



The application of shared custody in reconstituted families: challenges and perspectives in the Brazilian legal system

The application of shared custody in reconstituted families: challenges and perspectives in the Brazilian legal system

Luiz Eduardo Tadros Pinho¹

Manuella Silva Azedo²

Paulo Queiroz³

SUMMARY

The research analyzed the application of shared custody in reconstituted families in the Brazilian legal system, investigating its practical challenges and prospects for improvement. The starting point was the understanding that shared custody, enshrined in legal provisions, seeks to ensure the best interests of the child through parental co-responsibility. The context of new family configurations was considered —

resulting from divorce, widowhood and remarriage — which impose specific dynamics of coexistence and demand adaptations in custody agreements. A qualitative approach was adopted, of an exploratory and descriptive nature, based on a bibliographic review of specialized doctrine, normative analysis of Laws No. 11.698/2008, 13.058/2014 and 14.713/2023, and study of selected judgments of the Courts of Justice and the Superior Court of Justice from 2014 to 2024. The results indicated that, although Brazilian legislation has evolved to prioritize shared custody, its effectiveness remains conditioned by the judicial stance and the psychosocial support available. In reconstituted families, additional complexity was found: the need to establish parenting plans that contemplate new emotional relationships, ensure balanced living spaces and prevent conflicts of loyalty.

It was concluded that the consolidation of shared custody in reconstituted families depends on the coordination between legislative improvements, professional training and integrated public policies for psychosocial support. It is recommended that empirical research be conducted on the impact of different support models — in-person and virtual — on the quality of children's coexistence, as well as the establishment of mechanisms for monitoring and periodically evaluating custody agreements. In this way, it will be possible to ensure the continuous adaptation of the rules to social transformations and to effectively promote the best interests of the child in emerging family contexts.

Keywords: Shared Custody; Reconstituted Families; Parental Cooperation; Family Mediation; Public Policies.

¹ Law student at Santa Teresa College. Manaus/AM. E-mail: dudutp67@gmail.com.

² Law student at Santa Teresa College, Manaus/AM. E-mail: manuellazedo@icloud.com.

³ Graduated in Letters: Portuguese Language and Literature and Law, with a lato sensu postgraduate degree in Social Anthropology and a stricto sensu postgraduate degree in Cultural Anthropology. PhD candidate in Cultural Anthropology and Education. He also studied Philosophy of Law and Political Science. He is currently a parliamentary advisor for legislative production. - Legislative Assembly of the State of Amazonas, and works as an editor and university professor.

ABSTRACT

The research analyzed the application of shared custody in reconstituted families in the Brazilian legal system, investigating its practical challenges and perspectives for improvement. It was based on the understanding that shared custody, enshrined in legal provisions, seeks to ensure the best interests of the child through parental co-responsibility. The context of new family configurations — resulting from divorces, widowhood and new marriages — that impose specific dynamics of coexistence and demand adaptations in custody agreements was considered. A qualitative approach was adopted, of an exploratory and descriptive nature, based on a bibliographic review of specialized doctrine, normative analysis of Laws No. 11,698/2008, 13,058/2014 and 14,713/2023, and study of selected judgments of the Courts of Justice and the Superior Court of Justice in the period from 2014 to 2024. The results showed that, although Brazilian legislation has evolved to give priority to shared custody, its effectiveness remains conditioned to the judicial posture and the psychosocial support available. In reconstituted families, additional complexity was verified: the need to establish parental plans that contemplate new affective relationships, ensure balanced living spaces and prevent conflicts of loyalty. It was concluded that the consolidation of shared custody in reconstituted families depends on the articulation between legislative improvement, professional training and integrated public policies for psychosocial support. It is recommended to deepen empirical research on the impact of different support models — face-to-face and virtual — on the quality of children's life, as well as to institute mechanisms for monitoring and periodic evaluation of custody agreements. In this way, it will be possible to ensure continuous adaptation of norms to social transformations and to promote, in fact, the best interests of the child in emerging family contexts.

Keywords: Shared Custody; Reconstituted Families; Parental Cooperation; Family Mediation; Public Policies.

1 INTRODUCTION

To implement the principle of the best interests of the child, the Brazilian legislator instituted specific provisions regarding shared custody, with the enactment of Law No. 11,698, of July 13, 2008, which introduced the institute into the legal system; Law No. 13,058, of 22 December 2014, which required mandatory assessment of shared custody in cases of dissolution of stable unions and divorce; and, more recently, Law No. 14,713, of 25 of July 2023, which improved joint decision-making mechanisms and strengthened autonomy of the parents (Brazil, 2008; 2014; 2023; Pereira, 2010; Watanabe, 2018).

The effectiveness of these rules in Brazilian jurisdiction has been the subject of analysis doctrinal and jurisprudential, revealing advances and resistance. Studies indicate that, although the principle of parental cooperation is widely accepted, its practical application still depends on the judicial stance and the training of legal professionals (Watanabe, 2018; Silveira Junior, 2019).

Reconstituted families, formed as a result of new unions after divorces or widowhood, present specific dynamics that make shared custody a challenge singular. In this context, a reconstituted family is defined as one in which one or both parents establish a new conjugal bond, generating socio-affective relationships that are different from original (Silva, 2018; Silveira Junior, 2019).

The institute of shared custody, provided for in art. 1,583 of the Civil Code, presupposes the equitable division of responsibilities and balanced coexistence, aiming at comprehensive development of the minor. In this scope, the application in family reconstructions requires adaptation of parental plans and attention to the interests of children (Ramos, 2002; Melo et al., 2012).

The perspective of human dignity, a constitutional foundation, assumes a central role in the analysis of shared custody in reconstituted families, as it ensures the minor the right to continuous and balanced coexistence with both parents, reinforcing emotional bonds and preventing conflicts (Fermentão; Capelari, 2017).

Socio-affective indicators, such as the degree of cooperation between ex-spouses and the level of family communication, also influence the success of shared custody. Studies demonstrate that environments with greater dialogue between parents present lower rates of conflict and parental alienation (Zanini, 2021). Among the obstacles identified, the practice of parental alienation in reconstituted contexts, when a parent tries to disqualify the figure of the other before the children. This phenomenon compromises the principle of best interest and requires more effective protective measures (Campos, 2021).

Exploratory research on shared custody in family reconstructions point out the need for methodological guidelines that contemplate both legal-normative regarding the daily experience of the parties involved. Dissertations and symposia international studies have already indicated gaps in the integration of these approaches (Pratas, 2012; Melo et al., 2012).

Given this scenario, the present research is justified by the lack of studies that articulate legislative development, jurisdictional effectiveness and practical experience of reconstituted families. The objective is to evaluate challenges and perspectives of the application of shared custody, proposing interpretative guidelines and suggestions for improvement normative for the Brazilian legal system.

2 METHODOLOGY



The research adopted a qualitative approach, of an exploratory and descriptive nature, having as a scope to understand the challenges and perspectives of shared custody in families reconstituted. To this end, a bibliographic survey was carried out, consisting of the analysis of specialized doctrine on shared custody and reconstituted families, and research documentary, which covered the systematic interpretation of art. 1,583 of the Civil Code and the Laws No. 11,698/2008, 13,058/2014 and 14,713/2023. The legislative review stage identified the regulatory changes and the principles introduced in each legal framework, while the examination doctrinal offered theoretical subsidies on the foundations and current concepts about the institute.

In the jurisprudential phase, judgments from state and local Courts of Justice were selected. of the Superior Court of Justice, published between 2014 and 2024, which specifically addressed cases of shared custody in reconstituted families. The selection criteria prioritized decisions that highlighted practical conflicts, the application of the principle of the best interests of the child and possible references to human dignity. The analysis of these judgments allowed mapping decision-making patterns, identify interpretative obstacles and verify the degree of effectiveness of standards in the jurisdictional context.

Additionally, an international comparison method was adopted, through documentary research in foreign legislation (for example, in Spanish and Italian) and in empirical studies that dealt with shared custody in related contexts. The combination of techniques — bibliographic review, documentary analysis and comparative study — was operationalized through content analysis, which systematized categories themes such as parental cooperation, alienation, parental autonomy and indicators socio-affective.

Finally, possible proposals for normative improvements and practical guidelines, having considered the limitations arising from the heterogeneity of court decisions and the lack of consolidated statistical data.

3 RESULTS AND DISCUSSION

To understand the implications of shared custody in the context of recent social transformations, the research considered Mendes' (2015) premises on the maturity of children and De Melo's (2015) reflections on parental equality. These authors highlight that the institute, by distributing responsibilities in a balanced way among the parents, strengthens emotional bonds and contributes to the child's integral development.

Based on this framework, we investigated how different family arrangements, subject to multiple breakups and new unions, experience the exercise of shared custody. Thus, the study articulated concepts of parental cooperation and the right to family life to guide the subsequent phases of the investigation (Mendes, 2015; De melo, 2015).

Analysis of the effects of the COVID-19 pandemic revealed significant changes in power dynamics and coexistence between parents, since social isolation imposed readjustments in visit and communication agreements. According to Silva (2022), distancing aggravated latent tensions and exposed gaps in the legal and psychosocial support infrastructure for families in crisis. In this scenario, it was observed that the conventional application of custody shared demanded emergency adaptations and the use of technological resources to make coexistence possible. These findings indicate the need to incorporate flexibilities regulations capable of covering situations of force majeure (Silva, 2022).

Theoretical reflections on the family and separation processes emphasize dilemmas inherent to the adoption of shared custody in view of the persistence of strategies of disqualification of one of the parents. The authors Ladeira et al. (2019) argue that, without clear guidelines and preventive mechanisms, increases the risk of covert conflicts that undermine the principle of the best interests of the child. The research highlighted the importance of proactive guidelines for judges, lawyers and social workers to mitigate practices of parental alienation and to preserve the balance in parental relationships after separation (Ladeira et al., 2019).

Thus, the possibility of extending shared custody to other members of the circle affective, like grandparents, illustrates the contemporary fluidity of family configurations. When grandparents assume parental roles due to absences or special demands, the institute can ensure continuity of emotional ties, as long as suitability criteria are observed and emotional closeness. This perspective broadens the concept of family and reinforces the relevance to recognize de facto arrangements in the application of standards (Mirfendereski, sd).

For Faustino (2024), active cooperation and the equal division of responsibilities act as antidotes against reciprocal disqualification strategies, promoting self-esteem child. The study found that joint involvement of both parents reduces consequences adverse psychic conditions and contributes to the construction of positive narratives about coexistence parental.

Research into shared custody in multispecies families involving animals of pets, reflects new paradigms of affective solidarity and collective care. Thus, studies show that judicial decisions tend to recognize the therapeutic link between

children and pets, giving shared custody an interspecies dimension. This normative movement highlights the need to update legal concepts to encompass forms extended family (Dos santos et al., 2023).

From the perspective of human dignity, the examination of the effects of shared custody on the child well-being and parental functioning reveals substantial positive impacts. Another 2024 study found that families with well-structured agreements have lower parental stress rates and better adaptation of children to different contexts of coexistence. These results reinforce the importance of collaborative practices and policies public support for the model (De Araújo and de Freitas, 2024).

By giving children a leading role in organizing routines and understanding parental commitments, shared custody also promotes maturity and autonomy of minors. Mendes (2015) argues that such a model contributes to the development of negotiation and conflict resolution skills, essential for the building healthy interpersonal relationships. This emphasis on co-responsibility points to benefits that go beyond the legal sphere.

Aspects relating to parental equality and the right to family life reveal that unequal interpretations of norms can perpetuate gender stereotypes and limit action of one of the parents. Therefore, we are alert to the urgency of ensuring equitable obligations, preventing cultural prejudices from harming paternal or maternal participation in care everyday life. Such a scenario demands doctrinal clarifications and awareness among operators of Law (De Melo, 2015).

Likewise, De almeida (2023) shows that mediated processes reduce the time of dispute and strengthen the voluntary commitment of parents to fulfill the agreed terms. This instrument enhances parental cooperation and minimizes trauma associated with prolonged legal proceedings.

The integration of reflections on parental cooperation and mediation reveals that the success of shared custody depends on efficient communication and specialized institutional support. Ladeira et al. (2019) and De almeida (2023) emphasize the relevance of training programs for parents and mediators, capable of disseminating collaborative practices and reducing recidivism of conflicts. This formative framework is presented as a key element for the consolidation of the institute.

The experience of the COVID-19 pandemic has shown that technological resources, such as video conferencing and communication applications, can effectively support the exercise of shared custody. Authors such as Silva (2022) and Mendes (2015) point out that such

tools expand access to coexistence without compromising security and highlight the need to update the legal system to incorporate virtual means of interaction family (Silva, 2022; Mendes, 2015).

The recognition of extended family arrangements, which include grandparents and others caregivers, reinforces the importance of flexible criteria in the application of custody rules shared. Mirfendereski (sd) and Ladeira et al. (2019) emphasize that planning must embrace real situations, ensuring emotional stability for children even in the face of multiple ruptures. This normative openness strengthens family resilience (Mirfendereski, sd; Ladeira et al., 2019).

Assessment of social development indicators in children under care shared revealed that collaborative regimes favor school adaptation, relationships of friendship and self-esteem, where it was demonstrated that minors subjected to arrangements cooperatives present greater resilience and ability to face adversity, indicating benefits that extend beyond the legal scope (De Araújo and de Freitas, 2024).

Despite advances, practical challenges remain in implementing custody shared, such as cultural resistance, insufficient infrastructure and lack of training specific for legal professionals. With this, it is highlighted that the effectiveness of the institute requires integrated public policies and ongoing training of judges, lawyers and assistants social (Silva, 2022; Faustino, 2024).

Future perspectives point to the urgency of interdisciplinary research that consider psychological, social and legal aspects, in addition to legislative improvements to recognize plural family arrangements. Dos Santos et al. (2023), De Melo (2015) and De Almeida (2023) suggest that the update of the rules should contemplate new subjects of custody and create post-implementation evaluation mechanisms to monitor results.

It was therefore concluded that shared custody, by combining responsibility and affection, represents a promising path to meeting the best interests of the child, but it requires articulation between law, mediation and support policies. The combination of theoretical and practical reports indicate that, although significant advances have been made, the full success of the institute will depend on continuous adaptation to emerging family configurations (Mendes, 2015; Ladeira et al., 2019; dos santos et al., 2023; De almeida, 2023).

FINAL CONSIDERATIONS

Research has shown that shared custody in reconstituted families constitutes relevant advance in promoting the best interests of the child, by enabling participation effective involvement of both parents in the decisions and routine of their children. It was found, however, that The institute's effectiveness still faces cultural resistance, gaps in training legal operators and limitations of psychosocial support infrastructure. Therefore, although the normative bases offer robust instruments, their practical application requires greater articulation between the various actors involved in the Justice system and in the services of social assistance.

It was also observed that family mediation and the use of technological resources have been shown to be fundamental to enabling collaborative agreements and reducing emotional stress arising from protracted litigation. The implementation of continuing education programs for judges, lawyers, mediators and social workers emerges as a strategic measure to standardize understandings and strengthen the culture of parental cooperation. At the same time, the creation of interinstitutional protocols between the Judiciary, the Public Prosecutor's Office and the services mental health can expand support for families in crisis situations and minimize risks of parental alienation.

Finally, it is concluded that the consolidation of shared custody in families reconstituted depends on joint efforts to improve legislation, training professional and development of integrated public policies. It is therefore recommended that conducting empirical studies that evaluate the impact of different support models — in person and virtually — in the quality of family life, as well as the periodic review of mechanisms for monitoring and evaluating custody agreements. In this way, it will be possible ensure the continuous adaptation of standards to social transformations and new arrangements emerging family members.

REFERENCES

BRAZIL. Law No. 11,698 of June 13, 2008. Amends articles 1,583 and 1,584 of Law No. 10,406 of January 10, 2002 (Civil Code), to establish and regulate shared custody. Official Gazette of the Union, Brasília, DF, June 13, 2008.

BRAZIL. Law No. 13,058 of December 22, 2014. Amends articles 1,583, 1,584, 1,585 and 1,634 of the Civil Code, establishes the meaning of the expression “shared custody” and provides for its application. Official Gazette of the Union, Brasília, DF, December 22, 2014.



BRAZIL. Law No. 14,713 of October 30, 2023. Amends Laws No. 10,406 of January 10, 2002 (Civil Code) and No. 13,105 of March 16, 2015 (Code of Civil Procedure), to establish the risk of domestic or family violence as a cause preventing the exercise of shared custody and impose on the judge the duty to previously inquire with the Public Prosecutor's Office and the parties about situations of domestic or family violence involving the couple or their children.

Official Gazette of the Union, Brasília, DF, October 31, 2023.

CAMPOS, Rita de Kassia Alves. Shared custody: does the exercise protect the rights of children in a way that would be the way to minimize parental alienation practices?. 2021.

DE ALMEIDA, Maria de Fatima. FAMILY MEDIATION AND SHARED CUSTODY AS A FORM OF CONFLICT RESOLUTION. Ibero-American Journal of Humanities, Sciences and Education, v. 9, n. 3, p. 431-452, 2023.

DE ARAÚJO, Samuellen Thauane Alves; DE FREITAS, Gisela Carvalho. EFFECTS OF SHARED CUSTODY ON CHILD WELL-BEING AND FUNCTIONING

PARENTAL. Ibero-American Journal of Humanities, Sciences and Education, v. 10, n. 5, p. 4072-4089, 2024.

DE MELO, Nélia Sorahia Fonseca. Shared custody: reflections on parental equality and the right to family life. CADERNO DISCENTE, v. 2, n. 1, 2015.

DOS SANTOS, Victor Emanuel Miranda et al. MULTISPECIES FAMILY: ANALYSIS OF THE POSSIBILITY OF SHARED CUSTODY OF PETS IN THE DISSOLUTION OF UNIONS IN BRAZIL. Ibero-American Journal of Humanities, Sciences and Education, v. 9, n. 10, p. 1624-1644, 2023.

DOS SANTOS, Victor Emanuel Miranda et al. MULTISPECIES FAMILY: ANALYSIS OF THE POSSIBILITY OF SHARED CUSTODY OF PETS IN THE DISSOLUTION OF UNIONS IN BRAZIL. Ibero-American Journal of Humanities, Sciences and Education, v. 9, n. 10, p. 1624-1644, 2023.

FAUSTINO, JULIANO SILVA. The impacts of parental alienation and shared custody as a possible solution. 2024.

FERMENTATION, Cleide Aparecida Gomes Rodrigues; CAPELARI, Elaine Cristina de Morais. Custody in the context of reconstituted families: a look at human dignity. Family and Succession Law Journal, v. 3, n. 2, 2017.

LADEIRA, Mariana Rosa Alves et al. Theoretical reflections on the family and separation processes: dilemmas about shared custody and parental alienation. In: International Congress on Social Policy and Social Service: contemporary challenges; National Seminar on Territory and Management of Social Policies; Congress on the Right to the City and Environmental Justice. 2019. p. e2969-e2969.

MELO, C.; GAUDÊNCIO, C.; ANDRADE, J. Shared custody in the Brazilian context. V International Symposium on Brazilian Youth [Internet], 2012.



MENDES, POLYANNA YARA GUIMARÃES. SHARED CUSTODY AN EFFICIENT OPTION FOR CHILDREN'S MATURITY. 2015.

MIRFENDERESKI, Sophia Crispim. The possibility of shared custody between parent and grandparents. sd

PEREIRA, Aline Maria. CHANGES INTRODUCED IN FAMILY LAW BY LAW Nº 11.698/2008. 2010.

PRATAS, Sónia Isabel dos Santos. Shared custody: exploratory study. 2012. Master's Dissertation.

RAMOS, Patrícia Pimentel de Oliveira Chambers. Shared custody as a fundamental right of the child. Journal of the Public Prosecutor's Office of the State of Rio de Janeiro, Rio de Janeiro, PUBLIC PROSECUTOR'S OFFICE OF THE STATE OF RIO DE JANEIRO, v. 15, p. 213-222, 2002.

SILVA, Leandro Batista Martins da. Effects of the COVID-19 pandemic on parental relationships governed by the institute of shared custody in Brazil. 2022.

SILVA, MIRIAM ALBERTO DA. SHARED CUSTODY IN THE RECONSTITUTED FAMILY. 2018.

SILVEIRA JUNIOR, CLEBER LUCIANO DA. SHARED CUSTODY IN THE RECONSTITUTED FAMILY. 2019.

WATANABE, Carolina Sayuri. LAW Nº 11.698/2008: TEN YEARS OF SHARED CUSTODY. UNOPAR LAW JOURNAL, 2018.

ZANINI, Lara Franco. Parenting styles, family organization and socio-affective indicators of parents exercising shared custody. 2021. Doctoral Thesis. University of São Paulo.