

High court deals supreme blow to noncustodial fathers

BY JEFFERY M. LEVING AND GLENN SACKS

In 1857, the U.S. Supreme Court declared in the Dred Scott decision that Scott had no standing to bring the case, and that "a black man has no rights a white man need respect." On Monday, in deciding Elk Grove Unified School Dist. vs. Newdow, the U.S. Supreme Court ruled that noncustodial parent Michael Newdow has no standing, and that a noncustodial parent has no rights a court need respect. Since most of America's 14 million noncustodial parents are fathers, the court's decision represents an exceptionally bitter Father's Day gift.

Perhaps most important, Elk Grove places children in harm's way by limiting the ability of noncustodial parents to use the legal system to protect their children if the custodial parent is unable or unwilling to do so.

For example, in a pending Illinois case, an elementary school girl

suffers from a life-threatening condition that requires a medical procedure. The procedure, though standard, violates the custodial mother's religious beliefs. The girl's noncustodial father has gone to court to force the mother to accede to the lifesaving operation. Now, in the wake of Elk Grove, unless the father can win custody, the judge may be compelled to rule in favor of the mother, to the serious detriment of the child.

In another pending Illinois case, a noncustodial father seeks to take legal action both against a baby-sitter who allegedly molested his son, and the agency that placed his son in this baby-sitter's care. However, the custodial mother, apparently because of her hostility toward the father, has refused to consent to the filing of the lawsuit. Under Elk Grove, unless the father can win a substantial modification of custody, he has no standing to file the lawsuit without the mother's consent. As a result, his traumatized son

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may be deprived of a potential damages award, which is needed to pay for therapy, and neither the alleged molester nor the agency will be held responsible.

Elk Grove will make it more difficult for noncustodial parents to hold negligent schools, day-care centers, doctors, hospitals, sports coaches and others accountable for harming their children.

The court's ruling also highlights the hypocrisy of the current public policy and discourse on fatherhood, wherein men are lectured to take responsibility for their children while at the same time courts and lawmakers frequently disregard their right to play a meaningful role in their children's lives. Many believe that the court used the issue of standing to sidestep having to make a

decision on the thorny issue of the pledge. Evidently noncustodial parents are of such little concern that the court found it more expedient to undercut their rights than to decide the pledge case.

Elk Grove will also fuel damaging and costly custody battles. Millions of divorced or separated fathers have declined to fight for custody because they did not want to put their children in the middle of a conflict, or because they wanted to respect their children's bonds with their mothers. Yet by declaring that noncustodial parents have no standing, the court has seriously undermined their parental rights.

It will now be more difficult for parents to preserve their rights without expensive and sometimes gut-wrenching custody litigation. An average custody battle — one

without accusations of abuse or visitation interference, and one in which both parents are relatively civil — often costs \$25,000 or more.

By upping the ante on winning custody, Elk Grove may also increase the number of divorcing parents who use false allegations of sexual abuse, domestic violence or child abuse as weapons in custody battles.

The lasting legacy of Elk Grove will have little to do with the Pledge of Allegiance or the battle between atheism and religion that is now the public's focus. It will instead be a legacy of pain — for children of divorce and for the noncustodial parents who love them, and who in many cases will now be legally constrained from acting in their best interests.

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