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CHILD CUSTODY

By: Mary M. Janicki, Research Analyst

You asked whether there is an age at which a child who is the subject of a dispute can chose the parent or other party he or she prefers to have custody.

SUMMARY

A child's preference is never the only criterion for making a custody decision in a dissolution of marriage proceeding, regardless of the child's age. Neither case law nor Connecticut statutes establish or designate a particular age that is considered old enough to state a preference in a custody determination. In any proceeding for an annulment, dissolution of marriage, or legal separation, judges use the "best interests of the child" standard in awarding custody of minor children. If both parents agree, the statutes establish a presumption of joint custody. There is also a presumption that it is in the child's best interest to be in the custody of a parent over a non-parent. But, testimony or other evidence can rebut both of these presumptions. The court must consider any "relevant and material information obtained from the child, including the informed preferences of the child" in making or modifying an order. The court exercises its discretion in each case and set of circumstances in considering the appropriate age of a child expressing a custody preference.

Connecticut courts have held that the law requires only that the court take the child's wishes into consideration and that the court's ultimate determination of the child's best interest depends on all the facts of a particular case.

BEST INTEREST STANDARD

In any family relations case, including marriage dissolutions, the court is authorized to require an investigation of the circumstances of the child and family, and if it orders one, cannot dispose of the case until the investigation report has been filed (CGS §§ 46b-6 and -7). The investigation can include the child's parentage and surroundings; his or her age, habits, and history; the home conditions; habit; and character of the parents; an evaluation of the child's physical and mental condition; the cause of the marital discord; and the financial ability of the parties to provide support. The court may also appoint counsel for any minor child when it deems it to be in the child's best interest (CGS § [46b-54](#)).

The court can make and modify any order regarding custody, care, support, or visitation. The court can assign custody to the parents jointly, to either parent, or to a third party "according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable." In making or modifying such an order the court must consider a number of factors such as the child's temperament and developmental needs, the parents' capacity and disposition to meet those needs; the child's relationship with each parent; and relevant and material information the child provides, including his or her "informed preferences" (CGS § [46b-56](#)).

JOINT CUSTODY PRESUMPTION

Joint custody is defined as an order awarding legal custody to both parents, providing for joint decision-making by the parents, and requiring that physical custody be shared by the parents so as to ensure the child has continuing contact with both parents. The court can award joint legal custody without awarding joint physical custody if the parents agree to it (CGS § [46b-56a](#)).

The statute establishes a presumption that joint custody is in the child's best interest, if the parents have so agreed. In such a case, if the court declines to enter a joint custody award, it must state the reasons in its decision. If only one parent seeks joint custody, the court can order both parties to submit to conciliation at their own expense with the costs allocated between them based on ability to pay and as determined by the court.

PARENTAL CUSTODY PRESUMPTION

In any custody dispute involving a parent and a non-parent, the law establishes a presumption that it is in the child's best interest to be in a parent's custody (CGS § [46b-56b](#)). A showing that it would be detrimental for the child to be in the parent's custody can rebut this presumption.

The law specifically authorizes interested third parties to file a motion to intervene in a custody dispute (CGS § [46b-57](#)). The court can award full or partial custody to such a party “upon such conditions and limitations as it deems equitable.” In such situations, the court must appoint an attorney to represent the child's best interest. The same conditions described above that must guide the court in making its decision apply, such as the child's best interest and his or her wishes, if the child is “of sufficient age and capable of forming an intelligent preference.”

CASE LAW

In an appeal of a Superior Court decision in a case dissolving a marriage and awarding custody of a minor child, the Connecticut Supreme Court ruled that the trial court did not abuse its discretion in deciding the child’s wish to live with one parent was not in her best interests. The Supreme Court ruled that “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes, it requires only that the court take the child’s wishes into consideration” (*Knock v. Knock*, 224 Conn. 776, 788-9 (1993)). Although a child’s preference is one factor the court considers, it is not the only or the determinative one.

In another case, the court concluded that a minor child who was five years old at the time of the hearing, was not “of sufficient age or capable of forming an intelligent preference” (*Faria v. Faria*, 38 Conn. Supp. 37, 40 (1982)). More generally, in a Connecticut Appellate Court ruling that involved the trial court’s interview of a seven-year-old child in chambers in the absence of the parties and their counsel, the court held:

[W]hether the child's preferences and feelings as to custody and visitation are a significant factor in the court's ultimate determination of the best interest of the child will necessarily depend on all the facts of the particular case, including the child's age and ability intelligently to form and express those preferences and feelings (*Gennarini v. Gennarini*, 2 Conn. App. 132, 137 (1984)).