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ARTICLE

Considerations regarding child and parent neurodiversity in family court

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Abstract

Family court professionals must continually be developing a greater appreciation of diversity in its many forms. As with cultural diversity and non-traditional families, neurodiversity in children and parents is another social justice issue in which overt or implicit bias may impact child custody decision-making, such as when a divorcing parent has a significant psychiatric or neurocognitive condition. The neurodiversity perspective, while having its limitations, can help reduce bias in family court by recognizing that there is a broad range of brain functioning, while taking a strengths-based approach, as opposed to a pathology orientation. This article will define neurodiversity, address how the stigma of mental health conditions can lead to automatic negative presumptions about parental competency, as well examine how the voices of neurodiverse children can be better heard in family court processes. Lastly, principles for court personnel to consider with neurodiverse parents and children will be elucidated.

KEYWORDS
ADHD children and divorce, autistic Spectrum disorders, bias in family law, child custody, disability justice, divorce and children with disabilities, neurodiversity, special needs children and divorce

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Key Points for the Family Court Community

- As with cultural diversity and non-traditional families, neurodiversity is a social justice issue in which overt or implicit bias may impact child custody decision-making.
- Commonly recognized parenting plans may be inappropriate for many neurodiverse children, as some function below their chronological age and pose extreme behavioral challenges.
- A concern for neurodiverse children, especially those that suffer from language or intellectual impairment, is how their voices can be heard regarding the legal decisions that will impact them.
- Frequently, parents may be automatically presumed as "not competent" by having a mental health diagnosis. Instead of focusing on the diagnostic label, it is vital to assess the severity of a parent's symptoms, treatment compliance, and how the parent is managing stress related to their mental health condition.
- Child custody decision makers should be mindful of how diagnostic information is often misapplied or misunderstood; a parent's mental health condition should only become relevant to the extent that the condition affects the ability to parent a child effectively.

INTRODUCTION

To best serve families undergoing separation and divorce in an unbiased and fair manner, family court professionals must continually be developing a greater appreciation of diversity in its many forms. This includes ethnic and cultural diversity, gender diversity, non-traditional families, and individuals with disabilities. Recently, there has been a greater understanding of how implicit biases (i.e., biases that occur automatically, unintentionally, and unconsciously) may affect legal outcomes in employment, criminal, immigration, bankruptcy, and personal injury cases (Banaji & Greenwald, 2016). There has also been a greater appreciation of how implicit biases may impact decision-making in family court matters (Maldonado, 2017). While few scholars have examined the role of implicit bias in family law decisions, unconscious biases may influence a judge's or custody evaluator's perception of a parent's behavior as defensive, passive, or impulsive based on racial or cultural stereotypes (Maldonado, 2017).

Neurodiversity is a less recognized area of diversity in children and adults. Recently, there have been positive developments in the family law arena regarding neurodiversity in children, as exemplified by the increasing attention given to the unique considerations of children with special needs in families undergoing divorce and separation (Pickar & Kaufman, 2015; Rappaport et al., 2016). Neurodiversity in parents also presents great challenges in family court. For example, overt or implicit bias may impact decision-making in judges, custody evaluators, parenting

coordinators, and recommending mediators when a divorcing parent has a significant psychiatric disorder or neurocognitive disability (Hinshaw, 2007; Van Brunt et al., 2016). When a parent has a mental health condition or disability, there may be an automatic assumption that parenting capacity will be uniformly negatively impacted by this problem (Benjet et al., 2003; Dutton et al., 2011). However, viewing parents or children who have been diagnosed with psychiatric or neurocognitive conditions as *neurodiverse* instead of *disordered or abnormal* may help reduce bias, and is an important framework for considering such individuals' strengths or assets, in addition to areas of challenge.

This article will begin by defining neurodiversity in both children and adults while denoting why it is important to carefully consider this issue in family court cases. With respect to children, family courts are seeing an increasing number of separating and divorced families who have a child with special needs, including children with neurodevelopmental, psychiatric, and medical conditions. These cases present complex challenges for family law professionals charged with crafting parenting plans (Pickar & Kaufman, 2015; Rappaport et al., 2016; Saposnek et al., 2005) and providing post-divorce counseling and dispute resolution services for parents who have a child with special needs (Pickar & Kaufman, 2019). Regarding adults, neurodiversity has been described by some as the next frontier in social justice (Lollar et al., 2021). The existing stigma against psychiatric conditions leads many individuals to believe that those who suffer from mental health challenges are violent or unable to function in their everyday lives (Van Brunt et al., 2016). In the context of a child custody dispute, this stigma may cause fear, prejudice, and discrimination by family court professionals (Dane & Rosen, 2016). Judges, attorneys, and mental health professionals working within the family law arena, like people in general, have negative images and concerns about people with mental health challenges. The impact of stigma can be as harmful as the psychiatric disorder itself (Hinshaw, 2007).

This article will further explore how the stigma of mental illness may lead to bias about parental competency, thereby leading to unnecessarily restrictive family court decisions regarding parent–child contact. Also examined will be unique considerations regarding neurodiverse children, how their voices can be heard in court processes that will affect them, and how their post-separation needs can best be met. Reducing bias about neurodiversity in child custody evaluators and judges will be addressed, along with the limitations of using a neurodiversity model in court. Lastly, principles for court personnel to consider with neurodiverse parents and children will be elucidated.

WHAT IS NEURODIVERSITY?

Neurodiversity as a concept is about 20 years old and is generally credited to Judy Singer (2016). Neurodiversity is a neologism used to refer to variations in the human brain regarding sociability, learning, attention, mood, and other mental functions in a non-pathological sense (Armstrong, 2010). The concept originated as a movement among individuals with autism who wanted to be seen as different, not disabled (Silberman, 2015). The notion of neurodiversity is very compatible with civil rights pleas for minorities to be accorded dignity and acceptance, and not to be pathologized. The concept of neurodiversity provides a paradigm shift in how we think about mental functioning. Instead of regarding large portions of the American public as suffering from deficit, disease, or dysfunction, neurodiversity suggests that we instead speak about differences in cognitive functioning. Just as we talk about cultural and ethnic diversity, as well as gender and sexual diversity, neurodiversity advocates contend that we need to start using the same kind of thinking about the brain. By using the concept of neurodiversity to account for individual neurological differences, we create a discourse whereby labeled people may be seen in terms of their strengths, not only their weaknesses. Neurodiversity may also draw some of its vitality from the positive psychology movement (Seligman et al., 2005), which emphasizes that psychology has spent too much time focusing on what is wrong with personality, as opposed to the strengths, talents, aptitudes, and abilities of individuals with neurologically based differences.

Over the past 50 years, the field of psychiatry has witnessed a phenomenal growth in the identification and labeling of new mental health conditions. The National Institute of Mental Health reports that nearly one in five U.S. adults lives with a mental illness (NIMH, 2019). Likewise, according to the World Health Organization,

10%–20% of children suffer from a psychiatric or neurodevelopmental disorder. In 1952, the DSM-1 listed 128 diagnoses, whereas the DSM-5 (APA, 2013) lists 541 diagnoses (Blashfield et al., 2014). In the field of psychiatric diagnostic nosology, there are "fuzzy" borders around many mental disorders. For example, in considering the issue of "what is a mental disorder?" Stein et al. (2021) recently noted that the real possibility exists of erroneously classifying behavioral variations as "disorders," when they might be better conceptualized using other categories such as "non-pathological individual differences." One promising development of the DSM-5 (APA, 2013), compared to earlier editions, is that a greater cultural sensitivity and humility is incorporated throughout the manual. For example, DSM-5 has updated its diagnostic criteria to reflect cross-cultural variations in presentations and provides more detailed and structured information about cultural concepts of distress. There is a recognition that different cultures and communities exhibit or explain symptoms in various ways. Because of this, it is important for the clinician to be aware of relevant contextual information stemming from a patient's culture, race, ethnicity, religion, or geographical origin.

Neurodiversity includes the notion that conditions like autism, dyslexia, and attention deficit/hyperactivity disorder (ADHD) should be regarded as naturally occurring cognitive variations with distinctive strengths that have contributed to the evolution of technology and culture, rather than mere checklists of deficits and dysfunctions (Silberman, 2015). A neurodiversity framework seeks to recognize that many important and gifted individuals throughout history have had various forms of mental and neurological differences and that appreciating the contributions from people with this kind of diversity is essential (Hinshaw, 2007). Many individuals with autism have adopted the neurodiversity framework, coining the term "neurotypical," to describe the majority brain. Simon Baron-Cohen (2019), a prominent autism researcher, notes that the neurodiversity perspective argues that in highly social and unpredictable environments, some brain differences may be manifested as disabilities, while in more autism friendly environments, the disabilities can be minimized, allowing other differences to blossom as talents. What is attractive about the neurodiversity model is that it does not pathologize or focus disproportionately on what the person struggles with, but instead, takes a more balanced view, to give equal attention to what the person can do. In addition, it recognizes that genetics or other kinds of biological variation are intrinsic to peoples' identity and sense of self and personhood, which should be given equal respect alongside any other form of diversity such as gender or ethnic diversity.

What mental health or neurodevelopmental conditions would be encompassed under the term "neurodiversity"? This is not altogether clear, as there are varying definitions of this term. Regarding youth, the term *special needs children* is an umbrella designation that encompasses a staggering array of children who have specific learning disorders and cognitive impairment, serious medical conditions, and severe psychiatric and behavioral disorders. (Pickar & Kaufman, 2015). Similarly, in adults, because the term neurodiversity is relatively new, the definition has not been set down in stone. Armstrong (2010) expanded upon the original notion of neurodiversity's connection to autism spectrum disorders, to examine other disorders of neurological origin, which may instead represent alternative forms of natural human differences. This includes considering ADHD, dyslexia, mood disorders, anxiety disorders, intellectual disability, and even schizophrenia, as forms of neurodiversity. For example, lower gray matter volume in parts of the prefrontal cortex, the hippocampus, and the anterior cingulate cortex has been found in individuals who suffer from chronic depression (Pandya et al., 2012). Brain differences in the amygdala play a large role in anxiety disorders while the prefrontal cortex, which controls executive functioning, has been implicated in ADHD (Pliszka, 2016). Armstrong further denotes that human competence - and whether you are regarded as disabled or gifted - depends largely upon culture, in addition to when and where you were born. For example, ADHD, with its three major symptoms of hyperactivity, distractibility, and impulsivity, likely had major advantages in prehistoric and hunter-gatherer societies. A human being who has increased motor activity does a better job of foraging for food, seeking shelter, and engaging in other important survival tasks. The ability to rapidly shift one's attention from one thing to another (i.e., distractibility) makes a person constantly vigilant to possible threats to the safety of one's tribe and family. Around the world today, there are still many cultures where ADHD symptoms are viewed as positive traits, and much has been written about that (Hartmann, 1997). Neurodiversity is also embraced in the workplace by numerous companies which employ people on the autism spectrum to put their autistic intelligence to work in the technology industry (Silberman, 2015).

One of the most important benefits of considering the concept of neurodiversity to account for individual neurological differences is that we create a discourse whereby labeled people may be seen in terms of their strengths, in addition to their areas of challenge. For example, Armstrong (2010) has suggested that people with dyslexia can be viewed in terms of their visual thinking ability and entrepreneurial strengths, while people with ADHD can be regarded as possessing a penchant for novel learning situations. Certain individuals with autism spectrum disorder (ASD) can be regarded as possessing heightened talents in the areas of computer programming or mathematical computation. Furthermore, those with bipolar disorder can be appreciated for their creative pursuits in the arts (Armstrong, 2010). As a cautionary note, however, appreciating the neurodiversity perspective does not mean that we shirk the realization that people with these conditions often suffer great hardships, with challenges stemming from those differences often requiring medical, psychological, and educational intervention. They also suffer because most mainstream environments do not suit them.

Lastly, it is important to comment on the language utilized when referring to mental health and neurocognitive conditions. As with neurodiversity, the term *disability* is a broad term that is defined in both legal and scientific ways and encompasses physical, psychological, intellectual, and socioemotional impairments (World Health Organization, 2011). The members of some groups of people with neurodiverse conditions have ways of referring to themselves that they prefer others to adopt. There is an ongoing discourse regarding whether to use *first-person language* (i.e., a person with autism or an individual with depression) or *identity-first language* (i.e., an autistic person or a depressed person) (APA, 2020), but it may be permissible to use either approach depending upon the preference of the individual or group to which you are referring. Moreover, there may be subcultures within the larger culture of a neurodiverse condition, such as with autism, whereby some individuals preferred to be called *a person with autism*, while others prefer to be called *autistic*, as they believe the latter term accurately represents their unique identity. Another concern is that when a youth is labeled as a *special needs child*, this may lead them to feel that they have challenges that cannot be overcome and may instill a sense of hopelessness (Stern, n.d.). Therefore, using first-person language which references an individual's particular condition, such as *a child with ADHD* (i.e., as opposed to an *ADHD child*), or using a broader descriptive category when describing groups of individuals, such as *children with special needs* (as opposed to *special needs children*) is preferred and better supports the dignity of the individual.[1] It is also important to note that the language of neurodiversity, psychiatric conditions, and disability is constantly evolving.

NEURODIVERSE CHILDREN IN FAMILY COURT

The neurodiversity perspective seeks to change the conversation about children and adults with special needs from a disability or disorder discourse to a diversity discourse (Armstrong, 2012). While the terms “children with special needs” or “students with a disability” are still very necessary for obtaining state and federally mandated special educational resources and making sure that appropriate medical and therapeutic services are obtained for such children, the term “neurodiversity” also directs us to maintain awareness of some of the unique strengths of the child with special needs. Therefore, in this section, both the terms *children with special needs* (CSN) and *neurodiverse children will be used* interchangeably, to include a large variety of neurodevelopmental and psychiatric conditions. Family courts are seeing an increasing number of separating and divorcing parents who have a neurodiverse child. Recently, attention has been paid to the unique considerations of children with special needs undergoing separation and divorce. For example, it has been increasingly recognized in the family law arena that commonly recommended parenting plans may be inappropriate for many CSNs, as some function significantly below their chronological age and poses extreme behavioral challenges (Pickar & Kaufman, 2015). Pickar and Kaufman (2015) contend that a systematic analysis of risk and protective factors should inform timeshare arrangements and determinations with this varied

[1]In previous publications referenced within, I have used the term “special needs children,” whereas in hindsight, I wish the term “children with special needs” had been utilized instead.

population, including the safety of the child and severity of the disorder, parental commitment to pursue medical, educational, and therapeutic services, the parental attunement and insightfulness about the child's diagnostic difficulties, and the differential parenting skills of each parent. To this end, Pickar and Kaufman (2015) devised a framework for analyzing such risk and protective factors to identify and devise effective parenting plans for specific types of CSN. These authors have also addressed how gatekeeping issues may manifest in separating families with a child with special needs (Kaufman & Pickar, 2017), and the need for involving both parents in post-divorce treatment and intervention planning (Pickar & Kaufman, 2019).

Family law professionals have embraced the research-based findings that children of divorce do best when they have continued access to, and substantial time with, both parents (Meyer et al., 2017; Steinbach & Augustijn, 2021). However, not all parents of neurodiverse children with significant challenges have the requisite time, resources, and/or proficiency to provide specific and specialized interventions and structure. Additionally, reliance on what are seen as developmentally appropriate parenting time arrangements may not serve the neurodiverse child well. When such an imbalance exists, the less involved or less effective parent can be supported to improve parenting skills with the aim of having both parents contribute actively and significantly to the child's healthy development. Even with such parental intervention, though, traditional parenting plan schedules used with neurotypical children may not serve the neurodiverse child well. For example, for autism spectrum disorder (ASD) children of moderate to high severity, the need for sameness in the environment may supersede the need for sameness of routine. Thus, even if routines in two homes are coordinated and come close to mirroring each other, the ASD child may still be stressed by merely transitioning to a different physical environment (Pickar & Kaufman, 2015; Rappaport et al., 2016). Likewise, children with ADHD often have trouble with shifts in environmental settings, as they can be slow to adapt when moving from one household to the other, especially when there are differences between the two home environments. Thus, parenting plan schedules with more frequent transitions between the homes are often problematic, especially so with mid-week transitions, as these children need stable routines to meet the demands of school (Pickar & Kaufman, 2015). This is why Saposnek's et al.'s previous call to action "to replace *best interests of the child* with the enhanced standard of *best interests of the special needs child*" should be heeded (Saposnek et al., 2005, p. 579).

No high-quality empirical research has examined whether children with special needs are less likely to be placed in joint physical custody and if they are, whether they have more problems than neurodiverse children living in sole custody or one primary home (Emery, 2021). One relevant study does exist regarding judicial decision-making about children with special needs, which is a review of Canadian case law involving children with autistic spectrum disorder (ASD) (Saini et al., 2015). Several themes or principles emerged which the courts emphasized in decision-making regarding families with a child with special needs. The themes, including seeking and responding to a diagnosis of ASD, advocating for their child, parental endorsement of needed therapies, and stability and routine for an ASD child, bear a striking similarity to several of the risk and protection factors identified by Pickar and Kaufman (2015). These authors also similarly noted from their case law analysis that a custody decision or parenting plan that may work well for a typical family may not be the best decision for a family that has a child with ASD.

There have been recent attempts to describe some of the vulnerabilities of neurodiverse children in high conflict divorce, where there may be an increased risk of developing an alliance with one parent while resisting or refusing contact with the other. For example, Walters and Friedlander (2016) noted that some children with special needs may be ill-equipped to handle ongoing parental conflict and are vulnerable to rejecting a parent as a means of solving an otherwise overwhelming problem. They note that a child's rigid, rejecting stance of a parent may reflect, in part, having resources that are too limited or inadequate for navigating shared time with warring parents. Garber (2020) noted that a child with deficits of resilience, security, and capacity to manage change may lack the resiliency to withstand the intense pressures of the custody battle and the aligned parents' alienating behaviors. Polak et al. (2020) noted that a child with special needs rejecting stance towards a parent may reflect limited emotional or psychological resources to cope with the high conflict climate between the parents, as these children are especially vulnerable to the strong forces at play.

Another concern for many neurodiverse children, especially those that suffer from language or intellectual impairment, is how their voices can be heard regarding the legal decisions that will impact them. The United Nations Convention on the Rights of the Child (UNCRC), created over 30 years ago, led to an increasing awareness of the importance of listening to children's preferences and views about decisions that directly affect them. Family law professionals who are tasked with listening to a child with special needs' view regarding parenting plan preferences face many challenges, as a neurodiverse child's ability to express their voice, in some situations, is limited by the features of their condition. Recent empirical efforts have also been made to understand children's strategies for giving voice to their needs (Zumbach et al., 2021). These authors noted that children with lower social and emotional developmental status may have more limited resources for will-expression, but this should not mean that their voice is less important. A child with special needs may express their views in a variety of ways, not limited to only verbal communication. As Lundy (2007) noted, effective listening also involves "looking," as in behavioral observation and analysis. Therefore, the question becomes, how can we listen to a CSN to understand their voice? For example, children with ASD may have communication challenges, but an attempt to understand their desires is no less important than for children with no ASD diagnosis (Saini et al., 2015). Representing a neurodiverse child's voice also entails using the collective wisdom from child psychiatry and pediatric medicine research regarding the developmental needs, known risk factors, and protective factors for children with a variety of neurodevelopmental and psychiatric difficulties. This includes utilizing research-based diagnostic knowledge of the developmental courses of specific disorders that can eventuate in physical, social, and/or emotional compromise of the child with special needs. Birnbaum (2017) found that elementary school-age children and adolescents typically want to speak to a professional about their views and preferences in post-separation matters, so the same can be said for children with special needs, but many may not be able to express their views directly, so alternative methods of understanding their voice must be considered.

It bears mentioning that there are benefits to diagnosis for children, such as when a child who had previously not been diagnosed with an educationally handicapping condition receives a diagnosis, therefore allowing that child to be better assisted via receiving a variety of educational, mental health, or medical services, some of which may be specifically funded by the government or a health plan when the diagnostic condition is verified (U.S. Department of Education, 2008).

NEURODIVERSE PARENTS IN FAMILY COURT

Neurodiversity in parents will be addressed in three ways. First examined will be the issue of the stigmatization of mental health conditions and how this can lead to bias, discrimination, and unfair treatment by others. Secondly addressed will be the frequent automatic negative assumption parents with neurodiverse conditions face in family court. Lastly, the importance of education about mental health conditions and neurodiversity will be highlighted, which can help reduce bias against both neurodiverse parents and children.

The stigma of psychiatric conditions

What is meant by the stigmatization of psychiatric conditions? Underlying this concept are stereotypes or beliefs about social groups that are made in an all-or-none fashion, characterizing an entire group, while dismissing individual differences or the unique characteristics of persons within the group. When stereotypes become rigid, and particularly when they overlook any specific data regarding the person or group in question, they tend to acquire a negative, pejorative flavor. Stereotypes then become prejudices leading to discrimination, unfair treatment, and potentially harmful action towards those in that group. Discriminatory practices may be unofficial or officially sanctioned by law or judicial ruling (Hinshaw, 2007). Ultimately, stigma refers to a devaluation of certain individuals on the basis of some characteristic they possess. Stigma is an issue of social injustice, and while mental health

conditions may indeed lead to dysfunction in certain areas and require treatment, the reduction of stigma requires an appreciation of human diversity. Therefore, might the concept of neurodiversity lead to a more favorable social status than being branded as mentally disordered?

Bias and parental neurodiversity

It is frequently the case that parents may be presumed "not competent" by having a mental health diagnosis (Hinshaw, 2007). The legal rights of many parents may be curtailed by disclosing a history of mental health challenges or psychiatric hospitalization, as the other parent without such a history may be presumed to be the better parent. Another stigma or source of bias stems from the belief that a serious mental health diagnosis equates to dangerousness and violence as it pertains to parenting (Van Brunt et al., 2016). Media portrayals of people with mental health challenges who serve in parental roles are rarely cast in a positive light. Family court personnel who have had a compelling experience of how a parent's psychiatric condition negatively impacted their safe and effective parenting of their child may then develop a bias or "availability heuristic" (Kahneman, 2011) leading them to view those with mental health challenges as likely to be unfit parents. Thus, there is a detrimental effect of allowing limited case examples to drive larger correlational conclusions. Van Brunt et al. (2016) examined six common myths concerning dangerousness and mental health, concluding that there are several ways to mitigate the risk of overattributing the risk of potential violence to mental health problems or misrepresenting the impact of psychiatric conditions on an individual's fitness to parent. These authors suggest that rather than making broad assumptions about equating mental illness with a proclivity towards violence and how this impacts the ability to parent, that court personnel look at the behavior, not the diagnosis. While single case studies may give the impression that depression, bipolar illness, or autistic spectrum disorder leads to unfit parenting, there are many parents with such conditions who receive the proper treatment and care that allows them to be exceptional parents. For example, it is often presumed that a parent suffering from depression will not have the energy to be consistently attentive and emotionally available for their child, but this is highly dependent on several external factors, such as whether that parent is receiving therapy or whether the symptoms are generally controlled by medication (Deutsch & Clyman, 2016). Therefore, instead of focusing on the diagnostic label, it is vital to assess the severity of symptoms, past and present experiences with treatment, and how the individual is managing the stress in their life related to the mental health condition. This does not obviate the need, though, to still examine whether a parent's mental health condition is, or is not, impacting the children.

Many parents involved in contested child custody litigation will claim that the fact that the other parent takes psychiatric medication makes them an unfit parent. There is no evidence that taking psychiatric medication equals a higher risk for dangerousness or unfit parenting, although such claims are frequently encountered by family court judges and child custody evaluators. Rather, a parent who receives therapy or takes medications for psychiatric reasons is exhibiting great responsibility in dealing with their condition, so it does not negatively impact parental functioning. Family court professionals should also not assume that an increase in stress will lead to major problems with parental functioning. The question is whether the parent, at such times, is accessing and using resources and support during times of heightened stress. As the saying goes, while rain may be a negative stressor, it is less so for the person who has an umbrella (Van Brunt et al., 2016).

The role of education and the media in combating stigma regarding psychiatric conditions

Corrigan et al. (2012) examined how public stigma of mental health conditions can be reduced by conducting a meta-analysis investigating the effects of various anti-stigma approaches. Both education and contact had positive effects on reducing stigma regarding adults and adolescents with mental health conditions. Given the pervasively

negative images promulgated about psychiatric conditions through general language and the media, it is indeed crucial that narratives of strength as well as weakness, normality as well as deviance, and diversity as well as conformity, filter to the public's consciousness if inroads are to be made against stigma (Hinshaw, 2007). Narratives of strength, courage and resilience matter and showcasing them is essential. Stories related to the success individuals with disabilities or neurodiversity may not make for sensational headlines, but they should receive far more media attention than they do. Films such as *Temple Grandin* (Ferguson & Jackson, 2010), documenting the well-known scientist and author with autism who became one the top researchers in the humane livestock handling industry, or *Crip Camp: A Disability Revolution* (Newnham & Lebrecht, 2020), about American civil rights disability activism by individuals with disabilities, can help educate and reduce stigma while creating tremendous respect for those who are not neurotypical or able-bodied. Positive portrayals of neurodiverse children and adults have also recently been seen in such excellent Netflix shows as *Atypical* (Rashid, 2017–2021) and *Special* (O'Connell, 2019-2020).

Also crucial is education regarding neurodiversity for those in the fields of medicine, psychology, and law. The neurodiversity writings of Thomas Armstrong (2010, Armstrong, 2012) are particularly instructive in helping gain a greater appreciation of the unique strengths and assets of children and adults with a range of psychiatric and neurodevelopmental conditions. Using autistic spectrum disorders as an example, Nicolaidis (2012) emphasized that most physicians have been trained to think about autism using a deficit model, which focuses almost exclusively on impairments and limitations, ultimately leading physicians to see autistic individuals as broken or ill people who need to be fixed. While medical, mental health, and legal professionals need to develop awareness and sensitivity regarding differences across race, ethnicity, gender and sexuality (to name a few), the neurodiversity perspective challenges us to rethink psychiatric and neurocognitive conditions through the lens of human diversity. As opposed to only focusing on impairment, the neurodiversity model views neurodiverse individuals as possessing a complex combination of strengths and challenges. For example, while ASD individuals may have difficulty understanding social nuances, filtering competing sensory stimuli, or planning the tasks of daily living, this may be coupled with strengths in detailed thinking, memory, and complex pattern analysis. Thus, balanced media portrayals which highlight not only weaknesses, but the strengths of neurodiverse children or parents can go a long way towards reducing stigma.

Lastly with respect to the education of scientists and health care practitioners, in addition to developing cultural competence, the concept of *cultural humility* has great application in reducing bias regarding neurodiversity. Cultural humility is a process of self-reflection in health care education, which seeks to eliminate health care disparities based upon bias related to ethnicity, gender, sexuality age, socioeconomic status, or ability—to name a few. (Yeager & Bauer-Wu, 2013). Cultural humility is more than just self-awareness and education in offering culturally competent care, but rather, requires one to step back to understand one's own assumptions, biases and values. It also entails developing an ongoing sensitivity to significant cultural issues of others. Therefore, adapting the concept of cultural humility to the realm of neurodiversity could be most helpful in combating bias and stigma, by increasing medical, mental health, and legal professionals' awareness of bias and automatic negative presumption, while also enhancing the development of a strength-based perspective, in which neurodiverse people are seen for their unique strengths, and not just their difficulties.

LIMITATIONS OF NEURODIVERSITY MODEL

The concept of neurodiversity has created a debate within the medical field, as many psychiatric problems are more compatible with a medical rather than a neurodiversity model. Regarding ASD for example, Simon Baron-Cohen (2017, 2019), an internationally recognized autism researcher, contends that there is neurological and genetic evidence for both *neurodiversity* (i.e., genetic and neurological "variants"), *disorder* (i.e., an individual has symptoms causing dysfunction where the cause is unknown), and *disease* (i.e., a disorder which can be ascribed to a specific causal mechanism). Furthermore, Baron-Cohen (2019) states: "Neurodiversity is a fact of nature; our brains are all different. So there is no point in being a neurodiversity denier, any more than being a biodiversity denier. By taking a

fine-grained look at the heterogeneity within autism we can see how sometimes, the neurodiversity model fits autism very well, and that sometimes the disorder/medical model is a better explanation" (Baron-Cohen, 2019, page 7).

It is very important to underscore that many psychiatric conditions involve tremendous hardship, suffering, and pain. The importance of identifying serious mental health conditions, treating them appropriately, and developing the means for prevention in early childhood, if possible, cannot be overstated. The potential danger is that an over-emphasis on neurodiversity could end up romanticizing or glorifying serious mental health conditions, which is clearly not a worthy goal. The impairments accruing from many forms of psychiatric problems are real and often devastating. Still, to the extent that normality and pathology exist on a continuum, the neurodiversity perspective is legitimate, useful, and humanizing.

REDUCING BIAS AGAINST NEURODIVERSE PARENTS IN FAMILY COURT

Nomothetic research studies often conclude that parental deficits may stem from certain types of mental health conditions, but for a given individual, it is improper to infer that a mental health diagnosis implies specific deficits in parenting. It not uncommon that a parent in a litigated divorce situation will claim that the other parent has narcissistic or borderline personality disorder, thereby making them unfit for joint physical or legal custody. While it may be true that in some instances, a personality disorder creates difficulties with aspects of parenting, it is still necessary to show that the parental personality problems are manifesting in behaviors that have negative consequences for the child (Neuman, 2012). Likewise, while Jennings (2005) noted that some parents with autism may have deficiencies in empathy and relational reciprocity, which is inherent to the disorder, a parent with ASD may also exhibit a very keen emotional attunement to their child with ASD, stemming from their own experience growing up with ASD. Similarly, while having ADHD can lead to parental challenges, such a problem can also lead to many strengths in parenting one's own ADHD child, including an elevated energy level for their child's high activity level, and a special attunement to the social challenges their child might fight face due to impulsivity. Also, while parenting and mental health are clearly linked, they are also linked to the developmental stage of the child, the sociocultural context, the timing and onset of episodes, and child factors such as temperament (Deutsch & Clyman, 2016).

Child custody decision-makers should be mindful of how diagnostic information is often misapplied or misunderstood. Mental health diagnoses should only become relevant in a child custody matter to the extent that the condition affects the ability to parent a child effectively. The DSM-5 (APA, 2013) has many limitations as the categorical model pulls for an overly simple and reductionistic view of human behavior that ignores social context and family environment and is less valid when applied to other cultures. For example, what appears to be a delusional idea or marker of schizophrenia in American culture may be a commonly held belief in another culture (Canino & Alegría, 2008). Given the complexities inherent in DSM-5 information presented in court (e.g., misunderstood or distorted reports of symptoms which may include parental attempts to portray the other parent as pathological), a reliable and valid assessment of clinical symptoms in a custody evaluation context must consider unique factors such as the impact of symptoms on specific parental and co-parental tasks and the ways in which such symptoms influence the children general functioning and well-being (Deutsch & Clyman, 2016).

Many child custody evaluation reports, especially those using psychological testing, may only focus on parental psychopathology or dysfunctional aspects of parenting stemming from a mental health condition, without adequate discussion of individual parenting strengths (Pickar & Kaufman, 2013). A more balanced approach is necessary in report writing, such as denoting the strengths in a parent's psychological make-up and functioning, in addition to their areas for improvement. Recent contributions from positive psychology can also be most helpful when approaching neurodiversity issues in parents. Research in therapeutic approaches utilizing positive psychology (Seligman et al., 2005) have found that emphasizing a person's strengths may provide as many therapeutic benefits as trying to fix what is wrong with them. Pickar and Kaufman (2013) emphasized that when evaluators write reports,

it is helpful to assume that most parents want to do what is best for their children and improve upon their parenting skills. Parents may just not know how to do it, particularly in the high-conflict climate of custody litigation. Parenting strengths should be clearly denoted in reports and by bench officers. When discussing areas for improvement, evaluators should do so in a way that utilizes what Appelbaum (2010) described as "forensic empathy." As much as possible, highlighting ineffective parental approaches should be paired with suggestions and strategies for improvement, thereby increasing hope and emphasizing the parent's own desire to enhance their skills. Though the presence of psychological and emotional problems should not be ignored, it can also be described in conjunction with the more adaptive aspects of the parent's personality functioning and parenting skills.

PRINCIPLES FOR COURT PERSONNEL TO CONSIDER WITH NEURODIVERSE PARENTS AND CHILDREN

No legislation currently exists that specifically mandates the courts to consider custody and safety issues for divorcing families with a child with special needs. Also, many states do not specifically consider the mental health needs of the child in determining what is in child's best interests (Mermelstein et al., 2016). While the presence of domestic violence is a mandatory factor that most states must consider when determining the best interests of the child, the special needs of a child is only a possible factor the court may consider. Mermelstein et al. (2016) contend that the special needs of a child due to mental or behavioral health conditions must be a statutorily required factor when the court considers and decides a parenting plan under the "best interests of the child" standard.

Most developmentally based parenting plan models have been developed with neurotypical and able-bodied children in mind. Also, most risk-assessments models utilized by child custody evaluators or other court personnel for issues such as relocation (Austin, 2007) or domestic violence (Austin & Drozd, 2012; Jaffe et al., 2008) have been developed with neurotypical children in mind, but not with neurodiverse children. Therefore, with neurodiverse children, decision-makers should consider "developmentally appropriate" parenting plans with caution, as they may not be best for many children with moderate to severe special needs. As noted by Pickar and Kaufman (2015), in many instances, the need for stability in residential placement and consistent routine may outweigh a custodial schedule that provides significant time with both parents. Decision-makers need to be especially cautious about custodial plans that include multiple transitions each week, especially during times that are challenging for many neurodiverse children, such as school days. Such considerations may conflict with the predominant judicial tendency to order fully shared physical custody arrangements, even when not in the best interests of the neurodiverse child.

As a cautionary note, the previously described concerns about equally shared parenting plan arrangements for some neurodiverse children are not meant to be weaponized for creating a presumption against a more equally shared parenting plan arrangement for children with special needs. There are many neurodiverse children, when they have two effective parents in agreement about the nature of their child's diagnosis and have a reasonably good coparenting relationship which can support the child's transitions between homes, who may do fine with relatively equally shared parenting plan arrangements. For example, the risk assessment model co-developed by Pickar and Kaufman (2015) emphasizes that the severity of the child's special needs condition is a crucial factor in determining the best type of post-divorce living arrangement, as many neurodiverse children may function quite well in equally shared parenting plan arrangements, even those with multiple transitions between homes each week. Additionally, evaluators and decision-makers need to be on the look-out for maladaptive restrictive gatekeeping dynamics sometimes seen in post-divorce families with a neurodiverse child (i.e., "the parent as expert" or "the only capable parent," Kaufman & Pickar, 2017, p. 201) in which a parent may adopt a position that unnecessarily jeopardizes the neurodiverse child's relationship with the other parent. In developing parenting plans, it is often crucial to consider *safety first*, as some neurodiverse children with severe forms of ASD, ADHD or depression may be particularly at risk for self-destructive or impulsive behavior, elopement, or excessive risk-taking. As previously discussed, decision-makers should contemplate whether some resist-refuse dynamics seen in high conflict divorce may stem from a

neurodiverse child's inability to manage the stresses from a parental custody battle, thereby aligning with one parent over the other for reasons of security and to simplify life, given the fewer coping resources which may stem from their condition (Garber, 2020; Polak et al., 2020; Walters & Friedlander, 2016).

Regarding potential bias towards neurodiverse parents, Dane and Rosen (2016) caution that while some research studies focus on the negative effects of mental health conditions on parenting, bench officers must remain cognizant that the existence of a mental health challenge does not, by itself, warrant a denial of physical custody or parenting time. A parent suffering from a mental health condition may still be capable of providing a nurturing and loving home environment and meeting all the child's needs. There must be a nexus between the parent's mental health condition and the relationship of that condition to the child for those issues to impact a custody decision. For example, we must not presume that a parent who has suffered from depression is less available or inattentive to their child than a non-depressed parent. The impact of a mental health condition on parenting capacity varies depending upon the child's age at the outset, the severity and duration of problem, and the strengths and resources of that individual and family.

Lastly, most attorneys are not trained as mental health professionals and diagnosis is beyond their scope of practice (Frost & Beck, 2016). Nonetheless, family law attorneys should also be required to undergo training in common mental health conditions and understand how such psychiatric or neurocognitive diversity may or may not impact parenting. Even in representing their own clients, some attorneys may have personal biases or stereotypes leading to prejudice and discrimination in their handling of their client's case. A parent with a psychiatric or neurodevelopmental condition may be at a legal disadvantage due to the inexperience or lack of knowledge their attorney possesses about the unique issues involved. When a parent is about to undergo a child custody evaluation, attorneys should encourage an open and honest report of current and past diagnoses and treatment during the process, as opposed to suggesting that clients be guarded for fear of being over pathologized, which may unduly harm the evaluator's perception of the parent. Family court professionals with decision-making responsibilities should develop a fundamental knowledge base about the commonly seen neurodiverse conditions encountered in family court, but more importantly, an in-depth knowledge of the specific psychiatric or neurocognitive condition inherent in the case in which they are working.

CONCLUSION

As is the case with culturally diverse and non-traditional families, neurodiverse parents and children should experience a level-playing field in family court. Child custody decision-making should be fair, unbiased, and informed. For neurodiverse children, this means that equity is applied in decision-making, so their unique needs are considered in the development of parenting plan arrangements. The best residential arrangements for neurodiverse children may frequently be quite different than what is best for neurotypical children. Every attempt should also be made to consider the voices of children with special needs in the parenting plan decisions which affect them. All parents have areas of strength and weakness. Some neurodiverse adults do have unique parenting challenges which need to be examined in child custody decision-making. However, automatic negative presumptions about parental competency should not be leveled against neurodiverse parents based upon mental health or neurocognitive conditions. Rather, neurodiverse parents should be fairly viewed on a case-by-case basis. While parental challenges may need to be considered, areas of strength should be appreciated, even those that may uniquely stem from the parent's neurodiversity status.

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