Family law: `Changing the way we think'

Overhaul made in divorce, child custody regulations

By Katie Wilson Times West Virginian

FAIRMONT - If you've filed for divorce in the last six years and you have children, you've noticed some significant changes to West Virginia's family law system.

Senate Bill 2003, approved by the Legislature during a special session in June 1999, started an overhaul of the state's domestic relations system. The bill made changes in the divorce and child custody laws, changing terminology and adding steps to the process.

Marion County Family Court Judge David Born said there are some variations from county to county, but the primary components are the same. For example, required mediation sessions take care of minor issues before the couple goes back to court. Also, divorcing parents are required to attend a three-hour parenting course.

"They sound like big changes, but not really," family law attorney Marci Carroll said. "They're changing the way we think about things."

One of the biggest changes is in the terminology. For example, there are no "custody agreements" anymore. Instead, they are "parenting plans." One parent doesn't have "primary custody." Instead, he or she is the "primary residential parent."

Born said the terminology changes are important.

"The word `custody' got kind of loaded over time," Born said. "The real objective is to have parents come up with their own agreements."

Vivian Hamilton, professor at West Virginia University's College of Law, said the new terms, specifically "parenting plan," emphasizes parents' obligations to, instead of their rights over, their children.

"We've started seeing terms changing to make things gender-neutral," Hamilton said. "It's an attempt to mitigate the negative connotations of some terms."

Hamilton noted people often tack meanings of ownership to terms like "custody." Using more neutral terms takes the punitive connotations away, she said. Taking away those negative connotations helps make the process less adversarial, Hamilton said.

"It's reflecting we have a problem we need to work together to solve," she said.

Carroll explained the changes in terminology are also reflecting changes in the process.

For example, parenting plans are much different than the old custody agreements. Carroll said under the old

system, family law masters
had two custody schedules, one for parents who lived close to each other and one for parents who lived farther away. If a couple wanted
more flexibility, it was usually granted, but many couples didn't know flexibility was an option. Also, whoever was designated the
primary caretaker was given sole decision-making responsibilities.

"It used to be the primary caretaker, usually the mother, made all the decisions," Carroll said. "Now, we assume the responsibility
should be shared. It's pretty revolutionary.

"In divorce you shouldn't stop being a parent."

Carroll said the theory ties into research that indicates it's better for the child to have both parents involved. An added benefit
is that the nonresidential parent is more inclined to pay child support if he or she is invested in the child's life, Carroll said.

This can be good news for fathers fearing they'll be shut out of their children's' lives, Carroll said. Women are sometimes shocked
and resentful of the new ideas, she said.

"If dads are in disagreement with something, they have avenues," Carroll said.

Hamilton said the change in terminology can make fathers feel the playing field is more level. She noted nationally, few fathers
contest custody, but in the cases in which they do, custody is usually granted. Even if either party challenges the other and the
outcome is the same, if the parties feel the process is more fair, there's no doubt the changes have had a positive effect, Hamilton
said.

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