



**WYOMING GUARDIANS AS PROTECTORS  
UNITED for CHILDREN'S RIGHTS NOW!**

***DE FACTO CUSTODY LAW***

**COURTS RECOGNIZE THIRD PARTY CAREGIVERS AS HAVING  
SAME STANDING AS PARENTS WHEN DETERMINING CUSTODY**

*Because of difficulties with bringing legal custody cases and proving parents are unfit as part of the process, so far **twenty-two states** have enacted laws that help relative caregivers. Rather than relying on a court's subjective view and interpretation of "fit" vs. "unfit" parent, Wyoming's current standard, this law **REQUIRES** the courts to determine the custody of the child based on the **BEST INTEREST OF THE CHILD – PROTECTING THE CHILDREN'S CONSTITUTIONAL RIGHTS!***

# CURRENT DEMOGRAPHICS OF “FAMILY” AND “PARENT

- average American family structure today, including parental figures, has dramatically changed over last 50 years
- 1 in 10 children in the U.S. lives with a grandparent
- 4 in 10 are being raised by that grandparent
- In U.S. more than 6.7 million children living in households headed by a grandparent or other relative
- 2010 data - WY, 8,110 children living with grandparent
- 2010 data - WY, 2,173 children living with other relatives

# OPIOID AND SUBSTANCE ABUSE EPIDEMIC AND THE PARENTAL ADDICTION'S IMPACT

- between 1/3 and 2/3 of all child maltreatment cases involve alcohol and drug addiction by the parent
- an estimated 85% -90% of 3<sup>rd</sup> party custody placements are a result of substance abuse and/or incarceration associated with parental substance abuse
- children of parents who abuse substances are 3 times more likely to be abused, and 4 times more likely to be neglected, than those who grow up without an addicted parent
- next generation substance abuse research: consistently finds links between a parent's substance abuse and a child's likelihood of developing alcohol and drug problems later in life
- parental addiction creates extreme unstable environment – child's life becomes centered on the parent's substance abuse
- all-consuming disorder...lack of supervision, moral guidance

# CHILD AND ADOLESCENT DEVELOPMENT OF PARENTS WHO USE OR ABUSE SUBSTANCES

- Poor cognitive, social, and emotional development
- Depression, anxiety, and other trauma and mental health symptoms
- Physical and health issues
- Substance use problems
- More likely to experience trauma and its effects which include difficulties with concentration and learning, controlling physical and emotional responses to stress, *and* forming trusting relationships

# OKLAHOMA APP and SUP CT

- “the interest of children in a wholesome environment has a constitutional dimension NO LESS compelling than that the parents have in the preservation of family “integrity”. In the hierarchy of constitutionally protected values BOTH interests rank as fundamental and hence shielded with equal vigor and solicitude.”
- “holding that a ‘parent’s’ right to the custody of a child is NOT like the right of property, an absolute and uncontrollable right. It will never be enforced where its enforcement will obviously destroy the happiness and well-being of the child.”

# WHERE THE TRAGEDIES LIE

- Wyoming - NO custody laws in place which protect the “**BEST INTEREST**” rights of children in 3<sup>rd</sup> party care/guardianship status
- Only children whose parents are in domestic divorce cases are afforded the rights of determination of custody based on “**BEST INTEREST**” standards
- As a result, the most vulnerable children are often returned to parents with **long history and patterns** of alcohol and substance abuse, criminal behavior, domestic violence...children suffering the *long-term consequences* of these subjective rulings

# DEFINITION OF “DE FACTO CUSTODIAN”

- ...means a person who has either been appointed as de facto custodian, or if not so appointed, has been the *primary caregiver* for, and *primary financial supporter* of, a child who has resided with the person for a period of 6 or more months if the child is under 3 years of age and for a period of 1 year or more if the child is 3 years of age or older. - ID
- ...means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period. – CA
- all fifteen de facto custody states have similar language regarding definition

# IF A COURT DETERMINES THAT A PERSON MEETS THE DEFINITION...

- the court shall make the custodian a party to the custody proceedings, consider the wishes of the de facto custodian; extent to which the child has been cared for, nurtured, and supported by the custodian, and the circumstances under which the child was placed. The court shall give the de facto custodian a legal custody award if in the *child's best interest*. - IN
- court recognizes the grandparents as having the *same standing* as a parent for evaluating what custody arrangements are in the *best interests of the child*. – ID
- best interest determination is made by courts, using “Best Interest” identified factors (all De Facto states)



# IF A COURT DETERMINES THAT A PERSON MEETS THE DEFINITION... cont.

- when determining best interests, the court must not give preference to a parent over de facto custodian solely because she is the parent or on the basis of the gender of the parent, de facto custodian, or third party. – MN
- in any case where the child is actually residing with grandparents in a stable relationship, the court may recognize the grandparent as having the *same standing* as a parent for evaluating what custody arrangements are in the *best interest of the child*. - KY

# “CHILD'S BEST INTEREST” IN CUSTODY CASES

- means that ALL custody and discussions and decisions are made with the ultimate goal of fostering and encouraging the child's happiness, security, mental health, and emotional development into young adulthood.
- best interest determinations are made by considering a number of factors related to the child's circumstances and the parent or caregiver's circumstances and capacity to parent, with the child's ultimate safety and happiness being the paramount concern.

# WHAT FACTORS DETERMINE THE CHILD'S BEST INTEREST

SAMPLE STANDARDS FROM: ID, MT, IN, KY

- the wishes of the child's parents, *and* de facto custodians/grandparents
- the wishes of the child as to his custodian *(if old enough to express a reasonable preference)*
- interaction and interrelationship with members of household, current custodians, siblings, who may significantly affect the child's best interest
- other children whose custody is relevant to this child's custody arrangement
- the child's established lifestyle and adjustment to his home, school and community
- the character and circumstances of all individuals involved

# WHAT FACTORS DETERMINE THE CHILD'S BEST INTEREST – cont.

SAMPLE STANDARDS FROM: ID, MT, IN, KY

- mental and physical health of all individuals involved
- lifestyle of both parents
- physical abuse or threat of physical abuse by one parent against the other parent or the child
- is there a pattern of domestic violence – information and records
- parental use of excessive discipline or emotional abuse
- evidence of parental drug and or alcohol abuse
- pattern or history of chemical dependency
- whether a parent has knowingly failed to financially support a child that the parent is able to support

# WHAT FACTORS DETERMINE THE CHILD'S BEST INTEREST – cont.

SAMPLE STANDARDS FROM: ID, MT, IN, KY

- need for continuation of stable home environment
- the need to promote continuity and stability in the life of the child
- the extent to which the child has been cared for, nurtured, and supported by the de facto custodian
- the circumstances under which the child was placed or allowed to remain with the de facto custodian – was the parent seeking employment, or working or attending school
- whether the parents have had frequent and continuing contact with the child

# WHAT FACTORS DETERMINE THE CHILD'S BEST INTEREST – cont.

SAMPLE STANDARDS FROM: ID, MT, IN, KY

- developmental needs of the child
- emotional bonds that have been established between caregiver and child
- ability of parent to provide emotional support and guidance
- ability of parent to provide physical necessities (e.g. food, safe home, environment, clothing, healthcare)
- affects on the child of separation from care givers when an emotional bond has been established
- impact of change on the child
- if a child has special needs, how does each parent or de facto parent take care of those needs

# EFFECTS OF SEPARATION ON YOUNG CHILDREN

## *IMPLICATIONS FOR FAMILY COURT DECISION MAKING*

*NOTE: These facts...directly quoted from empirical researched based data from multiple  
Child Development professional publications*

- Courts often make decisions that result in the ill-advised separation of young children from their primary caregiver
- Usually these decisions are based solely on the needs of the adults involved
- consideration not given to profound negative short and long-term impact separation will have on the child
- when secure attachment to primary caregiver is removed, child likely to experience severe traumatic repercussions
- Some develop a stutter or other learning problems
- Cognitive and language delays highly correlated with traumatic separation

# EFFECTS OF SEPARATION ON YOUNG CHILDREN -cont.

*IMPLICATIONS FOR FAMILY COURT DECISION MAKING - Peter E. Haiman Ph.D.*

- regressive behavior such as bedwetting
- anger, aggression
- sleep disturbances
- Low self-esteem, distrust of others, mood disorders (including depression and anxiety)
- Socio-moral immaturity, inadequate social skills
- effects can continue throughout life cycle: problems with authority, delinquency, attention deficits, shyness, depression, among other issues including inability to maintain stable and enduring love and work relationships
- separation at early age from primary caregiver damages right brain for the rest of a child's life



# WHAT THIS LAW DOES NOT DO...

- does not terminate parental rights
- does not prevent parties from working out specific visitation arrangements with parent *if determined “in the best interest of the child”*
- does not take away the flexibility of the statute – custody could be given exclusively to de facto custodian; but, custody could also be shared between the de facto custodian and one or both of the parents if determined *“in best interest of the child”*; however, the de facto custodian then has legal decision-making power
- does **not** focus on “grandparents” rights, *BUT RATHER, the “CONSTITUTIONAL RIGHTS OF THE CHILDREN”*