



CHILDREN



DIVORCE

By Wendy A. Jansen

*How little we know and
how far we have to go*



FAST FACTS

- *Much research has been done and the general conclusion is that divorce doesn't have consistent, across-the-board effects on children.*
- *Experience has taught us that no public or inherently bureaucratic organization can effectively deal with such individualized problems as these.*
- *Another source of information and education, now that the electronic communication age is well upon us, is the Internet.*
- *Zealously representing the client does not mean we have carte blanche to ignore the most innocent victims of divorce, the children.*

It nearly borders on the absurd to try to come up with an opening for an article on the broad subject of children and divorce without running the risk of being completely cliché. Most family law practitioners are not psychologists and, therefore, the little we know comes from the learning of others and our own experience in the practice. All thoughts return to the most elemental idea: if divorce is likened to death on the scale of life events for adults, how much more impossible must it be for children. What adults can barely go through without turning into children themselves must also bring children completely to their knees, and so many times they are without the support and compassion of the people who figure most greatly in their lives. Because at this time, the people they most rely upon are usually unable to see clearly enough to help themselves through the divorce process, much less aid their children.

The basic problem was traditionally explained in terms of the fact that children generally lack the emotional ability to empathize. When a divorce strikes a family, the typical child is unable to deal with anything other than the fear they feel for their unknown future. Mom or Dad's problems pale completely when juxtaposed with a child wondering where he is going to live, if she will be able to go to the same school with her friends, or whether there is enough money to go to the next 'N Sync concert. Basic concerns of abandonment, that they will have to choose between their two parents, and guilt that they are to blame for the break up abound.¹

This, of course, is where parents should fill the gap, assuring the youngster that even though life will change, life will still be good and, more importantly, safe for the child. But what happens if the parents can not do this job, because they are so wrapped in their own emotional and financial wreckage that they can not see their own child's pain? This is what we in the legal system must wrangle with. This is the reason for the SMILE program, early intervention conferences, parental cooperation orders, and court clinics. They all attempt to provide accessible counseling, education, and mediation services to litigant parents with the goal of protecting the one person who cannot protect himself in this process: the child.

These services and programs have varying degrees of success. One reason for this is that so little is understood about how children react to divorce at different ages.² Much research has been done, but the general conclusion seems to be that divorce does not have consistent effects across the board for all children at all ages. Older children may have the ability to be more sensitive to family conflict and, there-

fore, feel more pressure to intervene between their parents. That is the downside, but on the other hand, they are beginning to develop more emotional resources and refined skills at this time in their lives to help them cope. The younger the child, the less risk they run of being able to intervene in conflicts between their parents, but it is clear they have fewer cognitive resources to make sense of the events and emotions that they are witnessing and experiencing, also creating risk to the child. Children at all ages seem to experience a sense of loss and shame, denial and profound sadness, self-blame, and powerlessness. Making the task of coming up with a comprehensive program to deal with this myriad of issues more difficult is the fact that it is clear, after reviewing many of the

major studies, that how a specific child will deal with divorce entails understanding that child's strengths and weaknesses and the demands of the individual situation.³

It is generally accepted, however, that all children face enormous adjustment tasks during and after a divorce. Judith Wallerstein articulates these vital tasks very succinctly. The first task is acknowledging the marital disruption. The second task is to have the child regain a sense of direction and freedom to pursue customary activities. These two first tasks ideally would be addressed and attained within a year of the divorce for the optimal health of the child. The third task is dealing with loss and the feeling of rejection, while the fourth is forgiving the parents. This fourth task is especially vital, because most children labor under intense anger directed most times toward both parents. The fifth and sixth tasks involve accepting the permanent nature of the divorce and relinquishing the longings for the restoration of the pre-divorce family and, then ultimately, resolving relationship issues. These final four tasks are likely to be sorted out for many years after the divorce, but it is obvious that the failure to do so could greatly affect the child's future mental health and coping skills.⁴

It would appear therefore that when parents cannot intervene on their own child's behalf, for whatever reason, and the court system must, the system, and each child it attempts to serve, is at a definite disadvantage. Experience has taught us that no public or inherently bureaucratic organization can effectively deal with such individualized problems as these. Where parents are best equipped, because

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they know their children's needs intimately, courts must grapple with limited resources and time to deal on a massive generalized basis with highly individual and specific problems.

Nevertheless, it does appear that some of these programs do work remarkably well, given their inherent constraints. Many of these programs have been fashioned based on two major reviews of divorce intervention.⁵ The conclusion reached by these studies is that of the two types of intervention, those that assist children directly, and those that teach parents how they can more effectively help their children through the difficult divorce process, the latter is more effective. This is because both reviews find limited empirical evidence that direct intervention with a child actually produces any desired benefit.⁶ Perhaps this is because of the highly individualized manner in which each child, regardless of age, assimilates divorce in her life.

One program that defies this general rule is the Children of Divorce Intervention program (CODIP), initially developed by JoAnne Pedro-Carroll and her colleagues. This program's curriculum and structure was designed to foster a supportive group environment by establishing a climate where children can express their feelings and get help in clarifying them in a safe environment, all while enhancing self-esteem by training them in situationally relevant skills. The mechanism to accomplish these goals is 12 one-hour meetings for children where they learn about divorce issues through film presentations and books. This program concentrates on 4th to 6th graders. Pedro-Carroll and her colleagues are presently expanding the program to include younger children, but no results are yet available for review.⁷

Focusing on more traditional interventions, those teaching parents how to cope and help their children, St. Louis's 22nd Judicial Circuit Court has a "Kids in the Middle" program, where parents filing for divorce are required to attend a class called "Parenting Together after Divorce." It sensitizes divorcing parents to adverse physical, emotional, and psychological factors experienced by children.⁸ Within this state, the SMILE program is utilized in Oakland and Macomb Counties' Family Courts. The program helps parents learn what they can do to create a nurturing and safe environment so that their children can recover from the divorce and feel good about themselves. The SMILE program is the subject matter of an article in the February 2001 issue of the *Michigan Bar Journal* and will not be discussed here further. A clear and concise article on the program is contained in the February 2000 issue of the *Michigan Bar Journal*, and is entitled "Protecting Children of Divorce through Parent Education."⁹

Another source of information and education, now that the electronic communication age is well upon us, is the Internet. It offers many options for information exchange in this area as well. America Online offers special sections specifically designed for children. One such example, "Kids Talk Seriously" provides children with an opportunity to discuss various subjects surrounding divorce and post their

thoughts for other children to read. As far back as 1995, and well before the option to be online was so readily available to so many, in a mere nine months, 362 postings appeared. A particularly poignant one reads:

"[I] have posted on here before and I have had alot of changes in how bad my life has gotten. My father has a girlfriend who he lives with and my mothers out of town boyfriend is coming to live with us next week I am so confused. My dad's girlfriend is constantly trying to s[t]op my father from seeing me and my brother, I really don't mind this because every time I do see him he blames me for everything that's going on. Even though I know it's not my fault it hurts to hear him blaming me for the divorce. MY mother has been a saint through all of this but I resent her for moving on



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and getting [a] new boyfriend so soon. All of the stress from the divorce the fights over child support and all of the stress and pressure to help out my family as much as possible has made me sacrifice a lot of my free time that I used to use for studying and socializing and I failed 2 classes last semester. Please anyone with advice other then IT'S NOT YOUR FAULT please e-mail me or post me a response."¹⁰

This posting provides more information on divorce and children than five pages in this issue or any study ever could. We have no assurances that the court systems we have in place can deal adequately with a plea such as this. The efficacy of these programs has indeed been hard to evaluate.

Complicating matters further is the advent of a number of disturbing trends. Any family law practitioner cannot help but be concerned by the growing number of allegations of sexual abuse upon a child made by one parent against the other.¹¹ This, and the increasing number of PAS, or Parental Alienation Syndrome, cases reported, give rise to another formidable challenge for any court trying to develop a comprehensive program to deal with issues of children in divorce. PAS occurs in a distinctive form of a high-conflict divorce in which the child becomes aligned with one parent and preoccupied with unjustified and/or exaggerated denigration of the other, target parent. In severe cases, the child's once love-bonded relationship with the target/rejected parent is destroyed.¹²

Interestingly enough, some information does exist about a child's age at the time of the divorce and PAS. Contrary to much of what a

litigant might say about a child's lack of desire to spend time with the target parent in a typical PAS case, most children and adolescents of divorce are eager to have an ongoing relationship with both parents. In a non-clinical sample of 131 children from 60 divorcing families, the majority of children was eager to visit their non-custodial fathers and wanted more time than the usual "every other weekend." However, when the study was followed up both 18 months and five years later, when the father did take an interest after the divorce, 20 percent of the children were in considerable conflict about visiting and 11 percent were genuinely reluctant to visit, most notably those between 9 and 12 years of age. Of these children, 19 percent of the children who were reluctant to visit with their dads were aligned

with a mother who was actively doing battle against the father.¹³

Ironically, in high-conflict divorces, children in the 9–12 year old age group are particularly vulnerable to forming strong PAS type alignments with one parent for the sole reason of trying to resolve the loyalty conflicts referenced previously.¹⁴ This is interesting when coupled with the fact that children in the 9 to 12 year range tend to make stronger alliances with the more emotionally dysfunctional parent, who was more likely to be the mother.¹⁵ In other words, it appears that in some cases, PAS might

develop, not only by a parent's childlike need to have their child "pick me" over the other parent, but by a natural need of the child to work through the adjustment tasks so necessary for them to complete to develop into a strong, mentally and emotionally stable adult. These nuances make it very difficult to give each family the help they may need within the court system.

In no way should this article be construed as an overview of the all-encompassing issue of "children and divorce." If anything, hopefully, it will simply ask that we, as family law practitioners, change our mindset a bit. Zealously representing the client does not mean we have carte blanche to ignore the most innocent victims of divorce, the children. We, perhaps, should acknowledge that no one knows the best or worst age for a child to endure a divorce. But before we counsel our clients that the example of a bad marriage is worse than a divorce, we should always remember that most of us are not psychologists. We should never hesitate to make the referral to one if we see a disturbed family.

We can also do something that can ultimately make lasting change in the state. Champion the idea of shared parenting. Instead of a presumption that the court needs to "assign" a custodial parent, why not suggest that each parent has a valuable role in their child's life and that responsibilities ought to be shared. Instead of a label of physical custodian and the increasingly archaic nomenclature of "physical" versus "legal" custody, why not suggest to our clients that a child has an inherent right to both parents after divorce, not just to one and the other part-time. The children did not make the decision to divorce, the grown ups did. They should pay the least, not the most. George Sand once said, "[w]e make a child more mad than

good if we try to encourage a conception of the realities of the universe, when an understanding of its beauty is enough."¹⁶ Divorce is indeed an ugly reality of our universe, but if we can convince our clients not to share every vivid and sordid detail of the divorce with their children under the auspices of "they have a right to know," perhaps we can leave children safer and happier knowing that after the divorce they will still have access to two loving and caring parents.

Various states have taken steps in this direction. At least eight states have a legislative preference in favor of joint custody. Even more states have a presumption of joint custody being in the best interests of the minor child. Nineteen states have declared it desirable that a child have close and continued contact with both parents, oftentimes calling the parent who facilitates this continued contact the "generous parent." The only limitation in legislation of this type is the addition of domestic violence or abuse into the equation to insure that no matter what presumption exists, the child's safety remains paramount.¹⁷ Whether these states have looked at marriage covenants, eliminating no-fault in marriages with children, or providing enabling legislation to facilitate a presumption of shared parenting, strides are being made toward the true and most real goal of any divorce with children: what is in the best interest of the minor child? Let us, as family law practitioners, always remember that asking that question does not prohibit us from representing our clients zealously. That question merely helps us represent our clients well. ◆

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Footnotes

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