

Supporting the Children
by Hon. Shirley Lilien

Studies show that a non-residential father's sense of responsibility to his children correlates with the father's frequency of interaction with his children.¹ To determine whether changes to the court system could assist fathers of children born out of wedlock in becoming more involved in their children's lives, the Arizona State Legislature, through the Department of Economic Security, funded a Paternity/Visitation Pilot Project in Pima County to study paternity issues and visitation. The impetus for the project was the demand placed on society as a result of children born out of wedlock, including gang activity, juvenile violence and ballooning welfare rolls. In Arizona, approximately one in four children is born out of wedlock.² Typically, the mother has custody of the children, and the father has little or no connection with his offspring. The mother may remain on welfare for the entire minority of the children. Even if paternity is established and the court enters a support order, most fathers are unaware of their rights to visitation or how to establish and enforce those rights because the majority of paternity litigants are unrepresented. However, if the court system assisted unwed fathers in establishing or maintaining meaningful relationships with their children through the court system, perhaps some of the burdens to society could be relieved.

Thus, the Pilot Project's goal was to determine: (1) whether visitation was occurring in paternity cases; (2) whether there was an interest in establishing visitation if it was not occurring; (3) whether existing paternity statutes and court procedures create obstacles to establishing visitation; (4) whether visitation impacts on the timeliness and compliance in payment of child support; and (5) how many paternity cases involved AFDC (Aid to Families with Dependent Children), and whether support orders entered in paternity cases were adequate to remove families from the welfare rolls.

The Study: Paternity/Visitation Pilot Project

Case collection was limited to the time period of October 1, 1994 to June 30, 1995. Paternity was adjudicated in 697 cases, which were entered into a computer database for this study.

Unlike the usual handling of paternity cases in which custody and visitation issues are not heard when a paternity order is entered, in the study cases, an initial custody order was also entered. Whenever possible, obstacles to establishing visitation were identified and remedied. The court advised the parties that the father had visitation rights and that additional services were available through the Conciliation Court. Visitation guidelines were distributed to establish reasonable expectations between the parties. Parties who were unable to resolve their differences were directed to the necessary court forms used to litigate these differences and were guided to Conciliation Court. The court noted whether visitation was occurring in its minute entry. If domestic violence was an issue, the court did not give litigants visitation information, but instead directed them to Conciliation Court for further help.

The court asked the litigants to fill out questionnaires that were separately directed to fathers and mothers. In addition, the court filled out a form for each case. Information from these forms was entered in a computer database for continuing future analysis.

What We Learned From the Project

Who are the litigants in paternity cases?

Litigants come from a diverse cross-section of the community, and include all races, ethnic backgrounds, socio-economic levels and educational levels. For example:

John Doe 1: This father is an executive with a large corporation. After his son's birth, he abandoned the child and the child's mother, moved to California and married another woman. He had no intention of maintaining any contact with his son, nor did he have any intention of supporting him. He is well-educated and earns approximately \$18,000 per month, yet he left without giving any thought to his responsibility for his child.

John Doe 2: He is a minimum wage worker who has eight cases in Pima County involving eight different mothers. All of the mothers, except one, receive welfare benefits. His current girlfriend is pregnant. He is only 30 years old. He moves from cash job to cash job.

Jane Doe 1: This young woman is 17 years old. She has two children, both born out of wedlock and conceived by the same father. She lives at home with her parents. Her children's father lives next door with his parents. She receives welfare benefits for both children. She is not interested in the father

having any contact with the children. In fact, when questioned in court, she stated, “he’ll never amount to anything.”

Are the fathers in paternity cases able to pay child support?

The answer to that question is a definite “yes”. Orders entered ranged from the minimum \$50 per month order, to \$1400 per month. The average order entered was \$124 per month.

How many mothers receive AFDC benefits?

Of the 697 cases studied, 420 mothers answered affirmatively that they were receiving AFDC; 122 answered “No”; and 155 did not answer. The percentage of those answering “yes” was 60 percent.

How many fathers knew that the mothers were receiving AFDC?

Of the 697 fathers, only 17 answered “yes”, that they were aware the mother was receiving AFDC. Eight answered in the negative, and 672 did not answer. One wonders how they imagined these children were being supported.

In how many cases was visitation occurring at the time the paternity order was entered?

According to the fathers’ questionnaires, visitation was occurring in only 35 cases, or five percent of cases. According to the mothers’ questionnaires, visitation was occurring in only 69 cases, or less than 10 percent.

How many parents wanted to establish paternal visitation?

Fifty-eight mothers said “yes,” but 110 said “no.” Of the fathers, 37 said “yes,” but 12 said “no.” A significant number did not answer.

Was there any increase in the number of paternity cases going to Conciliation Court for custody/visitation mediation during the Pilot Project?

During the Pilot Project, Conciliation Court showed a significant increase in the number of paternity case mediations. As a percentage of all mediation cases, paternity cases increased from 9.8 percent in January 1993 to about 18 percent in 1994.

Are the paternity statutes part of the problem?

Part of this complex problem lies in the paternity statutes. Unlike the dissolution statutes in which custody/visitation is determined prior to the entry of the decree and its parameters are set forth in the divorce decree, there are no clear standards or procedures in determining custody/visitation in paternity cases. In divorce cases, custody is determined by establishing the best interests of the child,³ and the parent not granted custody is entitled to visitation.⁴ However, in paternity cases, a party may request that custody and visitation be determined as “part of the paternity proceeding.”⁵ This language leaves unclear whether a hearing for custody/visitation may be set prior to judgment on the paternity issue, or whether it is a post-judgment matter, requiring additional filings and fees.⁶ The paternity statutes permit the court to award custody and visitation, but it only applies to visitation.⁷ Further confusion arises because legal custody may be granted without hearing to the parent with whom the child has resided for the greater part of the previous six months.⁸ This section appears to take away the right to contest an initial custody order. Consequently, the paternity statutes create a perception of unfairness which litigants routinely vocalized in court. To date, the situation has been ignored despite the number of children involved.

Are policy and procedure part of the problem?

Both federal and state policies and procedures impact paternity cases. By federal mandate as reflected in our statutes, the State’s attorney is not permitted to represent litigants in paternity custody/visitation issues.⁹ This creates a serious time/cost problem for the non-custodial parent who is left to sort out conflicting statutes, as well as any applicable local rules.

Federal regulations also mandate that if the custodial parent is receiving AFDC, the custodial parent’s address and the location of the children is considered confidential. The purpose of these regulations is to protect women and children who have been victims of domestic violence. However, there are ways to safeguard those who need protection without denying the majority of unwed fathers access to their children.

Local court procedures may be unduly punitive. For example, I was recently asked to sign a dismissal in a paternity custody/visitation matter because the father, a Phoenix resident, had not filed a confirmation notice as required by local Pima County rule. Should unrepresented fathers be held to lawyer standards when children are at risk? If all parties have been properly served with notice, should the court waive the extra paperwork for pro pers?

Improving Custody/Visitation in Paternity Cases

The courts are failing children with our present system, which appears to discourage visitation in paternity cases. An attempt should be made to reverse this trend:

The paternity statutes and court procedures applicable to paternity cases need a major overhaul.

The majority of paternity litigants appear without attorneys. A revised system must be simple, and fair to all parties. Information on services must be readily available to litigants, just as it is in divorce cases.

Best interests of the child should be the standard for awarding custody in paternity cases.

Paternity fathers should not be treated differently than divorcing fathers in determining custody. All children deserve to have their best interests considered when awarding custody.

A visitation order should be a part of every paternity determination, just as it is in dissolution matters.

Once paternity has been established, there should be a simple process for fathers to establish custody and visitation.

Conclusion

The study's most shocking statistic was that only 35 of 697 database group fathers were connecting with their children. Neither the courts nor the Legislature can force fathers to exercise their visitation rights and accept their responsibilities to their children. The courts and the Legislature can, however, remove statutory and procedural obstacles and encourage them to do so.

Shirley A. Lilien served as a Judge Pro Tempore/Commissioner in Pima County Superior Court for the past five years. She previously served as a Special Magistrate at Tucson City Court, and for 10 years was a sole practioner. She recently returned to private practice.

ENDNOTES

1. *The Social Exchange Model* by Sanford H. Braver, Ph.D., Ilene A. Wolchik, Ph.D., Irwin N. Sandler, Ph.D., Virgil L. Hilts, (citing Tepp, A.V., "Divorced Fathers: Predictors of Continued Paternal Involvement," 140 *American Journal of Psychiatry*, 1465-1469, (1983)).
2. Source: Arizona Department of Health Services, Office of Planning and Monitoring.
3. A.R.S. § 25-332(A).
4. A.R.S. § 25-337(A).
5. A.R.S. § 12-843(B).
6. *Id.*
7. *Id.*
8. A.R.S. § 25-843(C).
9. A.R.S. § 12-843(B).