

## A Child Custody View from the Bench

In a case regarding the parents' claims for custody of their children, the presiding family court judge eloquently expressed the court's outlook as to why parents should do all that they can to resolve their issues before asking the court to decide the future of their family. We thank the Honorable Paul W. Garfinkel for his permission to reprint his words for the benefit of all parents, in South Carolina and elsewhere, who may be facing difficult choices as to what is best for their children:

*I want to make a few comments to you about how important it is to your family to resolve this case. . . . I know that as both of you sit here today each of you are convinced of the merit of your own case and the rightness of your own position. However, asking your attorney to convert your convictions and beliefs into evidence that will result in a verdict in your favor is asking for what I believe the most difficult task that a trial attorney can be required to do.*

*A custody case is much different than any accident case or a criminal trial. In those cases, an attorney is only asked to prove what happened at a specific date and place. All of the events have been fixed and are unchanging. A custody case is much different. You are asking your attorneys not to paint a picture in time but to present a movie. The movie must show over a broad range of time how each of you parent. Then I must decide which of you is the better parent.*

*Can you imagine if you had to prove that DaVinci's "Last Supper" was a better painting than Michelangelo's "Creation," and say that you had to prove this to someone who had never seen either painting and you weren't allowed to show the paintings to them? I suppose you could hire the curator of the Metropolitan Museum of Art who would come to court and testify about composition, color, depth, character, and proportion. Or I suppose you could bring in some ordinary people to say which one they think is better. Maybe you could take a poll. This is what you are asking your attorneys to do in this case. They have to prove to me who is the better parent, but they have no way of showing me exactly how you parent. They can't take me to the study sessions so I can see what a good tutor Dad is. They can't bring me into your child's bedroom at 5 a.m. to see how Mom comforts the child who is awakened with a fever. I want you and I want your attorneys to bring up those incidents which show you to be caring and loving parents, and I am sure they will try. However, it is more likely that they will be forced to show the other parent at his or her worst. Neither of these efforts will work very well. In trying to prove the positives you will discover that with the passage of time, the inability of witnesses to describe the situation with the same force with which it occurred, just the difficulty of putting into words other peoples' thoughts, feelings and actions, all of these combine to make grey what you felt was vivid or blunt . . . what you thought was poignant. On the other hand, the negatives will seem to make you look like the worst parent that ever lived. Did you ever send one of your children to school without [his or her] lunch? Did you ever forget to give one of your children [his or her] medicine? Did you ever say about your child "I could have strangled her?" We probably have all done those things, and it will be presented as if you are the most neglectful or abusive parent.*

*At the end of the trial any goodwill each of you had for the other, if there is any, will have been totally destroyed.*

*It is both of you who must be parents of these children until either you or they die. Neither I nor any of these lawyers . . . will be there for you for the remainder of this long journey. We could try to do our best to get you pointed in the right direction and maybe even help you along, but it is only in the first few steps. In the end it is both of you who must raise these children.*

*If your children could reach into their hearts and tell you exactly what they think and feel about what is going on here, if they could get beyond the hurt we know they must feel, we all know what they would say. First they would say, "I wish Mom and Dad were back together." Knowing this will not happen, they would say, "I wish they would just stop fighting." No doubt they love you so much they are probably blaming themselves for your original breakup. It is time you get past the anger and put aside the hurt. You may even have to forgive. The pain that has been caused here arises from the conflict between each of you and has nothing to do with the children.*

*Your children want this conflict to end. You have the chance to leave there today with an agreement that is in the best interest of your children. But it is an agreement that you must reach together. You must be willing to put aside your differences and be willing to accommodate each other's needs. But most importantly you must be ready now to put the needs of your children first.*

*I know that your children want you to settle this case. You can do the right thing and you can start now. Put aside what has happened in the past. This is the judgment day for your children. It's not about you. And think about the additional damage you are going to cause to these children. I can tell you right now it has happened and it happens every time. Put aside your own egos and swallow them. Leave it in this courtroom . . . we've had a lot of egos left in this courtroom. You don't see them but I do because I see parents who are willing to put their children's welfare above their own ego. And they leave it right here and they know and understand what is really best for the children.*

~The Honorable Paul W. Garfinkel

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