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**SUBSTANCE ABUSE AND AN URBAN
COURT'S FAMILY DIVISION:
A VIEW FROM BALTIMORE CITY**

MASTER MIRIAM B. HUTCHINS*

INTRODUCTION

Of the many issues that arise in domestic cases, the problem of substance abuse and dependency stands out as a special challenge, particularly for judges and masters in urban areas. As a domestic equity master in the Family Division of the Circuit Court for Baltimore City for nine years, I have heard scores of cases where substance abuse is an issue. The following are some situations that typify the problems faced by the parties who come to court.

Families and children affected by substance abuse are among those who seek relief from the Family Division. The parties come to court for divorces, as well as to resolve custody, visitation, and child support issues;¹ in any of these situations, the substance abuse of either party may be a major contributing factor to the conflict. While seeking help with complex, intractable domestic problems, drug-addicted litigants are also those least likely to have access to resources such as family and drug counseling, psychotherapy, and legal services.²

The parties in these cases are varied. In addition to parents seeking a divorce, grandparents, stepparents, aunts, and uncles initiate custody and visitation cases. Approximately forty-three percent of the custody and visitation cases involving substance abuse or dependency assigned to my docket will have at least one party who is pro se.³ The Circuit Court has an Assisted Pro Se Litigation Project operated by Legal Aid and other legal assistance programs available,⁴ but some parties are not aware of these programs or do not qualify financially

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1. See JUDITH D. MORAN, CIRCUIT COURT FOR BALTIMORE CITY, ANNUAL REPORT OF THE FAMILY DIVISION 4 (1999).

2. See NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIVERSITY, NO SAFE HAVEN: CHILDREN OF SUBSTANCE-ABUSING PARENTS 3 (1999).

3. Over a six-month period, I heard or held settlement conferences for 23 custody and visitation cases in which a parent's substance abuse was an issue. In 10 of those cases, one or both parties were pro se. See also MORAN, *supra* note 1, at 4 (stating that in 1998, 54% of family law cases in the Circuit Court for Baltimore City involved one or more pro se litigants).

4. See *id.* at 4.

for them. The Assisted Pro Se Litigation Project is already well utilized by the parties in domestic cases. It would be difficult to imagine more litigants availing themselves of these services without an expansion of the project personnel and hours of operation.

I. GETTING SUBSTANCE ABUSE ISSUES BEFORE THE COURT

A. *Obstacles Faced by Pro Se Litigants*

When they do not seek or qualify for legal assistance, these parties must negotiate several obstacles just to get into court. A pro se plaintiff will often encounter difficulty serving the defendant. Problems with service are not unusual in cases where one of the parties has an abuse or dependency problem. These parties may move frequently and cannot be found, or they may evade service in the domestic case in fear that there is a criminal action pending against them.

An example of this is a stepfather who wanted custody of his stepson, who had been left in his care. The boy's mother had a drug and alcohol problem and had no permanent address. No one had heard from or seen the boy's natural father for many years. Although this stepfather had correctly completed the custody complaint form, he could not effect service on the child's mother or father. Furthermore, he was unaware of the alternatives to personal service⁵ or of his other legal options such as filing a report of neglect with the Department of Social Services.⁶ The problems with service prolonged the time between the stepfather's filing the complaint and the disposition of the

5. Maryland Rule 2-121 in pertinent part provides:

(b) Evasion of service. When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business, dwelling house, or usual place of abode of the defendant.

(c) By order of court. When proof is made by affidavit that good faith efforts to serve the defendant pursuant to section (a) of this Rule have not succeeded and that service pursuant to section (b) of this Rule is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.

(d) Methods not exclusive. The methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

MD. R. CIV. P. 2-121.

6. Section 5-701(r) of the Maryland Code, Family Law Article, defines "neglect" as: . . . the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or tempo-

case. There were at least two hearing postponements because the stepfather had not served either the child's mother or father. Each postponement extended the date of the actual hearing by at least two months, leaving the stepfather in limbo regarding his relationship to and responsibility for a child with behavioral problems.

Once the litigant is able to serve the opposing party, the court will review and track the case to ensure that the parties receive appropriate services. Screening, evaluation, and monitoring by the court play crucial roles in domestic cases where substance abuse is a factor, especially where the parties have limited financial resources. When the parties are pro se, screening and evaluation can disclose information that is important to and necessary for the court's determination.

The Family Division resources include: 1) the Domestic Case Coordinator, who screens civil domestic equity cases; 2) the masters, who hold scheduling conferences where issues are discussed; 3) the Social Services Coordinator, who evaluates parties in custody and visitation cases and can refer them to drug screening; 4) the Court Medical Services Office, which conducts psychological evaluations and offers supervised visitation and a Child Exchange Service for parents who cannot or do not want to pick up and drop off children at their homes; and 5) a Special Master who hears emergency custody cases and conducts settlement conferences for pro se litigants.

Although the court may order the parties to pay Court Medical Services for the psychological evaluation, the cost is based on a sliding fee scale and may be waived when their financial circumstances justify. Most of the other screening and evaluation performed by the court is free.

B. Divorce, Custody, and Litigation

All divorces and some custody and visitation cases are filed with the civil equity clerk.⁷ Once a party is served in a civil equity case, the Domestic Case Coordinator will screen it and set in a scheduling conference before a master or judge. With this review and scheduling conference, the court has its first opportunity to focus on the substance abuse issues brought to its attention by the pleadings or the

rery care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or
- (2) mental injury to the child or a substantial risk of mental injury.

MD. CODE ANN., FAM. LAW § 5-701 (1999).

7. See MD. CODE ANN., FAM. LAW § 1-201 (1999).

parties and to start the process of evaluating and resolving them. For example, in one scheduling conference on a visitation matter, a father expressed concern about the mother's drug abuse. The parties were able to agree on supervised visitation and a psychological evaluation to occur before the hearing. The most difficult issue to resolve was the mother's transportation to and from visitation. The mother was in a drug treatment program and had no money. The father felt that he could not afford to subsidize her transportation. At the scheduling conference, they were able to air their concerns and explore solutions to the transportation problem, which would likely persist as long as the mother was unemployed.

If the custody modification or visitation issues arise in a paternity case, there is usually no initial screening of the pleadings or scheduling conference.⁸ Custody is usually established in the initial paternity judgment, but the parties frequently file for modification of custody or a visitation schedule. The parties are usually pro se. Each week there are several of these cases on the master's docket and usually, at least once a week, there is a case in which substance abuse is a factor. For example, the mother of a child may oppose a father's request for visitation or may have refused to comply with a visitation order because of the father's alleged substance abuse.

In addition to the initial difficulties obtaining service, once these cases are scheduled for hearing, the parties encounter problems of proof. Because the parties are pro se, they often appear without witnesses who can substantiate their allegations. It is not unusual for one parent to say at a hearing, "I don't have witnesses today, but I can bring them in!" The pro se parties do not understand that witnesses need to be present at the hearing. When asked why they did not bring witnesses, the parties frequently respond that they did not know the witnesses needed to come to court, that the witnesses were at work, or that the witnesses were otherwise unavailable. Rarely does a pro se party mention using a subpoena to get a witness into court.

In the absence of witnesses, the hearings can disintegrate into a "he said/she said," with each party accusing the other of substance abuse and neither party appearing credible. Furthermore, the pro se party who does bring witnesses may not know how to examine them and how to develop their testimony to bring out important information. Under the circumstances, the court will order evaluations of the

8. The court maintains a separate docket for paternity cases. See MD. CODE ANN., FAM. LAW § 5-1047 (1999). If a party has an existing paternity case, he or she usually files a visitation or custody modification with the paternity clerk, but may also initiate the action by filing a new case in civil equity. See *supra* note 7 and accompanying text.

parties for substance abuse, and, if appropriate, counseling or a psychological evaluation. These evaluations take time, and the court will need to continue the case to decide custody after reviewing them. Until they are completed, the court may grant temporary custody to one of the parties. If the master finds that the child was at risk in the custody of either party, the master will notify the local Department of Social Services to initiate shelter care proceedings.⁹

Some typical examples of custody and visitation disputes in which substance abuse plays a role illustrate the dilemma the court often faces. The first situation occurs more often where custody is to be modified in paternity cases than it does in divorce or post-divorce modifications. The father seeks a change of custody because the mother has a substance abuse problem. At hearings on these cases, it is not uncommon for the mother to claim that the father was also a substance abuser, claiming, "We used to get high together," or that he abused her. In these situations, the master may have to choose between a parent who commits domestic violence and another who is a substance abuser, or between an addict in recovery and one who is still abusing drugs or alcohol. Both situations raise questions about the welfare of the child with either parent that can only be answered after the parents have been evaluated.

A second scenario also is frequently seen in paternity cases, where the father, a recovering addict, wants visitation with the child. Sometimes, the father has filed for contempt because the mother refuses to permit visitation pursuant to an order. In other instances, the father wants a visitation schedule established. The mother is reluctant to allow the visits because of either what she has seen the father do or what she has heard about him. She cannot testify about what she heard the father has been doing, yet often this is the main basis for her allegations. The only solution for the fact-finder may be to have the father evaluated for substance abuse. In the meantime, the court may grant the father supervised visitation.

Each year, there are custody cases filed by grandparents, aunts, uncles, or other family members where one or both parents are substance abusers, incarcerated, or both. Most relatives (or litigants in this situation) do not know that the court employs a different stan-

9. Under Maryland Rule 9-207, the domestic equity master does not have the authority to hear foster care cases or order foster care. *See* MD. R. FAM. L. 9-207. Additionally, there is no existing mechanism that would enable a domestic equity master to refer a case to a juvenile judge or master for shelter care proceedings.

dard when the person seeking custody is not a parent.¹⁰ In Maryland, where the dispute is between a biological parent and a third party, there is a presumption that it is in the child's best interests to be in the custody of the biological parent.¹¹ This is known as the *Ross* standard. When these significant others have cared for the child over prolonged periods during the parents' absence and the parents continue to show little interest in the child, the *Ross* standard is easier to meet.

A corollary to this situation is one where the grandparent or other family member has cared for the child in the parents' absence, but there is neither a court order for custody nor a written agreement between them. The parent returns from long-term drug treatment and demands the return of the child. The family member pursues custody or visitation either because they doubt that the parent is recovering from the dependency or because the parent will not let them see the child. The parties are unaware of the criteria used to decide their case and, consequently, may not be able to present the evidence the court needs to consider. While there is no guarantee of a continuance in these cases, the court may decide to continue the case to allow the parties to bring in the additional evidence and to order a psychological evaluation of the parties and child, substance abuse evaluation, or counseling.

C. *Child Support*

Substance abuse is a factor to be addressed in child support enforcement. In Baltimore City, the domestic equity masters hear a child support contempt docket, as well as a child support modification docket. A history of substance abuse or dependency is often cited by the defendant in contempt cases as a reason that he or she could or did not pay child support. The defendant may also state circumstances that are substance abuse-related as reasons for their failure to pay child support. These circumstances include incarceration for a drug-related offense or loss of employment. For example, a defendant might argue, "They fired me because I tested positive for drugs."

A few defendants contend that they refused to pay child support because the child's custodial parent uses the money for drugs. There have been cases where the non-custodial parent was actually the child's caregiver while still under an order to pay child support. They

10. See *Ross v. Hoffman*, 372 A.2d 582, 586-87 (Md. 1977). This presumption may be overcome if the third party demonstrates that the biological parent(s) are unfit or there are exceptional circumstances which make custody with the biological parent(s) not in the best interests of the child. See *id.* at 587.

11. See *id.* at 586-87.

come to court for relief, asking that the child support be suspended and arrears be abated, because they have taken care of the child while the "custodial" parent has been abusing drugs or alcohol.¹²

Parties who are in long-term drug treatment also seek modification of child support.¹³ They say to the court, "I cannot take care of anyone else until I deal with my substance abuse problem." They say that they need this treatment in order to become and remain clean and that they cannot be a resource to their child if they cannot stay clean. Perhaps the saddest case involves the HIV-positive parent seeking to modify or suspend child support. Their medical records may mention prior substance abuse as the likely cause of the current condition. They come to court to terminate child support because they can no longer work and are receiving Supplemental Security Income benefits.

The moving parties in child support cases must overcome some of the same obstacles faced by their counterparts in custody and visitation, such as problems with service and proof. Until there is service and a hearing, the child support order will continue unmodified, and the question of support for the child will remain unaddressed.

II. RECOMMENDATIONS

The problem of substance abuse in child support cases is not always insurmountable. For example, where the parent is in recovery, the case can be monitored at intervals to see if the parent has obtained employment or has reached a point where employment is a viable option. The court can also refer them to programs such as the Young Fathers/Responsible Fathers Program for help in seeking em-

12. Section 12-104 of the Family Law Article, of the Maryland Annotated Code, allows the court to modify child support "subsequent to the filing of a motion for modification and upon a showing of a material change of circumstances." See MD. CODE ANN., FAM. LAW § 12-104(a) (1999). This section provides incomplete relief for many such litigants, however, because they file for a modification long after they began taking care of the child. The child support can be suspended after the hearing, and arrears accruing after the filing date can be abated. Arrears accruing before the filing date can be held in abeyance (i.e., collection deferred) while the child lives with the party. *But see* Bradford v. Futrell, 171 A.2d 493 (Md. 1970) and White v. White, 368 A.2d 1061 (Md. 1977) for discussion of the availability of a credit against child support arrears for expenditures made by a non-custodial parent during the period of time the parent actually cared for the child.

13. Section 12-104 again presents a problem if the litigant does not file for a modification immediately after becoming unemployed. Assuming there are no child support payments made, the arrears continue to accrue. Only the arrears accruing after the filing date of the modification can be abated. See MD. CODE ANN., FAM. LAW § 12-104(b) (1999).

ployment.¹⁴ But there appear to be few options for substance abusers found in contempt for failure to pay child support who do not seek treatment.

Early intervention in domestic cases, identifying substance abuse problems, and providing resources for the parties must continue. Anecdotal evidence and my experience indicates that the parties and children have a better resolution of their cases when they can utilize appropriate services in the early stages of litigation. As with cases filed in civil equity, it would also be helpful to initially screen and refer parties raising custody modification and visitation issues in existing paternity cases. These parties are more likely to raise substance abuse issues than their counterparts in a civil equity case. If they are referred by court order to evaluation and services before their hearings, they and the court will have a better chance to settle the matter or reach an informed decision, which benefits the child.

14. Young Fathers/Responsible Fathers Program is operated jointly by the Baltimore Urban League, the Baltimore City Department of Social Services and the Lawrence Paquin School. It offers pre-employment training, counseling, GED services, parenting, and skills training. The program makes referrals to other agencies for substance abuse treatments. See generally Jon Jeter, *Making Family a Man's Word: Welfare Reform Brings Emphasis on Fathers*, WASH. POST, July 8, 1997, at B1 (describing the Young Fathers/Responsible Fathers program).