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SUPREME COURT OF FLORIDA

CASE NO. 77,623

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IN RE:

COMMISSION ON FAMILY COURTS
RECOMMENDATIONS

COMMENTS OF
LEGAL SERVICES OF GREATER MIAMI, INC.

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**STATEMENT OF INTEREST
OF LEGAL SERVICES OF GREATER MIAMI, INC.**

LEGAL SERVICES OF GREATER MIAMI, INC. (hereinafter LSGMI) has an interest in the recommendations of the Commission on Family Courts because of its longstanding involvement in representing both children and families in the juvenile division of the Circuit Court. The juvenile attorneys on the LSGMI staff have personal experience and knowledge about the understaffed, underfunded and overlooked juvenile division and also about conflicting results and forum shopping that result because of the dichotomy between the juvenile and general jurisdiction divisions.

In addition, LSGMI staff have served on the Study Commission on Child Welfare and the Supreme Court Commission on Nonlawyer Counselors which have studied the creation of a family division. Staff have also participated on the Juvenile Rules Committee of the Florida Bar and were responsible for drafting Fla.R.Juv.P 8.530 which deals with transferring cases among divisions within the Circuit Court. Thus staff have experience from research and theoretical perspectives as well as from daily observation.

The organizations joining with LSGMI all have a strong interest in the welfare and protection of children. They support the establishment of a Family Court in Florida and urge that juvenile dependency and delinquency matters be included within that court for all purposes.

According to the Florida Bar Commission on Children, a family court which includes juvenile jurisdiction is important for

children and one which needs to be viewed from this perspective. Children are the most vulnerable parties in family disputes.

"Increasingly, families are finding their very existence called into question through a multitude of legal proceedings in Florida courts," according to the Task Force on the Future of the Florida Family.¹ The impact of legal proceedings on all members of the family must be carefully reviewed. Id. The joining organizations feel they have a particular interest to convey by reflecting children's interests in the Family Court recommendations.

¹ Report of the Task Force on the Future of the Florida Family, Florida's Future Well-Being: "It's All in the Family" at 43.

SUMMARY OF COMMENTS

Comments are directed to two aspects of the recommendations of the Commission on Family Courts:

1. The optional inclusion of juvenile dependency and delinquency matters within the family court's jurisdiction through local decisionmaking; and

2. Resources for child assessment services.

The Court is urged to mandate that juvenile dependency and delinquency cases be assigned to the jurisdiction of the family court. An optional provision and a suggestion that an administrative judge "coordinate" dissolution and dependency proceedings involving custody simply does not go far enough to give juvenile cases their much-deserved and long-ignored significance within the larger group of family law cases in Circuit Court.

Juvenile dependency and delinquency matters involve complex, compelling and vital family and societal issues which are every bit as critical as, and often interrelated with, child support, visitation, domestic violence, paternity, guardianships, and adoptions, as well as child custody. The failure to include juvenile matters across the board within the jurisdiction of the family court system will leave the juvenile division as the Cinderella in the Circuit Court family.

Secondly, while it is agreed that sufficient child assessment support resources must be devoted to the family court, it is not accurate to state that such support services are now "available" in juvenile dependency matters. All family matters including

juvenile dependency and delinquency must be adequately funded and supported.

COMMENTS

I. OPTIONAL FAMILY COURT JURISDICTION OVER JUVENILE MATTERS.

Resolving the problems confronting children requires a combination of financial, structural, and societal remedies.... It will take the strong will and coordinated efforts of families, communities, schools, social service agencies, courts, and the legislature. We must recognize that, for economic as well as moral reasons, the strength of our society is tied to the well-being of our children, and we must apply whatever resources or solutions are necessary to ensure that they do well and flourish.

Report of the Study Commission on Child Welfare (hereinafter Child Welfare Study), (March 1991) at p. 2.

The Commission on Family Courts has taken an important step forward in recommending a family division. But the need to include juvenile jurisdiction across the board within the purview of such a division requires no further delay or study.

Coordination of efforts of all agencies, courts and other institutions serving children is a practical, economic and moral imperative to be accomplished now, not at some undefined future time. Such coordination is needed throughout the state and must not be left to a circuit by circuit discretionary process. The Study Commission on Child Welfare, recommended the establishment of a family court division in each judicial circuit to include juvenile dependency and delinquency jurisdiction.² The Commission reached its finding after concluding that the judicial system is

²See Letter of Transmittal of Report of the Study Commission on Child Welfare to the Honorable Leander Shaw, March 21, 1991.

overwhelmed by and has not responded to the increasing numbers and complexity of cases involving children and families. Child Welfare Study at pp. 33-35.

These recommendations of the Child Welfare Study are not unique. The Report of the Supreme Court Committee on HRS Non-lawyer Counselors (hereinafter Nonlawyer Counselors Report)³ found that the needs of the juvenile division of the Circuit Court were woefully overlooked despite "herculean efforts." Nonlawyer Counselors Report at p. 1. Resulting unjustifiable delay in processing juvenile cases, the Committee noted, "plants a time bomb that is likely to explode later in the form of abuse, neglect, delinquency, or adult criminal behavior...." Id. That Committee further concluded that "the juvenile dependency system is one of the most important components of the court system." Id. Unfortunately, the recommendations of the Commission on Family Courts overlook this finding.

Citing a number of previous studies on the issue of inclusion of juvenile jurisdiction within the purview of a family court, the Nonlawyer Counselor Committee warned:

There is a risk that juvenile dependency cases will again be lost in the shuffle or be dealt with as an afterthought, because most family law practitioners have no knowledge of or experience with juvenile dependency cases.

Nonlawyer Counselors Report at p. 7.

³See The Florida Bar, In re Advisory Opinion HRS Nonlawyer Counselors, 518 So.2d 1270 (Fla. 1988).

Regrettably, the present recommendations of the Commission on Family Court do exactly that. The suggestion that an administrative judge coordinate custody matters pending in dissolution and dependency cases overlooks a broad range of additional issues crucial to meeting children's needs: child support, court-ordered counseling, HRS supervision, the provision of social services, acknowledgement of paternity, guardianship of minors, domestic violence and involuntary commitment of children. These issues arise within juvenile jurisdiction just as often as they arise within general circuit court jurisdiction. Fla.R.Juv.P. 8.530, governing transfers among divisions attests to the frequency of such overlap.

The recommendation that one judge be assigned to hear any case involving the same family improves the current situation. It is unclear, however, whether only custody matters involving the same family will be heard together, or whether any matter concerning the same family, would be heard by the same judge. Separate proceedings would only continue the present problem of conflicting court orders on the same subject and encourage forum shopping by lawyers for a sympathetic court.

The common denominator among domestic, juvenile dependency, juvenile delinquency, and child civil commitment cases is family disintegration. In any of these proceedings, the basic existence of the family is questioned.⁴ To a child whether the family

⁴Report of the Task Force on the Future of Florida Family, Florida's Future Well-Being: "It's All in the Family," op.cit., p. 43.

dissolution is due to marital incompatibility, domestic violence, parental neglect, abuse, abandonment or delinquent behavior the attendant pain is the same. The child should be the focus of all proceedings which threaten the existence of the child's family.

All children in situations of family crisis profit by similar kinds of family oriented court intervention. All children benefit from a judge who is specially trained in family and juvenile law, child growth and development, child psychology and available social services, and is familiar with each and every aspect of circuit court jurisdiction which touches upon children. All children profit from timely, uniform and consistent judicial decisions, which eliminate the need for the child to repeatedly suffer the stress of multiple court appearances.

Neglected, abused, abandoned, mentally ill, and, indeed, delinquent children deserve access to the same level of specialization and support services as do children suffering from divorce or domestic violence. Without a totally integrated Family Court there is a likelihood that the new family court (varying from circuit to circuit) will garner new resources while juvenile resources shrink and caseloads rise. Justice, efficiency, preservation of scarce resources, and the best interest of the child demand that juvenile dependency, delinquency, civil commitments, and family court matters have equal stature throughout the state by inclusion within the proposed Family Court.

II. RESOURCE ALLOCATION.

The Commentary to the Recommendations of the Commission on Family Courts incorrectly implies that juvenile divisions are fully funded to assess children's needs, while such services remain unavailable in domestic and child support matters.

Unfortunately, juvenile divisions are woefully underfunded as well. See, Nonlawyer Counselors Report at p., 9.

The 1990 legislative session amended the juvenile delinquency provisions of Chapter 39 to require assessments of all children alleged to be delinquent. Section 39.04, Fla. Stat. (Supp. 1990)⁵ Similar assessments for juvenile dependents have never been enacted.⁶ While some circuit judges order assessments of children paid for by county funds, this is not standard in the state's juvenile divisions nor are assessments available to every child who needs them. As argued above, the establishment of a single service delivery system for all children within Circuit Court jurisdiction

⁵While it is true that the legislature appropriated significant amounts for Juvenile Justice Reform for FY 90-91, budget cuts by the Governor and Cabinet have decimated the initiative. The original appropriation would have yielded approximately \$9.3 million in new programs and services on an annualized basis. After the November 1990 and January 1991 budget cuts, the annualized scope of the initiative was reduced to approximately \$35.3 million. This year, the session just ended added only \$8.3 million to the HRS budget for Children Youth and Family Office of Delinquency Programs. Reports from House of Representatives Appropriations Committee, 1990 and 1991. These figures must be contrasted with the official statutory report of the Juvenile Justice System Review Task Force which in 1990 concluded that system needs were at least \$250 million. This task force included current and retired members of the judiciary, law enforcement offices, prosecutors and others.

⁶HB 661 and SB 552 which would have mandated such assessments failed to pass the 1991 legislative sessions.

will not only benefit the child but will contribute to efficiency, reduce the possibility of conflicting decisions, and help to preserve scarce resources.

It is imperative, therefore, that any recommendations designed to enhance family court resources take cognizance of the needs of the juvenile divisions as part of a single service delivery system.

CONCLUSION

It is respectfully requested that this Court mandate that juvenile jurisdiction be included statewide within the Family Court and further that sufficient support resources be allocated to the Family Court to support juvenile as well as family matters.

Respectfully submitted,



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