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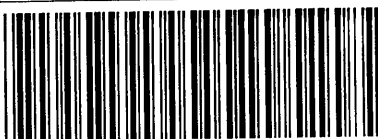
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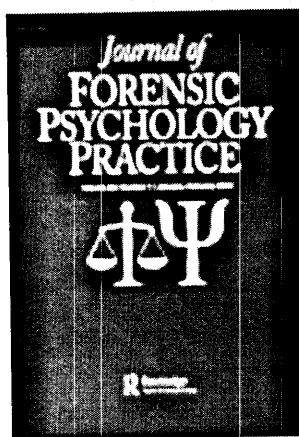
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Evaluation for Child Custody: Using Best Practices in a Worst Case Scenario

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CASE REPORT

Evaluation for Child Custody: Using Best Practices in a Worst Case Scenario

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Evaluation for child custody is one of the most criticized areas of forensic mental health assessment due to the perceived lack of standardization in evaluation methods. However, the field of child custody evaluation has made significant progress in the last two decades with respect to empirical research, professional resources available to evaluators, and an increasing emphasis on standards of practice. These advances have made it possible to work toward a best-practices model for child custody evaluation. This case report reviews the empirical basis for one best-practices model and applies the model to a complex child custody evaluation vignette. Additional practice recommendations are also provided.

KEYWORDS *child custody, forensic assessment, best practices, visitation, civil forensic evaluation*

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Child custody evaluations are among the most complex areas of forensic mental health assessment (Bow & Quinell, 2001; Heilbrun, Grisso, & Goldstein, 2012; Otto, Buffington-Vollum, & Edens, 2003) and are typically requested in family law matters when parents are unable to resolve their differences regarding the custody of their children (Melton, Petrila, Poythress, & Slobogin, 2007). Because of the wide range of legal regulations and procedures across jurisdictions as well as substantial variability in referral questions, there is no universally accepted method of conducting child custody evaluations (Melton et al., 2007; Heilbrun, Marczyk, & DeMatteo, 2002). However, over the last two decades, numerous professional directives¹ (e.g., American Psychological Association, 1994; American Psychiatric Association, 1988; American Academy of Psychiatry and the Law, 2005) and resources² (e.g., Fuhrmann & Zibbell, 2012; Gould & Martindale, 2007) on conducting ethical and competent child custody evaluations have emerged, including suggested best-practices models.

Best practice standards represent "practice at its best, given the available theories, methods, and procedures in the field" (Heilbrun, Grisso, & Goldstein, 2009, p. 144). Best-practices models are aspirational in nature and represent a standard for which practitioners strive, recognizing that performance will not always meet the promulgated standard. Despite a general trend toward standardizing practices used in forensic mental health assessment (Heilbrun, 1995), it has been argued that the field of child custody evaluation is not yet ready for a best-practices model, given the lack of consensus among researchers and practitioners about what constitutes an ideal evaluation (Gould & Stahl, 2000). However, a more common position within the child custody literature is the notion that, although most extant professional directives are aspirational in nature, they represent the best practices in the field (e.g., LaFortune & Carpenter, 1998; Martindale & Gould, 2004). There are several important arguments in support of the field of child custody evaluation being ready and in need of a comprehensive and empirically based best-practices model.

First, child custody evaluations are trailing behind most other areas of forensic mental health assessment in establishing best practices. The field of forensic mental health assessment has come very far in the last several decades in terms of developing standards of practice (Heilbrun, 2001). These standards are influenced by numerous sources, including ethics codes, specialty guidelines developed by professional organizations (e.g., American Psychological Association) to address specific forensic issues, broad principles of forensic mental health assessment (e.g., Heilbrun, 2001; Melton

¹ The term *professional directives* is used throughout to refer broadly to professional practice guidelines, standards, and parameters.

² The term *resources* is used throughout to refer broadly to books and articles published to provide information on conducting an "ideal" or comprehensive child custody evaluation.

et al., 2007), meta-analyses or national surveys describing outcomes or practices, psychometric properties of specialized forensic assessment instruments, professional resources and training, and relevant empirical research (Heilbrun et al., 2009). As such, the standards of practice that have emerged in other areas of forensic mental health assessment (e.g., competence to stand trial, criminal responsibility, violence risk assessment) have led to the development of best-practices models for particular types of forensic mental health assessments (e.g., Grisso, 1986, 2003; Heilbrun et al., 2009; Morse, 1978). A logical option would seem to be application of the extant best-practices models to child custody evaluation. However, such models were not designed to assess the unique constructs and problems that arise in a child custody evaluation.

A second argument for the establishment of a best-practices model in child custody evaluation is that the field has matured. The field of child custody evaluation has generally been viewed as relatively young and, as discussed earlier, without consensus regarding how child custody evaluations should be conducted. However, the field is no longer in its infancy, as evidenced by the numerous books, peer-reviewed journal articles, professional directives, and thoughtful treatises that have been published addressing issues related to child custody evaluations. Accordingly, Gould and Martindale (2007) stated, "We are convinced that the current state of the art in child custody assessment is strong enough to justify a call for child custody evaluators to uniformly embrace the forensic model" (Preface, p. x). Although empirical research in child custody evaluation remains underdeveloped when compared with its criminal forensic mental health assessment counterpart, the research is progressing (e.g., Ackerman & Ackerman, 1996, 1997; Ackerman & Pritzl, 2011; Bow & Quinnett, 2001, 2002; Horvath, Logan, & Walker, 2002; Keilin & Bloom, 1986; LaFortune & Carpenter, 1998; Zelechowski, 2009) and there are, currently, two peer-reviewed journals devoted primarily to this area: *Family Court Review* and *The Journal of Child Custody*.

A third argument for the establishment of a best-practices model for child custody evaluation is that the field of child custody evaluation has been the subject of considerable criticism over the last several decades and needs to address the existing concerns in order to be considered a viable and respected field (Felner, Rowleson, Farber, Primavera, & Bishop, 1987; Melton et al., 2007; Tippins & Wittman, 2005). Given the increasing emphasis on standard setting in all areas of forensic mental health assessment (Heilbrun, 1995) and, as a way of augmenting the credibility and consistency of child custody evaluations, many commentators have called for minimum standards of practice and, ideally, best-practices models in the field of child custody evaluation (e.g., Bow & Quinnett, 2002; Gould, Kirkpatrick, Austin, & Martindale, 2004; Grisso, 2005; Kirkpatrick, 2004; Melton et al., 2007).

It is primarily because of the three arguments presented here that the best-practices model utilized in this case report (Fuhrmann & Zibbell, 2012) was created. Fuhrmann and Zibbell created their model for child custody evaluation by translating the relevant "psycho-legal constructs" that emerge from statutory and case law, research, and professional directives (e.g., American Psychological Association [APA], 2009) into factors that can be appropriately assessed by child custody evaluators, in accordance with basic forensic mental health principles and practices. The following case vignette depicts a particularly complex set of circumstances for a child custody evaluator to address and the subsequent discussion illustrates how to apply the Fuhrmann and Zibbell best-practices model for child custody evaluation.

CASE VIGNETTE³

The Smith-Jones family was referred for a psychological evaluation in a court order that stated, "the [evaluator] shall investigate and report in writing on issues of visitation and legal and physical custody." Mr. Smith and Ms. Jones had two children, Robert (age 11) and Jane (age 6). Mr. Smith and Ms. Jones were never married, and their 7-year relationship was generally amicable, until they separated after Mr. Smith's discovery that Ms. Jones had begun a romantic relationship with a man she met through a social networking website. At the time of separation, Robert was 5 years old and Jane was 1 year old. After their separation, the children lived primarily with Ms. Jones, with alternating weekends spent with Mr. Smith. This was a mutually agreed-upon arrangement made without court involvement; although, Mr. Smith reported that Ms. Jones frequently withheld the children from him as a means of "controlling" him.

Mr. Smith reported that he and Ms. Jones were able to communicate in a "business-like" manner regarding the children's schedules. He indicated that they did not argue often but that there was frequent tension because Ms. Jones was unhappy that Mr. Smith had married his long-term girlfriend several years after she and Mr. Smith separated. He indicated that Ms. Jones's behavior became increasingly unusual and erratic, including leaving Mr. Smith's wife threatening voicemail messages and having the children deliver hostile messages to her. Mr. Smith also reported that Ms. Jones began to increasingly establish visitation rules for him, including prohibiting him from sleeping in the same bed with his wife or allowing the children to be alone with her. If Ms. Jones suspected that any of her rules were not being followed, she would not allow Mr. Smith to see the children. This parenting arrangement remained in place, in a relatively consistent manner, for 4 years.

³ Identifying information has been removed or modified to protect confidentiality.

Ms. Jones had a long history of mental health and substance abuse problems and self-injurious behavior. During the 4 years after their separation, Mr. Smith reported that Ms. Jones was frequently in and out of the hospital for psychiatric problems, which he would discover when he arrived at her house to pick up Robert and Jane for his alternating weekend visits. He indicated that he would not know Ms. Jones had been hospitalized until he arrived at her house and found the children there with only Ms. Jones's boyfriend. However, despite Ms. Jones's declining psychiatric stability, Mr. Smith reported that he felt that the children were generally well cared for when with Ms. Jones.

Approximately 4 years after their separation and after a recent discharge from an inpatient psychiatric facility, Ms. Jones set herself on fire outside her home, after an argument with her boyfriend. The children were 9 and 4 years old and were at home at the time; however, it is unclear to what extent they witnessed this incident. Robert and Jane went to live with Mr. Smith immediately after this incident, as Ms. Jones was in a medically-induced coma for several months. Once she was medically stable, she was transferred to a psychiatric hospital, where she has been receiving inpatient treatment for the last year-and-a-half. According to Mr. Smith, he and Ms. Jones's family members were aware of her history of self-injurious behavior as well as the fact that she was increasingly admitting herself into the hospital. However, he indicated that no one ever imagined she would do something so extreme, especially when her children were at home.

Robert and Jane had been living with Mr. Smith and his wife since the fire incident. Their move to Mr. Smith's home required them to change schools, and they seemed to be adjusting positively to their new school as well as participating regularly in individual and family therapy. Mr. Smith reported that Robert and Jane had been working closely with their therapists on accepting what happened to their mother and preparing to eventually see her, given that her injuries had left her virtually unrecognizable. They had recently begun supervised phone contact with her, which required a significant amount of emotional preparation, given how different her voice now sounded due to numerous surgeries. Mr. Smith reported that these phone calls were extremely difficult for Robert and Jane and that there were often substantial behavioral repercussions afterward (e.g., tantrums, aggressive behavior).

This matter had been brought before the court because Ms. Jones was requesting visitation with the children as well as joint physical and legal custody, both of which had been granted solely to Mr. Smith after the fire incident and subsequent removal of the children. Multiple clinical interviews were conducted with Mr. Smith, Ms. Jones, Robert, and Jane. A visit to Mr. Smith's home was conducted as well as collateral interviews of Mr. Smith's wife, Ms. Jones's parents, members of Ms. Jones's psychiatric treatment team, and Robert's and Jane's therapists and teachers. Legal and mental

health records were reviewed for Ms. Jones, including a comprehensive psychological assessment battery recently completed as part of her psychiatric inpatient treatment. In addition, Mr. Smith and Ms. Jones each completed a child behavior checklist (CBCL), parent form (Achenbach, 2009) for Robert and Jane, which measures a variety of emotional and behavioral problems as well as competencies in children, as reported by the parent. The following is a brief summary of the recommendations and conclusions offered to the court.

Visitation

Throughout the evaluation, it remained unclear to what extent the children witnessed the fire incident; however, it was indisputable by the children's caregivers, teachers, and providers that the children were severely traumatized, not only by the incident but by its aftermath, including immediate relocation to their father's home, a new school and community and the abrupt and complete loss of their mother's involvement in their daily lives. Robert and Jane coped with these changes and losses in different but equally distressing ways. Robert continued to demonstrate severe anxiety related to separation from caregivers or being alone, problems with sleeping and eating, and developmental regression. Jane demonstrated aggressive behavior, such as hitting other children, making threats related to hurting others or destroying property, and engaging in violent tantrums multiple times per day, without any obvious trigger or provocation.

Although both children have made substantial gains in the last 18 months in individual and family therapy, in school, and in their daily functioning, there is still a long road ahead in terms of emotional regulation and behavioral stability for each of them. They have worked hard in therapy to begin to process the events of the last several years and prepare to engage in weekly telephone contact with their mother, after a long period of her absence in their lives. Given their young ages and the severity of the trauma and disrupted attachment they experienced, this process has had to be extremely gradual and attuned to their fluctuating needs. Both Robert's and Jane's therapists felt very strongly that any major disruption or change in the children's current routines and expectations could significantly affect the behavioral and emotional progress they have made. Both therapists indicated that, although the ultimate goal is to work toward reunification with Ms. Jones in person, the children are a long way from being ready for that and that there are many steps that need to happen before then. For example, viewing pictures of Ms. Jones's current appearance in a therapy session, while working to maintain behavioral and emotional control during the session and in the days afterward, would be a necessary process before any in-person visits were planned with Ms. Jones.

Ms. Jones has expressed a desire to have her children visit her in the hospital in which she currently resides and has, thus, requested that the court order visitation. Although her desire to see her children is certainly understandable, particularly as she continues to improve her level of physical and emotional functioning, it is important to consider what is currently in the best interests of the children. Mr. Smith and the children's therapists seem to be working hard toward this goal while respecting Robert's and Jane's need to move at an extremely gradual pace. It appears that all involved parties have the same ultimate goal; however, Ms. Jones would like to substantially expedite the process, which could be disruptive and harmful to the children.

Physical Custody

Physical custody of Robert and Jane does not appear to be in dispute at this time, as Ms. Jones acknowledges that she is not in a position to assume physical custody of the children. She, as well as her current treatment providers, indicated that she likely has several years of intensive medical procedures ahead of her and will not be able to assume consistent responsibility for the children's daily needs. After her discharge from her current hospitalization, her living situation has not been established, as she may continue to have ongoing serious mental health issues. Currently, the children are in a stable, loving home with Mr. Smith and his wife, and their physical and emotional needs appear to be adequately met. There does not appear to be justification at this time for modifying the current physical custody arrangement.

Legal Custody

With respect to legal custody, Ms. Jones indicated that she would like to have a say in decision making that pertains to her children. She does not believe her decision-making ability is affected by her medical or emotional needs and feels that she and Mr. Smith were almost always in agreement about child-rearing decisions prior to the fire incident. Mr. Smith expressed significant concern about Ms. Jones's judgment and decision-making capacity, given her choice to set herself on fire when the children were home. He also cited her extensive history of psychiatric instability and self-injurious behavior and his concern about future suicidal behavior, particularly in the children's presence. According to members of Ms. Jones's psychiatric treatment team, she remains in a very preliminary phase of dealing with the implications of the choices she made and has not yet fully grieved or accepted the loss of her former life. As she prepares for additional medical procedures, it is unclear how her psychiatric symptoms may be exacerbated. Her availability to be active in her children's lives as she undergoes these

medical procedures and continues her psychiatric recovery is also unclear. Given the combination of Ms. Jones's recent psychiatric instability and numerous unresolved medical needs, it may be more appropriate to examine the issue of legal custody when her medical needs have been resolved and her depressive symptoms and risks for suicidal and self-injurious behavior have been in remission for a longer period of time.

DISCUSSION AND RECOMMENDATIONS

There is little consensus in the law regarding what constitutes the "best-interest-of-the-child" standard (Melton et al., 2007; Schutz, Dixon, Lindenberger, & Ruther, 1989) that, in turn, results in difficulty translating that prevailing legal standard into issues that can be assessed through psychological evaluation. However, across the numerous professional directives available to child custody evaluators, there are overarching constructs or principles that emerge (Zelechowski, 2009; Fuhrmann & Zibbell, 2012) as primary factors that courts consider when making child custody determinations. Specific recommendations for applying Fuhrmann and Zibbell's best-practices model for child custody evaluation to the Smith-Jones family case vignette are outlined below.

Organize Your Conceptualization and the Report According to Psycho-Legal Constructs

As discussed by Fuhrmann and Zibbell (2012), the indeterminacy of the best-interests-of-the-child standard has prompted many states to derive lists of factors for courts to consider when making custody decisions. These factors can generally be grouped into four broad categories: (1) parenting attributes, (2) child(ren)'s psychological needs and abilities, (3) the resulting fit between parent and child, and (4) the co-parenting relationship (Fuhrmann & Zibbell, 2012). The overarching principles that emerge from professional directives tend to generally fall into these four categories, as well. Clearly, the information reported in each domain would be relevant to all three legal questions raised in the case vignette: visitation, physical custody, and legal custody. Here is how one might organize the information obtained from the case vignette according to this model.

PARENTING ATTRIBUTES

With this construct, we are generally concerned with the court's need for information about parents and parenting; specifically, the functional abilities or deficits of both parents. This includes each parent's ability to create

a positive relationship with the child, understand the child's needs as an individual as well as in developmental context, place the child's needs ahead of one's own, demonstrate flexibility or adaptability in one's responsiveness to the child, and communicate effectively with the child. In the Smith-Jones case, the information about Mr. Smith and Ms. Jones obtained from clinical interviews, records reviewed, collateral interviews, and psychological testing could be organized according to this conceptualization of each parent's functional abilities and deficits.

For Mr. Smith, it was important in this case to assess his understanding of Robert's and Jane's distinct emotional and behavioral needs and his ability to adapt and respond to those needs. It was also important to understand whether he is able to establish suitable limits and administer appropriate discipline, when necessary, within a safe and loving context. For Ms. Jones, it was important to get a sense of her understanding of Robert's and Jane's current level of functioning and whether she grasped the devastating impact that her choices had on her children.

Interestingly, there was a considerable difference between Ms. Jones's ratings of Robert and Jane on the CBCL and Mr. Smith's ratings of the children. Specifically, Ms. Jones's ratings suggested that neither Robert nor Jane were currently experiencing any clinically significant behavioral or emotional symptoms; whereas, Mr. Smith's ratings for both Robert and Jane resulted in clinically significant elevations on a variety of domains (e.g., anxiety problems, aggressive behavior). This discrepancy as well as Ms. Jones's desire to expedite the visitation process against the recommendation of the children's therapists were clear examples of the deficits in her understanding of and ability to adapt to the children's needs.

CHILD'S PSYCHOLOGICAL NEEDS

In this category, we are focused on the child's nature and degree of attachment to each parent, self-regulatory capacity, special needs, peer relationships, academic functioning, relationships with siblings, and preference for a particular outcome. In the Smith-Jones case, the information obtained from each parent about Robert's and Jane's developmental histories and current functioning would fall under this category as well as the information obtained from the interviews with the children, the home visit, and the interviews with the children's teachers and therapists. For both Robert and Jane, it was important to assess their understanding of their current circumstances and parenting arrangement, their level of attachment to Mr. Smith and Ms. Jones, and how that has changed over time, their unique emotional needs, their academic and social functioning, and their wishes related to custody and visitation. Of equal importance in this case was placing those needs, deficits, and desires in developmental context for the court to provide a more comprehensive picture of overall functioning.

RESULTING FIT

The third construct is related to the congruence between the parents' functional capacities and the children's needs. This includes the degree to which parents understand and provide what their children need, the degree to which the children's needs are within the realm of what the parents are able to provide, the compatibility between parent and child temperaments, and the level of agreement between parents' expectations and demands and children's abilities. In the Smith-Jones case, there appeared to be a relatively compatible fit between Mr. Smith and the children. This was particularly important to assess, given that Robert's and Jane's emotional needs have significantly fluctuated over time and will likely continue to do so. Mr. Smith has demonstrated a strong commitment to ensuring that the children receive the psychological support necessary to continue making progress.

Conversely, there appeared to be a divergence between the children's needs and Ms. Jones's ability to meet those needs even before the fire incident, given her frequently fluctuating emotional stability. More recently, a disconnect was apparent between her expectations of when the children should be ready to visit her in the hospital and the children's current level of emotional and behavioral functioning.

CO-PARENTING RELATIONSHIP

The final category concentrates on the post-separation parenting relationship which, as research has demonstrated, is strongly related to outcomes for children (Amato & Booth, 2001). This includes the type of conflict, the level of conflict and how it is expressed, whether the conflict predated the separation, the degree to which the children are directly or indirectly involved, and the co-parenting skills. In the Smith-Jones case, there appeared to have been a significant amount of conflict between Mr. Smith and Ms. Jones prior to the fire incident, particularly when Mr. Smith did not follow Ms. Jones's established visitation "rules." The children were directly involved in this conflict when, for example, they were told by Ms. Jones to deliver threatening messages to Mr. Smith's wife. However, there did not appear to be much conflict related to child-rearing decisions, as both Mr. Smith and Ms. Jones reported that they had been able to agree on most major decisions for the children.

After the fire incident, Mr. Smith made significant efforts to maintain contact with Ms. Jones and her parents during Ms. Jones's recovery, and there did not appear to be much conflict related to co-parenting, as Ms. Jones acknowledged the need for Mr. Smith to take over all of the decision making. The conflict reemerged, however, as Ms. Jones regained her physical and emotional strength and increasingly desired a more active role in her

children's lives. The children do not appear to be directly involved in these recent conflicts, as Mr. Smith and the children's therapists have worked hard to protect them from potentially damaging information. Overall, with the exception of the legal custody dispute, Mr. Smith and Ms. Jones appear to be cooperating relatively well, and Mr. Smith is supportive of the children's relationship with Ms. Jones as long as it is fostered at a pace appropriate for the children's level of functioning.

Maintain an Empirical Foundation

Child custody evaluations require a substantial amount of specialized knowledge and training, particularly in the areas of clinical and forensic psychology. Given that child custody evaluations are primarily driven by concerns about children's development and whether parents can provide an appropriate environment for that growth (Fuhrmann & Zibbell, 2012), it is important that child custody evaluators interpret the information obtained in the context of the relevant psychological literature. For example, in the Smith-Jones case, it was necessary to have a solid understanding of the empirical literature in the areas of child attachment and development and the impact of traumatic exposure on children of varying ages and developmental stages as well as adult psychopathology and suicidal risk. Courts rely on the expertise of child custody evaluators not only to present the data obtained in the course of the evaluation but to place that information in the context of relevant scientific and psychological knowledge.

Stay Current

Finally, it is recommended that child custody evaluators stay focused on the present in terms of overall conclusions and recommendations to the court. In complex cases such as the one depicted in the Smith-Jones vignette, it is important to recognize that we can inform the court only about what is important for *these* children at *this* time. For example, we are unable to predict for the court what the children's level of functioning will be in 2 years, when Ms. Jones is likely to be living more independently, and whether it would be appropriate or harmful, at that time, to recommend unsupervised visits with Ms. Jones. We can anticipate for the court that things will change as circumstances in the parents' lives change and as the children progress through childhood and adolescence. However, we cannot accurately or appropriately predict for the court what will likely be the result of future modifications to custody or visitation orders with so many variables in flux. Accordingly, we can, and should, anticipate for the court that future evaluations may be necessary when salient variables change, particularly in these highly complex scenarios.

CONCLUSION

Given the significant advances made in the standardization of forensic mental health assessment and the particular need for such standardization in child custody evaluation, the field has expressed a readiness for a best-practices approach for child custody evaluation. This case report presented one such best-practices model and applied the model to an especially complex child custody evaluation scenario. Interestingly, when the circumstances of the case were viewed through the lens of the best-practices model presented, the case did not turn out to be a worst-case scenario at all. The children were making steady progress and appeared to be getting what they needed at the present time: intensive therapy, consistent, loving support from their father and stepmother, regular contact with their mother and extended family, and a stable academic environment. When the legal issues of visitation, physical custody, and legal custody were raised, this case appeared to be highly complex and without clear potential solutions. However, when the information obtained in the case was conceptualized according to the psycho-legal constructs of parent attributes, children's needs, parent-child fit, and co-parenting relationship, the evaluator's recommendations become quite obvious and naturally followed from the data and the relevant empirical literature.

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