

Defending parenthood: A look at parents' legal argumentation in Norwegian care order appeal proceedings

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Abstract

This paper examines parents' legal argumentation in 15 appealed care order (child removal) cases in one Norwegian district court, asking on what grounds parents appeal their case. I investigate the pragmatic, ethical, and moral bases in arguments by applying a discourse ethics framework, viewing argumentation as either justifications or excuses of the parenting in question. The analysis reveals complex reasons for appealing, displaying parents both justifying and excusing both specific situations and the totality of their parenthood. Parents primarily apply pragmatic and ethical adversarialism, followed by pragmatic blaming and claims of change, moral justifications about due process, and ethical excuses about age and own life histories. Interestingly, normalization emerges as a third strategy, where parents explicitly aim to widen the scope of parental normality and adequacy, challenging the common defense dichotomy. The study provides new insight into an important and sensitive field, and indicates that parents engage in similar concrete strategies when, most often unsuccessfully, defending their parenthood.

KEYWORDS

assessment, child protection, courts, discourse analysis, parenting/parenthood

1 | INTRODUCTION

An involuntary removal of a child from their parents' care is an extreme intervention by the State into the private sphere, and the involvement of biological parents in the legal decision-making process becomes essential. Various legislation (Barnevernloven, 1992; Council of Europe, 2010; Tvisteloven, 2005) emphasizes the strong formal and legal rights parents have when involuntarily involved in care orders. As such, failure to adequately include and assess parents' arguments can constitute reasons to question the quality of the decision and the process before it (Alexy, 1989; Eriksen & Weigård, 1999; Habermas, 1996). When a care order is decided by the County Social Welfare Board (County Board), parents can appeal their case to the District Court. However, this is often a complex and difficult task. As the legal care order proceedings are described as "the CWS (Child Welfare Services) demonstrating parental failure" (Masson, 2012: 203), on what grounds do these parents appeal their case?

Presumably, an important reason for appealing a care order case is that parents mean that their argumentation has not been properly considered, and this paper therefore aims to investigate parents' appeal grounds. It explores parents' appeal strategies, and aims to identify the type of discourse (Habermas, 1996) applied by parents. Are the norms the parents use as justifications empirical in nature, or is the appeal rather an expression of a different moral or ethical stance and differing views of parenting? Are they at all justifications, or do parents rather excuse their parenthood? Care order proceedings take place in a strictly legalistic arena, and parents have appointed or selected legal representation with whom arguments and strategies are put together in collaboration. Within this context, I aim to deepen our understanding of how parents, aided by their lawyers, contribute to the legal process of child welfare decision-making, a field in which there is an alarming scarcity of knowledge.

The paper consists of six parts. Following section 1 comes an elaboration on the current order of care order and appeal proceedings in the Norwegian child welfare system (section 2), and a presentation of research on parents in care proceedings (section 3). A

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theoretical elaboration on discourse ethics follows (section 4), along with methodological issues and reflections in section 5. Findings on parents' argumentation in appealed care order cases are then presented (section 6) and discussed (section 7), ending with some concluding remarks (section 8).

2 | CARE ORDER PROCEEDINGS IN THE NORWEGIAN CHILD WELFARE SYSTEM

The Norwegian child welfare system is described as family service oriented and child-centric; it provides early intervention services to children and families in at-risk situations to prevent future harm to the child (Skivenes, 2011). This approach is seen as to have a therapeutic view of rehabilitation in which it is possible for people to revise and improve their lifestyles and behaviours (ibid). Early intervention services function as, for example, financial and social compensation, increased control or monitoring, or assistance in increasing the parents' care capabilities, depending on the need of the family (Bufdir, 2015). As part of the family service orientation, the child welfare agency attempts to avoid placing children outside their homes through these in-home services, and it is only when these services have proven themselves to be of no use, or assessed as useless, that a removal can be sought (Skivenes & Søvig, 2017).

When the Child Welfare Services (CWS) ultimately pursues a care order, three legal criteria need to be met for the removal of a child based on the care order paragraph (§ 4–12 a–d), where abuse or neglect is the cause for (proposed) intervention. There needs to be (a) a situation where harm or neglect has occurred or was likely to occur, (b) in-home services have been unable to provide satisfactory care conditions, and (c) the removal is in the best interest of the child (Skivenes & Søvig, 2017). The CWS carries the burden of proof through their submission of the removal application to the County Board. The intention with the application is to obtain a formal care order decision and place the child in alternative care. Following the decision, either party in the case may appeal to the District Court within 1 month (Barnevernloven, 1992). When assessing an appeal case, the District Court may agree with the legality of the County Board's decision (the law has been applied correctly), but because the decision also has to be suitable present-day, at the time of the District Court case proceedings, this criterion alone is not enough (Ot.prp. nr. 64 (2004–2005), 2005).

3 | RESEARCH ON PARENTS AND CARE PROCEEDINGS

A pool of research is available on parents involved with CWS, less so on parents and legal care proceedings. Contributions to this field usually focus on relevant actors' experiences of inclusion and representation in court proceedings. Pearce, Masson, and Bader's (2011) *Parent Representation Study* explored the work of British lawyers representing parents in care proceedings through observation of hearings, interviews with legal professionals involved in care proceedings, and focus groups with solicitors, barristers, judges, and magistrates' legal advisers. Lens (2017) analysed concrete interaction between judges and parents in child protection cases, providing new and valuable insight into parents'

varying degrees of inclusion in the courtroom in current northeastern United States. Another important contribution from Ireland is brought by O'Mahony, Burns, Parkes, and Shore (2016), regarding the voice of parents in care proceedings. The researchers emphasize several aspects that could improve the current, in the authors' opinion, problematic process of parental engagement. They also highlight research gaps and deficiencies in today's Irish system, such as special advocates for parents in court, more time and resources for lawyers to better prepare their cases, a more coherent and accessible system to obtain independent expert assessments, and increased transparency (O'Mahony et al., 2016: 318–319). Even though Norway and Ireland represent two different child welfare systems, it is evident that some of the challenges in parent participation and representation in court are common.

Parents and their assigned or chosen lawyers together articulate the written arguments for the care proceedings and, as such, also the written judgements that are the focus for this study. This collaboration is presumed to be challenging, as the child protection cases ending up in Court usually involve more conflict, greater harm or risk, and parents who are harder to help (Masson, 2012). As such, care proceedings provide a very challenging environment to create and maintain parental engagement for lawyers and social workers (ibid). Research on parental engagement in care proceedings from the perspective of British specialist lawyers state that their role was to give advice and to represent the parent in the proceedings, and it was the court's role to decide what order to make. They would put forward the parent's case but could not lie or conceal information from the Court. The Court would make its decision on the basis of the specific child's interests (Masson, 2012). Similar research for the Norwegian system is lacking, but crucial to obtain to fully understand how parents personally engage with and in care proceedings.

4 | DISCOURSE ETHICS IN LEGAL ARGUMENTATION

With these valuable contributions in mind, this study seeks to enlighten the field by exploring parents' actual basis for engagement; what the parents' and their lawyers communicate in care proceedings through legal arguments.

Care proceedings can be seen as a communicative arena where various stakeholders provide justifications for their perspectives on the proposed intervention. Habermas' (1996) theory of argumentation presents three different practical discourse types that actors engage in, known as *pragmatic*, *ethical*, and *moral* discourse. These discourses appear as different types of systematic argumentation, with differing objectives, degrees of engagement, and standards for justification, depending on the nature of the contested issue (Eriksen & Weigård, 1999; Habermas, 1996). In *pragmatic* discourse, the outcome of an argument is oriented towards empirical knowledge to given preferences and assesses the (usually uncertain) consequences of alternative choices. It is based in empirically based situational knowledge, in other words, concrete facts and evidence, and the identification of the strategy best suited to solve the problem in question (Habermas, 1996: 161). *Ethical discourse* includes arguments based on a hermeneutic explication of the self-understanding of our historically transmitted form of life. Such arguments weigh value

decisions in a certain context with a view towards an authentic and “good” conduct of life, a goal that is absolute for us (ibid). In other words, they concern value orientations and principles about what constitutes a “good life” for the individual (Eriksen & Weigård, 1999). *Moral discourse* adds the aspect of justice to the ethical discourse, and aims to orient argumentation towards universalization. Can the norms meet with the considered agreement of all those affected? (Habermas, 1996: 162). Moral arguments thus have a universalistic approach towards establishing rights, aiming to identify what is a just and fair outcome for everyone; an outcome that everyone can accept as fair and right. Because the argumentation process in care proceedings takes place within the legal sphere, it must adhere to the legal system's logic of presenting and assessing arguments. Legal procedures nonetheless facilitate an institutional frame needed for the free display of the argument on what norms are appropriate for a certain case (ibid), which Habermas sets as a prerequisite. Legal procedures compensate for the fallibilities in communicative processes and enforce procedural justice (Eriksen & Weigård, 1999).

In court proceedings, there are typically two main types of legal defence strategies, *justifications* and *excuses* (Husak, 2005): “A justification claim ... seeks to show that the act was not wrongful, an excuse ... tries to show that the actor is not morally culpable for his wrongful conduct” (Dressler, 2006; cf. Husak, 2005: 558). In this study, justifications and excuses are used as analytical tools in which to examine the claims made in the legal statements, focusing on the intention with, or strategy within, the arguments, and the type of defense the parents engage in. Justifications and excuses will primarily function as structuring labels in which to aid the discourse analysis.

5 | METHODS

5.1 | Project and data material

This study is part of a larger comparative study of legitimacy and fallibility in child welfare services,¹ funded by the Norwegian Research Council and approved by the Norwegian Data Protection Official for Research. Legal procedures unite argumentation and decision-making, which make written court judgments a valuable data source. The study is an analysis of parents' written claims as presented in all appealed care order judgments tried through a full hearing in one of the 64 Norwegian district courts in 2012, catering to several hundred thousand inhabitants (Domstoladministrasjonen, 2016). We have collaborated with the

respective district court on confidential data processing upon gaining access to all written 2012 child welfare judgments ($n = 50$). The focus is on appeal cases subject to § 4–12, the main care order paragraph of the Child Welfare Act (and also § 4–8, Section 1 in three of these cases, as the cases are joint decisions regarding a care order and ban on removal from the foster home; $n = 15$).² Figure 1 illustrates the case selection, and further case characteristics can be found as Supporting Material online. The cases are given nonidentifiable names ranging from C1 to C15.

A minority of the 15 cases have clearly defined problem areas. In two cases (C2–3) the parent(s) have (had recent) extensive drug or alcohol problems, and in two cases (C11, C13), use of corporal punishment is the central issue. In two cases (C1, C6) the violent conflict between the parents is the issue, and the consequences of this. In three of the cases (C4, C10, C12), the parents' mental illness is directly linked to neglect. In one case (C10), the mother has a mental disability, and also lacks the capacity to follow up her child's special needs. The remaining five cases (C7–9, C14–15) are multifaceted; a core problem is general personality issues and functioning. This results in degrees of noncompliance, avoidance, and lack of insight (C8), not utilizing parental guidance counselling (C9), self-prioritization (C14), lack of motivation (C15), and general capacity to follow up children with special physical needs (C7, C10).

The judgments under analysis are on average between 10 and 20 pages long, with a relatively fixed structure. The parents' written claims range from a half to four pages, and are articulated by the parents' lawyers after conversation with the parents, and are incorporated in the written judgement by the court after the hearing. The written court judgments thus include both the written claims presented by the parents and their lawyers before the hearing, and statements made in the hearing. This is why the judgments decided without a hearing are not included in the study. I only analyse the parents' written claims, even though the Court's assessment and the background section have been read for descriptive purposes. The written claims are structured by the three care order criteria mentioned earlier. Following the care order arguments are subsidiary claims on visitation, should a care order be decided. When parents disagree or present separate claims, I have focused on the argument of the appellate, the parent who has parental authority and is claiming custody.

5.2 | Analytical approach

When reading and rereading the written claims, relevant phenomena and examples were collected in order to find thematic commonalities,

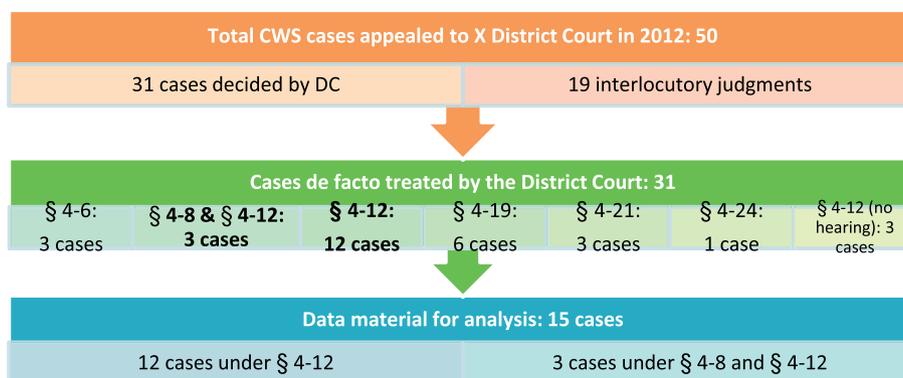


FIGURE 1 Overview of data selection [Colour figure can be viewed at wileyonlinelibrary.com]

differences, and patterns in the texts (Coffey & Atkinson, 1996). Parents made it fairly explicit whether they *justified* certain actions or behaviour, either accepting accusations but seeing nothing morally wrong with them, or *excused* their behaviour by alleviating responsibility. As such, the arguments were first sorted by strategy. Most claims included both types. However, some arguments were difficult to categorize as either, and a third type of strategy emerged; *normalization*. Here, the parents neither overtly excused nor justified the alleged neglect or abuse, but rather attempted to normalize either care conditions or expressions.

Although the preliminary sorting identified the intent with the argument, the discourse analysis aimed to reveal its normative basis. Several discourses were found in the arguments, and were labelled accordingly. Arguments focusing on empirical evidence or contesting established facts, such as how to interpret an expert assessment, were categorized as *pragmatic*. Arguments posed as value judgments about, for example, what the parents viewed as a good life for the specific child were labelled *ethical*, and arguments with moral or rights-based foundation, such as rights that had not been upheld, or emphasizing “unacceptable” procedures, were labelled *moral*. Arguments focused on various concrete themes, which structure the presentation of the findings. Direct references to child welfare legislation is not included in the analysis, as these references are natural in this context. They do not provide any further rationale, and were often unsubstantiated. The categories were reliability tested by a project supervisor. In the findings, I present quotes that were typical.

There are several limitations to the study that need mentioning. The written judgments include what the court deems relevant in order to substantiate the decision (Lundeberg, 2009; Tvisteloven, 2005). Thus, not all presented arguments or facts are included. The arguments are called “parents’ arguments” in the study, as the parents are the formal party in the proceedings, and it is impossible to know in detail how closely the parents and lawyers in reality have cooperated. As

such, analysing parents’ argumentation in written court judgments will never provide a complete picture of the parents’ fundamental wishes or feelings. The judgments function as representations of the parents’ official statements and display the legal argumentation provided for their case, through their lawyers.

6 | FINDINGS - PARENTS' JUSTIFICATIONS AND EXCUSES

The overall finding of this study is that both strategies and several discourses are the norm in arguing for custody in care proceedings. In 11 cases, the parents *primarily* excuse the previous care situation, and claim to have sufficiently improved their care abilities. Four cases (C4, C9, C11, C15) *primarily* provide justifications, and allege that a care order should never have taken place. C11 stands out, as the parents only emphasize one pragmatic justification; the children have lied about corporal punishment, and as such, the parents deny all allegations and present alternative empirical facts. The 14 remaining cases are more diverse, and include both pragmatic and ethical argumentation. Table 1 illustrates how the arguments in the 15 cases fall within the main strategies, the discourses present, and the central theme in the argument. Following this summary, I elaborate on the strategies, discourses, and themes that were identified.

6.1 | Justifications

When parents justified their parenthood and care situation, they applied moral, pragmatic, and ethical arguments in defending their performances as caregivers. Responsibility for action was admitted, but wrongfulness was contested, rooted in experiences of faulty legal procedures, diverging interpretations of empirical facts, and arguments stressing the importance of biology and the child(ren)’s wishes.

TABLE 1 Summary results table of strategies, discourses, and themes

Strategy/discourse	Theme	Cases
Justifications		C1-15
<i>Moral</i>	Lack of adequate in-home services Lack of assessment of adequate in-home services Lack of special needs assessment Incredible witness	C1, C4, C7, C9, C12, C14-15 C4, C7, C12, C15 C5, C7 C5
<i>Pragmatic</i>	Parents' interpretation of CWS evidence/casework Parents' interpretation of expert assessments Contradicting expert assessments Poor conditions in alternative care	C4-7, C9-10, C11 C2, C4, C5-6, C10, C12 C1, C6, C9, C13 C4, C6, C8, C13, C15
<i>Ethical</i>	Emphasis on importance of biology Child wishes to come home/misses family	C3, C5-7, C9-10, C13-14 C2-4, C8, C13-15
Excuses		C1-3, C5-8, C10, C12-14
<i>Pragmatic</i>	Partner change Family network change Improved health/addiction situation Blaming work Acquired housing	C1-2, C5-6 C1, C3, C5-6, C14 C2-3, C6-8, C12 C13 C10
<i>Ethical</i>	Own CWS background Age/maturity	C1, C5 C1, C14
Normalization		C3, C5-6, C9
<i>Ethical</i>	Normalizing conditions Normalizing expressions of care	C3, C5, C9 C6

Note. N = 15 (C1-15). Layout inspired by typology form Arluke and Vaca-Guzman (2005).

6.1.1 | Moral justifications—Lack of due process

When applying moral justifications, parents pointed directly to the casework done and the services experienced, and argued that it was not due process in line with the Child Welfare Act and other relevant legislation. Eight cases apply moral justifications arguing that the parents had not had their rights upheld in the decision-making process. A central theme was the utilization and assessment of adequate in-home services. Seven of the cases emphasized how there had been a lack of provided adequate in-home services in their case, which is one of the care order criteria that need to be fulfilled, exemplified by the following quote:

Mother said no to a family home because she could not stand the thought of being in a situation with constant surveillance. This is the only specified service Mother has been offered. C14

In C14, the mother questions the provision of services, and the lack of adequate alternatives provided for her family. This criterion is however twofold, because adequate in-home services do not need to be implemented, but only assessed, and as such, can be deemed useless without being attempted. The parents in four cases argued that in-home services had not even been adequately assessed, let alone implemented. Furthermore, two of the cases concerned children with physical impairments. These children have special rights and needs, and the father in C7 emphasized that legislation was violated by CWS in their casework:

As is also explicit in the premises for the County Board decision, we are talking about a boy with special needs grounded in his impairment (...) That great challenges are tied to Boy's care needs is not related to Father's care abilities. Boy is a boy in need of help, and has a legal right to it, ref. amongst other the Anti-Discrimination Act. C7

The father insinuated that society at large has accepted and enacted certain legislation relevant to his situation, and it is such morally wrong to not grant his family the services they are entitled to. The mother in C5 objected to a witness statement in the appeal proceedings. The witness had changed its opinion from the County Board to the District Court hearing, and thus the mother doubted the credibility of the witness:

In Appellant's opinion, the people who are talking negatively about her are not being objective. Witness X (Appellant's ex-partner) has changed his opinion since the County Board hearing. Appellant finds this peculiar. C5

This statement indicates that the mother experiences subjectivity in the care proceedings, and not a fair trial.

6.1.2 | Pragmatic justifications—Contesting interpretations and placement

Twelve cases included pragmatic justifications. Here, parents in essence deny the conclusions presented by CWS. In six cases, the

parents disagree with interpretations of evidence presented by CWS, such as visitation case notes, reports from health and service workers, and the children's statements. This theme is exemplified by the following quote, where the parents aim to establish a different empirical truth:

The fact that Daughter was described as adequate in all areas except communication, shortly after put in emergency placement, shows that the claims from the CWS were blown out of proportion. C9

The parents describe a different empirical reality that does not mirror the one presented by CWS. As such, they have not acted poorly as parents. In six cases, parents also contested the expert statement interpretations used as evidence, like this father in C10:

There are several weaknesses in the assessment made by psychologist XX, amongst others it is argued that the results of the psychological tests are falsely interpreted, and given too much weight. There are no findings in the tests that singularly or overall indicate worrisome deviations from what is normal. C10

Here, the father also aims to establish a different empirical truth about his mental health, and how it does not affect his parenting capacities. Parents in four cases emphasized contradictory expert or professional assessments, or at least emphasized aspects they saw as under-communicated, such as the argument presented by this father:

Out of the registered witnesses it is solely Sons physical therapist—CC—whom has observed him over time, and she has stressed that Son has had significant progress since he was little, and that the father has contributed strongly towards this. C7

Here, the father contradicts CWS arguments about his parenting skills, and provides alternative expert knowledge to reflect a different version of the truth, and as such, justify his adequate parenting.

Pragmatic justifications also focused on the poor quality of the alternative care provided by CWS. In five cases, the parents emphasized the inadequacy of the alternative placement (foster home in four cases, institution in one case) in which their children were placed, and how this compromised the justification of the care order decision:

Foster Mother (the boy's paternal grandmother) explained that she was tired and did not have energy. She lacked the skills in reflecting on why the boy acted as he did. Mother is initially positive towards Father's family, but Foster Mother seems like a very poor alternative for the boy. C6

The mother in C6 admitted that home conditions had been problematic, but nonetheless justified her parenthood, as CWS was not able to provide superior alternative placement.

6.1.3 | Ethical justifications—Importance of biology and the children's wishes

Ethical justifications were identified in 12 cases. These arguments were mainly tied to biology and the child(ren)'s wishes to come home. In eight cases, the parents mentioned the biological principle. One father was explicit in what he saw as a good life for his daughter:

Besides, one must acknowledge that growing up in the care of someone other than its biological parents is unfortunate for a child. It is in the child's best interest to grow up with her biological father. C10

The parents varied in their emphasis on biology. One father mentioned the biological principle only briefly:

The ECHR, the Child Welfare Act and the biological principle state that Son has a right to grow up in his father's care, alongside his twin sister. C7

In seven of the claims, the parents stated that the child(ren) wished to come home, or that he or she missed their family. This argument was applied to justify the return of the child to the home, as exemplified by the parents in C13:

The children are now 11 and 13 years old, and they both wish to come home to their parents. It is hard to establish a successful placement of children who are so intent on going home. C13

6.2 | Excuses

The parents' excuses mainly included pragmatically emphasizing empirical evidence and interpretations of changes from past deviances. Some parents also applied ethical excuses, explaining how issues of their own tragic histories and young age excused their untoward behavior and should be enough to grant them a second chance, as they still could provide good lives for their children.

6.2.1 | Pragmatic excuses—Circumstantial changes

Twelve cases presented pragmatic excuses for their parenthood, followed by claims that adequate change has occurred. Pragmatic excuses admitted that circumstances had been bad, but focused on empirical, measurable changes that had taken place since the County Board hearing, or changes that had not been adequately assessed previously. In six cases, the parents presented a significant improvement in their health or drug addiction, and arguments often took this form:

Mother has now stayed drug free for over a year, and is receiving treatment at Facility X. Mother and her treaters mean that Mother will be able to stay away from alcohol also in the future. C3

According to this mother, the recovery from the addiction has gone well, and this suggested that the child should be returned home. Pragmatic excuses were often linked to agents outside the immediate family, and were both resources and nuisances that the parents had now added to or eliminated from the care situation. In five cases, these were extended family or friends, and in four cases, the mothers' partners (none of the single fathers seeking custody emphasized the biological mother in any significant regard). The following quote exemplifies a combination of this type of argument:

The situation from now on is that Mother has broken up with Father, and she will move in with her own mother, whom the children are strongly attached to. The mother's sister, (Mother's aunt), will also move to X, to be of utter support for Mother and the children. C1

Here, the mother has separated from the father, who was deemed harmful in the case, as well as relocated to a new town. Partners were not only argued as negative elements, but also framed as resources meant to change the care situation for the better:

In addition, Mother's family situation has now changed. She has moved in with her boyfriend. He is oriented towards the child's best interests, and helps in strengthening Mother's care situation. C5

Here, the mother's new boyfriend is added to the family constellation, perhaps meant to excuse the previous lack of two caregivers in the family. Finally, one father (C10) referred to his newly acquired apartment where he could now raise his daughter, and one mother (C13) argued that it was in part her past problematic work conflict that made parenting difficult.

6.2.2 | Ethical excuses—Own background and age

Three cases included ethical excuses, and these took two forms; the mothers' own CWS background and young age. Two mothers pointed to their backgrounds, in order to explain their difficulties in cooperating with CWS:

However, one needs to understand Mother's somewhat strained relationship with CWS, in light of her personal experiences with CWS as a child. C5

Here, the ethically right thing to do is to be accepting, and see that the mother indeed can provide a good care situation. Two mothers also, to some extent, blame their young age and immaturity for their lacking parenting and cooperation skills. These appear as forces beyond the mothers' control, in which the mothers place blame:

Mother has the potential to change. She is young and immature. With adequate help she will however be able to strengthen her parenting skills. C14

The mothers' argumentation in these two cases requests acceptance and tolerance for being young, and also to be granted a second chance at parenting.

6.3 | Normalization—circumstances and expressions

Some arguments were challenging to categorize as either justifications or excuses, and as such, a third type of account emerged; *normalization*. Some parents would in part admit responsibility for the neglect, but not make an effort to justify it. In their claims, parents rather requested normalization of care *circumstances* and *expressions*, as their claim was that they too could provide good enough care for their children. An example of parents aiming to normalize circumstances was evident in C9, where the parents claimed that the CWS were not lenient enough in acknowledging the difficulties of newly becoming parents, arguing that insecurity should be normal under the present conditions:

The parents have been insecure, but must be granted leeway like other first time parents. C9

One mother attempted to normalize challenges of caring for two children born prematurely, claiming that these conditions could indeed be valuable even though not optimal:

Mother should not be measured against the ideal situation. Children grow up under different circumstances. C5

Normalization was also requested for families with children having clutter around the house, and parents being allowed to drink alcohol in the house even though children lived there:

Mother cannot be considered to keep a messier apartment before the care order than what is normal for

a family with children (...) The boy has seen beer cans at home, but this is normal. C3

The physical expression of care was another normalization issue. The mother in C6 described her relationship with her son in the following way, as she had been criticized by CWS of not displaying enough physical affection, but rather being "cold" with her son:

... the boy is nine years old. That the boy should sit on Mother's lap and hug and cuddle is not a point in itself. C6

She disagreed with CWS's image of a cold and unstable attachment between herself and her son, because in her understanding, the family defined and experienced attachment in different terms, but equally caring.

Finally, Table 2 sums up the findings by occurrence of type of account across the 15 cases.

7 | DISCUSSION

The analysis shows that parents' argumentation in appealed care order proceedings take the form of three different but distinct defence strategies, *justifications*, *excuses*, and *normalization*, anchored in different practical discourses serving different purposes. All the cases apply pragmatic argumentation, and the cases seem to quantitatively focus more on disputing events and facts, and significantly less on value judgments, even though ethical justifications are present in 13 cases. In 11 out of 15 cases, the parents apply at least two different strategies and two different discourses. This appears natural, as the cases are complex, and often unlike criminal cases, questions regard the totality of parenthoods and lived lives, both specific events and more permanent traits and trajectories. But what empirical "truths," facts, values, and norms do parents deem appropriate in defending their parenthood?

TABLE 2 Discourses across cases

Case	Moral justification	Prag. justification	Ethical justification	Prag. excuse	Ethical excuse	Normalization
C1	x	x		x	x	
C2		x	x	x		
C3			x	x		x
C4	x	x	x			
C5	x	x	x	x	x	x
C6		x	x	x		x
C7	x	x	x	x		
C8		x	x	x		
C9	x	x	x			x
C10		x	x	x		
C11		x				
C12	x	x	x			
C13		x	x	x		
C14	x		x	x	x	
C15	x	x	x			
In sum	8	13	13	10	3	4

Note. N = 15.

7.1 | Justifications—moral, pragmatic, and ethical adversarialism

Parents justify parts of their parenthood, or accept responsibility for the alleged neglect but do not see it as wrongful, in all but one case. The arguments nonetheless display different standards to which they should be evaluated. Moral justifications mainly emphasize lack of due process. The parents claim that assessments by CWS and the County Board have been insufficient, such as lacking services they are entitled to by legislation, and subjective testimonies in Court. In the parents' view, they have parented adequately, because their rights and entitlements have been infringed prior to the care order decision. This appears as rationalization of their parenthoods, and appeals to universalistic claims of unfair and unacceptable treatment. Society has agreed upon a certain child welfare legislation, and when CWS do not fulfil their end of the contract, the parents cannot be held accountable. Pragmatic justifications are also evident, but take the form of adversarial disputes about facts, or empirical interpretations of them. C14, providing solely a pragmatic justification, denying that any harm to the children took place, was indeed overturned, and the children reunited with their parents. Even though these surely are the parents' perspectives on unfair procedures and pragmatics, they should be taken seriously looking at the harsh media critique the Norwegian child welfare system has received nationally and internationally in recent years. Looking at the number of cases from Norway currently under communication in the European Court of Human Rights (Søvig, 2017) clearly underlines the conflicting perspectives in balancing and ensuring children's rights and parents' rights.

Ethical justifications concern the value and importance attached to growing up in one's biological family, and the children's wishes to reunite with their family. The tense relation between biology and attachment (see NOU 2012:5, 2012) comes to show, as one of the core disputes in the "battle of ideas" that is child welfare decision-making (Broadhurst, 2017). Even though one would expect most parents to advocate biology, only eight cases do. Parents primarily spend their efforts contesting pragmatic interpretations of reports, incidents, and conclusions. This may indicate the general role of the court in these cases, which I will return to below.

7.2 | Excuses—pragmatic and ethical pleas for a second chance

The parents applying excuses, which count 11 of the 15 cases, agree that the care order decision may have been right at some point, but refuse to take responsibility for the alleged neglect. If they were to be blamed, they have now significantly changed. Within the excuses, we also find various evaluative standards to which the argument should be judged. Pragmatic excuses are often linked to concrete agents and elements outside the family, such as partners, family, friends, work, and geography. The arguments concern how they empirically have affected the care situation, and how the situation has now changed. Because most of the cases are confirmed, the way in which significant change is measured by the Court does not match the parents', revealing a problematic interpretational gap.

Three mothers in three cases applied ethical excuses. They focus on their own child welfare backgrounds, and see themselves as "victims of the system" (Arluke & Vaca-Guzman, 2005) who were doomed to fail in some sense, and this may also explain their young age when becoming parents. The young age is an excuse in itself, and used as argumentation to indicate that given time they will mature. The ethically right thing to do is to give them a second chance, both at achieving a good life for themselves and a good life for their children. This argument can be linked to a moral line of justification as well, as it may indicate the idea that society at large would indeed grant them a second chance. These arguments reveal a thin line between ethical and moral arguments, but they are clearly excuses, as the parents attempt to conform to CWS' expectations.

7.3 | Normalization—an alternative defense strategy?

Justifications and excuses have been applied as a common dichotomy of legal defences in criminal cases, as mentioned, but they also work as social defences. They aim to bridge the gap between actions and expectations when these are being questioned (Arluke & Vaca-Guzman, 2005; Scott & Lyman, 1968). Researchers Arluke and Vaca-Guzman have studied the latter, and look at the justifications and excuses animal hoarders present when confronted by animal control and other services, through news articles reporting on the cases (Arluke & Vaca-Guzman, 2005). The authors identify several types of justifications and excuses provided by animal hoarders, and explain that these in sum are used "to construct a more positive image of themselves," and to "normalize their behaviour" (ibid). Here, normalization is intended by the sender to inspire or affect the audience, to hopefully be perceived in a more favourable light, and labels both justifications and excuses as "neutralizing techniques" (ibid). I argue that normalization emerges as a separate type of defense strategy. When attempting to normalize, the parents in my study did not justify behaviour directly, but neither overtly excused poor conditions. Rather, normalization appeared as ethical pleas to widen the scope of normality, and question the threshold that CWS has set for adequate parenting, such as, for example, how much and what type of insecurity first time parents can display (C9), how to show affection towards your 11-year old (C6), or how tidy a house where children live should be (C3).

Normalization was however not a very common type of argument, as it was evident in only four cases. This may be because questioning the underlying values and norms of CWS can come across as strategically unwise, as CWS carry the burden of proof in the case. It appears that the County Board and Courts are more oriented towards empirical and pragmatic evaluations rather than ethical and moral ones. Normalization can therefore be a subtle, but satisfying, way for parents to address these issues.

8 | CONCLUDING REMARKS

Using the analytic frame of legal strategies and discourse ethics, the types of arguments and normative discourse that parents, represented by their lawyers, apply in appealed care proceedings have been mapped out and discussed. These cases seem most often to be

pragmatic disputes about (interpretations of) facts, and much less ethical or moral debates about the good life for a child and its family. This is a paradox in child welfare decision-making, because these decisions are to be normative judgements about what is “in the best interest of the child” (Barnevernloven, 1992: § 4–1).

Only 2 of the 15 cases in this study are reversed in favour of the parents, which also reflects the national numbers (NOU 2012:5, 2012). As such, the strategies the parents pursue are unsatisfactory in 86% of the cases in the sample. Vogt Grinde (2000) asks if there are alternative ways to safeguard the parents' reactions to care orders besides appealing, because most are not reversed. This study investigates the differing moral bases in which parents' argumentation rests, as well as parents' intents with appealing. Looking at how parents defend their case reflects their general perception of norms of parenthood, and how these often collide with the CWS, County Boards, and the Courts. If the parties do agree about empirical facts and truths, parents' interpretation of adequate change is not sufficient and their excuses ultimately not satisfactory. Although the analysis does not reveal what parents feel on a personal level, or what strategies prove more successful and which do not, it highlights the argumentative complexity of care proceedings, and the dire need for more research.

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ENDNOTES

¹ <http://www.uib.no/admorg/38063/legitimacy-and-fallibility-child-welfare-services>

² Judgments regarding emergency placements (§ 4–6), visitation (§ 4–19), reunification (§ 4–21), and behavioural cases about teenagers (§ 4–24) are omitted from the sample, as well as three care order cases (§ 4–12) that were decided on written grounds only, after consent of both parties.

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SUPPORTING INFORMATION

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