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Custody Disputes Often Bypass Abuse Assessments

By Marie Tessier, WeNews correspondent

As advocates for battered women and children work to improve custody decisions in the nation's family courts, they say valid psychological assessments that measure trauma in children are often ignored.

(WOMENSENEWS) – Numerous psychological assessments have been developed to measure trauma in children, theoretically providing a tool for family courts and child protective workers to help determine where custody should be granted or where the child's best interests lay. But advocates for mothers who lose custody to men they accuse of abuse say courts and social workers often fail to use those tests, or ignore results once they're complete.



Robert A. Geffner

“It's very common for people to make recommendations in child protective cases and child custody litigation without ever looking at clinical evidence of child abuse, spouse abuse or trauma,” says Robert A. Geffner, who directs the Institute on Violence, Abuse and Trauma in San Diego's Alliant International University.

This reality, combined with the complex interplay of law, science and culture, has led advocates for women and for abused children to call for reforms in the nation's family courts in order to achieve justice for victims involved in the most contentious custody fights. Advocates for reform say it's the women involved who most often find themselves on the losing end.

A landmark report from the Washington-based American Psychological Association in 1996 showed that abusers seek sole custody more often than nonviolent parents. And other research indicates that abusers succeed in gaining custody about 70 percent of the time when they try, according to judicial training materials from the National Center for

State Courts, a legal education and court service organization based in Williamsburg, Va.

Psychologists and psychiatrists involved in case assessments say part of the reason that trauma assessments are not used is because they are costly and time-consuming, and they don't always come out with conclusive results.

"You have to do interviews with all the parties, look at the medical records and the criminal records, talk to the school therapists and teachers. Look at all the data and then put together all the pieces of the puzzle," says Geffner, who is a leader in the Leadership Council on Child Abuse and Interpersonal Violence. The group is a nonprofit with an office in Bala Cynwyd, Pa., that promotes the ethical use of medical and psychological science in policy debates on violence.

Disputed Sides, Dueling Experts

By the time a typical case comes before a judge, psychologists and advocates for battered women say, both sides in a custody dispute have developed a body of evidence--and have often engaged dueling teams of experts--to support their claims.

If the family has already been involved with child protective services or the police, routine investigative errors can complicate the picture for a trial judge, says Frances S. Waters, an authority on child abuse who practices in Marquette, Mich., and serves as an expert witness in child custody proceedings.

"There are a lot of problems with procedures that have a profound impact on the outcome of an investigation, and that often means that truthful allegations of child abuse are not found to be credible," says Waters, who is also involved with the Leadership Council. If the perpetrator is the one who brings a child to an interview with an investigator or an evaluator, she adds as an example, the child is not going to feel safe to divulge her experience.

Among the perils facing protective mothers seeking custody is the widely discredited – yet widely used – theory called the “parental alienation syndrome.”

It is heralded by some fathers' rights groups and used by alleged abusers, as well as some custody evaluators and judges, to cast battered women and protective parents as having “brainwashed” or “alienated” a child from the parent accused of abuse. The concept received a new public airing in April when actor Alec Baldwin accused his ex-wife, Kim Basinger, of alienating him from his 11-year-old daughter. The remark came to light after a taped phone call in which he berated the girl as a “thoughtless little pig” was posted on the Internet. Baldwin and Basinger have been involved in a contentious custody dispute since 2002.



Frances S. Waters

However, research published in several psychology journals indicates that divorce or custody disputes do not give rise to an increased number of false allegations and untrue claims most often come from fathers, not mothers. The proposed syndrome is not a recognized diagnosis by the American Psychological Association, which says the theory lacks clinical data to support it and cautions against using the term.

Tools to Assess Violence

One of the clinical measures that provide evidence when victim statements and other evidence of abuse fail to persuade evaluators and judges is the UCLA Post-Traumatic Stress Disorder Index, developed at the University of California, Los Angeles. It is a 48-item interview about physical, sexual and emotional trauma that is used for adults and children. It assesses 19 symptoms, such as whether someone re-experiences a trauma, avoids talking or thinking about it, has trouble concentrating or startles easily, according to the National Child Traumatic Stress Network, a project of the U.S. Department of Health and Human Services.

Other assessments include the Child Trauma Symptom Inventory, evaluations for depression and anxiety, the Dissociative Experiences Scale and the Child Sexual Behavior Inventory, according to scholars who specialize in trauma.

Access to these tests is controlled to prevent cheating and coaching. The results are just one piece of a full evaluation, according to test distributors and scholars.

During the past 15 years, a number of legal and professional groups seeking to prevent family violence have published guidelines and model procedures for courts to use when evaluating and deciding custody cases.

Those include the National Council of Juvenile and Family Court Judges, based in Reno, Nev.; the American Psychological Association; the American Law Institute, based in Philadelphia; and the National Center for State Courts.

Domestic Violence Skeptics

On the other side of the issue, fathers' rights groups and advocates for noncustodial parents are skeptical of the growing body of research on domestic violence, much of which has provided the rationale seeking to standardize the process for identifying abuse. They say that family courts are often too quick to make findings of abuse.

The American Coalition for Fathers and Children, based in Washington, D.C., says that a small portion of divorce and custody disputes are driving false allegations and that too many fit parents are losing custody of their children.

“When there’s any allegation of domestic abuse in the context of a custody proceeding, the accused should be afforded the same protections of those who are accused in the criminal justice system,” said Michael McCormick, executive director of the American Coalition for Fathers and Children.

That means all parents would be presumed innocent and entitled to parental rights until abuse is proved beyond a reasonable doubt, McCormick says.

Meanwhile, psychologists who advocate for battered women say their own credentials, thorough adherence to protocol and solid evidence can carry little weight in a courtroom, especially when they are hired by one side in a dispute.

“In the end, if protective services doesn’t find an allegation to be credible, the court is going to make a finding and the defense is going to have its own expert,” Waters says. “It becomes a battle of the experts.”

Marie Tessier writes frequently about violence against women and legal affairs.

For more information:

“N.Y. Bribery Case Casts Shadow on Divorce Court”:

<http://www.womensenews.org/article.cfm/dyn/aid/3205/>

“Women Push to Change Family Courts’ Custody Rules”:

<http://www.womensenews.org/article.cfm/dyn/aid/2052/>

American Psychological Association, Violence in the Family report:

<http://www.apa.org/pi/viol&fam.html>

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