

How Family Court Really Works.

by Steve Osborne

It's always been difficult for me to understand the political and legal positions of most of the equal parenting movement; don't be controversial or confrontational, be careful not to offend anyone, and, heaven forbid, don't be negative. Above all else, people are afraid to be seen as being negative when they confront the system that's had such a horrific impact on their lives. It baffles me why such a powerful tool is so assiduously avoided, especially in people's in-Court work, where appearances are God.

In my experience there is an almost complete lack of understanding of the politics of family law throughout the equal parenting movement and an even more prevalent misunderstanding of the family court process itself. The misconceptions that the vast majority of people seem to labor under not only prevent them from taking effective political action and making answer in Court, they also leave them vulnerable to the reactions that are bound to follow any such failed attempt - awards for costs against them, reduced or restricted access to their children, increased support payments, restraining orders - the list goes on.

I always cringe when I hear people say things like "*they can't do that*" in reaction to something that's *already a done deal*. When I hear that, I know I'm seeing someone who will remain a victim throughout their interaction with the legal system. Even when their situations continuously turn clearly for the worse. No amount of reason seems to be able to convince most people that they need to change their reactions and find new approaches, that they need to look at their own part in the dance to find relief.

The most common erroneous assumption I've found all over the country is related to the burden of proof in civil court. I don't now whether it stems from watching too many police dramas on TV or from a piece of misinformation they've been given in the past. But almost universally people think that civil courts adhere to the benchmark used in criminal proceedings, and they're dead wrong. In fact, as many of us learned far too late in our own proceedings, the burden of proof is not even close to the "beyond a reasonable doubt" standard we always hear about, instead it's "*the preponderance of evidence*" that rules in civil proceedings, a somewhat more unknown, ambiguous and subjective perspective.

In short, the biggest pile (of evidence) wins. At this point, the more intuitive readers will say, "Hang on, I had more witnesses at trial, all of them said the same thing and my ex lied through her teeth," and then see the paradox involved when their kids, income and future disappear over the horizon. Few notice that something's missing in the equation. Not seeing it clearly, they label it bias. But they haven't factored in dynamics like the training at the National Judicial Institute. Only with that extra "evidence" factored in is the analysis complete.

In jury trials the judge sits as the trier of the law alone; the jury is the trier of the facts. In a court where there is no jury, like family court, the presiding judge sits as both the trier of the law and of the facts. The judge's job is to make decisions, rulings, and they're supposed to be doing it based on the views of the community they serve and the facts brought before the court in the

course of the trial. That's the system we all expect to find when we go to court for the first time, and that's the one that it purports itself to be.

In family court the training at the NJI impacts decisions, by its own admission. That means that evidence other than what is presented in court is being used to make decisions, from training that the general public has no access to or ability to monitor (it's kept secret). The NJI is a big part of why having more witnesses and more evidence and even exposing lies makes no difference to the outcome in most cases. Why the decisions coming out of family courts are so divergent from the belief I've found in the general public that equal parenting is good for kids.

Now we've come full circle, back to understanding the politics of family law and how to operate within the process to achieve the best outcome. It's almost depressing that no one uses the great big negative controversy that's lurking there; it's a sure winner.

*Contact Steve Osborne of Saint John, NB by email at ozzy_downeast@yahoo.com
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