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A DOMESTIC RELATIONS COURT FOR PENNSYLVANIA

The Courts of Warren and Cumberland Counties in the years 1954 and 1955 respectively, have been the scenes of unparalleled acts of violence upon the bench and bar. The results were, the death of one judge, the wounding of another, the death of an attorney, and the wounding of another. These acts were undoubtedly perpetrated by men who believed that they had received an unfair shake of the legal dice, as it were. Could these tragedies have been avoided by a family court? Can other such potential tragedies be averted by a family court? My answer to both of those questions is "yes," provided that the court so established, is staffed with adequately paid and sufficient numbers of psychiatrists, clinical psychologists, social, psychiatric and medical caseworkers, marriage counsellors, in addition to specially trained judges. It is interesting to note that the perpetrators of violence in Warren and Cumberland Counties each had domestic relations problems. These two unfortunate occurrences should cause some introspection.

Judge Paul W. Alexander, perhaps the most prolific advocate of the family court has said:

" . . . the husbands and wives who come to you and to the family courts for help are heartsick. Indeed they are worse; they are distraught. They are so mad and angry and hurt and wounded that they cannot think straight, if they can think at all."¹

I submit to you that we must have the type of family court as outlined above, in order to cope with the very difficult problems as presented by these people.

The judges of our lower courts in Pennsylvania are heavily laden with work. They are doing a splendid job under very difficult circumstances. Most counties are in need of at least one additional judge in order to properly and fairly handle current business. Under present circumstances our judges cannot give the necessary time to all the cases that come before them.

"A family court is generally understood to mean a court with jurisdiction plus facilities for handling all manner of justiciable family problems arising out of conflicts between members of a family."²

If such a court were adopted in Pennsylvania, what might be its jurisdiction? It would probably embrace (1) neglected and dependent children under 18 years of age; (2) delinquent children under 18 years of age; (3) adults contributing or tending to cause the delinquency, neglect, dependency, or criminal actions on the part of children under 18 years of age; (4) children charged with criminal actions, excluding murder, under 18 years of age; (5) custody

¹ J. D. C. BAR ASSN. 5 (January 1954).

² 26 CONN. BAR J. 243 (September 1952).

of children; (6) adoption; (7) divorce and annulment; (8) support claims relative to husband, wife, children, and indigent parents; (9) physical violence or disorder, intra-family.

Under present Pennsylvania practice, excluding Allegheny and Philadelphia Counties, numbers (1) through (4) would be under the jurisdiction of the Juvenile Court; numbers (5) and (6) the Orphans Court; number (7) the Court of Common Pleas; number (8) the Juvenile Court or the Court of Quarter Sessions; number (9) Justice of the Peace or Court of Quarter Sessions.³

It can be seen at first blush why a family court or domestic relations court, which has jurisdiction over all the foregoing family matters, would avoid confusion, expense to the family, a multiplicity of suits, and conflicts of jurisdiction.

A resolution has been adopted by the Pennsylvania Senate to the effect, *inter alia*, that the Joint State Government Commission be directed to study and investigate "the feasibility of establishing a Court of Domestic Relations in each judicial district."⁴

In 1939, the United States Department of Labor, in a study entitled "The Child, The Family, and The Court concluded:

"Depending upon local conditions, social treatment of the cases mentioned may be developed in one unified court with separate branches for juvenile and domestic-relations work, or in separate juvenile and domestic relations courts. Unified jurisdiction is desirable when it can be obtained without the sacrifice of more important ends."⁵

As of July 1954, there were nine fully integrated family courts in the United States, eight of which were in Ohio, and the ninth in Portland, Oregon.⁶

Although the proponents of a domestic relations court have convinced this writer of its over-all soundness, nevertheless, such a proposal carries with it many problems, which in all fairness ought to be faced squarely and considered. First, I believe that every county should have a domestic relations court. According to the resolution adopted by the Pennsylvania Senate, I can only infer that each district will have such a court. In some cases more than one county is in

³ Numbers (1) (2) and (3) PA. STAT. ANN. tit. 11, §244 (Purdon 1939).
 Number (4) PA. STAT. ANN. tit. 11, § 256 (Purdon 1939).
 Number (5) PA. STAT. ANN. tit. 20, § 2080.301 (8) (Purdon 1954).
 Number (6) PA. STAT. ANN. tit. 20, § 2080.301 (16) (Purdon 1954).
 Number (7) PA. STAT. ANN. tit. 23, § 15 (Purdon 1939).
 Number (8) PA. STAT. ANN. tit. 18, § 4733 (Purdon 1945).
 PA. STAT. ANN. tit. 11, § 251 (Purdon 1939).
 PA. STAT. ANN. tit. 62, § 1955 (Purdon 1939).
 Number (9) PA. STAT. ANN. tit. 17, § 361 (Purdon 1939).
 PA. STAT. ANN. tit. 42, § 391 (Purdon 1939).

⁴ S. CON. RES. 145 (not printed), Adopted September 12, 1955.

⁵ U. S. DEP'T OF LABOR, THE CHILD, THE FAMILY AND THE COURT 65 (1939).

⁶ N. Y. STATE BAR BULL. 271 (July 1954).

a district, and this means that in those cases, people with family problems will have to secure transportation to move the family to the district domestic relations court. This is not as it should be. Secondly, I feel that the establishment of a court with such broad jurisdiction and grand stature ought to merit at least a separate courtroom, and sufficient offices for its staff. Most courthouses are over-crowded today, and this might well necessitate building many new ones throughout the state. This is certainly not objectionable, provided that the taxpayers can bear the burden. Thirdly, what sort of legal procedure and rules of evidence will be used in this domestic relations courtroom? Under our present system, the Juvenile Court has no jury and the procedure is informal. In our Court of Common Pleas there is usually a trial by jury and the burden of proof is on the plaintiff to prove his case by a fair preponderance of the evidence. In our Court of Quarter Sessions, there is usually a trial by jury and the burden of proof is on the Commonwealth to prove its case beyond a reasonable doubt. A jury trial is the exception rather than the general rule in the Orphans Court. Will a hybrid adjectival branch of the law emanate from the proposed domestic relations court? Fourthly, will such an Act be constitutional? Philadelphia was given a Family Court by the Act of April 8, 1937, P. L. 460. In that same year this Family Court was declared unconstitutional because it was a court of the same class or grade as the Court of Common Pleas.⁷ The part of the Pennsylvania Constitution relied upon to strike down this court was Section 26, Article 5, which provides:

"All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law and the force and effect of the process and judgments of such courts, shall be uniform; and the General Assembly is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judge of Common Pleas and Orphans Courts."

Isidor Ostroff of the Philadelphia Bar has suggested that the Family Court of Philadelphia was destroyed for political reasons:

"Unfortunately the Act had incorporated in it a ripper to do away with Philadelphia's Municipal Court and to eliminate the political patronages for which that court was then notorious. The legality of the Family Court was challenged. Instead of confining arguments to the socio-legal controversy the litigation took on political aspects."⁸

Section 26, Article 5 of the Pennsylvania Constitution has not been altered. We can only query whether a new family court will be constitutional. It is quite possible that a properly worded act will not be attacked as unconstitutional. A change in the timber and temper of the Pennsylvania Supreme Court since 1937 is also a significant factor militating toward constitutionality.

⁷ *Margiotti v. Sutton*, 327 Pa. 337, 193 Atl. 250 (1937).

⁸ 24 PA. BAR ASSN. Q. 241-7 (1953).

Number (9) PA. STAT. ANN. tit. 17, § 361 (Purdon 1939).

The protagonists of the family court, since coming to the fore with their resolution in the Senate, seem to have encountered no opposition. From this auspicious beginning, perhaps we can infer a successful conclusion. It is not unlikely that in 1957 Pennsylvania will have family courts.

Throughout this note the writer has indicated the desirability of a family court, provided that it be one that is adequately staffed, and one that functions properly. Any such plan that will do nothing more than give a title of "Domestic Relations Court Judge" to one of our sitting judges in each district, under the guise of establishing a family court, is not favored. If Pennsylvania is to have a domestic relations court, let it be a good one—the ideal of the nation! To do the job that is urgently needed in this state requires more than a superficial change.

I might respectfully suggest to those who might be called upon to redact family court legislation, that since other states have had experience with such courts, that Pennsylvania learn from those who have learned. Perhaps our state can avoid some of the agonizing experiences that the pioneers of this court system encountered. It would indeed be unfortunate if we were "to progress magnificently backward into the future."

ALLEN H. SMITH