

Expressed Wishes of

Children aged 9-12 years –

Interpretation and Weight

by

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Introductory Comments and Disclaimer

A topic such as this raises a number of contested issues that are the subject of much discussion in the literature. For example:- what is the place of children in parental disputes – should parents or courts, as opposed to the children, be the ones to be the focus and take responsibility in determining these matters? What are Australia’s obligations under the UN Convention on the Rights of the Child, especially Article 12 which stated that children’s views should be taken into account in matters which affect them? If children are to have more direct input into proceedings then should children speak directly to the judicial officer and/or give evidence in court proceedings? Also what place do children’s wishes have or what place should they have in parental disputes? Do Courts give children’s wishes a dominant enough focus in their proceedings?

You may be relieved, or disappointed, that I am not intending to directly address these issues in this presentation. They are all very interesting issues and generate a great amount of discussion and debate. Rather than address all these issues I intend to make some assumptions, supported by research, that children have a capacity to express wishes, that their wishes are an important part of our work and that we all value the input we receive from children. There is research that children do have views about their lives after their parents separate and that they are capable of, and competent in, expressing them (Atwool, (2001), Smith and Taylor (2003)).

We must also be clear that when we talk to children about their thoughts, observations and their wishes that we are not advocating placing them in a decision-making role as this may create emotional turmoil and feelings of guilt for them. (Kuehnle, Greenberg and Gottlieb (2004) p99)

What I intend to address is the importance of context in this area. In fact my subtitle for this talk is “Context, Context, Context.” There are two main perspectives that we need to consider when looking at what weight to give to the expressed wishes of children. The first perspective is that of the person listening to or hearing what the child is saying. The second perspective is that of the child and is developed through considering the contexts that impact on the children of this age group. This includes consideration of the developmental, situational and psychological contexts. As part of this we need to acknowledge the specific issues involved for the children we work with in terms of highly litigious families involved in Court processes.

The First Perspective - the Listener or ‘Know Thyself’

The first perspective to consider is that of the person listening to or hearing what it is the children are saying.

In an interesting talk to the FCoA 25th Anniversary Conference, Carol Smart (2001) quoting Young (1997) pointed out when adults attempt to put themselves into the shoes

of children what they often do is project onto the child their memories of their own childhood. They do not see the child in front of them but their own childhood reconstructed, recollected and filtered through a number of lenses. Whether we are a counsellor/family report writer, parent, lawyer or judicial officer - how we hear and interpret what is said is influenced by these factors. These lenses are derived from the way we, ourselves, were parented, what knowledge we have of the area of children and their development, how we parent our own children, what we remember of being a child and our own insight into the effects of these factors on our views. In addition we are part of a specific cultural and historical framework so we need to be aware that we are influenced strongly by our own class, ethnicity, generation and gender. For example 100 years ago children were viewed very differently to now and 'childhood' as a concept was not recognized at many times in history. Even now in different parts of the world and in Australia, how children are viewed and treated and what 'rights' they have vary considerably. Child labour and the sexual exploitation of children in some countries is still very common.

A number of writers have pointed out that ideas about childhood have been dominated by a Western perspective of development as a pathway towards rationality; a transitional state on the way to adulthood, and as a sequential attainment of abilities at set ages and stages. This is a deficit model that places emphasis on what children lack in comparison to adults rather than on the abilities they do have. (Smith & Taylor (2003), Atwool (2001)) In recent years the deficit models of childhood have been challenged and the 'needs' versus 'rights' debate has surfaced in this context. However, if children are seen as having rights this can be perceived as challenging, sometimes threatening, and this is not acceptable to some adults. New perspectives on childhood question the basis that adults make decisions for children without seeking their input. It also highlights that we, as practitioners in this area, must carefully think about where our attitudes and beliefs come from. Is it from personal values and cultural ideologies or current research and practice?

What this means in practice is important when we consider that, as a lawyer, your client will come to you and explain what the child has said to them - frequently comments such as - 'I want to live with you' 'I don't want to go on visits.', 'I am frightened of my father/mother.' The parents often take these views at face value and use them as justification for their court action. As you are all well aware here, it is often the case that the other parent has reported similar comments from the child to their lawyer. Children make these types of statements for a number of reasons - they may be true for that child, they are angry with a parent, they have been hurt or feel rejected by a parent, they want to please the parent they are with, they dislike a new partner, they are protecting a vulnerable parent/sibling etc (Powles & Sanson-Fisher (2005)). The reasons why the child is making these statements are unclear for lawyers and judicial officers and these matters often end up with some form of report to try and clarify the situation. So called "wishes reports" are often proposed as an answer to these dilemmas. Often a more in-depth analysis of what is happening for that child is required - stated wishes can be quite misleading without a contextual background.

Unfortunately many parents will take what they hear as a genuine expression of their child's wishes. Lawyers and social scientists also have filters but they tend to be aware that other factors are often at work. They do this on the basis of their knowledge, experience and professional judgement and are very aware that their own background, values and views may colour their view.

The first step for adults who work with children in the area of high conflict families is to 'know thyself' so they have an understanding of where their beliefs and values come from and how they influence their views of children and their wishes.

The Second Perspective –The Child

The second perspective focuses on the child involved and includes an understanding of the developmental issues of this age group, the situational context and psychological context.

General Stages of Development for 9-12 years

This period of 'middle childhood' is an important time, developmentally, as children learn new skills and make significant gains in cognitive development and in developing self esteem and a concept of self. Peer relationships become increasingly important as this group moves towards the process of individuation as they approach adolescence.

Below are some of the features of this stage of development that are relevant as to why children of this age group may express certain wishes:

- They are usually competent readers but their level of comprehension may not be as developed which means they may be able to read things they do not understand. This has implications for children exposed to Court documents.
- Peer relationships are becoming more important – including a need for peer group acceptance and approval. They are becoming more autonomous.
- They are developing a capacity to think about and understand relationships. They can hold different points of view at once.
- They are developing feelings of self confidence and self esteem – this is important when we consider later that separation and high conflict situations can interrupt these processes.
- They have strong feelings of attachment and loyalty
- Equity/sharing assumes priority status
- Their thinking is still concrete but there is some development of reasoning. They have some understanding of morals and values based on parental practices and

home life. This can be difficult for children where there are large differences between their parents' views and values. (adapted from Duffy, (2003))

Developmental Context– Responses to Separation for 9-12 year olds

- They understand what separation means but find acceptance of the separation difficult
- They understand that life is likely to be very different and are fearful of change
- This age group child is at risk of emotional splitting where one parent is 'all good' and the other 'all bad' They can become increasingly more vulnerable to feelings of alignment. To become aligned a child needs sufficient cognitive and emotional maturity and needs to be at a stage of their development in which moral evaluations and judgements are operating. The rage and contempt expressed by some alienated children reflects the normative increases in anger expected in pre-adolescent and adolescent young people. For these reasons it is unusual to see truly alienated children prior to the age of 7-8 years (Kelly and Johnston(2001) p29). Younger children more often forget their scripts, let go of their anger and have inconsistencies in their presentation which we often witness in observation sessions. These children are reluctant to see a parent and are initially withdrawn but despite this cannot help themselves and eventually engage successfully with the parent. Observations can be very useful in separating out an alienated child from an estranged one. I will discuss these issues further as they are situations we commonly see with this age group and are the more challenging and difficult end of our work.
- They may attempt to mediate between parents and can get caught into playing roles expected by the respective parents.
- They feel an overwhelming need to share time with parents equally.
- They can have feelings of extreme loss that can make separation difficult to accept.
- They can experience thoughts of abandonment by the parent who left the home. Alternatively, they can experience guilt if they have left with a parent.
- They can feel overwhelmed if parents are in conflict.
- They can still be at the stage of egocentricity that leads some to believe that a parent's absence is their fault.

- They have an overwhelming wish for parents to reunite.
- They are more likely to become embroiled in the parental dispute in an attempt to control or 'fix' the situation.(Hodges, (1991),
- May have a level of blame and hostility towards the parent they feel is responsible for the separation.
- They feel insecure about the future.
- They have feelings of rejection and loneliness (adapted from Duffy (2003))

Situational Context for 9-12 year olds involved in Court Proceedings

The situational context for children involved in family law proceedings is quite unique. They are influenced not only by the issue of the separation of their parents but in addition they are affected by a number of significant other factors. These include:-

- Chronic parental conflict which does not necessarily stop after separation.
- Pre-occupied parents who may be less sensitive to the children's needs
- Reduced standard of living post – separation
- Chronic stress for the child and parents
- More disorganized household in terms of housing, meals, schooling, homework and reading
- An additional complication to this is that often the parties involved have other issues such as mental health concerns or drug and alcohol addictions. (Hodges, (1991), p11)

Psychological Context

The Psychological context for the child is linked to the developmental and situational issues so the issues outlined below can be common outcomes for children and strongly influence their expressed wishes.

Children of the 9-12 years age group can present as children who are adultified (or parental) or parentified. At their ages they can assume more responsibility for handling the household after separation and this may include care and responsibility of younger children. These adultified children can tend to present as older than their chronological age. As this age group has an improved capacity to see the world from other's viewpoints, this can lead them to become very concerned for a parent and what they are going

through. This can lead to parentification, which in some cases causes the child and parent to reverse roles. Here the parent who is lonely and demoralized turns to the child as a confidante. The difference between the adultified child and the parentified child is that the adultified child fulfills some parent functions with younger children whereas the parentified child is expected to take care of the needs of the parent. Although the adultified child may learn useful skills, the parentified child is usually over-burdened and anxious. These children present as super-responsible children who also frequently take on a parental role in looking after younger siblings and doing adult tasks including provision of meals, tidying up, disciplining other children and supporting their parent emotionally. The long term psychological outcomes for these children are not good and research has shown that role reversal predicted poorer child adjustment, especially in terms of depression and psychosomatic illnesses (Hodges(1991), p23). They often present as pseudo-mature, rather than truly grown up. It is important to identify these children as, though they appear able to give a reasoned view, their own needs are overshadowed by their parent's needs but this may not be easily discernable unless further investigation is made of the family dynamics.

Children at this age often harbour fantasies of reconciliation between their parents. As children grow older they are more able to give up the belief that their parents may reconcile but it is still a strong wish, even for some adolescent children. Some of their expressed wishes, such as contact refusal, has the aim of making the parent return to the home to see them, and may be an attempt to try and engineer a reconciliation between their parents. They will often focus negative views on a new partner, again in the hope that if that relationship fails, their parents will reconcile.

Intense loyalty conflicts are common and lead children to tell the parent what they think they want to hear and their likely response is to tell both parents the same thing such as "I want to live with you." This is an age appropriate response for these children. As children grow older they respond in a different way. Dean aged 13 years when asked if his parents had ever had any hassles about contact replies, "Dad wanted more time and Mum wanted more time and all hell broke loose.....One of them wanted me to say one thing and the other wanted me to say the other thing. I just shut up and just didn't say anything." (Tapp and Taylor (2001)). Younger children tend to tell each parent what they believe they want to hear. In our experience when children are informed that they do not have to express their wishes if they do not wish to (under S 68H FLA) they are often very relieved. Not all children want to express a view as they do not want to be put in a position where they feel they have to make a choice between their parents as they are concerned they may upset or hurt a parent.

Some children have pre-existing damaged attachments to one or both parents and following an acrimonious separation they become insecure and their expressed wish to not see a parent is more a reflection of their anxieties about leaving their resident parent. An expressed wish for no contact can also reflect intense, conscious anger at the parent who is seen as initiating the separation.

Children in this age group can still be quite egocentric and this can lead some to believe that a parent's absence is their fault. This feeling of abandonment by a non-resident parent can be psychologically devastating as the child faces the possibility of unloveability. Children with these fears can become very compliant due to their concern they may lose the love of the remaining parent. On occasions children with these fears can act out or present as extremely co-operative. Fear of abandonment was common in one quarter of children in Wallerstein and Kelly's study (1976b) (Hodges, (1991) p25)

Adjustment problems are caused by the effects of chronic conflict more than separation itself. Raschke and Raschke's study (1979) reported that children from intact families with high levels of conflict showed significantly lower self-concept than children from families with low levels of conflict. The conclusion drawn is that low self-concept is not to do with family constellation but with the level of conflict (Hodges (1991) p9-10).

Maturity and Competence in a Child aged 9-12 years

When we are considering this age group there are some factors we can identify that assist us to assess how competent or mature a child is and therefore what weight should be put on their expressed wishes. 'Maturity' is defined by the Concise Oxford Dictionary as 'having reached a stage of mental and emotional development characteristic of an adult'. However I am going to use a slightly amended definition as I think a 'mature' child, in our context particularly, is often functioning at a higher level than their parent or parents! So I see a mature child, in our context, as one who can articulate the issues and evaluate them in a way that shows they have thought through their situation in a balanced way. I am defining 'competence' as a capability of understanding. (Freeman (2005) p209-10) The child needs to be assessed as having an ability to reason and an understanding of their situation.

To properly assess the maturity and competency of a child a number of factors need to be considered including:-

- chronological age,
- intelligence/cognitive competence,
- influence of any emotional/psychological factors that they do not recognize,
- access to, and an understanding of, the relevant facts/information so they are able to make an informed decision
- emotional maturity/intelligence - that is an ability to understand the issues and an understanding of the consequences of their wishes/decision, both now and into the future.
- children at this age do not have well developed meta-cognitive skills. Metacognition is the ability to think effectively about their own knowledge. They

are not aware of their own thought processes and that makes them less able to differentiate their thoughts and feelings from others. (DeHart, Sroufe and Cooper (2004) p.381)

Chronological age, of itself, cannot be the sole guide to assessing a child's maturity and ability to give clear wishes. Many children do not operate at their chronological age, they may be assessed to be operating at a younger age or may in fact present as older. Again they may be a parentified child who presents in a pseudo adult way and at a superficial level may appear to be able to express clear wishes.

A high level of intelligence may mean a child of this age group can express wishes but as pointed out earlier, at this stage of development they still have cognitive limitations, for example, they may read well but may not understand fully what they are reading. Their emotional intelligence, their capacity for insight and how they think about their feelings and thoughts may not be well developed, so their perspective is limited. Many will intellectualise issues, as a defence mechanism, rather than allow themselves to have feelings about an issue. This inhibits them from working through and resolving concerns.

The ability of a child to have thought through and to be able to articulate their feelings and emotions about the separation and their parents is another important aspect of assessing a child's capacity to give meaningful wishes. A child needs to have a degree of insight about their situation.

In assessing what weight to put on a child's wishes, we are also presupposing that the child has a capacity to reasonably clearly articulate his/her wishes.

If a child on interview can articulate a view that is reasonably well thought out and gives an impression they have knowledge of, and have taken into account, the pros and cons of a situation and their view is contextually consistent then counsellors are more likely to support this view as both genuine and as worthy of being given some weight. Their assessment of their parents' relationship can often give insight into their capacity for objective, uninfluenced thinking. They also need to demonstrate a capacity to understand the future implications of their wishes, especially with no contact cases.

So far we have considered the listener's perspective, the child's context - including the general development issues for that age group, then factors to consider for children of separating families and then issues for highly litigious families involved in Court processes. Lastly we have looked at the factors that need to be considered when we are evaluating maturity and competence in children.

The final area I want to look at in relation to children of this age group is to consider a useful continuum developed by Kelly and Johnston that looks at children's relationships with parents after separation. It draws distinctions between children having an affinity with a parent, being allied with a parent, being estranged from a parent and being alienated from a parent. Many of the most difficult cases that come before the Court have these issues in them - that is one parent is seeking reduced contact or wanting no contact

with the other parent, often strongly based on the child's expressed wishes. These matters are difficult to untangle especially if one only has the child's stated wishes on which to rely upon.

There are a number of reasons why children may refuse contact to their other parent after separation and only in certain situations should this behaviour be labeled as 'alienation'. Some examples of these reasons are:

- normal developmental processes - eg separation anxiety from the primary caregiver in very young children
- resistance related primarily to a high conflict relationship and separation - eg fear of, or inability to cope with high conflict handovers
- resistance in response to a parent's parenting style – eg rigidity, anger or insensitivity to the child
- resistance arising from the child's concern about an emotionally fragile residential parent eg fear of leaving that parent alone
- resistance arising from a remarriage or repartnering of a parent eg behaviours of the parent or step-parent which affect willingness to visit (Kelly and Johnston, 2001, p8)

Kelly and Johnston then go on to outline a Continuum of Child-Parent Relationships after Separation and Divorce (2001, Figure 1). Children's relationships to each parent after separation can be described along a continuum of positive to negative, where the most negative relationship is alienation.

Positive Relationship with both Parents

At one end of the continuum is a positive relationship with both parents. This applies to the majority of separating families. These children have positive relationships with both parents and want to spend time, often equal amounts, with each parent. As discussed earlier, developmentally, children of this age group can be strongly driven by the need to share time equally with parents.

Affinity with One Parent

Also at this end of the continuum are children who have an 'affinity' for one parent but still want contact with both parents. For reasons related to temperament, gender, age, shared interests, sibling preferences of parents and parenting practices these children feel closer to one parent more than the other. It is also important to note that these affinities may change over time with changing developmental needs and situations eg at adolescence children needs can change dramatically and they may wish to move residences as they perceive one parent as giving them more freedom than the other. Although these children may express a preference for one parent they still want substantial contact with the other. Examples of this type of relationship is boys who want

to go with their father as he has motorbikes and lives on a property and girls who wish to spend more time with their mother as she is involved in activities like shopping, dancing and netball with them.

Allied to One Parent

These children express or demonstrate a consistent preference for one parent which has been apparent pre-separation. They often want limited contact with the non-preferred parent after separation. Unlike alienated children these children generally do not reject the other parent or seek to terminate all contact. Usually they express some ambivalence towards this parent including anger, sadness, and love as well as resistance to contact. Such alliances between children and parents may arise from intense marital conflict and damaged dynamics in the relationship between the parents where children have been encouraged to take sides, carry negative messages and which may have intensified following separation. These alliances arise in the age group we are considering because they involve children's moral assessment and judgements about responsibility of a parent for the separation, a common feature, developmentally, of this age group. Children of this group also know which parent is most vulnerable and hurt and which one needs or deserves the child's allegiance and support. Children in this group tend to focus their anger on a parent and reflect the ideas of the parent they are allied with – "She left us, she's ruined our lives!" These alliances and the accompanying expressions of moral outrage and contempt are most often temporary if the child has the opportunity to deal with the issues surrounding the separation through counselling or through the support of a neutral trusted adult, or when the conflict reduces. However these attitudes may harden into strong alignments and even alienation in the context of a bitter separation with protracted litigation and this may result in strong resistance to contact. The main issue that differentiates these children from truly alienated children is that most aligned children are able to acknowledge, sometimes very reluctantly, that they love their other parent even if they do not want to spend time with them at present. In addition they do not engage in the harsh remonstrations and cruel rejecting behaviours of the alienated child towards the other parent. They present as more protective of their preferred parent whom they perceive as wounded and needing their support.

Estranged Children

These are children who are realistically 'estranged' from one of their parents as a consequence of that parent's history of family violence, abuse or neglect. They need to be clearly distinguished from alienated children. Among this group are children who observed repeated violence or explosive outbursts of a parent during the relationship or after separation, or who were themselves the target of violence or abusive behaviour by a parent. Often they only feel safe enough to reject the violent or abusive parent after the separation. Unlike alienated children, estranged children do not harbour unreasonable anger and/or fear. Often they require therapeutic intervention to deal with the outcome of the violence or abuse they have experienced.

Other children are estranged in response to severe parental deficiencies including persistent immature and self-centred behaviours, chronic emotional abuse of the child or

other parent, physical abuse which goes undetected, angry, rigid and restrictive parenting styles or substance abuse that interferes with parenting capacity.

It is important to note that as children become older and mature they develop capacities to clarify, consider options and they may wish to remove themselves from a toxic parent who is unreliable, consistently inadequate or abusive towards them.

These cases are often presented to lawyers, counsellors and the Courts by the abusive, deficient parent as Parental Alienation Syndrome. However these are matters where the children are estranged from a parent for good reasons and the other parent is not, in fact, alienating the child.

The Alienated Child

At the far end of the continuum are children who are alienated from a parent after separation. They express freely and persistently unreasonable negative feelings and beliefs (such as anger, hatred, rejection and/or fear) towards a parent that are significantly disproportionate to the child's actual experience with that parent (Kelly and Johnston, 2001, p7). These children strongly resist or completely refuse contact with that rejected parent. Usually the rejected parent falls within the broad range of marginal to good enough, and sometimes better parents, who have no history of physical or emotional abuse of the child. As these negative feelings and views are significantly distorted and exaggerated responses this is considered a pathological response by the child. Alienated children are responding to complex dynamics within the separation process itself, to a variety of parental behaviours and also their own vulnerabilities which make them susceptible to becoming alienated.

(The above descriptions are adapted from Kelly and Johnston, 2001, p1-15)

Children's expressed wishes, in many cases, need to be seen in a broader context and cannot just be taken at face value. They are a product of a number of influences on children including developmental pressures, the outcomes of separation for them and the difficulties they face when caught up in dysfunctional family dynamics with highly conflicted parents. In these situations further careful assessment is required to differentiate which situations reflect children who have sufficient maturity and competence to express clear wishes and those where other dynamics and influences are at work. We then need to be able to identify where children lie on the continuum of their relationships with their parents after separation. Determining an appropriate and just outcome for a child depends on lawyers, mediators and the Courts getting this part of the process right.

Figure 1. A Continuum of Children's Relationships with Parents after Separation and Divorce

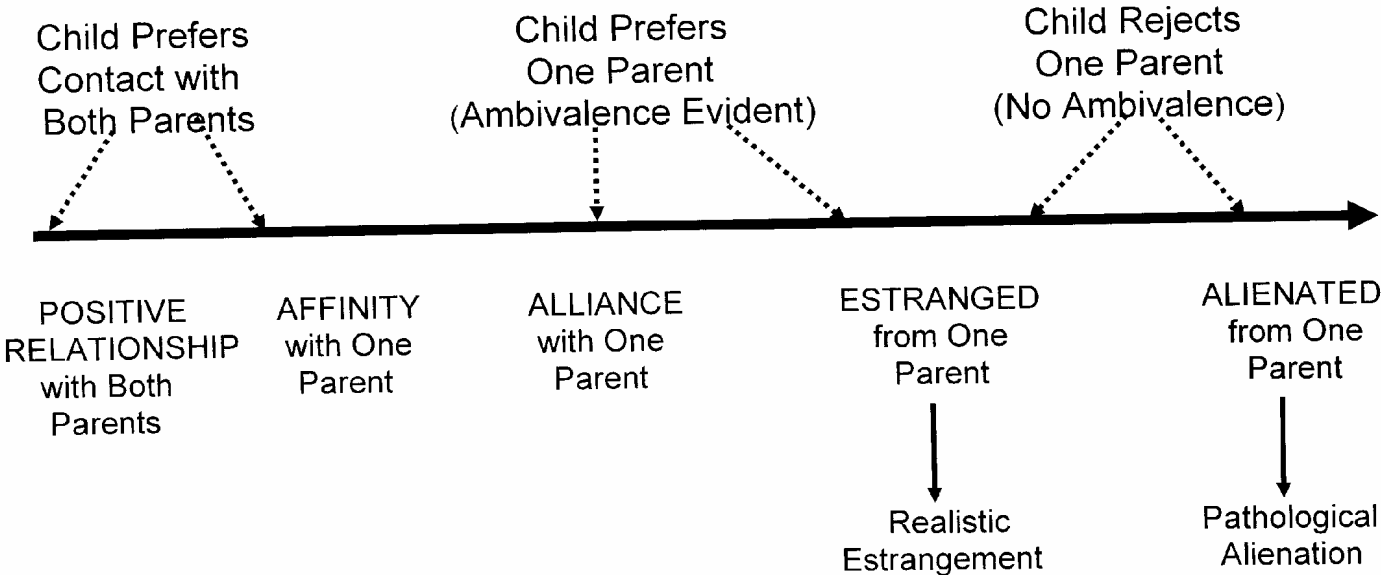


Figure 1 is from Kelly J. and Johnston, J. (2001), "The Alienated Child: A Reformulation of Parental Alienation Syndrome," *Family Court Review*, Vol 39, July 2001, p240-266.

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