

House adjourned at twenty three minutes before eleven o'clock.

Tuesday, 11 October 2005.

## Grand Committee

The Committee met at half-past three of the clock.

[The Deputy Chairman of Committees (LORD BROUGHAM AND VAUX) in the Chair.]

### Children and Adoption Bill [HL]

#### (First Day)

**The Deputy Chairman of Committees (Lord Brougham and Vaux):** Before I put the Question that the Title of the Bill be postponed, may I remind your Lordships of two points of procedure? Noble Lords will speak standing, and the House has agreed that there will be no Divisions in Grand Committee. Unless therefore an amendment is likely to be agreed to, it should be withdrawn.

Title postponed.

**Baroness Morris of Bolton** moved Amendment No. 1:

Before Clause 1, insert the following new clause—

#### "CO-PARENTING

After section 1(1) of the Children Act 1989 (c. 41) (welfare of the child) insert—

"(1A) In respect of subsection (1)(a) the court shall, unless a contrary reason be shown, act on the presumption that a child's welfare is best served through residence with his parents and, if his parents are not living together, through residence with one of them and through both of them being as fully and equally involved in his parenting as possible."

The noble Baroness said: Before I move Amendment No. 1, I wish to place on record from the Conservative Benches my thanks to both Ministers for the time that they have taken to explain parts of the Bill and to the countless people, including parents and organisations, whom my noble friend Lord Howe and I have met during the past two or three months, who have given their time to share with us their expertise, sometimes telling us harrowing stories. I place on record our thanks to them, particularly to those selfless parents who realise that any change in the law will now come too late for them to have a meaningful relationship with their children but who would still like to battle to see the law changed so that others may not have to go through the same process.

In December 2003, David Burrows, a former chairman of the Solicitors' Family Law Association, said:

"Family courts are failing the children and their parents which they are set up to serve".

He went on to state:

"Proceedings start in an ill-co-ordinated way: there is no consistent procedure around the country".

Over the weeks and months since Second Reading, we have built up a picture of an outdated family law system that leaves the impression that, if you get the best lawyer, you can have the house, keep the kids and airbrush the non-resident parent out of your life.

## **11 Oct 2005 : Column GC2**

Against that background, we are about to discuss a range of amendments that flow from one to another, with each having merit in its own right.

In moving Amendment No. 1, I return to an issue that we have argued for before in debates on and off the Floor of the House in your Lordships' House and in another place, most notably during the passage of the Children Bill. The amendment would do what it says on the tin. It would ensure that where the safety of the child was not an issue, the court, when determining any question with respect to the upbringing of the child would,

"act on the presumption that a child's welfare is best served through residence with his parents and, if his parents are not living together, through residence with one of them and through both of them being as fully and equally involved in his parenting as possible".

At this stage, I own up to an omission from the amendment; I have never pretended to be the best parliamentary draftsman. We should have mentioned that a number of cases now exist where there is shared residency. The amendment does not take that into account. We shall look at that again.

The family is the most immediate and important group in which people share responsibility for one another's well-being. However, we need to recognise that family life has changed dramatically. Our family law system was designed in an age when fathers were very much observers of the day-to-day upbringing of their children. That is not so now. The Equal Opportunities Commission refers to a new breed of "do-it-all dad", who is more directly involved in the lives of his children and who does eight times as much childcare as was the case 30 years ago. And so, where the safety of the child is not an issue, we believe that the best parent for a child is both parents. Parents who are deemed fit parents when they are living in the family unit should have the right to substantial parenting time when their relationship breaks down, so that they can build up and sustain a loving bond with their child. Through access to both parents, the child has access to the extended family, especially that precious access to grandparents.

If a parent is considered a fit parent when they are married or living together, there is no reason in a normal case why that assumption should change just because they separate or divorce. They should not have to prove that they are able to care for their children by being subject to reversal of the burden of proof that the current system operates. That in no way undermines the presumption that the welfare of the child is a paramount concern; it supports it. Neither does the amendment seek to provide a framework within which the child's welfare interests are defined.

In a letter sent to me on 14 July, the noble Baroness, Lady Ashton, stated:

"We appreciate that your argument would be that this welfare is best served by contact with both parents. We accept that in many cases this is true, and indeed this position is supported by case law, which states that children generally benefit from a meaningful relationship with both parents after separation so long as it is safe and in their best interest".

## **11 Oct 2005 : Column GC3**

In the absence of the noble Baroness, Lady Ashton, I ask the Minister why some relationships in safe situations are prevented by hostile resident parents for no reasonable excuse. Will the Minister produce the case law examples referred to in the letter?

Whenever co-parenting is mentioned, we see the shaking of heads, and we are told that you cannot split children down the middle or share them out like your record collection. Let us be clear that co-parenting does not mean a 50:50 split, as recognised by the Government. The noble and learned Lord, Lord Falconer, was asked about that on the "Today" programme on 18 January 2005. John Humphrys said:

"But you're defining co-parenting as fifty-fifty . . . it need not be defined that way".

The noble and learned Lord replied:

"It need not be defined that way and, indeed, the courts and the Government strongly favour the idea of both parents being involved". It is time for the rhetoric to stop. We need to reshape radically our family law system. We need to effect a culture change in attitudes to parenting, and we need to use legislation to send an important signal that the best parent for a child is both parents. I beg to move.

**The Earl of Listowel:** I should like to clear up a couple of things in my mind from what the noble Baroness has just said. What is safety for a child? From the literature, it seems to me that many of the families involved in those sorts of proceedings might be described as quite dysfunctional. The concern is that a sense of what is safe for a child should not simply apply to being physically safe but should include what is emotionally safe for them.

In principle, it is beneficial for a child to have contact with both parents, as we well know, but there might be a concern if the child of two parents who are at loggerheads with each other, in a very bad relationship, is obliged to be shared between the two. There is a danger that that sort of conflict would be detrimental to the child.

I have a note here from a book by three clinicians on the impact of discordant family relationships:

"Unresolved discord between parents is one of the major stresses for a child, potentially affecting all aspects of their emotional life, and continuing disharmony is consistently shown to have more adverse effects than parental separation of itself. The child may become embroiled in the parental disputes and 'triangulated' between them as demands for loyalty are pressed on them from both sides".

One may have a dispute where one partner says that the other has had intercourse with young women or whatever. I would find it helpful to have a bit more definition of "safety" for the child.