Child Testimony

By K. Dean Kantaras & Emily Saladrigas

While there are many stressors that come about in dissolving a marriage, the stressors seem to multiply tenfold when there are minor children involved. One of the biggest aggravations parents face when disputing parental responsibility and timesharing is not just how the changes will affect their children, but the fact that the court refuses to hear from the children rarely to not at all.

In child custody cases, it is understandable that a parent would assume their child would be given the opportunity to speak up for themselves, tell the court their opinions of each parent, who they prefer, and any experiences of abuse, neglect, or abandonment they underwent under either while in their custody. However, although the best interests of the child remain the top priority in child custody cases, the court does not want to hear what your child has to say.

While this may seem harsh, the basis of denying hearing child testimony is to protect the child. The court recognizes that divorce and child custody battles can already cause stress and turmoil within the home, and so to prevent the child from experiencing any further distress, Florida law implemented Family Law Rules of Civil Procedure 12.407, which states that unless the court grants an order on the basis of "good cause" shown, all children are prohibited from testifying at any court proceeding. Although this may frustrate a parent's case, this safeguard was implemented for good reasons, especially those highlighted in *Florida Statute 61.13(3),* which lists and details the best interests of the child.

The rules of civil procedure work in tandem with *Fla. Stat. 61.13(r),* which values, "The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child and refraining from disparaging comments about the other parent to the child." Both statutes serve to do the same thing – ensure the children are protected from the uglies of litigation as much as possible to preserve their mental wellbeing and stability.

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As an alternative, parents will try to speak for their child themselves. When a parent is testifying about a certain issue, whether alleging circumstances of abuse or egregious conduct of the other, the parent may try to mention what their child said in or about the situation. Although it is not the child technically speaking, this type of testimony is barred by Florida Evidence Code, and, either by the judge or opposing counsel, the statement will be immediately objected to and struck from the record. While this rule protects the child's best interests as well, so whatever the child allegedly said is not weaponized or misused to the advantage of a party, it primarily serves to ensure every piece of evidence admitted is reliable, earnest, and truthful. Almost always, admitting common hearsay statements will guarantee an objection, but admitting a hearsay statement of a child, coming from their own parent? Usually impossible.

So is there any way for the court to hear what the child has to say? Yes. Florida law says when determining the best interests of the child, the court may consider, "the reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference." The court may be willing to hear the preference of the child through a guardian ad litem representative, or, if the court finds the child's testimony extremely necessary to the case, will order an interview of the child with a court reporter present, and to ensure there is no influence over the child's statements, the parents absent.

The important takeaway is that while the court will usually refuse to hear from the child, their refusal is based on preserving the reliability of the evidence, and protecting the best interests of the child and when the court is willing to hear from the child themself, it will only be under "good cause," or, if the child is of sufficient intelligence and understanding, through the report of a guardian ad litem or isolated interview. ❖

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