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REVEALING THE EXISTENCE OF CHILD ABUSE IN THE CONTEXT OF MARITAL BREAKDOWN AND CUSTODY AND ACCESS DISPUTES

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ABSTRACT

Objective: Child abuse in the context of legal and de facto marital breakdown has received little attention internationally. Many believe it does not exist in this context and regard it as just a “gambit in the divorce wars.” Recently, however, family courts in a number of countries have become concerned over the management of child abuse allegations in custody and access cases, known more commonly now as residence and contact cases. This article presents a unique research study, which investigated how the Family Court of Australia dealt with such cases. The study, covering all forms of child abuse, sought to discover who were the families bringing these problems to family courts, what precisely the abuse was and how the courts dealt with it.

Method: The study reviewed court records of some 200 families where child abuse allegations had been made in custody and access disputes in jurisdictions in two states, observed court proceedings and interviewed court and related services’ staff.

Results: The findings showed that these cases had become a core component of the court’s workload without any public or professional awareness of this change, that the abuse was real, that it was severe and serious, and that the courts and child protection services did not provide appropriate services to the families.

Conclusion: A new specialized intervention system was developed based on the research and it is now being trialed and evaluated. The new intervention system contains features derived from the research findings that may be suitable internationally for implementation. © 2000 Elsevier Science Ltd.

Key Words—Child abuse, Family courts, Family violence.

INTRODUCTION

CHILD ABUSE, WITHIN the context of legal and de facto marriage breakdown, has received little attention internationally. In fact, there is a long-standing view that child abuse within this context

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rarely exists (Schudson, 1992; Toth, 1992). Such a view argues that most of the abuse allegations made at the time of marital breakdown are not real. Instead, they should be understood as false allegations manufactured by warring partners for use as weapons in their family fight, in other words, a “gambit in the divorce wars” (Thoennes & Pearson, 1988, p. 2).

This perspective has been reinforced in the past by the denial of partnership violence within legal and de facto marriages and its role in partnership breakdown (Brown, Frederico, Hewitt, & Sheehan, 1998). Wallerstein and Kelly (1996) did note the existence of partner to partner violence in their pioneering study on marriage breakdown.

However, they did not see the violence as a significant problem in the marriage or as a cause of marital breakdown. They thought of it as something unusual, possibly a result of the deteriorating relationship. They imagined it would die when the marriage finally did (Wallerstein & Kelly, 1996). Even later researchers like Janet Johnston who did recognize the importance of partner to partner violence and its role in marital breakdown, did not extend this recognition to the possibility of child abuse either as accompanying the other violence or as a separate issue (Johnston & Campbell, 1993).

More recently, concerns about child abuse allegations have emerged from family courts as a result of their experiences with child custody and access disputes, now often termed residence and contact disputes, as is the case in Australia since 1996. Such concerns have come mostly from the USA, Australia, and New Zealand, all of which countries have led in the development of specialized family courts to preside over marital breakdown.

These concerns have encompassed a breadth of issues, including an apparent rise in the number of such cases (Myers, 1989; Rubin & Flango, 1993), poor outcomes for the children involved (Harrison, 1989; Norris, 1993), difficulties in coordination between the courts and child protection services, between family and criminal courts, between family and children’s courts and between family courts and other related services (Edwards, 1987; Rubin & Flango, 1993), problems in the legal representation of children (Myers, 1989), and more. Most often, these concerns have been expressed in relation to sexual abuse allegations; other forms of abuse have been ignored.

PRIOR RESEARCH

One substantial research study has been undertaken previously—a large USA study covering sexual abuse (Thoennes & Pearson, 1988). This study tracked all custody and access disputes involving child sexual abuse allegations for a 6-month period in 12 separate USA jurisdictions scattered across a number of USA states, generating data on 169 cases.

Conclusions were that the outcomes for the children were unsatisfactory, with a major problem being the disbelief within the court system and within the child protection services as to the reality of the allegations. Such was the disbelief that in some areas the child protection services refused to investigate any referrals from family courts. The study found that contrary to popular views the abuse allegations were not commonly false; false allegations amounted to around 14%. The problems in dealing with the abuse allegations were compounded by the extreme youth of the children and the serious nature of most of the allegations (Thoennes & Pearson, 1988).

Subsequently a study was begun by the Family Court of Australia focusing on similar issues, but it did not progress beyond an exploratory stage (Norris, 1993). Hence, when the present study team approached the Chief Justice of the Family Court of Australia, the Honorable Alastair Nicholson, to undertake research into the way the family courts managed child abuse allegations in custody and access disputes, he gave very strong support.

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