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Rhode Island Family Court and the Best Interests of Children
Faculty Sponsor: Carolyn Hames

With the continuous rise of the divorce rate in America, there is also an increase in the number of children and adolescents who must suffer through the divorce along with their parents. For some, the divorce is a relief and can be a positive change in their lives. For others, it is difficult and devastating, filled with conflict and tension. Whatever the circumstances, there are permanent effects that children experience as a result of their parents' divorce. These effects of divorce on children are becoming better known as generations of children grow up in a single parent home. The court systems have become inundated with families requiring their services, and the case load continues to increase each year. Because of this, it is important to examine the legal system and evaluate its measures to ensure the wellbeing of children involved in the divorce process.

For my honors project, I chose to examine this problem on a much smaller scale, one that hits a little closer to home. The focus of my project is divorce, children and families in Rhode Island. I did an independent investigation of literature regarding children and loss, divorce, and the legal system. I also spent hours at the Garrahy Judicial Complex in Providence, RI. I shadowed a family law attorney, met and interviewed judges, observed courtroom motions and trials, and sat in on mediations. According to the United States Census Bureau, there were 8,200 marriages in Rhode Island during the year 2004, but there were also 3,300 divorces. It is necessary to examine this problem at a local scale because it clearly affects many Rhode Island families and children.

"Our society must do more than ask whether divorce causes clear and lasting damage to some children. It should also ask probing questions about how divorce shapes the lives of many children who experience it," (Marquardt 13).

According to the most recent data available by the United States Census Bureau, there were 2.4 million marriages in the year 1997. In the same year, there were also 1.2 million divorces (www.census/gov/prod/2006pubs/07statab/vitstat.pdf). Despite the fact that divorce was fairly common, it was not a popular topic of discussion many years ago. However, as the number of marriages that ended in divorce began to climb, discussion and debate surrounding divorce became much more frequent and common. There is an abundance of literature in libraries, bookstores, online, and in the media about divorce in our society. Family court systems throughout the country have become inundated with families requiring their services. Additionally, the effects of divorce on children are becoming better known as generations of children grow up in a single parent home.

For my honors project, I chose to examine this problem on a much smaller scale, one that hits a little closer to home. The focus of my project is divorce, children and families in Rhode Island. It is necessary to examine this problem at a local scale because Rhode Island is not immune from the problems of divorce in America as a whole. According to the United States Census Bureau for the year 2004, there were 8,200 marriages in Rhode Island. In that same year, there were also 3,300 divorces in Rhode Island. I did an independent investigation of literature regarding children and loss, divorce, and the legal system. I also spent hours at the Garrahy Judicial Complex in Providence, Rhode Island, where I was able to shadow a family law attorney. While at

Garrahy, I met and interviewed judges, observed courtroom motions and trials, and sat in on mediations.

Throughout my research and experience at the courthouse, I have sought to answer the questions, "What is Rhode Island doing for the children who are going through these divorces? What methods are in place to protect them, and how well do they work?" Unfortunately, this is not something that can be thoroughly answered in the course of a semester, or even a year, of school. Many factors need to be taken into account, and many things need to be clarified and understood before one can attempt to answer these questions. For example, it is important to first understand who can file for a divorce, and what the procedure is for obtaining one.

In order to obtain a divorce in Rhode Island, a person must be a domicile resident for at least one year prior to filing the divorce complaint. A divorce may be granted for impotency, extreme cruelty, abuse, adultery, or willful desertion, but because Rhode Island is a no fault divorce state, it may also be granted for irreconcilable differences. R.I.G.L. 15-5-3.1 states that "divorce from the bonds of matrimony shall be decreed, irrespective of the fault of either party, on the ground of irreconcilable differences which have caused the irremediable breakdown of the marriage" (www.rilin.state.ri.us/Statutes/Title15).

In a divorce proceeding where no children resulted from the marriage, the process can be simple and relatively fast. The plaintiff and defendant must show that they meet the requirements and understand what is happening. All assets, debts, and responsibilities are divided between the parties. Alimony, or spousal support, is either waived or requested. Once waived, neither party may ever come back to court to request

it. Additionally, the woman may request to assume her maiden name. At that point, the final judgment is entered, the divorce is granted, and all that remains is the filing of paperwork.

However, the process can be much more complicated and drawn out when children are involved. Not only are assets, debts and responsibilities harder to divide, but custody, child support, and visitation must also be determined. Unfortunately for all involved, the level of conflict is often extremely high and decisions are not reached easily. Often, parties find that they cannot reach an agreement and require the use of a mediator. A mediator is a neutral party who helps the plaintiff and defendant communicate and compromise to reach an agreement. The mediator works with both parties, either together or separately, to determine what is important to each person. Once an agreement is made that is mutually satisfying, a stipulation is filled out and signed by both parties, then given to the judge as part of the Marital Settlement Agreement. In order to be successful, the stipulation must be extremely specific. For example, I sat in on a meditation between a couple with a 5-year old son. The mediator met with the mother, then the father, then both parties together in order for them to read and sign the agreement. Their agreement detailed who would have the child for each school vacation, how the child would get to and from Rhode Island and Tennessee, who would pay for the airline tickets, when and for how long the grandparents could visit, and when and how each parent would notify the other of their son's exact whereabouts. It also specified that each parent must provide food, clothing, and a bed for the boy when he was staying with that parent. Because mediation is used when parents cannot communicate and compromise on their own, it makes sense that the agreement should be

as specific and detailed as possible. However, this particular mediator also made it a point to tell the parents that they had to work on their communication because they could not come to court over every little issue for the rest of their son's life.

When a judge is determining child custody and visitation, many factors are considered. Because this is not something that can be outlined in a piece of legislation, it is up to the presiding judge to determine what placement would be in the best interest of the child. In Rhode Island, the best interest of the child is determined using the landmark case *Pettinato v. Pettinato*, 582 A. 2d 909 (RI 1990). This case outlines factors to consider, which are: the wishes of the parents; the reasonable preference of the child, if the child is of sufficient intelligence, understanding and experience to express a preference; the interaction and interrelationship of the child with the parents, siblings, and other people who may significantly affect the child's best interest; the child's adjustment to home, school, and community; the mental and physical health of all parties involved; the stability of the child's home environment; and the moral fitness of the child's parents.

In order to fully support children through their parents' divorce, it is important to understand the developmental stages that children go through. The way in which the child reacts to the divorce depends on many factors. It is important to note that the child will review his experience of the divorce at every major developmental milestone, which may result in different problems as the child grows up. One important factor that influences coping is the age and developmental stage of the child.

Babies and toddlers require security and consistent routines. A baby also needs at least one primary caregiver, which can be either parent. At this age, custody and visitation issues are very important (Hannibal 73). The level of conflict in the divorce is

vital in determining what the custody and visitation arrangements should be. If possible, a baby should see both parents every day; this means that parents would still have daily contact with each other. However, if the level of conflict is high, this arrangement would be detrimental to all involved. In that case, it would be healthier for all involved if the baby had two consistent residencies. As long as a consistent routine was followed, a baby would be likely to adapt successfully to this arrangement. The baby's temperament should also be an influencing factor in how such an arrangement would be set up. Some infants may be more "flexible" than others if a consistent routine and schedule are followed.

Toddlers are most prone to separation issues because they are just beginning to see themselves as independent and separate from their primary caregivers (Hannibal 76). They also need consistency and routine, and certain comfort objects may help them make the transition, such as a blanket or toy. In terms of custody and visitation, it may be best to have the toddler visit and stay for extended periods during the day before making the transition into overnight visits. However, this also depends on the child's temperament.

Preschoolers will typically feel abandoned and may feel that the divorce is their fault. This is because children 18 months to five years old are magical thinkers. They personalize everything, have limited life experience, and focus on the "you" part of the messages they receive. Additionally, they are more likely to be confused and experience fear due to their lack of life experience. Regression to an earlier developmental stage may also occur. This is because divorce is experienced as a loss, and a certain amount of energy the child would be using to achieve developmental milestones is going to be spent on grief and coping (Hannibal 50).

When a preschooler must deal with the issues of having a parent leave his home, he may experience attachment issues. He needs clear and frequent messages that he is loved and did nothing to cause the divorce. He also needs a consistent routine regarding custody and visitation. However, preschoolers have a better sense of time than infants and toddlers, so they may be better able to tolerate weekly visits.

School age children, approximately 6-12 years of age, may become angry, resentful, lonely or insecure. They may feel that they have to choose a side between their parents, and may experience loyalty conflict. If the divorce results in a change in home or school, additional problems are likely to follow. Children of this age are concrete thinkers, which means that they think in absolutes such as good or bad, always or never. In order to best help them, it is important to avoid ambiguities and euphemisms. It is also important to avoid badmouthing the other parent since the child may already be experiencing loyalty conflicts (Hannibal 70).

At this age, the child may or may not be included in custody discussions. School and social schedules are very important, and should be maintained. At this age, children can understand different points of view, and should be involved in frequent discussions with both parents regarding the divorce and its effects on the child. Also at this age, the child can handle longer separations (Hannibal 80).

Young teens, or those aged 13-15, may experience extreme stress and increased moodiness. The divorce is likely to change their life in many areas, and they may try to distance themselves from family. However, they still need their parents in an authoritative role. They also may feel angry, lonely, helpless, depressed, and insecure.

Older teens, or those aged 16-18, may turn to violence or drugs to deal with their feelings. They are likely to be overwhelmed and may misbehave as a way to express their feelings. Because they are a little bit older and already becoming self-sufficient, a divorce may cause them to grow up faster than normal, and independence may be forced (Hannibal 84).

Teenagers should be encouraged to see both parents regularly, although they should have more of a say in the schedule than a younger child. It is extremely important to remember that a teenager is not yet an adult. They should not have to assume the role of the other parent, and they should not become a confidant for their parents.

Developmental psychologist John Bowlby has reported that a child can resolve loss appropriately when the following criteria are met: he has enjoyed a secure relationship with the person he perceives to have lost, he receives prompt, accurate information, he is allowed to ask questions and is given honest answers, he is allowed to participate in family grieving, and he has easy access to a trusted parent or adult who can be relied upon for comfort (Kuehn 55). If this is applied to divorce, following this criteria can help a child better adapt to his new lifestyle and living arrangements. As Jarratt states on page 39 of her book, *Helping Children Cope with Separation and Loss*, "it is useful to remember that children are less likely to be scarred by what they are told than by the fantasies – often frightening, self-blaming or damaging – they concoct to figure out what has happened when they are not given accurate information."

Children of all ages have very strong reactions to divorce because their world as they know it has changed forever. This concept is called the assumptive world, and is explained by Marquardt in *Between Two Worlds*. People take many things for granted,

and a loss of any kind often shatters these assumptions. For example, most adults assume that they will die before their children, while many children assume that their parents will always be together. In this way, grief following a divorce is similar to grief experienced after a death. "Separation and divorce involve both death and loss: the death of the family unit and the loss of all the normal expectations for what life would be. But because there is neither a body nor mourning rites, the grief following a separation often becomes convoluted," (Jarratt 35).

Even under the best circumstances, separation is always an issue. If the parents can work together and communicate to prevent high conflict, the child is still faced with many changes. One of his parents no longer lives with him, he may be split between two homes, his custodial parent may have to get a second job or work longer hours, and he may have to move and change schools. The divorce is the end of a marriage, but it is only the beginning for the child in the sense that it will shape the rest of his life experiences.

As part of my honors project, I was eager to intern in Family Court at the Garrahy Judicial Complex. In a conversation with Attorney David Tassoni, I was told that family court's case dockets are increasing each year. I was interested in seeing firsthand how they handle divorce cases, and how children's needs are met and protected in our court system.

The first thing I did was watch a video called "Divorce Education." It is available in English and Spanish versions, and shown daily at 8:30am. It is approximately 45 minutes long. The video was extremely basic and encouraged parents to work together towards communicating and co-parenting. It gave a basic synopsis of how children may

feel and grieve at various ages and gave some simple suggestions to help them. It advised parents to let their children express their feelings, and to be available to listen. It also stressed open, honest, frequent communication and warned against criticizing your spouse in front of your children and involving children in financial issues. The video emphasized that the higher the conflict level is between the parents, the higher the children's stress levels will be.

The video covered some very important topics and made some very good points, and it is better than having no system in place at all. However, I do not think that this is an adequate system, and it needs a great deal of improvement. While I was watching the video, there was another woman in the room with me. She appeared bored and was not paying attention; instead, she was counting her money and cleaning out her purse. She explained to me that her youngest child is 17 years old, which is why she stayed in the marriage for so long. She did not feel that this video applied to her because her children are grown. While the viewing of this video is required before the final judgment on the divorce is given, people have no accountability. There is no one there to make sure people pay attention, and there is no participation or activity afterward to make sure that people understand the main concepts.

This is an area that could easily be improved. For example, New Hampshire's family court system has implemented educational seminars for parents, called Children First. Parents who are divorcing must attend an educational child impact seminar before their case is heard in court (University of New Hampshire Cooperative Extension). It is mandatory, but it is also interactive and a far better system than currently in place in Rhode Island. In conversations with Associate Justice Howard Lipsey, I asked for his

opinions on New Hampshire's system and the Rhode Island divorce education video. He feels that the video system is "a joke," and was unsure how New Hampshire's system would work if put into effect in Rhode Island. He is in favor of "anything that works" but feels that the population difference and overall case load would prevent this seminar system from working in Rhode Island (H. Lipsey, personal communication, February 26, 2007).

Divided Yet United is another Rhode Island family court program conducted by St. Mary's Home for Children in Cranston. The program teaches parents how to help their children cope with the divorce. Topics covered include reactions to divorce, how to talk about divorce, visitation issues, developmental needs, coping skills, and restructuring of the family. Information can be found on the family court website and by calling St. Mary's. The program consists of two sessions that last about two hours each, and costs $25.00 (www.courts.state.ri.us/family/dividedyetunitedseminars.htm). This program is better than the divorce education video because it is held in two sessions, and they have activities and speakers to make sure people understand the concepts and are held accountable. However, the drawbacks to this program are that it is not required, and there is a fee, which may deter some people from participating.

Associate Justice Lipsey shared his feelings with me regarding Garrahy's system of processing divorce cases. He feels that the court's biggest weakness is twofold. The first part is the lack of funding available. In the juvenile court, this means that there is no money to appoint a Guardian ad litem for the many children who would benefit from having access to one. A Guardian ad litem is a person appointed by the presiding judge to represent the best interests of a minor child whose parents are going through the

divorce proceedings. He or she serves as a neutral, objective third party, and gives the minor child a voice in the litigation proceedings even though he is not physically present.

In the adult court, lack of funding means that there is no money for the use of psychiatric evaluations. Judge Lipsey said that he has attempted to remedy this problem several times to no avail. His most recent attempt was a letter to the Rhode Island Medical Society seeking a list of local psychiatrists who would be willing to provide their services to court.

Judge Lipsey feels that the court's biggest strength is in the DCYF and juvenile area. He feels that in these courts, competent judges shepherd cases and ensure that the proper services are received.

I asked him what role he thinks children should play in determining their custody and visitation, and he said that if the child is mature enough, he should be involved. He gave me the example of a recent divorce case where the girls were 16 and 17 years old. He interviewed them and asked for their thoughts because it is "(their) life too." However, he feels he has no way of knowing the developmental stage of the children involved, but feels that the younger the child is, the less input he should have. He commented that a Guardian ad litem would be useful in this regard, but there are no state funds to appoint one. In response to Judge Lipsey's comment on lack of knowledge regarding children and developmental stages, I asked if attorney and judges are given any education in this area. He responded that all attorneys and judges in Rhode Island must complete ten hours of continuing legal education per year. The seminars are of varying topics, and there have been some on children in the past. However, after an extensive

search of the seminars offered for 2007, I found that none are in any way related to children's development or needs.

Overall, I am disappointed with Garrahy's programs. More of a focus is needed in the area of continuing legal education for lawyers and judges. These are the people who are making important decisions that will forever affect children's lives. They need to be educated and up-to-date with pertinent information before they are put in the position to make life altering decisions. The Rhode Island family court system also needs more funding so that they can hire Guardians ad litem. This would give the children a voice in the divorce proceeding even though they are not physically there. The court system also needs money to appoint psychiatrists to do evaluations. This would significantly help in determining custody and visitation.

References

Hannibal, Mary Ellen (2002). *Good Parenting through your Divorce*. New York: Marlowe and Co.

Jarratt, Claudia Jewett (1994). *Helping Children Cope with Separation and Loss*. Boston: The Harvard Common Press.

Kuehn, Eileen (2001). *Divorce: Finding a Place*. Minnesota: Capstone Press.

Marquardt, Elizabeth (2005). *Between Two Worlds: The Inner Lives of Children of Divorce*. New York: Three Rivers Press.

Pettinato v. Pettinato, 582 A.2d 909 (1990).

Rhode Island Bar Association. Continuing Education Seminars. Retrieved March 20, 2007, from www.ribar.com/cle/calendar.asp.

Rhode Island Family Court. Retrieved from www.courts.state.ri.us/family.

Rhode Island General Laws. Retrieved January 29, 2007, from www.rilin.state.ri.us/Statutes/Title15.

United States Census Bureau. Retrieved March 5, 2007, from www.census/gov/prod/2006pubs/07statab/vitstat.pdf.

University of New Hampshire Cooperative Extension. Parental Rights and Responsibilities Act. Retrieved on January 24, 2007 from http://extension.unh.edu/News/Divlaw.htm.