Concern Over Judicial Authority Drove Parent Coordinator Elimination

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Ben Present

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To many family law practitioners, the Pennsylvania Supreme Court's decision to eliminate parenting coordinators in custody matters was a reasonable measure to keep decision-making in the purview of the state's judges.

But several attorneys questioned whether the practice, which on May 23 becomes a thing of the past in Pennsylvania custody cases, could have survived with some tweaking. Attorneys said the practice, with proper oversight, was a suitable enterprise for refereeing situations such as "mom's sister's wedding on dad's Saturday" in high-conflict custody cases. The courts, lawyers said, simply do not have time for such minor issues.

In other words, it seemed that while most attorneys had seen parenting coordinators work in many cases (though some had seen it go terribly), all recognized that the Supreme Court was trying to be cognizant of instances where courts are abdicating their authority to nonjudicial entities and, in turn, limiting that practice where it could.

And they said they couldn't knock the court for that.

As parenting coordination developed in Pennsylvania, it had been lawyers, psychologists and psychiatrists filling the role. Attorneys said the justices may have felt compelled to change the law as the latter two had grown accustomed to interpreting, and sometimes even changing, a court's custody order.

Others said the move was in response to the Luzerne County judicial scandal and recent scrutiny directed toward the Lackawanna County guardian ad litem program, whose central figure is now facing federal tax-evasion charges.

David L. Ladov, co-chair of the family law practice group at Obermayer Rebmann Maxwell & Hippel, summed up the high court's sentiment:

"Before it happens in another area of the law — parent coordinators — why are we allowing judges to abdicate their authority?" Ladov said. "Why are we letting judges pass on their authority to somebody outside the judicial due process situation?"

Ladov is vice chair of the Pennsylvania Supreme Court Domestic Relations Procedural Rules Committee, but said he was not speaking in his capacity as a rules committee member. Instead, he said he was speaking as an "experienced family law practitioner."

The word spreading through the family law practice bar, according to attorneys, is that the Luzerne County scandal and the stain it left on Pennsylvania's judiciary compelled the domestic relations rules committee and the justices to do away with parent coordinators.

The timeline seems to fall in line with that school of thought.

Fox Rothschild family law practitioner Natalie L. Famous pointed out the Supreme Court submitted the rules committee's proposal to The Pennsylvania Bulletin for public comment in November 2010, right around the time the Luzerne County scandal, which involved allegations of two judges taking $2.8 million in kickbacks from the co-owner and the builder of a private juvenile prison, was still very much in the news.

Famous, who was the first parenting coordinator in the state, said the court made the decision to do away with parent coordinators in favor of transparency by the judiciary and to hold the judges directly accountable for decisions.

Meanwhile, the Lackawanna County guardian ad litem program has come under scrutiny as attorneys have questioned a system in which one person was handling an overwhelming majority of the guardian work in that county. That one person, attorney Danielle M. Ross, awaits trial on federal tax-evasion charges.

"I would have to think that, with 'kids-for-cash' in the background, the failure of the guardian ad litem program in Lackawanna County, it has to be in the back of the justices' minds in considering whether continuing to grant quasi-judicial powers to people such as parenting coordinators is an appropriate remedy in resolving such delicate custody matters," said Jonathan T. Hoffman, an attorney in Klehr Harrison Harvey Branzburg's family law practice group. "I would think it would have to be relevant here."

For Ladov, though, regardless of whether lawyers viewed the decision to nix parent coordination as a positive or negative one, it was not a monumental event.

For one thing, most litigants can't afford a parent coordinator. Additionally, most cases don't rise to the level of conflict that warrants the appointment of one — a level Ladov characterized as featuring "repeated offenders" or "repeated litigators."

Ladov said a judge would be inclined to appoint a parent coordinator only if a case gets back in court three times, maybe even six times, after a judgment is entered.

"There's probably one parent coordinator in every 1,000 cases," Ladov said.

But in cases where it was successful, others said it helped clear the dockets and ease tensions.

"In the cases where it helped, it was a godsend," said Mary Cushing Doherty of High Swartz. "In cases where the parent coordinator was going beyond what was their responsibility, what the parents thought was their responsibility, the Supreme Court is pulling back and saying, 'we are not delegating judicial responsibility.'"

"The problem is, how do you draw that magic line?" Doherty added.

Hoffman also said the right parenting coordinators had proven to be an "excellent resource."

"It took people who were clogging up the dockets and turned their cases around really quickly," Hoffman said.

The net effect in most cases, according to Hoffman, was that children who were suffering got relief in the midst of continuing conflict between their parents.

'Balls and Strikes'

In interviewing a handful of family lawyers, more than one used the phrase "calling balls and strikes" in outlining the work of parent coordinators over the last four years — the lifespan of the practice — in Pennsylvania.

For example, if a custody order required divorced parents to split their child's birthday but provided no further elaboration, a parent coordinator could interpret the ruling and implement a game plan.

Blue Bell, Pa., solo practitioner Maria E. Gibbons, who had been devoting much of her practice to parent coordination, further provided the example of an ex-husband who won't give up his Saturday so his ex-wife could take their daughter to her sister's wedding.

Gibbons said that by the time a judge would be able to hear the issue, the wedding would be long past. Plus, dragging the parties into court for such a small issue, in Gibbons' view, is a waste of judicial resources, which are scarce to begin with in many counties throughout the state.

"A judge shouldn't be wasting their time hearing that," she said.

Those were the type of day-to-day decisions a parent coordinator could make on the spot.

Another part of Gibbons' job, as she described it, had been helping parents settle for alternatives when their custody order didn't seem to help either party in a particular dispute.

Saying, "Go back and settle so I don't have to make this ruling," would often incite parents to swallow their pride and resolve whatever their dispute was without forcing a ruling from the coordinator, Gibbons said.

Referring to a hypothetical custody order, Gibbons added: "If you make me rule, whether I like it or not, I have to rule the way this paragraph is written."

Psychologists' Involvement

Licensed psychologists and psychiatrists sometimes didn't seem to understand the letter of the law, according to attorneys interviewed, a possible impetus for the justices' rule change.

Every attorney interviewed expressed concern with psychologists filling a position that, to some degree, involves the interpretation of a court decision and an application of the law.

Lynne Z. Gold-Bikin, chair of the family law practice group at Weber Gallagher Simpson Stapleton Fires & Newby, was the most outspoken lawyer in favor of ridding the court system of the position. Gold-Bikin said she was "delighted" the court put an end to parent coordinators, particularly where psychologists were making decisions.

"Every time the psychologists get involved, they take over because they say the court system and the lawyers don't know what they're doing," Gold-Bikin said. "Even though they don't know the law, they take over."

The longtime family law practitioner said the therapists had "carved out an area to make money" and ended up costing litigants more money than they did help them with their conflicted cases.

Hoffman and Famous also said there was a real sense of concern that psychologists and psychiatrists were acting in place of the courts.

While Gold-Bikin used the psychologists' body of work in bidding farewell to the coordinators as a whole, other attorneys questioned whether the parent coordinator position could have survived with some tweaking.

Gibbons, the parent coordinator, said the Supreme Court could have crafted an order that narrowed the practice to only licensed attorneys, removing unauthorized practice of law questions from the equation. She said decisions were always appealable, but that only happened once.

"I think it's short-sighted," Gibbons said. "I think that the ones who made the decision didn't necessarily talk to the people in the trenches who it affects day to day."

The court's April 23 rule change says that only judges may make decisions in custody cases and that masters and hearing officers may continue to make recommendations. Other than that, the courts may not appoint someone to "make decisions or recommendations or alter a custody order in child custody cases."

"Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective," the court's rule said. "Local rules and administrative orders authorizing the appointment of parenting coordinators also shall be deemed vacated on the date this rule becomes effective."

Most attorneys agreed that language did not call for the vacating of parent coordinators' decisions to date, but rather called for them to be taken off their respective cases.

Moving forward, Hoffman said his first order of business approaching the rule change's effective date is to notify his clients of the change.

Hoffman said he would be informing his clients who have parent coordinators that dispute resolution is going to have to go through court.

In wealthier counties such as Montgomery, Chester, Delaware and Bucks, Hoffman said the courts should prepare for increased filings and more backlog.

"It leaves families in tremendous limbo," Hoffman said.

Doherty, although she was not surprised the Supreme Court took the action, did not see a viable alternative to fill the upcoming void.

"Am I shocked the Supreme Court has done this? No," Doherty said. "But do I think we have a solution yet? No."

Ben Present *can be contacted at 215-557-2315 or bpresent@alm.com. Follow him on Twitter @BPresentTLI.*