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REPORT ON THE CHILDREN'S COURT OF CONCILIATION, A DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES*

By HON. LOUIS H. BURKE †

I. WHAT IT IS.

The Children's Court of Conciliation is a regular department of the Superior Court of the State of California in and for the County of Los Angeles. Its purpose is to preserve and protect family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

II. HISTORICAL BACKGROUND.

The law authorizing formation of a Children's Court of California was enacted in 1939, and the first court in California under the new law was officially opened on September 26 of that year in Los Angeles.

The law was patterned after the French Conciliation Law of 1886 and the Wisconsin statutes of 1933 creating a department of conciliation as well as the Michigan statutes of 1919. The California law has been codified and consists of sections 1730-1772 of the Code of Civil Procedure. Save and except with respect to certain administrative matters provided for in the law, the original statute has never been amended, and only in certain very minor respects have its provisions ever been reviewed by any California appellate courts.

III. EFFECTIVENESS.

Only a few of the metropolitan counties of the state have taken advantage of the law and created a conciliation court, and even in Los Angeles, where it has been in continuous operation since 1939, it cannot be said that its procedures have made more than a substantial dent in the overall devastating and overwhelming divorce picture. This can be seen by the fact that over 2000 divorce actions a month are filed in Los Angeles County, with only approximately 100 matters being referred to the Conciliation Court each month.

In saying this I do not wish to infer that its operation has not been worth while. Last year, for example, over 1200 Conciliation Court actions were filed and reconciliations were affected in over 400 of such cases. There were 839 children involved in the cases

* Address given by Judge Burke at the Annual Convention of Colorado State Bar Association, Colorado Springs, October 16, 1954.

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where reconciliations were accomplished. This year, with a heavier load, an even higher percentage of success is being achieved, with reconciliations being effected in from 35 to 45 per cent of the cases completed in the Conciliation Court.

The failure of the program to accomplish a more substantial result in the light of the overall picture is due to several situations which are incidental to the program and do not constitute basic shortcomings of the plan itself. For example, in order to protect the privacy of the children and families involved, the Court seals the files. Consequently, practically no publicity results in the public press, and only a small segment of the four and a half million people residing within the county are even aware that the Court exists.

A number of years ago some attorneys specializing in the divorce field saw in the conciliation procedure a ready weapon to delay the granting of temporary orders of alimony and child support in divorce proceedings by the filing of petitions for conciliation. This was done in many cases where there was no real desire on the part of either party to consider reconciliation. Thus, the Court became bogged down in proceedings which should never have been brought before it, and in addition it suffered the disrespect of a segment of the bar who felt that it was merely a stumbling block.

This latter situation has been removed during the past year by providing that the filing of a petition for reconciliation in a previously filed divorce action shall not operate as a stay of proceedings in the divorce court. The conciliation proceedings take place in their regular course, entirely independent of the securing of temporary orders in the divorce proceedings. Robbed of their value as a weapon of delay, we now find that proceedings are filed in the Conciliation Court only in cases where at least one of the parties has a real desire to effect a reconciliation. I have taken pains to give you this picture so that I may not create the impression that our conciliation process has proven a panacea for the alleviation of divorce evils in our state. On the other hand, I want to stress that in my opinion it provides a vehicle under which a tremendous amount of good has been accomplished and in which I have very strong hopes for the future.

A question with which we are often met in estimating the effectiveness of the work of the court is, "How long do these reconciliations last?" Previous estimates of officials of the court indicate that in approximately two-thirds of the cases where reconciliations are effected the parties remain reconciled. In one third they part again at some later date. In my surveys of the work of the court during the past year we have found that after a six-months interval from 75 to 85 per cent of the reconciled couples are still reconciled, which is most encouraging.

IV. THE PROCEDURE OF THE COURT.

Prior to or after the filing of any action for divorce either

spouse or both may file a petition in the Conciliation Court. The forms are provided at the expense of the County and the law provides that no fees shall be charged for the filing or for the performance of any duty by any officers pursuant to the law. Upon the filing a notice goes out inviting the parties to attend an informal conference before a commissioner to assist in adjusting any difficulties which may exist in the home. In the event the petition is filed in a matter where a divorce action has previously been filed then copies of the notice go to the attorneys of record as well as to the parties. If necessary, the Court issues a citation to any respondent to require him to appear.

The hearing is conducted informally as a conference or a series of conferences. With the consent of both of the parties the Court may also invoke the aid of physicians, psychiatrists or of the pastors of any religious denominations to which the parties may belong. Such aid, however, is not at the expense of the County.

Where the petition is filed before a divorce action is instituted it operates as a stay *of the filing* of any divorce proceedings for a period of 30 days. This was intended no doubt to provide a "cooling off" period to avert formal action if possible.

At the first conference the commissioner advises the parties that the Court does not have the jurisdiction to compel them to do anything that they do not agree to do. Their co-operation, however, is enlisted for the purpose of reviewing the marriage and the difficulties which have arisen, in an effort to ascertain in a friendly, objective manner if an agreement can be worked out for the eventual reconciliation of the parties. Great stress is laid upon the effect of divorce on the children of the marriage. After having apprised the parties of the approach of the Court to the problem, one of the parties is asked to withdraw temporarily and the other is interviewed as to his views of the marriage.

Counsel for the opposing party is not permitted to be present when the examination is made of the other party. Attorneys are quick to appreciate the fact that the proceedings are in the nature of a compromise or settlement, and that nothing that is to be said is to be used in any subsequent arms-length proceeding between the parties. Attorneys are very helpful in assisting the Court in getting the case history of their own clients, and my experience has been that they are extremely co-operative in their attempts to aid the Court in effecting reconciliation, particularly where there are children involved.

After the commissioner has a preliminary view of both sides of the problem, both parties are brought in and the commissioner advises them of his appraisal of the situation. If deemed advisable, further conferences are held in order to afford a little more time for reflection by the parties and for "cooling off". Often temporary separations are suggested in order to provide for a more clear-

headed view of the situation. If one or more of the parties refuses reconciliation, then the proceedings are terminated.

At the first conference, or at a subsequent conference, when the parties are ready for it, a reconciliation agreement is worked out. In order to facilitate this process I have prepared forms for such an agreement containing many alternate paragraphs on every phase of domestic trouble which has occurred to us. The pertinent pages and paragraphs can be quickly assembled and with minor interlineations can be handed to the parties to read. Each paragraph prescribes a rule of conduct designed to aid in the solving of a particular problem, and viewed from its entirety the agreement provides a marital plan, which if adhered to should avoid many of the common pitfalls of marriage.

When an agreement has been reached the parties execute the document, being forewarned that the Court will make its order requiring them to comply fully with the terms of their agreement. For failure to so comply they are advised that they may be held in contempt of court and subjected to fine and imprisonment to the same extent and in the same manner as is provided by law for failure to comply with any court order. While the parties are still in the office a copy of the agreement is taken in to the judge for approval, the order is signed and copies of the order are served upon the parties. A copy of the agreement and order is supplied to the parties.

Contempt proceedings may later be invoked if there is a willful violation of some material part of the agreement. Contempt proceedings are only permitted to be instituted after the charges have been carefully screeened as, obviously, many of the provisions of such an agreement are not susceptible of contempt proceedings. On the other hand, such matters as restraints against physical violence, limitations upon drinking, gambling, child abuse, absence from home, lack of support are susceptible of such proceedings, and in appropriate cases parties have been sent to jail for the willful violation of their agreements and the Court order. I instituted this procedure of a written agreement and a formal court order in order to dignify and formalize the promises made by parties who desire a reconciliation which, experience has shown, are sometimes insincerely made merely to accomplish the objective of forgiveness and reconciliation.

The first conferences are usually held by a commissioner or a counselor. If such official believes that a conference by the parties with the judge of the department would be helpful to solve a particular situation, such a conference is scheduled for the judge, and the parties are ordered to return. At present I spend approximately one day a week conducting such conferences, although, at the inception of my study of the department, I devoted my entire time to the holding of such conferences in order to get some understanding of the problems and of their solution, following which were developed the forms which are in use in the department.

In addition to the time spent in conferences, at the present time we reserve on our court calendar from 9 to 10 a.m. of every court day for the hearing of orders to show cause in connection with the issuance of restraining orders, orders for temporary support, attorneys' fees, etc. and for the holding of contempt proceedings.

The remainder of the judge's time is devoted to civil non-jury trials which have no connection with the work of the Conciliation Court.

The law provides that the Court shall have jurisdiction over all persons having any relation to the domestic controversy involved, as well as over the particular spouses. It also provides that any person who has any relation to the controversy may be named in the proceedings as a respondent. In view of these provisions, third-party "paramours" or in some instances even "in-laws" are named as respondents and brought into the proceedings.

Where a domestic triangle exists and the husband and wife involved agree that they want to forgive and forget and start over again, upon the condition that the erring spouse will not consort any further with the third party, then the Court makes its order to that effect. Quite often our experience has been that the third party, having been brought into the proceedings much against his or her will, is only too pleased to join in a consent that the Court may make its order that such parties shall not consort with one another thereafter. In one such instance the wife brought a subsequent contempt proceeding before our Court, and after a hearing thereon, the erring spouse and the third party were found to be in contempt of the court order and were sent to jail. As far as I know, this is the first time that an erring spouse and the "homebreaker" have gone to jail for such conduct and it brings to mind a recent article emanating from London to the effect that a weekly Church of England newspaper editorial commenting on homebreakers recently stated that, "Again it seems strange that the guilty co-respondent is allowed so often to go scot-free. A man who breaks open a safe is sent to prison, a man can destroy a home and cause untold misery and not be guilty of any criminal offense at all. In many cases a term of imprisonment would be a more fitting punishment and would act as a deterrent to other homebreakers."

While our action in the case mentioned appears to have done just that, it is important that it be not misunderstood. The result was accomplished only where the husband, the wife and the third party consented to the making of the order. Had the parties refused to consider a reconciliation, then under our law our hands would have been tied and the order could not have been made. This is in harmony with the basic theory of our law that we do not attempt to force married people to live together but only implement reconciliations by suggesting rules for future conduct which after they are agreed upon are made the subject of a court order. We

thereby supply the injured party with some assurance that the erring party or both of them will not resume the same misconduct which brought about the separation. In some few instances the paramours have refused to consent to the order against future consorting, but in such instances, where the erring spouse has nevertheless consented to the order, the Court admonishes the third party that the erring spouse will be under the mandate of the Court and that for failure to comply therewith will be subject to fine or imprisonment or both.

V. PERSONNEL OF THE DEPARTMENT.

At the present time the personnel of the Department consists of a judge of the Superior Court who is designated by his fellow judges annually to preside in the Conciliation Department (with our 4,800,000 population there are now 80 judges of the court who participate in this selection), the regular staff for the conduct of its civil non-jury matters consisting of court clerk, bailiff and court reporter, and a court commissioner, a counselor and a clerical staff consisting of two clerks and a secretary.

VI. CONCLUSIONS.

I have been asked to express my personal views as to the handling of the overall divorce problems. In this connection may I state the following conclusions.

(a) The mere filing of divorce papers with all of the harsh legal language which they entail decreases greatly the possibilities of effecting reconciliations. I would favor, therefore, a requirement in the law that persons desiring to file a divorce or separate maintenance action be required first to file a declaration of intention to so proceed. In conjunction with the declaration of intention it would be necessary to provide for the making of interim orders to preserve the peace, to provide for support, attorney's fees, etc.

(b) I believe that it should be mandatory that in every case where children are involved the matter should be referred to a conciliation court established along the lines of our own Court in order to ascertain if it is possible to work out a reconciliation agreement. I would not give that court any more powers than the basic powers which our department now has. It would be there merely to attempt to conciliate; to afford the opportunity of a hearing of the controversy by a neutral third party who is charged with the responsibility of the State of doing whatever is possible to protect the children of such marriage.

(c) I believe it would be well to prohibit the filing of the actual complaint setting forth the alleged grounds of divorce or separation until at least 60 days after the date of filing the declaration of intention, thereby affording a "cooling off" period.

(d) Such a law should also provide that no hearing of the divorce or separate maintenance action could be had by default or otherwise for a period of 6 months from the date of filing of the

declaration of intention. I believe that the provision in the law for such a waiting period before the hearing of the divorce action would be far more effective in promoting an avenue for reconciliation than is the California plan of providing a year interlocutory period between the initial decree and the final judgment of divorce. Our experience indicates that in cases which are referred to us by the trial courts to attempt to work out reconciliation, our percentage of success is very substantially lower than in cases referred to us before the matter has been prepared or presented for trial.

(e) Finally, I believe that the duty of the enforcement of child support orders should be imposed upon an arm of the court or some other public agency. Recently the California Director of Social Welfare asserted that fathers who desert or do not support their children are costing the state about $50,000,000 a year under the State's Aid to Needy Children program. He stated that there are 35,000 non-supporting fathers in California of whom from 15 to 20 thousand cannot be located by law enforcement officials. Of these fathers over 10,000 are divorced.

Several other states are doing an excellent job in providing for the enforcement of support payments ordered by the court in domestic relations cases. We also have some precedent for delegating such a duty to the probation officer in California since under our juvenile law, where a child is placed by order of the court in a foster home and the court orders a parent to support such child, the responsibility for the enforcement of such support payments is placed on the shoulders of the probation officer. Records indicate that this enforcement has been very effective, whereas in the ordinary divorce case where enforcement is left to the individuals there is a high percentage of default in the making of support payments and ultimately the burden shifts to the State in many cases.

May I add one further personal note on the divorce problem in general. My experience in domestic relations matters in the past several years has led me to conclude that there is a basic cause of divorce which is not usually accorded a place in the ordinary compilation of statistics of divorce causes, such as infidelity, cruelty, alcoholism, financial distress, etc. This cause, I would say, is a lack of religion. Without attempting to make a speech on the subject, it has been increasingly apparent to me that what George Washington said in his farewell address, of the two firmest props of our form of government, namely, religion and morality, could well be said of the institution of marriage. Where marriage is entered into by two people solely upon the materialistic basis, it stands to reason that its future course will likewise be judged on the basis of materialistic values.

The parties entering into a marriage contract to which their Creator is not a party are likely to do so without any pre-marriage counsel or preparation for their new responsibilities. This is not true of a marriage performed by a member of the cloth, who coun-

sels the members of his flock in such matters before the marriage is performed. In such a marriage the word "love" is almost synonymous with the word "sacrifice". The marriage affords two individuals opportunities of serving each other. It is neither a marriage for purposes of utility or for purposes of pleasure, although it may well result in such blessings. Unlike marriages entered into solely for utility and pleasure purposes, the marriage entered into where the spirit of sacrifice plays a part is likely to endure through all kinds of adversities, since adversity merely affords greater opportunities for such persons to shower their blessings upon one another. Marriage entered into solely for utility purposes or purposes of pleasure, as all other types of materialistic marriages, are more likely to fall apart at the seams when the utility purpose or the pleasure diminishes, as is likely to be the case when hard times or adversities strike.

It is my observation, therefore, that what is most needed to cure the evil of divorce is a resurgence of religion and a more mature approach to the responsibilities entailed in a contract of marriage; a contract to which Almighty God should be not only a spectator but a necessary and vital party.

"While it is cheap wit for many to say sneering things of our profession, yet, if you strike from Anglo-Saxon history the thoughts and deeds of her lawyers you rob it of more than half its glory. Blot from American society today the lawyer with all the work that he does and all the power he exerts, and you leave society as dry and shifting as the sands that sweep over Sahara. For the mystic force that binds our civilization together and makes possible its successes and glories in the law, and they who minister at its shrine and keep alive its sacred fires, are you and I and that vast multitude of our co-workers who boast no higher title than of lawyer."

JUSTICE DAVID J. BREWER

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V. G. SEAVY, JR., Managing Editor.