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A Study of Domestic Relations, Juvenile and Family Courts in Tennessee

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A STUDY OF DOMESTIC RELATIONS, JUVENILE AND FAMILY COURTS IN TENNESSEE

The rapid growth of industry in Tennessee, with the concomitant increase in urban population, has emphasized the gravity of certain social problems confronting the state. Not the least among these is the present state of the domestic relations and juvenile courts. The seriousness and complexity of this problem was pointed up in the last session of the General Assembly (79th Session) at which time the Senate passed a resolution authorizing the legislative council to under take a study of the present system and to report their findings and recommendations to the next session of the General Assembly.[1]

Pursuant to this resolution the Council conducted public hearings. Appearing before the Council were various civic and professional groups, including the Tennessee Commission on Youth Guidance. All agreed that the problem exists, and some had very concrete suggestions to make in dealing with it.[2] This note will deal with these recommendations against a historical background of the growth of domestic relations, juvenile and family courts, and their utilization by other states.

BACKGROUND

One of the difficulties of discussing family courts is in giving a clearly defined meaning to the term. A discussion in regard to these courts might center around one of several concepts, *i.e.*, domestic relations, which would deal mainly with divorce and annulment, or juveniles, which would deal mainly with delinquency, desertion and bastardy, or a much broader concept of a court dealing with anything touching on the inter-personal relationships of the family.

Historically, the development in this country has followed one of two different patterns: One, a domestic relations court dealing with divorce and closely related legal rights and duties; and the other, a juvenile court concerned with the neglect, desertion, destitution and delinquency of children.

Domestic Relations Courts

The development of court-granted divorce, as distinguished from legislative divorce, is too familiar to dwell on at any great length. The development and wane of parliamentary divorce in England was followed by the conferring of divorce jurisdiction upon the courts. By the time of the American Revolution, American legislators had developed a real hostility toward legislative divorces and were quite

1. Tenn. Pub. Acts 1955, S. Res., c. 32.
2. See the Final Report of The Legislative Council Committee of the 79th General Assembly, to the Governor and Members of the General Assembly, p. 20 (1956).

willing to vest the courts with such jurisdiction.[3] Accordingly, the existing courts of general jurisdiction were given power to dissolve marriages[4] upon specified grounds. The development of divorce law in this country was statutory, as there was no common law of divorce in England which could be embodied in the American common law.[5]

Juvenile Courts

Although juvenile courts, as such, are of very recent origin in this country,[6] the concept of the state's interest in child welfare through the agency of the court is one found in the common law.

> The common law doctrine that the state or its agent, the court, is the ultimate parent of all such minors as require its care and protection is very ancient in origin. It looks back to the feudal times in England when the crown, through the *inquisitio post mortem,* assumed supervision over the estates of minors in order to realize the fruits of tenure and livery to the overlord. This was succeeded by the court of wards and liveries in the time of Henry VIII, continued to exercise such jurisdiction until its abolition in 1660. The feudal system having run its course and the common law having transformed the feudal duties of the overlord toward his vassals into the legal duties of the king toward his subjects, the jurisdiction of this court was transferred to the court of chancery, through which the king, as we are told by Blackstone, in his capacity of *parens patria* assumed the general protection not only of infant tenants but of all infants in his kingdom, through the keeper of his conscience his chancellor.[7]

In the United States the concept of *parens patria,* was adopted by the state and given recognition by the courts.[8]

It should be noted that the early juvenile courts were designed to deal primarily with neglected, dependent or destitute children, rather than to impose corrective or penal sanctions. The early statutes conferred no criminal powers upon the juvenile courts, and for some time there was no significant development in the handling of juvenile crime.[9] Certain constitutional obstacles had to be overcome in the development of delinquency proceedings. These constitutional difficulties[10] were removed by declaring that juvenile court proceedings were not criminal in nature, hence no question of constitutional guar-

3. See MADDEN, DOMESTIC RELATIONS § 81 (1931).
4. TENN. CONST. art. 11, § 4; TENN. CODE ANN. §§ 16-508, 16-612 (1956).
5. MADDEN, DOMESTIC RELATOINS § 82 (1931); 2 VERNIER, AMERICAN FAMILY LAWS § 62 (1932).
6. CHILDREN'S BUREAU, U.S. DEP'T OF LABOR, THE CHILD, THE FAMILY, AND THE COURT 12 (Bureau Pub. No. 193, 1933). The first real juvenile court in this country was established in Cook County, Illinois in 1899, to serve the city of Chicago.
7. LOU, JUVENILE COURTS IN THE UNITED STATES 3 (1927).
8. Schramm, *Philosophy of the Juvenile Court,* 261 ANNALS 101 (1949).
9. For an interesting but brief discussion on this point, see LOU, *op. cit. supra* note 7, at 5.
10. TENN. CONST. art. 1, §§ 9-16.

antees to one accused of crime was involved.[11] Once the constitutional question was removed, the acceptance of the basic concept of juvenile courts in the states was rapid.

> It is probably the most remarkable fact in the history of American Jurisprudence that these conceptions were adopted almost universally in less than 25 years.[12]

The general background against which the first real juvenile court was created was one of growing awareness that children should be treated differently from adults when charged with criminal acts; *i.e.*, not punitive, but rather rehabilitative treatment of child offenders. This awareness was manifested by piece-meal legislation in a number of states making special provision for trial of children in the regular courts, such as private hearing, or having representatives of social agencies interested in child care take part in the trial, and probation instead of imprisonment.[13] The departure from this piece-meal treatment was made in Illinois in a statute enacted in 1899. The peculiar feature of this statute[14] was the recognition that children accused of criminal acts should not be treated as criminals, but as wards of the state under its guardianship and care. Eliminated was the customary criminal proceeding, and in its place was substituted a practice more nearly that of equity, initiated by a complaint, followed by an investigation, petition, summons and an informal hearing, with disposition of the case within the sound discretion of the court. Next to follow was Colorado, which in 1903 passed a juvenile act[15] vesting authority for such cases in the county court.

Other states subsequently enacted laws creating separate branches of the regular courts with exclusive jurisdiction of juveniles. The rapid growth in this direction was noted by the U.S. Children's Bureau in a 1933 study (quoting from a 1925 survey) which states:

> [A]ll the states except two—Maine and Wyoming—have adopted legislation providing special court organization for dealing with juvenile cases. Every city in the country with a population of 100,000 or more has a court especially organized for children's work.[16]

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11. Cinque v. Boyd, 99 Conn. 70, 121 Atl. 678 (1923) (the act concerning juvenile courts and procedures is not of a criminal nature, and is not invalid for nonconformity to the guaranties pertaining to criminal prosecutions); Juvenile Court v. State *ex rel.* Humphrey, 139 Tenn. 549, 201 S.W. 771 (1918) (the proceedings are not criminal in nature . . . purpose is to provide for welfare of child not to punish); Childress v. State, 133 Tenn. 121, 179 S.W. 643 (1915) (proceeding not penal in its nature, but merely for the protection of the delinquent child).

12. CHILDREN'S BUREAU, *supra* note 6, at 12.

13. LOU, *op. cit. supra* note 7, at 13-18.

14. ILL. ANN. STAT. c. 23, § 190 (Smith-Hurd 1934).

15. COLO. REV. STAT. ANN. § 37-8-1 (1953).

16. CHILDREN'S BUREAU, *supra* note 6, at 12, (since that time Maine has granted juvenile jurisdiction to its municipal courts) ME. REV. STAT. ANN. c.

JUVENILE COURTS IN THE 48 STATES

Rather than enter into a detailed discussion of the different court systems and tribunals found in the forty eight states, each state will be classified according to its type of court.

A classification of the juvenile court systems of the various states was undertaken last year by the legislative council, which resulted in a breakdown of the states into two general classifications: those states which have attached jurisdiction of juvenile matters to pre-existing courts; and those states which have created separate courts with exclusive jurisdiction over juvenile problems.[17] A glance will show that the majority of jurisdictions have been satisfied with adding juvenile jurisdiction to an already existing court system, although this may mean the creation of a special division in existing courts for the handling of juvenile problems in certain areas of the states. Such areas are usually those heavily populated; in the more sparsely settled areas jurisdiction is left in the regular court. Tennessee is an excellent example of such procedure, have some eight juvenile courts in the metropolitan areas of the state, and leaving jurisdiction in the county court in the rural areas.

FAMILY COURTS

As the separate development of juvenile courts and domestic rela-

146, § 2 (1954); in Wyoming juvenile jurisdiction has been granted to the district courts, WYO. COMP. STAT. ANN. §§ 58-601, 602 (1945).

17. Statutes which give juvenile jurisdiction to already existing courts are: ALA. CODE ANN. tit. 13, § 351 (1940); ARIZ. CODE ANN. § 46-116 (Supp. 1951); ARK. STAT. ANN. § 45-202 (Supp. 1955); CAL. WELFARE & INST'NS CODE ANN. § 571 (Deering 1937); FLA. STAT. ANN. §§ 39.01-.02 (Supp. 1955); IDAHO CODE ANN. §§ 16-1802, 1803 (Supp. 1955); ILL. ANN. STAT. c. 23, § 192 (Smith-Hurd 1934); IOWA CODE ANN. §§ 231.1-.2 (1949); KAN. GEN. STAT. ANN. § 38-401 (1949; KY. REV. STAT. § 208.020 (1956); LA. REV. STAT. § 13:1561 (Supp. 1954); ME. REV. STAT. ANN. c. 146, § 2 (1954); MD. ANN. CODE art. 26, § 50 (1951); MASS. ANN. LAWS c. 119, § 52 (1949); MICH. STAT. ANN. § 27.3178 (598.1) (Supp. 1955); MINN. STAT. ANN. § 260.03 (1947); MISS. CODE ANN. §§ 7185-01, -03 (1942); MO. REV. STAT. § 211.020 (1949); MONT. REV. CODES ANN. § 10-603 (1947); NEB. REV. STAT. § 43-202 (1952); NEV. COMP. LAWS. § 1038.1 (Supp. 1949); N. H. REV. STAT. ANN. § 169:29 (1955); N.C. GEN. STAT. § 110-22 (Supp. 1955); N.D. REV. CODE § 27-1601 (1943); OHIO REV. CODE ANN. § 2151.07 (Baldwin 1953); ORE. REV. STAT. § 5.020 (1953); PA. STAT. ANN. tit. 11, § 243 (1939); S. D. CODE § 43.0302 (1939); TENN. CODE ANN. §§ 37-242, -243 (Supp. 1956) TEX. REV. CIV. STAT. ANN. art. 2338-1, § 4 (Supp. 1956); VT. STAT. § 9885 (1947); WASH. REV. CODE § 13.04 (1956); W. VA. CODE ANN. § 4904(48) (1955); WIS. STAT. § 48 (1955); WYO. COMP. STAT. ANN. §§ 58-601, -602 (1945).

Statutes creating special courts having jurisdiction over juvenile matters are: COLO. REV. STAT. ANN. § 37-9-1 (1953); CONN. GEN. STAT. § 2803 (1949); DEL. CODE ANN. tit. 10 §§ 901, 1101 (1953); D.C. CODE ANN. § 11-901 (1951); GA. CODE ANN. § 24-2401 (Supp. 1955); IND. ANN. STAT. § 9-3101 (1956); N.J. STAT. ANN. § 9:18-4 (1939); N.M. STAT. ANN. § 13-8-19 (Supp. 1955); N.Y. CHILDREN'S CT. ACT. § 3; OKLAHOMA. STAT. tit. 20, § 771 (1951); R.I. GEN. LAWS ANN. c. 616, § 2 (1938); S.C. CODE §§ 15-1103, -1111, -1171, -1173, -1221, -1223, -1224 (1952); UTAH CODE ANN. § 55-10-3 (1953); VA. CODE ANN. § 16.1-143 (Supp. 1956).

tions courts grew in the country, many persons working in this field became aware of the fact that juvenile and divorce problems had more than a casual relation. Both courts deal with essentially family problems and often one has a direct relation with the other. This realization led to a movement to create an integrated family court to handle all intra-family relationships.[18] The first court of this nature was established by the Ohio Legislature in 1914 for the city of Cincinnati[19] and was given exclusive jurisdiction over both domestic relations and juvenile cases. Judge Charles W. Hoffman, one of the leaders in this movement, stated the purpose of the family court to be:

> for the consideration of all matters relating to the family in one court of exclusive jurisdiction, in which the same methods of procedure shall prevail as in the Juvenile Court and in which it will be possible to consider social evidence as distinguished from legal evidence. In fact, providing for a Family Court is no more than increasing the jurisdiction of the Juvenile Court and designating it by the more comprehensive term of 'Family Court.'[20]

Within ten years the family court system spread to some six other cities in Ohio.[21] The development received an added impetus in 1948 with the indorsement and recommendations of the American Bar Association.[22]

TENNESSEE COURTS

With the background outlined above—noting not only the development of the various court systems, but also the concepts behind such development—the existing system in Tennessee will be examined. Following such examination will be a brief analysis of the recommendations for improving the Tennessee courts by those appearing before the legislative council.

At the present time the statutes[23] provide that the county judge or chairman of the county court in all the counties of the state shall sit as the juvenile court of that county. The juvenile court has original exclusive jurisdiction of:[24] (1) all cases to adjudicate a child dependent and neglected, delinquent, and/or, abandoned, except that this does not deprive circuit and chancery courts of the right to adjudicate an

18. Shulman, *The Family and Juvenile Delinquency*, 261 ANNALS 21 (1949).
19. Hoffman, *Social Aspects of the Family Court*, 10 J. CRIM. L., C. & P.S. 409 (1919).
20. *Id.* at 416.
21. TENNESSEE COMMISSION ON YOUTH GUIDANCE, A STUDY OF JUVENILE AND FAMILY COURTS WITH RECOMMENDATIONS FOR TENNESSEE, App. B, at 1 (1956).
22. See *Report of the Delegation of the American Bar Association to the National Conference on Family Life*, 73 A.B.A. REP. 302 (1948).
23. TENN. CODE ANN. § 37-242 (Supp. 1956). An exception is provided in those counties or municipalities in which juvenile courts are specially created by private acts of the legislature.
24. *Id.* § 37-243.

abandonment, where abandonment has been alleged in a petition to adopt; (2) all cases to appoint a guardian of the person of a child, except that in any county where there is or may hereafter be created a special juvenile court, the county court in such county shall have concurrent jurisdiction with such special juvenile courts to appoint a guardian of the person of a child where such county court has assumed jurisdiction to appoint a guardian of the estate of such child; (3) all cases to terminate parental rights where a child is found to have been abandoned for four consecutive months immediately preceding institution of an action or proceeding to declare the child to be an abandoned child, this however does not deprive circuit and chancery courts of the right to adjudicate an abandonment where abandonment has been alleged in a petition to adopt; (4) all cases to establish paternity of children born out of wedlock, to provide for the support and education of such children and to enforce support orders.

The circuit and chancery courts have jurisdiction in cases of divorce,[25] annulment, adoption[26] and custody of children. The circuit courts have jurisdiction to legitimate children.[27] Courts of chancery have concurrent jurisdiction with the county court of the persons and estates of infants, and of the appointment and removal of guardians.[28]

It is apparent that there is a lack of co-ordination of jurisdiction and a lack of uniformity of procedure in regard to the various phases of juvenile and family problems because they are handled in so many different courts. Further difficulty is due to the diversity of local situations in Tennessee where the contrast between metropolitan and rural areas is so pronounced.

Legislative Study of the Problem

As a result of a general feeling that the judicial administration of domestic relations has not kept pace with the increase of divorces, and the collateral questions of support, custody of children and delinquency, a legislative study of the problem was authorized.[29]

There was considerable response on the part of interested organizations to the study conducted by the legislative council, such interest being concerned mainly with the juvenile aspects of the problem. All were in accord that there was a need for improvements, and that there could be no mechanical solution where the administration of justice was concerned. Variations were found in the particular recommendations of those appearing before the council. The Young Lawyers' As-

25. *Id.* § 16-508 (circuit courts); *Id.* § 16-612 (chancery courts).
26. *Ibid.*
27. *Id.* § 16-507.
28. *Id.* § 16-610.
29. Tenn. Pub. Acts 1955, S. Res., c. 32.

sociation of Nashville[30] and the Tennessee Mental Health Association[31] recommended the establishment of state family courts to deal with the entire problem. The Tennessee Conference of Social Workers[32] in their statement to the Legislative Council stressed the need for: (1) the establishment of district juvenile courts, (2) amendment of the present law to include a requirement that petitions for divorce state the fact that minor children have resulted from the marriage (if so); and, (3) the establishment of family courts.

In view of the practical difficulties confronting any total solution it is submitted that the recommendations of the Bar Association of Tennessee are particularly sound as at least a partial solution to the urgent need for changes and reforms in respect to juvenile, domestic and family matters.

The Bar Association recommended:[33]

(1) that no state wide uniform system of district family courts be created and superimposed on the present system. (This recommendation was based on several factors, among them being diversity of local conditions and a general unawareness of the nature of the problem on the part of the public. Hence, creation of such a system with adequate financial support would not be feasible.);

(2) that any court which handles these matters should be of status and standing of the present criminal, circuit and chancery courts, to be presided over by trained lawyers exclusively, and that the statutes[34] which give the county judge or chairman, whether layman or lawyer, exclusive jurisdiction except where jurisdiction has been transferred to specially created juvenile courts, are unsound;

(3) that there should be improvement in probation and investigation service and personnel;

(4) that a waiting period should be required between the time of filing of the divorce bill and the final decree, particularly where children are involved;

(5) that existing juvenile courts should be placed on an equal position with circuit and chancery courts, and special juvenile courts should be created in other areas of large concentration of population;

(6) that a uniform set of standards for the handling of juvenile,

30. YOUNG LAWYERS ASSOCIATION OF NASHVILLE REPORT (1956).
31. TENNESSEE MENTAL HEALTH ASSOCIATION, OUTLINE OF RECOMMENDATIONS FOR THE COMMISSION ON CHILDREN (1956).
32. STATEMENT OF THE TENNESSEE CONFERENCE OF SOCIAL WORKERS TO THE LEGISLATIVE COUNCIL (1956).
33. BAR ASSOCIATION OF TENNESSEE, REPORT OF THE COMMITTEE ON THE QUESTION OF JUVENILE DELINQUENCY, FAMILY AND DOMESTIC MATTERS AND A STUDY OF REVISION OF LAWS AFFECTING COURTS AND COURT PROCEDURE RELATING THERETO (1956).
34. TENN. CODE ANN. § 37-242 (1956).

family and domestic matters should be enacted, and that all appeals[35] of juvenile cases should be to the court of appeals or the supreme court depending on the nature of the action, and that there should not be a trial de novo of the issues in a second lower court.

CONCLUSION

The legislative council in its report to the Legislature noted the existence of the problem and its complex ramifications, and recommended more study on the question. In view of the keen interest expressed on this question it was somewhat disappointing to find a recommendation for more study, especially in light of the detailed recommendations made by the Bar Association of Tennessee, and its willingness to help sponsor such legislation.

However, an authorization of two more years of study will permit the council to broaden the scope of the study and present the following legislature with a detailed recommendation for the creation of some court system that will enable it to deal with the problem in an intelligent manner.

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35. At present any judgment or order of a juvenile court is reviewable by the circuit court of the county upon a simple appeal which shall be perfected in the manner required by law by either the child, the parent of the child, any person standing in loco parentis to the child, or any person appointed by the juvenile court to act in behalf of the child. TENN. CODE ANN. §37-273 (Supp. 1956).