

**For Children and Youth Services Review**

**Representation of children's views in court hearings about custody and parental visitations – a comparison between what children wanted and what the courts ruled**

By

Svein Arild Vis<sup>1,3</sup> and Sturla Fossum<sup>2</sup>

<sup>1</sup> Researcher, The Regional Center for Child and Adolescent Mental Health and Child Welfare. University of Tromsø - Norway, Faculty of Health Sciences

<sup>2</sup> Associate Professor, The Regional Center for Child and Adolescent Mental Health and Child Welfare. University of Tromsø - Norway, Faculty of Health Sciences

<sup>3</sup> Corresponding author

Email: svein.arild.vis@uit.no

Phone: +47 45467979

Postal address: University of Tromsø, RKBU North, 9037 Tromsø, Norway

## Abstract

**Purpose:** Following the UN convention on the rights of children, a shift in policy towards greater emphasis on child participation in child protection case processing has occurred. A growing body of research has emerged concerning participation processes in child protection cases and the experiences of children in child protection cases. Very few studies have looked into if and when children get what they want, however. The aim of this study is to assess children's views about living arrangements and visitations in dependency court hearings and to compare these views with the rulings of courts.

**Method:** The study uses a retrospective cohort design. Cases where child welfare board rulings are in line with the wishes of children are compared to cases where rulings differ from the wishes of children. Data were collected from regional social welfare board archives. The study included 151 cases that were randomly drawn from a total population of 2481 cases. Simple and multivariate logistic regression was used to identify factors associated with the rulings being in accord with the child's wishes in each sample case.

**Results:** A child advocate was appointed in almost 95 % of the cases ( $n = 142$ ). Fifty-nine per cent of the children did not want a change in care. Rulings about care were in line with the wishes of the child in 39 % of the cases. Rulings about care were most likely to be what the child wanted, if the child was presently living in public care and did not want to move. Children wanted more visitations with their mothers in 60.5 % of the cases and with their fathers in 39.8 % of the cases. Whether children wanted more visitations with their mothers was associated with more visitations being granted. What a child wanted was not associated with the ruling on visitations with the child's father.

**Conclusion:** The impact of children's views on visitations on dependency court rulings depends on what a child wants and how these desires coincide with what is proposed by child protection services. Children's views can be quite effective in blocking certain decisions but are less effective if the child requested a specific change. If a child does not want to stay with his or her birth parents, then the odds that the birth parents will be granted custody is minimal.

**Keywords:** child protection, protective care, dependency hearings, participation, decision making

## 1. Introduction

Having a say about care placement and about contact with birth parents and family members is considered important by children facing the prospect of entering public care (Bessell, 2011). Child participation in the decision-making process in care and protection cases has an instrumental value in facilitating better outcomes for children (Cashmore, 2002; Vis, Stranbu, Holtan & Thomas, 2011), but this participation is also considered valuable in and of itself. In 1989, the United Nations Convention on the Rights of the Child (UNCRC) established participation as a fundamental right alongside provision and protection. Since then a growing body of research (Buckley, Carr, & Whelan, 2011) concerning participation processes and how these processes are experienced by children during case processing in child welfare has emerged; see also Gallagher, Smith, Hardy and Wilkinson (2012) for a review. Very few studies have looked into the issues of if and when children get what they want, however. The aim of this study is to assess children's views about living arrangements and visitations in dependency court hearings and to compare these views with the actual rulings made by courts.

Advocacy for children in public care is recognised as a means of countering disempowering experiences of exclusion from decision making. In Norway, the ratification of the UNCRC was followed by changes in child welfare legislation. Specifically, the age limit of 12 years of age for allowing children's views to be taken into consideration in child protection and dependency cases was lowered to seven years. Because children below the age of 15 have not been formally recognised as a party in Norwegian foster care hearings, an advocacy service was introduced in 1994 designed specifically to ensure the inclusion of children's views in court. The service was modelled on the British Guardian ad Litem (GAL) program but differs substantially from how that program works in both the UK and the US. The most important difference is that the mandate is not to conduct an investigation into the case. Instead, the service is restricted to reporting what the child wants. A brief description of the Norwegian systems for child representation in child welfare dependency hearings is therefore provided for context.

In Norway, the municipal Child Protection Services (CPS) is responsible for investigating cases and for providing social services for children within the child protection service. If CPS decides that a child needs to be placed in out-of-home care, the case has to be petitioned to the regional social welfare board. A board hearing is led by a judge, and negotiations are conducted in the same manner as in an ordinary court. A child below the age of 15 is usually not present at board hearings and does not have independent legal representation. The board is however required to take a child's views into consideration, and the judge may appoint a children's advocate specifically for this purpose. This process is regulated as a layman service, and the child advocate is not supposed to be an expert in child welfare (Child Welfare Act, Section 7-9). The advocate will meet with the child outside of court, usually once, and ask the child what the child wants. The advocate then submits a report and is called to the board as a witness during the hearing. The children themselves are usually not present. The child advocate is not supposed to form an independent opinion about the case, and the advocate usually is not given the necessary information to do so. The interview is not meant to be an investigation into the facts of the case but rather focuses on eliciting a child's views about care arrangements and visitations. Unlike in the UK and the US., there is no legal requirement for periodic review of care plans; thus, the board will only see the case again if a petition to change the last ruling is submitted. Depending on availability, a different advocate may then be appointed.

### 1.2 Research on child participation in court

An evaluation of the Norwegian advocacy service for child welfare boards was carried out five years after the introduction of the service (Moldestad, Havik, & Backe-Hansen, 1998). This study found that an advocate was appointed in about 15 % of cases in which the board was asked to rule about care arrangements and visitations, indicating a serious lack of child representation in dependency hearings. Since then, a shift in policy towards greater emphasis on child participation in child protection case processing has occurred in Norway, (Willumsen & Skivenes 2005) in the UK (Landsdown 2010, Winter 2006), and in the US (Weisz, Wingrove, Beal, & Faith-Slaker, 2011). We thus expect that children's advocates are more frequently used today compared to 15 years ago.

Studies have found that even though children are being given choices and opportunities to participate in meetings and reviews in earlier stages of CPS cases processing (Thomas & O'Kane 1999; Gallagher, et al, 2012), there is still little knowledge about how and when

children's views are being considered (Leeson, 2007; Coad & Shaw, 2008). One Norwegian study (Vis & Thomas 2009) found that children's participation affected CPS decisions in about half of the cases, but this study did not specify how decisions were affected, i.e., whether it was the content of the decision that was affected or the manner in which it was set into effect. In an observational study from 60 cases in the Scottish Children's Hearings system, Murray and Hallet (2000) found that children's contributions were frequently monosyllabic or single line expressions and that less than half of the participating children expressed an opinion about what should happen. The researchers did however conclude that when children asked for foster care or a supervision order, these requests generally translated into the eventual outcome.

Based on interviews with seven judges, Moldestad et al. (1998) concluded that a child's wishes could affect a ruling when the board was in doubt about how to proceed but that the child's wishes were less likely to do so in more serious cases of abuse or neglect. In such cases judges think that child safety would take precedence. A German study involving 80 child protection cases randomly assigned cases to either expert assisted case management or a control group with standard case management (Goldbeck, Laib-Koehnemund, & Fegert, 2007). Certainty with respect to the selected interventions was increased in the expert-assisted group but the involvement of children in planning decreased. This finding indicates that when certainty in case planning is increased, children's views may be considered less important and may be assigned less weight. The weight that courts assign to children's views are thus likely to be affected by the certainty with which it can be determined that the child is at risk and what sort of risk the child has been exposed to. Based on observations of children's hearings in Scotland, Murray and Hallet (2000) found that when children's asked for a supervision order or to be placed in foster care, this was likely to be the outcome of the case. That study did not report the exact fraction of cases in which decisions were affected by children's views. We may however assume that if the child's view supports a claim that it not safe for the child to stay with a biological parent, it will carry more weight compared to cases where the child does not acknowledge CPS' concerns.

Litzelfelner (2008) conducted a survey among social workers, parents and judges about Court Appointed Special Advocates (CASAs) in the US. The study included both CASAs within the Guardian ad Litem model (GAL), in which case the CASA was also the GAL, and a 'friend of the court' model where the CASA was an impartial observer who conducted investigations and made recommendations to the court. The study found no difference between parents,

social workers and judges with regard to their assessments of how much the CASAs influenced court decisions. Overall, CASAs' influence was rated from an average of 3.1 on a four-point Likert scale, ranging from strongly disagree to strongly agree. A score of three indicated that all parties think that CASAs influence court decisions, although the study does not explain how often, in what decisions, or in which cases the influence exists.

We were not able to identify any studies that have looked at the content of child advocate, CASA or GAL reports regarding children's wishes and compared those reports with case rulings. We did however find a few studies that looked at either child's wishes during dependency cases or outcomes at dependency hearings.

### 1.3 What children want

Lundstöm and Sallnäs (2009) asked children aged 13 to 18 years living in out-of-home care in Sweden to rate their agreement with the statement 'I would rather live with my biological mom / dad.' They found that about 25 % of the children did not want to live with their parents. Although this implies that about 75 % of the children would rather move back with their parents, the report did not publish exact numbers. This result coincides with findings from a U.S. study (Block, Uran, Uran, Baumrind, & Goodman, 2010) in which researchers interviewed 85 children aged seven to 10 years who had participated in dependency court hearings. These researchers found that of the children in their sample, 64 % wanted to go home immediately and that an additional 7 % wanted to go home if some conditions were met, such as "make my mom stop using drugs" or "kick my father out of the house." The remaining children would not go home and wanted to stay in foster care, expressing other specific desires, such as "have my sister and my mom come visit me," "make my mommy stop beating me," or "put my mom in jail" (Block, Uran, Uran, Baumrind, & Goodman, 2010, p.665). Lundstöm and Sallnäs (2009) found that more frequent visitations from parents increased the likelihood that a child would rather live with his or her parents.

It is well documented that children are more likely to have visitations with their mothers compared to their fathers when living in out-of-home care. In a Norwegian sample, Holtan (2002) found that 90 % of children had contact with their mothers, whereas only 57 % had contact with their fathers; similarly, in a Danish sample (Nielsen 2002), 77 % had contact with their mothers, and 41 % had contact with their fathers. A Swedish study (Lundstöm & Sallnäs, 2009) that also accounted for frequency of parental visitations, found that children

( $n = 269$ ) had at least monthly visitations with their mothers in 46 % of cases compared to 34 % for such visitations with their fathers. The study also found that about half (52 %) of the children wanted more visitations with their parents, while the remainder did not. In the study, the current amount of contact seemed to affect the children's wishes. Children with monthly visitations were more likely to want more frequent contact, compared to children who had less frequent contact. The study did not report whether there were differences between the amount of contact that the children wanted with their mothers and fathers, so we cannot determine whether the comparably lower rates of visitations by fathers fits with what children wanted. In a study of 76 complaints cases ruled upon by Norwegian child welfare boards, Thørnblad and Holtan (2007) concluded that fathers were more likely, compared to mothers, to be granted increased visitations. The study did not control for the current numbers of visitations by fathers. However, based on other Scandinavian studies, we may assume that the starting number of visitations were lower for fathers. Whether these rulings coincided with children's wishes is not known.

It is likely that the type, duration and severity of abuse or neglect can affect both the child's wishes and their motivation to disclose their views to a child advocate. Block et al. (2010) found that being a victim of child neglect rather than physical or sexual abuse predicted children having more negative attitudes towards dependency court hearings. This was attributed by the authors to that "neglect may not be as obvious a harm as are abusive acts of commission, leaving neglect victims to question why removal was required" (Block et al. 2010, p. 666). It is however not known if more negative attitudes towards CPS or the hearing process affect the likelihood that a child will express his or her wishes.

#### 1.4 Purpose and aim

Child representation in dependency hearings, for which Norway has introduced an advocacy service, has been a priority for many years. Yet, surprisingly little is known about what children want and whether children's wishes coincide with what they actually receive. The purpose of this study is thus to assess how well children's views are being accounted for and taken into consideration through the Norwegian advocacy scheme. The problems addressed are as follows:

- How frequently are children's views considered in Norwegian child welfare board hearings?
- What are children's views about care arrangements and the number of visitations with their mothers and fathers?

- How frequently are rulings in line with what children want?
- Which factors are associated with rulings being in accord with children's wishes?

## 2. Methods

This study uses a retrospective cohort design (Kazdin 2003). The child welfare board rulings that were in line with the desires of the sampled children were identified. Those cases were then compared to cases where the rulings resulted in outcomes that were different from the desires of child.

### 2.1 Participants

This study sampled 151 children involved in child welfare board hearings in 11 different regions. The board was asked to rule about care in 124 (82.7 %) cases, a child's visitations with the child's mother in 129 (87.2 %) cases and a child's visitation with the child's father in 103 (70.5 %) cases. In 127 cases (82 %), CPS asked the board for a ruling about care or visitations. In the other cases, a ruling was requested by a parent who wanted a previous decision or ruling by CPS to be overturned or changed. In some cases, when agreements had been reached between parents and CPS before the board was set, a judge ruled on the case without any further negotiations ( $n = 21$ , 14.2 %). In all but one case, CPS petitioned that the child should be in public care.

At the time of their rulings the children were living in a variety of care settings, shown in Table 1.

-- table 1 about here

The mean age of the children in the study was 10.0 years ( $SD = 2.7$ ), and 41.4 % were boys. The sample was predominantly ethnic Norwegian ( $n = 122$ , 80.3 %), whereas the rest were from Asia ( $n = 10$ , 6.6 %), Africa ( $n = 10$ , 6.6 %) and Europe/ North America ( $n = 7$ , 4.6 %).

We estimate that the cases included in this study represent about 12 % of the total population of cases that were ruled on by social welfare boards in 2011 for this age group. This estimate is based on the yearly report of the National Office for Social Welfare Boards (2012) in which the total number of cases that were ruled on by the boards in 2011 is reported to be 2,483. In this report, however, numbers are not broken down by child age. We thus assumed that the age distribution in these cases was about the same as the age distribution reported by Statistics Norway (2007) for all of CPS investigations, in which about half the children ranged in age from six to 14 years.

## *2.2 Data collection procedure*

Data were collected retrospectively from regional social welfare board archives. The study was first presented to the National Office for Social Welfare Boards, which in turn recommended that the regional welfare boards participate. All twelve Norwegian regional social welfare boards were then contacted and asked to provide archived data for a number of cases equal to four times the number of judges serving on the board. Thus, the number of cases from each board varies according to the population size of the region. The smallest region had three judges and was asked to provide data from 12 cases the largest region had 12 judges and was asked to provide data from 48 cases. The data was retrieved from the archives by the ruling judges who completed one registration form for each sample child.

To ensure that the studied cases represented the general population of cases we selected cases sequentially by case number according to a specific set of criteria. We only included cases that were ruled upon in the year 2011. All data was collected from September 2012 to January 2013. Each judge was asked to provide data from the four cases with the lowest archive case number in the year 2011 based on the following criteria: (i) the case was decided in 2011; (ii) the child was born between 1996 and 2004; (iii) in cases involving more than one child, the youngest child matching the age criteria was selected; and (iv) only four cases were drawn from the portfolio of rulings of each judge. The ruling judge personally completed most case reports, but in some instances where the judge had left the position, the judge's successor completed the reports. Although this selection procedure is not a randomization it does ensure that the sample was not biased towards the decisions of certain judges or regions. We requested data about 208 cases and received 161 responses. This represents a response rate of 77.4 %. Ten cases were excluded from the analysis. One was excluded because the age of the

child did not meet inclusion criteria, and nine other cases were excluded because we were unable to determine the rulings made in the cases. None of the cases included a pair of siblings.

Some boards reported that because the judge had left office and the former judge's position was still vacant, certain cases were missing. Because we did not link case reports to the names of judges, we do not know how many of the non-responses resulted from vacant positions.

### 2.3 Measures

A registration form was developed specifically for this study. The form consisted of 55 questions that were related to three main areas of interest (see below). One form for each case was completed anonymously by a judge with access to the case documents. Information was drawn from two different case documents. These documents were (i) the case ruling and (ii) the report of the child advocate. Because a child below the age of 16 is not formally recognised as a party in the case, the views of a child are characterised as wishes rather than as claims. The following information was collected:

- (a) *Information about the child and the child's wishes:* From the ruling, information about the child's age, gender, ethnic origin and existing care arrangements was collected. From the child advocate report, information about whether the child wanted to continue living with the child's current caregivers and, if not, where the child wanted to move was collected. We also collected information about the child's views about visitations with his or her mother and father, contingent on the child not being allowed to be in care of either or both of the child's parents.
- (b) *Information about the parties' claims.* Claims about care and visitations set forth by child protection services, as well as those from the mother and the father of the child were collected.
- (c) *Information about the case procedures and rulings.* Regarding the case procedure characteristics, information regarding which party was the petitioner, whether the case was decided with or without negotiations, whether a child advocate had been appointed and used, and whether an expert report had been submitted was collected. Finally, information about the ruling, including the care and visitation orders, was collected.

Based on this information, we computed the following variables for use in the analysis: (i) whether the ruling about care placement was in accord with what the child wanted (ii) whether the ruling about visitations with the child's mother and father was in accord with what the child wanted and (iii) whether CPS or the parents won the case with respect to care and visitations. Care was considered to be won by CPS if there was disagreement about care and the ruling was in favour of CPS or if the parents did agree with the CPS claim and the ruling was made accordingly. Care was considered to be won by parents if there was disagreement between the parents and CPS and the ruling was in favour of one or both of the parents. The ruling was counted as being in line with a child's wishes if the decision to move or not move the child away from the child's current home was in accord with what the child wanted. Very few children specified a specific number of desired parental visitations. To calculate whether a visitations ruling was in accord with a child's wishes, we scored whether a child wanted more visitations, whether a child wanted fewer visitations, or whether the child agreed to what was proposed by CPS, and we then compared this to the ruling. If the child wanted more visitations and the ruling on visitations was to increase visitations despite the CPS proposal, the ruling was counted as being in accord with the child's wishes.

#### *2.4 Analysis*

Chi square and t-tests were used in bivariate analysis of (i) the differences between the children who wanted to move and the children who did not want to move; (ii) the differences between the children who wanted more visitations with their mothers compared to those children who did not; (iii) the differences between the children who wanted more visitations with their fathers compared to those children who did not.

We compared differences between the proportion of children who wanted more visitations with mother and the proportion of children who wanted more visitations with father by use of the Fisher's exact test.

Logistic regression was used in simple and multivariable analyses to determine the odds of a ruling about care being in accord with a child's wishes. Simple logistic regression was used to determine the odds of visitations with the child's mother and the child's father being in accord with the wishes of the child.

### 3. Results

#### *3.1 Preliminary analysis*

A child advocate was appointed in most cases ( $n = 142$ , 94.7 %). There were no instances reported where a child refused to meet a children's advocate. In one case, the child expressed views directly to the judge, and in two cases, the child had been present at the negotiations and personally expressed views before the board.

We look at rulings and children's views with respect to three different issues. Care custody, visitations with mother and visitations with father. There were 151 cases, but not all issues were relevant in all cases. In cases where the board ruled on who should care for the child ( $n = 124$ ), most children expressed an opinion about whether they wanted to stay with their current caregivers or move to a different home ( $n = 114$ , 91.9 %). In cases where the board ruled about visitations with mother ( $n = 129$ ), the child had expressed views about visitations with mother in 66.7 % ( $n = 86$ ) of cases. In cases where the board ruled about visitations with father ( $n = 103$ ) the child had expressed views about visitations with father in 89.3 % ( $n = 92$ ) of cases.

Some children ( $n = 52$ ) specified to where they would prefer to move if the court ruled that the child had to move. Most of them ( $n = 38$ , 73 %) wanted to move to a parent. The rest wanted to move into public care: eight to a specific foster family, five to unspecified foster care homes and one to residential care. Two children wanted an unspecified combination of these. Children were more likely (Fischer's exact test,  $p < .001$ ) to suggest alternative care arrangements if they wanted to move ( $n = 47$ ), compared to if their primary wish was to stay with their current caregivers ( $n = 7$ ). This result may suggest that engaging a child in a discussion about alternative care arrangements was more difficult if that outcome was not what the child primarily wanted. Children who specified wishes for alternative care were about one year older on average ( $M = 10.4$ ,  $SD = 2.6$ ) than the ones who did not ( $M = 9.4$ ,  $SD = 2.6$ ). The difference was significant ( $t(121) = 2.06$ ,  $p < .05$ ). These results suggests that children's development, perhaps their ability to assess hypothetical situations, may have co-

determined the level of detail with which they were able to communicate what they wanted when meeting with child advocates.

Children's views about visitations were found in the children's advocate reports in about two-thirds of the cases. Sometimes, the child chose only to express views about visitations with one of the parents. There were no differences between children who expressed views on visitations and those who did not, with regard to age, gender, ethnicity or current caregivers. We did, however, find that in the group of children that did express views about visitations, CPS had proposed more ( $M = 92.7$ ,  $SD = 197.7$ ) visitations with the mother compared to the non-responding group ( $M = 41.8$ ,  $SD = 57.1$ ). The large standard deviation between the two groups does, however, indicate that the mean is not a good representation of the data. The variance in the amount of proposed visitations was significantly larger in the responding group compared to the group of children who expressed no views about visitations (Levenes test,  $F = 8.33$ ,  $p < .01$ ). This result indicates that children may be more likely to express views about visitations if what is proposed by CPS deviates significantly from what is normal. It is likely that differences exist between those who expressed views about visitations and those who did not on some variables that were not captured by this study. Among these may be what type of abuse or neglect the child has been subject to, the quality in and type of relation to perpetrator and time spent in public custody.

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### *3.2 Children's views and rulings about care*

Table one shows that 67 children (58.8 %) did not want to move, whereas 47 (41.2 %) did. Children that were already in public care were more likely to want to move compared with children living with their parents. Rulings about care were in line with children's wishes in 44 cases (39.3 %). In our bivariate analysis, several factors were associated with a care ruling being in line with the desire of a child (Table 3). A ruling was more likely to be in accord with a child's wishes if the child did not want a change in care. If the case was submitted with an expert assessment attached, the likelihood that the ruling was in accord with what the child wanted was reduced. Although CPS won most cases independently of what children wanted, there was no record of any case in which the child's parents won without this being supported

by the child. Therefore, winning a case appears to be difficult for a child's parents if the child does not want to stay with the parents. This was also evident in the multivariable analysis that showed that rulings were most likely to be in accord with children's wishes for children living in protected care who did not want to move (Table 3). Although the analysis did show that whether the child wanted to move or stay with current carers had quite a large effect upon the likelihood that the ruling would be what the child wanted, we should note that we do think the size of these odds are sample specific and does not represent the precise odds in the population. There were only six children who had asked to move to a different care arrangement and where this was the eventual ruling. If one more child had been added to this category this would have reduced the odds with about two points. This indicates that a larger sample is needed to estimate a more precise estimate.

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### *3.3 Children's views and rulings about visitations*

Children wanted more visitations with their mothers in 60.5 % of cases ( $n = 52$ ) and with their fathers in 39.8 % ( $n = 41$ ). This difference was statistically significant (OR 2.3,  $\chi^2 = 8.00$ ,  $p < .01$ ). Thus, children were more likely to request more frequent visitations with their mothers compared to with their fathers. Differences between children's wishes for visitations with their mothers and their fathers were largest among children who were currently living with their parents. Notably, a child in this category was about twice as often living with a single mother than with a single father, so we may assume that this adds to the above-referenced effect. Rulings about visitations with mothers were in line with children's wishes in about 43 % of the cases, and rulings with fathers were in line in about 50 % of the cases.

Mothers, but not the fathers, were more likely (OR = 3.30,  $\chi^2 = 6.62$ ,  $p < .05$ ) to be granted more visitations if the child wanted more visitations. Children's views on visitations with fathers were not associated with who the board ruled in favour of (Table 2). If the child did not want more visitations with the mother, the CPS proposal would more often be retained. Visitations were increased by 16.5 hours per year (SD = 57.8) on average for mothers and by 13.4 hours per year (SD = 69.6) on average for fathers. There were no significant differences in how many hours' visitations per year were proposed by CPS for the group of children who

wanted more visitations compared to those that did not want more visitations. Similarly, no difference existed in how many hours' visitations were proposed by CPS for mothers ( $M = 77.2$ ,  $SD = 158.7$ ) compared to fathers ( $M = 60.4$ ,  $SD = 90.7$ ).

Bivariate associations between the visitation rulings and the child and case characteristics are shown in Table 4. None of the child or case characteristics were associated with whether rulings about visitations with fathers were what the child wanted. If the child was older or the child wanted more visitations, the ruling regarding visitations with the child's mother was more likely to be what the child wanted. Rulings about visitations with mothers were almost five times more likely to be according to child wishes if more visitations were granted.

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#### **4. Discussion**

##### *4.1 Children's opportunities to express views*

The incidence of child participation through the use of independent advocacy increased from 15 % of the cases in 1998 (Moldestad et al., 1998) to 95 % of the cases in 2011. We have to conclude that a shift in practice has taken place with regard to the weight that child welfare boards put on collecting children's views before ruling about placing children in public care and determining the number of allowed visitations with parents for children in public care. Although a judge ultimately decides whether a child advocate should be appointed, the norm seems to be for a judge to appoint an advocate if the child is older than six years. Notably, the legal regulations for this advocacy scheme emphasise explaining to a child that the advocacy service is optional. Although there is no record of any child rejecting a meeting with the child advocate, not all children want to comment on all of their issues. Still, the service seems to be fairly effective in eliciting children's views, with more than ninety per cent of children expressing opinions on where they wanted to live and about two-thirds expressing opinions about parental visitations. Compared to the study by Murray and Hallet (2000), who found that less than fifty per cent of the children who attended hearings in person had expressed opinions, representation through the advocacy service does seem to enhance the opportunities for children to communicate their views to judges. This observation fits well with arguments made elsewhere (Elseley, 2010; Boylan & Dalrymple 2011) that independent advocacy helps children to more effectively take part in case conferences and reviews and that support may

be important in securing children's participatory rights in formal proceedings.

Advocacy may be particularly important for younger children who may find the prospect of speaking 'in front of everyone' daunting. For older children, however, there is evidence that the children may value the opportunity to attend judicial proceedings in person (Ormson & Marryat, 2009). In particular, a study by Weisz et al. (2011) documented that children between the ages of 13 and 18 were happy to be present in court and that these children believed that children in their age ranges should be able to attend their child protection hearings. Current regulations for child advocacy in Norwegian dependency hearings prescribe that representation is either through advocacy or in person. Though this advocacy system seems to be an efficient way to make sure children's views are presented in court, the widespread use of this system may also mean that children who would like to attend hearings in person, despite advocacy representation, may be overlooked. Attending hearings in person may have additional benefits that are not gained through representation. There may be an opportunity for a child to learn and to obtain information to better understand the reasons behind the child protection processes (Thomas & O'Kane, 1999) and to increase the child's perception of fairness and legitimacy in the eventual decision (Weisz, et al., 2011).

#### *4.2 Children's views about care arrangements*

Decisions such as where to live and how often to meet with biological parents have substantial implications for children. Although child-friendly procedures are important, children also care about the results of procedures. One child quoted by Holland and O'Neill (2006, p.91) expressed his views this way: "we had to be there to make sure it was what we wanted." This may serve as a reminder that many children have deeply vested interests in the outcomes of their child protection cases.

We found that many children wanted to move to a different care-taking arrangement, but this desire was influenced by where the child in question was currently living. Children living with their parents were not very likely to want to move into protected care. Out of children already living in public care, a little less than half of the children wanted to remain in care, and the others (57 %) wanted to move. Because not all of the children reported where they wanted to move to, we do not know the exact percentage of children who would prefer to live with their parents. Considering that some of the children who did want to move asked to

move somewhere other than the home of their parents, we may assume that the percentage of children who wanted to move back with their parents were a little less than 57 %, see Table 2. This proportion is still about twice that reported by Lundstöm and Sallnäs (2009), in which about one-fourth of the children placed in public care in Sweden stated that they would rather stay in protected care than live with their parents. Notably, however, the Swedish study was a questionnaire survey, and no decisions about changes in care for the responding children were imminent. The difference in the results between these two studies is thus likely affected by the contexts in which the studied children's views were collected and the differences in sample characteristics between the studies. Their sample mostly consisted of children who had been living in public care for more than two years (86 %) and their children were also older ( $M = 16.1$ ) compared to the children in this study ( $M = 10.0$ ). Children are probably less likely to want to move back with their parents if they have been living for a long time in permanent placements. Another interpretation is supported by the findings of Block et al. (2010), who noted that a proportion of the children that they interviewed immediately after dependency hearings wanted to move back with their parents, but that it was dependent on specific conditions being met. A possible interpretation is that many children may, in principle, rather live with their parents than in a public care environment, but when faced with a chance that a change in care could actually happen, the fraction of children who retain this preference is reduced. This shows the particular importance of taking context validity into consideration when children's views are being investigated.

Rulings about care were in line with what the child wanted in about 40 % of cases. Because we have no other studies with which to compare our analysis, we cannot determine whether the overall impact of children's views in Norway is large or small. Notably, however, other considerations are more important in many cases. Chief among these are probably child safety and child development. Our finding that a child is most likely to get what he or she wanted if the child was living in care and did not want a change does fit with this hypothesis. However, because the study did not include information about the type or severity of risk the child might be subject to nor the reasons that were given by the board for the ruling, we do not know how this co determines the case outcome.

When an expert assessment was commissioned, this reduced the probability that a ruling would be consistent with what a child wanted. This result is consistent with findings from Germany (Goldbeck, et al., 2007) that expert assessments increase certainty in intervention planning but that these assessments reduce child participation. Based on our study, we can

add that expert assistance also seem to reduce the probability that the decision will be in line with what the child wanted. Unfortunately we do not know if this is because the expert assisted cases are more severe. It could be that increased severity of abuse or neglect is linked to court rulings being less in accord with the child wishes for these cases. This assumption may be supported by the findings of Moldestad et al (1998) that children's views tend to be assigned more weight if the board is in doubt about what to rule.

In Norway the child welfare board ruling does not normally specify which family or residential care unit the child is to be placed with if taken into public care. This decision is made later by social workers from municipal and regional child welfare agencies in cooperation. If the child has expressed wishes for a specific care placement or to be placed together with a sibling this will normally be taken into consideration, it is however likely to be subject to availability of foster homes. Because the decision about where the child is placed in public care is not made by child welfare boards we were not able to assess if wishes related to care placement at a specific location had been met.

#### *4.3 Children's views about visitations*

Children's wishes about visitations were quite similar to what was found by Lundstöm and Sallnäs (2009) in Sweden, where about one half of the children living in long-term care wanted more visitations. In this study, we were able to elaborate on this finding by looking into differences between visitations with mothers and fathers. We found that children more frequently want more visitations with their mothers. This finding fits well with previous research from other Scandinavian countries (Holtan, 2002; Nielsen, 2002; Lundstöm & Sallnäs, 2009), which shows that mothers do have more visitations with their children compared to fathers. Although the greater absence of fathers may be influenced by other factors, such as the amount of contact between a father and a child before public care placement, our findings seem to imply that the observed differences in children's contacts with parents may also be rooted in children less frequently wanting contact with their fathers.

When children wanted more visitations with their mothers, this was associated with more visitations being granted. In contrast, fathers were also granted more visitations in about half of the cases, even if the child actually did not want more contact with the father. What children want appears to have a minor impact upon the actual rulings in many cases. Notably,

Norwegian child welfare board rulings probably set a low threshold for the amount of contact between children and their parents, granting CPS broad discretion to increase visitations, which would explain why studies find that children have more contact with their mothers even though there seems to be no significant difference in how much contact is awarded by courts.

According to Norwegian legislation (Child Welfare Act, 1992), parents have a right to contact with children placed in care. Thus, parental visitations can only be denied or greatly reduced under special circumstances. In 2012, a panel of experts (Norges Offentlige Utredninger, 2012) reviewed 14 rulings by Supreme Court of Norway and 21 cases ruled upon by the court of appeals regarding parental visitations. They concluded that although the Supreme Court's decisions were influenced by several factors, such as the anticipated length of the placement and personal capabilities of the parents, the child's wishes, age and reaction to previous visitations would normally determine supreme court decisions. In the cases ruled on by the court of appeals, however, the panel concluded that although the circumstances in the reviewed cases were very different, there was very little variation in the amount of visitations set by the courts. The reviewers concluded that the discretionary judgments conducted by appellate courts seemed more determined by ideology than by detailed considerations of the facts of the case. We suggest that equal visitations for mothers and fathers may be one ideology that may explain why the amount of visitations set for fathers are increased along with those of mothers despite the finding that children overall more often only want more contact with their mothers.

When children are placed in public care, visitations with other siblings and / or family members can be arranged. This is however not regulated by legislation and is therefore usually not part of the ruling that is made by the child welfare board. Although it would be of interest to investigate if, when and how frequent children have contact with other family members, this would require a different study design.

#### 4.4 Limitations

This study has some important limitations. The study is based on the associations between what the sampled children wanted and what the outcomes were for the sampled children. This type of analysis precludes causal inference.

It is likely that the wishes expressed by children were influenced by reason for removal, time of removal and type of abuse or neglect and that court rulings are affected by safety concerns. We therefore have to acknowledge that the associations we found between child views and ruling are likely to have been confounded by other case characteristics that child welfare boards take into consideration when they determine what is best for the child. Thus, we do not know to what degree a child's views helped determine the eventual ruling in the child's case or how important children's views were compared to the safety concerns. We suggest that future studies should include some measure of the judicial assessments that are being made and more detailed information about the evidence presented by CPS in order to determine more specifically which factors may help explain if children's wishes are being met or not.

This study presupposes that the child advocate report accurately reflects what the child wants. Although the advocate is expected to speak with the child separately and ask open ended questions it is likely that some children may not feel comfortable talking to a stranger about delicate issues. Another potential problem with relying on the child advocate report for identifying child wishes is that a child may have felt pressured by an adult to express views other than what he or she really feels. Additionally may a child not want to express how they feel about their parents or foster parents if they know that parents will hear about it in court. These are all factors that may have influenced the accuracy with which the child advocate report represents what the child wants. Future studies should perhaps look more closely at how accurately children's views are being represented through this advocacy scheme. Because not much is known about this at present, we have to acknowledge this as a potential validity problem.

In the analysis we treated all cases as independent. Because a panel consisting of three or five judges rules most cases we did not look for possible differences between regions or judges. It is however possible that dependency exists between cases if the weight that is put on the view of the child is greatly affected by factors attributable to judge's personal preferences or the culture within a region. In such a case a mixed models analysis would have been more appropriate.

Because many children did not express their views about visitations, the analysis of the factors associated with whether visitation rulings were in accord with a child's wishes suffered from a loss of statistical power. We were thus not able to significantly detect small to medium effects with the size of the remaining sample. Future studies should account for this omission and take into consideration that data about children's wishes about visitations may be missing in up to 40 % of cases.

## 5. Conclusion

Our findings are relevant to current on-going debates about legal policy. Children's views are represented in most cases. Although current child welfare legislation prescribes that a child's views should be weighed against what is in the best interest of the child, the influence of the children's wishes in child welfare case results seems to vary.

Based on data from our study, children's views appear to be quite effective in precluding certain decisions about care. However, a child's view appears to have less impact if the child requests a specific change. These outcomes were clearly seen in the few cases where custody was won by a child's parents, but there was no record of any child being ordered to live with the child's parents unless that was what the child wanted. Similarly, there was very little chance that a change in care would be ordered if the child was living in public care and did not want to move.

The number of visitations allowed to a child's parents seemed to be set fairly independently of what the child wanted. We are concerned that more visitations were allowed by rulings in about one-third of the cases in which a child did not want more contact. Notably, because increases were on average quite small, about 15 hours per year, we may question whether the increased number of allowed visitations had any significant implications for the children in question. Future research needs to perhaps examine more closely the impact of contact with birth parents upon outcomes for children living in public care to assess the merits of current practices.

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Table 1: Children's living arrangement at the time of the ruling

| Child is living with                      | N   | %    |
|---|-----|------|
| Both parents                              | 11  | 7.3  |
| Mother                                    | 22  | 14.6 |
| Father                                    | 9   | 6.0  |
| With relatives by private arrangement     | 4   | 2.6  |
| With non-relatives by private arrangement | 4   | 2.6  |
| Foster care                               | 50  | 33.1 |
| Kinship foster care                       | 8   | 5.3  |
| Family based acute placement facility     | 31  | 20.5 |
| Residential acute placement facility      | 4   | 2.6  |
| Residential care                          | 5   | 3.3  |
| Other                                     | 3   | 2.0  |
| Total                                     | 151 | 100  |

Note: Private arrangement means that parents have voluntarily arranged for the child to live with other carers. They still retain custody over the child.

Table 2 : Children's wishes about care and visitations - associations with child and case characteristics.

| Variable                            | Child want to move | Child want to stay |    | Child want more visitations, mother |            | Child want more visitations, father |            | Visitation s with mother vs father |        |
|-------------------------------------|--------------------|--------------------|----|-------------------------------------|------------|-------------------------------------|------------|------------------------------------|--------|
|                                     | N (%)              | N (%)              | p  | Yes<br>No<br>N (%)<br>N (%)         |            | p<br>Yes<br>No<br>N (%)<br>N (%)    |            | OR (p)                             |        |
| <b>Child characteristics</b>        |                    |                    |    |                                     |            |                                     |            |                                    |        |
| Mean age (SD)                       | 10.0 (2.4)         | 10.0 (2.7)         | ns | 9.8 (2.4)                           | 10.8 (2.8) | ns                                  | 10.0 (2.5) | 9.6 (2.6)                          | -      |
| Gender                              |                    |                    |    |                                     |            |                                     |            |                                    |        |
| Girls                               | 29 (41.4)          | 41 (58.6)          |    | 32 (62.7)                           | 19 (37.3)  | ns                                  | 19 (44.2)  | 24 (55.8)                          | 2.13   |
| Boys                                | 17 (39.5)          | 26 (60.5)          | ns | 20 (57.1)                           | 15 (42.9)  |                                     | 22 (36.7)  | 38 (63.3)                          | 2.36*  |
| Ethnicity                           |                    |                    |    |                                     |            |                                     |            |                                    |        |
| Norwegian                           | 38 (41.3)          | 54 (58.7)          | ** | 43 (61.4)                           | 7 (10.0)   | ns                                  | 33 (40.2)  | 49 (59.8)                          | 1.86   |
| Other                               | 9 (22.7)           | 12 (27.3)          | *  | 8 (19.0)                            | 3 (6.8)    |                                     | 7 (17.0)   | 13 (29.7)                          | 7.00** |
| Child currently living              |                    |                    |    |                                     |            |                                     |            |                                    |        |
| In care                             | 9 (42.9)           | 12 (57.1)          | ns | 8 (53.3)                            | 3 (17.6)   |                                     | 7 (35.0)   | 13 (65.0)                          | 3.64*  |
| With parent(s)                      | 33 (44.3)          | 33 (44.3)          | ns | 38 (55.1)                           | 6 (27.3)   | *                                   | 29 (39.7)  | 44 (60.3)                          | 1.96   |
| <b>Case characteristics</b>         |                    |                    |    |                                     |            |                                     |            |                                    |        |
| Expert assessment ordered           | 3 (8.1)            | 34 (91.9)          |    | 14 (82.4)                           | 23 (52.3)  |                                     | 12 (29.3)  | 18 (29.0)                          | 1.77   |
| Yes                                 |                    |                    |    |                                     |            |                                     |            |                                    |        |
| No                                  |                    |                    |    |                                     |            |                                     |            |                                    |        |
| Ruling was in favor of <sup>a</sup> |                    |                    |    |                                     |            |                                     |            |                                    | 3.30*  |
| CPS Parent                          | 14 (46.7)          | 16 (53.3)          |    | 16 (72.7)                           | 11 (42.3)  |                                     | 11 (42.3)  | 15 (57.7)                          |        |
| Parent                              | 33 (37.5)          | 50 (62.5)          |    | 36 (57.1)                           | 30 (40.5)  |                                     | 30 (40.5)  | 44 (59.5)                          |        |
| CPS                                 | 44 (42.7)          | 59 (57.3)          |    | 21 (47.7)                           | 16 (34.0)  |                                     | 16 (34.0)  | 31 (66.0)                          |        |
| Parent                              | 2 (22.7)           | 7 (77.3)           |    | 24 (72.7)                           | 25 (72.7)  |                                     | 25 (72.7)  | 31 (72.7)                          |        |

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|   |       |       |       |       |
|---|-------|-------|-------|-------|
| ) | (77.8 | (72.7 | (44.6 | (53.4 |
| ) | )     | )     | )     | )     |

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Note: \* $p < .05$ , \*\* $p < .01$ ; ns = not significant; <sup>a</sup>When a parent won the care ruling there was no visitations ruling.

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Table 3: Factors associated with the care ruling being according to child wishes

| Variable                     |     |      | Care ruling according to child wishes |                                |
|------------------------------|-----|------|---------------------------------------|--------------------------------|
|                              | N   | %    | Simple analysis OR (95 % CI)          | Multivariable analysis OR (CI) |
| <b>Child characteristics</b> |     |      |                                       |                                |
| Age                          |     |      | 1.06 (0.92-1.23)                      |                                |
| Gender                       |     |      |                                       |                                |
| Girls                        | 69  | 39.1 |                                       |                                |
| Boys                         | 42  | 40.5 | 1.06 (0.48-2.32)                      |                                |
| Ethnicity                    |     |      |                                       |                                |
| Norwegian                    | 90  | 35.6 |                                       |                                |
| Other                        | 21  | 52.4 | 2.00 (0.76-5.20)                      |                                |
| Current residence            |     |      |                                       |                                |
| In care                      | 75  | 46.7 | 2.72 (1.13-6.55)*                     | 10.78 (1.49-78.11)*            |
| With parent                  | 37  | 24.3 |                                       |                                |
| Child wish                   |     |      |                                       |                                |
| Change in care               | 46  | 13.0 |                                       |                                |
| No change                    | 66  | 57.6 | 9.05 (3.37-24.28)***                  | 56.07 (12.50-251.54)***        |
| <b>Case characteristics</b>  |     |      |                                       |                                |
| Expert assessment attached   | 30  | 23.3 |                                       |                                |
| Yes                          | 81  | 44.4 | 2.63 (1.01-6.82)*                     | 2.74 (0.71-10.50)              |
| No                           |     |      |                                       |                                |
| Parents agree with CPS       | 19  | 42.1 | 1.38 (0.47-4.01)                      |                                |
| Yes                          | 93  | 38.7 |                                       |                                |
| No                           |     |      |                                       |                                |
| Ruling was in favour of      | 103 | 34.0 |                                       |                                |
| CPS                          | 9   | 100  | NA*** <sup>a</sup>                    |                                |
| Parent                       |     |      |                                       |                                |
| Ruling was change in care    | 34  | 17.6 |                                       |                                |
| Yes                          | 78  | 48.7 | 4.43 (1.65-11.90)**                   | 3.25 (0.57-18.50)              |
| No                           |     |      |                                       |                                |

Note: \*\* p<0.01, \*\*\*p<0.001, N total number of cases; % Percentage of cases ruled according to child wishes; OR Odds Ratio; 95 % CI 95 % Confidence interval; <sup>a</sup>Odds ratio could not be computed because when parents won the case the ruling was always in line with child wishes (n = 9). The difference was highly significant (p< .001, Fisher's exact test). In the bivariate analysis N range from 111-112. In the multivariable analysis N = 111.

Table 4: Factors associated with the visitations ruling being according to child wishes.

| Variable                         | Visitations ruling according to child wishes |      |                     |        |      |                  |
|----------------------------------|--|------|---------------------|--------|------|------------------|
|                                  | Mother                                       |      |                     | Father |      |                  |
|                                  | N  | %    | OR (95 % CI)        | N      | %    | OR (95 % CI)     |
| <b>Child characteristics</b>     |  |      |                     |        |      |                  |
| Age                              |  |      | 1.23 (1.02-1.48)*   |        |      | 1.06 (0.90-1.25) |
| Gender                           |  |      |                     |        |      |                  |
| Girls                            | 45   | 42.2 |                     | 52     | 50.0 |                  |
| Boys                             | 32   | 43.8 | 1.06 (0.43-2.66)    | 40     | 50.0 |                  |
| Ethnicity                        |  |      |                     |        |      | 1.00 (0.44-2.28) |
| Norwegian                        | 63   | 39.7 |                     | 75     | 50.7 |                  |
| Other                            | 13   | 61.5 | 2.43 (0.71-8.29)    | 16     | 50.0 |                  |
| Child living in care             |  |      |                     |        |      | 1.03 (0.35-3.02) |
| Yes                              | 63   | 43.4 | 1.44 (0.43-4.79)    | 67     | 40.0 |                  |
| No                               | 14   | 35.7 |                     | 25     | 53.7 |                  |
| <b>Case characteristics</b>      |  |      |                     |        |      |                  |
| Child want                       |  |      |                     |        |      | 1.74 (0.68-4.43) |
| More visitations                 | 45   | 37.8 |                     | 35     | 37.1 |                  |
| Same or less visitations         | 32   | 50.0 | 1.65 (0.66-4.13)    | 57     | 57.9 |                  |
| Expert assessment ordered        |  |      |                     |        |      |                  |
| Yes                              | 20   | 40.0 |                     | 25     | 48.0 |                  |
| No                               | 56   | 44.6 | 1.21 (0.43-3.42)    | 64     | 51.6 | 2.33 (0.98-5.52) |
| Supervised visitations ordered   |  |      |                     |        |      |                  |
| Yes                              | 38   | 36.8 | 1.06 (0.40-2.85)    | 52     | 46.2 |                  |
| No                               | 31   | 35.5 |                     | 33     | 45.5 |                  |
| No                               | 44   | 34.1 |                     | 47     | 55.3 | 1.15 (0.46-2.91) |
| Ruling in favour of CPS          | 33   | 54.5 | 2.32 (0.92-5.86)    | 45     | 44.4 |                  |
| Parent                           | 23   | 69.6 | 4.84 (1.68-13.96)** | 29     | 41.4 | 1.03 (0.43-2.47) |
| Ruling was increased visitations | 53   | 32.1 |                     | 60     | 53.3 |                  |
| Yes                              |  |      |                     |        |      | 1.55 (0.68-3.52) |
| No                               |  |      |                     |        |      |                  |
|                                  |  |      |                     |        |      | 1.61 (0.66-3.97) |

Note: N total number of cases; % Percentage of total rulings that were according to child wishes; OR Odds Ratio; 95 % CI 95 % Confidence interval. In the analysis of visitations with mother N range from 69 to 77. In the analysis of visitations with father N range from 85 to 92.

## Highlights

- Most children get the opportunity to express their views
- Rulings about care were in line with the wishes of the child in 39 % of the cases
- If a child does not want to stay with parents foster care is likely the outcome