The Child-Related Family Law: Implications for Early Childhood Care and Education in Nigeria

By

[1]Majebi, I.O., PhD & [2]Odebode, I.O.

[1]Department of Early Childhood and Educational Foundations,
Faculty of Education,
University of Ibadan, Ibadan

[2]Department of Primary Education,
School of Early Childhood and Primary Education
Adeyemi College of Education, Ondo
Ondo State, Nigeria

Abstract

This paper discusses the child-related family law as it relates to adoption, custody and maintenance and its implications for early childhood care and education. Family law is simply the legal arrangement put in place to maintain fair dealing in case of domestic-related problems in relationships, especially those that lead to separation or divorce to cater for the products of such relationship which is the child(ren). This arrangement include adoption, child custody and maintenance. Most at times when the unexpected happened in a family setting, there is every tendency that children will suffer neglect, this might result in having their childhood experience been terminated. Children from dysfunctional homes have every tendency to have questionable lifestyle such as malnutrition, poor access to quality education and health services. It was recommended therefore that advocacy should be on the increase to enlighten the member of the community to see adoption as a way of making a positive impact in the lives of the less privileged. Parents with or without natural children can be encouraged to give life to a child in a difficult situation

Keywords*:* Family law, child adoption, custody, maintenance, early childhood care and education

Introduction

Naturally, children are considered vulnerable and susceptible to different forms of neglect whenever things go wrong most especially in the family, society and the world at large. This might be as a result of their age and nature. A child is any human being below the age of eighteen years, unless under the law applicable to the child, the majority is attained earlier. The United

Nations *Convention on the Rights of the Child* (UNCRC 1989 & Child Right Acts 2004) defines a child as any human person who has not reached the age of eighteen years. No matter the meaning attached to the child, every child has a right to belong to a family either natural or artificial where his/her will enjoy maximum care and sound education. Children live, learn and grow, not in isolation but as part of families and communities. Even though they are autonomous rights-holders, children, particularly younger ones, are dependent on others, either parents or any other adults in their immediate environment, especially their family.

A family or home is very important in the lives and proper development of children. Human organisms, including children spend their total lives in the family (Nweze, 2004). An idea family nurtures a child in such a way that he or she feels safe and secured. Children need to grow up in a family environment, in an atmosphere of happiness, love and understanding to experience the full and harmonious development of his /her personality (UN, 1989). One of the primary purposes of forming a family is to provide children with essentials such as care, food, clothing and shelter necessary for proper growth and development. Parents are the principal providers of these essential needs of life, they are saddled with much responsibility when it comes to child-rearing. These responsibilities can be effectively delivered when the family is intact but in a situation where there are family matter and domestic-related problems such as divorce, parents' sickness/death, financial status and abuse, children might be denied opportunities to experience family care and assistance in the real sense of it except provision is made for the alternatives. Also in some cases when marriages stand at the brink of collapse, attention is given to the irreconcilable differences between couples with little or no attention on what become the lots of the children of the marriage (Allison, 2014)

The international world, having an understanding of this, made provisions through the Convention of the Rights of the Child to enable children to have access to care and assistance regardless of the situation he/she meets him/herself in the family environment. This Convention systematically and specifically articulates the rights of children that will enable the young ones especially those in a difficult situation to enjoy their childhood period

through a substitute family life. It places emphasis on the best interests of the child.

Also, Article 25 of the African Charter on the rights and welfare (1999) of the child spelled out what a child must enjoy in case of separation from the parents as follows;

i. Any child who is permanently or temporarily deprived of his family environment for any reasons shall be entitled to special protection and assistance
ii. State parties to the present charter shall ensure that a child who is parentless or who is temporarily or permanently deprived of his or her family environment, who in his or her best interest cannot be brought up or allow to remain in that environment shall be provided with alternative family care, which could include, among others, fosters placement, or placement in suitable institutions for the care of children
iii. When considering alternative family care of the child and the best interest of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background

It infers, therefore, that there is every possibility that a situation may arise that can separate the child from the natural family, thus provisions are been put in place to cater for the child in such a situation. Some of these provisions that guarantee children's care and protection after the dissolution of marriage were properly spelled out in family law.

Rationale for the Paper

Childhood period deserves to be nurtured in a friendly and conducive home environment where father and mother are available to shoulder the responsibility of taking care of the children but there are times that things turned out to be contrary that parents might need to go their different ways. This might be a result of so many factors, which could be separation, divorce, parents' sickness/death, financial status and abuse. The products of this union which is the child might be the ones that feel the effect of the separation. They must not be left un-catered for. Certain provisions have been made to cater for any child find in such a situation under family Law. Thus, this paper espouses the child-related family law as relates to adoption, custody and maintenance and its implications for early childhood care and education.

Family Law

Family law can simply be described as a legal arrangement to maintain fair dealing in case of domestic-related problems. It can also be explained as a practice area concerned with legal issues involving family relationships, such as adoption, divorce, and child custody. According to Seltzer and Meyer (1994) family law governs issues related to marriage, divorce, and non-marital childbearing. It is primarily concern with family related issues especially the welfare of children after marriage dissolution. Each country of the world, Nigeria inclusive, have clear provision to cater for this. Custody laws (2008) and Elrod (2009) refer to family law as anything involving legal services that have to do with the family. It encompasses marriage, adoption, divorce, custody, maintenance, death and estate planning. According to Etomi and Asia (2015) marriages, marital breakdown and the welfare of children in Nigeria are mainly governed by the Matrimonial Causes Act enacted in 1970, now Cap. M7 Laws of the Federation 2004.

The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. He or she should be fully prepared to live an individual life in the society in the spirit of peace, dignity, tolerance, freedom, equality and solidarity (Convention of the Right of the Child, 1989). The international world, having an understanding of this, made provisions through the Convention of the Rights of the Child to enable children to have access to care and assistance regardless of the situation he/she meets him/herself in the family environment. This Convention emphasizes the importance of a family environment for children. In the preamble of this convention, it also refers to the family as "the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children". The document specifies the obligations of parents to provide guidance in the child's exercise of rights (Article 13) and the obligations to nations to assist parents, where necessary, with their child-rearing duties (e.g., Articles 7, 9 & 18).

Nigerian culture considered children as a priceless benefit of marriage (Aniebue and Aniebue, 2008). But most often, they are victims of family/domestic-related problems. When separation (either natural or man-made) occurs in the family, and

children that are in the union, are always the ones that suffer most. This is in line with the submission of Seltzer and Meyer (1994) that children are the weakest party among those with competing interests. Therefore, whatever the decision that will be taking as regards the welfare of children, it must be guided by the principle of 'best interest'. The principle of the 'best interests of the child' has, up till now, been part of Nigerian family law in matrimonial causes as relates to guardianship and custody issues, the CRA revolutionizes the importance of this principle by extending its application to matters relating to children; whether private (involving parents and families) or public (by government, public authorities and courts (Ekundayo, 2014).

The section 69 matrimonial causes act categorise children of the marriage into three which include; any child adopted since the marriage, any child of both spouses born before the marriage whether legitimated or not and any child (illegitimate or adopted) of either parties. The family law, therefore, is provisions made to cater for this weakest party called children of the marriage to minimize their level of suffering or remove it totally in case of the eventuality that might affect the normal family setting. These provisions are many but this paper limited its discussion to adoption, custody and maintenance.

A. Adoption

Adoption is a legal process whereby a child becomes a member of a new family and has one or two new parents. It is the process by which a legal parent-child relationship is created between individuals not biologically parent and child. The United Nations Convention on the Rights of the Child (1989) recognizes adoption as one of the forms of alternative care for children who have been temporarily or permanently deprived of their family environment, and also for children who are unable to remain in their family environment. Ojelabi, Osamor and Owumi (2003) also describe child adoption as a universal concept that provides a legal right for adopted and adoptee to become a family. Santrock (2007) in the same vain describes adoption as the social and legal process by which the parent-child relationship is established between each person unrelated at birth. Adoption is the process whereby the legal relationship between a child and his biological parents is severed and re-established between the child and his adoptive parents (third parties). It is a situation whereby people assume the

position of parents in respect of a person who is not their biological child (Nwosu, 2015). In order words, it is a legal way of cementing a relationship between someone who is taking a child of other parents as one's own child.

The Child's Rights Act 2003 made by Nigeria pursuant to the United Nations Convention on the Rights of the Child has been adopted by states like Lagos, with provisions on welfare and adoption of children. In 2012, Lagos State enacted the Family Law Rules pursuant to the Child's Rights Law. The Rules have greatly simplified procedures on adoption, custody, guardianship and welfare of children generally in Lagos State (Etomi and Asia 2015).

There are different types of adoption that adoptive parent can go into

Type of Adoption Procedures

i. Foreign Adoption – The scarcity of healthy babies or preferred sex in a particular country could make citizens pursuing the adoption of orphaned and abandoned babies from other countries.
ii. Agency placement – Arrangement can be made by a licensed public or private agency to assists the adoptive parents in searching for children to adopt. They are also responsible for a thorough investigation of the suitability of the potential adoptive parents. It must be detailed and taken into consideration the background of the child and prospective parents.
iii. Independent placement – this involves direct transfer from natural parents or family doctor to the parents seeking to adopt. No thorough investigation is involved.
iv. Surrogate motherhood – A surrogate mother can be paid a fee to bear a child conceived through artificial insemination. Once the child was born the surrogate mother agrees to terminate her parental rights in favour of the sperm donor.
v. Adoption by contract or agreement

Requirements for Adoption

To be entitled to adopt a child, an individual must meet the qualifications under the laws of his/ her state, since the state has the sole power to determine who may become an adoptive parent. The provisions of Part XII of the Child Right Act stipulate necessary procedures and guidelines for adoption. Oladokun (2010) reported that these procedures in actual practice are relatively

cumbersome due to various red-tapes in the Nigeria Welfare and Judicial System, but they are categorized as follows:

1. **Residency requirement –** Nigeria law requires that a parent-child relationship must be established before the court decision can be final. Each state determines the length of time it takes to establish a parent-child relationship. Also in some states such as Lagos, Delta, Edo and other Yoruba states, the applicant and the child must be resident in the same state where the adoption is sought
2. **Age –** Prospective parents must be at least 25years of age and 21 years older than the child.
3. **Marital status** – Single, married and unmarried couples may adopt. A single person, if he has attained the age of 35 years, provided that the child to be adopted is of the same sex as the person adopting is also eligible
4. **Income requirement** – No basic income is required but must have a stable source of income
5. **Partner consent –** A partner of a parent that wants to adopt must give his/her consent
6. Under Nigeria's legislation on adoption, not more than one person is allowed to adopt except when a couple is involved and this must be with the consent of both
7. **Adoption Order -** Only a court can make an adoption order. The effect of the adoption order is that the birth parents no longer have any legal rights and responsibilities for the child, these are transferred to the adoptive parents. Once the courts have made an adoption order the child becomes a full member of the adoptive family. They take the surname of the adoptive parents, have the same right, and privileged as if they had been born to them. This includes the right to inheritance. N.B. An applicant might not be permitted to adopt an opposite juvenile to guide against sexual abuse (Part XII, 129 C, Child's Right Act, 2003).

Eligibility Criteria for Adopting a Child

According to Tajudeen (2013) adoption is most suitable for children who are in irreversible situations of abandonment. Before the court can make an adoption

order, the child must have satisfied any of these conditions;

- Must be under the age of 18 when the adoption application was made
- Never being married or in a civil partners
- The birth parents or guidance cannot be found or is capable of giving consent
- If the welfare of the child is at risk
- An abandoned child whose parents and other relative are unknown or cannot be traced after due inquiry certified by a juvenile court
- Must meet the definition of an orphan
- The child must be living within that state (Part XII, 128, Child's Right Act, 2003).

Adoption Procedures

The following are the systematic processes involved in adoption as identified in Part XII, 126, 130 Child's Right Act, 2003;

1. **Application form –** application for an adoption order must be made and submitted to the registrar of the competent court
2. **Investigation –** the guardian ad litem will investigate the circumstances relevant to the proposed adoption and report confidentially in writing to the court
3. **Notice –** prospective adoptive parents must inform the welfare officer of their intention to adopt at least three months before the court order is made
4. **Petition –** the parents seeking to adopt must file a petition in court that supplies information about their situation as well as the situation of the child. This includes the names of the adoptive parents, the natural parents, the child's gender, age, and medical report
5. **Consent –** Written consent of the adoption agency or the child's natural parents accompanies the petition for adoption
6. **Hearing** – a hearing is held so that the court may examine the qualification of the prospective parent and decide whether to grant or to deny the petition. Adoption proceeding are confidential, so hearing is done in a closed courtroom because confidentiality is thought to promote a sense of security for the child with his/her new parents

7. **Probation –** most states require a period of probation proceedings. During this period, the child lives with the adoptive parents and the appropriate state agency monitors the development of the relationship, this is to ascertain the ability of the adoptive parents to properly care for the child, if the result is satisfactory, a permanent decree of adoption will be issued.
8. **Decree –** this is a judgment of the court and is given the same force and effect as any judgment
9. **Birth certificate –** a certificate of adoption is issued for the adopted child to replace the child's birth certificate. It lists the new family name, the date and the child's birth and the ages of the adoptive parent.

Documents required for Adoption

- Birth certificate
- Marriage certificate
- Divorce decree (where applicable)
- Medical certificate of fitness
- Two passport photograph Part XII, 126 (2), Child's Right Act, 2003

Consequences of Adoption

- It terminates the rights and responsibilities of natural parents
- It creates the same rights and responsibilities between a child and adoptive parents as existed between natural parents and children. It makes the adopted child be entitled to the same right as natural children.
- The name of the child will be affected by adoption
- An adopted child can inherit from adoptive parents

B. Custody

The issue of custody arises when parents decide to put an end to their relationship with each other through separation, divorce or annulment and a child or children are involved in the union. When a couple wants to divorce and child or children are involved, family law looks after children in deciding custody rights and the amount of payment needed by one of the parents to help pay the children's expenses. It might also be an issue to consider when parents are not available either by death or not capable to shoulder the responsibilities of child-rearing. Oniha (2018) describes it as a posthumous issues of a deceased marriage. It has to do with how parents who live apart from their children divide the responsibilities for taking care of them and the economic and noneconomic effects of

these arrangements on the children (Seltzer and Meyer 1994). It is related to the child's living arrangement when parents live apart or separated, divorced, insane or died. Custody according to Black's Law Dictionary is the care, control and maintenance of a child which may be awarded by a competent court to one of the parents as in a divorce or separation. Simply put custody is essential concerns with the control, preservation and care of a child's personality-**Otti v. Otti**. Although every aspect of child-bearing and rearing in Nigeria is largely influenced by culture (Avidime, Ameh, Adesiyun, Ozed-Williams, Isaac, Aliyu, and Ojabo (2013) but most countries follow the legalities put forward by the United Nations Convention on the Right of the Child in providing custody for children when the situation arises (Custody law, 2008).

Factors determining Right to Custody

The issue of child's custody is crucial especially after the demise of a marriage or relationship. It might requires a court determination of which parents, relatives or other adults should have physical or legal control and responsibility for a minor child under 18 (Black and Gray Attorneys 2018).

i. **Legal document -** This must be brought to the family court to decide on the primary custody of the child. Some divorced parents come to mutual agreement by working an arrangement under which both make a decision on the child's upbringing and well-being. Settling the custody dispute does not come with an immediate solution in some cases. When the judgment of the child's custody is passed, a partner may get the child custody while the other receives a visitation right.

ii. **The welfare and interest of the child-** whatever the decision taking on custody must be in "the interest of the child" .The primary consideration in awarding custody under the Matrimonial Causes Act and Child's Rights Act is the welfare and interest of the child (Oniha 2018).

iii. **Cultural practices** – The majority of the cultural practices in Nigeria accord the responsibilities of custody to the fathers (Onyemenam, 2006). This is because of the cultural practice related to family settings hinged on the fact that most Nigerian communities are patrilineal. The father has the absolute right to the custody of his legitimate or

legitimated children. On the death of the father, the custody of the child is vested in the male head of the father's family, though the mother has the day-to-day care of the child. Where the child is of tender age, Customary Law requires that it should be left under the care of the mother.

iv. The factors considered by the courts are not exhaustive. In *Alabi v Alabi (2007)* and *Olowoofoyeku v. Olowoofoyeku (2011) 1 NWLR (pt. 1227) 177*, the court stated that the following factors among others are key in determining who should have custody:

- Emotional attachment to a particular parent.
- Degree of familiarity.
- Age and sex of the child
- Adequacy of facilities (educational, social, emotional, and so on).
- Respective incomes of the parties.
- If one of the parties lives with a third party.
- Opportunities for a proper upbringing (education of the child).

Types of Custody

i. Physical custody – this designates where the child actually lives. The custodial parent dictates the living condition of the child and the non-custodial parent is granted the visitation rights

ii. Sole custody – This is when the care control and maintenance of a child are ordered to one of the parties to the exclusion of the other. This can be possible in a situation where one of the parents is not fit due to drug addiction, ill-health or disability or proof of child ill-treatment.

iii. Divided custody - This is a process of switching between parents for a period of time with reciprocal visitation rights. However, one parent cannot obtain custody from the other by writ of habeas corpus because none of the parents can be said to be wrongfully detaining the child- Lawson v Lawson.

iv. Split custody: involves awarding legal custody to one parent and physical custody to the other. Split custody was awarded in **Abayomi v. Abayomi** the court made this order of custody. Awarded legal to the father and physical to the mother.

v. Joint custody – this is when both parents share custody of a child after divorce, it refers to the time the child spends with each parent. It is about granting custody to both parents where they are willing and able to cooperate-**Williams v Williams.** They would consult one another before a decision is made. In the Western countries, there is joint custody called "bird's nest custody" whereby the children remain in the original family home and the parents take turns, moving in and out to exercise custody over the children (Seltzer and Meyer 1994).

vi. Temporary guardianship or foster care or Third-party custody - this can be arranged for by the court where neither parent can assume custody because of mental health problems (Custody laws, 2008). **Section 71(3)** provides that where both parents are unfit, disinterested or unavailable, the court may grant custody to a third party in the best interest of the child. In **Nwuba v. Nwuba**, custody of the children was granted to the maternal grandmother (Rosemary Inyama). Visitation access may be given to the parents for the sake of the child.

Custody of a child born outside wedlock

Under common-law, the custody of a child born outside wedlock remains with the mother-**Okoli v Okoli**. Under customary law (in most customs) the maternal grand-father has custody and in some customs, notwithstanding the fact that the child has been legitimated by the father. Under Statute, if the child falls within the ambit of **Section 69 of the Matrimonial Causes Act**, **Section 71** shall apply, and the best interest of the child would be the paramount consideration.

C. Maintenance

Maintenance has to do with another way of handling children when a marital relationship collapsed. The children are often the victim of adult disagreement or differences but in order to prevent any negative effect this might have on their personality, there is a need for adequate provision for their proper maintenance. Maintenance in this sense connotes support. Maintenance under **Section 70 of the Matrimonial Causes Act** is an ancillary relief which the High Court may grant in favour of either party of the marriage and (or) children of the marriage (Nwosu, 2015)

Basically, a child has reported in Owolabi (2003) at common law has the common right to maintenance and advancement by his parents on whom there is, therefore, a correlative moral duty. Odewale (2013) describes the concept of child maintenance as the one that stipulates an ongoing, periodic payment made by a parent for the financial benefit of a child following the end of a marriage or other relationship. Child maintenance is paid directly or indirectly by an obligor (The parent that is required to pay the child support to the other parent) to an oblige (the parent who receives the payment) for the care and support of children of a relationship that has been terminated, or in some cases never existed (Oniha, 2017).

The obligation to claim child maintenance in Nigeria depends largely on whether the claim is based on the English law, Islamic law, or customary law as applicable. Maintenance obligations under customary laws of Nigeria differ depending on the customary law to which the parties are subject to. However, the common practice is for the customary court to mandate the father to pay child maintenance to a mother who has custody of the children. In cases where the father has custody, the law does not impose the payment of maintenance on the mother. However, the mother can do whatever she feels like towards maintaining the children though this is a voluntary act and not mandatory as it is on the father (Odewale, 2013).

Under the children and young persons law of the Federal Republic of Nigeria and laws operative in the then Western states now Edo, Oyo, Ondo, Ogun, Osun, Delta and Ekiti makes it compulsory for father, step-father, mother, step-mother of a child or young person to make contributions towards the welfare of the child or young persons. The same law is in operation in the Northern and Eastern parts of the country (Owolabi, 2003). Under section 70 (4) of the Matrimonial Causes and Decree, maintenance could not necessarily be a matter of concern to the parent if the child is twenty-one years and above. Although Owolabi (2003) was of the opinion that the maintenance order should be awarded in favour of a child that has attained the age of twenty-one if evidence can be adduced that to established the fact that the child is undergoing vocational or educational training or if the child has mental or physical infirmity and he is not capable of maintaining himself.

Factors to be considered in calculating child maintenance:

- The financial needs of the child.
- The income, earning capacity, property, physical or mental disability of the child.
- The manner in which the child is being or is expected to be trained (Etomi and Asia, 2013)

Implications of Adoption, Custody and Maintenance for Early Childhood Care and Education

Children in family-related problems can be referred to as spoilt of the war in the circumstances. They are either not been adequately taken care of or not been taken care of at all. Most at times when the unexpected happened in a family setting, there is every tendency that children of the marriage or relationship will suffer neglect, this might result in having their childhood experience been terminated. Children from dysfunctional homes have every tendency to have questionable lifestyle such as malnutrition, poor access to quality care, education and health services. Family issues ought not to put children at disadvantage situations, children that are separated from their parents either through natural or artificial occurrences can enjoy the opportunity to grow up in a family setting (Dimkpa, 2010). This can be made possible if the alternative provisions highlighted in family laws and Child's Rights Act are effectively employed and practiced in society. Some of these provisions which include: adoption, custody and maintenance emphasised the wellbeing of children.

An increase in the awareness of the importance of early years of life and growing demand for quality care and educational services for young children are part of the major reasons that brought early childhood care and education into the limelight. It is basically to achieve the best start in life for every child regardless of location, social status and situation that surround their birth.Early childhood care and education involve efforts to get care and education across to children regardless of age, nature and ability. They focus on providing the care that will aid the proper development of the child to achieve maximum and lifelong learning. It is a way of investing in education and care for young children to enjoy a better life and secure a comfortable future. Research findings have revealed that investment in the early years has great gains. These investments supposed to cover every aspect of a child's life such as

education, care, health, nutrition, protection and stimulation. Adoption, custody and maintenance have every tendency to secure a better future for children whose natural family system has been terminated by providing alternative family life to them.

Considering the unique position a child occupies in marriage institution, and what he stands to suffer if he or she was unborn out of wedlock or the wedlock is dissolved, his welfare package in spite of any circumstances around them should favour their all-round development and be in their best interest. Therefore, adoption, custody and maintenance afford children some of the following;

- Safeguarding children from the consequences of societal ills like divorce, abandonment and negligence and they grant children the opportunity to grow up in a family environment in an atmosphere of love, happiness and understanding
- give room for children to be exposed to better physical and mental development with particular care with regards to health, physical, mental, moral and social development in a situation where parents are not available to do so
- provide legal protection in condition of freedom, dignity and security
- prevent children from internal and external displacement by providing alternative family care e.g foster placement or placement in a suitable institution for the care of the child.
- guarantee better economic life for children later in life as the early years would have been greatly invested in by different services provided under the Family Law for children whose parents are not available

Conclusions

Children are expected to grow and live in a healthy family setting but when the unexpected happened, they are not to be neglected or abandoned. The alternative provisions made through the Rights of the Child for children in general and those in a difficult situation in particular, if employed can provide succor for children that found themselves in the family-related situation. And therefore make them enjoy their childhood like any other child with the natural parents. This can also guarantee an increase in the number of enrolment in early childhood education since their new parents or the provision from maintenance can be

used to support children's education in the early years. Thus, if the alternative provisions of adoption, custody and maintenance are employed to take care of children that found themselves in difficult situations, there is every probability that the number of out of school children will reduce.

Recommendations

Considering what a child in an unpleasant family environment stands to suffer if he or she does not benefit from the provisions made for his/ her welfare through family law, conscious efforts should be made towards the effective execution of these services in the best interest of the child. Children in a troubled family situation need not experience difficulty if these alternative provisions are given a conducive environment for full implementation. The following recommendations were:

i. Advocacy should be on the increase to enlighten the member of the community to see adoption as a way of making a positive impact in the lives of the less privileged. Parents with or without natural children can be encouraged to give life to a child in a difficult situation.

ii. When parents are seeking for divorce and children are involved, the custody and maintenance of the child of the marriage must be well decided before granting the parents request.

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