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## PSYCHIATRIC LEGAL DECISION-MAKING: THE CHILD AND THE DIVORCE

Željka VUKŠIĆ-MIHALJEVIĆ  
Clinical Hospital Osijek, Osijek

Drago GRUBEŠA  
County Court in Osijek, Osijek

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The threat of divorce for children lies in the disruption of relationships with the parents. The struggle for and through the children embodies the intense conflicts that often accompany the failing marriage. This study deals with a case study of child custody decision-making after its parental divorce and it points out the psychodynamic aspect of psychiatric – legal decision-making. The objective of this case study is: 1. to analyse psychodynamic effects of divorce on children and parents; 2. to investigate the roles of postdivorce relationships, developmental factors and child gender differences in the process of custody decision-making; 3. to do a brief literature review in the field of child custody. The results and the conclusions: 1. postdivorce relationships and reactions among parents and children include important psychodynamic and psychological changes of quality and availability; 2. the study shows the important influence of postdivorce relationships, developmental factors and child gender differences in the process of child custody decision-making; 3. the study raised the question as to how important the custody arrangement by itself is to the psychological adjustment of the child; 4. child custody decision-making is a complex interdisciplinary problem which deals with psychological, sociological, psychiatric and legal aspects of the divorce; 5. professionals who are responsible for child custody decision-making must keep in mind that the custodial arrangement should fulfill the conditions for the child's psychological task-resolving and that, above all, the principle of acting in the best interest of the child or adolescent and the principle of avoiding harm as much as possible must prevail in custody decision-making.

✉ Željka Vukšić-Mihaljević, Department of Psychiatry, Clinical Hospital Osijek, University School of Medicine, Huttler Street 4, 31000 Osijek, Croatia. E-mail: mihaljevic.zeljka@kbo.hr

## **INTRODUCTION**

Divorce is not a time-limited event for the adults or the children involved, partly because a complex undulation of changes (many of them unanticipated and unforeseeable) leads up to and in turn, is set to motion by marital rupture. These changes often occupy a significant portion of the adult's post-divorce life and a significant portion of the youngster's childhood, adolescence and his or her own young adulthood (Wallerstein and Corbin, 1996; Albertson Fineman, 1996). According to Wallerstein and Blakeslee, this is the phase of dramatic and highly emotional responses (grief, rage, sexual jealousy, unrequited love) and is provoked by the fact that divorce in a family with children is rarely a mutual decision. Marital partners' separation escalates the spousal conflict, which includes physical violence between the parents. This phase may be relatively brief or it may extend over several years. Sometime ex-partners never obtain relief from the narcissistic injury that was initially experienced in divorce. The second phase is transitional when the parents move into new relationships and home settings. They begin to disengage from each other's lives. The third phase is the establishment of the relatively stable postdivorce single or remarried parent household, each of which has its own associated strains and gratifications (Wallerstein and Blakeslee, 1989).

Divorce is a process of social and psychological change in the individual and in family relationships that can extend over many years. It has no true counterpart in other crises of adult life. Although it was initially considered analogous to bereavement in the central significance of loss as the critical component of the adult experience, we have come to recognize that, in divorce, grief is only one of many powerful effects. Rage, sexual jealousy, and unrequited love share equal power and significance (Wallerstein, 1980). Hess and Camara point out that for children, the threat of divorce lies in the disruption of relationships with the parents (Hess and Camara, 1979). The struggle for and through the children embodies the intense conflicts that often accompany the failing marriage (Wallerstein, 1991). The most tragic children of divorce are those who are caught in the entrenched legal battles of their parents (Maccoby and Mnookin, 1992).

The child of divorce faces a special set of challenges and carries an added burden, which may indeed require professional help at different points along the developmental course. The individual child's resolution of these tasks is profoundly influenced by the family ambience and by the extent to which the parents have made progress in resolving the many issues which divorce causes (Shear, 1998; Winklear, 1998; Hethering-

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ton et al., 1998; Lengua et al., 1999; Mazur et al., 1999). The psychiatrist inevitably gets drawn into dealing with the psychiatric legal decision-making problems in the course of his or her practice. Books and articles about these problems provide some general principles and current trends of thinking are based on previous clinical and court practice.

This study deals with a case study of child custody decision-making after its parental divorce and it points out the psychodynamic aspect of psychiatric – legal decision-making.

The objective of this case study is: 1. to analyse psychodynamic effects of divorce on children and parents; 2. to investigate the roles of postdivorce relationships, developmental factors and child gender differences in the process of custody decision-making; 3. to do a brief literature review in the field of child custody.

## **CASE STUDY**

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After the court verdict ended a marriage and according to the parents' mutual agreement the mother was given custody of two under-aged boys (ages 13 and 7). The Social Center suggested the mother as the custodian parent to the court. However, the father complained to the higher court and the case was reopened. During the second trial the older boy expressed the wish to live with his father, but the Social Center repeated their first opinion that the 13-year-old boy should be in the mother's custody.

This time the court asked for psychiatric evaluation and opinion referring to the care and upbringing of the older boy after his parents' divorce.

The psychiatric examination and final opinion was given by one of the authors of this study, who based it on: court files study, psychiatric interviews and examination of both spouses and their older son.

### **Child anamnesis**

A 13-year-old boy, pupil of the sixth grade of primary school lives with his father in a town, in a family house, where the whole family lived once before the divorce and the house is owned by the father.

The boy is a first-born child and his early psychosocial development before his parents' divorce was rather normal, without any serious disease. He has a five-year-younger brother. He is a quiet, peaceful and introverted boy. His mother was more active in his upbringing and she participated in it more than the father, who was preoccupied with financial and existential problems while providing for his family.

The boy started school on time and till the fifth grade was

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a B pupil socializing well with his peers. His school problems started in the sixth grade and were associated with the divorce of his parents. He was also playing soccer in a local soccer club.

The boy had lived with his parents and a brother in Bosnia till the war, in a village and then they moved (the boy was 7 at that time) to Croatia and settled down in a small town, living together with the father's mother. After some time the family moved into a new house. The boy described his family life as nice, pointing out that he was happy with his family and love among the family members. He mentioned his parents' quarrels as rare and he did not know their cause.

When he was 12, his mother left the family partly because she was not satisfied with the marriage and partly because of an extramarital affair, taking both sons to her father and his wife in a nearby village. The younger boy started attending school and the older one changed the school due to his new residence. The children accepted the change without resisting. The older boy showed the first signs of depressive reactions and was less successful at school. The parents divorced officially after a few months and the court verdict gave full custody of the children to the mother and the father agreed. Soon after it, the mother was absent for a few weeks, trying to settle down in a new relationship in another town. Her intention was to take the children with her and start a new life with a new partner. In this period the older son initiated, with his father's approval, the return to his father's family house. Later the mother took the younger son with her and started a new life with her new partner. The custody battle broke out over the older son, since both parents wanted to take care of the boy. During the legal procedure the boy himself expressed the wish to live with his father.

### **Family anamnesis**

The mother is 33 years old, unemployed and lives with her new partner and the younger son in another place. It is important to mention, talking about her psychosocial development, that she, together with her younger brother, lived with a grandmother, separated from her parents, who worked in Germany. Her parents divorced later and her mother committed suicide. She finished primary school and three years of secondary school. She was never full-time employed and got married at the age of 19. She had two children and she was mostly engaged in their upbringing. She describes her older son (a subject of psychiatric evaluation) as a very sensitive child, prone to introverted behavior. She thinks that he needed support and encouragement. She points out that the father was

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closer to the younger boy right from his birth and his attitude remained the same. She, however, thinks that she treated the children equally.

The first years of marriage were full of disputes, since she resisted her husband's wish to dominate in the marriage and criticized his too close relationship with his mother, pointing out that the last couple of years in the marriage were very difficult.

She thinks that she and her husband grew apart due to everyday problems. She was financially dependent on her husband. Their first quarrels were mostly verbal, but before the marriage failed, the husband attacked her physically and the children witnessed the conflicts of their parents, especially the older son. He tried to protect his mother at a few instances. She mentioned that she did not have any extra-marital affairs prior to meeting her new partner, who she started living with. She was the one who initiated the divorce and wanted to take care of both sons, but the older one expressed his wish to live with the father.

The boy's father is a 38-year-old waiter, who lives together with his older son in the family house. The father's psychosocial development was affected by his parents' divorce, particularly during his adolescence and the period that he lived with his mother. He was extremely dependent on his mother, even when he was an adult. He finished secondary school and got a job in a mine. When he came to Croatia, he started working as a waiter and at the age of 24 got married. He described his marriage as a good one and himself as a rather good father. His explanation for the divorce was his wife's affair. He expressed his strong wish to look after the older son and willingness to have the boy living with him.

## **PSYCHODYNAMIC EFFECTS OF DIVORCE ON CHILD AND PARENTS**

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### **Postdivorce relationships and reactions**

The main threat that the boy experienced after his parents' divorce, lies in the disruption of relationship with the parents. This applies both to the availability of a parent and to the quality of the postdivorce relationship itself (MacNeil, 1998). The boy's separation anxiety got stronger, he was afraid of losing his parents' love and of losing parental figures.

The postdivorce relationship of the parents is usually marked with diminished parenting, it mostly lasts for a short period of time, as a result of divorce, but might be dangerous if it prevails, especially if a custodial parent fails in his efforts to reconstruct a relationship with the child in new circumstances. The whole process might be more difficult if a parent is en-

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gaged in a new relationship that might overshadow or even replace the relationship with the child. According to literature, postdivorce children relationships are overwhelmed with conflicts toward the court-appointed parent (Albertson Fineman, 1996).

The psychiatric evaluation of the parent's mental condition does not include an observation of psychopathological changes. We notice the following psychological reactions of the parents: upsetness, anger, jealousy, projective interpretation of divorce reasons and diminished parenting in both parents. We can analyze these parents' reactions from the aspect of Ogden's conceptualization of two modes of generating experiences (paranoid-schizoid and depressive position), that are lifelong and create a dialectical interplay in the mind (Gabbard, 1994; Ogden, 1986). The father seems to be more prone to use the paranoid-schizoid position, whereas in the mother's case it would be the depressive position. Looking at the psychosocial development of both parents in our case, we can see that they experienced their parents' divorce and were traumatized by it and by the collapse of the marriage. It might explain the transgenerational pass of a psychical trauma, meaning that they as children were victims of their parents' divorce (the mother got separated from her parents at the age of 3, followed by divorce; he witnessed his parents' divorce in his adolescence), and later as adults were active participants in their marriage and family collapse (Tallman et al., 1999). Evidently, both of them have less ability to establish and maintain a high quality of objective relationships, that would include mutual recognition and satisfying of their needs. Their growing up experiences in their primary families very likely influenced their choice of a future spouse.

As it was previously mentioned, the older boy interpreted the court decision to give full custody of both children to the mother, as a loss of the father and the mother's stay in another town for a few weeks as being abandoned by her, and consequently experienced the threat of losing both parents.

The mentioned separation fears, loss of parents and their love, provoked in the boy a strong emotional response, dominated by grief, resulting in a lack of interest and investment in his relationship with his surroundings and in failing to perform his tasks (failure at school, missing classes).

The mother's temporary departure and leaving the children with their grandfather could be explained by her diminishing ability to separate the children's needs and reactions from her adult needs and reaction to the new situation. Her economical situation after the separation just made things more difficult, putting her under more pressure. The boy's cognitive affective interpretation of this event was that the parents

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(mother) rejected him, who took good care of him in the past, intensifying his fears of being left alone, primarily caused by divorce and changes in the parents' behavior and their attitude. The boy's emotional reactions to the event included: fear, sadness, anger and jealousy. The way he perceived his mother's departure and her new partner, can be interpreted within the context of his adolescence, that usually triggers oedipal developmental interactions between child and parents. It can help us explain the boy's anger and even revenge and the urge to punish his mother. He interpreted his mother's behavior as the final actions that contributed to the failing of the marriage and family.

The struggle for and through children embodies the intense conflict that often accompanies the failing marriage. Although competition for the child's affection may occur in an intact, even well-functioning family, disruption of the family system and its resulting angers bring the parents' competitiveness into sharpened focus (Wallerstein and Corbin, 1996). The anger that family members in a failing marriage feel could create new relationships and new bonds between parents and children that can be different from previously intact family relationships. The child's conscious behavior might be motivated by loyalty toward a failed marriage and by the need to protect a parent, who he/she usually sees as the victim (sometimes the wrong one) of the divorce. It can explain the boy's wish to move in with his father and his present wish to continue living with him.

The relationship between the boy and his father, and their newly created "aliment" represents an effort to reconstruct a failed marriage and reunite the family. We assume that the boy's unconscious message by going to the father, was that he perceived his mother leaving the house, moving to another town and finding a new partner as the disturbing factor in the marriage and in the family, though he might have been aware of previously existing conflicts, when the father was an active participator.

Nevertheless, the mentioned events intensified the fear of abandonment and in the boy's case these fears were additionally strengthened by feelings of grief, anger and a childish wish for revenge, which led to the establishment of the present relationships son-father and son-mother.

The newly established bond between the boy and his wish to live with his father have a psychological purpose – to enable him to overcome the loneliness and grief after his parents' divorce and his separation from his mother and brother. The boy overcomes his fear of abandonment and family failure by his growing understanding that he is his father's life partner. This new bond between son-father and father-son helps the

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boy to overcome the intensive psychic pain of abandonment and helplessness. At the same time in his relationship with his father the boy meets his adolescent need to identify with the same gender parent, which is essential in the development of sexual and total ego identity. According to Shapiro and Lambert the effect of divorce on the quality of the father-child relationship and fathers' psychological well-being is moderated by the residence of children. Divorce is associated with lower relationship quality only for nonresident fathers and is associated with a decline in happiness for coresident fathers. Divorced fathers are more depressed than their married counterparts, regardless of child's residence. Changes in relationship quality do not significantly influence the fathers' psychological well-being (Shapiro and Lambert, 1999). According to Seiffge-Krenke and Tauber, intensive and long-term idealistic conceptions in adolescents of divorced parents are especially problematic, since adolescents are expected to become disengaged of their parents and develop a mature and realistic perception of them (Seiffe-Krenke and Tauber, 1997).

### **Developmental factors and divorce**

The boy is in the very first phase of his adolescence period. The main purpose of this period is to create ego identity, which can be defined as awareness of who the person is and where he is heading to. In this period there is a normal identity conflict opposite to confusion. Identity can be defined as self-awareness and confusion as failure in the development of cohesive self-awareness. The person tries to integrate values from different social sources within the existing ones. The conflict with the parent gets stronger and is motivated by confusing feelings of love, anger, hatred, belonging, alienation and rejection. So the boy finds himself in a sensitive developmental phase, filled with physical, psychological and social challenges and tasks on his way to reach his full physical and psychosocial maturity (Wallerstein and Corbin, 1996). The boy's depressive symptoms are mainly the response to marriage failure and family disruption. Partly, it can be explained with developmental adolescence psychological depression due to the separation from parental figures and losing them as up-till then idols, but these are imminent events experienced in the process of individualization of an adolescent (Offer et al., 1996; Takanishi, 1993; Peterson et al., 1993; Marans and Cohen, 1996).

The parents' divorce and boy's consequent reactions to his parents' divorce collide with developmental challenges, tasks and problems of normal adolescence (Marans and Cohen, 1996).



As we have seen in the case study, adolescents are vulnerable to the impact of their parents' divorce. The incidence of acute depression, accompanied by suicidal preoccupation and action out, is frequent enough to be alarming. Anger can be intense. Several instances have been reported of direct attacks on custodial parents by young adolescents who had not previously shown such behaviors (Springer and Wallerstein, 1983). Preoccupied with issues of morality, adolescents may sit in judgment on their parents' conduct around the divorce and they may identify with one parent and do battle against the other. In our case study, the boy's identification with the father is evident. The identification analysis suggests that it helps the boy to overcome a revived oedipal conflict. His emotions toward the mother are transformed into its opposite. It is a way to get free from a strong relationship with his mother. At the same time this adolescent developmental psychodynamics collides with real separation, loss of mother and her love as a result of divorce. The love he feels for his mother is conflicting with hatred and hostile attitude, which is psychodynamically demonstrated in the boy's wish to live with his father. The boy's conflict resolution to return to his family house, represents his return to a safe environment, where he can be reminded of happier times when family lived together, and has a protective reparative function. Besides, his return enables the reconstruction of his contacts with his peers and friends (preservation of objective relations' network), which should help him to decrease the fear, grief due to family disruption, loss of mother and younger brother. So the relations with objects from the surrounding social matrix can have a positive impact on the healing of the boy's narcissistic injury as a result of parents' divorce. The child's postdivorce negative experience with parents can provoke deep disappointment and devaluation of parental idealized image, which could later cause problems in accepting new ideals and values.

Parental vulnerability to the feelings of humiliation and loss (inherent in highly conflicted divorce and custody litigation) distorts parenting capacities and parent-child relationships in distinctive ways, putting children at risk for specific kinds of developmental difficulties. Pre-oedipal children often fail to achieve a complete separation from their primary caretakers. Oedipal children, already struggling with separation issues, manifest sexualized anxiety and discomfort with gender identity. By latency, these children present as fragmented within themselves and in relationships with others. The child's developmental concerns and preoccupations have to be analysed by mental health and legal professionals. The implication is to produce custody settlements that are more protective of the child's best interest (Roseby and Johnston, 1998).

## **Child gender difference and divorce**

Custody decision-making in our case included child's gender analysis and potential choice of a custodial parent. Although it had been widely accepted by researches that boys are more vulnerable than girls in both initial and long-term responses to divorce, this finding has been called into question by critical analysis of the methodology employed in a range of studies (Zaslow, 1989; Zaslow, 1989; Cummings et al., 1999; Woodward et al., 2000). The current state of our knowledge of divorce populations links gender differences to the different developmental stages. Thus major differences between preschool boys and girls at approximately 4 years post separation have been observed on a wide range of cognitive, social and developmental measures. Although traditional sex-role typing in girls did not appear to be disrupted by divorce, boys scored lower on male preference and higher on female preference on the sex-role preferences tests at this same time. The boys were also spending more time playing with girls and with younger children. They showed affective narrowness and a constriction in fantasy and play and they were more socially isolated than their female peers (Hetherington et al., 1982).

It may be that boys, especially oedipal and latency-age boys in mother-custody homes, have a more difficult time immediately following the divorce, whereas girls in mother custody find adolescence and entry into young adulthood particularly hazardous (Springer and Wallerstein, 1983; Roseby and Johnston, 1998).

A critical question is how much of the reported response between the sexes, if it does exist, is mediated by mother custody. According to Santrock and Warshak, latency-age children in the custody of the same-sex parent showed greater sociability and independence than did those boys and girls in the custody of the opposite-sex parent. Wolchik et al. examined whether two aspects of mothering – acceptance and consistency of discipline – buffer the effect of divorce stressors on adjustment problems in children whose families had divorced. The relation between divorce stressors and internalizing and externalizing problems is stronger for children who report low acceptance and low consistency of discipline than for children who report either low acceptance and high consistency of discipline or high acceptance and low consistency of discipline (Wolchik et al., 2000). Children reporting high acceptance and high consistency of discipline have the lowest levels of adjustment problems (Santrock and Warshak, 1979).

As we have seen, gender differences are an important factor in psychiatric legal decision-making. According to literature, clearly, gender differences need to be explored further

for the various age groups and within different structures and have to be a factor in custody decision-making (Wallerstein and Corbin, 1996; Albertson Fineman, 1996).

### **CUSTODY DECISION-MAKING IN THE CASE STUDY**

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The boy's wish, attitude and behavior do not mean his acceptance of the loss of mother, younger brother and their love, but a reflection of his confusing emotions toward parents and new situation after the family disruption. His wish in the new situation is his effort to reestablish psychosocial adaptation and balance after the parents' divorce and family disruption. However, that does not mean that the boy would not change his attitude toward his parents and that his wishes about his future life might not be different in the period of adolescence. The boy is at the moment at the age when a child's wish is considered as an important factor in custody decision-making after the divorce. It is very important to make a psychodynamic analysis of the child's wish, attitude and behavior in relation to his developmental phase and to the whole context of family relationship before and after marriage failure. The boy's wish should be evaluated in order to see whether it can support his further adjustment and development under new circumstances after divorce and family disruption and to what extent the fulfillment of the child's wish would be in his interest.

Both parents expressed motivation and a wish to participate actively in the boy's upbringing. Their motivation could be a reflection of a prolonged postdivorce conflict that is expressed in the form of custody battle, but can be also a memory of their own fears of being abandoned by their parents during their developmental period.

The boy's father in our case study has shown the postdivorce capacity to change his behavior and to become the primary caretaker and parent for his son. This is one of the factors that turned him into a potential custody parent.

The current parental abilities of both parents have deteriorated due to the postdivorce situation and have been described as diminishing parental abilities. The boy's mother is in a special situation that would require additional psychical energy in the adjustment process (moving out, founding of extramarital relationship).

The conclusions in psychiatric expertise are based on the previously mentioned analysis of family psychodynamics and psychodynamic postdivorce effects on child and parent, with an opinion that there is an indication to meet the under-aged boy's wish to continue living with his father, forming father's sole custody. The relationship between son-father and father-son and their reunion can help the boy with his psychosocial

adjustment to the new situations, with overcoming of the problem and challenges caused by his parents' divorce and family disruption. We suggest a regular visitation of mother and younger brother, in order to enable the mother's active participation in the boy's upbringing.

## **DISCUSSION**

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The case study presents the divorce as a process of social and psychological change in the individual and in the family "as a whole". The child of divorce from the case study faces a special set of challenges. The individual child's resolution of these tasks is profoundly influenced by the family ambience and by the extent to which the parents have made progress in resolving the many issues which divorce causes. According to literature, these tasks have been conceptualized as a hierarchical series, which follows a particular time sequence beginning with the critical events of parental separation and culminating at late adolescence and young adulthood (Shear, 1998; Winklear, 1998; Hetherington et al., 1998; Lengua et al., 1999; Mazur et al., 1999). They represent the agenda for the child (Lee and Hunsley, 2001; Kenny, 2000; Fine, 1997). According to Wallerstein, the psychological tasks are six in number: 1) acknowledging the reality of the marital rupture; 2) disengaging from parental conflict and distress and resuming customary pursuits; 3) the resolution of losses (including the loss of the presence of one parent in the home); 4) resolving anger and self-blame; 5) accepting the permanence of the divorce; 6) achieving realistic hope regarding relationships. These tasks will be worked on and reworked by the child over many years (Wallerstein and Corbin, 1996). Hetherington et al. have presented an analysis of five views of factors that contribute to the adjustment of children in divorced families or stepfamilies. These perspectives are those that emphasize (a) individual vulnerability and risk; b) family composition; c) stress, including socioeconomic disadvantage; d) parental distress; and e) disrupted family process. It is concluded that all of these factors contribute to children's adjustment in divorced and remarried families and that the transactional model examining multiple trajectories of interacting risk and protective factors is the most fruitful in predicting the well-being of children (Hetherington et al., 1998). These changes, which are inherent in the divorce experience, have the power to modify significantly or derail the young child's developmental course (Wallerstein and Resnikoff, 1997; Maughan and Mccarthy, 1997; Rodgers, 1996; Chaselansdale et al., 1995; Hoffmannhausner and Bastine, 1995).

According to our case study the psychodynamic interaction intrapsychic-interpersonal relations (object relations) – social

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context in the time continuity past – present – future has the most important meaning in marital conflict occurrence and rupture, but also in forming of postdivorce relationships between spouses. The interdependence between past and present can be seen in pattern repetition of parental behavior (boy's parents' marriage falls apart like their parents' marriage did). We can not exclude the social context, characterized by bad post-war economical and general social crisis that includes ethical and moral decline. The relations within social groups are prone to regression into a big group process, marked by the increase of aggression with its tendency toward projection on another object or an increase of diffuse aggression without projection possibility, which has destructive potential as its result. These circumstances (an individual – family – community with its social subgroups) stimulate an individual to become aggressive and destructive, so that divorce and the family disruption can be consequences of psychodynamic phenomena of regression in social groups and in family (Vukšić-Mihaljević and Mandić, 2001). This corresponds with Kernberger's concept of social group regression which is based on the presumption of psychoanalytical group psychology (Kernberg, 1993).

In the case study it was evident that the child's mother had a strong need to idealize her relationships with her new partner in the newly formed community (she – extramarital partner – younger son) and the relationship between her ex-marital partner and her older son. It can be assumed that the psychodynamic purpose of the mother's effort was to reduce the feeling of guilt for marriage failure and defense against anxiety of possible new marital failure. The mother's depressive reaction is psychodynamically linked with her marriage failure, her separation from the older son, the threat of new loss, moving, termination of her last relations with her surroundings, as well as her experiences from her primary family (separation from her parents in childhood, parents' divorce, her mother's suicide). Since the cultural opinion of sexes and divorce is dominated by the traditional attitude that the woman's role is to be passive and submissive in the marriage and is less tolerant in the case of woman's adultery, makes her feel more guilty, though objectively speaking the husband's guilt for marriage failure might be bigger or at least the same as hers.

The changing roles of men and women are mirrored in the courts and in legislation regarding custody and visitation (Albertson Fineman, 1996). Earlier, the courts relied extensively on the concept of "the psychological parent", assuming that, except in unusual circumstances or for older children, the mother would fulfill this role. Society has now moved away from the expectation that single – parent custody, combined

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with reasonable visitation of the noncustodial parent, is the legacy of divorce. Custody decision-making in our case study confirms current attention which has increasingly focused on the contribution of the father as parent and as potential primary custodial parent (Cath et al., 1982; Jacobs, 1982; Pruett and Pruett, 1998).

As we can see in the case study, there are qualitative differences between the contributions of child's parents before divorce to their children's upbringing. The mother was a primary caretaker and the father was primary earner. Gendered contributions are not equal. We can agree with Fineman who pointed out that the income contributions fathers make for their families cannot be classified as "sacrifices" because fathers are simultaneously establishing themselves in their professions, a benefit they retain throughout their careers (Albertson Fineman, 1996). Although this undeniably affords advantages to the entire family during marriage, the sharing of the benefit generally diminishes significantly after divorce, as evidenced by data relative to fathers' postdivorce child support payment patterns (Weitzman, 1985). By contrast, mothers' sacrifices in providing daily care to children yield no collateral advantages, except in terms of the attachment that forms between mother and child. Children consume the services mothers provide for them, with the years spent in childrearing representing a depletable amount of the mother's nonrenewable resources. Similarly, the time a woman spends away from career development probably disadvantages her throughout her work life (Fuchs, 1984; Chambers, 1984).

As we have seen in our case study, men have to change their behavior and have to become primary caretaker if they want to have an opportunity to get custody.

By rejecting the dominant ideology that defined a woman's role as that of mother and wife and by arguing for a more equitable redistribution of parental responsibilities, feminists hoped to break down the barriers that excluded them from the market and to make parenthood more of a joint effort than it had been traditionally. However, the studies indicate that this has not in fact occurred to any great degree (Fuchs, 1986). Mothers still perform not only the vast bulk of child care but also the majority of housework. Women in far greater proportions than men seem to plan their careers to accommodate child care responsibilities, illustrating that a combination of mothering and professional career is desirable for them (Fuchs, 1986; Chambers, 1984). The father's rights groups appropriated and successfully employed the feminist rhetoric of equality and gender neutrality to force reforms in family law, that were not particularly beneficial to women and children. These groups argued for the child's "right" to have access to

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both parents and the right of the noncustodial father to be equally involved in postdivorce decisions concerning the child (Albertson Fineman, 1996). Although the research literature isn't unequivocal on this point, it does strongly suggest that men who are "visitors" do not have as much impact on their children and that visits are a poor substitute for having a parental figure. The answer lies in creating meaningful roles for noncustodial fathers that elevate men's opportunities to contribute to their children's overall development (Pruett and Pruett, 1998). Most studies implicitly assume that contact with a nonresident parent has a positive effect on the well-being of youngsters after parental divorce. However, some recent studies have revealed no differences in the well-being of children who do or do not have contact with their nonresident parent (Spruijt and Iedema, 1998). The obsession with gender neutrality has affected the articulation of what substantively constitutes the best interest of the child and of what safeguards are considered necessary to achieve it. It seems that the force of the gender neutral logic has extended beyond attacking explicitly gendered rules to attacking those that operate merely to produce results that tend to favor one gender over the other. An expanded and uncritically accepted version of neutrality favors fathers. Neutrality in the context of an active and operating gendered system of lived social roles is antimaternal and is hardly gendered neutral in its impact (Fineman, 1995).

Although there is no longer serious consideration of the idea that the law should either prohibit or make it difficult to divorce, the state continues to dictate and monitors the terms of the dissolution and the structuring of postdivorce relationships.

Custodial arrangements have changed over the past 20 years. In the 1970s, the "best interests of the child" doctrine focused custody litigation away from parental competition and toward meeting each child's needs. Yet, artifacts of the parental preference doctrine remain entrenched in custody law and practice. The evolving "best interests" paradigm requires redefining "custody" as development, implementation, and adaptation of individualized plans that provide a structure for complementary parenting (Family Law, Public Paper, 1998; Cancian and Meyer, 1998). Special attention is on joint custody (MacCoby and Mnookin, 1992). In Croatia, legislation also welcomed these changes (Family Law, Public Paper, 1998). Joint custody remains a variously defined arrangement. Joint legal custody typically refers to an equally shared responsibility between parents for major decisions regarding their children's lives and well-being. Joint physical custody indicates that the child actually resides for substantial periods of time in each parent's home, although the proportion of time spent and the schedule of transitions between households may vary widely. Joint

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physical custody can be properly regarded as a new family form (Shear, 1998; Cancian and Meyer, 1998).

Cancian and Meyer have examined the factors associated with shared custody as well as mother-sole custody and father-sole custody. Although mother-sole custody remains the dominant arrangement, shared custody has increased over a nine-year period. The probability of shared custody increases with parent's income. Prior marital history, parents' ages, the age and gender of children, and the legal process also have an impact on the probability of shared custody. In contrast to shared custody, the probability of father-sole custody decreases with parent's income, while the relationship with other significant factors is generally similar. They have found no evidence for increase over time in the probability of father-sole custody. They also have found that when the father has a higher proportion of the couple's total income, both shared custody and father-sole custody are more likely (Cancian and Meyer, 1998).

Kline and her colleagues found that neither the custody arrangement itself nor the frequency of access and visitation with the father influenced the child's psychological adjustment. The factors affecting the child's psychological and social adjustment, regardless of custody arrangement, were the prior psychological functioning of the parents and the degree of post-divorce hostility and conflict between the parents (Kline et al., 1989). According to Kelly, children living in marriages with frequent and intense conflict are significantly more likely to have substantial adjustment problems before parental divorce and compromised parent-child relationships. These findings suggest that deleterious effects of divorce per se have been overstated, with insufficient attention paid in the clinical and research literature to the damaging effects of highly troubled marriages on children's adjustment (Kelly, 1998). A number of studies shows that many children prefer joint custody to sole custody and that many children benefit from this arrangement (Albertson Fineman, 1996; McKinnon and Wallerstein, 1986; Steinman, 1981; Kaltborn, 2001).

The parents in the case study did not prefer joint custody because they have been involved in an intensive postdivorce conflict. At the same time, the child preferred father's sole custody arrangement. This situation reminded us of one study of intensely conflicted families which showed that children in involuntary custody situations looked seriously deteriorated in their psychological and social adjustment, school performance, and peer involvement, as observed over a several-year period (Johnstone et al., 1989). Besides, we based father's sole custody arrangement in the case study on an assessment that the father mostly fulfills the criteria for the pri-



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mary care taking parenting role. The major finding according to Clarke-Stewart and Hayward, was that across a variety of assessments of psychological well-being, children (especially boys) did significantly better in the custody of their fathers. Moreover, children in father custody had the advantage of maintaining a more positive relationship with the nonresident parent, the mother. These differences in children's well-being were not eliminated by statistically controlling for the custodial parent's psychological state and adequate income or the child's contact with the nonresident parent—other variables that predicted children's well-being. No same-gender advantage was found for girls in mother custody. For these children, well-being was predicted by close "parentlike" contact with the nonresident father – participating in a variety of activities and spending holidays together (Clarke-Stewart and Hayward, 1996). Biblarz and Raftery have found that children from single-father families and stepfamilies have consistently had lower attainments than children from both two-biological-parent and single-mother families (Biblarz and Raftery, 1999).

A great deal of academic and professional energy has been expended in recent years arguing for alternatives to legal system for divorce cases, particularly in regard to the custody component (Albertson Fineman, 1996). Actual legal trends consider the factors that set the stage for development of the concept of child advocacy as well as its early implementation. At the same time, a consensus has developed about the fairness and general desirability of "shared parenting". There are two assumptions underlying the concept of independent child advocacy. The first assumption is that the child should be considered separately from the parent. The second is that it is possible to define children's interests independently when these interests are conceptually separated and set apart from those of their parents (Benedek and Benedek, 1979; Fineman, 1988; Neely, 1984; Schulman and Pitt, 1982; Weitzman, 1985).

An important issue is interaction between wartime stressors, marital and family functioning, mental health of children and adolescents, and the divorce. As we have described, the case study family experienced low to moderate wartime stresses. Mass disasters, especially war, may lead to epidemic-like disruptions in family functioning (Katz, 1994; Berman, 2001). How, to what extent, and in what ways do family support systems "break up" during and / or after wars nowadays? How do wars and civil disturbances, in general, "uproot" the emotional bonds of children within their own family groups? Do all children suffer in modern wars? Do children whose families are more directly exposed to traumatic war events tend to lose support within their own family groups more significantly and rapidly than their peers in more "safe" geopolitical a-

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reas (Barath, 1995)? These questions are important. When dealing with effects of war on children and their parents and whole family, consideration should be given to the careful examination of the nature of the stressors themselves, including actual damage to body or property, loss of family and friends (or threats of such losses), and the geographic and psychological proximity of the war-related stressors. In addition, careful scrutiny of the intrinsic adaptive capacities of the child and the social and community resources he or she has at hand to deal with the stressful circumstances are necessary to disentangle the effects of war from those of other adverse or detrimental conditions (Jensen and Shaw, 1993; Vukšić-Mihaljević et al., 1998).

In the end we can conclude: 1. the postdivorce relationships and reactions among parents and children include important psychodynamic and psychological changes of quality and availability and can operate in childhood as factors which ameliorate or exacerbate the social and psychological problems associated with parental divorce; 2. the study shows the important influence of postdivorce relationships, developmental factors and child gender differences in the process of child custody decision-making; 3. the study raised the question as to how important the custody arrangement in itself is to the psychological adjustment of the child; 4. the child custody decision-making is a complex interdisciplinary problem which deals with psychological, sociological, psychiatric and legal aspects of the divorce; 5. the professionals who are responsible for child custody decision-making must keep in mind that custodial arrangement should fulfill (as much as possible) the conditions for the child's psychological task-resolving and that, above all, the principle of acting in the best interest of the child or adolescent and the principle of avoiding harm as much as possible must prevail in custody decision-making.

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## Psihijatrijsko zakonsko odlučivanje: dijete i rastava

Željka VUKŠIĆ-MIHALJEVIĆ  
Klinička bolnica Osijek, Osijek

Drago GRUBEŠA  
Županijski sud u Osijeku, Osijek

Rastava braka prijetnja je djeci jer uništava odnose s roditeljima. Borba za djecu i preko djece utjelovljuje jake sukobe koji nastaju propadanjem braka. Ovaj rad bavi se studijom slučaja o odlučivanju oko skrbnštva nad djetetom nakon rastave roditelja i upozorava na psihodinamički vid psihijatrijskoga zakonskog odlučivanja. Cilj ove studije slučaja jest: 1. razmotriti psihodinamičke posljedice koje rastava ostavlja na djeci i roditeljima; 2. istražiti uloge međuljudskih odnosa nakon rastave, razvojnih čimbenika i razlike u djetetovu spolu prilikom odlučivanja o skrbnštvu; 3. osvrnuti se kratko na literaturu s područja dječjega skrbnštva. Rezultati i zaključci: 1. međuljudski odnosi i ponašanja i roditelja i djece nakon rastave uključuju važne psihodinamičke i psihološke promjene u kvaliteti i

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dostupnosti; 2. studija pokazuje značajan utjecaj odnosa nakon rastave, razvojnih čimbenika i razlika u djetetovu spolu na tijek odlučivanja o skrbništvu; 3. studija postavlja pitanje važnosti samoga dogovora o skrbništvu za psihološku prilagodbu djeteta; 4. odlučivanje o skrbništvu nad djetetom složeno je interdisciplinarno pitanje koje se bavi psihološkim, sociološkim, psihijatrijskim i zakonskim oblicima rastave; 5. stručnjaci koji odlučuju o skrbništvu nad djecom moraju imati na umu da skrbnički dogovor treba omogućiti djetetu uvjete za rješavanje psiholoških problema te da je u odlučivanju o skrbništvu najvažnije načelo djelovanja u najboljem interesu djeteta ili adolescenta te načelo izbjegavanja štete što je više moguće.

## Psychiatrisch-rechtliche Urteilsfindung – Das Kind und die Scheidung

Željka VUKŠIĆ-MIHALJEVIĆ  
Klinisches Krankenhaus Osijek

Drago GRUBEŠA  
Gespannschaftsgericht Osijek, Osijek

Die Scheidung der Eltern stellt für das Kind eine große Bedrohung dar, da dadurch das bisherige Verhältnis zu den Eltern zerstört wird. Der mit dem Zerfall der Ehe einsetzende Kampf um die Kinder, der nicht selten auch über die Kinder selbst geführt wird, bringt starke Konflikte mit sich. Der vorliegende Artikel ist eine Fallstudie aus dem Bereich der Urteilsfindung in einem Scheidungsprozess, bei dem das Kind einem Elternteil zugesprochen wird. Die Autoren verweisen in ihrer Arbeit auf den psychodynamischen Aspekt der psychiatrisch-rechtlichen Urteilsfindung. Die Studie hat folgende Ziele: 1) Es sollen die psychodynamischen Folgen untersucht werden, die eine Scheidung für Kinder und Eltern hat. 2) Es sollen die zwischenmenschlichen Beziehungen nach der Scheidung, verschiedene Entwicklungsfaktoren sowie die Rolle der Geschlechtszugehörigkeit des Kindes im Laufe der Zuerteilung des Sorgerechts untersucht werden. 3) Die Autoren wollen dem Leser einen kurzen Einblick in die Fachliteratur aus dem Bereich des Kindschaftsrechts gewähren. Ergebnisse und Schlüsse: 1) Zwischenmenschliche Beziehungen und Verhaltensmuster auf Seiten von Eltern und Kindern nach der Scheidung sind geprägt von gewichtigen psychodynamischen und psychologischen Veränderungen hinsichtlich Qualität und Verfügbarkeit. 2) Das Verhältnis der ehemaligen Ehepartner nach der Scheidung, verschiedene Entwicklungsfaktoren sowie die Geschlechtszugehörigkeit des Kindes beeinflussen nachhaltig die Zuerteilung des Sorgerechts. 3) Es wird die Frage aufgeworfen, wie wichtig die elterlichen Absprachen selbst für die seelische Anpassung des Kindes sind. 4) Die Zuerteilung des Sorgerechts ist eine

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komplexe interdisziplinäre Frage, die dem psychologischen, soziologischen, psychiatrischen und rechtlichen Aspekt der Ehescheidung Rechnung tragen muss. 5) Die Experten, in deren Händen die Entscheidung über die Zusprechung des Sorgerechts liegt, müssen stets im Blick behalten, dass die erzielte Lösung dem Kind ermöglichen muss, mit seinen psychologischen Problemen zurechtzukommen, und dass es am allerwichtigsten ist, im besten Interesse des Kindes zu handeln und, so weit es geht, Schäden zu vermeiden.