

DIVORCE AND SEPARATION

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 divorce researchers and divorce practitioners alike. While the literature is large and increasingly robust for school-age children regarding impacts of parental conflict and separation, our scientific base is less well established for babies and pre-schoolers. 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 New studies have begun to shed light on the importance of a strong developmental framework for decision making in divorce matters.

The special challenges of parental separation during infancy

The first four years of life is a time of developmental vulnerability by virtue of the rapid physical, cognitive, language, social and emotional development during this time. The brain, about 30% formed at birth, expands threefold during the first three years.² Importantly, much of the growth of the human brain during this time is termed experience dependent;³ that is, the complexity of the brain's development depends on the nature and quality of care the infant receives. This is the peak period of attachment formation.⁴

Neuroscientists and attachment researchers alike^{5,6} find that the quality of parenting in the first 2-3 years of life are particularly important to healthy development, and the child's subsequent ability to regulate stress and

emotional arousal.⁷ Specifically, psycho-emotional development in infancy depends to a great extent upon continuous, predictable, emotionally-available caregiving, through which infants are shielded from overwhelming and unsafe experiences, enabled to form organised attachments, and supported to develop their capacities for self-regulation and growing autonomy.

Three divorce related stressors threaten this equation:

1. The direct effects of parental conflict and violence,
2. The effects of diminished quality in parenting as parents adjust to separation and/or cope with ongoing conflict, and
3. The effects of repeat separation of the infant from primary attachment figures.⁸ For some infants, the three stressors coincide and are mutually reinforcing.

Extreme parental conflict can disrupt the organization of emotional experience in early childhood,⁹ with high intensity conflict linked to the development of insecure and disorganized attachment styles,^{10,11,12} heightened distress, and with less ability to regulate negative emotional arousal.¹³

Chronic interparental conflict – emanating from ongoing parenting and financial disputes, and fuelled by unresolved loss, grief or humiliation – also impacts parenting sensitivity and availability, with a higher likelihood of harsh styles of discipline and diminished emotional responses.^{14,15} Diminished patience and sensitivity in parenting pose a specific problem for very young children, whose cognitive equipment is not sufficiently advanced to understand or tolerate long periods of poorly attuned care. Such parenting behaviours are associated ultimately with emotional insecurity and social withdrawal in the child.^{16,17}

Repeated separation from a primary attachment figure is a third factor that represents a unique stressor for infants. Across the world, shared-time parenting is an arrangement that is gaining impetus, and in some countries is supported by legislation. Despite ample evidence suggesting that repeated and prolonged absence from a primary caregiver is normatively stressful for young children, few legislatures give attention to the developmental issues unique to infants in the context of parental divorce. Opinions about parenting plans for infants and young children are generally – and unhelpfully – divided into polarized camps: “for” or “against” overnight stays, or wanting to draw artificial distinctions, such as “Overnights are OK after two years, but not before.” These dichotomies, often perpetuated by adversarial process, miss the point. Researchers are attempting to ask and answer more complex questions, such as: under what conditions, and at what points in development does shared-time parenting pose a risk to developmental security?

Current research questions

A growing edge of research is now attempting to identify specific developmental considerations that should be brought to bear in decision making about infants in divorce. Infant mental health specialists and researchers share an interest and concern that shared-time parenting occurring during crucial phases of attachment formation and consolidation may create a scenario in which the infant does not have a continuous experience of reliable care with either parent.^{18,19}

A key area of enquiry concerns the effects of overnight separations of infants from primary caregivers.²⁰ While

empirical answers to this question are only just appearing, the special problems that sharing time between two separated parents may pose for the infant are becoming clearer.

Recent Research Findings

In a recent study, McIntosh, Smyth and Kelaher²¹ explored overnight parenting patterns and links to the young child's ability to regulate emotional stress. The study compared outcomes for young children in three types of care arrangements post-separation: shared residence (regular overnights with both parents), primary residence (most overnights with one parent, and occasional overnights with the second), and children who had rarely or never had any overnight time away from a primary caregiver.

For 4- to 5-year-olds with separated parents (n=1,292), high inter-parental conflict and low parental warmth independently predicted a number of emotional regulation problems in children. Overnight time arrangements did not predict outcomes in this age group. However, for infants (0-2 years, n=258) and young children (3-4 years, n=509) in separated families, the findings were different. Regardless of socio-economic background, parenting or inter-parental cooperation, babies under 2 years who spent one or more overnights a week with the second parent showed a cluster of stress regulation problems, compared to babies in lower rates of overnight care. Older infants, aged 2-3 years, who spent 2-3 nights per week with the second parent, also showed greater problematic behaviours than children in lower frequency overnight care, including heightened separation distress, aggression, eating problems and poor persistence.

These findings are consistent with the only other study of infants in overnight care, conducted by Solomon and George,²⁰ who found a greater propensity for anxious, unsettled behaviour in infants when reunited with the primary caregiver, and greater propensity for development of insecure and disorganized attachment with the primary caregiver. This study also identified that frequent transitions of care between parents who remain acrimonious and struggle to facilitate a smooth transition for the infant add to the difficulties.²⁰

While disruptions to overnight care appear to heighten insecurities within the primary attachment relationship, overnight care in early infancy does not appear to determine attachment security with the second parent.^{1,20,22,23} Warm, lively, attuned caregiving interactions between baby and the second parent appear to be central to the growth of attachment security in that relationship.

Research Gaps

In considering the empirical findings about infant outcomes in parental separation, one needs to bear in mind that this field of research is also in its infancy, and is subject to problems with interpretation. There is a need for further research that addresses known difficulties with sampling, definition and data sources, and that utilizes sensitive developmental outcome measures within a longitudinal frame.

Conclusions

Current evidence points to the need for special care in legal decision making about very young children in divorce and parental separation. McIntosh and Smyth¹⁸ describe a matrix of factors that create risks for children of any age in shared-time parenting arrangements, including inadequate socio-economic or pragmatic equipment (income and housing, work flexibility, geographic proximity) and inadequate co-parenting equipment

(lack of shared mutual respect, parenting incompetence, inflexibility, inadequate communication, inability to remain child focused). Important as these factors appear to be for children's outcomes in shared time arrangements, for infants, the third and crucial factor in determining appropriate parenting arrangements after separation is the child's developmental resources. Many assert that this factor should be the dominant consideration during the pre-school years (see Family Court Review, Special Issue, July 2011).

Implications for Parents, Services and Policy

Current research evidence suggests the following special considerations for infants in separation and divorce matters:

- The impacts of parental conflict and violence – and their associated effect on parenting sensitivity – are especially damaging during the first four years of brain maturation.
- Extra care needs to be taken with the nature of separation from a primary attachment figure during the first 2-3 years. Well-managed, brief separations are indicated in the first 2-3 years, growing in duration through the fourth and fifth years.
- In early infancy, overnight stays are contra-indicated, undertaken when necessary or helpful to the primary caregiver, and when the second parent is already an established source of comfort and security for the infant.
- Time spent with the second parent should enable maintenance of comfortable familiarity, and growing attachment security. Frequency of these visits should not create discontinuity or fragmentation for the young infant within their primary attachment relationship.
- The core consideration and determining factor is whether the proposed parenting plan and the method of its enactment will contribute to or detract from the emotional security of the infant.

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