Best interests of the child

We have been unable to determine what is defined as the best interests of the child and outline below relevant quotes and commentary on the matter. CAFCASS have long since argued that every case is different. Therefore no two similar cases have ever been heard, precedents cannot apply and any outcome is of benefit to the child without a degree of intellectual or moral thought. Below are the only quotes and legal definitions we have been able to find:

In re O and N (minors) (FC) In re B (minors) (2002) (FC) House of Lords on Thursday 3rd April 2003 it was stated: 24. This has long been axiomatic in this area of the law. The matters the court may take into account are bounded only by the need for them to be relevant, that is, they must be such that, to a greater or lesser extent, they will assist the court in deciding which course is in the child's best interests. I can see no reason of legal policy why, in principle, any other limitation should be placed on the matters the judge may take into account when making this decision. If authority is needed for this conclusion I need refer only to the wide, all embracing language of Lord MacDermott in *J v C* [1970] AC 668, 710-711. Section 1 of the Guardianship of Infants Act 1925 required the court, in proceedings where the upbringing of an infant was in question, to regard the welfare of the infant 'as the first and paramount consideration'. Regarding these words, Lord MacDermott said: "**I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood**." In principle the same approach is equally applicable under section 1 of the Children Act 1989. 25. The Children Act directs the court, when making a decision regarding a child's welfare, to have particular regard to the factors set out in the welfare checklist in section 1(3).

Section 1 the child's welfare shall be the Court's paramount consideration and 1(3) a the **ascertainable wishes and feelings of the child**, 1(3)b his **physical**, **emotional** and educational needs, 1(3)**c the likely effect on him of any change of circumstances, 1(3)e any harm which he has suffered or is at risk of suffering, 1(3)f how capable each of his parents and any other person in relation to whom the Court considers the question to be relevant is of meeting their needs, and 1(3) g the range of powers available to the court under this act in the proceedings in question.**

In 'LEXSEE 676 SO. 2D 493 ELIJAH WILLIAMS, Appellant, v. DELORIS WILLIAMS, Appellee. CASE No. 95-799 COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT 676 So. 2d 493; 1996 Fla. App. LEXIS 6839; 21 Fla. L. Weekly D 1503 June 28, 1996, Filed SUBSEQUENT HISTORY: [**1] Released for Publication July 17, 1996.'

We conclude that when a non-custodial parent proceeds under section 61.13(4)(c), no substantial change of circumstances is necessary to be proven where a violation of visitation rights is found by the court to have occurred and the court further finds that the best interests of the child lie in transferring custody to the other spouse. Additionally, it seems to us that "a substantial change of circumstances," in fact, is created by the custodial parent's establishment of a continuing and persistent pattern of obstructing the visitation rights of the non-custodial parent.

Section 61.13(3) provides a non-inclusive list of factors which the court is required to evaluate in determining shared parental responsibility, primary residence, and the best interests of the child:

the parent who is more likely to allow the child frequent and continuing contact with the non-residential parent.

the love, affection, and other emotional ties existing between the parents and the child.

the capacity and disposition of the parents to provide the child with food, clothing, medical care . . . .

the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

the permanence, as a family unit, of the existing or proposed custodial home.

the moral fitness of the parents.

the mental and physical health of the parents.

the home, school and community record of the child.

the reasonable preference of the child if the court deems the child to be of sufficient intelligence, understanding and experience to express a preference.

the willingness and ability of [**5] each parent to facilitate and encourage a close and continuing parent/child relationship between the child and the other parent.

any other fact considered by the court to be relevant.

In the instant case, there is ample evidence that factors (a) and (j) support the lower court's best interests finding in favour of Terrell's residing with Deloris rather than Elijah. Elijah urges, however, that the lower court could not change custody because Deloris did not offer evidence on the other statutory factors. We disagree and conclude there is enough evidence in the record consistent with section 61.13 to support the lower court's best interests finding.

These quotes too are of relevance to this definition:

"***Best interests of child lie in his being nurtured and guided by both natural parents***. TWERSKY V. TWERSKY, (2 Dept 1984) 103 A.D. 2d 775, 477 N.Y.S. 2d 409

"***Visitation is not only a joint right of a parent and child, but it is also in the best interests of child to have a meaningful relationship with his or her father.*** LYNG V. LYNG, (4 Dept 1985) 112 A.D. 2d 29, 490 N.Y.S. 2d 940

"***A trial judge abuses his or her discretion if he or she renders a decision that is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences to be drawn therefrom.***" PRENATT V. STEVENS (1992) 4th Dist. Ind.App., 598 N.E.2d 616, 619; WALKER V. WALKER (1989) 4th Dist. Ind.App., 539 N.E 2d 509, 510

"***Custodial parent has an affirmative duty to assure that visitation occurs."*** SPENSER V. SPENSER, 1985, 128 Misc 2d 298, 488 N.Y.S. 2d 565 (emphasis added).

"***Change of child custody is appropriate if the custodial parent's conduct deliberately frustrates, denies, or interferes with the other parents visitation rights."*** VICTOR L. V. DARLENE L. (1 Dept 1998) ___ A.D. 2d ___, 674 N.Y.S. 2d 371 (emphasis added).

"***The law, at a minimum, requires custodian of illegitimate child to do something to encourage and foster relationship between child and non-custodial parent to aid in gaining visitations; custodian may not simple remain mute and passive and in so doing impede visitation."*** JOYE V. SCHECHTER, 1983, 118 Misc 2d 403, 460 N.Y.S. 2d 992 (emphasis added)

"***Mother of illegitimate child, who had done nothing to encourage visitation or to foster a relationship between child and her father, failed to take any steps to cure hate that was instilled in child, and, due to her admitted strong persistent anti-visitation attitude, would not voluntarily encourage visitation, could be found in violation of visitation order despite her contention that no proof of negative action on her part was established."*** JOYE V. SCHECHTER, 1983, 118 Misc 2d 403, 460 N.Y.S. 2d 992 (emphasis added)

"***Termination of biological parents' visitation rights with child, on ground that visitation caused child anxiety and emotional distress, was not supported by record.."*** MCCAULIFFE V. PEACE, (3 Dept 1991) 176 A.D. 2d 382, 574 N.Y.S. 2d 528

"***In child custody case, where future of child is at stake, the determination of which parent ought to be awarded custody ought not to rest upon failure of proof or even solely upon proof adduced if proof is in any way unsatisfactory or deemed unreliable."*** CORNELL V. HARTLEY, 1967, 54 Misc. 2d 732, 283 N.Y.S. 2d 318

"***Critical question of child custody should not be decided upon limited evidence such as testimony of parties and child when independent evidence could be obtained in near future through reasonable efforts of the parties and auxiliary services of court system."*** GIRALDO V. GIRALDO, (1 Dept 1982) 85 A.D. 2d 164, 417 N.Y.S. 2d 785

"***A parent, even if divorced, has a natural right of access to child in other parties custody, and such right should be denied only under exceptional circumstances in recognition of paramount consideration of child's welfare."*** HORNER V. HORNER, 1944, 184 Misc. 2d 989, 49 N.Y.S. 2d 720

"***Objection of minor children to visitation did not warrant completely depriving father of visitation."*** BENJAMIN V. BENJAMIN (2 Dept 1985) 114 A.D. 2d 395, 494 N.Y.S. 2d 38.

"***A child's expressed desire to live with one parent is not exclusively determinative of long-term best interest of the child."*** JONES V. PAYNE (3 Dept. 1985) 113 A.D. 2d 968, 493 N.Y.S. 2d 650

"***While the Court may consider the wishes of a child, the child's desires are not controlling."*** OBEY V. DEGLING, 37 NY2d 768, 375 NYS2d 91 (1975); EBERT V. EBERT, 38 NY2d 700, 382 NYS2d 474 (1976).

"***In determining the issue of custody or residency of a child, the court shall consider all relevant factors, including but not limited to: ... The willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent."*** (excerpt State of Kansas Family Law)

"***The Sincerity of Each Parent's Request This factor requires the court to be attentive to the possibility of punitive or other improper motives. A parent who desires a particular custody arrangement for the purpose of excluding or reducing the other parent's involvement in the child's life is to be noted."*** (Excerpt Washington D.C. Family Law)

"***It is generally in the best interests of child for rapport to be established with non-custodial parent."*** SCHACK V. SCHACK (2 Dept. 1983) 98 A.D. 2d 802, 469 N.Y.S. 2d 813.

"***Although wishes of child of age of child in case at bar, 12 years or more, should be given considerable weight, it was an error for Family Court to make father's rights conditional upon wishes of daughter without showing visitation would be detrimental to child's welfare, in view of father's diligence in attempting to establish a relationship with his daughter, his want of opportunity to do so outside the presence of custodial grandparents and in view of much hostility between father and grandmother."*** (Emphasis added) STRUM V. LYDING (4 Dept 1983) A.D. 2d 731, 465 N.Y.S. 2d 347

"***A child's best interests are plainly furthered by nurturing child's relationship with both parents, and sustained course of conduct by one parent designed to interfere in the child's relationship with the other casts serious doubts upon the fitness of the offending party to be the custodial parent."*** RENAUD V. RENAUD, (No. 97-334), slip op. At 4 VT 9.11.98

Change of custody was compelled where mother had "engaged in ongoing conduct intended and designed to impede, obstruct, and interfere with the development of a healthy father-daughter relationship." LEWIN V. LEWIN, 231 Cal. Rptr 433, 437 (Ca.

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"***[A] parent who willfully alienates a child from the other parent may not be awarded custody based on that alienation."*** MCADAMS V. MCADAMS, 530 NW 2d 647, 650 (ND 1995)

"***Father was entitled to full custody of minor child and mother was to have no visitation privileges or contact with her daughter, in view of mother's programming of minor child to accuse father of sexually abusing child so that she could obtain sole custody and control and preclude any contact that father might have with child."*** KAREN B. V. CLYDE M, 1991, 151 Misc. 2d 794, 574 N.Y.S. 2d 267

"***Order directing father's visitation rights to be held in abeyance until child wished to see him was improper absent evidence that father's continued visitation would be detrimental to child's well-being; while child's feelings and attitudes were relevant, they were not determinative."*** VANDERHOFF V. VANDERHOFF (2 Dept. 1994) 207 A.D. 2d 494, 615 N.Y.S. 2d 919

"***Visitation with the father should not have been conditioned on the wishes of his children; it tended unnecessarily to defeat right of visitation."*** MAHLER V. MAHLER (2 Dept. 1979) 72 A.D. 2d 739, 421 N.Y.S. 2d 248

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"***Judges' refusal to consider evidence and psychological reports denies due process right to 'meaningful hearing."*** ARMSTRONG V. MANGO, 380 U.S. 545, 552; 85 S. Ct. 187 (1965)

"***Before terminating parent's rights, state must first attempt to reunite parent with child."*** MATTER OF THE GUARDIANSHIP OF STAR LESLIE W., 1984 63 NY 2d 136, 481 N.Y.S. 2d 26, 470 NE 2d 824

"***Efforts state must exercise to strengthen parental relationship before terminating parental rights include counselling, making suitable arrangements for visitation, providing assistance to parents to resolve or ameliorate problems preventing discharge of child to their care."*** MATTER OF THE GUARDIANSHIP OF STAR LESLIE W., 1984 63 NY 2d 136, 481 N.Y.S. 2d 26, 470 NE 2d 824

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In Coursey v. Superior (Coursey), 194 Cal.App.3d 147,239 Cal.Rptr. 365 (Cal.App. 3 Dist., Aug 18, 1987. ***The Court finds that the mother, Loretta Coursey, has induced such animosity of their daughter toward their father, Eugene Coursey, that the child now suffers with parental alienation syndrome, and refuses to visit her father. The Court, therefore, fines the mother $500 and sentences her to five (5) days in jail. The order, however, is stayed as long a the mother successfully completes scheduled visitations of their daughter with the father. The Court also orders Loretta Coursey to pay Eugene Coursey $1,000 for attorney fees. (COURSEY V. COURSEY Sutter County Superior Court (California) No. 33254 August 18,1987)***

Schultz v. Schultz, 522 So.2d 874, 13 Fla L. Weekly 387 (Fla. App. 3 Dist., Feb 09, 1988). ***Reference is made here to the parental alienation syndrome and the inculcation of the children's alienation by the mother. The Court threatened "the severest penalties this Court can impose, including contempt, imprisonment, loss of residential custody, or any combination thereof if the mother did not comply with this Court's order to cease and desist from her "slowly dripping poison into the minds of the children" rather than to instill love and respect for the father.On appeal the Florida Third District Appeals Court ruled that the Judge had acted properly and that there were no grounds for the mother's appeal. (SCHUTZ V. SCHUTZ, 467 So. 2nd 407 Fla. 4th DCA 1985)***

Krebsbach v. Gallagher, Supreme Court, App. Div., 181 A.D.2d 363; 587 N.Y.S. 2d 346, (1992): "Interference with the relationship between a child and a noncustodial parent by the custodial parent is an act so inconsistent with the best interests of the child as to per se raise a strong probability that the offending party is unfit to act as a custodial parent" (Leistner v Leistner, 137 A.D.2d 499, 524 N.Y.S.2d 243; see also, Matter of Krebsbach v Gallagher, 181 A.D.2d 363, 366, 587 N.Y.S.2d 346)

Lords Hansard text for 10 Jun 2002 (220610-09) 10 Jun 2002 : Column 50 Baronness Amos: Under the present law, no one is legally excluded from the right to adopt. Recent polling has shown that 41 per cent of unmarried couples would adopt, but only 6 per cent do so. That is mainly, as the right reverend Prelate said, because only one of them can become the legal guardian, while the other partner is downgraded to second-class status. It cannot be in the interests of a child for only one parent to be able to make decisions about his or her welfare. **I reiterate: it seems completely illogical that there is no requirement for foster carers to be married. Both partners are responsible for the child. Yet this is precisely what happens to the non-resident parent with a sole residence order to the mother in family law even if he was responsible, caring and married**

The only other attempt we know of is a legal definition is this argument put before the Court in Canada;

FEDERAL COURT - TRIAL DIVISION BETWEEN: A.B., C.D., and E.F., a minor by his next friend, G.H. Plaintiffs - and - ATTORNEY GENERAL OF CANADA Defendant STATEMENT OF CLAIM TO THE DEFENDANT: A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you involves the Best Interests Test under the Divorce Act, R.S.C. 1985, c. 3 ("Act") and is set out in the following pages.

7. The fundamental freedoms and the principles of equality, privacy and parental responsibility embedded in the Charter , the Bill of Rights and the common law protect and preserve the custodial rights of parents, even after the dissolution of their marriage. The test ("Current Test") for determining questions of custody and access in the event of a divorce action or in any proceedings relating thereto set forth in sections 16(1), 16(2), 16(8) and 16(10) of the Act is inconsistent with the Charter and the Bill of Rights.

Furthermore, common law principles require the courts to interpret the Act in a manner that does not unnecessarily undermine parental responsibilities.