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Family Division: The court of last resort

By **Art Peterson**
STAFF WRITER

When romance turns bitter and former partners can't resolve their differences, they may turn to the court of last resort.

The Family Division of Lake County Circuit Court seldom restores joy to a relationship, but the goal is to make the best of a bad situation, resolving settlement problems and child custody issues.

A several-tiered process is designed to solve problems short of going to trial, even though that can become a necessary evil when all else fails.

Sometimes, matters are worked out to everyone's satisfaction; other times settlements are grudgingly agreed to, and sometimes forced rulings create emotional heartbreak, particularly with child custody.

Custody cases carry a heavy impact and emotional burden for parents, children and judges, as well.

Family court, as an institution, is amidst ongoing change, and several national movements are under way to make fundamental changes, particularly in how child custody is decided.

In Lake County, as elsewhere, parents who have lost custody of their children criticize the court system's reliance on "experts" and the inequities of a legal system where, they say, a wealthier parent can buy more-favorable justice by prolonging cases to bankrupt a former partner.

The cost can be daunting. The average fee for area lawyers is approximately \$200 an hour, said Bernard Wysocki, president of the Lake County Bar Association. Depending on individual law offices, that can be applied to research, travel, phone calls, and secretary-paralegal help.

The base price for a divorce is about \$1,000 for a lawyer, Wysocki said, plus another \$500 for costs including filing, summons, and court reporter. Disputed child custody cases can "cost a lot of money when mediators and other experts are called in," he added.

Free legal service is available through the Bar Association and Prairie State Legal Services, but the waiting list is approximately six months for non-emergency cases that don't involve domestic violence, Wysocki said. The free service is usually not available for disputed child custody cases.

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Lake County Circuit Court Judge Jane Waller is presiding judge of the family division, which includes three other judges and courtrooms. A daily "call" for Waller often includes approximately 40 cases.

They range from agreed-to divisions of assets or shared child custody, to cases more mean-spirited as portrayed in the Hollywood film *War of the Roses*.

When the relationship is broken but the partners are still sharing the same household, "it can get so petty as to who can eat what food in the refrigerator," Waller said.

"When parents can't disengage from their conflict in order to figure out how to raise their children, and have to turn it over to a third party, it's sad," Waller said.

2,608 divorce cases in 2003

In 2003, 2,608 divorce cases were filed; in the past decade the total has held fairly steady despite a growing population. Most cases are resolved comparatively quickly (if not peacefully), but the disputed cases take up a disproportionate share of time.

With parents' tempers sometimes flaring, the Family Division is "the highest-risk courtroom," Waller said.

First priority is providing for the immediate safety of the children and, if there's been violence, of the abuse victims. "Sometimes the more appropriate parent has fled for safety and left the child behind," Waller said, "or taken the children and the other parent needs access. The court is left with the dilemma of how to set up a plan."

Judges "have to deal with a paucity of information and sort through issues like credibility," Waller said. "We have to rely on other evaluators, professionals who can give the family time the court can't." The ex-partners pay for the experts, sometimes with costs allocated more to the wealthier one.

The experts "give us insight, but the court would not act on that report without a hearing where parents can cross-examine the evaluator," Waller said. "An evaluation report is a tool, though it doesn't always end up as the order of the court. The court and lawyers can use it as a road map for trying to settle the case."

Waller said, "Often a bad settlement is better than a good trial, because it allows the parties some control over the outcome."

Under the law, a biological mother has custody of a child, until a biological father is declared, Waller said, "until a man establishes that he is the father, he has no legal rights."

Sometimes, when parents have split, "the mother has the advantage" for custody, "but the law is changing fast," Waller said. The maternal advantage only occurs when the father's rights have not been declared.

Judges hope the parents have lawyers before coming into court. "It's difficult if they've not. Lawyers help the parties deal separately with the emotional, legal and financial issues."

Initially, temporary custody must quickly be determined, either through the partners or imposed by the judge. "Our concern is

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making sure the children are safe and establishing who had been the primary care-giver."

One early option is assigning the case to a mediator, if there has been no domestic violence, substance abuse or mental illness. Mediation resolved 28 of 129 assigned cases in 2003, but only for some issues, according to court statistics.

A next step in trying to establish a status quo plan is to assign a lawyer in one of three roles: a Guardian Ad Litem (GAL), an Attorney for the Child, or a Child Representative.

The mission of the GAL is to act as an investigator for the court, and to stand in, and present information for, the child. Waller said GALs are "hardly ever used."

An attorney for the Child advocates for what a child wants, typically teenagers; this option is rarely used, generally when there is a conflict involving what the child wants.

A child representative generally works with younger children, advocating for the child's best interest.

What a child requests is not always what is determined in their best interest, although the older a child is, the more weight judges place with their wishes, Waller said.

'Parental alienation syndrome'

One theory, often disputed in court, is "parental alienation syndrome," where one parent has allegedly alienated the child from the other parent.

Psychologist evaluators are assigned; they interview parents and children, and prepare reports for court. "We have as many as three experts. That drives up the cost and adds to the tragedy, because it erodes funds that the families could use for living," Waller said. Experts can be appointed for the court, and for each parent.

The reports are the basis for another round of hearings and possibly an agreement. In 2003, 131 cases were referred for custody evaluations.

"If that still doesn't resolve it, we have to have a custody trial," Waller said. "By and large we're successful. We don't have many custody trials."

If a custody decision is made by a judge after a trial, the result usually is full custody for one parent. "Not many" end up in joint custody, Waller said, "chances are it's all or nothing."

If custody is shared, it won't be based on equal time with each parent, Waller said. More typical: during the school year, the child would spend weekdays with one parent and weekends with the other, and school vacation time could be used to provide some balance.

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