

Fathers' Rights to Contact and Care: Moving Beyond the Adversarial Approach

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Abstract : Our paper focuses on the rights' to contact and care of fathers in the heterosexual context, despite the reality of same sex parenting in South Africa. We argue that despite the new South African Children's Act framework creating a shift from the idea of parental power over a child to the notion that parents have parental responsibilities and rights in respect of a child. This shift has however not fundamentally changed the constant battle that parents and other interested parties have over children. In most cases it is fathers who must battle to either maintain contact with their child/ren or fight to have care (which includes custody) of their child/ren. This is the case whether or not the father was married to the mother of the child in question. In part one of the paper, we deal with the historical development of rights to care and contact and describe the current system in the context of case law and legislation in South Africa. Part two provides a critical analysis of a few anthologies of "what fathers are complaining about." In conclusion, in part three, we outline the way forward - "moving beyond the adversarial approach" through the "care of ethics approach." So what is the care perspective? The care perspective is a relational ethic which views the primary moral concern as of creating and sustaining responsive connection to others. We apply the care of ethics approach to parenting plans and family law mediation in the context of fathers' rights to care and contact. We argue by avoiding the adversarial system and engaging in a problem solving process focused on finding solutions for the future, divorcing parents can turn their attention to their children rather than battling each other.

Keywords : fathers' right to care, contact, custody, family law

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