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Can Children Testify in Court? (Should they?)

Child testimony is an often discussed issue between parents and attorneys dealing with family law parents are getting a divorce the children usually know more than their parents think and have " information. The children most likely witnessed fights, arguments, or other "bad" conduct. Perha one parties misconduct and were asked to help hide it, or at least not disclose it. Also, the children there is more to the story than mom and dad can no longer get along.

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So, do the children testify or not? Typically having the children testify should be avoided if it can several seminal cases in Mississippi law that deal with child testimony. For Chancery Court, or div purposes the leading authority is *Jethrow vs. Jethrow*, 571 So.2d 270 (Miss. 1990). This case lays that the Court should use when assessing child testimony. Different Courts and different Judges ap varying ways, but the basic premise is, as follows;

- A child witnesses of tender years, 12 and under for testimony purposes, testifying is subject t the Judge.
- Before allowing such testimony the Judge "should satisfy himself that the child has the abilit remember events, to understand and answer questions intelligently, and to comprehend and importance of truthfulness."

Before excluding the testimony of a child witness of tender years in a divorce proceeding, the chan minimum should follow the procedure required by *Crownover v. Crownover,* 33 Ill.App.3rd 327, (1975):

- The first hurdle is whether the child is competent to testify.
- The Judge should confer in camera (meaning in the Judge's chambers/office) with the child whether or not the child's testimony should be heard
- The Judge has considerable discretion in conducting proceedings of this type, meaning it's a j
- The court should not, however, reject outright proposed testimony of a child in custody proce omission of such crucial testimony might be harmful to the child's best interests.
- The trial court should take great pains to have an in camera conference with the child to det competency of the child,
- as well as the competency of any evidence which the child might present.
- The court should also then determine whether the best interests of the child would be served to testify, or
- Whether the child should be sheltered from testifying and being subjected to a vigorous cross

- The Judge should report the essential material matters developed at the in camera conferenc
- The Court should state the reasons for allowing or disallowing the testimony of the child, and
- The Court should note the factual information which the court developed from the conferenc which would be considered by the court in its ultimate determinations in the case.

Generally, the testimony of a child called as a witness in a divorce case should not be excluded for competency, or evidentiary defects, or for the protection of the child. (24 Am.Jur.2d, Divorce and 415). There should not be a summary refusal to inquire as to the competency of the child to testify competency of the proposed testimony of such child in a change of custody proceeding.

"We reiterate that parents in a divorce proceeding should if at all possible refrain from calling any their marriage, of tender years at least, as witnesses, and counsel should advise their clients again in the most exigent cases. The reason and wisdom behind this precaution need no amplification. W however, as we must that no parent can be precluded from having a child of the marriage in a div testify simply because of that fact." *Jethrow v. Jethrow*, 571 So.2d 270, 274 (Miss. 1990).

The children testifying should be avoided if it can be, however if it cannot be avoided the above pr used by the Court to determine if and how the child will testify.

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