
EMPIRICAL STUDY

WHEN THE VOW BREAKS: AN ANALYSIS OF THE IMPACT OF INTRINSIC AND EXTRINSIC FACTORS ON CHILD CUSTODY RESOLUTION

I. INTRODUCTION

Over the past two decades questions have arisen as to whether litigation is the best method for resolving child custody disputes when parents choose to divorce or separate. Several family law commentators have praised mediation as a cost-effective and efficient alternative that lessens the adversarial nature of custody proceedings. Based on this information, we wanted to investigate which dispute resolution method, as well as other intrinsic and extrinsic factors that may influence child custody cases, produces the most stable child custody arrangements.

In this Study, we first looked at three different types of custody dispute resolution methods—mediation, lawyer-negotiated settlement, and litigation—to determine which technique produced the fewest subsequent motions or events, resulting in the most stable custody arrangements. Second, we examined whether the parties' personal characteristics, their specific life circumstances, and their allegations against one another in the case (collectively "personal factors") made a difference in the number of subsequent custody events. Finally, we determined whether the individual judge who signed the initial custody agreement or order made a difference in the custody resolution's stability.

Our Study illustrates that between 2000 and 2003 in Forsyth County, North Carolina, the method of dispute resolution that produced the fewest subsequent motions in child custody cases was actually litigation. This is contrary to what many mediation proponents have speculated. Additionally, parties that voluntarily submitted to mediation did not necessarily produce more stable outcomes, but having prior agreements between the parents did help.

In addition, our data show that some personal factors could potentially influence the number of subsequent custody events. For example, factors such as (1) the plaintiff's income, (2) the

defendant's allegation of domestic violence, and (3) the number of children in each family seem to affect the stability of the custody arrangement by producing a greater number of subsequent custody events. However, we did not find a single factor that was dispositive.

Interestingly, the judge involved with the initial custody dispute may also have an effect on the number of subsequent custody events. Specifically, cases overseen by two particular Forsyth County judges seem to produce very few subsequent custody events compared to other judges, suggesting that each judge's style may influence the number of subsequent custody events.

Taking the data as a whole, we did not discover any factors that were dispositive of the number of subsequent events; rather, it is difficult to predict the stability of any child custody case. Each case has its own idiosyncrasies, and we found no reliable way to determine which cases will be high-maintenance and which will have more stability.

II. BACKGROUND INFORMATION

A. *Mediation in General*

Mediation is one of several alternatives to the regular system of adjudicating disputes through litigation.¹ The litigation process has often been blamed for much of the pain suffered by parties involved in a divorce or separation, especially when children are involved.² In response, several states have turned to mediation in family law cases as a way to decrease the trauma involved in the adversarial process.³ Mediation is intended to be a cooperative, rather than a competitive, method of custody dispute resolution.⁴ Initially, mediation programs also were created in many states as a cost-effective alternative to litigation.⁵

In family and divorce mediation, an impartial third party assists families in resolving their issues by promoting voluntary agreement among the parties.⁶ Mediators fulfill several functions in

1. See Ben Barlow, *Divorce Child Custody Mediation: In Order to Form a More Perfect Disunion?*, 52 CLEV. ST. L. REV. 499, 500 (2004-2005).

2. *Id.*

3. *Id.*

4. ROBERT E. EMERY, *RENEGOTIATING FAMILY RELATIONSHIPS: DIVORCE, CHILD CUSTODY, AND MEDIATION* 96 (1994); see also Jonathan R. Levine, *How to Properly Prepare for Mediation and Win!*, in 2004 FAMILY LAW UPDATE § 10.01 (Ron Brown & Laura W. Morgan eds., 2004).

5. Levine, *supra* note 4, § 10.01.

6. Carrie-Anne Tondo et al., Note, *Mediation Trends: A Survey of the*

family disputes, including “identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and finding points of agreement.”⁷ Mediation is intended to minimize competition between the parties and promote communication and civility in family dispute cases, particularly where the disputes involve children.⁸

As of 2001, thirty-eight states addressed family law mediation by statute.⁹ Some of the remaining states have local laws pertaining to mediation.¹⁰

B. North Carolina Mediation Procedures

North Carolina first implemented a mediation pilot program in 1983, which was established state-wide in 1989.¹¹ In the early 1990s, court-ordered mediation first was considered and implemented as a pilot program in 1991.¹² Since 1995, mediation has been mandatory in North Carolina for issues involving child custody and visitation in jurisdictions that have established mediation programs.¹³ Mediation programs in North Carolina are governed by state statutes, the Uniform Rules,¹⁴ and local rules.¹⁵

States, 39 FAM. CT. REV. 431, 431 (2001).

7. *Id.* (quoting BEYOND CONFRONTATION: LEARNING CONFLICT RESOLUTION IN THE POST-COLD WAR ERA 14 (John A. Vasquez et al. eds., 1995)).

8. *Id.* at 432.

9. *Id.* at 433.

10. *Id.*

11. Tony Biller, Comment, *Good Faith Mediation: Improving Efficiency, Cost, and Satisfaction in North Carolina's Pretrial Process*, 18 CAMPBELL L. REV. 281, 284 (1996).

12. *Id.* at 284-85.

13. See Barlow, *supra* note 1, at 518; Tondo et al., *supra* note 6, at 440. The North Carolina mediation statute states:

Whenever it appears to the court, from the pleadings or otherwise, that an action involves a contested issue as to the custody or visitation of a minor child, the matter, where there is a program established pursuant to G.S. 7A-494, shall be set for mediation of the unresolved issues as to custody and visitation before or concurrent with the setting of the matter for hearing unless the court waives mediation pursuant to subsection (c).

N.C. GEN. STAT. § 50-13.1(b) (2005). The North Carolina counties that had not established a mediation program as of January 2005 are: Alexander, Avery, Beaufort, Camden, Carteret, Cherokee, Chowan, Clay, Craven, Currituck, Dare, Davidson, Davie, Edgecombe, Gates, Graham, Haywood, Henderson, Hyde, Iredell, Jackson, Macon, Madison, Martin, McDowell, Mitchell, Nash, Pamlico, Pasquotank, Perquimans, Polk, Robeson, Rutherford, Swain, Transylvania, Tyrrell, Washington, Wilson, and Yancey. NORTH CAROLINA ADMIN. OFF. OF THE COURTS: CUSTODY AND VISITATION MEDIATION PROGRAM (2005), available at <http://www.nccourts.org/Citizens/CPrograms/Child/Documents/custmap.pdf>.

14. N.C. GEN. STAT., ANNOTATED RULES OF NORTH CAROLINA, UNIFORM

The North Carolina General Assembly has appropriated funds for court-ordered mediation, and each judicial district employs mediators.¹⁶ Therefore, there is no cost to a party who participates in the mediation program¹⁷ unless the party hires an attorney to assist with the process. While parties are not required to hire a lawyer for mediation, the North Carolina Bar Association strongly recommends doing so.¹⁸

The North Carolina mediation statute contains several goals for the program as set forth by the North Carolina legislature: (1) to reduce acrimony between parties to custody disputes; (2) to develop custody and visitation agreements in the child's best interest; (3) to provide the parties with informed choices and to allow the parties to make their own decisions about custody and visitation; (4) to provide a structured, non-adversarial environment that will lead to resolution with minimal stress and anxiety for all parties; and (5) to reduce the re-litigation of custody and visitation disputes.¹⁹

Although attending mediation is a mandatory prerequisite to litigating any child custody dispute,²⁰ mediation can be waived if a party can show good cause.²¹ In each case, the court-appointed mediator decides whether mediation is appropriate and determines

RULES REGULATING MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES UNDER THE NORTH CAROLINA CUSTODY AND VISITATION MEDIATION PROGRAM (2006).

15. 3 SUZANNE REYNOLDS, *LEE'S NORTH CAROLINA FAMILY LAW* § 13.77(a) (5th ed. 2002).

16. *Id.* § 13.77(b). Mediators are required to:

- (1) have at least a master's degree in psychology, social work, family counseling or comparable human relations disciplines;
- (2) have at least forty hours of training in mediation techniques by a qualified instructor of mediation as determined by the Administrative Office of the Courts ("AOC");
- (3) have had professional training and experience relating to child development, family dynamics, or comparable areas;
- and (4) meet any other criteria as specified by the AOC.

Id. § 13.81(b) (citing N.C. GEN. STAT. § 7A-494 (2000)).

17. *Id.* § 13.77(b).

18. NORTH CAROLINA BAR ASSOCIATION, *THIS IS THE LAW: CHILD CUSTODY/VISITATION AND CHILD SUPPORT* (2005), available at <http://www.ncbar.org/public/publications/pamphlets/ChildCustody05.pdf>.

19. See Barlow, *supra* note 1, at 519 (citing N.C. GEN. STAT. § 50-13.1(c) (2003)).

20. See REYNOLDS, *supra* note 15, § 13.77(c).

21. *Id.* § 13.77(d). The following reasons constitute "good cause" for waiving mediation: (1) undue hardship to a party; (2) an agreement between the parties to attend voluntary mediation; (3) "allegations of abuse or neglect of the minor child;" (4) "allegations of alcoholism, drug abuse, or spouse abuse;" and (5) "allegations of severe psychological, psychiatric, or emotional problems." *Id.* (citing N.C. GEN. STAT. § 50-13.1(c) (2003)).

whether any factors exist that would support waiver of mediation.²² If parties cannot show good cause for waiving mediation, they must attend mediation orientation to learn about the process and goals of mediation.²³ Parties must attend at least one mediation session before withdrawing from the program and pursuing litigation as a remedy.²⁴

The intended outcome of mediation is a parenting agreement, in which parents come to a compromise regarding the legal and physical custody of their children and set forth in writing all details pertaining to custody, visitation, and related issues.²⁵ The mediator must report to the court any remaining unresolved issues after the mediation or a decision by the parties to withdraw from mediation.²⁶

Child custody and visitation agreements or court orders are never considered “closed”; rather, the agreement or order can be modified by the court upon motion from either party.²⁷ The current North Carolina standard for modification is “upon motion in the cause and a showing of changed circumstances.”²⁸ North Carolina determines this standard using a two-prong test: (1) since the last order, there has been a substantial change of circumstances that affects the children; and (2) the modification is in the best interest of the children.²⁹ Courts will take several factors into consideration when deciding whether to modify an agreement or order.³⁰ Our research shows that out of all cases studied, subsequent motions to amend or alter initial child custody agreements or orders occurred in 156 out of 289 cases that reported the number of events.

22. *See id.* § 13.77(d)-(e).

23. *Id.* § 13.79(a). The orientation session helps to educate and familiarize the parties with the mediation process. Failure to attend orientation “could result in a party being [held] in contempt of court.” *Id.*

24. *Id.*

25. *Id.* § 13.80(a). Both parties must sign the parenting agreement, which the mediator will submit to the court as soon as possible. *Id.* When the mediator submits the parenting agreement to the court, the court enters the document as an enforceable “court order unless the judge finds good reason not to.” *Id.* § 13.80(b).

26. *Id.* § 13.80(c).

27. *See id.* § 13.98(a).

28. *See id.* § 13.99 (quoting N.C. GEN. STAT. § 50-13-7(a) (2000)).

29. *Id.* (citing Pulliam v. Smith, 348 N.C. 616, 501 S.E.2d 898 (1998)). Before a court will modify an agreement based on the two-prong test, the court will require factual findings supported by competent evidence. *Id.* § 13.108.

30. Such factors include: (1) stability for the child; (2) wishes and age of the child; (3) domestic violence and physical abuse; (4) emotional and physical health of the child or parent; (5) alienating the child from the other parent; (6) frustrating visitation; and (7) sexual conduct of the parent. *Id.* §§ 13.109-.115.

C. *Support for and Critiques of Mediation*

1. *Support for Mediation*

Several commentators have suggested that mediation is a good alternative to litigation. Some claim that mediation saves the parties time, money, effort, and emotional stress.³¹ Mediation has been praised as an optimal way for parents to actively participate in the negotiation settlements and achieve a feeling of control over the proceedings, leading to decreased anxiety.³² In addition, mediation participants have reported satisfaction with mediation, because the process enabled them to make their own decisions, allowed them to communicate their personal views to the other party, and helped them understand the views of their adversary.³³

Some researchers claim that mediation can lead to more contact between children and the non-residential parent. Robert E. Emery studied the outcomes in family dynamics twelve years after the families had used either mediation or the adversarial process to settle their disputes.³⁴ Emery noticed numerous long-term benefits for the children whose parents had participated in mediation rather than litigation.³⁵ For example, non-residential parents who mediated were more likely to see their children every week twelve years later than the non-residential parents who had litigated.³⁶ Non-residential parents who mediated tended to be much more involved in their children's lives, while the non-residential parents who used the adversarial process were more likely to discontinue contact with their children.³⁷

31. DONALD T. SAPOSNEK, *MEDIATING CHILD CUSTODY DISPUTES* 15 (rev. ed. 1998); see also Levine, *supra* note 4, § 10.03 (stating that mediation is almost always less costly, always takes less time, and is far less intimidating than litigation).

32. Levine, *supra* note 4, § 10.02. Levine states that the mediator acts as the "voice of reason" in divorce and custody proceedings. *Id.*

33. Tondo et al., *supra* note 6, at 432.

34. Robert E. Emery, *Easing the Pain of Divorce for Children: Children's Voices, Causes of Conflict, and Mediation Comments on Kelly's "Resolving Child Custody Disputes,"* 10 VA. J. SOC. POL'Y & L. 164, 165-66 (2002).

35. *Id.* at 172.

36. *Id.* at 175. In addition, Emery's study found that the majority of non-residential parents who had mediated spoke to their children on the phone at least weekly twelve years after the mediation. *Id.* at 176.

37. *Id.* at 176. Non-residential parents who mediated were much more likely to be involved in their children's discipline, dressing and grooming, religious and moral training, errands, holidays, significant events, school and church activities, recreation, vacation and resolving children's problems. *Id.* at 177.

2 *Limitations of Mediation*

Not all commentators have been unreservedly enthusiastic about divorce and child custody mediation, and note that the process is not beneficial in all circumstances. Several mediators have reported that couples who voluntarily chose mediation as a dispute resolution method were less adversarial and more likely to come to a consensus than couples who had been ordered by a court to attend mediation.³⁸ One possible explanation for this distinction is that court-ordered mediators often have limited time and resources to devote to the complex issues in each child custody dispute, and therefore are not able to focus on relational issues, which are key to resolving custody disputes.³⁹

While mediation is often thought of as the best method of custody resolution, research has not conclusively shown that mediation increases ongoing cooperation between disputing parents.⁴⁰ Mediation often reduces acrimony during the actual session, and the parties may come to a workable parenting agreement; however, research has suggested that the feelings of accord may not persist beyond the session.⁴¹

Laura F. Donnelly and Rebecca G. Ebron conducted a study in the 1990s regarding the effectiveness of mediation programs in selected North Carolina counties.⁴² Although Donnelly and Ebron praised several aspects of the program,⁴³ they found no evidence that

38. SAPOSNEK, *supra* note 31, at 14. In addition, couples that submit to mediation voluntarily tend to be of a higher socioeconomic status, have better spousal communication patterns, and have more respect for their former spouses as individuals. *Id.*

39. *Id.* (citing William A. Donohue et al., *Mediator Issue Intervention Strategies: A Replication and Some Conclusions*, 11 *MEDIATION Q.* 261, 273 (1994)).

40. *Id.* at 15.

41. *Id.* Researchers Howard Irving and Michael Benjamin suggest that perhaps mediation agreements do not persist after the session because it is unrealistic to expect a two hour mediation session to change deeply established behavioral patterns and “transform intense marital conflict into affectionate cooperation, and intense distress into positive postdivorce family adjustment.” *Id.* (citing HOWARD H. IRVING & MICHAEL BENJAMIN, *FAMILY MEDIATION: CONTEMPORARY ISSUES* 423 (1995)).

42. LAURA F. DONNELLY & REBECCA G. EBON, N.C. ADMIN. OFF. OF THE COURTS, *THE CHILD CUSTODY AND VISITATION MEDIATION PROGRAM IN NORTH CAROLINA: AN EVALUATION OF ITS IMPLEMENTATION AND EFFECTS* (2000), available at <http://www.nccourts.org/Citizens/CPrograms/Child/Documents/custvisitmedrept.pdf>.

43. *Id.* at 65. Some benefits cited by Donnelly and Ebron included: (1) mediation produced higher satisfaction in the handling of the case; (2) mediated cases tended to be re-litigated less often than cases that initially went to trial;

the mediation program reduced case processing time or increased satisfaction with existing custody agreements three years after the mediation took place.⁴⁴

III. METHODOLOGY

We examined case file data from child custody disputes held in Forsyth County, North Carolina Family Court from 2000 to 2003. Each child custody case file contains information regarding the progression of the child custody dispute from the initial filing to the most recent custody resolution. Along with complaints, answers, motions, and orders, some case files contain demographic information about the plaintiff, defendant, and their minor children. Each file, in addition to the initial dispute documents, contains any subsequent motions, agreements, and orders made during the child custody dispute.

To clarify, the “subsequent motions” referred to in this study include any request for modification of a custody dispute hearing, including (1) parenting agreements,⁴⁵ (2) consent orders,⁴⁶ (3) memoranda of agreement,⁴⁷ (4) memoranda of judgment,⁴⁸ (5) voluntary support agreements,⁴⁹ (6) court orders,⁵⁰ and (7) motions to modify.⁵¹ Parenting agreements are the result of mediation; consent orders, memoranda of agreement, memoranda of judgment, and voluntary support agreements are the result of lawyer-negotiated settlements; and court orders and motions to modify are the result of litigation.

In order to ascertain factors that lead to fewer subsequent custody events, we utilized a data coding software called Statistical

(3) improved communication between the parties; and (4) parents who mediated felt more in control of the custody decisionmaking process. *Id.*

44. *Id.* at 25, 38.

45. A plan that allocates custodial responsibility and decision-making authority for what serves the child’s best interest and that provides a mechanism for resolving any later disputes between parents. BLACK’S LAW DICTIONARY 1147 (8th ed. 2004). Parenting agreements are the desired result of mediation.

46. A court decree that all parties agree to. *Id.* at 441.

47. This title was used in the Forsyth County Divorce and Child Custody files to describe lawyer-negotiated settlement.

48. This title was used in the Forsyth County Divorce and Child Custody files to describe lawyer-negotiated settlement.

49. This title was used in the Forsyth County Divorce and Child Custody files to describe lawyer-negotiated settlement.

50. A written direction or command delivered by a court or a judge. BLACK’S LAW DICTIONARY 1129 (8th ed. 2004).

51. A written or oral application requesting a court to make a specified ruling or order changing an earlier order. *Id.* at 1036.

Package for the Social Sciences (“SPSS”).⁵² Using SPSS, we determined the number of subsequent motions resulting from each of three categories: (1) the type of initial resolution method used by the parties, (2) personal factors,⁵³ and (3) the judge who approved the initial custody resolution event.

We divided the number of custody events into two categories: “low” and “high.” A case considered “low” contained two or fewer events; a case considered “high” contained three or more events. Subsequent custody events can address matters dealing with not only child custody and visitation, but also child support and parental behavior around the children.

We used SPSS to run frequency tables, which show the occurrence of each variable within a particular category. After running frequency tables for the total number of subsequent motions, the type of each dispute resolution method, the personal factors, and the judge involved, we used the cross-tab function⁵⁴ in SPSS to determine whether there was a correlation between (1) the method of dispute resolution and the number of subsequent motions, (2) the personal factors and the number of subsequent motions, and (3) the judge who approved the initial custody resolution and the number of subsequent motions.

We examined data from a total of 341 cases. When a case file did not contain information about one of the variables discussed in this study, we used SPSS to treat the variable as “missing” so that the percentages would not include this missing data. Out of the 289 cases reporting the total number of custody events, 73.7% of the cases had a “low” number of custody events, while 26.3% had a “high” number of custody events.

IV. RESULTS AND ANALYSIS

A. *Dispute Resolution Method*

Our data reveal that custody disputes initially decided through litigation produced fewer subsequent custody events than those

52. “Coding” consists of assigning each result within a variable a different number, which is then entered into an SPSS coding spreadsheet.

53. The demographic factors and characteristics we examined for purposes of this study include: (1) number of children; (2) ages of the children; (3) plaintiffs’ and defendants’ income levels; (4) whether the parties had ever been married; (5) number of years the parties were married; and (6) allegations of domestic violence, parental unfitness, child abuse, neglect, abandonment, criminal record, and marital misconduct.

54. The cross-tab function in SPSS runs frequencies of two variables at one time. We ran the number of subsequent custody events against each additional variable that we examined.

initially decided by lawyer-negotiated settlements or mediation.

Table 1: Number of Custody Resolution Events Per Type of Dispute Resolution Method

	Mediation	Settlement	Litigation
1-2 subsequent custody events (Low)	52 (69.3%)	80 (75.5%)	76 (76.0%)
3 or more subsequent custody events (High)	23 (30.7%)	26 (24.5%)	24 (24.0%)
Total number of subsequent events per type of resolution	75 (100.0%)	106 (100.0%)	100 (100.0%)

Table 1 indicates that out of the 75 custody resolution cases initially concluded through mediation, 52 cases (69.3%) had a low incidence of subsequent custody events, while twenty-three cases (30.7%) had a high incidence of subsequent custody events. Of the 106 cases initially resolved through lawyer-negotiated settlements, 80 (75.5%) resulted in a low number of subsequent custody events, while 26 (24.5%) resulted in a high number of subsequent custody events. Litigation produced the fewest subsequent custody events, with 76 out of 100 cases (76%) resulting in a low number of subsequent custody events, and 24 (24%) resulting in a high number of custody resolution events.⁵⁵

Our findings here contrast with theories advanced by several custody mediation proponents. We reached the opposite result from Donnelly and Ebron's 2000 study, which found a higher rate of re-litigation when custody cases had been initially decided through trial.⁵⁶

55. As mentioned previously, a "low" number of subsequent custody events means one or two subsequent events; a "high" number of subsequent custody events means three or more events. The average number of custody events per type were: 1.88 events for litigation, 2.04 events for lawyer-negotiated settlements, and 2.29 events for mediation.

56. DONNELLY & EBRON, *supra* note 42, at 65. We recognize that the Donnelly and Ebron study focused on Wake and Mecklenburg Counties. *Id.* at 20-22. In contrast, we conducted our study in Forsyth County. Therefore, one possible explanation for this inconsistency may be due to differences in the

Some of our data indicate that there is little difference between court-ordered mediation and voluntary mediation, but there may be a meaningful difference between mediation and prior agreements between the parents. Although few cases indicated that the parties had submitted to voluntary mediation,⁵⁷ the data that we do have show that 66.7% of cases where the parties willingly mediated their dispute resulted in a low number of subsequent custody events.⁵⁸ Furthermore, where there was evidence that the parents had reached a tentative custody agreement prior to seeking legal remedies, few cases produced a high number of subsequent custody events.⁵⁹

Based on these findings, we are unable to conclude that mediation is always a low-cost, efficient alternative to litigation. It appears that proceeding automatically to mediation in custody dispute cases does not necessarily benefit the parties in terms of the time they will spend in court and the resources they will expend on hiring lawyers in the event that subsequent motions are made in the case. This is evidenced by our finding that both litigation and lawyer-negotiated settlements produced fewer subsequent custody events on average than did mediation. We recognize that mediation may lessen the emotional trauma for children often associated with the traditional competitive nature of the divorce process and may reduce anxiety for the parties. However, our data do not suggest that mediation can be justified on the grounds of cost and efficiency alone.

We hypothesized that mediation would work best when the parents voluntarily attend mediation because we thought that such parents would have a more cooperative mindset from the start and might be more focused on achieving a consensus for the sake of their children. However, we were unable to draw this conclusion from our data. It is possible that data from a larger sample could support our hypothesis.

judicial systems within each county.

57. Only 12 out of the 341 cases in our data collection indicated that the parties had submitted to voluntary mediation. However, parties are not required to report this information and therefore such information may not be included in the case file.

58. *See infra* Appendix A1. In contrast, 69.3% of court-ordered mediations resulted in a low number of subsequent custody events. *See supra* Tbl. 1.

59. Fifty-eight case files indicated that the parties had come to a prior agreement. Of those cases, forty-three (74.1%) resulted in a low number of subsequent custody events, while fifteen (25.9%) resulted in a high number of subsequent custody events. *See infra* Appendix A2.

B. Personal Factors

In addition to the type of initial custody resolution event, we examined several demographic characteristics of the parents involved, as well as other factors that may have an independent effect on the number of subsequent custody events.

1. Number of Children

We found that the number of children involved in a particular custody dispute may have an effect on the number of subsequent custody events.

Table 2: Number of Custody Resolution Events and Number of Children in Family

Number of Children				
	1	2	3	4
1-2 subsequent custody events (Low)	143 (71.6%)	56 (70.0%)	12 (70.6%)	2 (50.0%)
3 or more subsequent custody events (High)	45 (23.9%)	24 (30.0%)	5 (29.4%)	2 (50.0%)
Total number of subsequent events	188 (100.0%)	80 (100.0%)	17 (100.0%)	4 (100.0%)

Table 2 demonstrates that families with only one child were least likely to have a high number of subsequent custody events. Out of the 188 cases where the family had one child, only 45 cases (23.9%) resulted in a high number of subsequent events. Families with two or three children were slightly more likely to have a high number of custody resolution events. Families with four children were the most likely to have a high number of subsequent custody events. Fifty percent of cases involving four children resulted in a high number of subsequent custody events.⁶⁰

60. We recognize that only four families in the cases that we studied had four children. The small sample size here may affect the percentage results.

2. *Age of Oldest Child*

The age of each couple's oldest child does not seem to have an impact on the number of subsequent custody events.

Table 3: Number of Custody Resolution Events and Age of Oldest Child

Age of Oldest Child					
	0-2	3-6	7-10	11-14	15-20
1-2 subsequent custody events (Low)	56 (70.9%)	59 (76.6%)	43 (70.5%)	35 (77.8%)	17 (73.9%)
3 or more subsequent custody events (High)	23 (29.1%)	18 (23.4%)	18 (29.5%)	10 (22.2%)	6 (26.1%)
Total number of subsequent events	79 (100.0%)	77 (100.0%)	61 (100.0%)	45 (100.0%)	23 (100.0%)

Table 3 indicates that there is not a direct correlation between the age of a couple's oldest child and the number of subsequent custody events. The percentage of cases resulting in a high number of subsequent events is nearly identical for the middle age group (age 7-10) and the youngest age group (age 0-2). The percentage of cases with a high number of subsequent events does not increase or decrease in a linear manner depending on the age of the oldest child.⁶¹ We anticipated that cases involving younger children would likely result in a greater number of subsequent custody events because younger children are less autonomous and parents likely need to agree on more detailed and complex custody and care arrangements. However, the data do not tend to support our hypothesis.

3. *Income Level*

Our data show that the income level of the parties may have a potential effect on the number of subsequent custody events.

61. Similarly, our data showed that the age of the second, third, and fourth child in a family (if applicable) did not have an impact on the number of subsequent custody events.

Table 4a: Number of Custody Resolution Events and Plaintiff's Income

Plaintiff's Income						
	\$1- 14,999	\$15,000- 29,999	\$30,000- 44,999	\$45,000- 59,999	\$60,000- 74,999	\$75,000+
1-2 subsequent custody events (Low)	9 (56.3%)	38 (71.7%)	14 (60.9%)	9 (81.8%)	2 (66.7%)	5 (83.3%)
3 or more subsequent custody events (High)	7 (43.8%)	15 (28.3%)	9 (39.1%)	2 (18.2%)	1 (33.3%)	1 (16.7%)
Total number of subsequent events	16 (100.0%)	53 (100.0%)	23 (100.0%)	11 (100.0%)	3 (100.0%)	6 (100.0%)

Table 4b: Number of Custody Resolution Events and Defendant's Income

Defendant's Income						
	\$1- 14,999	\$15,000- 29,999	\$30,000- 44,999	\$45,000- 59,999	\$60,000- 74,999	\$75,000+
1-2 subsequent custody events (Low)	12 (85.7%)	27 (64.3%)	16 (59.3%)	5 (45.5%)	4 (80.0%)	9 (69.2%)
3 or more subsequent custody events (High)	2 (14.3%)	15 (35.7%)	11 (40.7%)	6 (54.5%)	1 (20.0%)	4 (30.8%)
Total number of subsequent events	14 (100.0%)	42 (100.0%)	27 (100.0%)	11 (100.0%)	5 (100.0%)	13 (100.0%)

Table 4a shows that the group of plaintiffs with the lowest annual income (under \$15,000) were the most likely to have a high occurrence of subsequent custody events (43.8% of cases). In contrast, the plaintiffs with the highest annual income (\$75,000 or more) were the least likely to have a high frequency of subsequent custody events (only 16.7% of cases). It is common for subsequent motions in child custody cases to address child support payments. Therefore, one possible reason for the above findings could be that plaintiffs with very low incomes may need to continuously petition for more child support, while those with the highest incomes may

not have such an incentive. However, the middle income groups do not follow a progressive linear pattern, so it is unclear whether the plaintiff's income is a decisive factor in the number of subsequent custody events.

Inversely, Table 4b shows that when the defendant is in the lowest income group (under \$15,000), there are very few cases with a high number of subsequent custody events (14.3%). This finding may also be related to the fact that many subsequent motions address child support. It seems that plaintiffs would be less likely to continuously petition for child support from defendants with very low incomes because of the defendant's limited financial resources. However, the other percentages do not follow a regressive linear pattern in relation to the defendant's income. Therefore, it is unclear whether the defendant's income influences the number of subsequent custody events.⁶²

4. Length of Marriage

We expected that the number of years that the couple had been married at the time of separation would influence the number of subsequent custody events. However, our data did not demonstrate any considerable relationship between these two factors.

Table 5: Number of Custody Resolution Events and Number of Years Married at the Time of Separation

Number of Years Married*					
	1-5	6-10	11-15	16-20	21+
1-2 subsequent custody events (Low)	41 (70.7%)	32 (71.1%)	22 (73.3%)	13 (72.2%)	7 (100.0%)
3 or more subsequent custody events (High)	17 (29.3%)	13 (28.9%)	8 (26.7%)	5 (27.8%)	0 (0.0%)
Total number of subsequent events	58 (100.0%)	45 (100.0%)	30 (100.0%)	18 (100.0%)	7 (100.0%)

* At the time of separation

62. Forsyth County does not require parties to report their income unless child support is at issue. Therefore, we had limited data about both the plaintiffs' and defendants' income levels, and it is possible that the incomes reported are not representative of all cases as a whole.

As is evidenced in Table 5, the percentage of cases with a high number of subsequent custody events is very similar for each category of marriage length. We recognize that there were no cases with a high number of subsequent custody events when the couple had been married for twenty-one years or more; however, since that category contained only seven cases, we are reluctant to conclude from this data that couples who have been married longer necessarily have fewer subsequent custody events.

We also examined the number of subsequent custody events depending on whether the parents had ever been married. Our data yield no substantial difference between the parents who had been married and those who had not. In cases where the parents had been married, 26.9% resulted in a high number of subsequent custody events, while 25.0% of cases in which the parents had never been married resulted in a high number of subsequent custody events.⁶³

5. Allegations

We also examined the potential effects of several types of allegations made by either the plaintiff or defendant against one another, specifically: (1) domestic violence; (2) parental unfitness; (3) criminal background; (4) child abuse, neglect, or abandonment; and (5) marital misconduct.

a. *Domestic Violence.* When the plaintiff alleged domestic violence by the defendant, there were a high number of subsequent custody events in only 23.1% of the cases. Interestingly, when the defendant alleged domestic violence by the plaintiff, there were a high number of subsequent custody events in 50% of the cases. Tables 6a and 6b display this data below.

Table 6a: Domestic Violence Alleged by Plaintiff			Table 6b: Domestic Violence Alleged by Defendant		
Did Plaintiff Allege Domestic Violence by Defendant?			Did Defendant Allege Domestic Violence by Plaintiff?		
	Yes	No		Yes	No
1-2 custody events (Low)	30 (76.9%)	175 (72.6%)	1-2 custody events (Low)	5 (50.0%)	119 (75.3%)
3 or more custody events (High)	9 (23.1%)	66 (27.4%)	3 or more custody events (High)	5 (50.0%)	39 (24.7%)
Total	39 (100.0%)	241 (100.0%)	Total	10 (100.0%)	158 (100.0%)

63. See *infra* Appendix B.

One possible reason for the increase in subsequent custody events when the defendant alleges domestic violence by the plaintiff is that the defendant has shown, by making such allegations, that he or she is willing to vigorously contest the plaintiff's suit.⁶⁴

b. *Unfitness.* Similarly, when the plaintiff alleged that the defendant was an unfit parent, 22.2% of cases resulted in a high number of subsequent custody events,⁶⁵ while 35.0% of the cases resulted in a high number of subsequent custody events when the defendant alleged that the plaintiff was an unfit parent.⁶⁶ In such cases, it also seems likely that the parties are in an especially contentious situation and the defendant is aggressively attacking the plaintiff's case.

c. *Child Abuse, Neglect, and Abandonment.* When the plaintiff alleged that the defendant committed child abuse, neglect, or abandonment, 30% of cases resulted in a high number of subsequent custody events.⁶⁷ When the defendant alleged that the plaintiff committed such acts, 40% of the cases resulted in a high number of subsequent custody events.⁶⁸ Again, it seems probable that when a defendant makes such allegations against the plaintiff, it demonstrates that an acrimonious court battle has commenced, and the parties are more likely to re-litigate the matters at issue.

d. *Criminal Record.* Cases in which the plaintiff alleged that the defendant had a criminal record did not differ substantially from cases in which the defendant alleged that the plaintiff had a criminal record in terms of the number of subsequent custody events. When the plaintiff alleged that the defendant had a criminal record, 18.5% of the cases resulted in a high number of subsequent custody events,⁶⁹ while 12.5% of the cases resulted in a high number of subsequent custody events when the defendant alleged that the plaintiff had a criminal record.⁷⁰ Because criminal records are easily verified, we think it is possible that if either party is found to have a criminal record, the opponent may have a clear

64. We recognize that there are only ten cases in our data set in which the defendant alleged domestic violence. Therefore, it is possible that the percentages would not be representative of this type of case.

65. *See infra* Appendix C1.

66. *See infra* Appendix C2.

67. *See infra* Appendix D1.

68. *See infra* Appendix D2.

69. *See infra* Appendix E1.

70. *See infra* Appendix E2.

advantage in the custody proceedings, and there may be no need for future events.

e. *Marital Misconduct.*⁷¹ Whether a party alleged marital misconduct did not seem to influence the number of subsequent custody events. When the plaintiff alleged that the defendant had engaged in marital misconduct, 27.9% of cases resulted in a high number of subsequent custody events.⁷² When the defendant alleged that the plaintiff had engaged in marital misconduct, 24.1% of cases resulted in a high number of custody resolution events.⁷³

C. *Role of the Judge*

A third consideration that we examined was whether the judge who approved the initial custody agreement had any effect on the frequency of subsequent custody events. We examined the cases heard by nine different Forsyth County judges and found that cases approved by certain judges produced more subsequent custody events than others.

Table 7: Number of Custody Resolution Events and Judge Approving the Initial Agreement

	Judge								
	A	B	C	D	E	F	G	H	I
1-2 events (Low)	53 (73.6%)	20 (64.5%)	20 (80.0%)	18 (94.7%)	10 (76.9%)	23 (88.5%)	19 (73.1%)	16 (80.0%)	20 (66.7%)
3 or more events (High)	19 (26.4%)	11 (35.5%)	5 (20.0%)	1 (5.3%)	3 (23.1%)	3 (11.5%)	7 (26.9%)	4 (20.0%)	10 (33.3%)
Total	72 (100.0%)	31 (100.0%)	25 (100.0%)	19 (100.0%)	13 (100.0%)	26 (100.0%)	26 (100.0%)	20 (100.0%)	30 (100.0%)

Table 7 shows that cases initially approved by Judges D and F were the least likely to have a high number of subsequent custody

71. "Marital misconduct" includes: (1) illicit sexual behavior; (2) involuntary separation of the spouses in consequence of a criminal act; (3) abandonment of the other spouse; (4) malicious turning out-of-doors of the other spouse; (5) cruel or barbarous treatment endangering the life of the other spouse; (6) indignities rendering the condition of the other spouse intolerable and life burdensome; (7) reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets; (8) excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome; and (9) willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome. N.C. GEN. STAT. § 50-16.1A(3) (2005).

72. See *infra* Appendix F1.

73. See *infra* Appendix F2.

events, with 5.3% and 11.5% of cases, respectively, resulting in a high number of subsequent custody events. In contrast, those cases initially approved by Judges B and I produced the highest number of subsequent custody events—35.5% of cases and 33.3% of cases, respectively.

From this data, it appears that the judge who was involved with the initial custody event may have some influence on the number of subsequent custody events. We noticed a much greater difference between the percentages here than the percentages related to the personal factors and the type of initial custody resolution method.

We cannot conclude definitively that the judge who oversees the initial custody event determines the number of subsequent custody events. However, the fact that custody resolutions initially overseen by certain judges tended to be less stable could indicate that the personal adjudicative style of the judge may make a difference in each case.

V. CONCLUSION

Based on our data, there seems to be no reliable way to calculate the long-term stability of child custody arrangements. While court-ordered mediation may have a plethora of benefits that this Study does not address, our data do not show that mediation reduces the rate of re-litigation of custody arrangements, and therefore, it cannot be justified solely from a cost-benefit or efficiency standpoint. In light of this information, we feel that the North Carolina courts should emphasize advantages of court-ordered mediation other than cost and efficiency. In addition, while certain personal factors and the particular judge who oversees the case may have a potential impact on the number of subsequent custody events, we cannot conclusively say from our data that any one of these factors is dispositive. Because each case is different, with its own inherent complexities, there is no reliable way to predict whether the initial custody agreement will be subjected to repeated changes.

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APPENDIX A

**Appendix A1: Total Number of Custody Resolution Events
When Parties Submitted to Voluntary Mediation**

Parties Submitting to Voluntary Mediation	
1-2 custody events (Low)	8 (66.7%)
3 or more custody events (High)	4 (33.3%)
Total	12 (100.0%)

**Appendix A2: Total Number of Custody Resolution Events
When Prior Custody Agreement Existed**

Cases When Prior Agreement Existed	
1-2 custody events (Low)	43 (74.1%)
3 or more custody events (High)	15 (25.9%)
Total	58 (100.0%)

APPENDIX B

**Total Number of Custody Resolution Events and Parties'
Prior Relationship Status**

Were the Parents Ever Married?		
	Yes	No
1-2 custody events (Low)	147 (73.1%)	57 (75.0%)
3 or more custody events (High)	54 (26.9%)	19 (25.0%)
Total	201 (100.0%)	76 (100.0%)

APPENDIX C

**Appendix C1: Total Number of Custody Resolution Events
and Whether Plaintiff Alleged Parental Unfitness**

Did Plaintiff Allege Defendant Was An Unfit Parent?		
	Yes	No
1-2 custody events (Low)	91 (77.8%)	111 (69.4%)
3 or more custody events (High)	26 (22.2%)	49 (30.6%)
Total	117 (100.0%)	160 (100.0%)

**Appendix C2: Total Number of Custody Resolution Events
and Whether Defendant Alleged Parental Unfitness**

Did Defendant Allege Plaintiff Was An Unfit Parent?		
	Yes	No
1-2 custody events (Low)	26 (65.0%)	97 (76.4%)
3 or more custody events (High)	14 (35.0%)	30 (23.6%)
Total	40 (100.0%)	127 (100.0%)

APPENDIX D

Appendix D1: Total Number of Custody Resolution Events and Whether Plaintiff Alleged Child Abuse, Neglect, or Abandonment

Did Plaintiff Allege Defendant Committed Child Abuse, Neglect, or Abandonment?		
	Yes	No
1-2 custody events (Low)	21 (70.0%)	52 (72.2%)
3 or more custody events (High)	9 (30.0%)	20 (27.8%)
Total	30 (100.0%)	72 (100.0%)

Appendix D2: Total Number of Custody Resolution Events and Whether Defendant Alleged Child Abuse, Neglect, or Abandonment

Did Defendant Allege Plaintiff Committed Child Abuse, Neglect, or Abandonment?		
	Yes	No
1-2 custody events (Low)	3 (60.0%)	33 (76.7%)
3 or more custody events (High)	2 (40.0%)	10 (23.3%)
Total	5 (100.0%)	43 (100.0%)

APPENDIX E

**Appendix E1: Total Number of Custody Resolution Events
and Whether Plaintiff Alleged Criminal Record**

Did Plaintiff Allege Defendant Had a Criminal Record?		
	Yes	No
1-2 custody events (Low)	22 (81.5%)	183 (72.3%)
3 or more custody events (High)	5 (18.5%)	70 (27.7%)
Total	27 (100.0%)	253 (100.0%)

**Appendix E2: Total Number of Custody Resolution Events
and Whether Defendant Alleged Criminal Record**

Did Defendant Allege Plaintiff Had a Criminal Record?		
	Yes	No
1-2 custody events (Low)	7 (87.5%)	117 (72.7%)
3 or more custody events (High)	1 (12.5%)	44 (27.3%)
Total	8 (100.0%)	161 (100.0%)

APPENDIX F

**Appendix F1: Total Number of Custody Resolution Events
and Whether Plaintiff Alleged Marital Misconduct**

Did Plaintiff Allege Marital Misconduct?		
	Yes	No
1-2 custody events (Low)	49 (72.1%)	90 (72.8%)
3 or more custody events (High)	19 (27.9%)	32 (26.2%)
Total	68 (100.0%)	122 (100.0%)

**Appendix F2: Total Number of Custody Resolution Events
and Whether Defendant Alleged Marital Misconduct**

Did Defendant Allege Marital Misconduct?		
	Yes	No
1-2 custody events (Low)	22 (75.9%)	68 (74.7%)
3 or more custody events (High)	7 (24.1%)	23 (25.3%)
Total	29 (100.0%)	91 (100.0%)