

**An Exploratory Study of Custody Challenges Experienced by Affirming Mothers of
Transgender and Gender-Nonconforming Children**

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ABSTRACT

Despite family acceptance being critical to transgender and gender-nonconforming (TGNC) children's well-being, parents do not always agree on how to approach a child's gender nonconformity. Such disagreement can contribute to child custody disputes. Historically, family courts have lacked familiarity with evidence-based recommendations regarding the best interests of TGNC children, resulting in some affirming parents losing physical and/or legal custody. This exploratory, qualitative study with 10 affirming mothers of TGNC children who had experienced custody-related challenges reported on salient themes across participants' experiences, including "blame" for causing children's gender nonconformity, coercion by ex-partners, transphobic/cis-normative bias in the courts, negative impact on children's well-being, the emotional and financial toll on participants, and the critical importance of adequate resources. Seven of the 10 mothers went to court and had judges decide upon their custody cases. Four (57%) of the seven decisions ended in the mothers losing physical and/or legal custody of their children. Relevant family case law and social science literature are reviewed and implications of findings—namely, the need for better educated family court professionals, as well as socio-emotional support and financial and legal assistance for affirming parents of TGNC children—are discussed. Study limitations due to small sample size are acknowledged, laying a framework for future research.

Keywords: transgender children, custody, family court, transphobia, best interest

An Exploratory Study of Custody Challenges Experienced by Affirming Mothers of Transgender and Gender-Nonconforming Children

There is growing public awareness of transgender and gender-nonconforming (TGNC) individuals—that is, people whose gender identities and/or gender expressions are different from what is typically expected for their assigned sex at birth (Simmons & White, 2014). Research into the lives of TGNC people has expanded and indicates that TGNC children and youth, especially in the United States, are at an elevated risk for depressive symptoms and suicidal ideation (Aitken, Vanderlaan, Wasserman, & Zucker, 2016; Perez-Brumer, Day, Russell, & Hatzenbuehler, 2017); TGNC youth are more than twice as likely as non-TGNC youth to report having “seriously considered” suicide (Perez-Brumer et al., 2017). One factor that has emerged as critically important to the well-being of TGNC children and youth is family acceptance (Olson, Durwood, DeMeules, & McLaughlin, 2016; Russell, Pollitt, Li, & Grossman, 2018; Ryan, Russell, Huebner, Diaz, & Sanchez, 2010; Simons, Schrage, Clark, Belzer, & Olson, 2013). Family acceptance is theorized to serve as a buffer against the stigma, discrimination, and rejection that TGNC individuals may face in schools and other community settings—experiences that threaten TGNC individuals’ well-being (Rood et al., 2016; Tebbe & Moradi, 2016).

Acceptance of TGNC children is not always unified within families. Parents may have divergent responses to a child’s gender nonconformity (Kovalanka, Weiner, & Mahan, 2014); one parent may allow the child to express their gender relatively freely, while the other places restrictions on the child’s gender expression. Such differences in parenting approaches can contribute to child custody disputes involving TGNC children, whereby each parent may believe their approach to their child’s gender expression is the correct one (Minter & Wald, 2012). A non-affirming parent may also try to capitalize on society’s traditional notions of gender and

general lack of education regarding TGNC children through the courts (Ehrensaft, 2011). Very little literature on such situations exists, with the exception of law review articles that analyze court proceedings (Margolis, 2016; Perkiss, 2014; Skougard, 2011). Such articles provide a glimpse into the lives of families that are experiencing custody disputes involving TGNC children, but do not provide an in-depth understanding of families' experiences of such conflicts or the dynamics leading up to and surrounding them, or of the impact that a family court's response has on family members.

TGNC Children and Youth and Family Courts

Currently, many clinicians advocate that parents should provide a TGNC child the "opportunity to live in the gender that feels most real or comfortable to that child and to express that gender with freedom from restriction, aspersion, or rejection" (Hidalgo et al., 2013, p. 286). The World Professional Association for Transgender Health (WPATH) has published standards of care (SOC) for gender dysphoria since 1979 (then referred to as transsexualism), and is currently working from the 7th version of the SOC published in 2012. The SOC advise the use of qualified clinicians with training in gender identity to support families in providing accepting and nurturing responses and to provide assessment for gender dysphoria. The SOC recommend supporting children in exploring gender identity, making clear that interventions designed to steer a child's gender identity or expression toward what is typically expected for the child's assigned sex at birth have not been effective and are no longer considered ethical (Coleman et al., 2012). The American Psychological Association and the National Association of School Psychologists (2015) also "support affirmative interventions with transgender and gender diverse children and adolescents that encourage self-exploration and self-acceptance rather than trying to shift gender identity and gender expression in any specific direction." This movement towards a gender affirming approach reflects changes in experts' understanding of the nature, cause, and

implications of childhood gender nonconformity (Ehrensaft, 2011), as well as the positive findings of outcome studies for childhood gender transitions (de Vries et al., 2014; Olson et al., 2016).

Experts have increasingly recognized that parenting has little to no impact on a child's gender identity (Menvielle, 2004); and yet the “parenting is to blame” narrative—particularly for mothers—still exists in relation to TGNC children (Ehrensaft, 2011; Hill & Menvielle, 2009; Johnson & Benson, 2014). For example, for TGNC children who were assigned male at birth, “too much” mothering and “too little” fathering was often thought to be the “culprit” (Hill & Menvielle, 2009, p. 246), reflecting bias against those whose gender identity and/or expression is deemed to be different from expected norms. Transphobia refers to a dislike or bias against those who have gender identities and expressions that vary from an expected standard (i.e., gender-conforming, cisgender). *Heteronormativity* pervades Western culture and is a value framework that promotes and privileges, among other things, traditional gender-related behaviors that differentiate “real” girls/women and “real” boys/men from “gender deviants” (Oswald, Blume, & Marks, 2005). *Cisnormativity* is an ideology that perpetuates the belief that there are only two genders and that assigned sex at birth is essentially tied to gender identity (Bauer et al., 2009). These biases and ideologies have influenced, and are reflected in, family court custody decisions involving the best interests of TGNC children (Minter & Wald, 2012; Perkiss, 2014).

Judicial precedent. Custody disputes centered around whether, how, and when to affirm a child's gender identity and expression have begun to proceed through appellate courts. Five cases involving TGNC children were highlighted in three law review articles (Margolis, 2016; Perkiss, 2014; Skougard, 2011). In three cases [*Shrader v. Spain* (Tex. App. Feb. 4, 1998); *Smith v. Smith* (Ohio Ct. App. Mar. 23, 2007); *Williams v. Frymire* (Ky. Ct. App. 2012)], the affirming parent lost custody or had their parenting time or legal decision-making authority reduced.

Smith v. Smith, the most well-known of the cases, involved a child assigned male at birth. When the child was six, the parents divorced; the mother was granted primary physical custody, and the father had standard visitation (Perkiss, 2014). As the child repeatedly made statements such as, “I was meant to be a girl,” the mother turned to the Internet to learn about what was then termed “Gender Identity Disorder of Childhood” (GIDC). When the child was nine, the mother allowed the child to start at a new school with a girl’s name. At that point, the father, who had very little contact with the child since the divorce, filed a restraining order and asked the court to change custody. The court ordered the mother to cease referring to the child as a girl and allowing the child to wear girls’ clothing and halt counseling related to the child’s gender. Conflating sexual orientation and gender expression with gender identity, as well as disregarding the established diagnostic criteria and assessment by trained professionals, the judge concluded that the child should not have received a GIDC diagnosis, because the child did not state an attraction for males and, from the judge’s perspective, the child’s mannerisms were not feminine enough, and the child was not specific enough in describing a preference for “girl stuff.” The judge also concluded that the mother had “pushed” the child into a female identity. The court-appointed therapist found that the child’s mother “was motivated by a genuine commitment to [the child’s] interests, while the father was less focused on [the child’s] needs and largely motivated by resentment toward his ex-wife” (Skougard, 2011, p. 1194). Efforts to create parental alienation towards the mother revealed the father’s limited capacity to serve the best interest of the child (CWIG, 2016). Despite the psychologist’s findings, as well as the child asserting a strong preference to live with the mother and exhibiting emotional distress due to being separated from the mother, the judge granted full physical and legal custody to the father.

Somewhat similarly, in *Williams v. Frymire* (2012), a mother, who was awarded sole custody of her one-year-old child after divorcing the child's father, lost her designation as the primary residential parent four years later. When the mother communicated to the father that the child was transgender and would from then on be affirmed as a boy, the father took the mother to court. Contradicting the opinion of at least two other clinicians that a diagnosis of GIDC was appropriate, a court-appointed psychologist said that "the mother was 'over-responding' to the child's dislike of 'girly' things" (Margolis, 2016, p. 145). Following the court-appointed psychologist's recommendation that "the child 'should be treated with gender neutrality'" (Margolis, 2016, p. 145), the court named the father as the primary residential parent, disregarding the opinion of the *guardian ad litem* (GAL) that the mother should retain primary physical custody. In contrast to *Smith*, the court in *Williams* decided upon joint legal decision-making authority, following the court-appointed psychologist's recommendation that "both parents should have equal 'input' on physical and mental health decisions" (Margolis, 2016, p. 145).

Johnson v. Johnson (2009) had similar circumstances to *Smith* and *Williams* but ended in a decision of shared physical and legal custody. Both the affirming mother and non-affirming father were court-ordered to remain involved in decision-making regarding the TGNC child's upbringing and have equal time with the child. The judge in *Johnson* appeared less concerned with traditional gender roles, compared to the judge in the *Smith* case, and accepted the TGNC child's statements of gender identity (Skougard, 2011). The mother also sought out a therapist's advice early and asked the court to approve a phased plan for the child to explore their gender, to which the judge seemed to respond favorably (Skougard, 2011). Notably, the court ordered that the child continue to see a therapist who was knowledgeable about gender nonconformity in childhood but also allowed the father to

bring the child to religious-based counseling. Given the known importance of family acceptance for TGNC youth's well-being, this shared custody decision raises questions about the impact on a TGNC child of going back and forth between an affirming and non-affirming household and whether living even part-time in a non-affirming household is in a TGNC child's best interests.

In only one of the five cases summarized in law review articles was an affirming parent awarded custody over a non-affirming parent. In *Kristen L. v. Benjamin W.* (2014), an affirming father, who had previously been awarded joint legal custody of his children and visitation, was awarded sole legal and primary physical custody after a non-affirming mother was found to be physically abusive toward the children. Thus, the decision of the court did not appear to turn solely or even primarily on the father's affirming response to his child's gender nonconformity but on the mother's abusive behavior (Margolis, 2016).

Legal advice/recommendations. In light of these cases and the courts' unfamiliarity with transgender identities and gender nonconformity in childhood (Baer, 2014; Minter & Wald, 2012), legal experts have advised affirming parents of TGNC children to "proceed cautiously":

You and your co-parent may not always agree on how to support your transgender or GNC child. It is very important to engage in a dialogue with the non-affirming co-parent in hopes of obtaining their consent when making important decisions about how to raise your child. If that is unsuccessful, it will likely still be in your child's best interest to come to an agreement together regarding your child's unique needs without going to court. Courts are very unfamiliar with transgender children and should be used as a last resort. In those situations, you should proceed cautiously, which includes taking your child to qualified mental health and medical providers and closely following the advice of those professionals. [National Center for Lesbian Rights (NCLR), 2015; Orr, 2017]

Similar guidance, such as encouraging the affirming parent to slowly accommodate the child's gender identity, to communicate as much as possible with the other parent, and to obtain and document professional clinical advice, has been provided to attorneys who are representing affirming parents in such cases (Baer, 2014; Minter & Wald, 2012). Recommendations for courts include the development of and adherence to a distinct protocol that involves initial mediation by a social worker and then, if necessary, the formation of an independent advisory council with the exclusive charge of protecting the TGNC child's best interests (Szczerbinski, 2016).

Beyond the sources cited above, little has been written about the experiences of affirming parents of TGNC children who are in disagreement with the children's other parents about how to approach the children's gender nonconformity. Even less examined are the perspectives of parents where such disagreements threaten to lead to, or have led to, child custody disputes. Yet, examining these families' perspectives could raise awareness about such cases and also lead to a greater understanding of how to better support affirming parents and their TGNC children.

Research Questions

Given these cited gaps in the literature as well as the potential positive implications of such research, we were interested in the following research questions for our exploratory study:

1. Among parents who face custody challenges related to their TGNC children's gender nonconformity, how did these custody disputes come about and unfold over time and what salient challenges and stressors do they report facing throughout the process—for example, in relation to their former partners, their child, and the courts?
2. Given that family acceptance can have a critically important influence on TGNC youth's health and well-being (Olson et al., 2016; Ryan et al., 2010), what is the perceived impact that these custody-related challenges have on the TGNC children involved?

Method

Sample

Ten mothers, ages 32 to 52 years old ($M = 43.6$ years; $SD = 6.7$), with one TGNC child each made up the final study sample. In total, 15 people participated. The five who were excluded from the final sample included two mothers who did not experience any concerns pertaining to child custody with their child's other parent—that is, threats to custody came from other sources, such as when child protective services was called upon by a community member to investigate a claim that one mother's affirmation of her child's transgender gender identity was akin to child abuse, and when another mother and her husband were assisting their transgender child with a legal name change, the judge overseeing the case asked a GAL to weigh in. Three grandmothers of TGNC children also responded to the call for participants and were interviewed. The grandmothers discussed visitation challenges, but grandparents' legal rights are significantly different from parents' rights; thus, for this analysis, we chose to include only parents who discussed custody-related challenges involving their TGNC child and the child's other parent. Nine of the 10 participants were White/Non-Hispanic; one of the mothers identified as "half Mexican and half White." Four of the mothers had earned a graduate degree, four had a Bachelor's degree, and two completed high school. The regions of the U.S. in which the custody challenges took place were the West ($n = 4$), Northeast ($n = 4$), Midwest ($n = 1$), and South ($n = 1$). Nine of the mothers were divorced; one was separated from her ex-partner at the time of data collection. Seven of the mothers had ex-partners who were of a different sex; three of the mothers had ex-partners who were of the same sex.

The 10 TGNC children of the participants were between the ages of five and 15 years old ($M = 9.4$ years; $SD = 3.3$) at the time of data collection. Seven were assigned male at birth; three

were assigned female at birth. Seven of the TGNC children were identified as White/Non-Hispanic by their mothers; one was identified as Mexican and White; one as African American and White; one as Asian and White. Six of the TGNC children had received a diagnosis of GIDC (prior to 2013) or Gender Dysphoria (GD). Two had not received a diagnosis of GIDC or GD; one mother said that she thought her six-year-old child was too young to be given a diagnosis, and the other mother said that her ex-spouse would not take her child to a clinician to see if a GD diagnosis was warranted. One mother said that her child had received a diagnosis of “unspecified GD,” because the child would assert a transgender gender identity with the affirming parent but then would be unclear about their gender identity with the non-affirming parent. Lastly, one mother said that her child had been given a diagnosis of GD from a pediatrician but that her ex-spouse had complained and got the diagnosis removed from the child’s record.

Procedure

Data collection took place in fall 2016. Participants were recruited via purposive sampling; investigators shared the study announcement with their professional networks and on listservs for parents with TGNC children. One-on-one, semi-structured, open-ended telephone interviews were conducted by the first author with eight participants; these interviews lasted approximately 60 to 75 minutes. Two participants anticipated that talking on the telephone for an hour would be too arduous, so they typed up their responses to the interview questions and sent them to the first author via email. The first author read through these two participants’ responses and emailed follow-up questions as necessary to clarify participants’ responses; these two participants answered the follow-up questions via email. All participants were asked about the make-up of their family, their child’s gender development, and their response to their child’s gender nonconformity. Participants were also asked to describe their custody-related challenges

through questions such as: (a) Tell me about the custody or visitation issues you've experienced related to your child. What led to these issues? When did the issues begin (how old was the child) and where do things stand now? (b) What do you feel the impact of these custody/visitation issues or parenting disagreements is/was/has been on the child? Telephone interviews were digitally recorded and then professionally transcribed.

Using inductive thematic analysis (Braun & Clarke, 2006), we identified similarities and differences in participants' experiences related to custody of their TGNC children, proceeding through six phases: familiarizing ourselves with the data, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing our report. The first author read through each transcript line-by-line, making note of open codes. For example, one participant spoke about the impact that the custody case had on her child and described the child's recent "third suicide threat." Next to this interview excerpt, the first author wrote: "Child's suicide threats." Once open coding was complete, the first author had several conversations with two research assistants who had also read through the transcripts. Open codes were discussed and broader themes generated. For example, the above open code and others were subsumed under "suicidal ideation," which ended up as a sub-theme under the larger theme: "Negative impact on children's well-being." The first author refined the coding scheme as the two research assistants verified participants' open codes with the respective themes and until the researchers were satisfied that the thematic narrative accurately reflected the data.

Findings

We provide an overview of participants' physical and legal custody situations (e.g., sole, shared, lost) at the time of data collection (see Table 1). Then, we describe salient themes across participants' situations and experiences. When providing direct quotes, we share custody status

and child's age and gender sparingly in order to ensure the masking of participants' identities. Each participant has been quoted at least twice in the following report of study Findings.

Overview of Custody Situations

“Sole” custody. Two participants essentially had sole physical and legal custody of their children at the time of data collection. For one participant, the custody decision was handed down by a judge; for the other, custody was negotiated through attorneys. One mother had “80% physical custody and 100% legal custody” of her child; “the little physical custody [my ex-husband] had sort of fizzled away because our daughter would not stay the night with him...and then he moved.” Although her ex-husband blamed her for the child being TGNC and threatened to sue for custody, she explained that he was “a narcissist...and did not like the reflection [that his child being TGNC had] on him, so he wasn't going to go to court and put this on the public record about our child.” Another mother reported that her child's father was not a U.S. citizen and was not living in the U.S. at the time of the interview and had very little contact with the child. At one point, he was temporarily granted joint physical custody: “I did lose sole custody at the hearing where they were trying to get me to stop bringing [my child] to the [transgender] support group, and it became joint custody.” Eventually, however, she regained full custody.

“Lost” custody. At the time of data collection, four participants had lost physical and/or legal custody of their children after going to court and having the decision handed down by a judge. Three of the four participants had been the primary caretakers of their children prior to their custody being challenged. Three of the four lost physical custody of their children and were allowed visitation with their children (two were allowed only *supervised* visits). One participant started with primary physical custody of her child but ended up with shared physical custody; she lost legal custody/decision-making authority. Another participant

started with sole physical and legal custody of her child but lost physical custody and had her legal custody reduced to 50%. One mother explained how she came to lose custody of her child:

When my child was born...I filed for divorce...and I received full custody at that time, because my ex was never involved in the child's life, never did keep a job. That's why I packed up and left. He was an alcoholic and very emotionally abusive...My ex had, by his own choosing, very little to do with the child...Then at 9 years old, my kid was diagnosed as trans by a psychologist that specializes in that area...And then I ended up getting a second opinion. Then at that point, my ex took me to court and charged me with child abuse for raising the kid as a boy...That got dropped, but they took me back to court...and they tried to say that I had [a psychiatric disorder] and was making my kid trans...The judge took my kid, and now I am supposed to get visitation every other weekend, but my ex-husband doesn't keep his word with that...I've basically been cut out of the whole kid's life by my ex-husband, and no one is holding him accountable.

“Shared” custody. At the time of data collection, four participants shared physical and legal custody with their child's other parent. Two of the four had gone to court and had their cases decided by a judge. All four of these mothers wanted primary physical custody and/or sole legal custody, so that their children could be more fully affirmed in their gender identities. Two of these participants were fearful of challenging their ex-partners in court. One of these mothers said: “I heard of several people who had lost court cases, and I did not want to that to happen.” Some ex-partners explicitly threatened or insinuated that if the participants did something that the ex-partners did not like (e.g., allow the children to express their gender freely) that the participants' custody would be challenged. Prior to divorcing her ex-wife, one participant had

been the primary caretaker of their child and tried to gain primary physical custody through the court but was unsuccessful:

At first we were going to mediation...and before we signed the agreement—we were going to transition to [our child] being with both of us 50% of the time—[my ex-wife] threatened that she would get...Child Protective Services to come and take [my child] away from me if I tried to do anything about the gender stuff. So I said, “I’m scared,” ...[but my] lawyer said, “You should fight this. You don’t have to be scared...you can show all these documents.” I had an entire year’s worth of teachers saying she said that she’s a girl, and I had two or three years of medical records at that point about counseling with the doctor, and I had the family therapist and all of that, so the lawyer was like, “You should fight this.” So I did, and we got to court, and they talked to [my ex- wife] and I...and the judge ordered immediate 50/50 custody starting the next day.

Themes

Six primary themes were identified across participants’ custody-related experiences: (a) “Blame” for causing or encouraging their children’s gender nonconformity; (b) coercive behaviors by ex-partners; (c) bias in the courts; (d) negative impact on children’s well-being; (e) toll on participants themselves; and (f) the critical importance of adequate resources.

Blamed for “turning child trans.” All 10 participants described being blamed by their ex-partners for causing the children to assert transgender identities. A mother, who at the time of the interview had sole custody of her child, had been court-ordered to meet with family services; at that meeting, her ex-husband said that she “was pushing this transgender stuff on our child because being the parent of a trans child is trendy.” A mother with shared custody thought that the blame was connected to her ex-wife’s transphobia and lingering anger over their break up:

We had just broken up, and [my ex] was blaming me for everything, including this...She was always a little transphobic in our relationship. She'd be like, "I don't understand trans people. Why can't they just be X or Y?" So, she was...predictably resistant...and because she was getting this information from me and the preschool teacher, who she deemed to be my ally, she was really suspicious of it and continues to be; continues to think that we're just feeding her a lie or that we're pushing this on [the child].

Three participants described how their ex-partners had claimed that the participants had psychological problems due to current or past trauma (e.g., sexual assault) or mental illness (e.g., Munchausen syndrome by proxy; addiction), and that these issues were the root of the child's gender nonconformity. One mother described how her ex-husband used her past against her:

Just like the worst skeletons from my closet. I've been sober for 13 years, but I struggled with addiction prior to that. So...[my ex-husband] had a lot of ammunition, and he was saying that my psychological problems were causing me to make [our child] want to be a girl...he accuses me of having Munchausen's by proxy...borderline personality, then, what was the most recent one? Oh, hysterical personality...something with hysteria.

Coercive and manipulative ex-partners. Nine participants described coercive and manipulative behaviors by their ex-partners. Such behaviors were interpreted by participants as attempts by ex-partners to exert their will over their TGNC children and/or the participants.

Child coercion. Five participants described such coercive behaviors directed toward the TGNC child and, often, the child's gender identity or expression. For example, a mother with sole custody of an asserted girl described how her ex-husband "did some really f-ed up stuff" when their child visited him when she was younger: "He did stuff like took her to get all her hair cut off, would take away dresses, would return gifts that people gave her that were girl stuff."

Another mother with shared custody said that her ex-husband tried to sabotage court-approved plans for affirming their child's gender: "[My ex-husband] wasn't doing anything to support [our child]...I've had to [travel long distances] to pick up the puberty blocker shot, because [he] lied and said it didn't come in. He was trying to prevent everything from being done."

Similarly, a mother with shared custody of her asserted girl said that her ex-wife claimed to be open to their child's gender nonconformity but was actually actively rejecting their child's female gender identity. Her ex-wife, for example, refused to use female pronouns even though the child had stated repeatedly that she was a girl to several people and had requested that others use female pronouns for her. Living in a progressive part of the country, the ex-wife was claiming openness to the child's true gender but also claimed that the participant was pressuring the child to identify as a girl. The participant elaborated: "[My child's] original therapist said that we need to follow the lead of the child, and [my ex-wife] said we can't in this situation, because [I have] coerced [the child] into saying she's a girl." In order to prevent the child from being affirmed as a girl, the ex-wife was trying to convince others that the child was gender-nonconforming rather than transgender and, thus, should be treated in a gender-neutral way. This way, the ex-wife's actions could be read as supportive and affirming, even though, according to the participant, the ex-wife was fundamentally rejecting of the child's gender identity:

[My ex-wife] was saying that [our child] was confused, and that [our child] was too young, and that [our child] was maybe gender-nonconforming but didn't really know her gender identity...It's not like [my ex-wife] is saying [my child] is a boy; she's saying, "We don't know yet. She's not old enough. Let's leave it open." It sounds so liberal and nice and neutral, and meanwhile she's communicating to [our child] that "girl is bad."

Participant coercion. Five participants described ex-partners' coercive behaviors directed at the participants themselves. Even when ex-partners' coercive behaviors were directed at the participants, children were often impacted indirectly. A mother with shared custody of her asserted girl had a contempt of court charge filed against her by her ex-wife for asking others to use female pronouns in reference to her child. Likewise, another mother said that her ex-wife did not want the participant to affirm their asserted girl's gender identity or to have any role in the children's lives: "It's all about control. She doesn't want me to have the kids, period. She doesn't want my influence."

Some of these participants described ex-partners as emotionally and psychologically abusive and as using the courts to both (a) further manipulate and control them, and (b) block affirmation of the child's gender. A mother of an asserted girl illustrated the relentless nature of the court actions that she endured from her ex-husband who had "buried" her in paperwork:

It's everyday I'm scared that I am going to lose [my child]...I had contempt of court charges brought against me for reading a book. I read *Harriet the Spy*; that's about a girl, so, ya know, that would be in contempt of the [order]...I get contempt of court charges for a pink ribbon. Unbeknownst to me, [my child] found a pink ribbon, used it as a bookmark, took it back to dad's house. I get a contempt of court charge.

This participant said that her ex-husband aimed "to mess with" her and "to make [her] life more difficult." Likewise, another mother, who had also lost custody of her child, spoke about her relationship with her ex-husband and how he continued to control her after their divorce:

He was really controlling, and I was always trying to be perfect for him, but I had been with him since I was 16...He will never be satisfied until I almost, until I'm just, like,

gone. I feel like he gets pleasure out of hurting me....He will never let me have my child. He will never let me have a life. I'll always be fighting against him.

Bias in the courts. Six participants described facing heteronormativity, cisnormativity, and/or transphobic bias in the family courts. One mother explained that the judge stated that he took away her legal decision-making authority because she had made the “bad” decisions to “let [her child] wear a skirt to school” and “play with another gender-nonconforming child.” Another mother of an asserted girl faced further legal problems upon remarriage. Her new husband had two boys from a previous marriage, and his ex-wife claimed the boys’ “health and welfare was compromised by the exposure of a trans child in the home.” The participant described the court’s bias and lack of knowledge about diagnoses of GID/GD in childhood:

It took three years to fight in court...we were having to educate even the judge...nobody knew what we were dealing with. So the court ordered a full evaluation of my family and my daughter. Which was horrific and cost us a lot of money. And had my daughter had a different medical diagnosis, like, I don’t know, cerebral palsy...the courts would have never ordered that. And they had men standing in the corner with a clipboard observing, and I hated it....My daughter...was totally, perfectly healthy...she just was a girl.

Four of these six participants provided examples of how courts were complicit in the ex-partners’ efforts to police the children’s gender expression and/or to limit efforts to affirm the children’s asserted gender. A mother who had lost custody of her asserted girl and was only allowed supervised visitation, explained how the family court had required her not only to halt affirmation of her child’s gender identity but also to actively reject it:

It was like a month before Halloween...and [my child] wound up picking out a fairy costume...I received a court order the day before Halloween that was signed by [the

judge] that [my child] was to be dressed gender neutral or boy only, not allowed to play dress up at home, had to be referred by birth name and male pronouns. A week later my ex found out about the [transgender] play group, and...[it was added] to the orders...that I wasn't to have the kids to any place or situation so as to normalize being transgender.

Similarly, another mother was given the following orders of non-affirmation by the court:

I am not to refer to [child] with female pronouns...I am not allowed to allow [child] to have any girl items in the house...I cannot discuss gender with [my child]. So...I had to take away all of [my child's] favorite toys. I had to take away all of the clothes, the books. And this was when [my child] was six...So [my child] came home and there was nothing there. Like, all of [my child's] favorite things were gone. And this was all supposed to be temporary, but this [order] is still in place right now [three years later].”

Negative impact on children's well-being. Nine participants said that the custody challenges their families experienced negatively impacted their children. A mother with shared custody felt that “what's hurting [her child] the most” was that the court would not ensure affirmation by the child's father. Because these parents shared custody, the mother had to go through the courts to “force [my ex-husband's] hand”—often to no avail, resulting in her child feeling “angry and spending time with friends to kind of block it out.” A mother with sole custody shared what it was like for her child when her child's father was contesting the custody arrangements: “[My child] would come home a mess, because [my ex-husband] would call me the C word and call me all these other words in front of [our child] trying to get [our child] to say them about me.” The asserted boy felt responsible for the blame that was put on the mother:

[My child] and I were in the car one day, and...he says to me, “Mommy, I think I'm just going to go back to being a girl.” I pulled the car over, and I said, “What?” He goes, “I

think I'm just going to go back to being a girl, because it will be easier." I said, and my heart was breaking, "Easier for whom?" He said, "Easier for you, Mom. Everybody is so mean to you." I hugged him, and I said, "Son, don't worry about me. I can handle that." I said, "You be who you need to be. If you want to be a girl that likes boy things, be a girl that likes boy things. If you want to be a boy that likes girl things, be a boy that likes girl things. If you don't want to be either a boy or a girl, you don't have to be. Just be you and be yourself however you need to be to make yourself happy." He was in second grade, beginning of third grade. To have that much weight on [him] just broke my heart.

Four of these participants spoke about concerning behavioral and physical problems their children exhibited and which the mothers attributed to living at least part-time in a non-affirming household and/or from court orders that forbid affirmation of the children's gender. A mother with shared custody of her 5-year-old asserted girl described her child's acting out: "She will throw more temper tantrums. She'll scream 'no.' She never was a child who [did] anything like that...Now if anything comes up about gender, she will hit pillows or become visibly upset, and she never did that before." A mother who had lost custody of her 10-year-old, explained how her child's distress manifested physically, when asked about the impact on her child: "I think it's been detrimental to the child in every way possible. My kid is not eating. My kid is not sleeping." Two of these participants said that their children expressed suicidal thoughts and behaviors. One said: "I let him identify and live as a boy when I see him, because that's what's keeping him alive, because he's already made suicidal threats...[and said that] he couldn't live as a girl for much longer." Another mother described how the court order, which disallowed affirmation of the child's gender, led to her child's contemplation of suicide:

It was during the custody evaluation. . . . We were all very stressed out, and [my child] started saying, “I wanna die. . . . I wanna die, because of the [order].” And I said, “You know, sweetie, the [order] is temporary.” And I’ve gotten in trouble for saying that—for telling [my child] that the [order] isn’t gonna last forever. . . . My poor kid. So I say, “The [order] is temporary, and dying is a permanent solution. You don’t want to do this.”

Negative toll on participants. These custody-related challenges also had a negative impact on the mothers; seven participants expressed during the interview the burden that the custody-related challenges had on them. Five referred to the emotional and psychological toll (e.g., depression). One mother was overwhelmed by her ex-husband’s abusive legal tactics:

It’s like I have PTSD anytime an email arrives from [his lawyer], because the most horrible things have been said about me. Awful. . . . Sometimes I wake up, and I’m like, “I can’t do this anymore. I can’t keep going. I can’t keep fighting.” But then I think about [my child] . . . and that I can’t give up, because I’m not going to give up on my kids.

Five participants also spoke about the financial toll the costly legal challenges had taken. Among the most financially devastated was a mother who had lost custody of her child: “In one year, I lost my kid, my home, my car, and my career. Now I’m . . . living in the basement of my parents’ house. . . . I’ve lost everything, all my savings, everything, retirement—it’s all gone.”

Importance of adequate resources. Nine participants spoke about the critical need for access to adequate resources when experiencing custody challenges. Eight of these participants referred to the importance of money and how having it—or at least having more than their ex-partners—could make the difference between keeping or losing custody, or could influence a decision of whether or not to pursue primary custody when ex-partners were non-affirming of the children’s gender. A mother with shared custody had decided not to seek out full custody even

though her ex-husband was not supportive of their child: “I consulted with a lawyer at that time to change things, but they wanted \$3,000 for a retainer, and I didn't have that.” Another mother, who had lost custody, was trying to appeal the custody decision but could not afford the thousands of dollars it would take to even secure representation: “They cannot find me an attorney. I don't have the money. I'm trying to save up money. I've been in and out of court for three years.” One mom found herself without representation when her attorney switched employers (“I couldn't afford her at her new law firm”) and was still paying attorney's fees after losing her child and her job. At least three participants were completely out-resourced by their ex-partners; a mother who had lost custody of her child and who said that she was recently “on food stamps” and “in subsidized housing,” put it plainly: “[My child's] dad has a lot of money. He has unlimited funds, and he uses those funds to keep the [order] in place.”

Six participants spoke about the need for and importance of better-educated, unbiased family court professionals. From attorneys, to custody and psych evaluators, to GALs, to judges, participants talked about how they would have benefitted, or did benefit, when they encountered family court professionals who had sound knowledge of transgender identities and gender nonconformity in childhood, or who were at least *not* transphobic. One mother, who had shared custody of her child, explained: “Transgender-friendly lawyers are really hard to come by. Or if they're transgender-friendly, they don't do family law. Or they just lack experience. They have great heart but lack experience.” Another mother, with sole custody of her child, felt fortunate that the judges weighing in on her case did not seem to hold anti-trans bias, which allowed them to see through her ex-husband's false claims about her: “We got pretty lucky with the judges. At one point...the judge looked at [him] and said, ‘Mr. , it sounds like you're trying to blackball a woman who is trying her best by your child’.” Another mother went on to discuss the critical

importance of everyone who is associated with the court—not just attorneys and judges—being educated about what is in the best interests of TGNC children and how to best support them:

If professionals don't know, then they may think that supporting a child in their trans identity, which professionals say is what is best for trans youth, is not the best route.

They may err on the side of “caution,” but that decision can actually be detrimental to the child. A family services representative who was trying to mediate when [my ex-husband] wanted [me] to stop bringing my child to trans support groups said, “Well, maybe you should stop.” I looked at [her] and...I explained...“I can love my son, and I can relate to him on many different levels but...there's no way I can possibly relate to my son on being transgender. So the best thing I can do is provide him that opportunity to meet others and to have that community where he can have that connection.”

Summing up the current state of many family courtrooms in regard to custody cases involving TGNC youth—and the need for court professionals, especially judges who hold so much power, to be educated, a mother who had lost custody of her child said:

You hear all this stuff about bathrooms, but nobody has even talked about or even penetrated the judicial system. This judge doesn't have a clue, but he made a life and death decision on something he knew nothing about, and still doesn't...I'm just taken aback that there are not continuing legal education credits that are mandatory for family judges and family law attorneys...They're not educated, and to this day they're still not.

Discussion

This exploratory study represents the first known analysis of first-hand accounts of mothers who had experienced custody-related challenges involving their TGNC children. Seven of the 10 mothers went to court and had judges decide upon their custody cases. Four (57%) of

the seven decisions ended in the mothers losing physical and/or legal custody of their children; two (29%) ended in shared physical and legal custody; one (14%) resulted in the mother having sole physical and legal custody. Three participants did not go to court and, instead, had their lawyers negotiate the custody arrangements; two of these mothers had shared physical and legal custody of their children, while one had sole physical and legal custody. Legal experts advise affirming parents of TGNC children to avoid court whenever possible, given that family courts are generally unfamiliar with transgender identities and gender nonconformity in childhood (Baer, 2014; NCLR, 2015). Yet, court may be unavoidable if non-affirming ex-partners try to take custody away from affirming parents, as was the case for half of our participants. Further, as was also the case with several participants in our study, affirming parents may be concerned about emotional harm to their children resulting from living even part-time in non-affirming households and, thus, may contemplate or attempt a modification to custody. Our findings, although derived from a very small sample, shed light on the experiences of these mothers—some of the challenges they faced and successes they had—and have implications for family court professionals concerned with the best interests of TGNC children.

All participants were accused by their ex-partners of causing their children to exhibit gender nonconformity and pressuring the children to assert transgender identities. Some mothers were said to have a mental illness that resulted in them “turning their children trans.” “Blaming” an affirming parent (usually a mother) for a child’s transgender identity or gender nonconformity is not new (Ehrensaft, 2011; Hill & Menvielle, 2009) and has been a successful approach for non-affirming parents in some custody cases [e.g., *Smith v. Smith* (Ohio Ct. App. Mar. 23, 2007)]. Such accusations are rooted in, and capitalize upon, society’s transphobia, which is “no more apparent than in the anxiety that gets stirred up...when a child transgresses culturally

prescribed norms of male and female” (Ehrensaft, 2011, p. 45). “The mother is pathologized for trying to honor her [child’s] true gender,...[and the child’s] father...is...normalized for standing up and fighting for...his [child]” (Ehrensaft, 2011, p. 46). These accusations of blame can be especially harmful when non-affirming parents find clinicians—who may lack expertise or be guided by religious beliefs—to back up their claims (Ehrensaft, 2011). Leaders in the field of childhood gender development have noted that children can be taught values pertaining to gender, “but parents probably have little or no influence on the child’s core feelings that define him or her as gender typical or gender variant” (Menvielle, 2004, p. 3). Yet, if a family court is persuaded by such misleading or false accusations in this regard, affirming parents may unjustly lose custody or have their parenting time reduced, while non-affirming parents may be rewarded for their adherence to and promotion of cisnormative ideals. In such cases, courts are going against the recommended SOC (Coleman et al., 2012) and a gender affirmative approach (Hidalgo et al., 2013) and, thus, what is in the best interests of TGNC children.

Almost all participants also described their ex-partners as exhibiting coercive or manipulative behaviors targeted at the child, the participant, or both. Such behaviors directed toward children often involved efforts to stifle or punish the children’s expression of gender by, for example, cutting a child’s hair against their will, taking away a child’s “girl” toys, and disallowing others to use a child’s asserted pronoun. Such overt acts of rejection toward TGNC children have been referred to as *identity-related abuse*, which also includes more subtle behaviors, such as insisting that a child is too young to know their gender or delaying affirmative interventions (Riggs & Bartholomaeus, 2018). According to Riggs and Bartholomaeus (2018), parents, such as some ex-partners described by our participants, may try to convince others that they are open to their children being TGNC but

are, in actuality, non-affirming: “Such parents present as well informed about transgender people's lives, and positive about their child. Yet...the parent is more of a barrier to, than a facilitator of, their child's transition...and may act in ways that undermine the child” (p. 2). It is essential that judges, family lawyers, and therapists be cognizant of the ways in which parent behaviors that appear as “tolerant” (e.g., advocating a “gender neutral” approach) may actually be quite invalidating and harmful.

Some participants described actions by ex-partners reminiscent of *coercive control* (Stark, 2007). Coercive control, common in couples experiencing high-conflict divorces (Stover, 2013), involves repeated use of tactics to dictate and dominate an individual's daily life, including restricting personal autonomy (Stark, 2007). Coercive control can be exerted through the court system (Przekop, 2011); for many individuals involved in high conflict divorces, the “pattern of control...is likely to continue throughout the divorce” (Haddad, Phillips, & Bone, 2016, p. 248). Our participants described ex-partners threatening to take away custody and repeatedly filing contempt of court charges if/when participants affirmed a child's transgender identity or gender nonconformity. Such actions served to paralyze participants with fear, overwhelm them with legal proceedings, and in some cases, continue an abusive relationship through the family court (Johnston, 2006). As Johnston (2006) noted about intimate partner violence and divorce: “After separation the abuser uses legal disputes over the children to harass and punish” (p. 17). Coercive control is a gender neutral term (e.g., men and women can be perpetrators; Candela, 2016); that the affirming parent is often a woman with a male ex-partner, however, reveals how power dynamics in these custody negotiations can be fundamentally gendered. Some male ex-partners used women's past mistakes or personal challenges against them as “ammunition” in court, ultimately tipping the balance of power even more in their favor.

The courts in six of these cases appeared to succumb to heteronormative, cisnormative, and transphobic bias, resulting in some participants being forced to reject their children's asserted gender identities. Of note was a relative over-representation of mothers and asserted girls in the study. A deeper look at underlying misogyny related to the suppression of women as parental decision-makers, especially when it involves a perceived threat to masculinity, warrants further research. Some courts believed that it was so irresponsible of a mother to allow a child (in this case, mostly assigned boys) to break traditional (in this case, mostly masculine) gender norms that losing parental time and rights was warranted. Our findings support the assertion that a lack of education about childhood gender nonconformity, including evidence-based recommendations about how to best support a TGNC child, has led to "too many custody decisions...be[ing] made based on subjective opinions" about gender (Szczerbinski, 2016, p. 200). Such decisions can leave a TGNC child at the mercy of a non-affirming parent who refuses to recognize or allow the child to express their true gender, despite evidence that such familial rejection is detrimental (Klein & Golub, 2016). Family professionals should possess knowledge of childhood gender development, including the spectrum of gender identities and expressions, and work to understand their implicit and explicit biases in regard to gender—as with race and ethnicity (Maldonado, 2017)—so as to avoid doing harm to TGNC children and their families.

Impact on Children

Perhaps unsurprisingly, given that high-conflict divorces have been linked to adverse child outcomes (Haddad et al., 2016; Kopystynska & Beck, 2018), almost all of the participants reported that their children were negatively impacted by the custody-related challenges that the families experienced. Several participants also specifically pointed to the lack of affirmation of a child's asserted gender—by ex-partners and, in some cases, mandated by the courts—as a source

of children's distress. Similar to previously documented custody cases involving TGNC children [e.g., *Smith v. Smith* (Ohio Ct. App. Mar. 23, 2007)], some participants also said that court-mandated reduction in time with an affirming parent caused children additional stress. Most alarmingly, two mothers in our study reported that their children had spoken about suicide.

Given that best interest standards include children's mental and physical health needs and avoiding alienating the affection of parents (CWIG, 2016), family courts need to be aware of best practices for TGNC youth when making custody decisions. They should consult with legal and clinical experts (e.g., NCLR; Center of Excellence for Transgender Health at the UCSF Medical Center) as outlined in the protocol suggested by Szczerbinski (2016), and attend continuing education courses, seminars, and webinars that provide education about TGNC youth needs and well-being. Although parents and courts might assume that a "gender neutral" approach, that accepts gender neutral behavior, dress, and toys but explicitly disallows cross-gender identification, is a wise and reasonably affirming compromise, such an approach may still reject the child's true gender, having potentially negative consequences (Murchison et al., 2016).

Impact on Affirming Mothers

Participants described the toll that defending their TGNC children against their ex-partners and the courts had on them. These women were walking a tightrope, trying to appease former partners but also honor their children's gender identities. Many were in a position of compromised power, trying desperately not to alienate or anger their ex-partner for fear of losing their child—but also aware that such appeasement came at a cost, in that every day their children were forced to live as a gender they were not threatened their children's integrity and well-being. A vast body of research has demonstrated the consequences of parental well-being for children, such that parents who report more depression, anxiety, and stress tend to have children who

exhibit more internalizing and externalizing difficulties (e.g., Benzies, Harrison, & Magill-Evans, 2004). Thus, it is essential that these parents receive needed support and mental health treatment to buffer adverse effects of stress on parent and child well-being (Armstrong, Birnie-Lefcovitch, & Ungar, 2005). Beyond socio-emotional supports, these parents also need financial and practical help (e.g., money for attorneys; access to pro-bono services). Organizations such as the Transgender Children's Legal Defense Fund (<http://www.defendtranskids.org/>) could help affirming parents garner necessary financial and legal assistance.

Need for Resources

Our findings indicate a critical need for comprehensive education of family court professionals to mitigate the harm they may inadvertently cause TGNC children and their families. The state of family courts in regard to affirming parents of TGNC children is reminiscent of family courts in the 1970s and 80s in regard to lesbian mothers. Back then, many lesbian mothers lost custody of their children to their heterosexual ex-husbands; this began to change in the 1990s, when courts became aware of research showing that parental sexual orientation did not have negative implications for children's well-being (Tasker, 2013). Likewise, the tide could change for TGNC children in the family courts. On the other hand, if non-affirming parents continue to win custody of their TGNC children, other non-affirming parents could be emboldened to try to do the same (Lyons, 2016), causing fear, insecurity, and negative psychosocial outcomes for a cohort of affirming parents and their children.

Given the present lack of education in family courts in regard to gender nonconformity in childhood, affirming parents of TGNC children need expert legal advice about how to find knowledgeable attorneys and how to protect their families. For example, parents who wish to stay out of court when negotiating child custody could benefit from guidance around specific

language to use in parenting agreements that would ensure the affirmation of their children's gender. Provision of resources for free or at reduced cost is necessary so that financial barriers do not continue to be a factor in whether or not affirming parents maintain custody of their children.

Limitations and Future Directions

The limited size and diversity of our sample necessitate that caution be used when interpreting study findings, especially regarding generalizability beyond our sample. First, we garnered only the participants' perspectives on their family situations; interviews with participants' ex-partners and the family court professionals involved would likely elicit different viewpoints. That is, as with most research, we were privy to only the participants' recollections and interpretations of their experiences—thus, we do not claim that all details of their cases that we have reported are objective truth but, rather, truth from these participants' perspectives. Given that our call for participants referred to custody challenges involving “transgender and gender-nonconforming children,” we were more likely to recruit participants who identified their children as TGNC and, thus, were affirming of their children as TGNC. Further, no study, especially not one with only 10 participants, can represent the experiences of all affirming parents of TGNC children involved in custody disputes. We find it alarming, however, that even among our highly educated sample such negative experiences were described, especially among those who ended up in court. Perhaps because attaining an attorney is so costly, families from higher socioeconomic statuses may be more likely than families of less means to utilize the courts to challenge custody. That said, negotiating custody without the input of a judge may be advantageous for some affirming parents but may leave others, especially those from lower socioeconomic statuses, with few options for motivating a non-affirming parent to act in the best interests of a TGNC child.

There remains much to learn about the experiences of families with TGNC children and youth involved in custody challenges. Future research could delve more deeply into the stressors facing affirming caregivers of TGNC children, as well as their resources. The gender make-up of our sample also raised the following question: How might the experiences of affirming fathers differ from those of the affirming mothers represented in our study? Our exploratory study was cross-sectional, providing only a snapshot of these families' lives. Future research that examines how custody issues change over time, as well as the relationship of these changes to child well-being and outcomes, could provide important insights into how family professionals can better meet the needs of these families and act in the best interests of TGNC children and youth.

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Table 1. Summary of participant custody context

Custody situation	Child age, assigned sex at birth*, and asserted gender	Summary of custody situation
“Sole”	10 years; AMAB; girl	Had sole physical and legal custody; ex-spouse threatened to challenge custody but did not
	12 years; AFAB; boy	Had sole physical and legal custody; ex-spouse temporarily had joint custody
“Lost”	6 years; AMAB; girl	Lost physical and legal custody
	8 years; AMAB; girl	Lost physical and legal custody
	9 years; AMAB; girl	Shared physical custody but had lost legal custody
	10 years; AFAB; boy	Lost physical custody; retained 50% legal custody
“Shared”	5 years; AMAB; girl	Shared physical and legal custody
	5 years; AMAB; girl	Shared physical and legal custody
	13 years; AFAB; boy	Shared physical and legal custody
	15 years; AMAB; girl	Shared physical and legal custody

*AFAB = Assigned female at birth; AMAB = Assigned male at birth