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Divorced Fathers Push for a Greater Role

By [MARCELLE S. FISCHLER](#)

BRYAN BOHN considers himself a great father.

"I don't think I have ever missed a school function or a soccer game," said Mr. Bohn, 44, a vice president of a coffee distributor. "I enjoy being with my kids more than anything else."

He likes to help his three children with their homework, take them to movies and concerts at the beach and play baseball and football with them.

Since his divorce two years ago, Mr. Bohn has taken care of Ashley, 13, Kristie, 11, and Harrison, 9, on Tuesdays and Thursdays from the end of the school day until 8 p.m. He also has them the first weekend of each month and parts of the third and fourth weekends.

He is yearning for more time, and he plans to go back to court in August to ask for changes in his custody agreement.

Mr. Bohn wants his Elwood home, where the children lived for 4½ years before the divorce, to again be their primary residence, rather than their mother's place in Dix Hills.

"I think I have a very good shot at having my children with me full time," Mr. Bohn said.

His ex-wife, Christine Rosenberg, a 38-year-old nurse, doesn't see it that way. She said she would seek sole custody of the children, with Mr. Bohn allowed only supervised visits.

A generation ago, there wouldn't have been any doubt how the story would end: New York State law tilted so strongly in favor of mothers that Mr. Bohn would have been lucky to have the access he has now.

Now, legal experts say, the application of the law is more neutral, and the standard for custody arrangements is the best interest of the child. Even in communities where traditional family roles retain a strong hold, like the picket-fence towns of Long Island, many more fathers are saying that what's best for the children is a greater role for dad.

"It's fathers not accepting the old, traditional way," said Sari M. Friedman, a matrimonial lawyer in Garden City and general counsel to the Long Island branch of the Father's Rights Association, a statewide advocacy group. "More than ever before, more fathers are having shared custody, meaning shared physical custody. They are not just having alternate weekends and a dinner or two during the week. They are having time overnight during the week."

Though the legal preference for maternal custody was scrapped decades ago, Ms. Friedman said, Long Island

mothers still seem to have an advantage in contested cases, and are likely to get more custody than fathers do. "Maybe it's still 60 percent mom, 40 percent dad, but it is much more tilted in the amount of time that they are giving to dad," Ms. Friedman said.

Emily Pines, a State Supreme Court justice in Suffolk County who hears matrimonial cases, said the law reflects changes in society. Though New York is one of seven states that have not adopted laws creating a preference for joint custody, "the appellate courts over the past several years have been writing that, where parties can agree, joint custody is not only a viable option but perhaps a preferable one," Justice Pines said. "What has started to happen is that in some cases, parents have a real shared parenting arrangement, where the children share their time between two households."

Under New York law, if divorcing spouses cannot reach an agreement, the court must appoint one or the other as the custodial parent.

"The statute and the case law say, make a determination based on who is the better parent," said Marion McNulty, the supervising judge for matrimonial cases in Suffolk County. "Who will provide better for the emotional or educational, physical, psychological, financial well-being of the child? Who will foster visitation in a relationship between the child and noncustodial parent?"

Justice McNulty said the goal is to give the noncustodial parent as much time with the children as possible. But in all cases, one parent must have primary residential custody - especially when the parents live in different towns. "Minor children have to be in one school district," she said. "They can't go to Huntington half the year and Miller Place half the year. They have to have a home base."

Most divorces on Long Island are uncontested - they outnumbered contested cases 2,902 to 1,732 in Suffolk last year, and 1,893 to 1,327 in Nassau. In those cases, questions like where the children will live and go to school, and who will decide issues like their health, education and religion, are settled by the parties and their lawyers without a trial.

When Steve Haweeli, 51, the owner of a public relations company, and Ellen Watson, 45, a photographer, divorced last year, Ms. Watson suggested a shared arrangement for their son Ned, now 11. "We wanted to split the time as evenly as possible, because we thought it would be good for Ned," said Ms. Watson, who now lives a mile from her ex-husband in Springs. "We were both his parents. We had to work it out so he would come out of it as unscathed as possible."

But in many divorces, the feelings are too hard for an amicable agreement. Fred Crockett, who supervises the matrimonial department of State Supreme Court in Suffolk County, said four out of five contested divorce cases with children under 18 include a dispute over custody.

H. Patrick Leis, the state district administrative judge for Suffolk County, has presided over matrimonial cases off and on for the last 16 years. "Couples who come to court for a divorce basically toss the ball into a stranger's hands," he said. "They do that basically because they don't have the ability to get together and do what's right for their children."

Then it gets complicated. Justice Leis said the courts appoint a lawyer to act as a law guardian, representing the children's interests, and recommend a custody arrangement. If that doesn't induce the parents to settle, the case is tried and an expert is appointed to analyze the case and prepare a report that the judge uses in deciding custody.

Even then, Justice Pines said, "there are some cases that are so acrimonious that a trial judge might decide afterwards that, even if they are both good and loving parents, that a joint custody just isn't going to work, because the parents can't operate together in that kind of manner."

Dr. Paul Marcus, a psychologist in Great Neck, works both as a forensic evaluator for the courts and, privately, as a therapist and consultant. In his private cases, he said, he often helps fathers navigate the legal system and "deal with some of the issues pertaining to their extremely difficult ex-wives."

"The men are complaining that the wives are marginalizing them from involvement with their children and trying to alienate the children from the father," Dr. Marcus said.

That does not mean that the men are blameless, he said. "Many times, these ex-husbands have so enraged these women that the empire strikes back, and the kids are one way of doing it," he said.

When the hostility keeps up after the divorce, Justice Leis said, the case often winds up back in court. But some parents are looking for ways to resolve custody issues without litigation, even when the divorce is hard fought.

Peter Favaro, a psychologist in Port Washington, said more divorcing parents were turning to professional intermediaries to keep them from battling each other over the children.

"We are seeing a larger trend in something called parallel parenting, not shared parenting," Dr. Favaro said.

The assumption that the parents need to get along at any cost is being set aside. "Now many of us are coming to the conclusion that that might be an impossible task for people," Dr. Favaro said. Instead, it is often easier on all concerned to assume that the parents will operate in separate universes after the divorce, and not even talk with each other, with a neutral party to bridge the communication gap.

Judges for divorce cases in Nassau County started using parent coordinators a year and a half ago. "It seems to be taking the fuse out of the firecracker," said Robert Ross, state supervising judge for matrimonial cases in Nassau County.

Judges are also encouraging settlements that avoid protracted litigation and a win-lose mentality. They often send divorcing parents to a free state-sponsored course to help reduce the harm done to children by divorce.

Custody issues are often the reason divorced couples wind up back in court again, Justice McNulty said. "A lot of things we are dealing with are visitation issues: who is cutting who off, who is bringing the child home late, who is not taking the child to religion or the games and which parent isn't home when the other parent arrives for visitation," she said.

Psychologists or social workers are increasingly being used to broker solutions, even if it means trying something unusual.

"There is a new area of the law - they call it spheres of influence - where one parent makes final decisions in education and the other one makes the medical decisions," said Lynne Kramer, a matrimonial lawyer in Commack and former president of Suffolk County Bar Association. "Or you might use an expert in each of those fields when you can't agree."

But Mel Feit, executive director of the National Center for Men, an advocacy group and nationwide telephone

counseling service based in Plainview, said there are not a lot of easy happy endings in divorce. Even as more fathers are receiving full or joint custody, he said, they are also being attacked more.

"The system is recognizing that fathers are capable of raising their children," Mr. Feit said. "There is also an increase of accusations being made back and forth, of child abuse, of sexual abuse, of domestic abuse. Those accusations normally flow from custody battles."

Richard Smulczeski, 57, a firefighter, won custody of his two teenage daughters in a trial two years ago in Suffolk County. But after eight months, the girls ran away and returned to the home of their mother, Susan Smulczeski, 47. "They are uncomfortable and afraid," Ms. Smulczeski said. "He was physically abusive and verbally, emotionally and financially." He says "there was no hitting involved" and that his wife "has no credibility." An appellate court reaffirmed Mr. Smulczeski's custody on May 23, but he still has no contact with his daughters, and he sees a double standard in enforcing parents' rights. "You get the distinct feeling: 'You are the father, why don't you give up,'" Mr. Smulczeski said.

Ms. Smulczeski, a corporate meeting planner, said that she contributed 65 percent of her salary to child support, and that she was trying to work things out so both she and her ex-husband would have a part in raising the girls. "I have no problem with the kids seeing or speaking to him, but they won't go," she said. Another custody hearing is scheduled for Thursday in Suffolk County Family Court in Riverhead.

"Divorce papers are like a marriage certificate," Ms. Smulczeski said. "You have to make it work."

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