Parents as the problem – or the solution? On the necessity of subject-oriented assessment in highly contentious child custody proceedings

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Jorge Guerra González
March 2026

[Die Eltern als Problem – oder als Lösung? Zur Notwendigkeit subjektorientierter Begutachtung in hochstrittigen Kindschaftsverfahren]

Jorge Guerra González
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Parents as a problem – or as a solution? On the necessity of subject-oriented assessment in highly contentious child custody proceedings)

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Zusammenfassung:
[Der Beitrag analysiert die Grenzen klassischer, entscheidungsorientierter familienpsychologischer Gutachten in hochstrittigen Kindschaftsverfahren und plädiert für eine subjektorientierte, lösungsfokussierte Begutachtung. Hochkonflikthafte Elternkonstellationen belasten Kinder erheblich und führen trotz gerichtlicher Entscheidungen selten zu nachhaltiger Befriedung. Die traditionelle Begutachtung folgt häufig einem Gewinner-Verlierer-Prinzip, verstärkt Polarisierungen und eröffnet kaum Chancen auf elterliche Verständigung. Empirische Befunde zeigen niedrige Einigungsquoten und geringe Zufriedenheit der Beteiligten. Demgegenüber versteht die subjektorientierte Begutachtung Eltern als handlungsfähige Subjekte und als Teil der Lösung. Der Sachverständige übernimmt neben der diagnostischen auch eine moderierende Funktion und fördert Kommunikation, Empathie und eigenverantwortliche Vereinbarungen. Studien belegen deutlich höhere Einigungsraten sowie positivere Bewertungen durch die Eltern. Der Ansatz trägt zur Deeskalation, zur Stabilisierung der Eltern-Kind-Beziehungen und zur langfristigen Konfliktreduktion bei. Insgesamt wird die subjektorientierte Begutachtung als rechtlich, empirisch und ethisch gebotener Weg dargestellt, um das Kindeswohl in hochstrittigen Verfahren nachhaltig zu sichern.]

Schlüsselwörter: [Elternkonflikt, Kindeswohlprinzip, Subjekt/Objektorientierte, Lösungsorientierte / Entscheidungsorientierte Begutachtung, Systemische Perspektive, Nachhaltige Konfliktlösung]

Summary:
The article examines the limitations of traditional decision-oriented psychological assessments in high-conflict custody proceedings and argues for a subject-oriented, solution-focused approach. High-conflict parental disputes significantly harm children's well-being and often persist despite court decisions. Classical assessments typically follow a winner–loser logic, reinforcing polarisation and rarely leading to sustainable conflict resolution. Empirical findings show that such approaches seldom result in parental agreements and may even intensify disputes. In contrast, subject-oriented assessment treats parents as active subjects and potential contributors to solutions rather than as objects of evaluation. The expert not only analyses but also facilitates communication, promotes empathy, and works toward consensual arrangements. Research demonstrates substantially higher agreement rates and greater parental satisfaction in solution-focused procedures. This approach reduces long-term conflict, enhances compliance, and better protects children's emotional stability. Ultimately, the article concludes that subject-oriented assessment aligns more closely with the child's best interests, legal principles favouring consensus, and the long-term well-being of post-separation families.

Key Words: [Parental conflict, Best interests of the child principle, Subject-oriented / object-oriented Solution-focused/decision-oriented assessment, Systemic perspective, Sustainable conflict resolution]

VidPR:
Dr Jorge Guerra González, Salzstr. 1, 21335 Lüneburg

Correspondence:
Dr Jorge Guerra González, Salzstr. 1, 21335 Lüneburg, kontakt@jorgeguerra.de

1. Abstract

Highly contentious child custody proceedings pose considerable challenges for family courts and the professionals involved. Ongoing parental conflicts have been shown to have a negative impact on children's psychological development and well-being, while purely judicial decisions often fail to bring about a lasting resolution of the family situation. Against this background, this article analyses the limitations of traditional, decision-oriented family psychological assessments, which are primarily focused on diagnostic status determination and the selection of the "more suitable" caregiver. Empirical findings show that this approach often exacerbates polarisation in highly contentious situations, rarely promotes agreement and thus fails to adequately fulfil the legally enshrined priority of amicable solutions (Section 156 FamFG).

In contrast, subject-oriented, solution-focused assessment is presented as an alternative approach. It does not primarily view parents as objects of investigation, but rather as subjects capable of action and potential co-creators of viable solutions. In addition to their diagnostic function, the expert takes on a moderating, process-shaping role, promoting communication, perspective-taking and responsibility-taking, and actively working towards an amicable settlement. Empirical studies show significantly higher agreement rates and more positive evaluations by those involved compared to purely decision-oriented procedures.

The article concludes that subject-oriented assessment is better suited to ensuring the long-term welfare of the child, both legally and in terms of developmental psychology and procedural practice. It opens up the opportunity not only to decide highly contentious cases, but also to bring about peace, thereby contributing to the long-term stabilisation of post-separation family structures.

2. Table of contents

3. Introduction

Highly contentious conflicts between parents after separation or divorce pose major challenges for courts and family support services. Although they account for only a small proportion of all separated families – according to estimates, around 8–10% of separated parents are considered "highly contentious" – such cases tie up a disproportionate amount of resources and place a considerable strain on the children involved. Ongoing parental conflicts have been shown to have a negative impact on children's mental health and development, especially when the disputes are protracted and noticeable to the children (cf. Guerra 2023; Walper & Langmeyer, 2008). This gives rise to a central concern in family law: protecting the welfare of the child despite parental disputes and, where possible, finding viable solutions for the future.

Family psychological assessments often play a decisive role, particularly in highly contentious child custody proceedings, such as disputes over custody and access rights. They serve as a means of gathering evidence for the courts as a basis for far-reaching decisions and are intended to help find the arrangement that best serves the welfare of the child. However, practice shows that purely judicial decisions without the agreement of the parents often do not lead to lasting peace. A mere legal decision awarding custody to the supposedly better parent may leave the underlying conflict untouched or even exacerbate it – clearly not bringing about a "solution" to the conflict situation.

Family Procedure Law (FamFG) takes this dilemma into account: according to Section 156 FamFG, the court should work towards an agreement between the parties "at every stage of the proceedings", provided that this does not conflict with the welfare of the child. Amicable solutions between the parents are therefore preferred by law in order to avoid escalation. At the same time, the principle of the best interests of the child (Section 1697a BGB) obliges the courts to always make the decision in child custody cases that best ensures the welfare of the child. Where necessary, the state must even intervene in the parents' right to raise their children in order to protect the child (Section 1666 BGB). However, in highly contentious cases in particular, court decisions alone are often ill-suited to resolving the conflict permanently.

Against this background, there is increasing discussion about how experts should shape their role in family court proceedings. Traditionally, the expert acts as an objective "data collector" and advisor to the court, whose expert opinion primarily serves as evidence for decision-making. This classic object-oriented, decision-centred assessment usually focuses on the question of which custody or contact arrangement appears to be best in the status quo – often combined with an assessment of the parents' parenting skills and the selection of the "more suitable" parent (Jopt & Behrend 2006). The family becomes the subject of the assessment and then of the court proceedings.

In contrast, there is a subject-oriented, solution-focused approach that sees parents not only as part of the problem, but as the key to the solution. The family becomes the subject of assessment, and its autonomy and ability to shape its own future are promoted. Here, the expert uses the proceedings themselves as an intervention to work with the parties involved to reach an amicable and future-oriented arrangement, rather than simply providing a recommendation.

This article examines the legal basis and empirical findings relating to these approaches and argues for a stronger anchoring of subject-oriented assessments in highly contentious child custody proceedings.

After presenting the legal framework (Chapter 2), research findings on the impact of traditional versus solution-oriented assessments are presented, followed by a critical analysis of object-oriented assessment (Chapter 3), before the subject-oriented, solution-focused approach and its procedure are explained in detail (Chapter 4). Its benefits are illustrated using anonymised case vignettes from practice. Finally, the consequences for practice – from the formulation of court orders to the work of assessors and legal representatives to implications for legislation and legal policy – are discussed in order to justify the need for a reorientation in the interests of the child's welfare.

4. Legal basis

Principle of the best interests of the child and mutual agreement

The guiding principle of German child custody law is the welfare of the child. According to Section 1697a of the German Civil Code (BGB), the family court must make decisions on custody and access that are in the best interests of the child under the given circumstances. In doing so, the interests of the parents must take second place to the interests of the child (Article 6(2) of the German Basic Law (GG)). At the same time, procedural law requires that, where possible, no decision be made against the will of one parent, but rather that an amicable solution be reached: Section 156 (1) FamFG expressly obliges the court to work towards an agreement between the parties at every stage of the proceedings. A consensual outcome – for example, a court settlement on access rights (Section 156 (2) FamFG) – is preferable to a contested decision, provided that it is compatible with the welfare of the child. This emphasis on parental autonomy in the proceedings reflects the constitutional value judgement that the care and upbringing of the child is primarily the responsibility of the parents (Art. 6 (2) GG). The court should therefore provide moderating support and only make authoritative decisions where parental agreement does not appear to be achievable or where the welfare of the child is acutely endangered.

State duty to protect and endangerment of the child's welfare

If parental conflicts significantly impair the welfare of the child, the state is obliged to intervene. Section 1666 of the German Civil Code (BGB) authorises the family court to take measures up to and including the withdrawal of parts of parental custody if the physical or mental well-being of the child is at risk and the parents are unwilling or unable to avert the danger. Persistent, escalating parental conflict can constitute such a risk – studies identify highly contentious parental constellations as a significant risk to child development. However, the principle of proportionality applies in family law: coercive measures should only be taken as a last resort when less severe options have been exhausted. It follows that the court must first take less drastic steps to protect the child. These less severe measures include, in particular, mediation efforts and offers of counselling or mediation at an early stage of the proceedings (Section 156 (1) and (3) FamFG). If the parental conflict can be defused with the support of the parents themselves, state intervention in the parents' rights – and thus a potentially traumatic disruption of the family structure – often becomes unnecessary.

Role and mandate of experts

In complex child custody proceedings, the court regularly appoints psychological experts (cf. Section 30 FamFG (formal taking of evidence) in conjunction with Section 404 ZPO (selection of experts)) in order to obtain a sound basis for a decision in the best interests of the child. The expert's traditional task is to provide the court with the necessary specialist knowledge about the child's situation, the parents' parenting skills, attachments, risks and expected development. Experts are independent and are only bound by the objective truth and the court's mandate. However, with the entry into force of the FamFG in 2009 and subsequent reforms, the job profile of experts has been expanded: the law now gives the family court the option of expressly entrusting the expert with the task of promoting an agreement. According to Section 163 (2) FamFG, in addition to providing an assessment, the expert may be tasked with "working towards an agreement between the parties involved". This provision, which is unique in German procedural law, makes it clear that the legislator sees the expert not only as a neutral expert, but also potentially as a conflict mediator. Similar to a mediator, the expert may actively work to bring the parents to a cooperative level and develop a joint solution for the benefit of the child. It is important that such a dual mandate is always based on the premise of the child's welfare: the professional assessment must not be distorted in favour of a forced agreement. Rather, experts should use their psychological expertise to help find constructive solutions without abandoning their neutrality and actual role as experts (Behrend 2011). Judicial practice increasingly shows that, especially in highly conflictual cases, such an extended mandate is given to experts in order to support the amicable resolution of conflicts preferred by the law.

5. Traditional expert opinion practice: objective diagnosis and decision-oriented approach

Traditionally, family psychological assessments in highly contentious cases followed a **decision-oriented** paradigm (Jopt & Zütphen, 2004a). The focus was on the legal question, such as: *"Which custody arrangement is in the best interests of the child?"* or *"Is one parent's ability to raise the child limited?"* The assessor acted primarily as **an objective, detached expert** who was supposed to use diagnostics – e.g. psychological tests, standardised interviews, behavioural observations – to assess the "current state" of the family and the parents' competencies. This approach is also described as *status-diagnostic norm-oriented* (Zütphen 2010, 41), as it measures parents against normative standards and, in a sense, makes a **selection**: which parent is psychologically "better suited" for certain responsibilities? Parents are often viewed as **rivals** whose conflict must ultimately be resolved by a clear decision – whether by granting one parent the right to determine the child's place of residence, restricting the other parent's access, imposing conditions or measures such as therapeutic support (see Fichtner 2015, 39 ff; Jopt 2004).

This classic approach has several ***advantages***: it follows the court's mandate to provide a **professional decision template as expert evidence** and emphasises neutrality and objectivity.

However, it is increasingly being criticised, especially in highly contentious situations. ***The*** main ***points of criticism*** are:

- **Dichotomous winner-loser principle (zero-sum orientation):** Decision-oriented expert opinions often effectively result in one parent being recommended as the "primary caregiver" or "more suitable". *This can further fuel the conflict, as parents fight for an expert opinion "verdict"*. The prospect of one winning and one losing creates incentives for further polarisation rather than de-escalation. Reaching an agreement becomes a distant prospect if both hope that the expert will confirm *their* position. Studies show that parents rarely come to an agreement after a traditional assessment –

in one study, only about **10.7%** of parents in decision-oriented assessments ultimately reached an amicable solution, while almost 90% remained in dispute (Zütphen 2010, 220). This ultimately prolongs (or even exacerbates) the parental conflict in front of a different audience.

- **Static, objectifying view vs. dynamic family life:**
  Another fundamental criticism concerns the methodological orientation of classic assessments. They are usually *status-diagnostic* and past-oriented: the current state of relationships, parenting skills and psychological sensitivities is assessed – often using tests and one-off interviews – and conclusions are drawn as to which permanent arrangement is most likely to be in the child's best interests. *However,* this approach *underestimates the changeability of families* and the possibility of *bringing about improvement through support*. An assessment that only reflects the status quo can lead to self-fulfilling prophecies: if, for example, a parent is certified as having limited parenting skills, the subsequent court decision may cement this assessment instead of enabling the parent to expand their skills. Solution-oriented approaches criticise the fact that the classic expert witness becomes a "selector" who makes decisions based on standard tables and a deficit view instead of activating the family's resources (Behrend & Jopt, 2009). Especially in high-conflict families where both parents are caught up in destructive patterns, an individualised assessment falls short. Here, a *process-diagnostic* approach would be necessary, focusing on interactions and conflict dynamics rather than singling out individuals as the cause of the problem.

- **Stress for children and violation of the child's welfare:**
  Paradoxically, a strictly decision-centred assessment can be detrimental to the child's welfare, even though it is actually intended to protect it. Children experience conflicts of loyalty when they feel that one parent is "losing" in court. Traditional expert assessments – such as exploring the child's attachment – can be highly stressful for the child because they indirectly force them to take sides between their parents. If, for example, the assessment ultimately recommends severely restricting contact with one parent, this can trigger *feelings of guilt or fear of loss* in the child. In addition, an object-oriented approach often ignores the long-term consequences: a parent-child relationship that is severed or severely reduced by a court decision can hardly be repaired later on. Experts criticise the fact that some reports prematurely promote breaking off contact as a solution, even though developmental psychology warns of the damage caused by abrupt separations from a caregiver. They also criticise the fact that **attachment diagnostics** are used in a questionable manner in many traditional reports ( ): The quality of the parent-child bond is assessed as a rigid characteristic ("primary caregiver" vs. "less important bond") and used as a basis for decision-making, instead of addressing the causes of attachment disorders – often the parental conflict itself. Such simplifications can lead *to the child becoming the loser precisely because of the ongoing disputes*, for example when one parent binds the child to themselves through subtle influence and the expert opinion then uncritically endorses this one-sided attachment situation.
  Finally, it should be noted that the *objectively detached expert in highly contentious proceedings hardly meets the expectations of the legislator*. Formally, he may fulfil his mandate (taking evidence), gather facts and formulate a recommendation. *However, if this is not accompanied by an attempt at de-escalation, it runs counter to the priority of amicable solutions enshrined in Section 156 FamFG*. In her study, Zütphen (2010) concludes that purely decision-oriented assessment "does not even open up the chance of improvement for the family". It often has negative effects on family relationships and thus ultimately fails to achieve the goal of ensuring the long-term well-being of the child.

As a result, these points of criticism argue in favour of rethinking the traditional assessment concept and replacing it with approaches that are more conflict-sensitive and forward-looking.

- **Focus on deficits and the past:** Object-oriented diagnostics often look for pathological findings or past data (e.g. attachment disorders, personality accentuations, parenting mistakes) in order to derive risks to the child's welfare. Parents often experience this as **stigmatisation** or a "test" in which they could fail. Highly contentious parents tend to *blame each other* anyway; an expert opinion that revisits the past and emphasises individual misconduct often only confirms mutual accusations. Looking back makes it difficult to look ahead: *How can the family function in the future?* remains a secondary question when the primary focus is on evaluating what went wrong. In addition, diagnostic labels carry the risk of labelling one parent as *a "problem"* (e.g. in the form of a mental disorder), which can then lead courts to take drastic measures (e.g. complete withdrawal of custody) without any effort having been made to bring about change.

- **Lack of participation and understanding:** In many traditional expert reports, parents and children are interviewed, but have little **opportunity** to **participate** in the process. They become *objects of the proceedings*; decisions are made about them, but without them. The expert's findings and assessments often remain hidden until the report is completed in writing. Parents tend to be defensive or distrustful of the expert, for fear of saying something *"wrong"*. *There is hardly any genuine dialogue* in which the parents' perspectives are heard and mutual understanding is promoted. The process can have an incapacitating effect on the family: a stranger observes, tests and judges – the parents feel like **objects** of assessment rather than active participants. Many of those affected therefore perceive expert opinions as an additional burden. In fact, parents in traditional proceedings often report that the expert did **not help** them find a solution: in a survey, *76%* of parents from decision-oriented expert opinions stated that the expert had **no** potential to help in reaching an amicable agreement (only 12% saw him as a source of support). These figures contrast sharply with solution-oriented proceedings (see below).

- **Quality problems and bias:** As mentioned above, studies have revealed significant quality deficits in many expert reports (Salewski & Stürmer, 2014). A lack of transparent methodology, questionable tests and unclear evidence issues make the reports **vulnerable** to **attack**. This is fatal in highly contentious cases: if one party perceives a report as unprofessional or biased, it provides new fuel for the fire. In fact, parents often criticise the neutrality of the expert – especially those parents who come off worse in the report. Accusations of bias are common in practice. In some cases, this is not without reason: a **survey of family court judges** (Jopt & Zütphen, 2004b) revealed that judges themselves doubt the neutrality of some experts and see differences in quality. Without going into the details of this study, it suggests that the classic expert model does not always enjoy the trust of all parties involved. The higher the level of conflict, the more likely it is that **mistakes** will be sought **in the other party** – including the expert.

In summary, it should be noted that although the classic, decision-oriented assessment has long been the standard, it **often misses its mark** in highly contentious proceedings: instead of settling the dispute for the benefit of the child, it runs the risk of continuing it in a scientifically embellished form. The welfare of the child – which is influenced not only by the final decision but by the entire process – can suffer as a result. A *poor* expert opinion (technically deficient or biased) can escalate the dispute or lead to questionable decisions. However, even a formally correct, neutral expert opinion based on the traditional model **does not** offer **a systematic means of conflict resolution**. This is precisely where the idea of subject- or solution-oriented assessment comes in.

6. Subject-oriented, solution-oriented assessment: concept and advantages

Subject-oriented assessment – often synonymous with the *systemic solution-oriented approach* (Vosberg 2015) – represents a paradigm shift. Instead of viewing parents primarily as objects to be diagnosed and the conflict as a disruptive element in the search for truth, the assessor takes on a **mediating, procedural role** among autonomous subjects or individuals. The theoretical basis here is **systems theory** and systemic therapy/family therapy, combined with mediation-oriented techniques (Zütphen 2010, 51; Bergmann et al. 2002). The family is seen as a dynamic system undergoing change (*separated family*). The aim of the solution-oriented expert is to support the family in its transformation into a functioning post-divorce family **so that the child retains its entire social and emotional network of relationships** (Schweitzer & Schlippe 2015 and 2016; Vosberg 2015; Zütphen 2010, 51). Instead of implicitly "sorting out" one parent, this approach strives to preserve *both parents as resources* for the child – as far as this is responsible. The parents are addressed as experts in their own family on an equal footing. As part of the process, they are recognised as autonomous subjects and, with the professional guidance of the expert, empowered to develop viable solutions for their family on their own responsibility.

6.1 Characteristics

Some **characteristics** of subject-oriented assessment are:

- **Impartial attitude:** Assessors see themselves less as detached examiners and more as **impartial moderators** in the conflict. *Impartiality* means showing empathy and concern for all parties involved – mother, father **and child**. The message is: *"I am here to help **everyone** find a good solution for the child."* This attitude differs from the seemingly neutral but often cool and distant role in the classic approach. As a result, parents tend to perceive the assessor as **impartial and understanding**. In Zütphen's study, significantly more parents described the solution-oriented assessor as objective, attentive, warm and fair compared to the decision-oriented assessor. For example, around **66–67%** of parents perceived the solution-oriented expert as understanding for *both* sides, while only **16.7%** saw this in the classic assessment (Zütphen 2010, 203). Similar differences were found in characteristics such as impartiality (perceived by ~50–60% vs. 23% in the traditional approach) and sympathy (73% vs. 27%). These data show that parents feel they are **taken more seriously personally** when a subject-oriented approach is used.

- **Inclusion of the subjects' perspective:** The solution-focused assessor views the parents as subjects on an equal footing. They allow the parents to speak at length and take an interest in **their views, feelings and wishes**. They explore not only what each accuses the other of, but also what concerns both have for their child, where they themselves see difficulties and what would be important to them for a good solution. By sharing their subjective experience, parents feel heard – often for the first time in a long time in this conflict. **The child's voice** is also carefully taken into account: the expert talks to the child (in an age-appropriate manner) or consults a legal representative to understand their needs and attachments. Unlike a purely diagnostic approach, however, this avoids drawing the child into a conflict of loyalty or taking sides. Instead, the child's statements are used to make it clear to *both parents* what is troubling the child and what they need. The subject-oriented approach here means **promoting empathy between the parties to the conflict** by showing each side the perspective of the other – especially that of the child. In the best case scenario, parents develop **empathy for their own child** again,

beyond the conflict between the couple. In fact, parents from successful solution-oriented assessments stated that their empathy for their child's needs was restored during the process, which contributed significantly to the agreement (Zütphen 2010, 220f.).

- **Active conflict management and mediation:** While traditional assessors often merely *collect data*, solution-oriented experts **proactively** intervene in the communication process. Where appropriate, they hold joint discussions with the parents, moderate the discussion of contentious issues and seek **solutions to conflicts**. In doing so, they act in part as **mediators**, but retain their role as experts in that they continue to analyse and evaluate the situation. It is important to note that solution-oriented assessment is *not* simply mediation; experts still have an **investigative mandate**. But instead of maintaining neutral distance, they *use* their neutrality to build bridges: for example, they can reframe entrenched accusations (*"So you are very concerned about your daughter's safety during visits – that shows how important her well-being is to you."*), identify common interests (*"Both parents care deeply that Anna is not harmed – that is an important common ground"*) and work towards concrete agreements. **Solution-focused experts regularly attempt to reduce or even resolve parental conflict** – in contrast to traditional assessments, where such mediation efforts by the expert are rather the exception. The figures speak for themselves: even **during the assessment process**, 43.6% of parents in Zütphen's sample reached an agreement using a solution-oriented approach, compared to only 3.3% in decision-oriented assessments. By the end of the proceedings, these rates had increased to **57.9%** agreements in the solution-oriented group, compared to only **10.7%** in the traditional group (Zütphen, 2010, 220). **More than half** of the highly contentious families were thus able to reach an amicable settlement with the help of the expert – a remarkable success considering how complex these conflicts often are.

- **Cooperation with the court and youth welfare services:** A subject-oriented expert often works closely with the court to create conditions conducive to the proceedings. For example, they may suggest that the court issue interim contact arrangements in the meantime (to prevent contact from being broken off during the assessment) or that it involve further support (such as family therapy or accompanied contact in parallel with the assessment). This **coordinated approach** is in line with the interdisciplinary spirit required by quality standards (Gould & Mulchay 2023; Drozd et al. 2016).

  A practical example is the often-cited *"Cochem model"*, in which judges, youth welfare offices, lawyers and experts work closely together and strive to reach agreement from the outset. In such settings, the expert does not act as an isolated expert who ultimately submits a paper to the court, but as part of a network that works with the parents **in a solution-oriented manner**. Another example is special programmes for high-conflict families such as *"Kinder aus der Klemme"* (Lawick & Visser, 2017), in which interdisciplinary teams work intensively with parents and children to de-escalate the situation. Although such interventions sometimes take place outside of court proceedings, a solution-oriented assessment can integrate or at least encourage comparable elements (e.g. group or individual sessions with a therapist and assessor in a dual role). In this way, **assessment** becomes **intervention** in a positive sense.

- **Solution proposals instead of mere decision proposals:** Ideally, a subject-oriented assessment should not result in *a "decision proposal"* ("child to mother/father, contact with father/mother every two weeks"), but rather in an **agreement worked out jointly by the parents** or at least a differentiated solution plan. If the parents reach an agreement with the support of the expert, the expert can propose to the court that this be recorded as a settlement – the child receives a more sustainable arrangement supported

by both parents. Even if no complete agreement is reached, the expert provides recommendations that are **solution-oriented**: e.g. concrete steps to improve communication, suggestions for therapeutic support for the family, or transitional solutions that give the child stability and the parents time to change. It is important that such recommendations no longer carry the stigma of winners and losers, but convey to the parents: *here **are ways** to defuse your conflict and maintain parent-child relationships.* The parents thus remain **the subjects** of change – they can agree to the recommendations and implement them on their own responsibility , instead of feeling forced to accept a settlement decreed by the expert.

6.2 Advantages

The advantages of this approach are obvious and are supported by empirical findings (cf. AFCC 2025; 2022; APA 2022; Tesler & Thompson 2019; Mosten 2009; Salava 2004).

Higher satisfaction and acceptance ratings

Parents in solution-focused proceedings reported significantly fewer **negative effects** of the assessment on the family than parents in traditional assessments (even if no agreement was ultimately reached). The **satisfaction and acceptance ratings** are particularly striking: after completion, most parents in the solution group rated the expert as helpful and fair, while in the decision group, many associated the expert primarily with negative consequences for the family (Zütphen 2010, 243). In summarising her findings, Zütphen makes it clear: *"Decision-oriented assessment does not even offer the family a chance of improvement. It therefore fails to meet the criteria required by law"* (Zütphen 2010, 243). This damning verdict on the traditional approach – that it offers the family no chance of improvement – underlines why subject-oriented assessment is **not merely an ideal, but a necessity**. It alone opens up the possibility that family court proceedings will not lead to the final break-up of the family, but to a new beginning in a changed form.

Cost reduction

Subject-oriented assessment regularly leads to a reduction in immediate procedural costs. Traditional family psychological assessments are often extensive, time-consuming and methodologically strongly deficit- or hypothesis-oriented. In contrast, subject-oriented procedures are usually shorter and less costly, as the focus is not primarily on retrospective conflict analysis, but on the activation of resources and a structured empowerment and agreement process. This is where the first form of cost savings becomes apparent.

However, the actual economic relevance is evident in the follow-up costs. While conventional assessments often result in continued legal disputes, modification proceedings or renewed evidence-taking, subject-oriented assessments aim at a sustainable de-escalation of the parental conflict. If it is possible to restore parental cooperation or facilitate viable agreements, the likelihood of further proceedings is significantly reduced (Bergau 2014, 51 ff).

There are also indirect social effects: the mental and physical health of those involved is protected, the consequences of stress are minimised and developmental risks for the children are reduced. Long-term impairments in education, career and social integration can thus be prevented or at least mitigated. Transgenerational conflict dynamics also become less likely if destructive interaction patterns are addressed rather than perpetuated (Guerra 2026).

Overall, subject-oriented assessment is therefore not only sensible in terms of procedural economy, but also cost-preventive for society as a whole.

6.3 Implications for the welfare of the child: why this approach best serves the child

With regard to the **benefits** of subject-oriented assessment **for the welfare of the child**, it should first be noted that **ongoing high-conflict parenting** is considered **one of the most harmful influences** on children. Numerous studies in divorce research show that children from highly conflictual families suffer from emotional problems, anxiety, loyalty conflicts and developmental problems at an above-average rate (Walper 2011). It is not so much the divorce itself that harms children, but rather the extent of unresolved conflict and hostility between the parents *afterwards*. In a review, Fichtner and colleagues (in Walper 2011) emphasise that the **relationship between the parents** plays a key role in the children's adjustment – the more conflictual and uncooperative the parental relationship after separation, the greater the stress on the child. The immediate conclusion is that family court proceedings that **exacerbate or prolong** parental conflict are contrary to the best interests of the child, even if the final decision appears to be in the child's best interests. Conversely, any action that **defuses** parental conflict directly contributes to the well-being of the child because it pacifies their living environment.

Subject-oriented assessment aims precisely at this. Instead of "tearing" the child out of an escalating parental relationship and assigning them to a supposedly better parent alone (which was the classic approach in some cases), it attempts **to stabilise** the **child's living environment as a whole**. This usually means that both parents remain positively anchored in the child's life, regardless of the custody arrangement, but without ongoing conflict. The child no longer has to choose sides, because the assessor has helped to restore *cooperation between the parents* to such an extent that open conflict is reduced. After successful solution-focused assessment, parents report, for example, that they have learned to communicate better with each other and to focus more on the welfare of the child – an immense benefit for the children (cf. Zütphen 2010, 220f.). In Zütphen's study, parents cited **empathy for the child's needs** and **reduction of conflict** through the intervention of the expert as the main reasons for their agreement. It is precisely these two factors – a child-centred perspective and conflict reduction – that are at the heart of the child's welfare (see Fichtner 2015, 95 ff).

Furthermore, a subject-oriented assessment better protects the **rights of the child**. Modern family court proceedings emphasise the **participation** of children – their concerns should be heard (e.g. by hearing the child in the proceedings or through legal representation). A solution-oriented expert will take the child's wishes and fears very seriously and integrate them into the solution-finding process. It is important to note that the child is *not* made the arbiter or sole decision-maker of their future – a responsibility that would overwhelm them – but rather their perspective is sensitively conveyed. This makes the child feel more **understood and less helpless**. Any special protection needs (in cases of violence, abuse, etc.) can also be better taken into account in a subject-oriented framework, because the assessor does not wait neutrally, but actively steers the process: If, for example, there are indications of domestic violence, a responsible, solution-oriented expert would naturally focus first on protection and clear agreements (up to and including recommending restricted contact, if necessary). Subject-oriented does not mean "naively glossing over everything" – it means taking everyone involved seriously. In cases where the welfare of a child is at risk, this can also mean confronting a dangerous parent with reality and offering help or imposing conditions, rather than simply pointing out their shortcomings. Here, too**,** there are overlaps with the welfare of the child: **help and cooperation instead of sanctions** – wherever possible – contribute to the child growing up in a permanently improved environment, rather than just averting the danger in the short term and creating new problems (e.g. by breaking off contact with the other parent).

By viewing parents as subjects, as individuals – not as objects of assessment – they become **part of the solution rather than part of the problem**. This approach has another long-term benefit for the child's welfare: it promotes **self-efficacy and responsibility among parents**. Parents who work out their own agreement (with support) are generally more **committed to this solution** and implement it more reliably than parents who have had a settlement imposed on them. Empirical evidence shows that willingness to reach agreement and compliance increase (with the traditional approach, parents often underestimated the need to contribute to the solution themselves, whereas with the new approach they actually play an active role). For the child, this means fewer relapses into conflict, fewer renewed court proceedings and more stability. A viable parental agreement minimises the likelihood of further *loyalty conflicts* or breaks in contact, as both parents feel heard. As a result, the child's right to **contact with both parents** (cf. Section 1684 of the German Civil Code) is better secured than in the case of a hard cut. Research on **the sustainability of agreements** also supports this: amicable solutions tend to last longer and need to be revised less often than court-imposed regulations (Behrend 2021). Highly conflictual parents who manage to reach an agreement with external help report greater satisfaction with it and are more willing to adhere to it (Behrend 2013). Thus, solution-oriented expert opinion practice not only provides short-term help, but also contributes to the long-term **relief of the child**.

Last but not least, the subject-oriented approach is in line with the legally enshrined principle that *state intervention should be as gentle and participatory as possible*. Instead of removing children from their parents or authoritatively restructuring families, it helps them to find **a viable family solution themselves**. This principle of *helping people to help themselves* is in line with modern socio-educational guidelines and avoids unnecessary interference in family autonomy. The Federal Constitutional Court has repeatedly emphasised that children of separated parents have a right to the state exhausting all possibilities to maintain their relationship with both parents, and that serious infringements of fundamental rights (such as withdrawal of custody) may only be *a last resort*. Subject-oriented expert opinions often provide courts with alternatives to such drastic measures by showing *that there is still a way for these parents to fulfil their responsibilities together*. This serves the **best interests of the** child in a comprehensive sense – despite their parents' separation, the child experiences cooperation instead of conflict, receives love and upbringing from both sides and does not have to become the subject of endless proceedings.

6.4 Approach in practice

Solution-oriented experts usually work according to a multi-phase model (Bergau 2014, 121 ff). Bettina Bergau (2014) describes a proven approach based on Munich practice: First, there is a phase of *status clarification*. Similar to a classic expert opinion, the expert obtains a picture of the initial situation: discussions with each parent individually, discussions with the child, home visits or psychological tests if necessary, in order to gather important facts and dynamics. This step ensures that the expert can correctly assess the family situation and possible risks (such as a threat to the child's welfare) (. Unlike in a purely diagnostic assessment, however, the expert does not remain in the role of observer. Even at this stage, they can build trust through their behaviour: they signal to both parents that the aim is not to find someone *to blame*, but to find a viable solution for the benefit of the child.

In the next phase – which could be described as *the moderation or mediation phase* – the expert takes on the role of a process facilitator (see Fichtner 2015, 154 ff). He or she often conducts one or more **parent meetings** in the presence of both parents (provided there is no history of domestic violence). In these meetings, the contentious issues are discussed openly, but under the guidance of the expert, who ensures a fair and structured exchange. The expert places the child

at the centre of the discussion: for example, he describes to the parents (in an age-appropriate manner and maintaining confidentiality) what the child thinks and feels about the situation – for example, that he worries at night or feels responsible for the conflict. Such feedback can be very impressive for the parents and shift the focus from the couple's conflict to the child's well-being. The expert often provides specific **psychoeducational input**: they explain the typical stresses experienced by children of separated parents, the effects that constant conflict can have on school performance or behaviour, and how important stable caregivers are for the child. This raises the parents' awareness that the dispute should not be about their personal power struggle, but about their child's future.

Specifically, the expert will, for example, inform the parents about the negative consequences of violent parental disputes and promote an understanding of what their child needs now. On this basis, he or she can work out **possible solutions** with the parents. The expert often has suggestions in the best interests of the child – such as a specific division of care times or communication rules – but does not present these as ready-made guidelines, instead developing them in dialogue with the parents. This allows the parents to feel like *co-creators* of the solution rather than mere objects of judgement. A solution-oriented expert asks questions such as: "What do you think your daughter would want in this situation?" or "How could you both ensure that you don't get into such an argument again?" Such questions encourage the parents to formulate their own solutions, which the expert then takes up and works out together with them. The entire process is characterised by *transparency*: the expert discloses which criteria are decisive for the child's welfare in his or her view (e.g. secure attachment, parenting ability of both parents, continuity and low conflict) and how certain behaviours of the parents affect this (FSLS 2020; Behrend & Fichtner 2014).

Result and report: Ideally, this cooperative process leads to an agreement between the parents on the disputed points – for example, a concrete care and contact plan that both would sign. Once such an agreement has been reached, the proceedings can often be concluded without a contentious court decision: the agreement is recorded by the court and made binding as a settlement or a court-approved agreement. The expert then no longer prepares a classic comprehensive report, but rather a final statement in which they briefly assess the parental agreement reached and, if necessary, make recommendations for accompanying support (such as family counselling).

If, despite careful methodological implementation, the subject-oriented assessment is not successful in essential parts in individual cases, it seems appropriate, for reasons of resource conservation and time savings, for the expert to remain in the proceedings and answer the court's questions of evidence. In this way, the court can be provided with a professionally sound basis for its decision without the findings of the exploration already carried out going to waste.

In this respect, his recommendation is usually more differentiated and balanced, as he knows the views of both parents and may already have been able to find a solution for some areas. In some cases, parents agree on the child's primary residence, for example, but still argue about holiday or public holiday arrangements – in this case, the expert can only make a recommendation to the court on the remaining points of contention. It is important that the tone and content of the expert opinion remain constructive, even in the case of a recommendation for a decision: the expert avoids judgemental language, acknowledges the strengths of both parents and explains why the solution he or she proposes offers the child the greatest stability. This increases the acceptance of the expert opinion and the final court decision.

At the time of such a transition, the expert usually has the most comprehensive insight into the family system: they have already got to know the parties involved in sufficient depth, understood the specific life and conflict situation, and observed key aspects of the interactional dynamics

and developmental processes. The information gained in this way can be evaluated in a structured manner and made available to the court in the course of the hearing of evidence in the form of answers to the court's questions.

Ideally, this aspect should already be taken into account when appointing the expert. In particular, it is advisable to formulate the court's questions for evidence in such a way that – in addition to the primary interest in subject-oriented assessment – they also provide a viable alternative in the event that the subject-oriented approach cannot be maintained in the course of the proceedings. This allows for a flexible methodological response without delays, duplicate assessments or avoidable stress on the family.

6.5 Practical examples and feasibility

While the theory may sound convincing, a few examples will illustrate the implementation of subject-oriented or solution-oriented assessment:

Case vignette 1: Paradigm shift – ideal example

In a highly contentious custody case, the family court appoints a psychological expert. However, instead of simply conducting assessments with each parent individually and then making a recommendation, the expert invites them to a **family meeting** after the individual interviews: for the first time in a long time, the mother and father sit together at the table, moderated by the expert. Both are allowed to describe where they see the problems from their respective points of view. The atmosphere is tense at first, but the expert intervenes to clarify the situation, prevents personal attacks and summarises what the issues are. It quickly becomes clear that both parents want the best for their 7-year-old daughter, but are concerned about each other's parenting style (the father thinks the mother is too lenient, the mother thinks the father is too strict). In the course of further moderated meetings, the expert manages to focus the parents on **common parenting goals**. They develop – hesitantly at first, then more concretely – a **plan** for how care could look in the future: the daughter will live mainly with the mother, but the father will be more involved, for example by taking over homework supervision on two afternoons. At the same time, both agree to take part in a parenting course (*"Kinder im Blick"*) to improve their communication with each other. **Instead of** a long expert report, these agreements are incorporated into a final agreement. The expert reports to the court primarily on the process: that the parents have agreed on which points are still difficult and what support is recommended. The court, which was informed in advance and gave its consent, can now confirm this parental agreement as a court settlement, having checked that it is in the best interests of the child. The result: no losers, two parents who support the solution, and a child who will hopefully feel less tension between his parents in future.

This example may be idealised, but it reflects experiences from several projects. In the Würzburg area, for example, an interdisciplinary model project has shown that even highly contentious *"War of the Roses" couples* can reach agreements with intensive support (Weber & Schilling 2006). In the Higher Regional Court district of Koblenz, it was reported that after the introduction of cooperative procedures, significantly fewer expert opinions were needed because parents were able to find joint solutions earlier (Staudinger 2014). Such practical reports confirm that **a solution-oriented approach is not only theory-driven but also practicable**.

Of course, not every case can be concluded with an agreement. There will always be parents who remain irreconcilable despite all efforts. However, research shows a remarkable finding here: even when solution-focused assessment failed to reach an agreement, parents rated the impact on the family situation **more positively** than those in the comparison group (Zütphen 2010, 243). Apparently, they were able to clarify at least some aspects or felt that they had been treated with respect, which facilitated further cooperation. The assessor may not have reached a

consensus, but may **have built bridges** that can be used in the future – for example, an improvement in communication or the concession of one parent in a specific area. This is still more than the classic assessment can achieve in such cases, which often leave only scorched earth behind.

Case vignette 2: Last-minute agreement after years of dispute

Mr K. and Mrs K. fought a bitter dispute over access rights for their ten-year-old daughter for over four years. Since their separation, almost every handover had been accompanied by loud arguments in front of the child. Both parents showered each other with accusations – he accused her of manipulating the child and sabotaging his access rights; she accused him of neglecting the child and putting psychological pressure on her. The access arrangements had to be adjusted several times by the court because agreements were not being adhered to. The family court had already commissioned two classic expert opinions. In both cases, the expert recommended that the mother retain primary custody and that the father's access be restricted, as the child had shown increasing "rejection" towards her father. Mr K. felt strongly disadvantaged by these expert opinions – he was convinced that the mother had influenced their daughter against him. After the second report, the situation deteriorated further: the father sometimes turned up unannounced at the school to see his child, and the mother finally applied to have contact completely excluded. The positions were completely entrenched; the judge ultimately considered measures under Section 1666 of the German Civil Code (BGB), as the daughter had developed psychosomatic complaints (headaches, sleep disorders) and her performance at school had declined significantly.

At this stage, the court decided to take an unconventional step: a new expert was appointed – but with the express instruction to work in **a solution-oriented manner** and to work towards an agreement between the parents. First, the expert conducted lengthy individual interviews with both parents. It emerged that the mutual accusations were rooted in deep wounds from the marriage: Mr K. felt that his role as a father had been "taken away" from him after the divorce; Mrs K., on the other hand, was afraid that her daughter might be turned against her by her father as the conflict between the parents continued to escalate. The expert gently made it clear to both of them how much their daughter was suffering from the situation. He also told them that the girl had expressed her despair in a confidential conversation: she loved both parents and no longer wanted to be the cause of their arguments. This message had an effect. For the first time, both parents agreed to a joint round-table discussion.

During the joint discussion, the expert strictly structured the dialogue. Each parent was allowed to speak in turn, while the other had to listen. The expert steered the conversation away from mutual recriminations and towards the needs of the child: *"What does your daughter need most urgently from both of you right now?"* was one of the key questions. Gradually, specific points came to the fore: The mother admitted that the constant mistrust between the parents was the main problem – she had often withheld information from the father (e.g. their daughter's doctor's appointments) because she was afraid of his reaction. The father recognised that his impulsive behaviour – such as showing up at school – further fuelled the mother's fears and embarrassed his daughter. The expert helped to verbalise these mutual perceptions. Step by step, the three of them worked out a plan: in future, the father would have fixed weekly telephone times with his daughter to stay in touch between visiting weekends. The mother agreed to write the father a monthly "parent letter" with all the important information (school, health, leisure activities) – this made him feel involved. In return, Mr K. undertook to no longer turn up unannounced, but to stick to agreements and to talk to Mrs K. first if he had any concerns. The breakthrough came when both parents realised that they actually wanted the same thing: a happy, relaxed child. At the end of the second joint meeting, they surprised the expert with an idea of their own: they wanted to try a new contact arrangement whereby the father would look

after his daughter every two weeks from Friday to Monday (instead of until Sunday evening as before) in order to have more everyday time together – in return, spontaneous visits during the week would be discontinued. This was accepted by both as a fair compromise.

The expert documented this agreement and assessed it in his report as very positive for the child's welfare, as both parents now supported the plan. The court adopted the agreement as a court-approved parental agreement. Afterwards, the situation eased significantly: although the conflicts did not immediately disappear completely, both parents made a noticeable effort to stick to the agreed plan. A year later, the guardian ad litem reported to the court that the child seemed much less stressed and was looking forward to spending time with both parents without constantly fearing the next argument. This case impressively demonstrates how a solution-oriented expert opinion was able to turn around a deadlocked conflict at the last moment – by focusing on the child and actively mediating, rather than simply attributing "blame" and superiority or inferiority.

Case vignette 3: No agreement – but greater understanding and a clear basis for decision-making

The solution-oriented approach does not always lead to complete agreement. The M. family is an example of how even the termination of mediation efforts can provide valuable insights . Since their separation two years ago, Mrs M. and Mr M. had been arguing about whether their seven-year-old son should live mainly with his mother or be cared for by both parents in an alternating model. Mr M. wanted his son to live with him half the time, while Mrs M. strictly rejected this, arguing that a child of that age needs a primary caregiver and clear stability. The tone between the parents was frosty; there was hardly any direct communication. In the first instance, an expert opinion was obtained, the result of which recommended that the child live with the mother and that the father only have extended contact (every other weekend and one afternoon during the week). Mr M. did not agree with this. He lodged an appeal, and in the appeal proceedings, the High Court commissioned a new expert opinion – with the instruction to explore the possibilities of a parental agreement.

The new expert again conducted individual interviews and a joint meeting with both parents. It quickly became apparent that Mrs M. harboured deep mistrust towards her ex-husband: she was convinced that his main motive for proposing the alternating custody model was to reduce maintenance payments and that he was not considering the child's needs at all. Mr M., on the other hand, suspected that the mother had a need for control and did not want to be pushed out of his role as a father. Despite the expert's intensive efforts, both remained adamant in their positions. The joint discussion was broken off because Ms M. left the room in tears when Mr M. accused her of "instrumentalising" the child.

The expert then changed his strategy: instead of insisting on a joint meeting, he spoke to each parent separately again and constructively and critically conveyed the other's point of view. Ms M. learned, for example, that Mr M. felt he had been treated unfairly in the first report because, in his view, his parenting skills had been underestimated. Mr M. heard from the expert that his son had said he missed his dad, but felt stressed by frequent changes (as had been tried out during the holidays). This information gave both parents pause for thought. Nevertheless, no real agreement was reached – Mrs M. remained adamant in her rejection of a 50/50 arrangement, and Mr M. insisted on being granted significantly more time than he had previously had.

In the final expert report, the expert openly explained why an agreement had failed: he described the continuing refusal of both parties to deviate from their own concepts, but at the same time acknowledged that at least a better understanding of each other's fears and motives had developed. Mrs M. had realised that Mr M. did not want to "take away" the child from the mother,

but was primarily afraid of losing importance in his son's life. And Mr M. grudgingly accepted that an immediate 50/50 model might overwhelm the boy. The expert finally proposed a **compromise** to the court that had emerged from the individual discussions: the son should remain with his mother for the time being, but the father would be allowed to look after him every Wednesday after school until Thursday evening (in addition to every other weekend). In purely mathematical terms, this model resulted in about 35% father time – significantly more than before, but not a full alternating model. It was important to the expert that both parents could see the benefits of the proposal: Mr M. saw his care time extended; Mrs M. found it easier to agree because during the week the child at least slept most of the time in his familiar surroundings with her.

In fact, the court followed this recommendation in its decision. Although neither the mother nor the father were completely satisfied, both accepted the ruling. It was noteworthy that Mr M ultimately refrained from further appealing against this decision, even though he had originally insisted on equal custody. Apparently, the family court expert had been able to convey to him that the welfare of his son was more important than a rigid 50% solution. Ms M., in turn, agreed to the additional contact during the week and complied with it after she understood that the father was no longer seeking a "power struggle". Six months later, the responsible youth welfare office employee reported that the parents had at least established a neutral handover arrangement and were communicating objectively by email. The serious underlying conflict had not been completely resolved, but it had been **contained** – both parents had come to terms with the agreed solution.

This case vignette shows that even without direct agreement between the parents, solution-focused assessment can be valuable. The assessor's subject-focused approach enabled important information and perspectives to be identified, which ultimately led to a more sustainable court decision. In addition, the willingness to cooperate improved, at least to some extent, which created a significantly less stressful situation for the child. Even though the outcome was an authoritative court decision, it was more well-founded and acceptable to both sides than it would have been without the mediating assessor.

6.6 Feasibility: prerequisites

The **feasibility** of the subject-oriented approach depends on a number of prerequisites (cf. Carlier & Guerra 2026; De Hemptine et al. 2011):

1. **Willingness of the parties to cooperate:** A key condition for the success of subject-oriented assessment is the fundamental willingness of those involved to engage in a solution-oriented process. This willingness does not have to be equally pronounced in all parties, but it should at least be sufficiently present in both. A viable, autonomous solution that is in the best interests of the child can only be developed – with the expert support of the assessor – if both parents share the fundamental attitude of taking responsibility for finding a joint solution. Parallel proceedings may exist, but they must be clarified before or at least outside the actual assessment process, as they can significantly impair the necessary openness and willingness to cooperate.

2. **Openness to results:** The process requires that none of the parties to the conflict is predetermined to a specific outcome. An unconditional cooperative attitude on the part of all involved is essential for this.

3. **Training and attitude of assessors:** Not every psychological expert is automatically qualified to work in a solution-oriented manner. It requires additional knowledge of mediation, systemic therapy and communication skills, as well as a willingness to step outside the comfort zone of pure diagnostics. Further training and education to become *a*

"systemic assessor" (Lehmann 2012) or similar curricula can help here. It is also important for the expert to have an inner attitude that is not based on superiority, but rather works on an equal footing with the families (keyword**: "attitude and sensitivity"**, cf. Behrend 2019). Many experts of the new generation, especially those with further training in legal psychology and systemic counselling, already have this basic attitude.

4. **Judicial support:** A solution-oriented assessment is most effective when the court supports this approach. This means, among other things, that judges give the expert sufficient **leeway** in the evidence order to also act as a mediator . Classic evidence orders often ask very narrow questions: *"What arrangement do you recommend?"* More suitable for subject-oriented experts are more open formulations such as: *"What possible solutions are there... and how can the parents be supported in this?"* (Menne & Weber 2011, 191–211, explicitly recommend such formulations). In addition, the court should allow sufficient time – short-term pressure to make a decision counteracts mediation work. Some courts have already developed good practices for this, for example by first making a provisional ruling (see Section 156 (3) FamFG) and giving the expert several months for their process. This also includes a willingness to accept interim results (e.g. partial solutions) and not insisting on a written expert opinion in every detail. Fortunately, this is in line with the approach expressed in Section 156 FamFG: **settle disputes before deciding**. If judges, as intended by the law, work towards parents reaching an agreement, they will be sympathetic to an expert who is trying to do just that.

5. **Recognising limits:** A legitimate question is whether subject-oriented assessment is *always* appropriate. Critics argue that in cases of serious child welfare risks (e.g. abuse, severe violence, highly pathological behaviour by a parent), a mediating approach is misplaced – here, decisions must be made and action taken (bringing the child to safety, suspending contact if necessary). This is true: **child protection comes first**.

   However, protection and solution orientation are not mutually exclusive. Even in cases involving danger, an assessor can first try to persuade the perpetrator to see reason and cooperate (e.g. to undergo therapy or supervised contact as an interim solution) before recommending the last resort.

   But there will be cases where consensus is not possible or sensible. The subject-oriented expert must know when to stop trying to be impartial and give the court a clear, one-sided recommendation for the protection of the child. This ability to **differentiate between roles** is important: being solution-oriented does not mean reaching a settlement at any cost. It means involving the parties as much as possible – but also clearly stating when solutions fail on one side. In practice, however, it has been shown that most highly contentious cases are *not* clear-cut perpetrator-victim constellations, but rather involve mutual conflicts, misunderstandings and hurt feelings (Walper 2011). This is precisely where there is room for mediation.

6. **Interdisciplinary follow-up care:** An expert opinion can provide the impetus, but implementing the solution often requires further support (parental counselling, youth welfare office, therapy places for children, etc.). In the examples mentioned (e.g. post-divorce family programmes), families continue to receive support after the court phase. Courts should not hesitate to order or suggest such assistance, based on expert recommendations. The sustainability of the solution found increases when parents have learned to accept offers of help. A mother from a case report said*, for* example: *"It was the expert who showed us that we needed help – now we are voluntarily attending parental*

counselling, and it is good for all of us." Such insights would hardly have been possible without subject-oriented work.

In order to do justice to this dynamic and to be able to intervene at an early stage, the expert remains in the proceedings for a certain period of time.

In order to do justice to this dynamic and to be able to make corrections in good time, the assessor can remain in the process for a while longer.

6.7 Practical implications

For parents/parties involved in the conflict

Subject-oriented assessment marks a paradigm shift in the context of family court proceedings. From the parents' perspective, it means a fundamental shift in roles: they are no longer treated primarily as subjects of a diagnostic procedure, but as capable actors and central protagonists in the solution process.

The focus is on recognising parents as the real experts on their own family. No one knows the relationship dynamics, biographical backgrounds, resources and vulnerabilities of the system better than they do. The assessor's task is therefore not to develop a solution imposed from outside, but to provide a structured, transparent and professionally sound framework within which parents can work out viable solutions on their own responsibility.

The practical consequences are far-reaching: if this process is successful, the result is a solution that does not have to be enforced by a government decision or judicial authority. Rather, it is an autonomous agreement that is the responsibility of and supported by the parents themselves. External authorities – courts, government agencies or other state bodies – take a back seat, provided that the welfare of the child is not at risk. State intervention is thus reduced to ensuring a constitutional framework, rather than controlling the content of family arrangements.

It is precisely this autonomy that represents a central advantage, one that parents are often unaware of at the outset. In escalated conflict situations, mistrust, feelings of powerlessness and the expectation of an authoritative decision "from above" often dominate. The fact that they themselves can be the key architects of the solution is not initially perceived as an opportunity. This makes it all the more important to make this perspective clear at an early stage.

This is where legal representatives and the family court have a crucial role to play. They should actively emphasise the structural advantages of a subject-oriented assessment: the opportunity for self-determination, for regaining parental autonomy and for developing a solution that is more sustainable in the long term than any court-imposed arrangement. If this added value is not clearly communicated, there is a risk that parents will see the process merely as another instrument of control – and behave defensively or confrontationaly. Under such conditions, the approach cannot fulfil its potential.

A prerequisite for success is the unrestricted or at least seriously achievable willingness of both parties to cooperate. Subject-oriented assessment is not a procedure for enforcing unilateral positions, but a structured space for joint responsibility. Without the willingness to engage in an open-ended process, it cannot work.

The family court plays a key role in this. It can – for example, in the context of procedural design – examine and determine whether there is sufficient willingness to cooperate or whether this can be established in the short term. If this is not the case, the structural conditions for subject-oriented assessment are not met. Without a minimum common attitude among the parties involved to take responsibility for an independent solution, the approach remains ineffective.

In summary, subject-oriented assessment means for parents:

- a return to an active role – as "experts".
- recognition as responsible subjects,
- the opportunity to develop solutions autonomously,
- a reduction in state intervention to the necessary minimum,
- and the chance for more sustainable, self-sustaining agreements.

Where parents can assume this role, the result is not only a legal regulation, but a new form of shared responsibility. This is precisely where the practical relevance of this approach lies.

For family courts

The implementation of a subject-oriented assessment begins with the court order. Subject-oriented assessment unfolds its potential above all when it is used at an early stage – not only as a "last resort" after all previous interventions have been exhausted. In already highly escalated conflict situations, parents are often stuck in stabilised counter-narratives, attribution dynamics and loyalty conflicts, so that the openness to process and willingness to cooperate that are central to subject-oriented procedures are only available to a limited extent.

Working towards agreement may still be possible under such conditions, but it usually requires a considerably greater investment of resources – both in terms of time and money – and places an additional burden on all those involved. This not only increases the individual pressure on the family, but also the use of judicial and professional resources.

Essentially, subject-oriented assessment represents a paradigm shift: away from a primarily diagnostic and decision-oriented perspective towards a structured facilitation of parental self-determination. In suitable families and under appropriate conditions, this approach can therefore be implemented at the outset of legal proceedings – rather than only after escalation processes have failed (De Hemptine et al. 2011).

It provides professional support in regaining parental autonomy and opens up the possibility of lasting peace within the family system. The aim is not merely a legal settlement, but the permanent re-establishment of independent cooperation in the interests of the child.

In appropriate cases, courts should expressly state that, in addition to or even before the expert clarification of the disputed issues, parental agreement could and should be sought (in accordance with Section 163 (2) FamFG). Many *judges are still reluctant to issue such a "dual mandate" – partly because of uncertainty about what options are available, and partly because of concerns that the expert opinion could be delayed. A rethink is needed here: in highly contentious proceedings, the court should view experts as potential aids in conflict resolution and give them the leeway to act accordingly. In practical terms, this means that courts should state at an early stage of the proceedings (at the latest in the order for evidence): "The expert should also explore and promote possibilities for an amicable agreement between the parents within the scope of the assessment." In addition*, judges *should* actively convey to the parties involved that the expert is not acting as a "substitute judge" but as a e supporter of all parties – this way, parents are more likely to perceive the assessment process as an opportunity. In terms of procedural law, the court can combine the assessment with a suspension of the proceedings for, say, three months (Section 156 (3) FamFG) in order to create space for solution work. It is important that the court remains in control in the background: it

should regularly inquire about the progress of the assessment and, if necessary, hold status conferences (with the expert, legal representative and youth welfare office) to keep all parties involved up to date. If the court recognises that an agreement can be reached, it can leave the finalisation to the expert; if, on the other hand, it sees that the efforts are failing, it should press ahead with the proceedings quickly so as not to cause unnecessary delays. Ultimately, the courts benefit from this approach, as an amicable outcome is sustainable and future follow-up applications become less likely.

For experts

For psychological *experts, the solution-oriented approach means expanded requirements for their skill set. In addition to diagnostic expertise, they need mediation skills, knowledge of communication psychology, and an attitude characterised by empathy and appreciation for all parties involved. The training and continuing education of* family experts should therefore focus more on topics such as conflict mediation, systemic thinking, and conversation techniques. Practising experts can receive further training in these areas (e.g. through training courses in mediation or systemic counselling). It is also important to observe ethical boundaries: despite being solution-oriented, the expert must **not** "force" an agreement. They must remain transparent and retain the option of returning to the traditional expert opinion mode at any time if it becomes apparent that no consensus can be reached. Professional associations and quality standards should explicitly highlight the solution-oriented approach as a permissible and desirable option – so that experts feel encouraged to use more creative methods without losing their neutrality. In addition, at the beginning of each case, experts should check whether there are any circumstances that would preclude mediation (e.g. proven domestic violence, addiction problems, serious mental illness). In such cases, the protection of the child and the parent at risk is paramount; mediation within the framework of the expert opinion would be inappropriate here. In normal cases, however, experts can achieve a great deal by using their special position: they enjoy the trust of the court and have access to the most intimate family details – this makes them ideally suited to help initiate solutions. A practical tip is to mention in the letter to the parents that the proceedings serve not only to provide an assessment but also to find an amicable solution. This prepares the parents mentally. Overall, experts should see themselves as *facilitators of the child's welfare*, building bridges between hostile parents – in the interests of the child.

For legal representatives (and other professionals):

Legal representatives (also known as "children's lawyers") play an important role in highly contentious cases as the voice of the child in the proceedings (Section 158 ff FamFG). In a subject-oriented setting, the legal representative should cooperate closely with the assessor. Both pursue the goal of ensuring the welfare of the child, but with different functions: The representative primarily represents the interests of the child and can report to the court – detached from detailed psychological issues – what appears important from the child's perspective. In practice, it has been shown that legal representatives can be helpful in solution-oriented expert opinion processes in order to give the child feedback and convey that their parents are working on a solution. However, the guardian must be careful not to be counterproductive: a guardian ad litem who prematurely takes the side of one parent or makes rigid demands ("The child *no* longer wants to see their father/mother") can torpedo the solution-finding process. Instead, they should – similar to the expert – adopt a mediating, moderating attitude and explain to the child that an agreement is being sought. In joint discussions, the guardian can contribute the child's perspective, for example by saying: *"Your son told me how stressful the disputes are for him. He wants Mummy and Daddy to agree."* Such interventions

directly support the work of the expert. In addition, once the expert opinion has been completed, the guardian ad litem can accompany the transition into practice, e.g. by remaining in contact with the child in the initial period after the new agreement and providing feedback to the court on how the solution is working from the child's perspective. For legal representatives, this means embracing the idea that their task is not only to represent the (sometimes one-sided) wishes of the child, but also to promote the child's welfare in a broader sense – which includes facilitating a peaceful post-divorce family environment.

For legal policy

At the political and structural level, a number of measures could be taken to promote subject-oriented assessments. First, training and further education for *family court judges* could *be institutionalised, for example through regular training courses on dealing with high-conflict cases and on the possibilities of mixed-method approaches (assessment and mediation). Certifications could also be created for experts, demonstrating additional qualifications in conflict mediation – courts could* give preference to *such* experts. Furthermore, quality standards should be developed that explicitly stipulate that the aspect of conflict de-escalation must be taken into account in child custody assessments. The "Minimum Requirements for Expert Opinions in Child Custody Law" presented by a working group of the Federal Ministry of Justice in 2015 could be supplemented by guidelines for promoting agreement. In addition, the financing of such procedures should be clarified: solution-oriented expert opinions are sometimes more time-consuming, which would have to be reflected in higher remuneration rates for experts. Here, legislators could create incentives by, for example, providing for surcharges in remuneration law for experts who can demonstrate that they have been involved in mediation. Models of interdisciplinary cooperation – such as the direct involvement of counselling centres or family counselling services in court proceedings – should also be further tested and promoted. In some regions, there are or have been promising projects (e.g. "court-accompanying counselling", the "Warendorf practice" (Warendorf 2023), the "Cochem model", etc.) in which judges, youth welfare offices, legal representatives and experts work hand in hand to reach an amicable solution even before a court decision is made. Such best practice models deserve support and scientific monitoring. Ultimately, legal policy faces the task of striking a practical balance between the welfare of the child and parental rights (Art. 6 GG). Subject-oriented assessments offer a promising way to meet this requirement: they help to reconcile the constitutionally protected right of parents to raise their children with the state's duty to protect the welfare of the child by focusing on cooperation rather than escalation.

In summary, the above considerations show that all parties involved in the proceedings – courts, experts, legal representatives – and also the legislature are called upon to support a rethinking of highly contentious child custody proceedings. Away from a purely decision-centred ritual, towards a genuine process of helping families. This requires the courage to adopt innovative procedures, interdisciplinary openness and a willingness to ensure the welfare of the child not in abstract legal terms, but in concrete terms in each individual case through peaceful family relationships.

7. Conclusion and outlook

"Parents as the problem – or as the solution?" – This question sums up the paradigm shift. In highly contentious child custody proceedings, the focus has long been on **objectifying** *the*

problem of "parental conflict" through expertise and ultimately resolving it by court decision. However, as the findings and experiences described above show, this way of thinking often leads to a dead end: parents remain enemies, and the child remains torn. The alternative view does not see parents as an insurmountable problem, but as **an indispensable part of the solution**. They are regarded as autonomous subjects, as individuals within the framework of the assessment, not as its object. After all, **the welfare of the child** cannot be enforced against the parents, but is most likely to be achieved *with* them – even after a separation. Subject-oriented, solution-oriented assessment starts right here. It opens up opportunities for improvement where traditional assessment did not. It creates understanding where previously there was silence. And it puts responsibility back where it belongs: with the parents, albeit guided and supported by expert mediation.

The necessity of this approach is underpinned by the legal situation – the FamFG requires agreement for the welfare of the child – supported by empirical evidence – significantly higher agreement rates and satisfaction – and backed by ethical considerations – children have a right to peace between their parents and to participate in solutions that affect their lives. Subject-oriented assessment is not a panacea and requires well-trained experts with tact and sensitivity. However, experience to date has been encouraging: wherever experts have acted as **solution guides** rather than judges in white coats, families have benefited.

In conclusion, one could paraphrase the words of a family court judge (Ortuño, 2018): *"The best decision is the one that parents no longer need because they have reached an agreement themselves."* Subject-oriented assessment aims precisely at this – it helps parents to make this agreement (again) possible. It is therefore not a luxury, but a requirement for the welfare of the child and – wherever feasible – the preferred course of action in highly contentious proceedings.

8. Literature

•	AFCC - Association of Family and Conciliation Courts. (2022). Guidelines for Parenting Plan Evaluations in Family Law Cases.
•	AFCC - Association of Family and Conciliation Courts. (2025). Model Standards of Practice for Child Custody Evaluation.
•	APA - American Psychological Association. (2022). Guidelines for Child Custody Evaluations in Family Law Proceedings.
•	Behrend, J., & Fichtner, J. (2014). Transparency despite intervention: Guidelines for solution-oriented assessment in family court proceedings. In I. Götz et al. (Eds.), Family – Law – Ethics (613–). Beck.
•	Behrend, K. (2011). Expert opinions as a solution aid in custody and access disputes after separation. In K. Menne & M. Weber (Eds.), Professional cooperation for the benefit of the child (191–211). Weinheim: Juventa.
•	Behrend, K. (2019). Attitude and sensitivity as central elements in the counselling process for arranging childcare. Sozialmagazin, 44(5-6), 91–95.
•	Behrend, K. (2021). Quality and stability of parental agreements. Journal of Child Custody Law and Youth Welfare (ZKJ), 12/2021, 439–445; 1/2022, 14–16.
•	Behrend, K., & Jopt, U. (2009). Children are children! – A plea for a solution-oriented approach, even in cases of child welfare risks. In C. Müller-Magdeburg (Ed.), Changed thinking – for the benefit of children. Festschrift for Jürgen Rudolph (153–163). Baden-Baden: Nomos
•	Bergau, B. (2014). Solution-focused assessment as an intervention in highly contentious separation and divorce. Beltz Juventa.
•	Bergmann, E., Jopt, U., & Rexilius, G. (2002). Solution-oriented work in family law. LIT Verlag.
•	Federal Ministry of Justice and Consumer Protection (BMJV) (2015). Minimum requirements for the quality of expert opinions in child custody law. (Interdisciplinary working group on behalf of the BMJV). Berlin.
•	Carlier, M-F & Guerra González, J. (2026. The Consensus model and the collaborative expertise. No. 9 (in preparation)
•	De Hemptine, M; Renchon, J.L.; Van Dieren, B. (2011) The risk of parent-child separation and expertise focused on parental cooperation. Quarterly review of family law. No. 2, 261-298
•	Drozd, L., Saini, M., & Olesen, N. (2016). Parenting Plan Evaluations: Applied Research for the Family Court. Oxford Univ. Press.

•	Fichtner, J. (2015). Separated families – solution-oriented assessment and court-related counselling. Hogrefe
•	FSLS – Professional Association of Systemic Solution-Oriented Experts (2020). Standards for systemic solution-oriented assessment (brochure).
•	Gould, J. W., & Mulchay, L. (2023). "Child Custody Evaluations," in The Oxford Handbook of Psychology and Law.
•	Guerra González, J. (2023). Causes and long-term consequences of separation and alienation experiences in childhood. A quantitative/qualitative study. Sustainability and Law Series. 28
•	Guerra González, J. (2026). The societal costs of parental conflict. Series on the social dimension of sustainability. No. 8 (in preparation)
•	Jopt, U. (2004). Expectations and hopes of the family court towards psychological experts. ISUV Report, 4, 5–7.
•	Jopt, U. J. & Behrend, K. (2006). Who benefits from decision-oriented expert opinions in family law? – A plea for a new role for psychology in family law. In T. Fabian & S. Nowara (Eds.), New approaches and concepts in legal psychology (Vol. 3, 55–70). Berlin: LIT.
•	Jopt, U. J. & Rexilius, G. (2002). System-oriented assessment in family court – Tasks of the psychological expert following the reform of child custody law. In E. Bergmann, U. Jopt & G. Rexilius (Eds.), Solution-oriented work in family law (177–199). Cologne: Federal Gazette.
•	Jopt, U. J. & Zütphen, J. (2004a). Psychological assessment from a family court perspective: A. Decision-oriented approach – An empirical study. Zentralblatt für Jugendrecht, 91, 310–321.
•	Jopt, U. J. & Zütphen, J. (2004b). Psychological assessment from a family court perspective: B. Solution-oriented approach – An empirical study. Central Journal for Youth Law, 91, 362–376.
•	Krabbe, H. (2010). Wars of the Roses – Is mediation possible with highly contentious divorcing couples? Blickpunkt EFL-Beratung, 25, 69–75.
•	Lawick, J. van & Visser, M. (2017). Children in a bind. Interventions for families in highly conflictual separations. Heidelberg: Carl-Auer.
•	Lehmann, M. (2012). The systemic expert? Systemically based "solution-oriented expert activity" in family law. Context, 43(1), 4–15.
•	Mosten, F. S. (2009). Collaborative divorce handbook: Helping families without going to court. John Wiley & Sons.
•	Ortuño Muñoz, J.P. (2018). Justice without judges. Editorial Ariel.

•	Salava, L. (2004). Collaborative Family Law: The Unexpectedly Underwhelming Advance. Pepperdine Dispute Resolution Law Journal.
•	Salewski, C. & Stürmer, S. (2014). Psychological assessments for family court: Diagnostic and methodological standards in assessment practice. Research report, FernUniversität Hagen.
•	Schweitzer, J., & Schlippe, A. v. (2015). Textbook of Systemic Therapy and Counselling (Vol. II). Vandenhoeck & Ruprecht.
•	Schweitzer, J., & Schlippe, A. v. (2016). Textbook of systemic therapy and counselling (Vol. I). Vandenhoeck & Ruprecht.
•	Tesler, P., & Thompson, K. (2019). Building a Successful Collaborative Family Law Practice. ABA (American Bar Association)
•	Vosberg, S. (2015). Systemic solution-focused assessment in family court proceedings – a largely unexplored field. Systeme, 29(1), 23–41
•	Vosberg, S. (2015). Systemic solution-focused assessment in family court proceedings. Systeme, 23.
•	Walper, S. (ed.) (2011). Highly conflictual separated families. Research findings, practical experience and support for divorcing parents and their children. Weinheim: Juventa.
•	Walper, S., & Langmeyer, A. (2008). Effects of high-conflict parenting on children. In R. Bienenthal (Ed.), Handbook on child welfare and access rights (87–102). Munich: DJI.
•	Walper, S., Fichtner, J., & Normann, K. (2013). Highly conflictual separated families: Background, strategies, support. Weinheim: Beltz Juventa.
•	Warendorfer Kreis (2023). Warendorfer Praxis. Warendorf district
•	Weber, M. & Schilling, H. (Eds.) (2006). Escalated parental conflicts – counselling in the interests of the child in highly contentious separations. Weinheim: Juventa.
•	Zütphen, J. (2010). Psychological assessment in family law: Effects of decision-oriented vs. solution-oriented assessment on separated families – experiences and views from the parents' perspective. (Doctoral thesis). University of Bielefeld.

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