1921

Courts of Domestic Relations

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MINNESOTA
LAW REVIEW

VOL. V FEBRUARY, 1921 No. 3

COURTS OF DOMESTIC RELATIONS

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IN presenting this article, the writer must in fairness to the readers of the MINNESOTA LAW REVIEW and himself disclaim such preparation as he would ordinarily wish to make before going into print. The subject is of local timeliness and the editors cannot quickly lay hands on anybody who has given it thorough study.

Courts of domestic relations, or family courts, as they are coming to be called, are among the newest of the specialized courts with which we have been experimenting in the United States during the last twenty years. Not only by reason of their novelty, but because they differ among themselves in organization and jurisdiction, they have not yet come to be generally understood. This is illustrated by recent occurrences in our own state. For several years our social workers, who are usually the first to be interested in new attempts to relate the state's authority to social maladjustments, have been quietly discussing this subject and wondering when the widening circle of propaganda in favor of the family court would reach Minnesota. When the State Conference of Social Work met in Minneapolis last October it was rumored that there probably would be submitted to the incoming legislature a bill for the establishment of a court of domestic relations. Not for the purpose of promoting such legislation, but rather in order to forestall a possibly premature and ill-considered measure, a committee was appointed to study

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the whole question and report to the conference in the fall of 1921. About the same time a committee of the Hennepin County Bar Association took up the subject for investigation, and certain progressive organizations of women, eager for improvement of the conditions of family life, made the family court a plank in their legislative programs. Presently there appeared in a local paper an interview with a member of the district bench favoring, under the name of a court of domestic relations, the specialization of the divorce court, with appropriate organization to protect the interests of the public. At once there was a tempest in the professional teapot. Lawyers rose in protest against interference with the established order, and a meeting of the Bar Association, called to discuss the general scheme of the family court, became a lively forum for debating pro and con the propriety of raising barriers against easy divorce.

Marriage being the fundamental domestic relation, it might well be expected that a court which by its name professes to deal with such relations would have jurisdiction of the dissolution and annulment of marriage; and yet there is but a single state (Ohio) where such courts have been given divorce jurisdiction. One may desire more efficient handling of divorce matters, and to that end may favor judicial specialization in that field, and yet not be interested in the development of courts of domestic relations like those now functioning; and one may covet for the large cities of Minnesota the sort of judicial organization which in a dozen other states goes under this name, without being willing to give it authority in cases of divorce. Therefore, let us clear up our terminology by at least finding out what courts of domestic relations really are.

One need not be a profound student of affairs to have observed that in the last quarter century the emphasis of public opinion as expressed in statutes and decisions of the courts has made a notable shift away from preservation of the rights of private property as the chief object of the law, and toward securing and safeguarding the welfare of people,—people as individuals and as grouped in the community. This process of humanizing and socializing the law and its administration has gone on more rapidly in substantive than in adjective law, probably because the influence of the conservative legal profession has been most effective in the field of procedure. But beginning with the juvenile court in 1899 one can trace the process of

socialization in the latter field, expressing itself in the wide and rapid spread of juvenile courts and the development of courts of conciliation and small claims, morals courts, traffic courts, and courts of domestic relations; in quasi judicial instrumentalities, such as rate commissions,[1] industrial accident commissions, minimum wage commissions, the so-called "court of industrial relations" in Kansas; and in agencies for securing justice for the poor, such as legal aid bureaus, private and municipal, and the public defender, and in the increasing use by criminal courts of scientific aids and organized probation. The court of domestic relations is a product of this tendency. Its genesis is not obscure nor its growth difficult to follow.

The basic ideas of the juvenile court are not new; they are as old as chancery. The new things that happened in Chicago in 1899 were the working out of these ideas to their logical conclusions as legal concepts, and the creation of an agency to make them effective; that is, an organized and socialized piece of judicial machinery. The child in need of the guardianship of the state, whether dependent, neglected or delinquent, was cared for in a single court instead of several, as before, with adequate administrative aid at its command. The next steps were taken in Colorado a few years later, when the juvenile court was empowered to deal with parents and others responsible for conditions that brought children into court. These "contributory delinquency and dependency" laws spread rapidly to other states, until now practically every juvenile court has this cognate jurisdiction, except when barred by constitutional provisions. The natural way in which this sort of court came gradually to be clothed with added functions is seen in the history of the juvenile court of Indianapolis.

"It was organized in 1903 and dealt with juvenile delinquents, truants and neglected children on petition of the board of guardians; in 1905 is assumed jurisdiction over contributory delinquency cases; in 1907 it was empowered to consider cases against parents for abandonment, non-support and neglect; to take children away from vicious parents, and if parents were separated, to decide which one should have custody of the child; finally it was given charge of homeless, abandoned and destitute children. In 1911 the court changed its name to the Marion County juvenile and domestic relations court because it had been dealing with

[1] It is not forgotten that rate commissions long antedated 1899, and that in their origin at least, they were mere business expedients, untinctured with any purpose to "socialize" law.

every variety of case handled in a domestic relations court except divorce, alimony and closely allied cases."[2]

A similar development may be traced in Ohio, New Jersey, Virginia and Oregon.

The first so-called domestic relations courts, however, were not juvenile courts and most of them are not now. The earliest was established in Buffalo in 1910, and was a city court of limited jurisdiction, specializing in cases of non-support. Of the same sort were and still are the domestic relations courts of Greater New York, (one each in Manhattan, the Bronx and Brooklyn), Boston and Kansas City. The highly organized municipal court of Chicago took on a domestic relations branch in 1911 to deal with cases of non-support, illegitimacy and offenses against children, including abduction and statutory rape. This has been from the first a popular and efficient court. At a dinner given in celebration of its first anniversary and attended as a testimonial to its success by nine hundred of the leading citizens of Chicago, Judge Goodnow, who had carried the court through its first year, stated its demonstrated advantages in terms which may be summarized as follows:

1. Uniformity of decisions and treatment of offenders; 2. Removal of women and children from police court environment; 3. More intelligent understanding and sympathetic treatment of cases; 4. Opportunity to discover and check causes of dependency and delinquency; 5. Opportunity to make an effort to keep the family and home together; 6. Efficiency in dealing with non-supporting husbands; 7. Facilities for aiding deserving women and children; 8. Unification of record system; 9. Promptness in disposing of cases.

A recent statement from Judge Harry A. Fisher, now sitting in this court, is worth quoting as giving the point of view of "the man on the job:"

"The advantages of having such a court are in the main the possibility of establishing a social service department in connection with it, which is required to make investigation of cases and, when possible, to avoid bringing these matters before the court either by effecting reconciliations or by obtaining voluntary contributions for the support of the families, and to look after a proper collection of the money ordered for the support of wife or child. A separate court for these matters also develops expertness on the part of the judge who is assigned to preside over it. It separates these cases from the other cases that

[2] Mangold, Problems of Child Welfare, 374.

are usually brought before the criminal branches of the court; and, above all, makes it possible to treat these cases from a social point of view. The proceedings are less formal and the court is not limited to the trial of bare issues of fact. It is in a position to call to its aid the numerous private social agencies which exist in the city and which are able to help solve many domestic problems. In fact, our court has become much more a great social agency than a court. The judicial power is resorted to only where coercion is necessary."

The municipal court of Philadelphia (1914) has shared with that of Chicago the distinction of being especially well organized and efficient. It has a juvenile branch[3] and a domestic relations branch, but the administrative work for the two branches, in the way of investigations and supervision, is done through a unified system. Like other domestic relations courts it commands the service of probation officers and is a remarkably complete organization, as well as that of medical and psychiatric experts, such as has been found indispensable to the best work of juvenile courts. It has jurisdiction in cases of non-support, desertion, illegitimacy, habeas corpus involving children, and abandonment of parents.

Chapter 296, Laws of Oregon, 1919, established a court of domestic relations in Multnomah County (Portland) with exclusive jurisdictions in cases under the juvenile court laws, adoption, and commitment of feeble minded, epileptic and "criminally inclined" persons under nineteen years of age. Concurrent jurisdiction with the circuit court in non-support cases was also conferred.

The obvious field for the court of domestic relations,—assuming that it has a legitimate field, and the presumption seems to be in its favor in view of the foothold it has quickly gained even in conservative communities,—is the large city. Specialization is one of its essential features, and it is difficult to see how this can be secured in a rural district. The differences in the judicial machinery of the states, and sometimes in that of different cities in the same state, are so great that no precise analogy can be found to conditions in the three large cities of Minnesota. Perhaps the court most nearly like what is now being discussed in Minnesota is found in Cincinnati, where there is a "division of domestic relations" in the court of common pleas, a court of general jurisdiction. In 1913, section 1639 of the General Code

[3] In Chicago the juvenile court is a branch of the circuit court.

of Ohio was amended so as to provide that one of the judges of the court of common pleas shall be elected under the designation on the ballot of "judge of the court of common pleas, division of domestic relations;" and that to him shall be assigned all cases of divorce, alimony, non-support and desertion, together with all matters arising under the juvenile court act, including the administration of "mothers' pensions." The court has been open six years and seems to give general satisfaction. Those who are interested to inquire into its spirit, methods and results, with special reference to divorce matters, are referred to the address of Judge Charles W. Hoffman before the Boston meeting of the American Institute of Criminal Law and Criminology.[4]

Act 186, Laws of Michigan, 1915, provided an elaborate scheme for the city of Detroit. This measure, which was passed unanimously by both houses of the legislature, created a domestic relations branch of the circuit court, with a judge elected under a special designation, as in Cincinnati. Jurisdiction was given in divorce and annulment of marriage, non-support, desertion, minor offenses against children and illegitimacy. This act was declared unconstitutional in *Attorney General v. Lacy*,[5] chiefly on the ground that the classification by population, limiting the operation of the act to Wayne County, was special legislation. Decisions of the Minnesota supreme court seem to indicate that a different conclusion would have been reached in this state.

Constitutional obstacles have prevented the spread of the new idea in New York beyond the present limits. The legislature of 1920 proposed an amendment to the constitution providing as follows:[6]

"The legislature may establish children's court and courts of domestic relations, as separate courts or as parts of existing courts or courts hereafter to be created, and may confer upon them such jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors, and for the punishment and correction of adults responsible for or contributing to such delinquency, neglect or dependency, and to compel the support of a wife, child or poor relative by persons legally chargeable therewith who abandon or neglect to support any of them."

It will be observed that no divorce jurisdiction is included in this proposal.

[4] Jour. of Crim. Law & Criminology, November, 1919.
[5] (1914) 180 Mich. 329, 146 N. W. 871.
[6] 3 N. Y. Laws 1920, pp. 2521, 2522.

The social workers' ideal of the family court is set forth in the report of a committee of the National Probation Association, presented in 1917. Judge Hoffman, of the Cincinnati court, was chairman. The report recommends jurisdiction in—

"(a) Cases of desertion and non-support; (b) Paternity cases, known also as bastardy cases; (c) All matters arising under acts pertaining to the juvenile court, known in some states as the children's court, and all courts however designated in the several states having within their jurisdiction the care and treatment of delinquent and dependent children and the prosecution of adults responsible for such delinquency and dependency; (d) All matters pertaining to adoption and guardianship of the person of children; (e) All divorce and alimony matters."

In this grouping there appear to be three underlying ideas: the interest of the state in the conservation of childhood, the intimate interrelation of all justiciable questions involving family life, and the need for administrative aid in the wise solution of such questions. Concerning the general scheme Dean Roscoe Pound, of the Harvard Law School, makes the following discriminating comment:

"What seems to me the true dividing line is this: The main work of the courts is with the economic activities of the community—in a large sense property and contract. Next to that comes injuries to personality through the aggression or negligence of others. In these cases the administration of justice calls for rules or standards applied according to a settled technique. On the other hand, in the class of cases belonging to a domestic relations court the technique of application of legal rules has more of an administrative character. Attempts to deal with these cases along the lines of property and contract have failed. We have had to recognize that common sense and experience backed up by adequate administrative facilities and a staff of social investigators, and even, perhaps, a psychological laboratory, are required for a proper administration of justice in this field. This does not mean that we should make the mistake of setting up separate courts of hard and fast jurisdiction, but rather that in our courts of general jurisdiction we should make provision for specialist judges handling this group of cases as a unit. In the end it is wasteful for a man whose time is primarily given to that portion of the administration of justice which has to do with interests of substance to turn from time to time to fragments of situations calling for a different sort of treatment, and involving different interests, and endeavor to deal with them through a different technique. The chances are infinite that he will do what, by and large, most of our judges have done, namely, apply the habits and methods of property law and commercial law to the solution of problems of human conduct."

Do we need the family court in Minnesota? And if so, in what form? The reader who desires to answer these questions for himself should examine somewhat intensively the situation as it now exists in our large cities. Let us take Minneapolis, with which the writer is most familiar, accepting the foregoing scheme as a standard and bearing in mind that the object sought is to increase judicial efficiency through specialization and access to administrative aid.

(a) *Desertion and non-support.* Desertion is handled in the district court, often with the aid of unofficial social workers in preparing the evidence, and with a probation officer to supervise in the event of stay of sentence. The same is true of non-support in the municipal court. It may well be doubted whether cases of the latter sort are handled more humanely, wisely or successfully in any of the courts of domestic relations than in the municipal court of Minneapolis. In 1919 there were 154 cases. Reconciliations, still effective at the end of 1920, were brought about in 24 families, while collections under court orders totaled $37,481.20. In 1920 the corresponding figures were 152, 26 and $55,200.26 respectively. In the district court there is no specialization, the criminal assignment being passed successively to eight judges, each keeping it two months. In the municipal court each of three judges has the criminal branch four months during the year.

(b) *Illegitimacy.* Establishment of paternity and collections for support are in the district court, under the criminal assignment. Aid in securing evidence, adjusting the mother and making collections from the father is given by an agent of the County Child Welfare Board. Disposition of the child may be through an adoption proceeding in the district court, under the "court" (equity) assignment, or through a dependency proceeding in the juvenile court. In either case administrative aid is available from the Child Welfare Board for investigation and supervision.

(c) *Juvenile court matters;* i.e., delinquency, dependency, neglect, "contributory" cases against adults, county allowances ("mothers' pensions"). All these go into the juvenile branch of the district court, under an assignment for not less than one year, giving opportunity for specialization. There is good administrative machinery,—probation officers, investigators of allowances to mothers, correctional schools and various unofficial co-operative agencies.

(d) *Adoption*: in the district court, "court" assignment.[7]

Guardianship of the person of children: in the probate court by constitutional provision, except as special custody is authorized by the juvenile court act.

(e) *Divorce and alimony matters.* These are disposed of in the district court, under the "court" assignment, except where adultery is alleged; then under the "jury" assignment. No administrative aid is available, and there is no specialization.[8]

In some of the proposals for family court jurisdiction there are included other offenses involving the welfare of children besides the "contributory" cases noted above. It seems plain to the writer that felonies, such as "carnal knowledge," have no proper place in the scheme; but something can be said for the inclusion of offenses against the "general welfare" policies of the state involving the morals, education and health of children, such as violations of child labor and compulsory education laws, furnishing forbidden articles to minors and admitting them to forbidden places. These offenses are for the most part misdemeanors, triable in the municipal court. Aid in child labor cases from agents of the state bureau of labor and industries, and in school attendance cases from representatives of the local board of education, is available, in addition to service from probation officers.

It will be observed that in practically every class of cases making up the ideally complete jurisdiction of the family court, as suggested by Judge Hoffman's committee, except divorce cases, the aid of a social service organization, official or unofficial, is already at the disposal of the judge. In many divorce cases, especially when custody of children is involved, the need for similar aid is keenly felt, and the propriety of the court's employing it can be denied only by denying the interest of the public in suits involving the marriage relation. The idea that the use of investigators in divorce matters would lead to star chamber methods is not borne out by local experience in other fields. Much time of the court is wasted, and much expense incurred by people who can ill afford it, in disputes over alimony. The well known contrast between the lax enforcement of such payments in the district court and the efficient methods of collection in the mu-

[7] See above.

[8] In Ramsey County the judge having the juvenile assignment also takes all divorce cases.

nicipal court under orders in non-support cases, speaks loudly in favor of administrative aid for this branch of divorce business at least.

It is not necessary, however, to create a new court, or even a domestic relations division of the district court, in order to secure the benefits of administrative aid in divorce and alimony matters. It is obvious that this can be done simply and directly. The thing that cannot be done without carefully devised legislation is to bring to a focus in a unified judicial tribunal all the work needing to be done in or through the different courts, in the fields above indicated, or so many of them as it is thought best to combine. As to whether this would be worth while, people will differ according to the measure of their sympathy with the modern tendency of the courts toward socialization; and according as they do or do not believe that the business of administering justice and executing laws for the public welfare, when delegated to the courts, will profit, like other forms of business, by organizing details and by training to expertness, through accumulation of experience, those who are the responsible heads. The inbred conservatism of lawyers tends to array them as a class on the negative of this proposition; but there is very respectable opinion on the other side: witness the publications of the American Judicature Society. The social workers, a keen and tireless group, are to be reckoned with; and the newly enfranchised woman is not likely to be long delayed in pursuing her ideals for the betterment of family life by mere legalistic use-and-wont. The family court seems to be on the way: if it is not to arrive the obstacles must be made to appear substantial.[9]

[9] Courts of domestic relations; references:

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But on one point, surely, there should be no conflict of opinion among intelligent citizens, and least of all among members of the legal profession: the stronger the movement of public opinion toward departure from the beaten paths of judicial procedure, the more alert and diligent should be the leaders of the bench and bar to find in which direction lies the general good.

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