THE BEST INTEREST OF THE CHILD IN THE STATE OF ARIZONA

By

KAREN LENORA DONDEREWICZ

A Thesis Submitted to The Honors College

In Partial Fulfillment of the Bachelors degree
With Honors in

Political Science

THE UNIVERSITY OF ARIZONA

MAY 2013

Approved by:

Dr. Chad Westerland
School of Government and Public Policy

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THE BEST INTEREST OF THE CHILD IN THE STATE OF ARIZONA

Abstract

This thesis explores current and historical child custody laws in the State of Arizona and how they have correlated with child development theories. It discusses the impact child development theories have had on Arizona child custody cases. Additionally, it includes an overview of early Arizona Supreme Court cases and the implications it has on the best interest of the child. The thesis also provides insight to problems with Arizona courts and the actors involved with making the decision for the best interest of the child. The investigation demonstrates a disconnection between judicial discretion and the best interest of the child standard. An example from the United States Supreme Court case *Troxel v Granville* (1999) is reviewed to illustrate how courts discretion, in general, can be misused. Overall, court discretion in Arizona is liberal and the impact it has on child custody decisions can sometimes conflict with the best interest of the child.

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The burden of the case is, that the decision is one which involves the future welfare of a little girl; and I think no man can look upon the face of a bright and happy little girl, like the one before us, and come to a decision of a question which may make or mar her future life, without hesitation and feeling: certainly we are not so insensible as to be able to do it.

- United States Supreme Court Justice Brewer (1881)

The responsibility for making primary decisions for children is always made by a parent or guardian. They choose where their child lives, what they eat, what they wear and even the schools they attend. Decisions about private schools, extracurricular activities, and daily routines are all within the control of the parent or guardian. However, decision-making for a child expands beyond the child's home environment because other adults such as school principals, teachers and coaches make decisions for them as well. Even in a broader context, laws and social norms govern the decisions made for children. The assumption is that responsible adults will make the best decision for the child because each child requires protection and guidance. However, this is not merely conceptual knowledge, but it is recognized and enforced in legal, psychological and social theories. For instance, any type of medical or psychological research categorizes children as a vulnerable population and extraordinary reasoning must be given to research this population.

Nonetheless, when a conflict arises such as a divorce, which adult is making the best decision for the child? Would it be the mother, father or grandparents? Would it be the responsibility of a judge or a custodial party? If so, what would be the best time to make the decision for the child? According to A.R.S. § 25-403, "in making any custody determination, the court shall always consider the best interests of the child." The law is broad and can be interpreted in various ways. While courts use criteria that help make this determination, these

guidelines are often both too limited and too broad to yield decisions that do not leave one parent or the other feeling betrayed and/or feeling the decision was not justified. Unfortunately, the parents often neglect the child's point of view because the best interest of the child has the tendency to become based on the best interest of the parents.

Undoubtedly, even without the volatile emotions of a divorce, the best interest of the child from an individual's perspective is a difficult matter to approach. Even the social scientist and other professionals have difficulties defining this term. According to Goldstein, Freud and Solnit (1979), the best interest of the child is subjective but is legally guided by "the child's need for continuity of relationships… the adult's sense of time… and the law's incapacity to supervise interpersonal relationships and the limits of knowledge to make long-range predictions." Yet another definition by Judge Cohen, a judge in Maricopa County in Arizona, the best interest of the child can be translated into "the least worse option" (Cohen Lecture, 2012). Each definition encompasses what is the "best interest" as the central point, yet each definition or description of what the term should encompass is vague in wording and broad in content. It is the expectation for the decision-makers to fill in where the definition lacks detail for various reasons, but mainly the circumstance of each child can vary case to case. The qualifications for making a decision for this vulnerable population can also vary. But, how did the term the best interest of the child materialize? Was it the legal system or psychosocial theories? Regardless, the complexity and vagueness of the best interest of the child still has leverage to make important and even life changing decisions for a child, especially when making a child custody decision. In general terms, one could consider the best interest of the child, as considered in a legal context, the focus on the best probable outcome of the child's well being.

Even if the judge has made the decision, would that decision truly meet the best interest of the child? In reality, could a judge predict the best outcome based on a decision made by the best interest of the child? What exactly is the best interest of the child? This thesis will present specific questions related to child custody and the best interest of the child. To explore this topic, the thesis will investigate current and historical child custody laws in the State of Arizona and how they have correlated with child development theories. I will include an overview of early Arizona Supreme Court cases and the implications it has on the best interest of the child. In addition, discussions of current and anticipated problems of the laws and the theories will be addressed and reforms will be recommended. Overall, the thesis will embrace the complexities of the best interest of the child standard.

A brief history of child custody in the United States

Adopting the paternalistic practices of England, men in the United States had ultimate legal, private and social authority. Women, children and slaves were considered chattel, or personal property of men. They did not have any decision-making power. This absolute control stemmed from ancient Rome, where a father could sell his children or condemn them to death (Weithorn, 1987). Thus, men had principal rights to gain custody of their child or children after a divorce, regardless of the child's age or sex. The reason is because the father was the primary source of income for the entire family. It was more beneficial for the child to stay with the father who could provide economic security than a mother who would have a difficult time finding work. Moreover, women were at a disadvantage for child custody because of their inability to buy land or own property. However, considerations were never made if the father was abusive or

neglectful of the children prior to divorce, thus leading to questionable decision-making for the child.

The tender years doctrine was established in 1839 in England under Justice Talford. Talford, "diluted the rights of the father," or, rather, the paternal rights for custody, "and extended the rights to the mother if the children were less than seven years old" (Foster, H., Life with Father, 1978). Several child custody books and journal articles published in the United States cite this occasion as the first time the United States abandoned paternalistic rights (Alexander S., 1977; Morgenbesser, 1981). This would imply England's courts had major influence on the courts in the United States. This included the decision to abandon the chattel rule when making child custody decisions. Considering the Arizona Supreme Court had not been established, the tender years doctrine would already be an established precedent for custody cases. The tender years doctrine will be explored more later in this paper.

The *Chapsky v. Wood* case in 1881, Justice Brewer, prior to becoming a Supreme Court Justice, created the best interest of the child test. The case involved a father whom had given his daughter to his sister-in-law and abandoned the daughter for five years. The court recognized the father was not an unfit individual, but also took into account his "coldness, a lack of energy, and shiftless of disposition" (Chapsky v Wood, 1881). The Court also recognized the cost and benefits of moving the child from her current living environment to a foreign environment if they based their decision solely on the paternal rights of the father. Most importantly, the court recognized and incessantly discussed the future welfare of the child. This is partly because of the Court's admiration for the "bright and happy little girl." It is questionable if the best interest of the child test would have been established had the case involved a little boy.

Historical impact of child development on child custody

In the early 20th century, Sigmund Freud set in motion the development of psychoanalytic theory. The theory focused on the subconscious repressions of the mind. It encompassed subconscious thoughts of infants and children. This is known as Freud's oral stage of development. In this developmental stage, Freud focuses on child's desire and needs of their mother's breast. Although many of Freud's theories have been debunked in the research of child development, this aspect of his theory can be considered the inception of the attachment theory. Freud's own daughter, Anna Freud, further developed this theory with her creation of child psychoanalysis. She directly observed children who had survived concentration camps and noticed how the children "sought safety and security in relationships with each other…" (Fongay, 2001). However, her work was limited because she "was unwilling or unable to abandon what she perceived as the most scientific aspects of her father's contribution" (Fongay, 2001). Finally, John Bowlby, who was influenced by Freuds' work finally created the attachment theory around the 1950s. John Bowlby's attachment theory has extended into other fields of academia, but for the purpose of this thesis, we will only look its the psychological and legal contexts.

Attachment theory is based upon the relationships and bonds children, specifically infants, make during their development. The theory involves two outcomes and the consequences of the outcomes. The first outcome is of a positive relationship between child and the mother or caregiver during the infancy, what I will call the mother-child bond. The second concerns a negative relationship. Naturally, Bowlby's advocated for the former and was able to convey the health advantages of this type of "maternal" behavior through his position as a health consultant for the World Health Organization during the 1950s. Global recognition of the importance of the mother-child bond would eventually overflow into the legal world and transpire into the child-

bond the courts consider when making their decisions. Nonetheless, as I will explore later, the State of Arizona had already recognized the importance of the mother's role.

Prior to attachment theory, child custody laws recognized the tender years doctrine. The doctrine was based on the notion the child would be in the care of the mother until he or she became an adolescent. Once the child reached a certain age, as determined by the individual state law, the child would be returned to the father. With the help of the feminist movement, the law recognized the importance of a mother's care and the importance of the father's rearing. The law divided the responsibility of both parents, the mother as the nurturer and the father as the master, teaching his children the way of life. In addition, the intent was to give small rights to mothers by allowing them to care for their children during their infancy while alleviating the burden for men to raise small children on their own. More so, the tender years doctrine recognized the importance of bonding and nurturing between mother and child at an early age. It is uncertain why child development theories were lagging behind. It is possible because the topic was not explored scientifically and confirmed by various testing standards.

The tender years doctrine eventually gave the mothers the advantage of being awarded child custody during the early twentieth century. It could be because of gender roles since the father was the breadwinner and the mother was left at home to take care of the children. When the parents filed for divorce, the court would recognize the role and involvement of the mother as a homemaker and would automatically give the mother custody rights of the children. It could also be because of the lack of the father's involvement. Still to today, it is generally perceived that mothers receive child custody preference over the father and, unfortunately, statistics demonstrate this to be true.

With the foundations of child development theories already lagging behind the legal system, it can be assumed that the courts had already recognized the importance of child bonding and gender relations between custodians and the children. Additionally, the best interest of the child had already been set forward. I will now explore examples from the earliest child custody cases in the Arizona Supreme Court.

ARIZONA HISTORICAL CUSTODY LAWS

When the State of Arizona ceded to the United States in 1912, the Supreme Courts of other states had already been established. There was only one Supreme Court of the Territory of Arizona case involving custody prior to an actual State child custody case. It pertained more to writ of habeas corpus and unlawful custody in a different jurisdiction than it did to child custody pertaining to divorce or adoption. The case was New York Founding Hospital v Gatti in 1906. What is important about this case is that it mentions the best interest of the child when the courts from another state made the custody decision. It also asserts the determination for the best interest of the child based on the court's discretion (New York Founding Hospital v Gatti, 203 U.S. 429). This case is not cited until decades later, but it provides insight to the Supreme Courts ideologies regarding the best interest of the child.

Consequently, the first of the Arizona Supreme Court cases regarding child custody used precedent from other states across the nation. However, prior to the first Supreme Court case, the state-enacted child custody laws were created and set forth in the Revised Statutes of Arizona 1913 Civil Code. It can only be assumed the standards for these laws were influenced by the surrounding states and by traditionally held laws during that time. The two most important guidelines are discussed below.

The Revised Statutes of Arizona 1913 Civil Code, Chapter 15, Section 1122

> *In awarding the custody of a minor, or in appointing a general guardian, the court is to be guided by the following considerations:*
>
> (1) *By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child be of sufficient age to form an intelligent preference, the court may consider that preference in determining the question (Arizona., & Pattee, S. L., 1913).*

At this point in time, the State of Arizona had recognized the best interest of the child standard. They specifically indicate the criterion for determining the best interest of the child: "temporal, mental and moral welfare." This suggests the State had already adopted the ideas of what would later become the child development theories. However, as noted below in Subsection 2 of Chapter 15, the tender years doctrine had not been fully eradicated.

> *(2) As between the parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but, other things being equal, if the child be of tender years it should be given to the mother if it be of an age to require education and preparation for labor or business, then to the father (Arizona., & Pattee, S. L., 1913).*

This would imply the State's wishes for the courts to accept responsibility in providing the best outcome of the children. The benefit of this law is the mark of progression. The State had already recognized the importance of the best interest of the child from other states. Although the tender years were still enacted, the first part of the law shows there was not any particular favor granted to mothers or fathers. Regardless, each parent was given the right to visitation as held in the divorce or custody decree. The next section will review the first Arizona Supreme Court Cases under the 1913 Civil Code and the 1928 Civil Code and the implications they had during that time.

The first Arizona Supreme Court case regarding child custody was *Harper v. Tipple* (1919). There was not any precedence set for the Court to use in this case. Therefore, the justices relied on cases from other states to make the decision. This case involves a dispute between a father and the maternal grandfather of a child. Before her death, the mother of the child requested her parents, the maternal grandparents, to take care of her daughter. Soon after, the grandmother, also before her death, requested the child to be taken care of by the grandfather. The child's father was temporarily absent during this arrangement, but at some point he did consent or promise the grandparents they could keep the child. Three years had passed and the father wanted to "visit" with the child. However, he never returned the girl and maintained his right to have custody over the child. The Arizona Supreme Court recognized the dying mother's wishes, but made the decision based on two reasons. First, although the wishes were "sincere" they were not legally binding. This is because the Court acknowledged the "voice of nature, which declares that the father is the natural guardian of his minor child, cannot be silenced." They quoted a case from Georgia that stated, "The law does not fly in the face of nature, but rather acts in harmony with it." Additionally, under common law, as the State of Arizona adopted in the state statutes, the father has the right to his child. "The father or the mother of a minor child under the age of fourteen years, if found by the court competent to discharge the duties of guardianship, is entitled to be appointed a guardian of such minor child, in preference to any other person…" (Arizona Civil Code 1913, paragraph 1110). Therefore, the rights of the father trump those of the grandparents if there is one living parent. The second is because the Court did not find any evidence to suggest the father was incompetent. They note in this case the welfare of the child is "paramount" and could technically diminish a parent's rights. However, since the father was deemed competent, the welfare of the child was not at stake. Lastly, they

acknowledge the grandfather's love for the child, but also considered his "decline of life" (*Harper v Tipple*, 21 Ariz. 41).

Implications

The Court acknowledged three things in this case. The first two are the inherent rights of parents to care for their children and the welfare of the child, the "precedent" for the best interest of the child in Arizona. Thirdly, it recognized the importance of grandparents, but it did not automatically grant them custody of the children because of the relational bond created over the years of direct care. I believe this case set precedence for the struggles many grandparents have today over the custody of their grandchildren. Overall, the court made a decision based on "the welfare of the child," meaning they were looking at the future/best interest of the child.

Another early case from Arizona was *McFadden v. McFadden* (1921). The mother and father filed for a divorce and the custody of the child was granted to the mother. However, the father appealed for property reasons, including the child, and was looking to receive a revision of the divorce decree. The father claimed the division of property was not based on evidence and was contrary to law. The Court reviewed the evidence and found the lower courts were right in their decision because both parents were capable of providing for their children. Plus, the decision was made based on the tender years doctrine. Moreover, the father recognized the mother would have "the burden of educating and caring for the minor child." Regarding the division of other property, the Court affirmed the lower court's decision. Lastly, it made it clear that the father's visitation rights were not outlined in the decree and thus, it needed modification (*McFadden v McFadden*, 22 Ariz. 246).

Implications

This case mirrors divorce cases of today in community property states. Parents typically do not agree with the division of property, especially since children cannot literally be divided. However, parents now have the opportunity to go through mediation to make decisions about the division of property and, more importantly, child custody arrangements. I am under the impression the father did not have the opportunity to do this.

Nonetheless, the father and mother's ability to care for the child was considered. This case specifically mentions the tender years doctrine, but also builds upon the best interest of the child standard. It notes that the tender years doctrine was widely used, but if everything being equal, the best interest of the child would be the "paramount consideration." This means that if the mother was given custody to the children based on the tender years doctrine, but she did not serve the best interests of the child, then the father would be equally capable of receiving custody of the children. This might be the beginning transition of the courts relying on the tender years doctrine to relying on the best interest of the child standards. The shift away from the tender years that started with McFadden became more apparent in the *Bradstreet v Bradstreet* case in 1928 (*Bradstreet v Bradstreet*. 34 Ariz. 340).

Finally, this would imply that the mother and father are equal when it comes to the best interest of the child. Yet, the Court was open about their ability to use their own discretion when making child custody decisions, "The statute does not require the court to favor the party succeeding in the divorce suit, but leaves the whole matter open to inquiry and investigation, and gives the court a freedom controlled only by the court's sense of 'justice and right'". I understand the court's right to use discretion regarding child custody cases because each circumstance is different. The issue is how much of the discretion to make the decision is actually part of the judges' personal beliefs. It is natural to assume their decisions are influenced by their beliefs.

However, would these beliefs change if the judges kept current in child development theories or other scientifically based information?

In 1928 the State of Arizona issued a Revised Code. In it included changes to child custody laws regarding the divorce decree. Since the court recognized the importance of the child's welfare, the court was "given the power from time to time after the entry of the final decree of divorce to amend, change or alter any provision therein respecting the care, custody and maintenance of the children of the parties" (*Dickason v Sturdavan*, 50 Ariz. 382). By this time, the Supreme Court had already heard a few cases and was able to apply precedent from cases from within the state. But the added information for the Revised Code made it easier for the courts to change divorce decrees to suit the best interest of the children.

The major development in modification of divorce decrees was in a 1929 case involving the divorce of Ernestyne and Edward Gotthelf. Mom was awarded custody and the dad, a Surgeon, had to pay $250 in child support. At the time of the divorce, Mr. Gotthelf "admitted to…cruelty" and accepted that the child would be in the care of the mother. Later, the mom was brought to court to modify the decree because the father believed the mother to be unfit. The reason was because she was out partying, was drunk all of the time and she associated with "men of dissolute character" while leaving the child under the care of "incompetent people." The father wanted the child to be removed from the mother's care and be placed into St. Josephs Orphanage. Surprisingly, the father won this case based on the best interest of the child (*Gotthelf v Gotthelf*, 38 Ariz. 369).

Implications

In 1931, Arizona still regarded the tender years as important, thus granting the mother primary custody of the children after the divorce. It recognized how strange it was to take the

child from the mother during its tender years, but they justified it by stating, "It is, however, a biological fact that the first four or five years of a child's life are his most impressionable years, and, if that be true, they are the years that his little body and mind need most careful nurture and protection." Since the mother was found unfit and did not have the best interest of the child at hand, the child was given to the orphanage. Moreover, this provides leeway for parents who were not granted custody of their children to petition to change the decree.

Another instance where the court disregarded biological association as an inherent right in favor of the best interest of the child standard is *Fladung v Sanford* (1938). A child born out of wedlock and in order to legitimize the child in the State of Arizona at that time, the dad must adopt the child. The mother, then, gave the child to the father and both the father and stepmother adopted the child. Later, the mother wanted the child back, but the father did not allow it. The mother then took the father to court on the ground that he unlawfully took the child. She also claimed that since the child was illegitimate, she had ultimate rights over the child's interest and visitation. The Arizona Supreme Court threw out her writ of habeas corpus because the father did not adopt the child illegally and he was suitable to meet the best interest of the child (*Fladung v Sanford*, 51 Ariz. 211)

Implications

The main point made in this case is that direct biological relationship does not matter as much as the best interest of the child. So, for instance, if a child were adopted during this time and the mother and father gave up their legal rights to that child, the biological parent could no longer be entitled by a mere matter of biological right to have custody over the child.

The above cases are only a few of the earliest Arizona Supreme Court cases involving the best interest of the child in various child custody cases. This sample of cases should provide the

basic legal principals the State of Arizona held prior to the maturation of child development theories. I will now "fast forward" to the decades when child development theories began to evolve, yet the court continued to use their discretion contrarily.

The first case, *Cone v Righetti* (1952) involves a divorce modification after the mother was awarded custody of the children. In less than two months after her divorce, Mrs. Cone re-married and made a modification of the divorce decree stating that the two older children were to be in the care of their father. Six months after the second marriage, the mother divorced and was remarried two months later. In that same month, she gave the father custody of the baby. Six months after the father was granted custody of the children, the mother wanted to have the children back. The lower courts denied her custody and the Supreme Court affirmed. The reason was because the circumstances and welfare of the children did not change, (the children were in good care of their father). The Court also noted Mrs. Righetti's, formerly Mrs. Cone, parenting style. According to the Court, the mother was seen unfit because she did not exhibit proper care of the children. Although I believe the children were in better care with their father, I believe the role of a mother, was at play when analyzing the mother's character (*Cone v Righetti*, 73 Ariz. 271).

Implications

This case is relatively complex regarding the best interest of the child for three reasons. First, the mother was granted custody over the children after the initial divorce. This implies the idea of the mother having the predominant capability of taking care of the children might have played a part in this decision. Secondly, it indicates the court did not consider the best interest of the child when the original divorce was finalized in light of the mother's erratic behavior within one year of the divorce. This is possibly because the courts during that time were biased and, by

default, granted mothers custody of the children or because the mother's fitness to be a parent was not contested by the father during the divorce. Thirdly, the Court held that the father was to have custody over the children. The last explanation has implications of its own. First, the Court upheld the best interest of the father thus, regardless of the custodian's sex, the interests of the children was most pertinent. Secondly, it rejects the notion of that mother is the best fit for awarding custody for children based on the attachment theory. This type of decision-making draws questions regarding the efficiency of the court's discretion. If the court erred in making the original custody decision, but instead of the mother initially changing the decree, the father attempted to, would the court have made the same decision it did? Probably not.

The *Arizona State Department of Public Welfare v Barlow* case in 1956 suggests that the courts *were* basing some of their decisions on the notion of child development theories. This case is about parents whose children were taken away from them due to neglect. The State had to return the children back to the parents. The State did not provide adequate burden of proof to indicate that the children returning to their parents would not be in the best interest of the children. The lower courts returned the children to their parents. This is the first time in a child custody case in the State of Arizona that the court mentioned using sociology and psychology to make decisions"…that the atmosphere of the hearing should approximate the kindly inquiry of a loving parent. This is a desirable end to be achieved. It conforms to the understanding of sociologists and psychologists in the era in which we live. It is possible the Court's ideologies had changed, but it is uncertain, in this specific case, the Court mentioned sociologists and psychologists.

Another interesting case indicating the courts could be applying their knowledge of the attachment theory is in *Clifford v Woodford* (1957). In 1942 Clifford and mom divorced.

Custody of their infant children was granted to the mother. Both the father and mother re-married in 1946. Since then, the children resided in the care of the mother and stepfather. In 1956, the mother was told she did not have long to live. The mother and stepfather decided it would be in the best interest if the stepfather was granted guardianship if she were to die. Later that year, before the guardianship was granted, the mother died. The biological father of the children wanted custody of the children. The lower court decided it was in the best interest of the children to remain in the care of the stepfather. The reasons were because the natural father did not make any special effort to create a relationship with his daughters, with the exception of one summer, from the period after the divorce until the death of their mother. This was compared to the love and care the stepfather has given the girls since their infancy. The court considered whether or not the father was fit to receive the custody of his children. Considering the circumstances above, the Arizona Supreme Court affirmed the lower court's decision awarding the stepfather custody of the children.

A dissent from two of the Court's justices indicated that they did not believe the father, during the time the trial was brought to court, was not an unfit parent because he did care for the kids and other circumstances hindered his ability to visit the children. They also did not believe that the stepfather provided enough evidence to deem the natural father unfit. They also disagreed with calling Clifford unfit because this would indicate he was also unfit to take "care of his other children." On the other hand, they praise the stepfather for caring for the children, but regard him as "legally a 'stranger' to the family." In addition, they question his ability to parent his children because of the fact he hired a housekeeper after the children's mother died and deemed the housekeeper "in charge of the house." They compared this with the fact that

their stepmother “is an outstanding mother and housekeeper, that she has special talents as a seamstress and decorator…” Again, there definitely are gender stereotypes at play in this dissent.

While it is true that a father, who is a proper and fit person to care for his child, is entitled to its custody above any other person, since the voice of nature, which declares that the father is the natural guardian of the minor child, cannot be silenced, yet he must be so fit and suitable for the performance of this most important function that the court can say that the child's best interest will be subserved by placing it in his care and custody. The paramount consideration being the child's welfare, the parents' prima facie right to its custody is not an unconditional one. Neither does the sole fact that one is the parent and able and willing to care for it necessarily have this effect, because this could easily be true and yet the best interest of the child be subserved by placing it in the custody of another (*Clifford v Woodford*, 82 Ariz. 181).

Implications

In this case the Court recognized the stepfather’s long-term care of the children. According to the law, they easily could have awarded the father custody because, “the voice of nature, which declares that the father is the natural guardian of the minor child, cannot be silenced, yet he must be so fit and suitable for the performance of this most important function that the court can say that the child's best interest will be subserved by placing it in his care and custody.” This means that the court needed to find the father fit to award custody of the children. The dissenters literally translated the second part of this law. However, the court was willing to consider the long-term emotional bond of the children with the stepfather. This could suggest they were aligning the best interest of the child standard with the attachment theory. Be that as it may, the court still made a discretionary decision.

A 1971 case, *Black v Black,* is illustrative of the point I am trying to make, the court's discretion can be questionable. Virginia Black (Virginia Sharples) and Jerry Black divorced and the custody of their two children, ages eight and six went to Mrs. Black. Visitation rights were established. In 1973 Mr. Black filed a petition to grant him custody of the children. The court granted him custody of the children because "changes in circumstances were sufficient to materially affect the welfare of the children." The reason for the lower court's decision and the Arizona Supreme Court's affirmation was because of the mother's actions after the original decision had been made. First was because the mother had remarried a boyfriend she had cohabitated with for several months. Secondly, the older child ran away to his father's house. Third was because the younger child was having a hard time adjusting in school. Finally, the re-marriage was done after the petition was filed, but the living arrangements had not been decided. In addition to these circumstances, the court did take into consideration the children's wishes to reside with their father. (*Black v Black*, 114 Ariz. 282).

Implications

A change in custody arrangements is not unusual for any court to decide. However, the reason for this decision is, perhaps, unconventional in today's standards. It can be speculated that during the time this decision was made, gender roles were still regarded important to the elderly male justices on the Arizona Supreme Court making the decision. Thus, in the eyes of the Court, Mrs. Sharples did not exhibit the "proper" role of a mother. I do not believe under today's standards Mrs. Sharples' circumstances would be an issue. However, this case exemplifies how the best interest of the child determination can be at the sole discretion of the court or justice.

Nonetheless, the indication that the courts were adhering to child development theories is negated in *Betchel v Rose* (1986). The State of Arizona allows the right to intervene in cases

involving property. In this case, the mother of the child had died in a car accident and the child was placed under the care of the state. Soon after, the father relinquished his rights to the child. The grandmother filed a motion to intervene but was denied by the trial courts. The Arizona Supreme Court ruled in favor of the grandmother and gave her the right to seek temporary custody. They also ruled that the trial court abused its discretion by denying the grandmother the motion to intervene. (*Betchel v Rose*, 150 Ariz. 68)

Implications

The State of Arizona grants certain rights to grandparents in the instance of parentless grandchildren. This specific case allows for grandparents to intervene if there is a dependency hearing for a parentless grandchild. The ruling was also restricted because they included the best interest of the child is paramount in any custody hearing. However, it also mentions other rights the State had given to grandparents such as visitation rights.

Most importantly, though, was the trial court's abuse of discretion. Courts are obligated to provide justification for their decisions, but that is not always the case with granting or denying motions. The risk for not providing justification is illustrated in this case. In the eyes of the Arizona Supreme Court, the trial court did not indicate any reason to deny the motion. Thus, the decision was arbitrary and is viewed as the abuse of discretion. It is unknown why the trial court did not indicate why the motion was denied. This is very frightening because the trial court did not even take the "golden rule" of child custody cases, the best interest of the child, into consideration. Moreover, the Court cited previous cases regarding the importance of family ties and stated from a previous case, "courts should bend over backwards, if possible, to maintain the natural ties of birth." Had the grandmother not appealed the case, there is no way to know what the outcome of the child would have been.

United States Supreme Court Child Custody Cases

Over ten years later, a child custody case is brought to the United States Supreme Court *Troxel v Granville* (1999). By this time, the best interest of the child standard was in full effect. John Bowlby's Attachment theory had been fully established. Although the tender years doctrine had dissipated, the culture of child custody reflected a preference for mothers. Family law had evolved and included options for parents to facilitate child custody arrangements such as mediation, and parenting plans. The courts continued to make mistakes, but even so it was rare a child custody case would make it the United States Supreme Court.

In the case of *Troxel v Granville*, the mother, Tommie Granville separated from Brad Troxel in 1991. They had two children. Prior to committing suicide, the two children would visit their father, who was, at the time, living with his parents Jenifer and Gary Troxel, the grandparents. After his death, the Granville informed the grandparents that the children would be visiting less. The grandparents brought the case to court and a decision was made in favor of the grandparents based on a broad state statute. Granville appealed the case and both the Court of Appeal and Washington's Supreme Court agreed that the law infringed upon her right to due process under the Fourteenth Amendment. In the opinion, Justice O'Connor states, "The liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court." The United States Supreme Court affirmed this decision and stated

Implication

Overall, the Court addressed many issues regarding the overall decision, the reasons the State Supreme Court made the decisions and the actual state statute at the core of this case. This

case is particularly special because of the way the Justices addressed the issue of the discretion of courts. The Court clearly has an issue with state intervention regarding best interest of the child cases since due process was the legal provision for this case. However, Justice Souter was especially vocal about how the statute "gave too much discretion in every case." He does not discredit the court's privilege to use discretion, but he does indicate there is a limit. This is important because it reaffirms that the courts *do* have some flexibility when making decisions based on the best interest of the child as long as the decision does not infringe on the parent's fundamental right of parenting. (*Troxel v Granville*, 530 U.S. 57).

CURRENT ARIZONA LAWS AND CASES

Child custody laws can vary from state to state, each one with a different translation of the type of child custody awards. Typically this includes physical custody, the individual responsible for the child where the child predominantly resides; legal custody, the ability for the caretaker to make legal decisions for the child; joint custody or joint physical custody, both parents having the domestic rights of the child; joint legal custody, both parents have the legal right to make decisions and domestic rights; and finally, sole custody, one person has the legal and physical custody of the child. The State of Arizona currently recognizes joint custody, legal and physical, and sole custody A.R.S. § 25-402.

Below are the current Arizona Child Custody Laws relevant to this thesis.

During a child custody dispute, the court prefers the parent's to make a decision about child custody. This is known as the Parenting Plan in the State of Arizona. According to Dr. Connie Beck, "80% of all child custody disputes in a divorce are settled outside of court either by the parents themselves or through a court mediator" (Beck, C. lecture December 4, 2012). However, children are often used as a means of hindering the divorce or as a means to create additional

emotional distress towards the other parent and the child's best interest is given to the court. To discourage parents from using the court as the decision-maker, the alternative would be prolonging the divorce. This alternative includes family mediation, going in front of a jury or child custody evaluations on both parents.

According to ARS 25-10023, a child custody determination "means any judgment, decree or other order of a court, including a permanent, temporary, initial and modification order, for legal custody, physical custody or visitation with respect to a child." Below are some guidelines and determinants of child custody under this statute the Family Courts in the State of Arizona use to make a decision.

- The wishes of the child's parent or parents as to custody.
- The wishes of the child as to the custodian.
- The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests.
- The child's adjustment to home, school and community.
- The mental and physical health of all individuals involved.
- Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.
- If one parent, both parents or neither parent has provided primary care of the child.
- The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.
- Whether a parent has attended the Domestic Relations Education Course on Children's Issues (Parent Information Program), pursuant to A.R.S. § 25-352.

In making a determination as to whether to award joint custody the court shall also consider:

- The agreement or lack of an agreement regarding joint custody.
- A parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.
- The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint custody.
- Whether the joint custody arrangement is logistically possible.

Implications

The State has now defined additional factors when determining the best interest of the child. The law focuses on the responsibility of the parents prior to and after the divorce or custody dispute. The law sets the standards for what a post-divorce model home should look like by exemplifying the how the court will make the decision. The law considers the individual who could provide the healthiest environment for the child as he or she develops. Not once does the law specify the rights of a mother or a father when making the determination, nor does it entail additional discrimination based on the sex of the parent. Thus, there is no preference given to a mother or father. This is contrary to mother's rights and father's rights advocacy groups.

PROBLEMS

Economic Interests

If the best interest of the child were to be taken seriously, wouldn't money still be a factor when making this decision? According to a 2009 report from the United States Census Bureau, "Among custodial parents, 24.6 percent had incomes below poverty, about twice as high as the overall poverty rate for the total population (12.5 percent)" (Census Bureau, 2009). Unfortunately, the State of Arizona does not take economic welfare into factor when deciding for

their cases. The same report indicates “Mothers accounted for the majority of custodial parents (82.6 percent), while 17.4 percent were fathers” (Census Bureau, 2009). An abundance of scholarly research suggests women, in general, are more likely to apply for welfare during or after a divorce. Additionally, women tend to earn less than men. It is assumed the child support and, if granted, spousal support would alleviate some of the financial burden. However, if the statistics above are accurate, custody is most likely given to the parent with the less advantageous economic stability in the first place. Further, if a parent has an economic risk, would that have an impact on the child’s physical well being? On the other hand, if the courts did decide to take economic stability into factor, would they grant fathers custody more often than mothers or would they just increase the amount of child support?

Types of Living Arrangements

Prior to any type of custody decisions made by the court, there are different types of living arrangements for a child. The first would be the biological parent arrangement. The child would live with both biological parents or, in the case of death or other circumstances, with one biological parent. The second would be a non-biological arrangement in situations where the child has been adopted. A transitioning home or foster home is the third form of living arrangement. The child is ultimately forced to live in this arrangement due to abuse, neglect or other unfavorable circumstances. The final living arrangement would be the relative arrangement or near-relative arrangement. In this circumstance, the child is placed in the care of a parent, sibling, other relative or close friend. More so than the child living with a close friend of the biological parent, living with an actual relative is a favorable circumstance for the child.

I believe the type of living arrangement is important when making child custody decisions because it relates to the child’s bond to the parent or guardian. Of course time plays an

important factor, but even if the child was with the guardian for a long period of time, the State of Arizona does not take the type of living arrangement into account when making a decision. Instead, they look at the well being of the child in the type of living arrangement prior to the case. If the circumstances favor the child's well being, then the type of living arrangement does not need to be taken into account. Yet, a custody decision to relinquish the child back to the biological parent has demonstrated the complexity of child custody decisions and the rights of the parents.

Custodial Parents

Reports indicate there are a majority of women who have custody of their children compared to men, regardless if they were divorced from the children's father. "In 1990 the wife was awarded custody of the children almost three-fourths (72 percent) of the time in those divorces in which custody was awarded. Joint custody was the second most common arrangement (16 percent) while husbands were awarded custody in 9 percent of these divorces. Divorces in which custody was awarded to someone other than the husband and/or wife were rare, accounting for only 1 percent of the divorces in which custody was awarded" (Clarke, S.D., 1995).

Would this imply mothers are granted custody more often than fathers? What about our laws? According to ARS 25-403 the gender of the parents is not an issue when making a custody decision. The court implies that they are making an effort to not give rights to either parent. This reflects the earliest Arizona custody cases with the exception of any case with a decision involving the tender years doctrine. If this is the case, why is it implied that mothers are granted custody more often than fathers?

"Some reasons why wives are awarded custody more often are because they more often request custody of the children and also because of strong legal presumptions and traditions that favor the mother as the custodial parent, especially when the children are young. In recent years (Clarke, S.D., 1995)." Another reason could be the assumed role of the mother. If a mother decided to not take custody of her child or children, her decision would not meet the expectations of society. This is because someone who is considered a natural caretaker would socially reject her children. Thus, it is a societal expectation for a mother to fight for custody of their children.

Specific Problems with Current Arizona Laws Related to Child Custody

According to ARS 25-312, to order or "finalize" a divorce or legal separation, the court must have "considered, approved and made provision for child custody. This law perpetuates the insistency of completing the divorce. However, child custody arrangements tend to slow down the dissolution of marriage.

Under ARS 25-321 the court has the authority to "appoint an attorney to represent the interests of a minor or dependent" regarding custody issues. However, according to the 2013 Arizona Association of Family and Conciliation Court Conference (AZAFCC), the courts rarely use this option due to costs and lack of resources. In addition, not every judge would utilize this option because they are doubtful that the input from the child would be helpful in deciding the case. The overall impression I was given was that the judges had already made their decision and, based on "experience," any input from the child would not alter the court's decision. This is also the reason why the courts do not typically hear from children, although, they can use discretion to do so.

Problems with the courts in Arizona

As with any legal system, any persons involved with making a legal decision in the State of Arizona are required to uphold the law. Within the agencies representing children during custody cases (the legal system, CPA, mediators, counselors, court psychologists, etc.) there is a general consensus of how to achieve the best interests of the child. However, there are differing views between each of the agencies. This difference can leave the communication channels ambiguous and can hinder progress when making a custody decision. One example from the AZAFCC is if the family is required to attend counseling or mediation and there is an allegation or a first-hand disclosure or admission of child abuse. The conference revealed there were major differences in opinions between judges, lawyers, custody mediators, CPA caseworkers and psychologists regarding the duty to report. The underlying reason for this difference revolved around the interpretation of ARS 13-3620 ,which states:

> "Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means… shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security… For the purposes of this subsection, "person" means:
>
> 1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.

2. Any peace officer, member of the clergy, priest or Christian Science practitioner…

5. Any other person who has responsibility for the care or treatment of the minor.

Analyzing this law can give some insight to the differences in opinions. First, and unfortunately, this law does not include judges. This means there is not a legal obligation for a judge to call the authorities in a scenario like this. Some of the judges at the conference concluded they would report, while others did not. Additionally, custody mediators, who would most likely receive information about the abuse, are also not included in this law. The mediators at the conference were under the impression that since this law did not specifically apply to them, they did not have any legal obligation to report either. From the perspective of counselors and psychologists, it *is* their duty to report, but it is not their duty to do the actual investigation. Many of the counselors and psychologist were surprised about their fellow colleagues' unwillingness to report. I am uncertain why the actors making custody decisions for a child, presumably in their best interest, use their own discretion of when or when not to utilize the standard in related scenarios.

Another problem with the Arizona courts are the judges. The AZAFCC conference revealed that each judge uses his or her own discretion in choosing which laws to apply to each case. This is based on their own interpretation of the law and on their personal beliefs on what they will allow in their court. It is understandable that each child custody case is different and has its own complexities, but the implications of choosing to dismiss certain laws while embracing others can have a negative impact on the best interests of the child. For example, ARS 25-321, as mentioned before, gives the court the power to appoint an attorney for the child. It is understandable how it would be unreasonable to appoint a lawyer for an infant or toddler, but in

other circumstances, an attorney would be beneficial. Providing an attorney for the child would recognize that the child is a "party" in the custody dispute and would also take into consideration the child's wishes. Utilizing this law would provide an additional perspective in order to make a custody decision. Nonetheless, some judges in Arizona do not recognize the child as being a "party" in the dispute nor do some judges endorse the child's wishes. Therefore, it is questionable whether or not judges who clearly repudiate this option are actually making a decision in the best interests of the child.

Problems related to child custody laws in Arizona

The same-sex marriage dilemma

The State of Arizona undeniably invalidates same-sex marriages because it is written in the constitution and in ARS 25-101 stating "marriages between persons of the same sex is void and prohibited." Therefore, since the state does not recognize the same sex marriages, then the States would not recognize the relationship between the child and his or her parent in a same sex marriage/relationship. This brings about certain problems because first, the individual who might have raised the child since birth would not be able to gain rights to his or her child if the child is not biologically related. This is because the law gives rights to the legal parent "biological or adoptive parent whose parental rights have not been terminated" (ARS-25-401). However, the same-sex dilemma becomes more complex. For instance, one partner of a lesbian couple is artificially inseminated and has the baby or one partner of a gay couple inseminates his sperm in a surrogate mother. The mother who had the baby would, undoubtedly, be the biological mother and man who donated the sperm would undoubtedly be the biological father. If the parents decide to separate, the State of Arizona would automatically give custody to the legal parent – the biological parent. So, even if the non-biological parent has been present in the child's life

since inception, the individual would not have any legal rights over that child. However, if it were in the best interest of the child to reside with someone who has been a caregiver since birth, why would a parent in this circumstance be denied rights? What kind of rights does this person have and how different is this from a relative or grandparent who has been taking care of the child since birth?

A specific case from the United States Supreme Court, *Stanley v Illinois*, can answer this question. This case involves a non-biological father losing his partner. Subsequently, he also lost his children when the mom died because they were unmarried. The State of Illinois disregarded the father's fitness to be a parent based on their laws and took his kids away from him. However, the father and the mother had been in a relationship for many years, allowing the father to raise the children from a very young age. The Supreme Court said the law violated the Stanley's constitutional rights because of the due process clause of the 14th Amendment (Stanley v Illinois, 405 U.S. 645). If the right of a non-married, non-biological parent was upheld at the Supreme Court level, then how come Arizona courts cannot do the same?

The State of Arizona has relied on this case many times for child custody cases. But, because same sex couples do not have the same rights as they would if they were a heterosexual couple in Arizona, this law does not apply to them, per se. The Supreme Court of the United States is currently deciding on two same-sex marriage cases. If same-sex couples have the same legal rights as heterosexual couples do, then it can be assumed that the child custody laws will be extended to homosexual couples as well. What is uncertain is how the State of Arizona will react to this type of ruling. Would they continue to undermine the rights of this population or will they embrace the Supreme Court ruling? That answer is unknown, but the discretion for the best interest of the child is left up to the court.

Another issue related to child custody cases involving same sex couples is the Uniform Marriage and Divorce Act (UMDA). UMDA attempted to provide overall guidance for judges regarding child custody decisions. Most of the states have adopted child custody laws that mirror the UMDA. It states, "In determining the best interest of the child the court shall consider all relevant factors including:

(1) The wishes of the child's parent or parents as to his custody;

(2) The wishes of the child as to his custodian;

(3) The interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;

(4) The child's adjustment to his home, school and community; and

(5) The mental and physical health of all individuals involved. The court shall not consider conduct of a proposed custodian that does not affect this relationship to the child."

Although the Act is relevantly clear and *does* reflect Arizona law, how is it possible for Arizona judges to continue to acknowledge the best interest of the child standard, but deny their best interest based on the illegality of same sex marriages?

CONCLUSION

In my thesis, I have overviewed child custody cases in the State of Arizona and have identified a disconnection between judicial discretion and the best interest of the child standard. The best interest of the child standard looks to resolve any type of difficulties the child might have to overcome after a divorce. The State of Arizona child custody laws are direct enough to provide guidelines, but are too broad for the courts to use discretion. As I have demonstrated, there have been cases when the discretion of the court was questionable. If judges willingly use their discretion to make a critical decision like this, it would be beneficial to incorporate other

sources from outside the legal realm. This is especially true if the courts rely on other actors to assist with making these legal decisions. In my opinion, if the courts utilize other avenues to make their decisions, it will ultimately lead to fulfilling the best interest of the child.

APPENDIX A

The Revised Statutes of Arizona 1913 Civil Code

Part IV Probate Procedure

Chapter 15. Guardian and ward

1107 If the minor is under the age of fourteen years, the court may nominate and appoint his guardian. If he is above the age of fourteen, years he may nominate his own guardian, who, if approved by the court must be appointed accordingly.

1108 If the guardian nominated by the minor is not approved by the court, or if the minor resides out of the state, or if, after being duly cited by the court, he neglects for ten days to nominate a suitable person, the court or judge may nominate and appoint the guardian, in the same manner as if the minor were under the age of fourteen.

1122 In awarding the custody of a minor, or in appointing a general guardian, the court is to be guided by the following considerations:

(1) By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child be of sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

(2) As between the parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but, other things being equal, if the child be of tender years it should be given to the mother if it be of an age to require education and preparation for labor or business, then to the father.

(3) Of two persons equally entitled to the custody in other respects, preference will be given as follows:

(1) To a parent.

(2) To one who was indicated by the wishes of a deceased parent

(3) To one who already stands in the position of a trustee of a fund to be applied to the child support

(4) To a relative

Chapter 17. Adoption

1193 The judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. An adoption may be decreed without the consent of the parent, guardian, next of kin, or next friend where the judge considers that the interests of the child will be promoted thereby.

1194 The consent of the child, if over the age of fourteen years, is necessary to its adoption.

Title XXXII – Marriage and Divorce

Chapter 4 . Absolute Divorce

3870 In suits of divorce the court may make such orders concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of the action as may deemed proper and necessary for the well-being of the children, and in the final judgment rendered in any such suit or in any suit for annulment of the marriage, the court may make such disposition of, and provision for the minor children, as shall be deemed most expedient under all circumstances, and for the present comfort, and future well-being of such children.

References

Arizona., & Pattee, S. L. (1913). Civil code. Phoenix, Ariz: McNeil Co. Retrieved from: http://galenet.galegroup.com.ezproxy2.library.arizona.edu/servlet/MMLP?af=RN&ae=DT102525008&srchtp=a&ste=14

Arizona State Department of Public Welfare v Barlow. 80 Ariz. 249; 296 P.2d 298; 1956 Ariz. LEXIS 209. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Beck, C. Lecture December 4, 2012

Betchel v Rose, 150 Ariz. 68; 722 P.2d 236; 1986 Ariz. LEXIS 229. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Black v Black. (1977) 114 Ariz. 282; 560 P.2d 800; 1977 Ariz. LEXIS 258. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Bradstreet v Bradstreet. 34 Ariz. 340; 271 P. 717; 1928 Ariz. LEXIS 150. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Census Bureau. (2009). *Nearly Half of Parents Get Full Amount of Child Support, Census Bureau Reports.* The United States Census Bureau. Retrieved from: http://www.census.gov/newsroom/releases/archives/children/cb09-170.html

Clarke, S.C., (1995). Advance report of final divorce statistics, 1989 and 1990. Monthly vital statistics report 4, 8,. Hyattsville, Maryland:NationalCenter for Health Statistics. Retrieved from: http://www.cdc.gov/nchs/data/mvsr/supp/mv43_09s.pdf

Clifford v Woodford. 82 Ariz. 181; 309 P.2d 973; 1957 Ariz. LEXIS 210. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Cone v Righetti. 73 Ariz. 271; 240 P.2d 541; 1952 Ariz. LEXIS 240. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Dickason v Sturdavan. 50 Ariz. 382; 72 P.2d 584; 1937 Ariz. LEXIS 190. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Fladung v Sanford 51 Ariz. 211; 75 P.2d 685; 1938 Ariz. LEXIS 206. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Fonagy, P. (2001). Attachment theory and psychoanalysis. New York: Other Press

Foster, H., & Free, D. J., (1978). Life With Father: 1978. Family Law Quarterly, 11, 4, 321-363. Retrieved from: http://www.jstor.org/stable/25739196

Goldstein, J., Freud, A., & Solnit, A. J. (1979). Before the best interests of the child. New York: Free Press.

Gotthelf v Gotthelf. 38 Ariz. 369; 300 P. 186; 1931 Ariz. LEXIS 249. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Harper v. Tipple. 21 Ariz. 41; 184 P. 1005; 1919 Ariz. LEXIS 109. Retrieved from www.lexisnexis.com/hottopics/lnacademic

McFadden v McFadden. 22 Ariz. 246; 196 P. 452; 1921 Ariz. LEXIS 129. Retrieved from www.lexisnexis.com/hottopics/lnacademic

New York Founding Hospital v Gatti. 203 U.S. 429; 27 S. Ct. 53; 51 L. Ed. 254; 1906 U.S. LEXIS 1606. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Stanley v Illinois. (1971). The Oyez Project at IIT Chicago-Kent College of Law. Retrieved from: http://www.oyez.org/cases/1970-1979/1971/1971_70_5014

Troxel v Granville. 530 U.S. 57; 120 S. Ct. 2054; 147 L. Ed. 2d 49; 2000 U.S. LEXIS 3767; 68 U.S.L.W. 4458; 2000 Cal. Daily Op. Service 4345; 2000 Daily Journal DAR 5831; 2000 Colo. J. C.A.R. 3199; 13 Fla. L. Weekly Fed. S 365. Retrieved from www.lexisnexis.com/hottopics/lnacademic

Weithorn, L. A. (1987). Psychology and child custody determinations: Knowledge, Roles, and Expertise. Lincoln: University of Nebraska Press.