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Running head: FAMILY COURT AND STEPPARENTS

An Exploration of the Impact of the Family Court Process on “Invisible” Stepparents

Natalie Gately

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October, 2004

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An Exploration of the Impact of the Family Court Process

On “Invisible” Stepparents

Natalie Gately

Edith Cowan University

Abstract

The increase of divorce in Australia is creating a social phenomenon for family researchers. Many families resolve disputes regarding children in the Family Courts, however due to the protracted litigation process many partners will have repartnered. Little is understood about how bureaucratic systems impact upon the experience of stepparents. These decisions might very well impact on the stepparents own new lifestyle and relationship, placing an additional burden on themselves and the stepfamily. The purpose of this review is to explore the literature pertaining to the issues surrounding repartnering and the Family Court process in order to illustrate how this invisibility is created.

Author: Natalie J. Gately

Supervisors: Assoc. Prof. Lis Pike and Dr Paul Murphy

Submitted: October 2004

An Exploration of the Impact of the Family Court Process on “Invisible”
Stepparents

The divorce rate within most western countries has continued to escalate since the introduction of no fault divorce laws that began to emerge in mid 1970 (Boyd, Rhoades & Burns, 1999; Fisher & Pullen, 2003). In Australia these laws were introduced with the Family Law Act (FLA) 1975, and in Western Australia with the Family Court Act (FCA) 1975 (Fisher & Pullen, 2003). As a consequence, a greater number of parents are accessing the services of the Family Courts to litigate various orders relating to child residency and contact (Family Court Counselling Services, (FCCS), 2002) and property and financial settlements (Charlesworth, Neville, Turner & Foreman, 2000) Within Western Australia alone, the Family Court of Western Australia (FCWA) commences approximately seven thousand new cases every year (Kerin & Murphy, 2003). A significant proportion of these cases (about 35 percent) involve disputes relating to children (Murphy & Pike, 2004a).

Although the courts attempt to resolve these issues within an appropriate time frame, it is not unusual for any one case to span a number of years (Fisher & Pullen, 2003). As women ordinarily repartner within 3-5 years post-separation, and men typically repartner within 1-2 years of separating (Hughes, 2000), a number of parents will still be negotiating the family law process whilst simultaneously forming new interpersonal relationships (Murphy & Pike, 2004b; De’Ath, 1997).

As these relationships become established, the new partner inevitably becomes integrated in the bureaucratic systems of the Child Support Agency, the Australian Taxation Office and in some instances Centrelink, as their income becomes part of the household assets. As a consequence, these new partners also become enmeshed within a Family Court system where a number of issues associated with the dissolution of the previous relationship are still being resolved (Murphy & Pike, 2004b).

Whether living with a residential or non-residential parent, the new partner in this reconstituted family will assume some parental responsibilities that may include providing a home, having contact with the child(ren), providing some elements of day-to-day care, providing for education, or protecting and maintaining the child(ren) (Baum, 2003; Funder, 1991). Despite these new responsibilities, these partners (stepparents) are notably absent from the Family Court process, thereby rendering them hidden or 'invisible' when decisions are made about those child(ren) (Edwards, Gillies & McCarthy, 1999). These are decisions that might very well impact on their own new lifestyle and relationship, thereby placing an additional burden on the reconstituted family. Given these issues, the purpose of this review is to explore the literature that demonstrates the invisibility of new partners (stepparents) within the Family Court process. As there is little empirical literature examining this issue, this paper will consider the issues surrounding repartnering and the Family Court process in order to illustrate how this invisibility is created.

The following definitions will be applied within the body of this paper. The term *stepparent* will refer to an adult partner of the biological parent who has no legal or genetic relationship with the partner's children (Murphy, 1999). The term *residential* parent will refer to the parent with whom the child(ren) live, with *contact parent* being the parent with whom the child visits or spends less nights a week (Commonwealth of Australia, 2001). The term stepparent will be used for both legally married (de jure) and defacto relationships acknowledging that many families seeking assistance from the Family Court in respect of children's issues are not formally married (Kelley, 1996; Ritala-Koskinen, 1997).

Demography of Separation and Re-partnering in Australia

Whilst 50-60% of couples in first marriages separate (Degarmo & Forgatch, 2002; Duran-Aydintung & Ihinger-Talman, 1995), 74% of second marriages also fail within the first five years (Jones, 2003). The high rate of divorce in second and subsequent marriages puts children at significant risk of experiencing another major disruption (Aquilino, 1994; De'Ath, 1997; Doyle, Wolchik & Dawson-McClure, 2002). Despite these statistics marriage in Australia remains popular (Rhoades, 2000) with over 58% of Australians marrying at some stage (Australian Bureau of Statistics (ABS), 2003). When young adults are surveyed they invariably indicate their intention to marry, foreseeing a committed relationship that will benefit themselves and any children they have (Wolcott & Hughes, 1999).

Although marriage remains popular, an increasing alternative is the formation of defacto or social marriages. The 2001 census showed that 12% of couple

families were defacto or social marriages (ABS, 2003). Like married couples approximately 46% of defacto couples have children (ABS). The major difference between formal marriage and defacto relationship becomes evident when the relationship breaks down (Sheehan & Felberg, 2000). Under Commonwealth Law marriage, divorce and property settlement are under the jurisdiction of the Family Court. However (depending on which state they live in), defacto couples are required access to different courts in order to litigate different aspects of their relationship dissolution. Whilst the Family Court has jurisdiction in matters relating to the children of defacto couples, property disputes were (until recently) heard in the State Court (Sheehan & Fehlbberg, 2000). Defacto relationships often occur post separation, producing children to the newly formed couple whilst one, or both parents are still negotiating Family Court process involving children from previous relationships (Murphy & Pike, 2004).

Statistics compiled in 2002 indicated that 44% of marriages included one partner who was not marrying for the first time (ABS, 2003). Furthermore, over a third of people remarrying had children from a previous marriage (ABS, 2003). Those statistics indicate a significant increase in second and subsequent marriages. Only twenty years ago, remarriage rates were as low as 17% for both grooms and brides (ABS, 2003). However, these statistics do not show the number of de facto partnerships that are formed after separation as people who wait for the legal processes to be completed before being free to re-marry or simply opt not to formalize their new relationship (Fausel, 1995). Therefore,

statistics grossly underestimate the number of couples who repartner after separation.

This higher incidence of repartnering is an indication of the rising number of stepfamilies in Australia. Whilst official statistics indicate that only 10% of families in Australia are stepfamilies (ABS, 2003), the actual number is estimated to be as high as 20% (Murphy & Pike, 2004a). The discrepancy between official statistics and current estimates lies in the definition of stepfamily that is incorporated by the ABS. In summary the ABS only includes residential parents as stepfamilies (Martin, 1998), thereby underestimating the actual number of stepfamilies in existence.

This is a significant issue as the ABS statistics have a direct impact on both research and social policy (Martin, 1998). Despite the number of stepfamilies in existence, social policy and law has yet to provide the stepparent with a legal status (Coleman, Ganong & Fine, 2000). As a consequence if either of the parents has children then each of these new relationships establishes a stepfamily and creates a new 'stranger carer' who has no legal status (Chisholm, 1989; Martin, 1998). This lack of recognition and support is something many stepparents deal with on a daily basis (Martin, 1998) and denigrate the new family form (Barber & Lyons, 1994).

This lack of recognition is echoed in current literature that is dominated by children and adolescent's perceptions of stepfamilies (Amato & Bruce, 1991; Cartwright & Seymour, 2003; Freisthler, Savare & Harrison-Jay, 2003; Gamache, 1997; Smart 2000). Researchers have examined the psychological effects of

marital breakdown and repartnering on mothers (Solomon, 1995), fathers (Frieman, 2002), and even grandparents (Lussier, Deater-Deckard, Dunn & Davies, 2002). However, little is known about the experience of stepparents. Research that has been conducted suggests that the experience of the stepparents far from satisfying (Bray & Berger, 1993; Coleman & Ganong, 1997; Kheshgi-Genovese & Genovese, 1997; Visher, Visher & Pasley, 1997). That research has focused on both economic and psychological considerations.

Research examining economic considerations has focused on post divorce financial living standards and has yielded conflicting findings (Bauman, 1999; Smyth & Weston, 2000). In an Australian study, Smyth and Weston (2000) examined gender, family type, welfare and child support payments in order to appraise economic disadvantage after divorce. Personal satisfaction with their current household income was also assessed. Findings demonstrated that women with children were financially disadvantaged after divorce. Findings also demonstrated that child support payments did not appear to be creating long-term financial hardship for the majority of wage earning men who had repartnered (Smyth & Weston, 2000). This implied that there was no economic disadvantage for stepparents. However, Kelly and Lamb (2003) recognised that the cost of being a contact parent included the need for larger accommodation separate bedrooms, household items required specifically for contact and hidden costs that are not accounted for when directly measuring only income and child support. Being a contact parent involves costs associated with transport, food, leisure activities and medications in addition to the housing and accommodation costs,

which greatly reduces a contact parents' financial resources (Kelly & Lamb, 2003; Smyth, 2002). This particular issue was also raised by the recent parliamentary inquiry into child custody arrangements (Commonwealth of Australia, 2003). This report indicated that non-residential parents were distressed by the levels of child support that created financial difficulty for them (Commonwealth of Australia, 2003).

It has also been suggested that the presence of a stepparent's income provides a buffering effect against poverty (Ganong, Coleman & Mistina, 1995). However, findings in relation to the economic impact of remarriage show that women benefit more than men, who may be supporting two households (Ozawa & Yon, 2001). Given the financial strain placed on men who repartner, second wives often need to work outside the home to supplement the family income (Jones, 1978). The obligation of a man to a former wife and children often makes the financial contribution by his new partner essential to their financial survival (Jones, 1978). This in itself can create conflict and stress for the adults of the second marriage and also exacerbate conflict with the parents and children from the former relationship (Jones, 1978; Kelley, 1996; Kheshgi-Genovese & Genovese, 1997; Murphy, 1998).

Ganong, Coleman and Mistina (1995) examined equity and fairness on a societal level with a population of 348 men and women in the United States. Findings demonstrated that a significant proportion of participants believed that child support from a contact parent was conditional on their economic resources, whether or not the residential parent had repartnered and, to some extent the

custody and contact arrangement. This sample believed that once the residential parent had repartnered, the stepparent should assume financial responsibility for the stepchildren living with them (Ganong, Coleman & Mistina, 1995). This is in direct contrast to the philosophy and legislation supporting ongoing financial responsibility from the contact parent only. This contradiction between legal obligations and societal expectations explains why many stepparents feel pressured to support their stepchildren with whom they live.

Inequalities with the Australian Child Support Agency (CSA) formula have also created acrimony and division between first and second families (De' Ath, 1997). Bitterness has resulted from a system that grants a residential mother various allowances and welfare payments for looking after her children. However, a stepmother, even if also a mother at home looking after her partner's children, does not have access to benefits and is also assumed to be able to support her own housing costs and those of the children (De' Ath, 1997). This anomaly creates resentment as it seems that the children of the first marriage are paramount. Reports indicate that bankruptcy, stress and marital breakdown is directly attributed to the child support legislation and has increased levels of conflict between separated parents (De' Ath, 1997). Although there is an ability to appeal CSA decisions, new partners are not eligible to give evidence in such appeals and so remain 'invisible' in the allocation of resources in their new family unit (Child Support Assessment Act, 1989). These findings have implications for the invisible children in a second relationship as the same parental resources are not available to them or are diverted from them.

Financial difficulties therefore could be identified as having a significant impact on second families who have been recognised as having additional financial responsibilities (De'Ath, 1997; Duran-Aydintug & Ihinger-Tallman, 1995). The Family Law Act attempted to remove the bitterness, expense and continuing hostility associated with divorce, whilst aiming to provide financially for those who are most deprived by a separations (Charlesworth et al., 2000). However, this is usually seen to be the children and their primary caregivers. As a consequence, it has failed to recognise other parties affected by extreme financial conditions and the inequity it brings to second relationships (De'Ath, 1997; Duran-Aydintug & Ihinger-Tallman, 1995).

Although repartnering is recognised as an avenue out of poverty post-separation (Sheehan & Fehlberg, 2000), it needs to be questioned whether this situation creates financial inequity or even poverty for the subsequent family form. Distribution of finances across families has been identified as creating poverty in second families and aggravating animosity (De'Ath, 1997). Furthermore, although finances were not identified as a reason for divorce, in nuclear families it was recognised that the stress and conflict caused by financial issues caused major marital dissatisfaction (Wolcott & Hughes, 1999). This issue is emphasised in second families and highlighted by stepfamily counsellors (Martin, 1998).

An English stepfamily helpline utilised over 300 telephone calls and additional letters (De'Ath, 1997) to gather an insight into unique issues facing stepfamilies. Whilst not a clinical or random sample, this organisation was able

to conclude that problems in stepfamilies are exacerbated by a lack of understanding of their position and ambiguity of their roles. It also pointed to the confusion and inequality that stepparents feel by legislation that provides for non-residential parents to continue to parent and provide financially for their children. The lack of official statistics do not allow an accurate picture for stepfamily forms, strengths and problems (De'Ath, 1997; Ganong, Coleman & McDaniel, 1998; Visher & Visher, 1990). This invisibility supports the view that stepfamily situations are a private matter, not for public concern and thus create a higher level of stress and conflict (De'Ath, 1997; Joinking, 2003).

The repartnering of either parent can act as a barrier to contact with the non-residential parent (Smyth, Caruana & Ferro, 2004). However, it has been established that new partners can also be instrumental in re-establishing or maintaining contact with their stepchildren (Smyth, 2002; Funder, 1991). The new partner acts as a buffer from depression and as a support to the parent benefiting both the biological parent and the child (Funder, 1991). Successful stepfamilies can provide emotionally and developmentally for all family members (Banker & Gaertner, 1998; Visher & Visher, 1990). Given the potential importance of the stepparent's contribution to continued harmony between biological parents and their children, exclusion from and invisibility in decision making processes seems to be unjustified.

In a qualitative analysis of the psychological issues faced by stepparents Felker, Fromme, Arnaut and Stoll (2002) identified four major themes. Those themes were legitimate power, expectations of appropriate roles and inclusion,

loss of personal time and feelings of exclusion. The theme of exclusion was identified as a major contributor to dissatisfaction within the family structure. This finding was supported by Banker and Gaertner (1998) who concluded that stepparents continue to experience more stress and less cohesion than nuclear families (Banker & Gaertner, 1998). These factors can have a significant impact on the reconstituted family, causing stepparents to cease the pursuit of a caring relationship with stepchildren. As a consequence, stepparents abdicate their role as caregivers (Borton, 2003; Jones, 2003). Research has also demonstrated that the levels of stress experienced by stepfamilies often causes spousal disagreement in relation to parenting and discipline and has been suggested to be the primary determinant of second marriage failures (Kheshgi-Genovese & Genovese, 1997).

Despite these issues, stepfamilies are often seen as poor substitute for a real family with literature presenting a deficit model when referring to these family forms (Coleman, Ganong & Goodwin, 1994; De' Ath, 1997; Doyle, Wolchik & Dawson-McClure, 2002; Gamache, 1997; Kelley, 1996; Smart, 2000). However, the literature has yet to consider is how external processes (such as the Family Court process) contribute to the dissatisfaction experienced by stepparents. For example, the Family Court does not currently recognise the significance of stepparents with Court processes demonstrating a rigidity that routinely excludes the stepparent. The irony of this situation is self evident as stepparents are expected to remain flexible in their support of their new partner and child(ren), maintaining what is in the best interests of the child (Jones, 2003; Kelley, 1996). Therefore, stepparents are expected to nurture and provide care for stepchild(ren)

with neither the authority nor the support to do so (Chisholm, 1989; De' Ath, 1997; Kelley, 1996).

This absence of legal status has the capacity to reduce feelings of confidence and self-worth. In terms of the new relationship, research has demonstrated that remarried couples with stepchildren have significantly lower marital happiness and doubt their wisdom in engaging in this family form (Kheshgi-Genovese & Genovese, 1997). Therefore, this family law exclusion leads to conflict and confusion for families that are already dealing with third party intrusion from the other biological parent and their family who have a valid interest in the activities and behaviour of repartnered families (Duran-Aydinug & Ihinger-Tallman, 1995; Kheshgi-Genovese & Genovese, 1997). In order to understand how this occurs, it is important to consider the legislative framework guiding the Family Court of WA.

The Family Court of Western Australia

The Australian Commonwealth Family Law Act 1975 reformed the law and procedures relating to divorce with the aim of abolishing the indignity, delays and costs associated with the old fault based divorce laws. This was achieved by simplifying court proceedings, introducing counselling and providing successful custody and access orders (Green, 1998). In addition, in 1996 Part VII of the Family Law Act was amended by the Family Law Reform Act 1995, with the goal of creating co-operative parenting between separating adults to ensure that children remained in contact with both parents and to reduce protracted litigation and disputes (Funder & Smyth, 1996; Rhoades, 2000). Both of these changes

were subsequently reflected in the Western Australian legislation the Family Court Act (WA) 1997. This legislation removed the notion of 'custody' and replaced it with residency insinuating that each parent has the right of day-to-day responsibility whilst the child was in their care. Clearly the parent with the majority of residency hours would have more of the care. However, it stipulated that both parents would remain equal in decision-making regardless of residency (Rhoades, 2000). Parenting orders and parenting plans were introduced with the object of the new legislation to encourage parents to use mediation and counselling to settle disputes focusing on the best interests of their children rather than engaging in legal procedures.

Conversely, these and other changes have increased litigation as a significant proportion of cases brought before the courts are to determine residency issues (Rhoades, 2000). Social commentators agree that the courts continue to be a failure for many families (Green, 1998). Regrettably, court proceedings continue to be costly (Fisher & Pullen, 2003) and contact orders are not being enforced (Rhoades, 2000) even though both parents may believe they are operating in the best interests of their child. These issues were recently reviewed by the Parliamentary Inquiry into Child Custody Arrangements in the event of Parental Separation (Commonwealth of Australia, 2003) and have resulted in the government proposing significant changes to the adversarial family law processes throughout Australia (Howard, 2004). However, unless stepparents are included in these new processes their invisible status will remain unchanged.

Courts are required to make decisions and resolve conflicts in complex family structures whilst creating the least amount of damage, especially to children (Kirkland, 2003). In Australia, the Family Court undertakes this task utilizing sometimes unreliable and contradictory information given primarily by the child's parents and in some cases those parties that the parents feel can corroborate their version of events. This system assumes that the principal players in the process are the two biological parents. There is virtually no mention of the existence or additional needs of new partners children or stepparents (De' Ath, 1997).

Stepparents have been, and continue to be, ignored during the Family Court process (Jones, 2003; Weinstein, 1997), in a system that is still using the nuclear family as its primary model (Jones, 2003; Rhoades, 2000). At best stepparents will be regarded as third parties. However, they are not routinely included in either the court process or mediation until their character needs to be cross examined as the other party questions their suitability to have contact with the child being discussed.

This examination is usually at the trial, which may take place as long as two years after an application is first made. The stress of such action compounds the difficulties of the first two years that have already been identified as the hardest for stepfamilies (Bray & Berger, 1993; Kelley, 1996). Furthermore, the biological parent is the key to stepparent inclusion within the new family (McKenna & Labozetta, 1997). The child will look to the parent to see whether they are expected to treat the new member as family (Khesghi-Genovese &

Genovese, 1997). Conversely, the court process by its very exclusion promotes non-acceptance of the new family structure.

The policies and laws inherent in the Family Court by its very exclusion creates an invisibility which in turn limits that individual family's experience (Jones, 2003). This is in contrast to social policy, which includes non-biological parents and honours emotional and psychological ties promoting affection and moral responsibility which are seen to be in the child's best interests (Gamache, 1997; Jones, 2003).

The 'best interests' principle was established to remove the focus from the parents needs to the needs of the child and how parents decisions are going to affect their child(ren) (Charlesworth et al., 2000; Fisher & Pullen, 2003).

Therefore, the court sets out to primarily serve the best interests of the child principle and requires that it consider the care, welfare and development of the that child (Family Law Act 1975 s.60(b)). Given that this is the fundamental principle on which the court decides child matters it warrants quoting in full;

(1) "The object of this part is to ensure that children receive adequate and proper parents to help them achieve their full potential, and to ensure that parents fulfill their duties, and meet their responsibilities, concerning the care, welfare and development of their children...

(2) The principles underlying this object are that:

- (a) Children have the right to know and be cared from by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and

- (b) Children have a right of contact, on a regular basis with both their parents and with other people significant to their care, welfare and development; and
- (c) Parents share duties and responsibilities concerning the care, welfare and development of their children; and
- (d) Parents should agree about the future parenting of their children.”

(Family Law Act 1975 s.60(b))

This best interests principle clearly demonstrates the law's intention to promote shared parenting. Although the best interests principle is rarely defined, there is a lack of consensus on how the criteria to determine the best interests should be applied (Chisholm, 2002; Kelly, 1997; Thomson & Molloy, 2001). This principle also seems to be exclusive as the primary focus is on the child instead of factors such as parents, family context, family dynamics, financial status and cultural differences.

Despite the requirement to focus on the child's best interests, disputes over post-separation parenting issues are increasing because the law cannot 'force' parents to be co-operative (Rhoades, 2000; Rhoades, Graycar & Harrison, 1999). Lawyers and social scientists seem to agree that co-operative parenting across two households will inevitably bring logistical obstructions to be overcome even when focusing on the best interests of the child (Rhoades, 2000). This notion also suggests that couples can put aside their spousal relationships easily in order to maintain their parental relationship (Boyd et al., 1999; Smart, 2000). Often spousal issues and conflict continue as long as the parental relationship is

ongoing (Murphy, 1999) with many couples failing to re-negotiate new roles and relationships (Fausel, 1995; Smart, 2000;). Often, such conflict is manifested in continued disputes over parenting issues such as contact and residency, both of which ultimately include, yet seldom acknowledge, new partners (Sheenan & Fehlberg, 2000; Kelley, 2003). This again creates an aura of invisibility (Martin, 1998).

The court attempts to help parents understand that it is a child's right to be parented, cared for and have contact with both parents (Rhoades, Graycar & Harrison, 1999). This reiterates that the welfare, development and active involvement is the responsibility of both parents even though the parents have separated (Rhoades et al., 1999). In this respect it seems the law is intent on trying to get parents to share parenting as if they had never separated (Rhoades, 2000; Kelly, 1997). This is in stark contrast to what the children's living and care arrangements might actually be. Clinicians need to determine how the transformed family structure is going to change continuity of care and routine (Kelly, 1997). The best interests principle promotes parental involvement, that is, who has fed, clothed, bathed and performed the primary care giving role (Kelly, 1997). However the system is exclusive of a stepparent even if they are fulfilling that role.

The Columbus Pilot Project, a unique program aimed to facilitate ongoing relationships in the context of abusive family circumstances was conducted in the Family Court of Western Australia during 2001-2002. The evaluation report of this project (Murphy & Pike, 2004) conceptualized the notion of hidden or

invisible parents revealing that a number of new partners (stepparents) and half siblings together with stepsiblings often remained peripheral in the Family Court process. This finding is significant as it has implications for orders that will impact upon family members who remain hidden to the decision-makers through the very process itself. The Columbus Pilot project was unique in its provision for the inclusion of other significant adults in the mediation process and the acknowledgment of additional children that might be affected by decisions agreed upon (Murphy & Pike, 2004).

Researchers have suggested that rather than focus on the negative aspects of divorce more attention needs to be directed into the positive outcomes (Campbell & Pike, 1998; Funder, 1992a; Kelley, 1996). Smart (2000) proposed that the culture of divorce is providing society with 'caring' people who are able to use divorce as an area for personal growth whereby parents are putting the quality of relationships between themselves, their children and their ex-spouses as a priority. The lack of conflict in these situations greatly benefits a child's well-being and emotional development (Amato, 2001; Amato & Burce, 1991; Bauserman, 2002; Cartwright & Seymour, 2003; Cherlin, 1999; Downey, 1995; Funder, 1992; Hanson, McLanahan & Thomson, 1996; MacDonald & DeMaris, 1995). However the adversarial process is clearly not an arena that can promote caring and sharing between former spouses (Fisher & Pullen, 2003) as the end process is not conducive to shared primary responsibility.

Legislation promotes the notion that parents have the primary responsibility to maintain a child and that step-parents have a secondary duty (Sandor, 1996).

Although step-parents often want only the spousal relationship and have no intention of playing a parental role (Kheshgi-Genovese & Genovese, 1997), others refute this notion implying that when partnered with a parent to some extent you are automatically involved in parenting (Funder, 1991). Although stepparents are not biologically tied, psychologists addressed the idea of a 'psychological' parent (Jameson, Ehrenberg & Hunter, 1997), an idea that was revisited by researchers trying to establish non-biological ties and the importance of the psychological parents (Jones, 2003; Gamache, 1997).

Research conducted by Smart (2000) found children wanted and believed it was their right to be consulted about issues that affected them in their parents separation. Charlesworth et al. (2000) suggested inclusion of children through the counselling process helps them to feel less isolated and promotes that they are part of the family system. This perspective allows understanding of how the experience of an individual resonates through the larger system in the family context (Grossman & Okun, 2003) especially in the field of changing family forms, divorce, repartnering and transition (Bray & Berger, 1993). This further highlights the exclusion of a stepparent who is also part of the family system (Jones, 2003).

Clearly common sense needs to be taken when deciding to include or exclude biological parents partners' in the court process (Duran-Ayudintug & Ihinger-Tallman, 1995). Care needs to be taken not to antagonize or inflame an already highly conflictual situation. Inclusion within a court process would serve to be supportive of the new stepfamily whilst not diminishing the privileges of the

biological parent. Inclusive legislation would in essence operate within a non nuclear framework and authenticate this family type (Duran-Aydintug & Ihinger-Tallman, 1995). It is in the best interests of the child to have stability and continuity in quality care. The remarkable rate of failure in second marriages and relationships indicate the need to explore the difficulties faced by second families, and what support is need to prevent serial break-ups and repartnerships that have adverse consequences for children.

In summary, the increase of divorce and remarriage in Australia is creating a social phenomenon for family researchers. The social reality is that contemporary family life is changing with an increase in the number of stepfamilies. Research has shown that successful stepfamilies are nurturing children to similar developmental and emotional levels as functioning nuclear families (Banker & Gaertner, 1998). However, stepfamilies continue to face psychological difficulties with lower levels of cohesion and higher levels of conflict. This is exacerbated by stepparents feeling disadvantaged and invisible in areas where in fact they are instrumental at parenting and child rearing. Until consideration is awarded the courts will remain incongruent with the emotional and financial needs of these non-biological parents, who carry out a substantial portion of the caring in their stepchild's life. Research has suggested family law needs to recognize the important role that new partners perform for their stepchildren on a daily basis and have them integrated and consulted in the court process (Rhoades, 2000). As yet stepparents continue to be invisible in the court process therefore further research needs to be conducted to recognize the

implications and impact of current policies, legislation and regulations on stepparents and stepfamilies (De'Ath, 1997). There is also lack of knowledge on the experience and impact of the Family Law Court process on stepparents. Therefore, further research needs to explore the impact of the Family Court process on the partners of litigating parents in terms of adult relationships and the stepparent's relationship with their partner's children.

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Running Head: INVISIBLE STEPPARENTS IN THE FAMILY COURT

An Exploration of the Impact of the Family Court Process

On “Invisible” Stepparents

Natalie Gately

Edith Cowan University

An Exploration of the Impact of the Family Court Process on “Invisible” Stepparents

Abstract

Child custody decisions on separated families seldom acknowledge the impact that such decisions have on subsequent partners of the biological parents. New partners are thus ‘invisible’ in litigation in the Family Court. This project utilised a qualitative research methodology to explore this experience with a purposive experiential sample of 12 second partners. The primary themes identified in thematic content analysis were exclusion and invisibility in a system over which they had little control. The findings suggest that the negative psychological impact would be lessened if a policy of inclusion was adopted in the Family Court process.

Keywords: stepparents; stepfamilies; remarriage; Family Court; adversarial; invisibility; exclusion; family systems theory; equity theory

Author: Natalie J. Gately

Supervisors: Assoc. Prof. Lisbeth Pike and Dr Paul Murphy

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Introduction

Increasing parental separation over past decades means that approximately one million children under 18 years of age will experience the divorce of their parents (Smyth & Wolcott, 2003). This is reflected in statistics indicating that one in four children live in an alternative family form to both biological parents (Australian Bureau of Statistics (ABS), 1997). Consequently, a greater number of parents are accessing the services of the Family Court to litigate various orders relating to child residency and contact (Family Court Counselling Services, FCCS, 2002) and property and financial settlements (Charlesworth, Neville, Turner & Foreman, 2000). The Family Court of Western Australia (FCWA) processes approximately seven thousand new cases every year (Kerin & Murphy, 2003). A significant proportion of these cases (about 35 percent) involve disputes relating to children (Murphy & Pike, 2004a). Although the courts attempt to resolve these issues within an appropriate timeframe, it is not unusual for any one case to span a number of years (Fisher & Pullen, 2003).

Estimates project that 50-60 percent of couples in first marriages will separate (Degarmo & Forgatch, 2002; Duran-Aydintung & Ihinger-Tallman, 1995). Research has indicated that women (mothers) ordinarily repartner within 3-5 years post-separation and men (fathers) typically repartner within 1-2 years of separation (Hughes, 2000). This suggests that a number of parents will be negotiating the family law process whilst simultaneously forming new interpersonal relationships (Murphy & Pike, 2004b; De'Ath, 1997). Whilst these relationships become established, the new partner inevitably becomes integrated in bureaucratic systems such as the Family Court where a number of

issues associated with the dissolution of the previous relationship are still being resolved (Murphy & Pike, 2004b).

Whether living with a residential or non-residential parent, the new partner in this reconstituted (step)family will inevitably assume some parental responsibilities for their new partner's children (Baum, 2003; Funder, 1991). However these partners (stepparents) are notably absent from the Family Court process, and are essentially hidden or 'invisible' when decisions are made about residency and contact regarding the children (Edwards, Gillies & McCarthy, 1999). These decisions may very well impact upon their own new lifestyle and relationship, thereby placing an additional burden on the reconstituted stepfamily.

In this report the term stepparent will refer to an adult partner of the biological parent who has no legal or genetic relationship with the partner's children (Murphy, 1999), and will be used for both legally married (*de jure*) and *de facto* relationships, acknowledging that many families seeking assistance from the Family Court in respect of children's issues are not formally married (Kelley, 1996; Ritala-Koskinen, 1997).

Research indicates that stepfamilies comprise an increasing proportion of contemporary Australian families. However, the statistics do not recognise the number of *de facto* partnerships that are formed after separation by couples who are waiting for the legal processes to be completed before being free to re-marry or simply opt not to formalise their new relationship (Fausel, 1995). Current statistics grossly underestimate the number of couples who repartner after separation. Murphy and Pike (2004a) suggested that when *de facto* families and non-residential stepfamilies are accounted for, stepfamilies are estimated to be as high as 20% of all family forms. This estimation has

also been supported by Martin (1998). The research that has been conducted indicated that 74% of second marriages fail within the first five years (Jones, 2003). This high rate of divorce in second and subsequent marriages puts children at greater risk of experiencing another major disruption (Bray & Hetherington, 1993; Aquilino, 1994; De' Ath, 1997; Doyle, Wolchik & Dawson-McClure, 2002) with as many as two thirds reportedly experiencing multiple divorces (Wallerstein & Lewis, 2004). As a consequence, issues associated with separation, divorce and repartnering require extensive consideration.

Despite the need for research to examine the many issues that are associated with repartnering, the current body of literature is quite narrow in focus. Existing research is dominated by child and adolescent perceptions of stepfamilies, (Amato & Bruce, 1991; Cartwright & Seymour, 2003; Freisthler, Svare & Harrison-Jay, 2003; Gamache, 1997; Smart, 2000), to the exclusion of the more diverse issues that are associated with family functioning. Also explored are the psychological effects of marital breakdown and repartnering on mothers (Solomon, 1995), fathers (Frieman, 2002), and even grandparents (Lussier, Deater-Deckard, Dunn & Davies, 2002). However little is known about the stepparents and their experience of Family Court processes.

The research that has been conducted into stepparents focuses mainly on economic and family relationships, confirming that the experience of the stepparent can be far from satisfying (Bray & Berger, 1993; Coleman & Ganong, 1997; Kheshgi-Genovese & Genovese, 1997; Visher, Visher & Pasley, 1997). It has been suggested that the negative experiences of stepfamily dynamics may be due to the conflict and stress that is experienced during its formation (Bray & Hetherington, 1993). One significant

source of stress may well be the exclusion from Family Court processes. A theoretical approach to the study of families is the Family Systems theory, which posits that whatever impacts upon one member will inevitably impact upon all other family members (Olson & DeFrain, 2000). This research therefore explores the impact that Family Court decisions have on the new lifestyle and relationship of stepparents and specifically seeks to address the following questions;

1. Does the Family Court process impact upon the partners of litigating parents?
2. How does the Family Court process impact upon the partners of litigating parents?

Method

Research design

The current study is exploratory research that has utilised a qualitative methodology incorporating a semi-structured interview process. A phenomenological philosophy was adopted by the researcher as it was suited to discovering the subjective experiences of individuals in the Family Court context (Creswell, 1998). This enabled the identification of common themes and meanings within the descriptive data in order to establish the primary factors impacting on participants (Banyard & Miller, 1998; Miles & Huberman, 1994; Patton, 1990; Punch, 2000).

Paradigm and assumptions

This research is grounded in the family systems theory as it accepts that family members are interconnected and any event that impacts upon one individual will ultimately affect every other member in some way (Olson & DeFrain, 2000). The principles for the family systems theory proposes that the family needs to be considered as a whole, that family rules define relationships between its members, that there are family boundaries, a structured hierarchy, and the family seeks to maintain balance by communication and feedback loops, which enable it as an entity to evolve (Olson & DeFrain, 2000). Without biological ties, stepfamilies can experience difficulties building the new rules, boundaries and cohesive relationships.

The family systems theory has been utilised by researchers to demonstrate how the family is affected as a whole by situations experienced by individual family members (Olson & DeFrain, 2000; Murphy, 1998) and is inclusive of different family forms. However, when exploring the impact of the Family Court process there appears to be a

disparity between the acceptance of different family forms and the new legal and biological ties created within second families. The Family Court process assumes a biological model as a base for its policies and procedures. This creates a perception of inequity. Equity refers to the perception of balance in relationships (Larson, Hammond & Harper, 1998). The social psychological equity theory devised by Walster, Walster & Berscheid (1978) suggested that an individual seeks to maximize reward whilst maintaining equilibrium. Therefore, if all factors are balanced, the individual presumes an equitable relationship. However, if the relationship is perceived as inequitable, individuals seek to address the imbalance (Larson, Hammond & Harper, 1998). The inability to correct the balance can lead to withdrawal and despair. This has implications for individuals enmeshed in a system where they are not acknowledged where the ability to create equity is not afforded to them.

Sample

A purposive experiential sample of 12 participants was obtained. Participants were recruited by placing notices on community and shopping centre notice boards (Appendix A). Participants were over 18 years of age and in an established relationship with a parent who is or has litigated through the Family Court of WA. The final sample consisted of eight females and four males between 25 and 50 years of age ($M=36$). The participants had been in an established relationship with a litigating parent for 2-17 years ($M=8$). All participants volunteered and no reward was offered for participation.

Data Collection Procedures

The interview was conducted in an informal comfortable location, where information sheets were provided (Appendix B) and informed consent received

(Appendix C). Participants consented to the tape-recording of interviews. A short demographic questionnaire (Appendix D) was completed, which allowed rapport to develop prior to the interview being conducted (Smith, Hare & Van Langenhove, 1995). The participants were notified when the tape recording was due to commence and the recorder was placed between the participant and the interviewer. The semi-structured interview schedule using open-ended questions and encouraging prompts was used. For example “*What was your personal experience with the Family Court?*”... “*tell me more*”... and “*how did that make you feel...?*” The participant was free to express their thoughts and experiences. The complete interview schedule is presented in Appendix E.

Ethics

Interviews were conducted in an environment where the participant felt comfortable and at ease. Confidentiality was addressed by advising the participants that it was not necessary to use their real names, however, they were required to sign the consent form using their legal identity. Participants were further informed that they could withdraw at any stage and on completion of the interview any concerns raised by the participants were addressed. Interviews were coded and the transcripts and consent forms were stored separately. Participants were informed that the data would be destroyed after five years and were provided with professional contacts on the information sheet in the event of emotional distress arising from the interview process. The participants were also made aware of the value of their contribution to the research and appreciation of their involvement was reinforced.

Data Analysis

The interviews were transcribed verbatim to maintain the accuracy of the participants' responses. A question ordered matrix (example shown in Appendix F) was constructed with rows of coded participants, and columns of questions in order, providing a matrix for corresponding responses and comments. As qualitative research is a continuous interplay between the participants' responses and the researchers' interpretation, every effort was made to ensure the consistency and soundness of the findings in the current study. Therefore, the researcher acknowledged any personal bias, to allow for more extensive analysis of the descriptive data. This was achieved with the method of analyst triangulation. An independent researcher conducted an analysis of responses simultaneously in order to ensure inter-rater reliability (Punch, 2000; Miles & Huberman, 1994). A third researcher then examined both sets of interpretations in order to determine a percentage agreement measure (Shaughnessy & Zechmeister, 1990). An inter-rater agreement rate of 82% was obtained. To ensure the phenomenon under investigation was not compromised, responses were not significantly reduced (Creswell, 1994; Miles & Huberman, 1994). Also to guarantee phenomenological validity all participants were contacted after final analysis to verify findings and confirm understanding of themes, subthemes and statements (Miles & Huberman).

Findings and Interpretations

This exploratory study was conducted in order to determine if and how Family Court processes impact upon the partners of litigating parents. In order to address research question one, a thematic content analysis was conducted revealing one major theme – *the adversarial process*. Additionally two sub-themes of *invisibility* and *exclusion* were identified, demonstrating how the Family Court process impacts upon partners of litigating parents. Data indicated that invisibility and exclusion facilitated a *perception of inequity* leading to psychological consequences such as *resentment*, *anger* and *guilt*. The interrelationships between the themes and sub-themes that emerged from the data are presented diagrammatically in Figure 1 below.

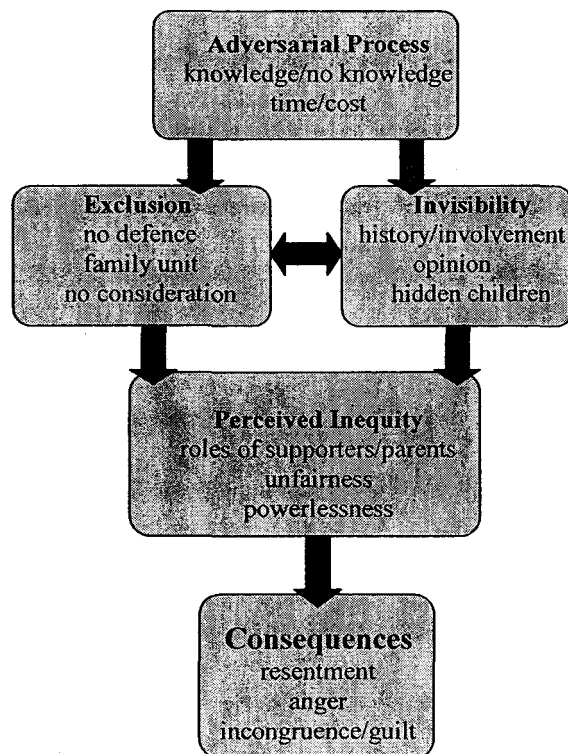


Figure 1: The Effect of the Family Court Process on Unacknowledged Participants

Adversarial Process

The principle theme extracted from the descriptive data was identified as the role of the Court process itself. Specific elements of the process dominated participants' narratives, in particular *knowledge or no knowledge*, *time/cost* and the *terminology* used. Participants explained how they experienced feelings of shock and fear as a result of their unfamiliarity with the Court process. Many participants shared these feelings. However, those with prior knowledge of the system (by having a friend or family member support a partner through the process), did not experience the same level of shock or fear, as those without prior knowledge of the system. Examples indicative of the shock and fear experienced by those with no prior knowledge included:

...the system was full steam ahead and there was nothing else I could do...

...I had no idea, I was so shocked that the system allowed this to happen...

This is evidenced in research into criminal court proceedings that demonstrated that individuals with no knowledge experience difficulties in dealing within the Court process (Mandell, 1995). Conversely, it can be assumed that individuals who do have prior knowledge do not experience the same levels of shock. This was demonstrated in the current study with responses such as:

I knew that prior to this, that all parties are trying to win at all costs, at all costs.

...the biological parents go through the process...with the rest of us excluded.

Participants consistently remarked on the amount of time that was taken out of their lives because of their involvement in the Family Court process. They had not anticipated the protracted nature of disputes regarding children (Cohen, 2002;

Wallerstein, 1997), nor the costs associated with litigation (Beck & Sales, 2000). For example, one participant's experience was typical:

*This whole court thing is all consuming. You have to have time off from work, my employer was pretty good but they soon get sick of you needing time off...you need to work to get the money...to pay for the court cases...and the lawyers...and to put food on the table...
...but you need so much time off.*

A further concern was the very nature of adversarial process with participants commenting that the legal status as a spouse was afforded to the ex-spouse and not to them as the new spouse or current spouse. This was reflected in responses such as:

...she's not the wife, she's the ex-wife. I am the wife, not the current wife, not the partner, but the wife, and I have been for eight years now.

The consequences of failing to acknowledge the existence of stepparents are revealed within the two sub-themes of exclusion and invisibility.

Exclusion

The sub-theme of exclusion suggested that although partners' presence was acknowledged, their input and participation was not permitted. This exclusion was evident in all stages from initial mediation to the process of trial, intensifying for those who had no prior knowledge of the adversarial process. The feeling of exclusion was demonstrated within the following statements:

I wasn't included in anything, very much apart... just sat outside, alone... left outside on my own, not knowing what was going on... excluded...was always excluded...

The desire to be included is a fundamental human trait (Baumeister, & Leary, 1995). When obstructed through social exclusion results can manifest in the forms of stress, anxiety and aggression (Twenge, Catanese & Baumeister, 2003). This observation surfaced when the participants felt they had no defence in protecting themselves against what they described as “character assassination” commenting:

They took her word for what I was like...I wanted to fight back over all the lies written about me... have slandered my name and written it in dirt...

Consistent with the literature of Jones, (2004) these people consequently began to conceal their thoughts and feelings in an effort to reduce information being transferred to the child's other biological parent where it could be used as ‘ammunition’ against them. Research has indicated that in order to avoid emotional distress, individuals withdraw and experience feelings of numbness (Twenge, Catanese & Baumeister, 2003; Larson, Hammond & Harper, 1998). This has a direct result on intrafamilial relationships as it creates divisions in the family structure and leads to individuals being excluded.

Olson and DeFrain (2000) suggest that strong family ties are facilitated by open communication without any member being excluded. The Family Court process excludes some members, however these partners still experience the negative impact of the litigating parent. This supports the notion of ‘wholeness’ as the event affects every family member even when excluded from the event itself (Olson & DeFrain). Furthermore, despite the exclusion of all but the biological parents in custody disputes, the Family Court favoured the parent that can provide a more traditional family household (Lambaise & Cumes, 1987). Once again, this contradiction was evident in the

participants' statements that the process did not consider the whole family as a unit (Wallerstein, 1997).

... didn't take into account our family situation...not just my partner and myself, there's two other children... was going to affect myself, my wife and my children as well...

It is necessary for the court to place a child in the environment that will best foster their growth and development (Liss & McKinley-Pace, 1994). However, the study indicated that the lack of recognition for the family as a whole, fostered the perception that only 'one child' is important and that no consideration is afforded to any other family member:

Never recognized...and to this day I'm not recognised...

I am married to him, I am the mother of his other children, the forgotten ones...

...my child was never a consideration for anyone else but me...

This violates the notion that the needs of one family member should not supersede that of another (Wall & Amadio, 1994). Furthermore, it was suggested that the focus should be on the best interests of the family, rather than the best interests of the child (Wall & Amadio). This would result in a feeling of "oneness" inducing unification, which is considered necessary for stepfamily well-being and identification (Banker & Gaertner, 1998). This is consistent with the Family Systems theory which supports the unity of the family as a whole (Olson & DeFrain, 2000). Furthermore, it was proposed that if family members needs are taken into consideration then these individuals will be more supportive of making the new family situation work (Wall & Amadio). Therefore it is not unreasonable to assume the current process jeopardises the strengthening of the new family and its overall wellbeing (Melton & Wilcox, 1989).

Invisibility

The second sub-theme of invisibility was described as a failure to recognise the participants' presence (Franklin & Boyd-Franklin, 2000). Research has consistently demonstrated stepfamilies are invisible to social systems (Coleman, Ganong & Fine, 2000). However, the degree to which participants reported feelings of invisibility and a lack of identity within Family Court processes was not anticipated. This is reflected within the statements below:

I was a nothing in court...I didn't exist... was a shadow... a non-entity...

Where stepparents were permitted to sit contributed to this perception of invisibility. The participants indicated that they were isolated from their partner and the court process, being forced into a position where they were;

... sitting down the back in the audience... up the back in the peanut gallery...

...down the back with the rest of the public...

...I had no contact with him what so ever in the courtroom, he had no contact with me...

Participants indicated that the Family Court failed to acknowledge that they were significantly involved in the stepchild's home life. The Family Court also failed to acknowledge that the stepparent had formed a psychological attachment to their stepchild, or recognise that they were inherently important to the child (Liss & McKinley-Pace, 1994). This was demonstrated by the following statement;

...my name was down at the school as an emergency contact, and I was the one who used to go and get them when they were sick...

Wallerstein (1997) suggested that the adversarial process is not inclusive, leaving some family members without contribution, thereby preventing the court from hearing information that will help them understand the full context of the child's life. Many participants felt that they had information which was important to the stepchild's everyday life and well-being but this was neither acknowledged nor sought during the proceedings. The frustration at not being able to contribute was evident in the following responses:

...told it's none of my business, but at the end of the day they're living in my house...

...I rang to discuss my concerns they were like well I can't discuss this with you...

The very nature of the adversarial process is problematic, as it creates a win/lose situation and fails to consider the child in the context of the family as a whole (Wallerstein, 1997). It also fails to acknowledge that typical family structures within society have diversified, with traditional nuclear families no longer being the dominant family form (Olson & DeFrain, 2000). Stepfamilies now constitute up to 30% of family structures thereby implying that a significant number of stepparents will encounter family court processes (Murphy & Pike, 2004b). Currently the Family Court does not routinely include stepparents in its process which has led to many indicating a perception of inequity.

Perceived Inequity

Most participants proposed they had this equitable relationship in the home environment and their roles as protectors and parent figures with regard to their stepchildren. However, the Family Court process and its perceived inability to accept the

role of stepparents has created an imbalance which was evidenced in the following statements:

My role was nothing...we're nobodies...I'm playing the role of a father...but I have no say...I've been a part of his life for 13 years...

This lack of understanding of the role one assumes in the family structure highlights the perception of inequality within the Court system. This is incongruent for many participants with research indicating that decision-making is more equally distributed in second marriages (Coleman, Ganong & Fine, 2000). Equity is positively correlated with commitment and higher levels of unity and permanence in stepfamilies (Larson, Hammond & Harper, 1998). The ability to conceptualise this inequity led the participants to identify an overwhelming feeling of unfairness within the process, an example of this expressed as follows:

She (ex-wife) was allowed to express her opinions, the kids were allowed input, my husband was allowed input, but I wasn't allowed any input at all, nothing...

Theories of social justice presume fair and equitable treatment of all people (Ruger, 2004). This theory promotes that individuals have the right to participate in any decision-making process that will affect their own well-being (Ruger). The difficulties of achieving social justice occur when defining who are the principle players and therefore becoming the included participants (Kobayashi & Ray, 2000). For example, in custody disputes the assumption is that the principle players are the biological parents. The definition of being non-biological renders stepparents as invisible and unable to participate in the decision making process (Kobayashi & Ray). Interestingly, most participants understood this principle commenting that if they were in court over their

own biological children, they would not wish the 'new' partner to be having extensive input in the decision making process. However, they justified their position in that they are not 'new' partners and after being in an established relationship and a part of the child's life, they become an equal part of the equation and should not be excluded due to the lack of biological ties. Participants believed this contributed to feelings of a lack of control.

When an individual believes they have little control over their environment it creates feelings of powerlessness and hinders psychological well-being (Daniels & Guppy, 1997). This was observed in the statements:

...don't forget I'm a nothing and they can't consider your needs or address them if you don't exist...I felt like things were my right and important and they weren't being dealt with.

The feeling of powerlessness was heightened by the fact that the adversarial process was beyond their control and they were given no opportunity to address the imbalance.

Equality theory suggested that people will try to equalize the situation (Longmore & Demaris, 1997), however in the adversarial process a lack of control and powerlessness are exacerbated by the inability to participate. As a result negative emotional consequences of resentment, anger and guilt were experienced (Larson, Hammond & Harper, 1998).

Emotional Consequences

All participants cited stress directly and indirectly as a consequence of the trauma their partner was experiencing. Furthermore, significant negative emotional consequences were reported by over half of all the participants;

I had to crack one day before anyone realized how stressful it was for me...

I had a stroke...

I had to get counselling as I couldn't cope with the stress...

I am taking anti-depression medication...

I have recently been prescribed anti-depressives...

I tried to kill myself

Those in inequitable relationships report insecurity, lack of self-esteem and significant levels of resentment (Larson, Hammond & Harper, 1998). Given this, it is not too surprising to observe equivalent emotions being communicated by the present sample.

Absolute resentment, it's just so unfair....so resentful, so very stressful...

...resentful, other people are making you go through this process...

Olson and DeFrain (2000) suggest centrifugal forces facilitate cohesive relationships for family members, alternatively it can pull the family apart. Resentment produces divisions in relationships as it results in participants withdrawing and failing to share positive feelings. This is contradictory to the family systems theory which proposed that positive communication and feedback loops contribute to greater satisfaction. This inability to share affirmative emotions can lead to individuals failing to listen to, empathise, or care about their partners or stepchildren's feelings and opinions (Larson, Hammond & Harper, 1998). Reducing resentment can only be rectified with re-establishing equality (Baker & Gaertner, 1998) the inability to achieve this resulted in participants experiencing varying degrees of anger.

Although no participants in the current sample reported bouts of physical anger, literature has supported the notion that anger, internalized rage and frustration can

produce depression and violence (Franklin & Boyd-Franklin, 2000). Furthermore, the ongoing effort to manage these feelings can eventually lead to a decline in the perception of an ability to cope (Franklin & Boyd-Franklin). A representation of some emotions experienced were:

Anger, anger and more anger...

...very, very angry...

... I became so very angry...

This anger contributed to a direct avoidance of the stepchild. For example:

I'm so angry that I don't want to see my stepchildren anymore...

...will do anything and pay any amount of money not to have to deal with them...

This has serious repercussions as the avoidance of the stepchild can impact upon the contact parent who gradually distances themselves from their child. Research has indicated a detrimental outcome for both parent and child when contact ceases post-divorce (Wall & Amadio, 1994). The participants who described intense feelings of anger also experienced guilt due to the impact it had on their partners and stepchildren.

Guilt refers to an unpleasant emotion associated with a person's reaction, which they believe they are not justified in feeling (Baumeister, Stillwell & Heatherton, 1994).

The feelings of resentment and anger seem incongruent with the participants' expectations of what they themselves see as justifiable, such as:

Feel so resentful of my stepchild that makes me feel very, very guilty...

I felt so selfish in the end and that made me feel so guilty...

...felt so guilty for feeling this way...

I will now do anything not to see my stepchildren, they are just a reminder of all the exclusion all the bitterness, and I feel so guilty about that...

Understanding the cause of guilt is important as it is accompanied by behavioural consequences (Baumeister, Stillwell & Heatherton, 1994). Guilt has been linked to social exclusion, anxiety and disturbance of the sense of belonging (Baumesiter, Stillwell & Heatherton). Importantly, the guilt experienced by the participants indicated genuine concern for the children they felt resentment and anger for. When engaging in self-judgement participants found those emotions incongruent with their own expectations of what they perceived as 'right' for them to feel (Baumeister, Stillwell & Heatherton). A common strategy to relieve guilt is to dehumanize the source thereby reducing discomfort (Baumeister, Stillwell & Heatherton). This has similar implications to the consequences of anger being the avoidance of the stepchild. This indicates that some stepparents could use withdrawal as a way of returning to homeostasis. They try to return the equilibrium to normal (Olson & DeFrain, 2000), thereby avoiding the source of the discomfort, but by having serious implications on both the stepparent/stepchild relationship but also the biological parent/child relationship.

Incidental Finding

An incidental finding of this research was that of unrecognised or 'hidden' children. This was identified as singularly the most upsetting for all the participants that had their own biological children and created a feeling of 'us' and 'them', confirming the impression of being 'hidden' in the process. Participants displayed disbelief that the courts could ignore the children that were going to be affected by the decisions made:

...my wife's child was always spoken about as if it were the only child in the relationship...

...my children weren't thought about once, they were hidden.

...we don't exist, my daughter and I...

It's just like me, my children are second best...

...my kids should have been important, and they're not, they never have been...

One participant summarised her feelings as;

When my daughter was born it was like we don't exist. It's not just me that doesn't exist anymore, it's both of us that don't exist now...

This has negative consequences for stepfamily unity as it is divisive in nature (Banker & Gaertner, 1998), and is damaging to both spousal relationships (McKenna & Labozetta, 1997) and stepparent-stepchild dyad relationships (Felker, Fromme, Arnaut & Stoll, 2002) and can produce feelings of rejection, jealousy and exclusion (Rohrbaugh & Bunker, 1992). The area of hidden children is unknown and warrants considerable research.

In summary, increased levels of cohesion and the recognition of a stepfamily as a legitimate group has resulted in reports of harmony and accord (Banker & Gaertner, 1998). Further research has indicated that unless the situation was highly conflictual, stepfamilies were found to experience equivalent harmony to nuclear families (Banker & Gaertner). Therefore consideration needs to be given to situations that cause families to exist in conflict and what provokes members into withdrawing or fighting for equity.

Overall, when participants were asked how the experience of supporting a partner

through the Family Court process was for them, the answers had similar negative connotations:

Excluded...it's a terrible, terrible feeling, I wouldn't wish it on anyone...

...going through this was the biggest mistake of my life

...I'm considering at the moment whether to stay or whether to go...

The statements suggest that a stepparents' experience of the Family Court is difficult to understand and comply with. Regular contact with lawyers and court systems are a stressful process. This is supported by current literature that recognises disputes over children require families to 'live' within the legal process (Lebow, 2003).

Conclusion, Limitations and Directions for Further Research

This study has limitations as the sample was small and purposive thereby specifically chosen. Those participants that replied to the posters had experienced genuine distress due to their contact with the Family Court process and therefore may have been motivated to contact this researcher. Also, due to legislative differences between the states, these findings cannot be generalised to all courts dealing with Family Law considering the participants in the current sample dealt exclusively with the Family Court of Western Australia.

Nonetheless current research has implications for bureaucratic agencies as the insights gained should be of interest to practitioners, agencies and their networks and families themselves. This research has identified that prior knowledge of the Family Court could alleviate distress associated with misconceptions and a lack of awareness of the process. Therefore, given policy change is lengthy, an immediate recommendation suggests the Family Court could employ the use of skilled professionals to educate and

explain the current system and the role each member plays within the process. The finding of exclusion suggests that inviting all family members to participate in family therapy post-separation could create a sense of inclusion. It may be necessary to provide this as individual counselling, when factoring that subsequent partners may exacerbate conflict. However, given that decisions made will impact upon the life of the stepparent, support should be afforded to them whether included in family mediation or as an individual. Furthermore, counselling should reflect the actual position and role of each family member. The concept of invisibility could be addressed by identifying all family members, with a deliberate focus on uncovering those that are affected by the process but remain hidden in the current system.

Due to stepfamilies becoming an increasing family form, further research should continue to explore the issues surrounding stepparents experiences. The impact of other bureaucratic departments such as the Child Support Agency and the Australian Taxation Office, which were highlighted by the sample but not addressed by the current research, need to be explored. Further research needs to explore both what impacts upon second and subsequent families. Furthermore, given the current findings, what is the long-term affect of these experiences on relationships between biological and non-biological family members.

In conclusion, the Family Court performs an unenviable task deciding what is in a child's best interests. A child operates within a bio-directional family system and ultimately what impacts upon the whole family will inevitably impact upon the child. Therefore, the best interests concept should extend to a family unit, recognising biological and non-biological members. The inclusive nature of the systems approach is

appropriate in alternative family forms as the very perception of inclusion may eliminate the negative psychological consequences which create division by promoting a focus within the family of healing and cohesion.

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Appendix A

ARE YOU A PARTNER OF SOMEONE WITH CHILDREN?

Are you a step-parent or a partner of someone with children, who has supported them through the Family Court process?

If so you are invited to participate in a completely confidential interview on your experiences of the Family Court process. Your information will provide a valuable resource and will be much appreciated.

This study is being undertaken by a fourth year university student at Edith Cowan University, Joondalup.

If you are interested could you please call Natalie Gately on 6304 5930 or 0419 697 783.



Appendix B

Information Sheet

A study to assess the impact of the Family Court process on “hidden” partners

My name is Natalie Gately and I am completing an Honours year for a Bachelor of Arts at Edith Cowan University. As part of this process I am required to complete a research project and would like to invite your participation in this study. Only participants over the age of 18 should apply to participate.

The aim of the study is to examine the impact of the Family Law Court process on the partner of a biological parent, a ‘hidden’ parent, who is going through or has been through the Family Court process in Western Australia.

The study has been approved by the Ethics committee of the Faculty of Community Services, Education and Social Sciences Ethics Committee. Participation is completely voluntary and you can withdraw at any time.

Participants need not answer any questions they do not wish to and the interview is a very informal process that is, with your consent, taped onto an audio cassette and will take approximately 45 minutes. Your confidentiality is protected by not recording names or addresses and by keeping cassettes and consent forms separately. All materials will be stored in a locked cabinet for the duration of the project. At no time will you be identifiable from your taped interview.

If you have any questions regarding the study, please do not hesitate to contact me on any of the numbers below. You may also contact my supervisor Associate Professor Lisbeth Pike on 6304 5535. If you wish to speak to someone not connected with the study, please phone the Head of School, Dr Craig Speelman on 6304 5724 or Ms Julie Ann Pooley – Honours Co-ordinator on 6304 5591.

If you feel any distress through participating in this research, please contact the “Mums and Dads Forever” Programme, at Kinway on 9325 7033 or The Homestead’s Step Parents Support Group or counselling service on 9307 6900.

I sincerely appreciate your time in reading this letter and your interest in this study,

Supervisor

Associate Professor Lisbeth Pike
School of Psychology
Edith Cowan University
(08) 6304 5535

Researcher

Natalie Gately
School of Psychology
Edith Cowan University
(08) 6304 5497
mob: 0419 697 783
n.gately@ecu.edu.au

Appendix C

Participant Consent Form

Purpose of Study: The purpose of this study is to examine the impact of the Family Court on “hidden” partners such as yourself.

Explanation of Procedures: You will be asked to describe your experiences of the Family Court whilst supporting your partner. This information will be recorded on an audio cassette.

Potential Risks and Discomforts: There are no potential risks associated with this research. However, you should take into account that you are being asked some questions about your own personal experiences. If you do agree to participate and you do encounter any emotional side-effects, please withdraw your participation immediately and advise the researcher or her supervisor.

Potential Benefits: There are no direct benefits to you other than the knowledge that you are helping to build the body of knowledge about individuals in your situation.

Confidentiality of Data: Your name will not be associated in any way with your data. Your consent form will be stored separately from your data.

Withdrawal from the Study: Participation is voluntary. If you decide to participate, you are free to withdraw your consent and discontinue your participation at any time.

I (the participant) have read the information above and have been informed about all aspects of the above research project. Any questions I have asked have been answered to my satisfaction.

I agree to participate in this activity, realising that I may withdraw at any time. I agree that the research data gathered for this study may be published provided I am not identifiable.

Participant Signature_____

Date:_____

Investigators Signature_____

Date:_____

Appendix D

Demographic Questionnaire

Gender: Male Female

Age:

Marital Status: Married to current partner
Divorced from former partner
Married to former partner (separated)
Never married

Years/months in current relationship

People including yourself in household
Your children
Your partner's children
Children of this partnership

Your employment status full time outside home
Part time/casual
Full time inside home
Self

Appendix E

GUIDE QUESTIONS

1. Could you explain your family situation for me
2. How much time do your partner's children spend in your home?
3. How was that arrangement made/how long has this arrangement been in place?
4. What was your personal experience with the Family Law Court?
Probe: (Can you tell me more) (How did that make you feel)
5. Were you included in any of the mediation or discussions surrounding this process?
6. What role do you think that you should have played
7. What would you liked to have said
8. How did you discuss your wants with your partner before the process
9. Do you think that your partner understood your issues
10. Do you think that they adequately portrayed this in court

In summary, is there anything else you would like to add about your experience whilst supporting your partner through the Family Court process.

	Q4: what was your personal experience with the FLC	Q4a: How did that make you feel	Q5: Were you included in any of the mediation	Q6: What role do you think you should have played	Q7: What would you have liked to have said
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P1	<p>I wasn't allowed to do anything</p> <p>I wasn't included in anything</p> <p>Excluded</p>	<p>Quite frustrating Resentful</p> <p>Angry</p> <p>It makes me quite angry</p>	<p>There was no mediation at all</p>	<p>I'm paying for her children...I was totally excluded...</p> <p>I'm supporting the children, he's not paying anything towards the schooling...the house...her general upbringing... I should have had some sort of say in the process</p>	<p>It's a pretty messed up process...</p> <p>It is all quite awful, you know quite bewildering...</p> <p>I think I should have a say....</p> <p>In terms of financial things I don't have much of a say in that either</p>
P2	<p>Exclusion</p> <p>I wasn't taken into account...</p> <p>Sitting down the back of the court...</p> <p>Very much apart</p>	<p>Excluded</p> <p>I was always excluded</p> <p>Very much apart,</p> <p>Pretty stressed, not a good time</p>	<p>No</p> <p>I was never a part of the mediation...</p> <p>never part of the proceedings</p> <p>I was always excluded</p>	<p>I was playing the role of a father at the time, so I should have had a say in what was happening</p> <p>Given that she was living in my home... I was heavily involved with her daughter</p>	<p>I should have some say what's going on given that it was happening under my roof...</p> <p>That was going to affect myself, my wife and eventually my children as well</p>

Example of Question Ordered Matrix

Appendix F

Appendix G

Journal of Divorce and Remarriage – Letter to Authors

JOURNAL OF DIVORCE & REMARRIAGE™—Instructions for Authors

1. ORIGINAL ARTICLES ONLY. Submission of a manuscript to this journal represents a certification on the part of the author(s) that it is an original work, and that neither this manuscript nor a version of it has been published elsewhere nor is being considered for publication elsewhere.

2. MANUSCRIPT LENGTH. Your manuscript may be approximately 20 typed pages double-spaced (including references and abstract). Lengthier manuscripts may be considered, but only at the discretion of the editor. Sometimes, lengthier manuscripts may be considered if they can be divided up into sections for publication in successive journal issues.

3. MANUSCRIPT STYLE. References, citations, and general style of manuscripts for this journal should follow the APA style (as outlined in the latest edition of the *Publication Manual of the American Psychological Association*). References should be double-spaced and placed in alphabetical order. The use of footnotes within the text is discouraged. Words should be underlined only when it is intended that they be typeset in italics.

If an author wishes to submit a paper that has been already prepared in another style, he or she may do so. However, if the paper is accepted (with or without reviewer's alterations), the author is fully responsible for regging the manuscript in the correct style as indicated above. Neither the editor nor the publisher is responsible for re-preparing manuscript copy to adhere to the journal's style.

4. MANUSCRIPT PREPARATION.

Margins: leave at least a one-inch margin on all four sides.

Paper: use clean, white 8-1/2" x 11" bond paper.

Number of copies: 4 (the original plus three photocopies).

Cover page: *Important*—staple a cover page to the manuscript, indicating only the article title (this is used for anonymous refereeing).

Second "title page": enclose a regular title page but do not staple it to the manuscript. Include the title again, plus:

- full authorship
- an ABSTRACT of about 100 words. (Below the abstract provide 3–10 key words for index purposes).
- a header or footer on each page with abbreviated title and page number of total (e.g., pg 2 of 7)
- an introductory footnote with authors' academic degrees, professional titles, affiliations, mailing and e-mail addresses, and any desired acknowledgment of research support or other credit.

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Check your paper for the following common errors:

- dangling modifiers
- misplaced modifiers
- unclear antecedents
- incorrect or inconsistent abbreviations

Also, check the accuracy of all arithmetic calculations, statistics, numerical data, text citations, and references.

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