The Custody Battle – The Importance of Recognizing the Existence of Violence in the Relationship and the Exercise of Power and Control

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When a couple comes before a family court judge seeking a decision about the custody of their child(ren), family court judges, Guardians Ad Litem, social workers, psychologists, and others involved in the decision are often woefully unprepared for the cases that raise the greatest risk of injury or death to the child(ren) – cases in which there is a history of domestic violence. In these cases, myths and stereotypes about protective mothers often work against the mother, and result in custody decisions that ultimately harm the child(ren).

Far too often, with tragic results, family court judges, Guardians Ad Litem psychologists, social workers and others involved in the custody decision miss the warning signs, and send children to live with abusive fathers and deny protective mothers any chance at a meaningful relationship with their child(ren). One reason for this – groups with expertise in domestic violence are commonly denied an opportunity to share their expertise with the court, and are excluded from the discussion.

Leading experts across the United States have confirmed what protective mothers have been asserting for years – that family court judges often lack training and understanding of the importance of looking for and identifying patterns of abuse in the marriage, and fail to bring to bear the proper experts – domestic violence advocates – to assist them in making the proper custody decision.

Recent research by custody and domestic violence experts across the United States have reached the same conclusion – "the present practices can no longer be justified and the custody court system must create the necessary reforms to protect the safety of children and protective mothers in domestic violence custody cases." See "Domestic Violence, Abuse, and Child Custody", edited by Maureen T. Hannah and Barry Goldstein. Available at http://www.civicresearchinstitute.com/dvac.html

According to Goldstein: ("TEN WAYS TO KNOW THE CUSTODY COURT SYSTEM IS BROKEN"), at http://www.barrygoldstein.net/:

"We now have extensive research to demonstrate common mistakes courts and the often-unqualified professionals they rely on in use in domestic violence custody cases. Studies show that while evaluators believe they are considering domestic violence in their investigation of the family, in fact most fail to do so. We have many studies proving widespread gender bias against women in the approaches used by the courts. Evaluators regularly use psychological testing that has little or no relevance to the issues before the court and is gender biased. Psychologists testifying before the courts rarely inform the judges that their results are based upon probabilities so that factors in the case that would reduce those probabilities can be
considered. Most important to the present topic is research that considers the accuracy of the actual court decisions. Most custody cases (over 95%) are settled more or less amicably. The problem is with the minority of terrible cases that continue to trial and beyond. Courts often think of them as “high conflict” cases, but in reality these are mostly domestic violence cases. Research studies vary somewhat on the percentage of these cases that involve abusive fathers, but all agree the majority of such cases involve domestic violence. I believe the studies that found 90% of these contested custody cases are caused by abusive fathers because unqualified professionals frequently miss domestic violence. In any event, contested custody cases should be being decided overwhelmingly in favor of protective mothers because most of the fathers are abusive, but 70% of the cases result in custody or joint custody to the father. This does not tell us an individual case was wrongly decided, but does demonstrate that a large percentage of cases are being decided in a way that is harmful for the children.

It is essential that these high conflict cases be recognized for what they are – ongoing efforts by the husband – the perpetrator of domestic violence – to continue to engage in power and control, using the child(ren) as tools – in family court. Use of domestic violence advocates is also essential, and the failure to bring them into the discussion can have tragic, sometimes fatal, consequences.

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