Fathers' Rights Against Maternal Preference

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Introduction

In awarding custody, do New York courts favor mothers more than fathers or fathers more than mothers?

Neither. Legally New York Courts have no gender preference when awarding physical custody of a child. However, the first thing they consider is which parent is the main caregiver/nurturer. In American society mothers are still disproportionately the primary caregiver. For many years a mother’s duty was to take care of the children and raise them. Even though fathers now have more of an active role with their children, mothers are still often perceived to be the ones that provide most of the love.

Background

- In ancient Roman law, children were the property of their fathers; mothers had no legal rights to the children.
- Until the mid-19th century, fathers had the absolute right to custody after divorce.
- The British Act of 1839 gave custody of children under age seven to mothers. American laws followed this.
- As fathers left villages to look for work in the late 1800s, mothers became primary caretakers.
- By 1920s, maternal preference was favored by the courts.
- By mid-1970s, fathers claimed discrimination in custody decisions; states abandoned maternal preference in favor of gender neutral laws.
- Today, the needs of children determine custody, not gender. Yet NY courts still looks at which parent is the main caregiver of a child. (New York Unified, C.S.)

Activists for Fathers’ Rights

- Mothers are viewed as more nurturing, which is why they are more often awarded custody.
- There is a non-profit organization called Fathers’ Rights Association of New York. They fight for equal parenting rights “to ensure that children maintain a continuing nurturing relationship with both parents after divorce” (Law Office of Sari M. Friedman 2013).
- The American Coalition for Fathers and Children (ACFC) is another group that supports fathers’ rights and ensures equality in the courtroom when both parents are in a custody battle.
- The ACFC believes that “equal shared parenting time or joint custody is the optimal situation” (ACFC 2013).
- The President of the National Organization for Women wrote an article titled “ Fathers’ Rights Groups: Beware Their Real Agenda” in response to the emergence of fathers’ rights activists. Her article warns that “shared parental responsibility is the new doublespeak for [forced] joint custody” (National NOW Times 1997).

Increases in Fathers’ Involvement

- Studies show fathers are making efforts to be more involved in their kids lives.
- In the last ten years, a number of key gains were made that show fathers have significantly increased their involvement with their children at school. Increases were made with fathers:
  - Walking their child to school: 38% to 54% +16 percentage points
  - Attending class events: 28% to 35% +7 percentage points
  - Visiting their child’s classroom: 30% to 41% +11 percentage points
  - Volunteering at their child’s school: 20% to 28% +8 percentage points
- Fathers also significantly increased their interaction with teachers, school officials and other parents. Fathers increased engagement by:
  - Attending parent-teacher conferences: 69% to 77% +8 percentage points
  - Attending school meetings: 28% to 38% +10 percentage points
  - Attending school-based parent meetings: 47% to 59% +12 percentage points

Key Findings

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Conclusions

- Mothers receive primary custody 68-88% of the time, fathers receive primary custody only 8-14%.
- After a divorce or separation, mothers are still more likely to be awarded physical custody of the children in New York.
- In about 1 in 45 households, fathers raise their children without a mother. The number of single-father households has increased by 62% in 10 years.
- In New York, the male must legally state he is the father or he has no rights to the child.
- Safe Haven law allows a parent to anonymously place a child up for adoption and give up all parental rights. If a woman were to do this, unless the father is listed on the birth certificate, he would not be notified.
- More and more fathers want to be involved in their children’s lives. They are staying home with their children more than ever before and provide more equal time in the parenting role children.

References

- McCormick, Spies and Horton (2013). ACFC is America’s shared parenting organization (para. 2).