

High Conflict Family Cases

In contentious cases with children, solutions need expert help

By **Diana Isaac**



Diana Isaac

(September 20, 2019, 9:03 AM EDT) -- How can a court help a child whose divorced parents cannot agree on what's best for him or her? B.C.'s Supreme Court is currently grappling with one such delicate scenario.

The child, a 14-year-old transgender boy who has asked for testosterone treatment, has the support of his mother, but the father strongly opposes the treatment.

The child was diagnosed with gender dysphoria and referred by a psychologist to the gender clinic at a children's hospital in B.C. The clinic concluded that it was in the child's best interests to proceed with hormone therapy so that he could transition into a male body. The child and his mother were informed of the risks and both signed a consent form.

In written arguments filed with the B.C. Court of Appeal, the father said that "a lower court delivered a 'rush to judgment' in siding with his child, who as a minor is incapable of appreciating the potential consequences of a 'still experimental treatment.' "

Determining the child's best interests in these sorts of cases is extremely complicated. There is no singular answer: The solution will be highly dependent on the facts and will therefore be very different for every family.

Like many legal cases involving a child, the challenge here is to balance the facts, the voice of the child and his or her best interests. For less complicated scenarios, the Office of the Children's Lawyer, a law office in the Ministry of the Attorney General that works on behalf of children with respect to their personal and property rights, may be the appropriate resource to provide a court with facts.

But when the final outcome of a case may result in a permanent, life-altering change for the child, it is necessary to bring in specialized experts who can provide facts based on what the child says and needs (which is what occurred in the case involving the transgender boy). A s. 30 assessment would be more appropriate in situations where there are clinical and psychological issues at play. Assessments can be conducted by social workers, psychologists, psychiatrists or other professionals who have specialized knowledge and experience working with children.

Parents too can make a contentious case less damaging for all parties involved, even if they both hold different viewpoints. In addition to including and listening to expert assessors, they may want to consider arbitration over litigation. There are several benefits to arbitration, including the fact that it is private. This keeps the parents and the child away from public scrutiny. Arbitration also promotes more of a dialogue between the parents. In court, they are simply presenting their case to a judge, but in arbitration, the parents have an opportunity to talk about solutions.

The main caveat here is that the parties must have time. If a decision about the child must be made quickly, then court may be the better option. Furthermore, both parents must be willing to participate in the arbitration.

In highly contentious cases involving children, it is crucial to keep in mind that the child needs help.

The parties involved must do their best to put their own views and beliefs aside, focus on the facts and find a solution that will best serve the child's needs. When there is a disagreement between divorced parents as to what is best for their child, decisions cannot be based on which parent is "right" and which parent is "wrong." It is not their responsibility to diagnose their child, either. These cases require teamwork and experts must be part of this collaboration.

Diana Isaac, called to the Ontario bar in 2010, is a family lawyer at Shulman Law Firm. She specializes in resolving high conflict and acrimonious matters.

Photo credit / LightFieldStudios ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Yvette Trancoso-Barrett at Yvette.Trancoso-barrett@lexisnexis.ca or call 905-415-5811.

© 2019, The Lawyer's Daily. All rights reserved.