

B138401 (2 Civil)
BD125686 (Superior Court)

IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

IN RE THE MARRIAGE OF:)
)
KEVIN R. SULLIVAN,)
Petitioner and Appellant) Case No.: 2 Civil B138401
)
VS.) LASC No.: BD 125686
)
CYNTHIA SULLIVAN (Conteas),)
Defendant and Respondent.)
)
)
)

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HONRABLE ISABEL COHEN, PRESIDING

AMICUS CURIAE BRIEF

ALLIANCE FOR NON-CUSTODIAL PARENTS RIGHTS
MR. LOWELL JAKS, PRESIDENT
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BY: _____

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Dear Honorable Presiding Justice Joan Dempsey Kline:

INTRODUCTION

Recently, the U.S. Department of Health and Human Services (HHS) launched the Fatherhood Initiative with appropriate hype and fanfare. According to the HHS website devoted to this initiative,

The Department of Health and Human Services has developed a special initiative to support and strengthen the roles of fathers in families. This initiative is guided by the following principles:

- All fathers can be important contributors to the well-being of their children.
- Parents are partners in raising their children, even when they do not live in the same household.¹

This initiative is in response to what is now an epidemic in our nation. In the United States, fully 40% of all children will go to bed tonight, deprived of the companionship and care of their biological father. That amounts to *22 million children*. Furthermore, the number is increasing and some estimate that it will soon be 50%.

Father-absence is a national tragedy the scope of which has never been experienced in the history of modern civilized society. The consequences are staggering. Fully 90 percent of homeless or runaway children are from fatherless homes.² Eighty percent of pre-school children admitted as psychiatric patients in two New Orleans hospitals came from homes without fathers.³ Similar percentages emerge from countries as diverse as Canada,⁴

¹ <http://fatherhood.hhs.gov/index.htm>

² U.S. Bureau of the Census,

³ R. Dalton, *et al.*, "Psychiatric Hospitalization of Pre-School Children: Admission Factors and Discharge Implications," *Journal of the American Academy of Child and Adolescent Psychiatry*, Vol. 26, No. 3, May, 1987, pp. 308-312.

⁴ H.S. Merskey and G. T. Swart, "Family Background and Physical Health of Adolescents Admitted to an In-Patient Psychiatric Unit, I: Principle Caregivers," *Canadian Journal of Psychiatry*, Vol. 34, 1989, pp. 79-83.

South Africa, and Finland, at ages from pre-school through teenage.⁵

In response to the widely recognized fact that children need involvement from both of their biological parents, the California Legislature had this to say:

The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy..." CAL FAM CODE §3020, b.

Given the widespread nature of this problem demonstrated by these statistics, coupled with the findings of the California State Legislature, along with the findings of nearly all other states, one would expect that the courts would uphold the principles of shared parenting whenever and where ever it is possible. However, exactly the opposite is the case. It is our position that there is enough in the statute law to go a long way to providing for the emotional and psychological needs of children to a relationship with both of their parents. While more legislative reform may in fact be called for, at this juncture, with regard to the case that is subject to this appeal, we want to suggest how the family courts themselves could do their part, given the resources they have, to further

⁵ Nicholas Davidson, "Life Without Father: America's Greatest Social

the needs of children. We feel that much of the blame for the tragic epidemic of fatherlessness in our society can, at this juncture, be placed squarely on the shoulders of the judiciary. For example, let us refer to one case in particular which demonstrates conclusively the massive insensitivity of the courts to the real needs of children. Following is a quote from Moffat:

Section 1694 provides, as relevant: "The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court." In seeking to avoid the plain meaning of the statute, Mr. Moffat frames the following issue: "Where the father has consistently performed his duty of support, can a mother leave California, quit her job, go on relief in another state, for the express purpose of depriving him of visitation with his children and still use RURESA, and not be subject to [the] defense of estoppel because of CCP Section 1694?" Despite our sympathy for a noncustodial parent thrust into that predicament, our reply, in short, is affirmative.

[24] We emphasize that we in no way approve of such conduct by a custodial parent. But as the court observed in In re Marriage of Ciganovich (1976) 61 Cal. App. 3d 289, 293 [132 Cal. Rptr. 261]: "Objective of [RURESA] is to aid stationary mothers in exacting child support from peregrinating fathers. The peregrinating mother reverses that objective The reciprocal law assures the continued flow of child support. It also facilitates the mother's destruction or impairment of the father's visitation rights and paternal interests." Regardless of whether we might view this as an unjust result from the noncustodial parent's point of view, in such circumstances the

Catastrophe," *Policy Review*, Winter 1990, p. 42.

child's need for sustenance must be the paramount consideration. (Id. at p. 294; McDowell v. Orsini (1976) 54 Cal. App. 3d 951, 964-968 [127 Cal. Rptr. 285].)

...a noncustodial parent in the position of Mr. Moffat is not bereft of remedy. Such rights are initially determined by the superior court, acting under authority of the Family Law Act. (Civ. Code, § 4351.) Thus the parent whose rights are in jeopardy may seek enforcement of the judgment, order, or decree in the rendering court. (Id., § 4380.) The Ciganovich court identified several appropriate sanctions when the custodial parent acts with an intent to frustrate or destroy visitation rights. These include holding the parent in contempt, terminating or reducing spousal support, and requiring a bond to assure compliance with the visitation order. (61 Cal. App. 3d at p. 293.) Moreover, the court has authority to award a change of custody or to otherwise modify the custody and child support provisions of the original decree. (Ibid.; Civ. Code, §§ 4603, 4700.) The deliberate sabotage of visitation rights not only furnishes ground for modification, it is a significant factor bearing on the fitness of the custodial parent. (Ciganovich, supra, 61 Cal. App. 3d at p. 294.)

In seeking a writ of habeas corpus and filing a contempt action for violation of the visitation order, Mr. Moffat appropriately sought vindication of his and the children's visitation rights. Unfortunately he was unable to overcome Mrs. Moffat's tenacity. Nevertheless, under existing authority we can only conclude that by her misconduct alone in depriving the father of his visitation rights, she is not estopped from pursuing the enforcement of child support under RURESA." (Moffat v. Moffat, 27 Cal. 3d 645)

This is an extraordinary passage. Notice that the best the court could do is to say that it is "unfortunate" that Mr. Moffat, despite availing himself of every remedy offered by our courts to see his children, could not overcome Mrs. Moffat's "tenacity." The word tenacity is generally used in a laudatory

connotation. Furthermore, the court implies in its analysis that it may be possible that Mrs. Moffat's actions are justified ("Regardless of whether we might view this as an unjust result from the noncustodial parent's point of view...") The court refers to Mr. Moffat's position as "a predicament", further diminishing the tragic plight of both the father denied the companionship and love of his child, and also the child's need of the love and guidance of the father. By choosing to put it this way, the court has given any mother *carte blanche* to follow the roadmap charted by Mrs. Moffat. The court, in effect, provides such a mother with the court's *imprimatur*, openly and brazenly proclaiming that the "paramount consideration" of a child is money. The need of the child for the care and companionship of the father, apparently, is not worthy of the court's protection.

While we certainly realize that the court was constrained in Moffat to apply the law, we are endeavoring in this brief to bring to the courts attention the perspective of the noncustodial parent with regard to these issues and to remind the court that just because "the law is the law", does not mean the law is right, or just. At one time in this country, not that long ago, slavery was not only legal, but upheld as such by numerous court decisions, including some by the U.S. Supreme

court. Later, even less than 50 years ago, it was perfectly legal to bar blacks from public drinking fountains and restaurants. In light of the many studies that have been done on the effects of fatherlessness on the well being of children a small number of which we will cite in this brief, it becomes quite clear that to subject a child to the risks that have conclusively been shown to be directly attributable to father absence amounts to nothing less than a form of domestic violence (to both the child and the father) and child abuse.

What we are saying is that in a very tangible and real sense, the court is condoning the widespread abuse of our nation's children, and that by its choice of language commits the outrage of not only condoning the abusive behavior of the custodial parent, but then showing countless other parents how to do the same: get rid of the father, and then make him pay for the custodial parent's own deliberate act of child abuse and domestic violence. It is indeed tragic that all too often, custodial parents across the nation are following this lead. Hence, we are moving toward a society in which the father is nothing but a pay-check. As Warren Farrell evocatively illustrates, however, "A child can't say, "Hey Dollar Bill, I had a nightmare last night."⁶

⁶ Warren Farrell, *Father and Child Reunion*, Jeremy P. Tarcher/Putnam, New York, 2001, p. 188. Farrell attributes the "Dollar Bill" reference to Kevin Roy, "Low -Income Single Fathers in an African-American Community and the

Adding insult to outrage, is the Moffat court's reference to the legal remedies outlined in Ciganovich. Filing motions for enforcement of visitation and contempt, and then later taking the case to appeal are not really viable options for most fathers who are subject to a 25 to 50 percent wage garnishment and who must work extra hours to make up the difference or starve. He can't afford a lawyer, which may cost several thousands of dollars, and he doesn't have the wherewithal to mount his own legal actions. Simply put, the average father is stuck. If the mother has moved and not provided the father with a new address, he would additionally need to hire a private investigator to locate his own children, since he will quickly find that the child support agencies will not cooperate with him. If he does manage to find his family, more than likely, he will not be awarded any extra time with the children, and he very well may find that his child support obligation is increased. Particularly galling, from the perspective of the noncustodial parent, is that, in the case of the mother, in order to get child support, all she must do is pick up the phone, dial a toll-free number, and immediately call into action a \$4 Billion legal and administrative apparatus which will hunt

Requirements of Welfare Reform," *Journal of Family Issues*, Vol. 20, No. 4, July 1999, p. 432.

down the father, seize his assets and his income and deliver them to her, absolutely free of charge.

The court's emphasis in Moffat on the child's need for money over a father's love is particularly disturbing given that it was motivated by completely erroneous statistics that were reported in a study detailed in *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*,⁷ by Harvard sociologist Lenore Weitzman, Ph.D. In this book, Weitzman proclaimed that after a divorce women and children suffer on average a 73 percent drop in their standard of living while fathers enjoyed a 42 percent increase in their standard of living. It is almost impossible to underestimate the influence of Weitzman's figures. Her report was quoted in 348 social science articles, 250 law review articles, and 24 appeals cases.⁸ "Furthermore, the U.S. Supreme Court cited Weitzman's figures in at least one of its cases, and even President Clinton cited the statistic in his 1996 budget request."⁹ Weitzman's findings have prompted innumerable activists to suggest that "fathers must compensate mothers for this differential change in their relative economic prospects.

⁷ Lenore J. Weitzman, *The Divorce Revolution*, 1985.

⁸ Hoffman, S. D., and Duncan, G.J. 1988. What are the economic consequences of divorce? *Demography* 25:641.

Proposals have ranged from a call for greater child support or alimony levels and/or disproportionate division of property favoring mothers, to promoting far greater enforcement efforts to collect the child support ordered."¹⁰ However, as even Weitzman herself has admitted, her figures were completely wrong. A thorough analysis of the economic situation for divorced mothers and fathers after divorce, especially for middle and upper-middle class earners, which takes into account all the various factors such as the tax value of child support, child care subsidies, and numerous other factors that must enter into such an analysis to make it valid, indicates that in fact "divorce economically benefits mothers noticeably more than fathers."¹¹ This conclusion, furthermore, has been verified by several other independent researchers.¹²

We have shown that the economic rationale motivating the emphasis that Moffat and many other appeals court cases have placed on collecting fathers' money over facilitating fathers' love was based on a completely false assumption, namely that mothers experience a severe decrease in standard of living after

⁹ Sanford Braver, Ph.D. with Diane O'Connell, *Divorced Dads, Shattering the Myths*, Jeremy P. Tarcher/Putnam, NY, 1998, p. 57.

¹⁰ Ibid. p. 58.

¹¹ Ibid., pp. 70-83.

¹² Ibid.

divorce and that fathers benefit. There is, however, another, equally prevalent, and equally false notion that motivates decisions like that in Moffat. This notion is the widely held belief that fathers are principally the parents who abandon their families. This false assumption is even shared by many who are generally considered champions of fathers. For example, David Blankenhorn, writing in *Fatherless America* asserts, "today the principal cause of fatherlessness is paternal choice...and paternal abandonment."¹³ Similarly, the eminent Australian sociologists Ailsa Burns and Cath Scott have written an important book exploring the calamitous worldwide rise in single-mother families, *Mother-headed Families and Why They Have Increased*. In every land, they note, the conventional wisdom is the same regarding the cause divorce and single-mother headed households. It is "The psychology of men ... the suspicion that many would rather readily abandon wife and children unless pinned in by moral and financial restraints."¹⁴ It is significant that neither Blankenhorn nor these researchers cite even one academic or scientific study in support of their premise. The reason is that there isn't one. In the six-year, ten million dollar study of divorced families by Sanford

¹³ Blankenhorn, D. 1995. *Fatherless America*, pp. 22-23.

Braver¹⁵, the largest study of its kind ever conducted, it was found that "No matter when the question was asked or of whom we asked the question, the wife was identified as the initiator in 63 to 67 percent of the couples, the husband was identified as the initiator in 26 to 34 percent of the couples, and in 4 to 9 percent of the cases, the divorce was a "mutual decision." Thus, by all measures, including the official records of who was "petitioner" in the legal action, the wife would be designated the initiator in about two-thirds of the families, directly in contradiction to the common wisdom."¹⁶

FATHERS AND CHILDREN

There is a massive amount of literature detailing both the positive benefits to children from father involvement in addition to the negative affects of father absence. Prevalent is a common misconception that parenting is a generically conceived "thing" that all parents do. In fact, it is clear from studies that fathers and mothers have different parenting styles, and that both are required for optimum child development, as each complement the other. In other words, we

¹⁴ Burns, A., and Scott, C. 1994. *Mother-headed families and why they have increased*. Hillsdale, NJ: Lawrence Erlbaum Associates., As quoted in Sanford Braver, op. cit., p.126.

¹⁵ The results of the study are the subject of Braver's book, *Divorced Dads, Shattering the Myths*. Op. cite.

are saying that father absence cannot be compensated for simply by more "parenting" from the mother. By restricting the parenting time with the father, or even eliminating it altogether, the child loses a vital component of its upbringing that cannot be replaced from any other source. Fathering is irreplaceable.

What are the benefits of early and continuing contact with the father? As Warren Farrell has discovered, one of the most surprising findings about father involvement is that "the amount of time a father spends with a child is one of the strongest predictors of empathy in adulthood."¹⁷ Farrell theorizes that this may be due to the father's unique style of discipline, especially with regard to the father's style of play which is generally rougher than the mother's. As the child plays roughly with the father, he will normally begin to get too rough, to lose control. This is when the father steps in and sets the boundaries, saying, "No, that's too rough, you can't hit that hard." Because the father tends to discipline in a way that is more direct and immediate, mentioning consequences up front, and "when the boundary is violated, exact the consequences as if it

¹⁶ Sanford Braver, *op. cite.*, p. 133.

¹⁷ Richard Koestner, C. Franz, and J. Weinberger, "The Family Origins of Empathic Concern-A Twenty-Six-Year Longitudinal Study," *Journal of Personality and Social Psychology*, Vol. 58, No. 4, April, 1990, pp. 709-717.

were a deal made between the dad and the child, the child takes the boundary-setting more seriously"¹⁸. The child learns to treat boundaries more seriously and to respect the rights and needs of others. As Farrell points out, "Thinking of another's needs creates empathy."¹⁹

The influence of a father's involvement in the child's academic performance is noteworthy. Students coming from father-present families score higher in math and science even when they come from weaker schools.²⁰

As one researcher found after examining four major surveys, "...even when race, education, poverty, and similar socioeconomic factors are equal, and regardless of which survey was looked at, living without Dad doubled a child's chance of dropping out of high school."²¹

As quoted in Warren Farrell, *Father and Child Reunion*, Jeremy P. Tarcher/Putnam, NY 2001, p. 30.

¹⁸ Farrell, p. 31.

¹⁹ Farrell, p. 31.

²⁰ Bryce J. Christensen, "America's Academic Dilemma: The Family and the Schools," *The Family in America*, Vol. 2, No. 6, June, 1988. Cited in Nicholas Davidson, "Life Without Father: America's Greatest Social Catastrophe," *Policy Review*, Winter 1990, p. 41. As quoted in Farrell, p.31.

²¹ Sara McLanahan and Gary Sandefur, *Growing Up with a Single Parent* (Cambridge, MA: Harvard university Press, 1994), p. 41. The four national surveys are: the National Longitudinal Survey of Youth, the Panel Study of Income Dynamics, the High School and Beyond Study, and the national Survey of Families and Households. The socioeconomic variables that were controlled included race, mother's education, father's education, income, number of siblings, place of residence, and other background differences.

The effect of father-absence is long term. "Even six years after living with mothers, boys scored lower on ten social and an additional ten academic measures.²² And students from father-absent homes score "dramatically" lower on college entrance examinations,²³ and are 1.5 times more likely to be unemployed, not only in their teens, but well into their mid-twenties.²⁴

Even in intact families the father can be uninvolved. However, in intact families that have been studied, father involvement has been shown to be the most likely predictor of high academic performance. "In two-parent families, fathers' involvement, but not mothers' involvement, is associated with an increased likelihood that children in the 1st through 5th grades get mostly "A"s. Among children in the 6th through 12th grades, after controlling for a variety of resources that parents offer at home, fathers' involvement, but not mothers' involvement,

²² John Guidubaldi, Joseph D. Perry, and Bonnie K. Nastasi, "Growing Up in a Divorced Family: Initial and Long Term Perspectives on Children's Adjustment," in Stuart Oscamp, ed., *Applied Social Psychology Annual, Vol. 7: Family Processes and Problems* (Beverly Hills, CA: Sage Publications, 1987), p.212.

²³ Christensen, "America's Academic Dilemma" op.cit., in Davidson, op.cit.

²⁴ McLanahan, op.cit., pp. 48-49, 49-50. Cited in Farrell, p.33.

remains a significant influence on the likelihood that their children get mostly "A"s.²⁵

The National Center for Health Statistics reports that a child living with his/her divorced mother, compared to a child living with both parents, is 375 percent more likely to need professional treatment for emotional or behavioral problems.²⁶ They are also more likely to suffer from frequent headaches²⁷ and/or bed-wetting,²⁸ develop a stammer or speech defect,²⁹ suffer from anxiety or depression,³⁰ and be diagnosed as hyperactive.³¹

²⁵ Christine Nord, DeeAnn Brimhall, and Jerry West, "Fathers' Involvement in their Children's Schools." *U.S. Department of Education, National Center for Education Statistics*, Washington, D.C., 1997. Pp.viii-ix. As cited in Farrell, op. Cit., pp. 33-34.

²⁶ U.S. Department of Health and Human Services, National Center for Health Statistics, "Family Structure and Children's Health: United States, 1988," *Vital and Health Statistics*, [hereinafter *Vital Statistics*/"Family Structure..."] (Hyattsville, MD: Public Health Service, 1991), p. 27, Table 13, "Number of Children 3-17 Years of Age and Percent Treated for Emotional or Behavioral Problems in the Past 12 Months, by Family Type and Social Characteristics: United States, 1988." In the previous 12 month period, 2.7% of children living with their biological mother and father, and 8.8% of children living with a formerly married mother and no father, were treated for emotional and behavioral problems.

²⁷ *Vital Statistics*/ "Family Structure..." op. cit., p. 19, Table 5, "Number of Children 17 Years of Age and Under and Percent Who Had Frequent Headaches in the Past 12 Months, by Family Type and Selected Demographic and Social characteristics: United States, 1988." In the previous 12-month period, 2.5% of children living with their biological mother and father, and 4.1% of children living with a formerly married mother and no father, had frequent headaches.

²⁸ *Ibid.*, p.21, Table 7, "Number of Children 17 Years of Age and Under and Percent Who Had Chronic Enuresis in the Past 12 Months, by Family Type and Selected Demographic and Social Characteristics: United States, 1988." In the previous 12 month period, 2.3% of children living with their biological mother and father, and 2.9% of children living with a formerly married mother and no father, had chronic enuresis (bed-wetting).

It has been established that living in mother-only homes contributes more than anything else to suicide-for both sexes.³² Coincidentally with the rise in divorce and the growing number of single-mother headed households, the suicide rate among white American men between the ages of fifteen and twenty-four has increased by 50 percent since 1970.³³ Tragically, and frighteningly for the instant case, boys in their early twenties are six times as likely as girls to commit suicide.³⁴

²⁹ Ibid., p. 20, Table 6, "Number of Children 17 Years of Age and Under and Percent Who Had a Stammer or Other Speech Defect in the Past 12 Months, by Family Type and Selected Demographic And Social Characteristics: United States, 1988." In the previous 12-month period, 2.3% of children living with their biological mother and father, and 3.2% of children living with a formerly married mother and no father, had a stammer or other speech defect.

³⁰ Ibid., p.10 In the previous 12 month period, 39% of children living with their biological mother and father, and 55.3% of children living with a formerly married mother and no father, had one or more indicators of anxiety or depression.

³¹ Ibid., p. 10. In the previous 12-month period 34.9% of children living with their biological mother and father, and 51.1% of children living with a formerly married mother and no father, had one or more indicators of hyperactivity.

³² Carmen Noevi Velez and Patricia Cohen, "Suicidal Behavior and Ideation in a Community Sample of Children: Maternal and Youth Reports," *Journal of the American Academy of Child and Adolescent Psychiatry*, Vol. 273, 1988, pp. 349-356.

³³ John S. Wodarski and Pamela Harris, "Adolescent Suicide: A Review of Influences and the Means for Prevention," *Social Work*, Vol. 32, No. 6, November/December, 1987, pp. 477-484.

³⁴ U.S. Department of Health and Human Services, National Center for Health Statistics, *Vital Statistics of the United States* (Washington, D.C.: G.P.O., 1991), Vol. II, Part A, "Mortality" p. 51, Table 1-9 "Death Rates for 72 Selected Causes by 5-Year Age Groups, Race, and Sex: U.S., 1988."

Among adolescents, those who experience their fathers as being distant are much more likely to use drugs heavily.³⁵ It has been established that the most important factor by far in preventing drug use is a close relationship with Dad.³⁶ We have already cited a study that shows fully 90 percent of homeless or runaway children are from fatherless homes.³⁷ Most gang members come from mother-only households.³⁸ As to other pathological behavior in adolescence, "Former neo-Nazi T.J. Leyden, who joined the skinheads after his parents divorced, reported that the neo-Nazis look for "young, angry kids who need a family"-which, in practical terms, usually means that they need a dad."³⁹ As Farrell points out, "If a child has been alienated from his dad, lives with his mom, and goes to a school with mostly female teachers, from where does he receive his male

³⁵ P. Frankel, C.F. Behling, and T. Dix, "The Parents of Drug Users," *Journal of College Student Personnel*, Vol. 16, No. 3, 1975, pp. 244-247.

³⁶ The only factor more important than father involvement was the child's age. Robert H. Coombs and John Landsverk, "Parenting Styles and Substance Use During Childhood and Adolescence," *Journal of Marriage and the Family*, Vol. 50, May 1988, p. 479, Table 4. The factors considered were age, sex, ethnicity, social class, closeness to parent, parent trust, parental rules, parent strictness, etc. Age accounted for about 17% (.17 out of a max of 1) of the variation in drug use among the youth in their sample; positive father sentiment (closeness) accounted for another 10%, and no other factor accounted for more than 2%.

³⁷ U.S. Bureau of the Census. As cited in Farrell, op. cit. P. 35.

³⁸ Francis Ianni, *The Search for Structure* (NY: Free Press, 1989). As cited in Farrell, op. cit. P. 35.

³⁹ Warren Farrell, op. cit., p. 35. Quoting Duke Hefland, "L.A. Skinhead Forms Unlikely Alliance," *Los Angeles Times*, August 12, 1996.

identity? It is exactly those circumstances that make young men turn to gangs for male approval and love."⁴⁰

There is a significant correlation between living in a home without the father and serious criminal activity. Seventy-three percent of adolescent murders come from mother only homes.⁴¹ Eighty percent of rapists who were evaluated as raping out of anger and rage came from father-absent homes.⁴² Ninety percent of adolescent repeat arsonists lived with only their mothers.⁴³ Furthermore, 65 percent of juvenile prisoners were brought up without their fathers.⁴⁴

In a large study of 11,000 individuals in different urban areas it was found that poverty was not nearly the primary factor in predicting higher rates of crime, rather, "the more

⁴⁰ Farrell, op. cit., p. 35.

⁴¹ Dewey G. Cornell (University of Virginia), in "Juvenile Homicide: Personality and Developmental Factors," final report to the Harry Frank Guggenheim Foundation, New York, NY, 1989.

⁴² Raymond A. Knight and Robert A. Prentky, "The Developmental Antecedents of Adult Adaptations of Rapist Sub-Types," *Criminal Justice and Behavior*, Vol. 14, December, 1987, pp. 413-414. Knight and Prentky labeled this type of rapist as one with "displaced anger."

⁴³ Wray Herbert, "Dousing the Kindlers," *Psychology Today*, January, 1985, p. 28.

⁴⁴ U.S. Department of Justice, Bureau of Justice Statistics, *Special Report: Survey of Youth in Custody, 1987* (Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics, Sept. 1988), p. 3, Table 2, "Family Structure and Peer Group Involvement of Youth in Long-Term, State-Operated Juvenile Institutions, year end 1987."

absent the father, the higher the rates of violent crime."⁴⁵ As Farrell points out, "When the children in homes with fathers with more income were compared to the children in homes with fathers with less income, there was no difference in the rates of violent crime. **The difference in crime rate could be predicted only by comparing the children without fathers at home to the children with fathers at home.**"⁴⁶

SULLIVAN V. SULLIVAN

At this point it would be well to ask whether the foregoing evidence and observations are relevant to the case that is the subject of this appeal, namely, Sullivan v. Sullivan. Tragically, they are all too relevant. Since this case began in 1993 there have been, as best we have been able to glean from the 25 page and hopelessly confusing and garbled Registry of Actions, at least 35 separate OSC's filed, with nearly 100 appearances in court. This has resulted in a record, including transcripts, of upwards of 10,000 pages! Approximately 10 of the OSC's were filed by the father, almost always seeking to fix his vacation visitation or to clarify the visitation schedule. All of the rest, as many as 25, were filed by the mother, all

⁴⁵ Farrell, *op. cit.*, p. 38. Quoting: Douglas A. Smith and G. Roger Jarjoura, "Social Structure and Criminal Victimization," *Journal of Research in Crime and Delinquency*, Vo. 25, No. 1, February, 1988, pp. 27-52.

with the intent to either limit in some way the father's contact with the child, or, in about 20 of the OSC's, asking for complete termination of overnight visitation altogether. Never has there been any showing, finding, or even allegation that the father's conduct has been threatening or violent, the usual reasons for termination of overnights, rather, they have included such trivial allegations as his having been 15 or 20 minutes late returning the child from his visitation (the father is required to drive approximately 45 minutes through rush-hour traffic in one of the most congested areas of Orange County). Another OSC included the allegation that on return from visitation with the father in the middle of August, the child had a sunburn. In another, the allegation was that the child had lost some weight. In what would appear to be an attempt by the court to mollify, placate, or even appease the mother, the court ordered first one parenting class, then yet another, first one custody evaluation, then yet another, and then later step-parent counseling for the father. The effect has been to gradually "raise the bar" for the father.

Never once, in the entire history of this case, as near as we could determine, was the mother ever reprimanded or even criticized for her relentless attack on the father. Finally,

⁴⁶ Farrell, *op. cit.*, p. 38.

incredibly, it was the father who was criticized and punished for being excessively litigious for his attempts to protect his relationship with his son. In the end, the mother's "tenacity", to use the term from Moffat, won the day. Finding that the father's litigiousness was harmful to the child and the mother, the court reduced his visitation to only one overnight per month, with the requirement that he undergo step-parent counseling, at a cost of approximately \$1000 per month, the scope and treatment for which he was directed to report to the mother's lawyer, without any finding that he was in fact able to afford such counseling (the father is unemployed). In other words, the court finally "raised the bar" to a height over which the father simply could not jump. As a result, little seven-year-old Nicholas Sullivan has not seen his father since December 28, 1999, nearly one and a half years.

What has been the effect of all this on Nicholas, the child? Are the studies we have quoted above relevant in any way to him? Tragically, the answer is an emphatic "yes". Has he been benefited by the court's and mother's enforced father-absence? Absolutely not.

Nicholas is seeing as many as four different psychiatrists for various behavioral problems, including wetting his bed, his pants, and difficulty in controlling his temper. He is also on

a cocktail of cocaine-like drugs (Ritalin, Proxil, Dexedrine, and Methylin) in treatment of ADHD. Tragically, he is not alone in that he has become a victim of a system that fails to do anything about it when single mothers fail. While it would not be scientific to draw a direct causal relationship between his mother's successful extirpation of the father from this boy's life and his psychological difficulties that have been exhibited thus far, nevertheless, it is very possible that there is a strong correlation. It would also be completely reasonable to infer that if he has already fallen victim to two significant indicators of father-absence, he is very likely in the future to experience yet more symptoms of the pathology as he gets older and he continues to be deprived of a loving and caring relationship with his father. As we have shown, he is at high risk of delinquency, poor academic performance, dropping out of school, running away from home, drug addiction, crime, prison, and suicide.

We would ask this court to consider this question: Why has the court never entertained the possibility that the difficulties faced by Nicholas are not due to anything done by the father, but instead are due to the mother's relentless, unremitting and finally successful elimination of Nicholas's right to enjoy a loving and nurturing relationship with his own father? Why is it that what for the mother is considered tenacity and perseverance, is for the father considered

excessive litigiousness? Given that young Nicholas Sullivan, who has not seen his father since December 28, 1999, is already exhibiting several at risk characteristics, why would this court want to take the chance that one day longer without his father's involvement might lead to even worse results?

Dr. Frank Williams, of Cedar Sinai Hospital, has written a paper in which he discusses the concept of "parentectomy"⁴⁷. One short passage from Dr. Williams' address will be all too recognizable to anyone familiar with what happens in our family courts:

"In the worst consequential wake of a parentectomy , the victim parent gives up and walks away from the surgically-minded adults and the victim children. When this happens, the victim parent walks away from the chronic warring battlefield with intense ambivalence and confusion, faced with an insoluble dilemma. He or she knows that the chronic war in which one parent tries to erase the other parent, and the other parent struggles to stave off the parentectomy, is itself destructive to the children, as it causes ongoing tension and stress in them, as well as in the ongoing interaction between the children and each of their parents. On the other hand, if a mother or father gives up and walks away from the war, the children feel abandoned by a loved and needed parent, and unusually resent and become depressed over the abandonment."⁴⁸

This is exactly what has happened to Kevin Sullivan, the Appellant in this case.

⁴⁷ "Preventing Parentectomy Following Divorce", Keynote Address, Fifth Annual Conference, National Council for Children's Rights, Washington DC, October 20 1990, By Frank S. Williams M.D.

⁴⁸ Ibid., pg.1

RECOMMENDATIONS

As we noted in our Application for leave to file this Amicus Curiae brief, if this were an isolated case, it would be egregious enough. However, the real outrage is that for every case that makes it to the Appellate level, there are hundreds, even thousands that do not, because of the dynamic described above by Dr. Williams. The only reason that this case is coming to this court's attention is due to the superhuman perseverance of the father.

This case presents an excellent, albeit tragic, opportunity for the court to address the issues of abuse of process that were discussed in Bidna v. Rosen, 19 Cal. App. 4th 27, wherein the parent with the most money wins, regardless of the facts, by "wearing the other party and the court down" with repeated court actions designed to wage a legal war of attrition of valuable resources of money and time. It is also the perfect case to examine the other, equally vital issues of judicial bias, improper Judicial affiliation with special interest groups (the judge in this case received and accepted an award from the women's activist group Harriet Buhai Center), admissibility of evidence, proper judicial case management, and the extent to which the safe, legal activities of the non-custodial parent during visitation can or should be restricted or controlled by the court.

Whether this court can "fix" what has happened to Kevin Sullivan and his son, Nicholas is a difficult question. It may be that this case is much like the scene of a fatal accident, or even the scene of a multiple homicide. Those charged with the authority to investigate can examine the evidence, assign blame and guilt, and even make recommendations for the future in order to avoid the repetition of the accident or crime, but they can't bring back the dead. Perhaps this appeal and the resultant discussion that it leads to will be more in keeping with that of an autopsy, or post mortem, rather than a "remedy". I, for one, hope that is not so. I can attest to the deep grief that has engulfed the father in this case. I can only guess at the pain and suffering that little Nicholas Sullivan has endured with the "death" of his father.

What, realistically, can this court do in order to insure that the tragedy that has befallen this father and son does not happen to others? Obviously, the problem is comprehensive enough that its solution will require a sea change in public perception, involving social, political as well as legal reforms. However, much can be accomplished, we believe, with the resources already at the disposal of the court.

The parent child relationship has been traditionally considered sacrosanct, perhaps one of the most fundamental rights of all those recognized by our Constitution. Most

recently, in Troxel v. Granville, No. 99-138 (U.S. 06/05/2000), the US Supreme Court took great pains to outline the significance and importance of the constitutionally protected right to be a parent to ones own child. The decision quoted Stanley v. Illinois no less than four times, for example:

"the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection. A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility." Stanley v. Illinois, 405 US 645, 651; 92 S Ct 1208, (1972)]

The U.S. Supreme Court also recognized that excessive litigation represents a burden on parental rights, and so should be discouraged.⁴⁹

In another case, the United States Supreme Court noted that a parent's right to the companionship, care, custody and management of his or her children is an interest "far more precious" than any property right. May v. Anderson, 345 US 528, 533; 73 S Ct 840, 843, (1952).

The importance of maintaining the parent/child bond is further recognized by California's own statutes relative to the

⁴⁹ "and the parties should not be forced into additional litigation that would further burden Granville's parental right." Troxel v. Granville, No. 99-138 (U.S. 06/05/2000), paragraph 22.

custody and care of children involved in custody disputes. For example:

"The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy..." CAL FAM CODE §3020, b.

Elsewhere we find:

In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Section 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. (CAL FAM CODE §3040, a., 1)

With the foregoing in mind, we would make the following recommendations to this court:

1. Somewhere in the decision rendered by this court in this case, there should appear the words "THE PARAMOUNT CONSIDERATION IS THAT EVERY CHILD ENJOY FREQUENT AND CONTINUING CONTACT WITH BOTH PARENTS". This is not writing new law, nor is it in anyway a "reversal" of the finding in Moffat. It is simply a positive affirmation by this court of the primary need of children involved in divorce and parental separation as has already been enunciated in CAL FAM CODE §3020, b.,

2. Put some teeth into the importance that family court judges must give to the language in CAL FAM CODE §3040, a., 1, to wit, "the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Section 3011 and 3020." As things stand now, this statute is rendered essentially a nullity by an over-emphasis on the concept that family court judges shall have "the widest possible discretion" with regard to deciding custody. If a 50/50 shared parenting plan is absolutely impractical, then primary custodianship should be assigned to the parent who will most likely work to foster a healthy relationship with the other parent. Filing repeated OSC's to terminate visitation should be a *prima facie* showing that the parent propounding the OSC's is not willing to perform this duty, and therefore, custody would be reversed. Fostering a healthy and loving relationship between the other parent and the child should be interpreted as a "duty" owed both to the other parent, and to the child. Failure in that duty should have immediate consequences.

3. Stop attempting to determine which parent is the best parent. It should be assumed that both parents have faults. It, however, should also be assumed that the PARAMOUNT CONSIDERATION is that the child loves both parents, and furthermore needs a relationship with both parents,

unimpeded, in order to develop into a happy, secure and functioning member of society.

4. Forbid the inclusion of hearsay evidence from all custody hearings. There is absolutely never a reason to abandon the Evidence Code, as it is painfully apparent was done in the case before this court now.

5. Use this case to further examine the difficulties that were discussed by all the judges writing in Bidna. Excessive litigation of custody and visitation issues should be recognized for what it is: a particularly insidious form of child abuse in that it serves only to estrange parents even further, and subsequently leads to the destruction of the parent/child relationship.

On behalf of all the members of ANCPR, and all noncustodial parents and their children, I would like to offer my sincere thanks for giving us the opportunity to present our perspective on these vital issues.

Respectfully submitted on this date, February 21, 2001,

Lowell Jaks
President, ANCPR