CHAPTER 3

9:35am
“Unpacking 50/50”: Myths and Realities of Shared Parenting

Janet Helson
Skellenger Bender, P.S.
&
Raegen Rasnic
Skellenger Bender, P.S.
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Janet Helson and Raegen N. Rasnic
Skellenger Bender, P.S.

History of Shared Parenting

Pre-1900’s:  Industrial Revolution

- Children, like women, treated as property. Custody automatically granted to fathers.
- Men entered urban workforce, women assumed child care and homemaking role

“Tender Years Doctrine”  “Best Interests of the Child”

- Preference for maternal custody  - Beginning in 1970’s, “Tender Years Doctrine” challenged as sexist
- Belief that women are uniquely suited to perform parenting tasks  - Invalidated on due process, equal protection grounds
- Accepted for most of 20th Century
History of Shared Parenting, cont’d

- Courts grappled with meaning of “Best Interests of the Child”

- Parenting Act (1987) sets forth specific factors for the court to consider
  - RCW 26.09.187

- Factors allow/require flexibility in developing parenting plans and avoid a “cookie cutter” approach; no schedule guidelines, no presumptions

Parenting (.187) Factors (original)

- Relative strength, nature, and stability of the child’s relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- Agreements of the parties . . . .
- Each parent’s past and potential for future performance of parenting functions;
- Emotional needs and developmental level of the child;
- Child’s relationship with siblings and with other significant adults, as well as the child’s involvement with his or her physical surroundings, school, or other significant activities;
- Wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- Each parent’s employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

History of Shared Parenting, cont’d:

- Pre-2007:
  - The court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time only if the court finds the following:
    - No limitation exists under RCW 26.09.191;
    - (A) The parties have agreed to such provisions and the agreement was knowingly and voluntarily entered into; or
    - The parties have a satisfactory history of cooperation and shared performance of parenting functions, the parties are available to each other, especially in geographic proximity, to the extent necessary to ensure their ability to share performance of parenting functions; and
    - The provisions are in the best interest of the child.
  - RCW 26.09.187(3)(b)
County Guidelines

- Some counties develop “guidelines”
  - King County Family Court Services guidelines
  - Spokane County
  - Yakima County still has on website
    - [http://www.yakimacounty.us/superiorcourt/ChildDiv.htm](http://www.yakimacounty.us/superiorcourt/ChildDiv.htm)
  - Whatcom County (based on Spokane and King County) 1998
  - Others
- Problem: Risk of Cookie Cutter Approach
  - Fails to address families where shared parenting exists prior to separation
  - Fails to address families where parenting deficits/issues which may not rise to .191

History of Shared Parenting, cont’d:

- Washington Parenting Act Study (1999)
- From review of 400 Parenting Plans, found:
  - 45% of plans provided for primary parent, alternate weekends
  - 75% of primary parents were mothers
  - “Only a handful” of plans provided for more than alternating weekends
  - 20% of plans had no specific schedule at all


History of Shared Parenting, cont’d:

- Washington Parenting Act Study (1999)
- From review of research, found:
  - “Absent high levels of parental conflict, there are no significant disadvantages to children of shared and 50/50 residential schedules. Nor are there significant advantages to children of shared or 50/50 residential schedules.”
  - “Parental conflict is a major source of reduced well-being among children of divorce.”
  - “Shared or 50/50 residential schedules have adverse consequences for children in high conflict situations.”
History of Shared Parenting, cont’d:

- Some argued the finding required by RCW 26.09.187(b)(ii)(B)
  - Too easily allowed a parent who opposed shared parenting to create the very conflict which then precluded the court from entering a shared parenting schedule.
  - Unfairly disadvantaged “breadwinner” parents because of focus on shared performance of parenting functions
  - They advocated for presumption of shared parenting in every case. Parent challenging presumption would have burden of proof.
- Critics of shared parenting presumption argued that requiring courts to favor 50/50 or a set proportion of residential time would not serve the best interests of children in high-conflict and DV cases.

Shared Parenting Proposed Legislation

- As early as 2001 (and perhaps earlier), State Sen. Jim Kastama proposes various bills aimed at leveling what he perceives as a playing field while is slanted against fathers:
  - Presume that children will be with each parent one third to one half time
  - Create a “friendly parent” factor
  - Eliminate or unweight the portion of factor .187(i) related to which parent has performed parenting functions related to the daily needs of a child
  - Problem with presumed shared parenting: Would create a different “cookie cutter”
  - State and KCBA family law sections oppose
  - DV advocates, including legal services programs and NW Women’s Law Center oppose

History of Shared Parenting, cont’d:

- 2007 – Sen. Hargrove convened a workgroup of stakeholders to discuss perceived concerns with the .187 factors and, as a political matter, to try to resolve the ongoing conflict regarding shared parenting.
- A compromise legislative proposal resulted.
  - Separated out “daily parenting functions” from first .187 factor and thus “unweighted” it
  - Removed barriers to “frequent and alternating time”
  - Parenting Act retained (and arguably increased) flexibility.
  - Father’s rights advocates tried to frame as a shared parenting bill; common misperception that the bill created a presumption in favor of shared parenting.
History of Shared Parenting, cont’d:

- **Post-2007:**
  - Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties’ geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

- **RCW 26.09.187(3)(b)**

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Parenting (.187) Factors (revised)

(i) Relative strength, nature, and stability of the child’s relationship with each parent;
(ii) Agreements of the parties . . . .
(iii) Each parent’s past and potential for future performance of parenting functions as defined in “RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
(iv) Emotional needs and developmental level of the child;
(v) Child’s relationship with siblings and with other significant adults, as well as the child’s involvement with his or her physical surroundings, school, or other significant activities;
(vi) Wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences . . . . ; and
(vi) Each parent’s employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

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Where We Are Now: Questions

- Is there a new cookie cutter?
  - Is a cookie cutter ever appropriate?
  - Why are lawyers/judges/parenting evaluators so drawn to cookie cutters?
  - What can we do to encourage flexibility?
- How is push toward 50-50/equal residential time driven by other considerations, i.e., interface with child support and relocation?
Where We Are Now: Questions

- "Shared Parenting": Do you know it when you see it?
- **3.2 School Schedule**
  - Upon enrollment in school, Buster will reside with Parent A, except for the following days and times when Buster will reside with Parent B:
    - Every Tuesday after school to 9:30 PM
    - Every Thursday after school to Friday return to school;
    - Every weekend from 1:00 Saturday to 10:30 AM Sunday
  - In addition, Parent B shall transport Buster from Parent A’s home to school every Monday, Tuesday, and Wednesday, and from Parent B’s home to school on Friday.
- Focus on overnights: where does it come from?

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Shared Parenting and Child Support

- Questions:
  - How to define Obligor/Obligee when parents have equal or substantially equal residential time?
  - True or False: shared parenting = no transfer payment
    - Arvey calculation does not apply
  - Does transfer payment always go from higher earner to lower earner? What is legal basis for that approach?

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Shared Parenting and Child Support

- "The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families."
Shared Parenting and Child Support

- "...When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment."

Shared Parenting and Child Support

- Is the "residential schedule credit" approach useful?
  - No set formula
  - Completely discretionary
  - Doesn't reflect real expenses of two households
  - What does the second sentence mean?

- Can concerns over child support drive the push for "50/50"?

Shared Parenting and Child Support

- An alternative approach: Colorado Child Support Guideline, C.R.S. 14-10-115
  - For cases with split or third party physical care, or extensive sharing of physical care, each parent's calculated share of child support is adjusted by the time spent with the children.
  - Because shared physical care presumes that certain basic expenses for the children will be duplicated, an adjustment for shared physical care is made by multiplying the basic child support obligation by one and fifty hundredths (1.50).
Shared Parenting and Relocation

- "... a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate."
  - RCW 26.09.430

Shared Parenting and Relocation

- "The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person..."
  - RCW 26.09.520

Shared Parenting and Relocation

- How to determine who is "a person with whom the child resides a majority of the time"? Overnights relevant factor?
- If there is shared parenting, who is required to give notice?
- Who gets the benefit of the presumption?
- Should either parent benefit?
- If there is no presumption, must the parent who intends to relocate petition for a major modification?
Wrap-Up Questions

- Is “50/50” the new norm?
- Should it be?
- Should shared parenting interact with child support?
- How should shared parenting interact with relocation?
- Are these child-centered, or parent-centered questions?