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Family Courts Are Not Listening to Foster Parents. Many Wonder: Does That Even Make Sense?

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Paula Hartley took in 9-day-old infant Baby AN after both of the child's parents failed screenings for opioids, methamphetamines, benzodiazepines and marijuana in May 2019. Before the Georgia couple moved from Tennessee, the welfare authorities there had already permanently removed three of their older children when they were toddlers because of severe neglect.

Paula, a cousin of the father, quit her job at the local public school to stay home and care for the baby, just as she and her husband Chris, a sixth-grade teacher, had raised their own three children as preschoolers.

The baby stayed with the Hartleys for the first nine months of her life, and they watched the infant develop as her parents continued to spiral downward. Paula saw that the formula she prepared for the baby's court-appointed visits with the parents, an hour's drive away, had barely been touched when she was returned by the court-appointed transport service at the end of the day. Paula also observed the mother leaving the child crying strapped in the car seat on a floor inside the house. But just as often, the parents simply cancelled the visits the day before, without giving a reason. Caseworkers confided in Chris and Paula that the parents were not yet ready to have the child for overnight visits – right before the court ordered such stays.

Paula was not permitted to share any of this information during the hearings in January that resulted in the baby's ultimate return to her parents. Indeed, neither she nor her husband had the right to say anything unless the judge happened to ask them – which he didn't.

Paula found the whole experience "heartbreaking." She says the system "weeds out good foster parents and good families -- not people there to get a check. This is why people don't do foster care."

The general legal silencing of the Hartleys and foster parents like them, typically the most reliably informed about children in their care, is a little-publicized and much-resented aspect of America's foster care system, which is shrouded in secrecy to protect the identities and privacy of children and families.

On one hand, the system, which cost the federal and state governments over $10 billion combined in 2018, is meant to act in the best interests of the estimated 440,000 foster children nationwide. There is even a federally imposed limit on total time spent in foster care, after which the natural parents are supposed to lose permanent custody and new legal arrangements are to be made.

On the other hand, the first goal of foster care agencies and family courts is to reunify children with their parents whenever possible. In practice, critics say, that means the state grants parents an unlimited amount of time to clean up the substance abuse that is the root problem in many, if not most, foster care situations. Caught in the middle are foster parents who care for kids for durations well exceeding federal statutes – sometimes years – but who are still legally regarded as little more than a 15-year-old babysitter hired for a Saturday night.

Such caregivers are ignored at great peril. Children commonly suffer violence or trauma when returned to abusive households and it's hard to imagine that some foster parents wouldn't know beforehand of the dangers such kids face. In New York, most abuses of children in state custody occurred while foster kids were visiting their biological parents.

Paula Hartley and others say that if the state trusts foster parents enough to care for children for years at a time, surely the courts should value their observations concerning their development, behavior during and after visits with their biological parents, medical needs and whatever else would be most helpful to a child's well-being. After all, with as many as 40% of the nation's caseworkers cycling out of their roles each year, foster parents may be the only adults in the system deeply familiar with the details of a child's upbringing.

That was the case with Shea Stevens and her husband, Chris, who with their two sons (then 10 and 6) welcomed a 2-day-old foster child into their Augusta, Ga., home in February 2018.

The Stevenses -- non-relatives of the baby girl who say, as do many foster parents, "God is what made us decide to foster" -- raised the infant for the first 15 months of her life as the local child welfare agency tried to find a blood relative who wanted to care for her.

Then, at a June 2019 hearing supposedly intended to terminate the biological parents' rights, a judge decided that the toddler should live with an uncle in Florida who had met the girl once. The Stevenses – who were not asked to speak at the hearing -- were devastated as the agency came to take the baby away three hours later.

The Adoption and Safe Families Act of 1997 technically gave foster parents the "opportunity" to testify at family court hearings and suggested that foster families be notified of hearings regarding children in their care, but under the law judges were not required to do either. A 2005 report found "inconsistent notification of caretakers and providing [of] opportunity to be heard." Cassie Statuto Bevan, who worked as staff director for the House Ways and Means Committee and helped draft the 1997 law, told me that "the states and courts were ignoring the opportunity [for foster parents] to be heard that was in AFSA."

Bevan worked to amend language as part of a 2006 law that mandated that any "case review system" must include procedures that assure the foster parents "are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child."

Nothing has ever been done to enforce the provision and it is rarely honored. Bevan said the act remained unfunded and "no HHS [Health and Human Services Department] guidance was issued and no oversight on the provision was rendered."

Of the dozens of foster parents I've interviewed about family court in the past two years, almost none were aware that they had a right to speak in court or to be notified of any hearings that would change a child's placement. Even when they have been informed of the obligations that

the court has to keep them in the loop, they may still find themselves shut out of the process. When the Hartleys' lawyer argued that they should have been notified that the January hearing could result in a change of placement, the judge simply told them it wasn't a change of placement after all – rather, he was sending the baby on a "60-day temporary visit" with her biological parents.

Bevan and others say a combination of factors make most courts uninterested in hearing from foster parents. A main reason is that family courts are often understaffed and overwhelmed. In California dependency court, judges handle between 500 and 1,000 cases per year; in Los Angeles County, the average is 1,200 cases. One reporter recently saw a judge address 23 cases involving 38 children in a single day. A report on the New York Family Court system from The Fund for Modern Courts, a nonprofit, noted: "The disparity between the number of cases assigned to Family Court judges and other judges in New York State (e.g., Supreme Court, County Court, and Court of Claims) is unconscionable. The clear message to the public is that family matters are not as important as other legal matters."

Given these constraints, many judges are wary of hearing from foster parents because they don't have the time and resources to assess their credibility: Are they bad-mouthing the biological parent because they want to adopt the child? Are they praising the biological parents because they are relatives?

Some wonder whether foster parents have a financial incentive to make negative assessments of biological parents so they can keep the kids. In fact, most states offer subsidies for foster care that are higher than their subsidies for adoption. But most states have a shortage of foster parents so non-relative caregivers in it for the money can almost always get another child placed in their home as soon as one is removed.

Given the high turnover rate of social workers and others laboring in the child welfare system, one might think it particularly important for the judge to hear the views of a longtime foster parent or the relative caregiver. In Wisconsin, Chase Bouman and his wife fostered four children for brief periods of time before Baby L came to them in September 2014. Baby L was different: She stayed with them for just shy of three years; her biological parents were out of the picture for months at a time. And yet over the course of more than a dozen hearings they attended, the Boumans were not allowed to speak. They could not speak of the girl's medical issues – including a blood disorder requiring specialized care – or of the court guardian who almost never visited the child to, as the guardian put it, "save the taxpayers money." The judge, however, was eager to hear from the caseworkers – there had been six in three years Baby L lived with the Boumans.

In addition to high caseloads, family courts are widely believed to be staffed with the least competent judges and lawyers in the system. Family law is a notoriously low-prestige field. In New York Family Court, a public advocate in family court can make as little as $75 a day. And one lawyer told me the story of a judge who was punished by his colleagues for misbehavior by being made to spend a year on the family court bench.

About half of states have provisions similar to the 2006 law that allow for foster parents, pre-adoptive parents or relatives providing care to apply to be parties to the case. But these provisions are not automatic. In Arizona, for instance, any person who "has a legitimate interest in the welfare of the child," including not only foster parents but even physicians, "may file a

petition for the termination of the parent-child relationship." In Washington, D.C., foster parents gain the right to be a party to the case after a child has been living with them for 12 months. In West Virginia, foster parents can apply to courts for the right to intervene.

A couple of states have gone further, including Colorado, which allows "foster parents who have had a child in their care for more than three months and who have information or knowledge concerning the care and protection of the child [to] … intervene as a matter of right following adjudication with or without counsel." The law was initially challenged but eventually upheld by the state's Supreme Court.

In February, Georgia's state legislature began considering a bill that would require the courts to "make specific written findings of fact regarding participation by the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child." It would also allow these caregivers to call witnesses – including doctors, therapists and teachers – to testify regarding their observations about the child. There are no guarantees that this legislation will pass. Some advocates worry that such laws could flip the script, suddenly providing foster parents with undue influence over the process.

Melissa Carter, executive director of Emory University's Barton Child Law and Policy Center, is concerned by the "idea of injecting another party to influence or bias" the proceedings. "At the end of the day when you offer an alternative like a foster parent, it's too easy to then devolve into a comparison between parents" -- with the natural parent or parents at that point already found lacking by the system.

Carter suggests allowing foster parents to speak at non-adjudicatory hearings, where the termination of parental rights, for instance, is not at stake. When she represented such parents as a lawyer, she says, she was "always curious why you wouldn't want to hear from someone who has cared for the child day to day."

Walter Olson, a senior fellow at the libertarian Cato Institute, said the conditions under which foster parents are heard need to be worked out. Should they have a right to testify in open court, as opposed to submitting written testimony less conspicuously? Should the child welfare agency be required to submit reports reflecting and summarizing interviews with those parents? But he agrees with current doubts about "the presumption that the state agency has fully acquired and interpreted and transmitted to the court" all evidence needed to decide a child's best interest.

As for Baby AN, Paula Hartley hasn't heard much from the parents since having to hand the child back to them. She did visit once when the couple asked for her food-assistance vouchers, but it was not a warm encounter. She said the mother was popping caffeine pills to get through her third shift at Waffle House.

Paula wonders how parents engaged in "hard-core drug use for more than 10 years" will be able to clean up their act with a couple of nights a week of outpatient drug counseling. And she worries that no one may know until it is too late. "If caseworkers are not going to visit foster parents more than once every few months, what makes a judge think they're checking up on her in the bio parents' home?"

Referring to the child, Paula predicts "she'll be back."