

Custody Battle Chattel

Courts Must Stop Vindictive Parents From Manipulating The System

By Fred Silberberg

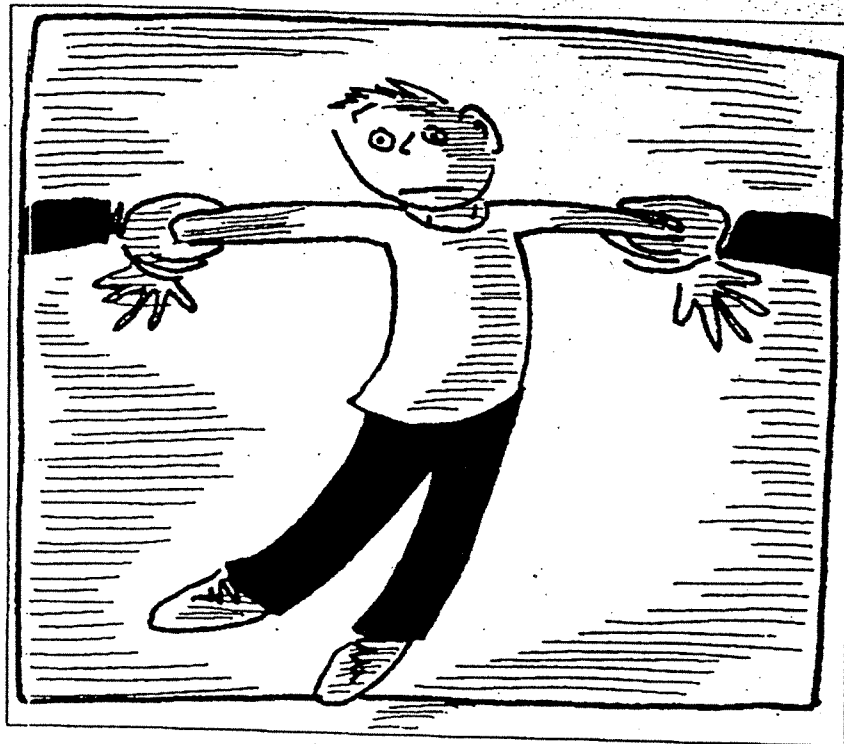
There is a serious flaw in our legal system when it comes to addressing custody cases. The existence of pre-emptive jurisdiction by the Dependency Court in custody disputes pending before the family law courts gives vindictive parents a weapon in custody litigation that can cause great harm to children and families.

Take the following example: Seven-year-old Billy is at the center of a custody battle wherein his father alleged that his mother is not emotionally fit to care for him and he therefore needs to participate more fully in his child's life. The father also contends that he is very closely bonded with Billy and that separation of more than a few days would be harmful. These allegations are supported by evidence, and an experienced family law judge finds them meritorious.

After a hearing, interim orders are made, and an evaluator is appointed who conducts a detailed evaluation. The interim order also requires that the parents share Billy equally, to return to court when the evaluation is complete to see whether any changes should be made to the court-ordered schedule. All seems well. There is only problem: Billy's mother is not happy with this outcome.

While the evaluation is pending, mother learns that, if Dad is accused of inappropriate conduct with Billy, another judge will probably take control of the case and pre-empt the orders made by the family law judge, at least temporarily. The mother figures that her chances might be better in a different venue with a new audience, so she calls the Department of Children's Services and claims the father abused the child. She doesn't say he beat or neglected the child. Instead, she rattles off a list of conduct that might be interpreted as inappropriate, especially when taken out of context. Nonetheless, the department must act to protect the child. Although the case could have been over in a short time, thanks to pre-emptive jurisdiction, it won't be.

Without warning, the father gets a call from a department caseworker telling him he can no longer see his child and advises him to report to Dependency Court for a hearing.



He's not given details on the allegations, but is only asked whether he will agree to be interviewed by a department caseworker. Fearing he may lose his child if he does not cooperate, he agrees. He is neither given warnings nor offered legal counsel. Thanks to the actions of a mother who is empowered by pre-emptive jurisdiction, this family is now in the dependency court system and will remain there for months. During that time, Billy will no longer stay with his Dad as he did before but instead will be permitted to see his father only for brief periods in the presence of a monitor. No more ball games or trips to get ice cream with Dad.

Billy's father has not been charged with any crime. In fact, these allegations were never raised in the family court proceeding. Nonetheless, the department has interfered in the father-son relationship and invalidated the custody order. Because of pre-emptive jurisdiction, the family law court proceedings have stopped. The nearly completed custody evaluation is stalled, and instead a new evaluator from the Dependency Court Panel is appointed. The father's counsel's suggestions that the pending evaluation be completed and considered are rejected.

After the evaluation is completed

months after the complaint was made, after Billy is interviewed by the expert, the department lawyer and his own court-appointed counsel, the expert witness finds that the mother is histrionic and that the father did nothing wrong. After this lengthy and costly battle, jurisdiction is returned to the family court.

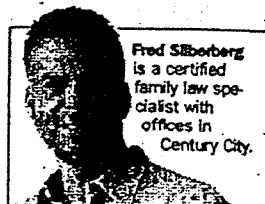
This happened because our system allowed it to happen. The mother was allowed to use the legal system to try to usurp decision-making authority from a well-qualified family law judge. She was given the tools to "get even" with the father, and it didn't cost her anything because she had court-appointed counsel in dependency court. The father was subjected to the stigma of being accused of harming his child. Billy was subjected to unnecessary interrogation while being kept from his father, whom he desperately needed.

What these proceedings did obtain was the mother's nearly six month of exclusive control of her child, during which time she tried to damage the father-son relationship. No one knows for certain whether that damage can ever be repaired. So much for the child's best interests.

This is not to say that dependency court and the Department of Children's Services serve no useful purpose. Quite the contrary, thousands of children who are abused and

neglected need and deserve the protection of the department and the dependency court. However, pre-emptive jurisdiction allows parents to use the department and Dependency Court when there is already an ongoing custody case in family law court, which isn't the way these entities were designed to be used. If family law judges believe that drastic action is necessary, they could determine that neither parent is suitable, and involve the department at that point. The family law judge who conducts a hearing is in a better position to make this determination than a caseworker who happens to answer the phone when the mother calls and hears only her side.

Parents have enough weapons to use in custody battles. They shouldn't be allowed to add dependency court to their arsenal. Our family law judges know how to serve the best interests of children. Custody disputes between divorcing parents belong in the family law court.



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