotional security and comfort.

Preschoolers: Three to Five Years

• *Erikson's Psychosocial Stage: Initiative vs. Guilt*¹⁵

— According to Erikson, this is the age when children's intellectual curiosity grows by leaps and bounds. Preschoolers are able to learn about the world from real as well as imaginary figures. And, when their interests, explorations, and activities foster positive feelings, a sense of initiative is developed. On the other hand, if youngsters are chastised and made to feel inadequate for their ideas and efforts, then feelings of guilt will likely emerge.

Young children have difficulty understanding the idea of divorce, so it is very important for parents to let their children know they could not be responsible for the parental dissolution. Otherwise, children may secretly blame themselves and feel guilty, thinking they are unworthy of receiving love and attention from either parent.

Additionally, young children are concrete thinkers, meaning they will engage in either/or thinking, which results in seeing their parents and others in dichotomous, or all-or-nothing terms. Thus, three to five year olds cannot understand that parents can be happy and sad, loving and angry, or kind and punishing. Therefore, when a parent who usually is on time arrives late to pick up his or her preschooler, this parent can be regarded as "bad" whereas the parent who comes on time is considered "good." It is this kind of thinking that leads children to distort reality and say things that can exacerbate problems. At this age, a child's lie is not equivalent to an adult's lie since fantasy and reality exist side by side and the boundaries between the two can co-exist. And, when children are faced with unpleasant situations, sometimes they will escape into a fantasy world in order to distance themselves from their painful reality. Consequently, sometimes children may not exactly tell the "truth," yet, there are many reasons for their so called "lie."

More often than not, their inability to remember is preferable to heightening conflicts between their parents. Therefore, parents would be better off if they could try and react less to their child's words, and instead try to understand the feelings and intent behind them.

• *Psychological Input Regarding Visitation Scheduling* — Preschoolers also need a visitation schedule that is predictable and reliable, as going to and from each household can still produce feelings of separation anxiety, emotional distress, and insecurity. When unexpected changes occur in a parent's routine, they must be clearly explained. Even phone calls should occur as routinely and consistently as possible. These exchanges can be brief, as the length of time is not as important as making a consistent connection. Generally, preschoolers dislike spending much time on the phone as they are unable to hold an image of someone who is physically or visually absent.

Preschoolers will demonstrate their emotional distress readily and may have difficulty accepting lengthy separations. Parents need to pay careful attention to any regressions in behavior such as bedwetting, thumbsucking, baby talking, and/or excessive temper tantrums. Generally speaking, if any of these behaviors re-emerge after being dormant, they are a nonverbal sign that their child is experiencing significant emotional distress.

Elementary School Age Children

• *Erikson's Psychosocial Stage: Industry vs. Inferiority*¹⁶ — This developmental stage spans the elementary school years and is a time when children become highly motivated to learn and are eager to participate in extracurricular activities with their friends. The developmental task of this age involves increasing a child's intellectual competency and acquiring various skills in order to feel competent.¹⁷ Acquiring new information, learning new skills, and en-

gaging in hobbies enable a child to develop feelings of accomplishment and purpose, which also enhance self-esteem and self-worth. On the other hand, if a child does not feel secure in these areas, feelings of inferiority will dominate.

• *Developmental Factors for Ages Six to 12* — Children at this age have more effective psychological resources to help them cope with the stress and change in the family structure. Still, many children find the divorce process painful, confusing, and as a result are more likely to have difficulties separating themselves psychologically from their parents' influence and wishes.¹⁸

Frequently, this occurs when children are placed in the middle of their parents' conflicts. What usually results is an increase in negative feelings such as frustration, anger, helplessness, sadness, and guilt. Generally speaking, boys are more likely to show anger and exhibit more aggressive behaviors, whereas girls are more likely to be sad and inhibited in their outward expressions of anger. Some children have tremendous difficulty verbalizing any unpleasant feelings and instead hurt, angry, and sad feelings become expressed in bodily complaints, such as headaches and stomach aches.

• *Psychological Input Regarding Visitation Issues* — During these years, children frequently develop interests, hobbies, and sport activities outside the home. There will be times when these activities can create havoc with the visitation schedule. These discussions should not be conducted in the child's presence as it is detrimental to the child if it is either put in the middle or becomes the go-between for either parent. Hence, flexibility, fairness, and adaptability, need to be demonstrated and taken into consideration for the welfare of the child.

The Adolescent: 12 to 18 Years

• *Erikson's Psychosocial Stage: Ego Identity vs. Role Confusion*¹⁹ — This is the time when teenagers

try to figure out who they are and what career path they would like to pursue. Psychologically, teenagers are also in the process of sorting out their beliefs, values, and ideals to incorporate into their identity. While adolescents need to have a sense of belonging, they also need to be encouraged to develop their self-sufficiency. Otherwise, they will become resentful, rebellious, or engage in self-defeating patterns, especially if they feel they are growing up in a world where the adults are controlling their destiny. If either parent notices that their son or daughter is starting to make harmful changes with regard to their choice of friends, daily habits, appearance, and/or his or her routine functioning, (e.g., a gregarious teen who becomes more withdrawn and isolated), these disturbing changes suggest the need for immediate intervention and parental action.

• *Developmental Issues* — Undergoing a parental separation and divorce during adolescence can be quite trying as this developmental stage encompasses considerable physical, mental, social, and emotionally charged transformations. The initial phase of adolescence (12-14 years old) is a time when teenagers are preoccupied with peer relations, social interactions, and how others perceive them. The middle stage of adolescence (14-16 years old) is when the focus shifts to the self and identity formation. During the last stage of adolescence (16-18 years old), a child's attention turns to issues of individuation, intimacy, and career.²⁰ It is a time of heightened emotional instability as well as uncertainty about one's identity or future career. Of course, family relationships still play an influential role on the teenager's self-concept and self-esteem. Although a teenager understands the reality of the divorce process, it is still disturbing because it raises questions about the future of their own relationships given the fact their parents' marriage has failed.²¹ Depending upon how much a teenager is affected by their parents'

break up can create difficulties in their own ability to seek affection and intimacy in relationships.

• *Psychological Issues Regarding Visitation Issues* — The primary need at this age is being able to negotiate and maintain parental control and authority in conjunction with the teenager's desire for greater freedom and independence.

Time Sharing, Age, and the Law

How closely does the law in Florida adhere to these findings by child psychologists regarding the propriety of a development-centered schedule of time sharing between divorced parents and their children? The overriding concerns in the laws related to child custody and contact between children and both parents are contained in F.S. §61.13(2)(b)(1), which is commonly viewed as defining the primary intent of Florida's child custody law:

The court shall determine all matters relating to custody of each minor child of the parties in accordance with the best interests of the child.... It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. (Emphasis added.)

F.S. §61.13(3) contains a list of 12 specific factors and one general, catch-all category ("any other fact considered by the court to be relevant") that the court is required to evaluate when making an award of parental responsibility and primary residence. However, the balance of the statute fails to specifically mention a child's developmental needs as a factor to be evaluated by the court in making such an award, or when setting a schedule of time sharing between the child and parents. The only mention of such developmental need as a factor is in the new F.S. §61.13001 (Parental Relocation with a Child), which became effective October 1, 2006.

In the absence of statutory language requiring the court to consider the developmental needs of a child when making an award of parental responsibility, primary

residence, and time sharing, the courts have had to evaluate matters on a case-by-case basis to craft some general rules as to when and how those needs should be taken into consideration. During the last decade, several judicial circuits have adopted "standard" visitation/time sharing schedules that counsel and courts have come to rely upon heavily when time sharing is an issue. The First, Fourth, Fifth, Ninth, 10th, 12th, 15th, and 18th circuits have all promulgated schedules of visitation/time sharing as "guidelines." In reality, these guidelines become the schedules agreed upon or ordered by the court in the majority of cases in these circuits.

However, during this same decade-long creation of "guidelines," courts in several appellate districts have consistently found that the imposition of a "standard" visitation schedule, lifted completely from the circuit's "guidelines," is an abuse of discretion unless the schedule based upon those guidelines is consistent with the age and circumstances of the child. For example, in *Wattles v. Wattles*, 631 So. 2d 349 (Fla 5th DCA 1994), the trial court imposed the "standard" visitation schedule, which was based in part on the school year, even though the child was only two years old at the time. The district court vacated this portion of the final judgment and remanded for the court to impose "an appropriate visitation schedule more in conformity with the age of the child."²²

Imposition of these "standard" visitation schedules have been frowned upon by the appellate courts, who have pointed out that just because they are labeled "standard" does not necessarily mean they are appropriate in a particular case.²³ Trial judges are instructed to make sure that there is a specific finding that the terms of the "standard" visitation schedule are appropriate to the child in question.²⁴ However, at least one court has upheld the imposition of a "standard" schedule in place of a schedule stipulated by the parents, albeit based upon a finding that the "standard" visitation order was

more appropriate to the child's best interests.²⁵

The new parental relocation statute²⁶ specifies as a factor "the age and developmental stage of the child,"²⁷ which the court must take into consideration during litigation on whether a primary residential parent can relocate with a child subject to the proceeding. This appears to be the first time that legislation has mandated that a child's developmental stage be taken into account during a proceeding regarding time sharing. The factor will probably be more closely scrutinized by the courts in other time sharing-related matters, now that it has received the legislative "seal of approval."

Conclusion

Having an understanding of the sequence of developmental factors, beginning in infancy, may enable parents and attorneys to construct visitation and time sharing schedules that are most appropriate for their family. After all, studies have demonstrated the effects of divorce on a child vary depending on the child's age, how well he or she copes with changes and stress (how resilient the child is), the degree and availability of emotional support, and the intensity and continuation of ongoing marital disharmony.²⁸ Therefore, it is in the parents' best interest to understand both the short- and long-term consequences of separation and divorce within the psychosocial stages of development so their children's various risk factors can potentially be minimized.

Hopefully, the courts and legislature will also become more enlightened as to the wealth of research on this topic, so a "one size fits all" approach is no longer the standard for time sharing plans between parents and children in family law matters. □

¹ *In re Report of Commission on Family Courts*, 588 So. 2d 586 (Fla. 1991).

² *In re Report of the Family Court Steering Committee*, 794 So. 2d 518, 522 (Fla. 2001).

³ *Id.*

⁴ E.M. HETHERINGTON, *Should We Stay Together for the Sake of the Children?*, COPING WITH DIVORCE, SINGLE PARENTING,

AND REMARRIAGE: A RISK AND RESILIENCY PERSPECTIVE (Mahwah, NJ: Erlbaum 1999); N. Kalter, & J. Rembar, *The Significance of a Child's Age at the Time of Parental Divorce*, 51 AMERICAN J. OF ORTHOPSYCHIATRY 100 (1981); J.S. WALLERSTEIN & J.B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE (1980).

⁵ C. Beuhler, A. Krishankumar, & G. Stone, *Interparental Conflict Styles and Youth Problem Behaviors: A Two-sample Replication Study*, 60 J. OF MARRIAGE AND THE FAMILY 119-132 (1998); M. Kline, J.R. Johnston & J. Tshann, *The Long Shadow of Marital Conflict: A Model of Children's Postdivorce Adjustment*, 53 J. OF MARRIAGE AND THE FAMILY 297 (1991); J.B. Kelly, *Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research*, 39 J. OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 963-973 (2000).

⁶ P.T. Davies & E.M. Cummings, *Marital Conflict and Child Adjustment: An Emotional Security Hypothesis*, 116 PSYCHOLOGICAL BULLETIN 387-411 (1994); R.E. EMERY, MARRIAGE, DIVORCE, AND CHILDREN'S ADJUSTMENT (2d ed. 1994); J.R. JOHNSTON, & V. ROSEBY, IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING AND HELPING CHILDREN OF CONFLICTED AND VIOLENT DIVORCE (1997); E. Vanderwater & J. Lansford, *Influences*

on Family Structure and Parental Conflict on Children's Well-being. 47 FAMILY RELATIONS 323-330 (1998).

⁷ P.R. Amato & B. Keith, *Parental Divorce and the Well-being of Children: A Meta-analysis*, 110 PSYCHOLOGICAL BULLETIN 26-46 (1991); M.K. Pruett, T.Y. Williams, G. Insabella & T.D. Little, *Family and Legal Indicators of Child Adjustment to Divorce Among Families with Young Children*, 17 J. OF FAMILY PSYCHOLOGY 169-180 (2003).

⁸ P.R. Amato & B. Keith, *Parental Divorce and the Well-being of Children: A Meta-analysis*, 110 PSYCHOLOGICAL BULLETIN 26-46 (1991); E.M. Hetherington, M. Bridges & G.M. Insabella, *What Matters? What Does Not? Five Perspectives on the Association Between Marital Transitions and Children's Adjustment*, 53 AMERICAN PSYCHOLOGIST 167-184 (1998).

⁹ E.M. Hetherington & M. Stanley-Hagan, *The Adjustment of Children with Divorced Parents: A Risk and Resiliency Perspective*, 57 J. OF THE SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT 1-242 (Serial No. 227, 1999).

¹⁰ E.H. ERIKSON, CHILDHOOD AND SOCIETY (W.W. Norton & Co. 1950).

¹¹ *Id.*

¹² M.K. Pruett, T.Y. Williams, G. Insabella & T.D. Little, *Family and Legal Indicators of Child Adjustment to Divorce Among Families with Young Children*, 17

J. OF FAMILY PSYCHOLOGY 169-180 (2003).
¹³ ERIKSON, CHILDHOOD AND SOCIETY (W.W. Norton & Co. 1950).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ J.S. WALLERSTEIN & J.B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE (1980).

¹⁹ ERIKSON, CHILDHOOD AND SOCIETY (W.W. Norton & Co. 1950).

²⁰ M. LEVY-WARREN, THE ADOLESCENT JOURNEY: DEVELOPMENT, IDENTITY FORMATION, AND PSYCHOTHERAPY (1996).

²¹ J.S. WALLERSTEIN & J.B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE (1980).

²² *Wattles v. Wattles*, 631 So. 2d 349, 350 (Fla. 5th D.C.A. 1994).

²³ *Owen v. Owen*, 633 So. 2d 1156 (Fla. 5th D.C.A. 1994).

²⁴ *Brown v. Smith*, 705 So. 2d 682, 685 (Fla. 4th D.C.A. 1998); *Mendelson v. Gil*, 877 So. 2d 753, 754 (Fla. 3d D.C.A. 2004).

²⁵ *Kelley v. Kelley*, 656 So. 2d. 1343, 1346 (Fla. 5th D.C.A. 1995).

²⁶ FLA. STAT. §61.13001, *et sec.*

²⁷ FLA. STAT. §61.13001(7)(b).

²⁸ J.B. Kelly, & M.E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 FAMILY AND CONCILIATION COURTS REVIEW 297-311 (2000); J.B. Kelly & J.S. Wallerstein, *Brief Interventions with Children in Divorcing Families*, 47 AMER. J. OF ORTHOPSYCHIATRY 23-39 (1977).

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This column is submitted on behalf of the Family Law Section, Thomas J. Sasser, chair, and Susan W. Savard and Jeffrey A. Weissman, editors.