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Special Considerations for Infants and Toddlers in Separation/Divorce: Developmental Issues in the Family Law Context

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Introduction

By virtue of their unique stage of development and complex needs for care and nurture, infants and young children under five years of age pose specific concerns for researchers and practitioners alike. While the literature is large and increasingly robust for school-age children regarding impacts of parental conflict and separation, the scientific base for babies and pre-schoolers is less well established. Babies and young children are amongst the least capable of voicing their needs, and as such, the onus falls on family law professionals to advocate for the emotional and developmental security of the infant, and to consider these as prime and determining elements in custody matters.[1] The first four years is a unique era of developmental expansion and of vulnerability by virtue of the unparalleled speed of physical, cognitive,

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language, social and emotional growth during this time. The brain, about 30% formed at birth, expands threefold during the first three years of life.[2] Importantly, much of the growth of the human brain during this time is termed experience dependent;[3] specifically, the complexity of the brain's development and the child's subsequent ability to regulate stress and emotional arousal are shaped by the quality and predictability of the nurturing care they receive.[4-7]

Three divorce related stressors in particular threaten the infant's care environment: the direct effects of parental conflict or violence;[8-16] the effects of diminished quality in parenting;[17-19] the effects of unsettled schedules, and repeat separation of the infant from primary attachment figures.[20-22] For some infants, all three stressors overlap and are likely to be mutually reinforcing. Deciding on exactly how best to share the care of infants and young children after their parents separate is a difficult task for parents in conflict or courts making decisions on their behalf, made harder by scant and often mis-represented science on the topic. The remainder of this article provides a synopsis of the available research and presents a summary of recent work on integrated frameworks and interventions for assisting developmentally sound decisions about postseparation parenting of very young children.

Recent Research on Infant Overnight Schedules

Debate about this topic has been widespread, with the developmental well-being of infants and the needs of separated parents often painted as being at odds. Attachment-based researchers and advocates, on one side of the debate, suggest that frequent or extended time away from a main caregiver is risky for young children, compromising the early, organising nature of that relationship. On the other side, others suggest that too little overnight time with the second parent undermines that relationship and its developmental resources (see reference 23, for elaboration on these either/or perspectives).

To date there are six studies of overnight care in the pre-school years, with three of these examining outcomes for infants under three years. Each is limited by sampling limitations, particularly given high frequency overnight arrangements for children 0-3 years remain uncommon in most countries[24] (refer to original publications for sampling and methodological details).

The first two studies investigated data from large population studies in Australia and the USA.

1. McIntosh and colleagues[25,26] employed the Longitudinal Study of Australian Children database to investigate emotional regulation and stress outcomes for infants and pre-schoolers whose care was shared between separated parents. Having a high number of overnights did not predict differences between the 4-5-year-old overnight groups, while parenting warmth and co-parenting conflict did. For young children three years and under, having a high number of overnights independently predicted some problems with emotional regulation, compared to lower rates of overnight care or day contact only, regardless of socio-economic background, parenting or inter-parental cooperation.

2. Tornello and colleagues[27] used data from the Fragile Families and Child Well-being Study, representative of the population of 20 major inner U.S. cities. One-year-olds with most frequent overnights (one or more per week) were more likely to show attachment insecurity and emotional dysregulation when they were re-assessed at 3 years old. Attachment insecurity at this age in turn predicted adjustment problems at both ages 3 and 5. Frequent overnights at age 3 were not independently linked with adjustment problems at older ages.

Three early investigations used convenience samples to explore similar questions:

3. Solomon and George[20] found significantly higher rates of disorganised/unclassifiable infant-mother attachments among babies of separated parents who spent regular overnights with a second parent, in comparison to infants from married families. In the one-year follow up, toddlers who as infants had regular overnights between their separated parents showed more anxious, unsettled and angry behaviour when reunited with their mothers. High parental conflict, anxiety and poor co-parental communication influenced outcomes.

4. Kline Pruett and colleagues[28] studied outcomes of pre-school children who had any regular overnight time with their second parent against outcomes of those who had no overnights. Some benefits for girls of having some overnights were apparent, but not for boys. Parental conflict, poor parent-child relationships and inconsistency of the parenting schedule were related to children’s difficulties more so than number of overnights.

5. Altenhofen, Sutherland and Biringen[29] studied children aged 2-7 years in separated families who spent at least two nights a week away from their mothers. Fifty-four per cent showed an insecure attachment with the mother, compared to norms of insecurity for non-divorced families of about 31 per cent. Similar to Kline Pruett et al.,28 the most salient

contributors to child difficulty were quality of parenting and cooperation in the coparenting relationship.

6. Fabricious and Suh[30] conducted a final retrospective study of college students. The number of overnights per week in infancy and toddlerhood each separately as reported by parents predicted the quality of reported father–student relationships but were unrelated to measures of the quality of student–mother relationships. Generalization of findings is limited by the selective sampling of high functioning young adults from relatively affluent backgrounds.

The replicated evidence does not support arguments against *any* overnight care of very young children but does support caution about *high frequency* overnight arrangements under two years, given a greater chance of difficulty with attachment security and emotional regulation, especially in contexts of higher parental conflict. The longer-term benefits of active safe involvement of both parents in a child's life are not in question.

A multitude of empirical questions remain about factors that work for and against infant security in the individual case. Current evidence has not explored the role of parent gender in this equation, nor the circumstances under which higher time splits are protective for very young children. Future research will optimally account for the effects of confounders such as busy parents, childcare, distance, violence, poverty, alcohol, drugs, siblings, supportive grandparents, and so on. Clearly, even with better data, there can be no one-size-fits-all solution to overnight care dilemmas.

Research Translation

Two papers have attempted to synthesize this available evidence for application in court matters. The first (**Pruett, McIntosh & Kelly**)[23] focused on relevant developmental and divorce research beneath the twin developmental priorities of retaining joint parental involvement and ensuring early emotional security. Seven points of consensus were reached, as summarised below.

1. Early childhood (0-3 years, including the year of being three) is a period critical to subsequent psychosocial and emotional development and is deserving of special attention and planning in family law matters.
2. Healthy development in the young child rests on the capacity of caregivers to protect the child from physical harm and undue stress by being a consistent, responsive presence.

3. Similarly, healthy development rests on the capacity of caregivers to stimulate and support the child's independent exploration and learning and the process of discovery.
4. Secure development in this phase requires both continuity in and an expanding caregiving environment for the young child that includes family, community, educational and cultural connections.
5. A 'both/and' perspective on early attachment formation and joint parental involvement is warranted. The young child needs early, organised caregiving from at least one, and most advantageously, more than one available caregiver. An optimal goal is a 'triadic secure base' constituted by both parents and the child as a family system.
6. Relevant studies to date substantiate caution about high frequency overnight time schedules in the 0-3-year period, particularly when the child's security with a parent is unformed, or parents cannot agree how to share care of the child. Equally true, clinical and theoretical cautions against any overnight care in healthy family circumstances have not been supported.
7. Critical variables in considering readiness for and the likely impact of overnight schedules include psychological and social resources, co-parental dynamics, and nature of each parent-child relationship prior to separation.

A second companion paper (**McIntosh, Pruett & Kelly)**,[31] created a Chart of Overnight Decisions for Infants and Toddlers (CODIT; free online resource)[32] to assist holistic appraisal of each young child's needs within their unique caregiving context. The overriding caveat from this work provides an apt conclusion to this article: "This developmentally based guidance for children 0-3 (i.e., up to 48 months) is not intended to override the discretion of parents who jointly elect to follow other schedules in the best interests of their child, and in the context of their own circumstances" (p. 257).

Evidence-Based Interventions

To date only one intervention program is reported in the literature.[33] Young Children in Divorce and Separation (YCIDS) was designed to guide separated parents toward a developmentally sensitive arrangement for the care of their infant, in the context of their unique circumstances. A cluster randomized pilot study compared two conditions: the YCIDS program utilised within a mediation-based intervention and a "Mediation plus Reading" control group intervention.

Participants were separated parents attending mediation over a co-parenting dispute concerning a child under the age of 5 years (n=33 cases). Nine of the 16 key child and parent outcomes were significantly improved for the intervention group, with the remainder nonsignificant between groups. Subsequent litigation was 35% lower for YCIDS cases. The YCIDS program is now in a 90-minute online format, with multiple application formats and English and Chinese translations (see Children Beyond Dispute: https://childrenbeyonddispute.com).[34]

Conclusions

Current evidence points to the need for developmentally sensitive and informed decision making about the care of very young children following parental separation.

Beyond a matrix of factors that create risks for children of any age in shared-time parenting arrangements, including inadequate socio-economic or pragmatic resources and hostile co-parenting relationships,[24] for infants, a third and crucial factor in determining appropriate parenting arrangements after separation is the child's developmental resources.

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