

Focus | Family Law

# A Child's Best Interest: What Does it Mean, Really?

BY CHANTE BRANTLEY

There is perhaps no phrase more ubiquitous in family law cases than "a child's best interest." From the simplest of custody disputes to situations involving the termination of parental rights, cases that concern children often boil down to one question—what is in the child's best interest? Despite the importance of the term, however, the Texas Family Code gives no consistent definition of what constitutes a child's best interest, leaving attorneys and judges with only the vaguest of guidelines to determine which factors come into play when determining a child's best interest, and what the relative importance of each factor is.

Section 263.307 of the Texas Family Code provides a list of best interest factors for permanency hearings in CPS cases, including questions about the child's physical safety, mental and physical vulnerabilities, and the willingness of the family to improve the child's home situation. Even this list of factors includes the circular question of "whether this transition is in the best interest of the child." These factors are also not generally applicable to cases where both parents are indisputably fit parents. The Texas Supreme Court did outline a non-exhaustive list of factors for a best interest analysis in the 1976 case of *Holley v. Adams*. The included factors are the desires of the child; the emotional and physical needs of the child and dangers to the child, both now and in the future; the parental abilities and plans for the child by the parents and other individuals seeking custody; the programs available to assist these

individuals; the stability of the proposed home; any acts or omissions that indicate an improper parent-child relationship; and any excuses for those acts or omissions. However, the *Holley* factors are only explicitly approved for termination cases—again, cases where one or both parents are potentially unfit parents.

In cases where both parents are fit, the law is less clear as to what it means for a parenting plan to be in a child's best interest. Generally, it is presumed that appointment of both parents as joint managing conservators is in the best interest of the child. In these cases, however, the court must make a best interest determination of which parent will have the right to designate the child's primary residence. Some courts have adapted the *Holley* factors to any case involving children, passing judgment as to what parenting plans, home circumstances, or other factors are better for the children. Other courts have incorporated the joint recommendations of the ABA Child Custody and Adoption Pro Bono Project and the ABA Center on Children and the Law, contained in *A Judge's Guide: Making Child-Centered Decisions in Custody Cases*. These questions ask about the parent's physical and psychological health, as well as the child's health and safety, for each of several developmental stages. They also ask whether the parent appropriately promotes the child's intellectual, psychological, and emotional development. This can be demonstrated through behaviors such as providing stimulating learning opportunities, supporting the child's relationship with the other parent, reinforcing

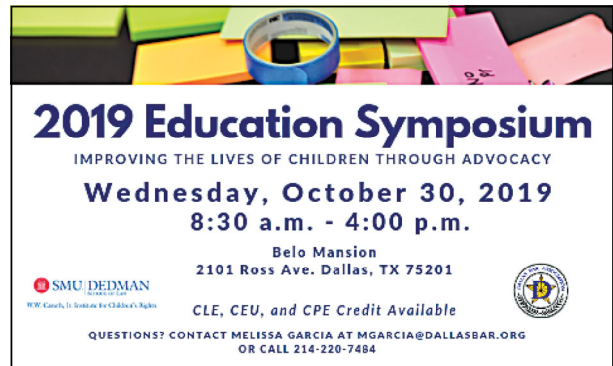
the child's social skills, and maintaining an open channel of communication with the child as he or she grows.

Whereas the Family Code is generally quiet on what can be considered, it is not silent on what *cannot* be considered as a factor in a best interest analysis. Texas Family Code Section 153.003 indicates that gender and marital status of a parent are not valid factors—an express disavowal of the mother-favoring "tender years" doctrine. Texas Family Code Section 162.015 further excludes race and ethnicity as factors. Some appeals courts have also excluded a parent's religious affiliation from being considered, citing the U.S. Constitution and Texas Constitution's protections for freedom of religion.

Ultimately, any list of factors for best interest suffers from the same crucial flaw—no list explains how any of

these factors should be weighed against one another in terms of priority, nor do they claim to be complete and comprehensive lists. In Texas family law cases, the decision of which factors to consider, how to weigh those factors against one another, and how to interpret the results ultimately lies with the factfinder and his or her own notions of what constitutes a child's best interest. Because family cases are mostly tried as bench trials, the personal element of best interest analyses makes it incredibly important for an attorney in a suit affecting the parent-child relationship to make an effort to understand what the judge's stances and beliefs are regarding childrearing and family relationships. **HN**

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