

Keeping Family Courts Accountable While Too Many Families Are Unraveling

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It takes just a few data points to portray the dissolution of too many American families today. According to the Centers for Disease Control and Prevention (CDC) and other resources:

- In 1968, 42% of households were nuclear families (two parents plus one or more children under the age of 18). In 2018, that number had decreased to 22%.
- There were approximately 332 million residents in the USA in 2018, so around 73 million people were part of a nuclear family at that time.
- Currently, 40.4% of all births are to unmarried women.
- In 2021, approximately 7.21 million families were led by a single man with no spouse.
- As of 2022, approximately 60,000 minor children were being raised by a widowed parent.
- After no significant change between 2001 and 2007, the suicide rate among young people ages 10–24 increased 62% from 2007 through 2021.
- The homicide rate among young people ages 10-24 increased 60% from 2014 through 2021, after no significant changes between 2001 and 2006.
- 15% of high school students reported having ever used select illicit or injection drugs (i.e. cocaine, inhalants, heroin, methamphetamines, hallucinogens, or ecstasy) and 14% of students reported misusing prescription opioids.
- 25% of women and 11% of men will experience domestic violence in their lifetimes.
- Roughly 1 in 100 children in the U.S. have their parents' rights terminated by age 18.
- Recent and comprehensive Florida specific data can be accessed [here](#).

Florida Statute 61.13(3) provides in pertinent part that its family court judges consider the following factors in making custody determinations:

(3) For purposes of shared parental responsibility and primary residence, the best interests of the child shall include an evaluation of all factors affecting the welfare and interests of the child, including, but not limited to:

(a) The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent.

(b) The love, affection, and other emotional ties existing between the parents and the child.

(c) The capacity and disposition of the parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

(k) Evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to s. 741.30.

(l) Evidence of domestic violence or child abuse.

(m) Any other fact considered by the court to be relevant.

Ideally, every parent should have the ability to instill a moral code and a value system in their children. But not every parent does, nor are they capable of doing so. Some of them rely on grandparents or other extended family members to raise children. Some families become enmeshed in what advocates refer to as lifetime cases. Children are often caught in the middle of such cases.

Good parents come in all shapes, colors, creeds, sexual orientations and socioeconomic levels. While addiction and mental health issues may contribute to some of the statistics delineated above, the emotional instability that surrounds these children can create complex legal issues.

Consequently, some family court judges are asked to make difficult decisions on a daily basis. If a child is exposed to danger, or if a parent's acts or omissions endanger the child, should that mean that children are

removed from the parent? Does exposure to danger mean that the parent's parental rights must be terminated, and their relationship with their children cut off? What impact does the termination of parental rights have not only on the children made the subject of such cases, but on their relationships and on their children? What happens if and when the remaining parent nonetheless continues to welcome the parent whose rights have been terminated into the children's lives?

Family court judges look for more than a threat of metaphysical harm or the possible ill effects of one parent staring idly into their cell phone rather than engaging with their children. Instead, family court judges analyze evidence to consider whether acts or omissions on a parent's part are directed at the child made the subject of a termination case, or if the child suffered a physical or psychological injury as a result of that parent's act or omission.

We see cases in which a child may display, "an uptick in tantrums, fear-based anxiety related behaviors, and verbalizations of feeling scared when visiting" a parent. If a parent fails to react when hearing testimony that their child would say to foster care providers, prior to family therapy visits, that the child does not feel safe when with the parent, even under the therapist's supervision, and prefers to stay home and not attend the therapy session nor to see their parent, what should that indicate to the trial court judge? Should the trial court just stop visits with a parent if advised that following visits, the child made the subject of the suit displays increasingly problematic behavior?

How do we serve the best interests of children in such complicated situations? What are family court judges to do in the face of conflicting

testimony? How do we prevent the unraveling of the American family? Unfortunately, while many mental health professionals have tried to educate the courts on the reasonable and expected emotional responses during the transitions wrought by divorce, children's responses have become weaponized in order to gain an advantage in court. Mental health professionals cannot answer many of the child's behavior-related questions posed by attorneys because the answers are just not that simple. Courts need accurate data in order to make truly informed decisions. Too often, the mental health professional wants to provide that reliable information, but—understandably from their perspective—opposing attorneys want to win the case for their client. Competing needs and competing professional responsibilities often push “best interests” to the rear.

Service plans and temporary orders are more than checklists. In cases involving allegations of physical and sexual abuse, service plans should address the means of accomplishing substantive behavioral changes, especially in light of an outcry of abuse. Often, when allegations of abuse are raised, a defense of coaching or alienation is asserted.

Children deserve a safe and appropriate home life. Whether in an intact nuclear family, a blended family, a single parent home, a family with a widowed parent, etc., children need safety and nurturing. Parenting is about more than meeting a child's basic needs. It is about helping children thrive in a safe haven. When a parent improves their behavior after court intervention and as a result of counseling, that is promising, but such improved behavior does not always offset “evidence of a pattern of instability and harmful behavior in the past.” Moreover, as gatekeepers, trial courts are “not bound to accept the truth or accuracy

of a parent's testimony either as to past actions or future intentions." Trial judges must assess whether a parent is unable or unwilling to take responsibility for the reasons why that parent's children are in foster care or in some other alternative placement, as well as analyzing such a parent's denial or minimization of the issues that their children are confronting.

Advocates are charged with being zealous in representing clients. Attorneys, like their clients, can become polarized in their view of the case. Intellectual integrity must be a factor in every case—for the parties, for their advocates, for the mental health professionals involved in the case, and for the judiciary. When parents cannot sort things out on their own, judges have a variety of tools to implement in cases to try to bridge impasses even in the most high conflict cases. Each party and each attorney bring their own perspective to the case. Ideally, judges should have the ability to find balance and truth in the midst of long court cases.

As tightly woven together as some families are, others unravel very easily. Judges are sometimes forced to order the unraveling of families. We offer a metaphor: Knitting may be defined as the "formation of a close texture by the interloping of successive series of loops of yarn." "The act of knitting is based on the repetition of two stitches, plain and purl, creating a fabric by moving forwards and backwards, and on the shaping of a garment by increasing or decreasing those stitches." When a child makes an outcry, the fabric of the family is torn. Parents and professionals need to listen. The child must feel heard. Families are stitched together in a variety of ways. Judges help many families stay together by monitoring temporary orders and service plans, and by reviewing key evidence. Only when clear and convincing evidence is

presented, and a variety of other due process requirements are met, should parental rights be terminated. The child's outcries must be investigated and their justifiable fears must be validated, even if doing so means the unraveling of the child's family of origin.

Family court judges have difficult tasks. They must be exemplary knitters. Facing tensions, family court judges constantly try to cable together rulings that serve the best interests of children.

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