

Successfully
Navigating
Family Court
in New York

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Preface

After practicing law in Family Court for nearly 20 years, I realized that most people come to Family Court—either for their own matter or with a family member or friend—and do not know what to expect. They have little advance knowledge of what happens in Family Court and virtually no guidance for getting through what is usually a stressful process. It is my hope that this book will provide some much-needed guidance and answer some of the frequently asked questions about Family Court in New York.

The information contained in this book is general in nature and should not be construed as legal advice. I strongly urge every Family Court litigant to retain an experienced attorney, and in Chapter Three I provide tips for retaining and working with an attorney.

The views and opinions expressed in this book are my own, and they do not purport to reflect the policies of the Legal Aid Society of Orange County, Inc., where I am employed as a Family Court attorney, nor do they reflect the official policies of the Family Court of the State of New York.

The Family Court of the State of New York is a statewide court system with a court in each county. Although all Family Courts in New York adhere to the same laws, each county's Family Court has developed its own local practices. Since 1999, I have practiced law on a full-time basis exclusively in Orange County Family Court. The practices and procedures I describe in this book reflect the manner in which Family Court cases are handled in Orange County, New York.

In this book, I use stories to illustrate Family Court concepts. The stories are fictional and based on an amalgamation of the thousands of cases I have been involved with over the years.

They do not reflect the actual identity of any clients or the facts of any particular case.

This book is not intended to provide an in-depth recitation of family law. For that, I refer the reader to Merrill Sobie's comprehensive treatise, *New York Family Court Practice*. Also, because Family Court does not have jurisdiction over the dissolution of marriages and the distribution of marital assets, this book does not discuss matrimonial law issues that are the subject of divorce proceedings in Supreme Court.

What I do hope to provide in this book is an overview of what typically happens in Family Court and how best to navigate its often stressful and emotional landscape. I hope to provide insights and practical tips for getting through what is usually a difficult time for the people who find themselves in Family Court.

Introduction

If you have to go to Family Court, you are probably in the middle of one of the most difficult times of your life. You are going through a breakup of your family. Or you are dealing with domestic violence. Or your child is in trouble.

Family Court is an emotionally charged place. People say hateful things to one another. People argue and yell. People cry.

I am a Family Court attorney. My job is to help my clients get through difficult times. I have witnessed the arguing and yelling and crying on a daily basis for almost 20 years. What I have learned—and what I am here to tell you—is that there is a better way to get through the difficult times.

In this book, I will explain the shift in focus needed to make the Family Court experience better and more productive for everyone involved. I will describe what happens in Family Court and provide guidance for resolving each type of case.

But first, a story...

Clarissa and Will: The Day Everything Went Wrong

Clarissa's children awoke to the sound of police sirens. After she had tucked them into bed, Clarissa had called Derek over for a quick romp while Will, her fiancé, worked the evening shift as the manager of a local bistro.

It was all very fun and exciting for Clarissa, a stay-at-home mom whose relationship with Will had become rather boring lately. But the fun quickly ended when Will came home early and became enraged at what he saw. Will dragged Derek into the front yard and beat him to a bloody pulp.

The neighbors called the police. The police arrested Will and charged him with assault. The children looked out the window in horror as they saw their daddy handcuffed and taken away in a police car. Derek was taken away by ambulance to get medical care.

Clarissa tried to comfort her scared and confused children. After she finally got them back to sleep, she opened a bottle of wine, cried, and drank it all.

Beth, a Child Protective Services caseworker, knocked on the door the next morning. Clarissa was clearly hungover, and the dirty dinner dishes from the night before were piled in the kitchen sink with leftover bits of macaroni and cheese stuck to them. The empty wine bottle and glass were on the counter.

As Beth was taking off her coat, four-year-old Kaylee yelled, “Mommy, baby Joey smells like poop!” Clarissa ran upstairs, with Beth following close behind. Beth saw that Kaylee was calling from the bathtub, where she was happily playing in bubbles, unattended. Baby Joey, who indeed had a full diaper, was holding on to the side of the bathtub and pulling himself up, hoping to jump into the tub to play with his sister.

Clarissa hustled Kaylee out of the bathtub and wrapped her in a towel. As Clarissa was changing Joey’s diaper, Kaylee whispered to Beth, “Do you want to see my daddy’s gun? When he and Mommy fight, he says he’s going to shoot her with it.” Little Kaylee led Beth to the master bedroom closet, where a shotgun was propped up next to a box of ammunition and a stash of cocaine.

By the end of the morning, Will had posted bail and had come back to the house to tell Clarissa that it was over and he was filing for custody of the kids. Clarissa said she would fight him every step of the way because the kids belonged with her, and besides, she was going to seek an order of protection because of his threats and violence. Meanwhile, Beth had started the process of filing a neglect petition against both parents. And so, Clarissa and Will found themselves in Family Court.

PART I

Navigating Your Way Through Family Court

CHAPTER ONE

What Is Family Court?

In New York, Family Court is a place where people go to resolve disputes that involve children or that arise out of certain intimate or familial relationships. Perhaps surprisingly, Family Court does not have jurisdiction over divorce cases. The dissolution of a marriage and the distribution of marital assets are handled in Supreme Court.

Family Court only has jurisdiction over the types of cases that are listed in New York's Family Court Act. The Family Court Act provides that the following types of matters can be litigated in Family Court: adoptions, child custody and guardianship, child abuse and neglect, termination of parental rights, paternity, child and spousal support, juvenile delinquency, persons in need of supervision (PINS), and family offenses.

With the exception of cases involving child and spousal support, Family Court does not have jurisdiction over matters concerning money or property. Disputes concerning large sums of money are handled in Supreme Court, and disputes involving personal property or small sums of money are handled in Small Claims Court.

Family Court is also not the place for matters involving wills, estates, the guardianship of incompetent people, or name changes. These matters are handled in Supreme Court or Surrogate's Court.

Family Court is a civil court. No one comes out of Family Court with a criminal conviction. However, it is possible to leave Family Court in handcuffs and end up in jail after violating a court order. Family Court judges also are authorized to issue warrants for the arrest of people who fail to show up for court.

There are trials in Family Court, but there are no jury trials. Family Court is a court of law, but oftentimes the law is applied in a less formal manner than in other courts, and sometimes the proceedings in Family Court seem more like social work than legal work.

Family Court is arguably the most important court in the judicial system. The decisions made by Family Court judges determine, among other things, where and with whom children will live. These decisions affect the trajectory of children's lives. They determine what experiences children will have and to what values and influences children will be exposed. The decisions of Family Court judges also profoundly affect the lives of parents. Family Court judges have the authority to reach into the most private sphere—that of family life—and dictate when and under what circumstances parents can be with their children. Family Court judges have an enormous responsibility—they have to sift through all of the evidence and the conflicting and often exaggerated versions of events and arrive at decisions that keep children and adults safe and well while also respecting the sanctity of family bonds.

CHAPTER TWO

A Shift in Focus

Successfully navigating Family Court requires a shift in focus. In most courts, each party is trying to win the case. For example, in Supreme Court, the cases frequently involve money. One party wants to get more money, and the other party wants to pay less money. In County Court and the local justice courts, the cases involve criminal matters. The prosecutors want to maximize convictions and sentences, and the defendants want to minimize charges and punishments.

Family Court is different. Or at least it should be. Family Court cases primarily involve the care and protection of children. They also involve the care and protection of adults after intimate relationships have gone awry.

People come to Family Court when they are hurt and angry. As a result, they want to win their case. They want to punish the other party. They want to prevent the cheating spouse from ever seeing the children. They want the deadbeat parent to go to jail. They want the judge to hear every detail of every fight and read every profanity-laced text message and decree that they are completely right and the other party is completely wrong, as well as a liar and an evil person.

But after handling thousands of cases in Family Court, I can tell you that people almost never leave Family Court with the emotional satisfaction and vindication that they crave. What they do leave Family Court with is a court order.

A court order is issued at the end of every Family Court case, and it can be seen as the solution to the problem that brought the parties to Family Court in the first place. In a custody case, the order sets forth when the children will be with each parent. In a child support case, the order sets forth

how much money the non-custodial parent has to pay. In a neglect case, the order sets forth a list of things parents must do to prevent their children from being removed from their home or to get their children returned from foster care.

Each person's goal in Family Court should be to end up with an order that he or she can live with. Although a common view in the courthouse is that a good settlement is one that no one likes, I believe that an ideal settlement is one that everyone likes because it resolves the problems that brought the parties to Family Court.

The shift in focus needed to navigate Family Court successfully is this: ***look at your Family Court case as a problem that needs to be solved. Then work toward getting to an acceptable resolution.***

Once you see your Family Court case as a problem to resolve, you can begin to resolve it. To do so, you need to identify the issues in your particular case, apply the appropriate law to the facts of your case, consider the various possible outcomes, and then implement the best solution.

But How Do I Handle All the Hurt and Anger I Feel?

The extreme pain, hurt, anger, and despair that accompany virtually every Family Court case cannot and should not be denied or minimized. The time preceding and during a Family Court case may be the very worst time in a person's life. Every person who works in Family Court should be sensitive to the anguish felt by the people involved in a Family Court case.

While the pain is real and should be respected, the place to resolve the emotional issues is outside of Family Court. Ideally, each adult and child involved in a Family Court case would seek support and counseling from a mental health therapist. The goal would be to gain an understanding of the emotional issues that led to the problems that brought the parties to Family

Court. If, for whatever reason, mental health counseling is not available, each party to a Family Court case should turn to a supportive friend or relative to talk about the feelings and issues that come up during the Family Court process.

CHAPTER EIGHT

A Guide to Resolving Guardianship Cases

Mary and Karen's Story: The Problem

Mary was the mother of two young girls. Her husband abandoned the family. Mary suffered from bi-polar disorder. When she took her medication, she was able to parent her daughters effectively. Her illness sometimes got the better of her, however, and when it did, she had to be hospitalized. After several such hospitalizations, her sister Karen filed for guardianship of Mary's daughters. The judge gave temporary guardianship to Karen at the beginning of the case, over the objection of Mary's attorney. The case then dragged on for about a year, in part because Mary was hospitalized on some scheduled court dates. By the end of the case, the children were used to living at their Aunt Karen's house. The problem in Mary and Karen's case was whether the children should returned to their mother or continue to live with their aunt.

A guardianship case involves a non-parent who is seeking custody of a child. In general, parents have a superior right to parent their children as compared to all non-parents. A non-parent cannot be awarded guardianship just because the child may, by some measure, be better off in the non-parent's home. Being richer, smarter, more stable, or inhabiting a nicer home than the child's parent is not enough.

A non-parent may only petition for guardianship if the child's parent is unfit, persistently neglectful, has surrendered or abandoned the child, or if other extraordinary circumstances exist. Even if a potential guardian establishes that such extraordinary circumstances exist, the court must then determine whether it is in the best interests of the child to live with the person seeking to be the child's guardian.

In the leading case about guardianship, a fifteen-year-old girl named Joanne gave birth to a baby girl. Joanne's mother persuaded Joanne to give the baby to Mrs. Jeffreys, a friend of the family. Mrs. Jeffreys then raised the child for seven years. Joanne grew up, attended college, and wanted her child back. The Court of Appeals held that although Joanne was not unfit or neglectful and had not surrendered or abandoned her child, the fact that the child had lived with Mrs. Jeffreys for seven years constituted extraordinary circumstances. Consequently, the case was sent back to Family Court for a determination of whether staying with Mrs. Jeffreys or returning to Joanne was in the child's best interests.

Other extraordinary circumstances that may cause a non-parent to obtain guardianship of a child include cases in which the parent has a chronic mental illness or a persistent substance abuse addiction that renders the parent unable to take care of the child.

A non-parent who seeks to become a child's legal guardian must jump over more hurdles than a petitioner in a regular custody case. In addition to filing a guardianship petition, potential guardians must complete a guardianship packet. They must be fingerprinted. They must provide a list of all of their past addresses. They must submit to a background check to see whether they have any criminal history or any history of abusing or neglecting children. They also may be subjected to an inspection of their home. Once these preliminary steps have been taken, the guardianship case proceeds like any other Family Court case. At the end of a guardianship case, the judge issues a court order, and the Family Court Clerk issues letters of guardianship.

Step-Parent Guardianship

Sometimes step-parents end up seeking guardianship of their step-children. A person may marry a person who has a child from a prior relationship and thus become that child's step-parent. The married couple may then have a baby and raise the half-siblings together. If the couple then separates, the step-parent has no legal standing to seek custody of his or her step-child. But it may be in the siblings' best interests to continue to grow up together. Consequently, the step-parent would have to file for custody of his or her biological child and guardianship of his or her step-child. Both of the step-child's biological parents would have to be respondents in the guardianship case. The issue would be what living arrangement is in the best interests of the children. In such a case, preserving the sibling bond would be of utmost importance.

Mary and Karen's Story: The Solution

Mary and her sister could not reach an agreement about where Mary's children should live. Mary insisted that she could parent her children and that the children deserved to live with their mother, not their aunt. Karen insisted that Mary's mental illness caused her to be an unfit parent. The case proceeded to a trial. After reviewing all of the evidence, the judge ultimately agreed with Karen that in this particular case Mary's chronic illness rendered her unfit to parent the children, and that it was in the best interests of the children to live with their aunt. Accordingly, the judge granted Karen guardianship of the children. Mary was permitted to spend time with her children on alternate weekends and two evenings per week. This arrangement ensured that the children were in a stable home, and it also provided Mary and the children with plenty of time together to maintain a close and loving bond.