



Perspectives of Mothers Fighting for Custody of Their Trans Children

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Project website: <http://transkids.info/resources/family-court/>

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PLEASE NOTE: DRAFT – Study findings have not yet been published

Background

- Trial courts have broad discretion in determining child’s “best interests” and in making legal and physical custody decisions
(Myers & Krause, 2017)
- Most family courts are not familiar with gender nonconformity in childhood and do not have experience with transgender and gender-nonconforming (trans) children
(Minter & Wald, 2012)



- American Psychological Association et al. (2015) “**support affirmative interventions** with transgender and gender diverse children and adolescents that encourage self-exploration and self-acceptance rather than trying to shift gender identity and gender expression in any specific direction.”
- Heteronormative/ cisnormative values and beliefs (Oswald et al., 2005; McGuire et al., 2016)—e.g., childhood gender nonconformity is “bad;” parenting is to “blame”—can influence family court professionals who form opinions about what is in child’s best interests (Minter & Wald, 2012; Perkiss, 2014)



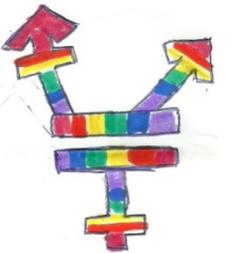
Existing case law

- *Smith v. Smith* (Ohio Ct. App. Mar. 23, 2007)
 - Family court judge:
 - Relied upon heteronormative and cisnormative notions of gender
 - Discounted expert testimony and wishes of child
 - Concluded mother pushed child toward trans identity
 - Father awarded full custody (Perkiss, 2014; Skougard, 2011)
- *Johnson v. Johnson* (Superior Ct. of Calif. Cnty. Of Alameda, Oct. 10, 2009)
 - Family court judge:
 - Less concerned with traditional gender roles
 - Prioritized child's wishes and statements of identity
 - Decision: Shared custody (Skougard, 2011)



Research Questions

- What are the experiences of parents who face custody-related challenges involving their trans children's gender nonconformity?
 - How can we can better support them?
- Family acceptance is critical, positive influence on trans youth's well-being (Olson et al., 2016; Ryan et al., 2010), what impact do these custody-related challenges have on trans children?



Sample

- **10 mothers** (9 bio moms; 1 non-bio mom)
- Age: 32 to 52 ($M = 43.6$ years; $SD = 6.7$)
- White/Non-Hispanic ($n = 9$); “ $\frac{1}{2}$ Mexican & $\frac{1}{2}$ White” ($n = 1$)
- Highest degree earned:
 - Graduate degree ($n = 4$); Bachelor’s ($n = 4$); High school ($n = 2$)
- Geographic locale:
 - West ($n = 4$); Northeast ($n = 4$); Midwest ($n = 1$); South ($n = 1$)
- Divorced ($n = 9$); Separated ($n = 1$)
 - Different-sex ex-partners/spouses ($n = 7$)
 - Same-sex ex-partners/spouses ($n = 3$)



- **10 transgender/gender-nonconforming children**

- Ages 5 to 15 years ($M = 9.4$ years; $SD = 3.3$)
- AMAB ($n = 7$); AFAB ($n = 3$)
- White/non-Hispanic ($n = 7$); Mexican & White ($n = 1$); African American & White ($n = 1$); Asian & White ($n = 1$)
- GID or GD diagnosis
 - Yes: $n = 6$
 - No: $n = 2$
 - Other:
 - “Unspecified GD”; inconsistency depending upon parent
 - Pediatrician gave diagnosis, but ex complained; removed?



Methodology

- Data collection: Sept-Dec 2016
- Purposive and snowball sampling
- One-on-one telephone interviews*
 - Semi-structured, open-ended; 60 to 90 minutes
 - Child's family context
 - Child's history of gender identity and presentation
 - Custody/visitation challenges
- Professional transcription; quality-checking
- Inductive thematic analysis (Braun & Clarke, 2006)

* $n = 8$; 2 participants completed interview questions via email



Overview of custody situations:

- 1 sole custody
- 3 lost physical and legal custody
 - Supervised visitation ($n = 2$)
 - Court-ordered to not affirm child ($n = 2$)
 - *Mother of 10-year-old asserted boy:*
 - “When my child was born...I filed for divorce...and I received full custody at that time, because my ex was never involved in the child’s life, never did keep a job. That’s why I packed up and left. He was an alcoholic and very emotionally abusive. For the first couple of years...my ex had, by his own choosing, very little to do with the child...”



- “...So, it was just me, a single mom raising my kid. Then at 9 years old, my kid was diagnosed as trans by a psychologist that specializes in that area... And then I ended up getting a second opinion, then at that point, my ex took me to court and charged me with child abuse for raising the kid as a boy.... That got dropped, but they took me back to court...and they tried to say that I had Munchausen by proxy and was making my kid trans... The judge took my kid, and now I am supposed to get visitation every other weekend, but my ex-husband doesn't keep his word with that ... I've basically been cut out of the whole kid's life by my ex-husband and no one is holding him accountable.”



- 6 with shared physical custody (5 w/ shared legal)
 - Want to have full, but fearful
 - Court-ordered to not affirm child ($n = 2$)
 - Threats
- “It’s everyday I’m scared that I am going to lose (my child).”
-- *Mother of 9-year-old asserted girl (shared physical custody)*



Findings



- **Blamed for “turning child trans”** ($n = 10$)
 - Claims of mother being mentally ill (e.g., Munchausen syndrome by proxy) ($n = 3$)
- **Controlling/manipulative behaviors by ex-partners** ($n = 9$)
 - Abusive ex-partners continue coercion through courts ($n = 3$)
 - He was really controlling, and...I feel like he gets pleasure out of hurting me. ...[He] will never let me have my child. He will never let me have a life. I'll always be fighting against him.”
 - *Mother of 8-year-old asserted girl (lost custody)*

- **Heteronormative/ cisnormative bias in the courts** ($n = 6$)
 - **“Policing” of children’s gender** ($n = 4$)
 - *Mother of 6-year-old asserted girl (lost custody)*
 - “It was like a month before Halloween...and Chloe wound up picking out a fairy costume...I received a court order the day before Halloween that was signed by [the judge] that Chloe was to be dressed gender neutral or boy only, not allowed to play dress up at home, had to be referred by birth name...and male pronouns. A week or so later my ex found out about the [trans youth] play group, and....[it was added] to the orders...that I wasn’t to have the kids to any place or situation so as to normalize being transgender.”



- **Negative impact on children's well-being** ($n = 9$)
 - **Difficulties going to & from rejecting household** ($n = 7$)
 - “Now if anything comes up about gender, she will say, like, ‘No, I don't want to talk about it,’ or like hit pillows or become visibly upset, and she never did that before.”
-- Mother of 5-year-old asserted girl (shared custody)
 - “I think it's been detrimental to my child in every way possible. My kid is not eating. My kid is not sleeping.”
-- Mother of 10-year-old asserted boy (lost custody)



- **Suicidal ideation** ($n = 2$)

- “I let him identify and live as a boy when I see him, because that's what's keeping him alive, because he's already made suicidal threats.” —*Mother of 10-year-old asserted boy (lost custody)*
- “It was during the custody evaluation. . . . We were all very stressed out, and (my child) started saying, “I wanna die. . . . I wanna die, because of the [court order].” And I said, “You know, sweetie, the [court order] is temporary. . . and dying is a permanent solution. You don't wanna do this.”
—*Mother of 9-year-old asserted girl (shared physical custody)*



- **Negative toll on participants** ($n = 7$)
 - Emotional ($n = 5$)
 - “Depression has probably consumed me.”
– *Mother of 13-year-old asserted boy (shared custody)*
 - Financial ($n = 5$)
 - “In one year, I lost my kid, my home, my car, and my job. Now I'm down to living in this room in the basement of my parents' house. . . .I've lost everything, all my savings, everything, retirement, it's all gone.”
-- *Mother of 10-year-old asserted boy (lost custody)*



- **Importance of adequate resources** ($n = 9$)
 - **Money** ($n = 8$)
 - “They cannot find me an attorney. I don’t have the money.”
-- *Mother of 6-year-old asserted girl (lost custody)*
 - “[My child’s] dad has a lot of money. He has unlimited funds, and he uses those funds to keep the [court order] in place and to mess with me, to make my life more difficult.”
– *Mother of 9-year-old asserted girl (shared physical custody)*



- **Need better educated court professionals** ($n = 6$)
- “Transgender-friendly lawyers are really hard to come by. Or if they’re transgender-friendly...they just lack experience.”
– *Mother of a 6-year-old asserted girl (shared custody)*
- “You hear all this stuff about bathrooms, but nobody has even talked about or even penetrated the judicial system. And like I said, this judge doesn’t have a clue, but he made a life and death decision on something he knew nothing about, and still doesn’t. ...I’m just taken aback that there are not continuing legal education credits that are mandatory for family judges and family law attorneys. That’s the roadblock: They’re not educated.”
--*Mother of 10-year-old asserted boy (lost custody)*



Conclusions

- There is a critical need for:
 - Education of family court professionals re: gender nonconformity in childhood
 - Expert legal advice for parents
 - How to protect self and child
 - What language to use in parenting agreements
 - How to find knowledgeable attorneys
 - Financial resources for parents, including pro-bono and reduced-fee legal services
 - *Transgender Children's Legal Defense Fund:*
<http://www.defendtranskids.org/>



Limitations & Future Directions

- Limited size, diversity, and perspective of sample
- Much more to learn about challenges and resilience of families with trans youth who end up in family court
 - How domestic violence is a factor
 - Roles and experiences of siblings, extended family
 - How custody issues change over time
- Next step: Follow-up with participants
- Share findings to help raise awareness
- Assist with grassroots organizing



Thank you...

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- *Consultants:*
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 - Asaf Orr, Esq., National Center for Lesbian Rights
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