



Child Custody Evaluations and the Borderline Personality Disorder

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Abstract:

This article addresses the issue of a Borderline Personality Disorder in parents in family courts world wide, with case examples from Australia and Canada. It advocates that child custody evaluators can be useful resources that can assist the courts in determining the best interests of the child.

Key words: borderline personality disorder; family courts; custody evaluators

1. General Characteristics of Borderline Personality Disorder

Borderline personality disorder (BPD) is a complex condition. It affects how a person feels about one's self and others. BPD is characterized by intense, unstable emotions and relationships, as well as insecurity and self-doubt. BPD makes everything about a person feel unstable. BPD can be diagnosed in men and women but it is predominantly found in women.

2. Technical definition of Borderline Personality Disorder

The current *Diagnostic and Statistical Manual of Mental Disorders* described it as “a pervasive pattern of instability of interpersonal relationships, self image, and marked impulsivity, beginning in early adulthood and present in a variety of contexts.” DSM-5. The current *International Classification of Diseases* describes it as “a personality disorder in which there is a marked tendency to act impulsively without consideration of the consequences, together with affective instability.” ICD-11

3. Custody Evaluators and Borderline Parents

A collection of psychiatrists from several countries found that “Personality disorder is now being accepted as an important condition in mainstream psychiatry across the world.”² It is estimated that the most

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² Peter Tyer, *et. al*, “Personality Disorder: A New Global Perspective,” *World Psychiatry* 9(1), 56-60 (2020). The authors are from England, New Zealand, Denmark, Kenya, Argentina, Italy, and Tanzania.



prevalent personality disorder in family courts is borderline personality disorder. An Australian academic researcher systematically reviewed scientific literature and found that “maladaptive parenting practices were overwhelmingly reported as a psychosocial risk for the development of borderline personality disorder.”³

Child custody evaluators should be aware of maladaptive parenting practices that are frequently exhibited by borderline parents. Information might be obtained from collaterals, from interviews with the other parent and the children, as well as direct observations made in the parents’ homes.

Borderline parents exhibit a diverse array of behavioral characteristics and traits, but the most common characteristic is a fear of abandonment. Custody evaluators should be sensitive to this trait because of its enormous effect on the children of borderlines. Adult borderlines are typically terrified of abandonment, whether real or imagined...They may destroy healthy relationships and they frequently feel a strong sense of emptiness. Sometimes BPD parents will even arbitrarily destroy the healthy relationship that their children had with their grandparents.

4. In the family courts

Two examples of the prevalence of BPD in family court litigation are Canada and Australia. The Canadian Legal Information Institute (CanLII) lists 1,289 court cases where the term, “Borderline Personality Disorder” is found. It includes cases in all 13 Provinces and 9 federal cases. The Australian Legal Information Institute (AustLII) lists 185 court cases where the term, “Borderline Personality Disorder” is found.

A: Australia: In this case, a three-year-old child’s BPD mother was ordered supervised visitation until (a) the mother had long-term treatment without evidence of relapse or major issues, and

³ Kayla R. Steele, “Parenting and Personality Disorder: An Overview and Meta-synthesis of Systematic Reviews” *PLoS One*, 2019 14(10). Professor Steel is in the School of Psychology at the University of Wollongong in New South Wales, Australia.



(b) until the child would be of an age to have appropriate self-protective capacity. *Haak v Jusic*, [2020] FCCA 45.

B. Canada: In this case from British Columbia, “The father presents with many features of BPD, which is characterized by poor self-image, feelings of emptiness, interpersonal impairment...” #37. “The Court does not wish to risk further harm to either child. Unless and until the father receives...treatment...there is the risk of further harm, except where the father’s parenting time is supervised.” #73, *E.W. v J.B.*, [2021] BCSC 2093.

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A custody evaluator should consider the characteristics and traits of borderline parents in connection with the “best interest” custody factor⁴ which is the operative factor for custody determinations by family court judges.

5. Comorbidity of Disorders

Comorbidity means that exhibiting traits of one disorder or illness can exist concurrent with one or more other illnesses. Often, parents diagnosed with BPD experience additional conditions. Some case law examples are:

A. Canada:

Davies (Re), 2020 ONCA 544 BPD and Schizophrenia

Hines (Re), 2022 ONCA 402 BPD & Antisocial Personality Disorder

R. v Rhayel, 2015 ONCA 377 BPD & Post-Traumatic Stress Disorder

B. Australia

⁴ Examples: for Australia see the Family Act of 1975, Section 60cc; for Canada see the Divorce Act of 1985, Section 16(3); and for the United States, the best interest factor has been codified separately. Also, the *United Nations Convention on the Rights of the Child* states that the best interests of the child shall be a primary consideration in all actions concerning children.



Haak & Jusic [2020] FCCA 45 BPD & Depression & Anxiety
Arcadis v Arcadis [2021] FCCA 1935 BPD & Depression...
Faraday v Faraday [2020] FCCA 1895 BPD & Anxiety

While custody evaluators are typically familiar with BPD and attachment theory, most may not be sufficiently educated to identify the variety of other personality disorders encountered during interviews and observations. Therefore, it would be wise to consult with other professionals, particularly when comorbidity is expected.

6. Attachment Theory

Attachment theory was developed in the 1940's and beyond by British psychologist John Bowlby and further developed by American/Canadian Mary Ainsworth. The theory postulates that a child's early emotional attachment to an adult (usually a parent) is an essential mechanism for the child's later emotional health; and the lack of such attachment may lead to emotional deprivation.

Custody evaluators understand how the dynamics of Attachment Theory affect a child's emotional connection to a parent. In Attachment theory, "bonding" is the expression used when parents (or other adults) become emotionally attached to children. On the other hand, "attachment" is the expression used to define the strong emotional involvement that infants develop with certain adults. Custody evaluators should not confuse these terms.

Most countries address the best-interest custody factor that deals with the parent/child relationship. In Canada, an important best-interest custody factor is "the nature and strength of the child's relationship with each parent." CLRA 24 (3)(b). In Australia, the same important custody factor is "the nature of the relationship of the child with each of the child's parents" Family Law Act of 1975, Section 60cc(2). One sign of a BPD parent is frequently a child's weakened attachment to that parent. There might have been an attachment earlier in the child's life, when essential parental activities were adequately performed with regularity and stability. But, over time, if the child has developed a sense of autonomy, continuing the previous



stability in the child/parent relationship might be difficult for the child. In her book about borderline mothers, the author explains how children of borderline mothers are “at risk for developing this complex and devastating personality disorder themselves.”⁵ She describes how children of borderline mothers may have mental health issues as they grow older because they lack a healthy maternal attachment.

7. Primary and Secondary Attachments

Attachment theory recognizes that the emotional bonds between parent and child can be both primary and secondary, sometimes the latter more important than the former. For example, in a custody case where the child's primary attachment is with the mother and the secondary attachment is with the father, it may be in the child's best interest to place custody in the father when the borderline mother exhibits an unhealthy influence over the child. In such a case, the custody evaluator might submit personality test results to the court in support of the child's removal from the child's primary attachment figure.

There is another situation where the best interest for a child might be the removal from the primary attachment parent to the secondary attachment parent. For example, just last year there was a 19-day long custody case in Ontario, Canada that exemplified this point.

In *K.K. v M.M.*,⁶ the trial judge (J. Peterson) recognized the child's strong emotional attachment to the father, but determined that it would be in the child's best interest to place custody in the child's mother. Here, the court changed custody from the child's primary attachment parent to the child's secondary attachment parent. Father appealed and the appellate court affirmed the trial court, reasoning that –

⁵ Christine Ann Lawson *Understanding the Borderline Mother*, Roman and Littlefield Publications, 2000.

⁶ *K.K. v M.M.* 2022 ONCA 72.



“(T)he child’s views had been manipulated [parentally alienated by his father]...[H]e needs to be removed from the poisonous atmosphere of his father’s orbit in order to escape the crushing pressure under which he has been placed.” Fn. #6.

8. Conclusion

Custody evaluators can be effective resources to the family courts, particularly when a given case deals with an attachment issue such as borderline personality disorder or parental alienation. Whether or not the particular judicial district requires findings and determinations regarding statutory custody factors, the best interest of the child is the guiding star. When family courts utilize competent custody evaluators, they should be well guided.

Additional Resources

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