

## A RIGHT NOT TO PARENT ONE'S CHILDREN

Carmen M. Cusack

### I. INTRODUCTION

The right to privacy includes a right to surrender one's children to the state.<sup>1</sup> In Section Two, this essay discusses 1) fundamental rights and the right to privacy; 2) the right to parent; and 3) the established and implied right not to parent.<sup>2</sup> The decision to parent supersedes alternate courses in many cases. It is a fundamental right and lifestyle that must be respected. Section Three discusses 1) the best interest of a child and the right of a child to receive care from a natural parent; and 2) balancing a parent's prior choice to parent against a right not to parent and the best interest of the child.<sup>3</sup> Section Four discusses the state's interest in family life, morality, children's

---

<sup>1</sup> U.S. Const. Am. V. U.S. Const. Am. XIV.

<sup>2</sup> *Id.*

<sup>3</sup> *See e.g.*, Fla. Stat. § 61.13(3) (2019).

rights, and avoiding dependency.<sup>4</sup> Section Five concludes that the established right not to parent (e.g., birth control) exists after a parent exercises the right to parent. To exert this right, a parent's prior decision must be placed on one side of the scale with the best interest factors and the state's interest in avoiding dependency.<sup>5</sup> On the other side of the scale is the right not to parent and the best interest factors.<sup>6</sup> The right not to parent is not an unlimited right, yet it is a fundamental right that must be considered in light of a child's natural and fundamental right to receive appropriate care from a birth parent.<sup>7</sup>

## II. EXERCISE OF A FUNDAMENTAL RIGHT

A fundamental right is rooted in a traditional firmly held in the United States.<sup>8</sup> Family traditions and private matters that were inviolable (e.g., sex between married partners) in England, the colonies,

---

<sup>4</sup> *Id.*

<sup>5</sup> *See e.g.*, Fla. Stat. § 61.13(3).

<sup>6</sup> *Id.*

<sup>7</sup> U.S. Const. Am. V.

<sup>8</sup> *Id.*

and throughout the history of the United States form the basis of fundamental rights. The right to privacy is a Court-made description not precisely described in the United States Constitution, a document which expands, and yet, literally protects rights by denoting minimum and exact requirements to propagate freedom.<sup>9</sup> Right to privacy includes, but is not limited to, right to have sex, reproductive freedom, and right to parent. No right is limitless. The Court and legislature have consistently recognized the power of abstention.<sup>10</sup> It is sometimes described as a reciprocal, implied, or dormant aspect of a right.<sup>11</sup> One may exercise a right in one scenario, and then abstain from exercising the same right. One may have sex with one's spouse, and then choose to abstain. Although the partner who suffers a loss may feel alienated, the recourse is divorce or dissolution of the marriage. Marital rape is no longer an exception under the law. Similarly, a person may exercise the right to procreate and the right to

---

<sup>9</sup> *Id.*

<sup>10</sup> CARMEN M. CUSACK, *SEX CASE LAW* (2019).

<sup>11</sup> *See*, U.S. Const. Art. I, Sec. IIX, Clause III.

parent.<sup>12</sup> Although the right to procreate may be dimmed through abstention, the right to parent socially appears to be irrevocable. There appears to be no right to terminate parental rights. Yet, there must be. Although courts and legislatures have established best interest factors of a child, including enforcement of protective orders and support orders, the Court has not established a parent's right not to parent.<sup>13</sup> This is necessary because the state may not violate the right to privacy.<sup>14</sup> However, in light of the seriousness of the exercise of this right, the original decision may not easily be disturbed.

### III. CHILD'S BEST INTEREST

Children's rights to life, liberty, and the pursuit of happiness and property are protected using best interest factors.<sup>15</sup> When matters arise that affect children (e.g., a child's right to receive support

---

<sup>12</sup> U.S. Const. Am. V.

<sup>13</sup> See e.g., Fla. Stat. § 61.13(3).

<sup>14</sup> U.S. Const. Am. V. U.S. Const. Am. XIV.

<sup>15</sup> See e.g., Fla. Stat. § 61.13(3). U.S. Const. Am. V. U.S. Const. Am. XIV. *Declaration of Independence* (1776).

money), the Court may analyze best interest factors to determine the best way to enforce the child's right.<sup>16</sup> The best interest factors include various provisions, such as psychological well-being, spiritual health, access to medical care, companionship, nuclear family ties, pleasant home environment, and disruption to education and community. Implied is a child's fundamental and obvious right to be paired with one or both parents who reproduced the child. No right to privacy is more apparent than the right to be related to one's parent. Generally believed to be bestowed at birth, the child's right to be with a parent is protected by the state.<sup>17</sup> The parent's right to impinge on this right by terminating parental rights must be balanced against the child's right to continue this relationship. During the best factor analysis, a child may provide his or her preference (e.g., guardian ad litem).<sup>18</sup> The exercise of this right cannot trump the parent's right *per se*, and yet the parent's previous exercise must

---

<sup>16</sup> See e.g., Fla. Stat. § 61.13(3).

<sup>17</sup> CARMEN M. CUSACK, TWINS AND DEVIANCE (2016).

<sup>18</sup> See e.g., Fla. Stat. § 61.403 (2019).

not easily be violated. Thus, a child who exercises his or her right may outweigh a parent who exercises a right not to parent when the Court finds that it is not in the child's best interest to remain with the natural parents. Parental rights may be terminated.

#### IV. DISRUPTING THE EXERCISE OF RIGHTS

The state has an interest in protecting children, maintaining families, and exercising morality.<sup>19</sup> The state also has an interest in avoiding the burden of maintaining other people's rights. The state cannot participate in a legislative scheme that permits people to exercise a right to parent to the detriment of the state, the public, and other residents. The state may and does require individuals to care for children.<sup>20</sup> Although the government cannot institute a total ban or denial of procreative rights to those who exercise them without regard for the linked right to parent and right to be parented, the state has

---

<sup>19</sup> CARMEN M. CUSACK, *LAWS RELATING TO SEX, PREGNANCY, AND INFANCY* (2015).

<sup>20</sup> Fla. Stat. §§ 827.03, 827.10 (2019).

incapacitated individuals who are unable to comply with court orders to provide care (e.g., contempt and arrears).<sup>21</sup> Individuals who are unwilling to care for children and threaten to harm children under their care may be subject to termination proceedings.<sup>22</sup> The state may place their children into dependency.<sup>23</sup> The state's exercise of this authority demonstrates the severability of the natural bond, and yet also demonstrates the severity of this measure. Thus, the state's interest in maintaining traditional rubrics and avoiding economic and social costs associated with disruption cannot easily be overcome by an exercise of a right not to parent that ends the exercise of a right to parent. The state may require residents to take alternate measures in lieu of fully exercising their rights.

---

<sup>21</sup> Fla. Stat. §§ 38.23, 409.2558 (2019).

<sup>22</sup> Fla. Stat. § 63.087 (2019).

<sup>23</sup> Fla. Stat. § 39.507 (2019).

## V. CONCLUSION

A parent's right to end a natural relationship with the child may be exercised. It may be viewed as unideal, however the right cannot be unarticulated simply because it is implied or dark at times. Many individuals exercise the right through alternative family structures and lifestyles. Informality and privacy support their decisions to exercise a right not to parent. These individuals have support networks and their actions do not involve the government. Yet, individuals without easily identifiable support networks possess the same right. Their needs may be met through more effective community strategies; and children's rights to be with natural parents should be additionally raised in any considerations of rights to procreate and parent.