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Child custody case managers scrutinized

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By Andy Marso

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Karen Williams had full custody of her daughter for almost 10 years until, in March 2011, a judge accepted a court-appointed case manager's recommendation that custody be given to the girl's father.

Williams went from being her daughter's primary caregiver to seeing her for one hour a week at a supervised visitation site in Lawrence called "The Farm."

"It was devastating," said Williams, whose daughter will turn 11 in May. "Everything changed in an instant."

It was all the more devastating, Williams said, because she felt powerless to stop it. She said the decision to separate her from her daughter was made based on confidential conversations between the judge and the case manager, who is part of a group coming under increasing scrutiny in both the judicial and legislative branches of state government.

Case managers are appointed by the court to work with parents in "high-conflict" relationships on their visitation schedules. It's a difficult job that usually immerses them in some of the messiest custody battles. But in Kansas, case managers have broad authority and little accountability. They are not required to have any sort of professional license.

"The only qualification currently is that a judge appoints them," said Ron Nelson, a Lenexa attorney who specializes in family law.

Nelson said the use of case managers has been authorized for a little more than 10 years, and concerns about them overstepping their bounds have mounted due to a lack of clear guidelines about their responsibilities and authority.

Complaints about case managers abusing their power has put a bill requiring more specific case manager qualifications before the Legislature and has put Williams' custody case before the Kansas Court of Appeals.

Williams said she requested a full hearing several times after her case manager, Cheryl Powers, altered her daughter's custody arrangement. But the judge instead went with Powers' recommendations.

Nelson said that's not unusual.

"A lot of judges assign case managers and then essentially wash their hands (of the case)," he said.

But Williams and her attorney have pushed the case to the appellate level, with a hearing scheduled May 15. They argue that she has a constitutional right to a hearing in which Powers must present the evidence to back up her custody recommendation and allow Williams to respond to it.

"I believe my 5th and 14th Amendment rights have been violated," Williams said. "I've not been allowed due process and I want a day in court."

Rep. Joe Patton, R-Topeka, said he thought that if a parent objects to the recommendation of a case manager within a certain time frame, that parent is entitled to a full custody hearing.

"That's my understanding," he said. "If, for some reason, it's not working that way we definitely need to look into that."

Williams' appeal has the potential to change, or at least clarify, the role of case managers throughout the state. Several lawyers, including Nelson and Washburn professor Linda Elrod, have submitted or signed onto amicus briefs.

Meanwhile, members of the Legislature's judiciary committees are mulling a bill that would tighten the rules governing who can be a case manager.

The bill would restrict judges to appointing only licensed psychologists, psychotherapists, counselors, therapists, social workers or lawyers.

Patton, an attorney who serves on the judiciary conference committee, said he has "mixed feelings" about the bill.

"It's certainly very important to have someone qualified," he said. "It's very possible someone can be qualified without a particular license, but as a general rule we want someone qualified."

Powers, reached by phone Thursday, said she was a licensed social worker until about a year-and-a-half ago.

"I didn't need it for what I'm doing, so I just let it lapse," said Powers, who added that she'd had some medical problems. "I'm still doing the continuing education."

Powers, who charges \$120 an hour according to a state directory of domestic mediators, said the bill might disqualify "a couple of really good case managers," but she would not fight it.

"If the Legislature were to say, please have your license by today, I would ask, can I please have until tomorrow?" she said. "But I would honor that. I would not have an issue with that."

Powers declined to comment on the Williams brief with the hearing pending. But she said she believes the backlash against case managers is coming from a group of young, disgruntled attorneys.

"There are certain attorneys that are less than happy with the fact that some of us have quasi-judicial powers without a license," she said. "They're attorneys and don't have that much power. They are not happy with that."

Nelson, who has been practicing since 1981 and is a fellow in the American and International Academies of Matrimonial Lawyers, said the case management concerns are about non-judicial officers making custody decisions that should be the purview of the courts. His concerns stretch back as far as 2001, when the appeals court threw out a case manager recommendation that two combative parents perform community service as part of their custody arrangement.

"Undoubtedly, the case manager thought the best way to decrease the number of future disputes between the parties would be to distract them with other activities — force them to 'get a life,'" the court wrote in its ruling. "However, the community service order reaches beyond the scope of dispute resolution and encroaches too far into the parties' private lives."

Nelson said the state's case management system is in dire need of guidance.

"It was a good idea, but it wasn't vetted properly," he said. "Kansas was the first state to do it, and we expected the Supreme Court would do more rulemaking."

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