

“Contact Order Or Control Order: Providing Formal Advocacy To Women Who Continue To Be Victims Of Violence Through The Family Court Process”.

Brisbane Domestic Violence Advocacy Service (BDVAS) is the regional domestic violence service for the Brisbane Metropolitan area. Brisbane Domestic Violence Advocacy Service provides advocacy and outreach services to women, children and individuals in the community affected by domestic and/or family violence. BDVAS assists those affected by domestic and family violence by providing information/referral and advocacy/outreach services. We provide varying degrees of support ranging from crisis support to longer-term case management.

At present BDVAS does not receive funding for the support it provides to clients going through the family court process. Therefore we only have the capacity to provide family court support to women who are already receiving intensive support and assistance from BDVAS, and court support within the family court has been identified as one particular component within the case management plan.

This paper is going to draw upon the experiences of the women BDVAS has worked with, and the experiences of Advocate Workers who provide court support to women who are attempting to negotiate the family court system. Some of the issues that will be explored in this paper are: issues of control, re-enforced victimisation and re-traumatisation, how court orders perpetuate risk for women and children, responding to victims of domestic violence going through the family court process and providing formal advocacy/outreach services.

Control: Control is a principal characteristic of domestic violence. Women and children who have experienced domestic and/or family violence have had power of some kind exerted over them. Women who are or who have been victims of domestic violence are often placed in a situation where they have no control over what has happened to them, and for multiple reasons are often powerless to stop the abuse (White and Kilroy, 2000). There is a common misconception that if a woman is able to leave the domestic violence relationship the violence will cease, and that the perpetrator will no longer have the ability to exert power over the

woman or control her actions (Johnson, 2004). Unfortunately, evidence suggests that such assertions are far from the truth. It has been well documented that the period succeeding separation is the most dangerous time for women and their children, and the potential risk of being subjected to further harm or being victims of homicide increases dramatically (Johnson, 2004).

It has been witnessed by workers at the Brisbane Domestic Violence Advocacy Service that the Family Court and professionals linked to the court process like solicitors, mediators and court report writers can play a pivotal role in maintaining the unequal power balance that exists between the perpetrator and the victim. Often the actions of the Family Court system and of the professionals working within it equates to another mechanism of control and abuse.

In Family Law matters where there is the prevalence of domestic violence, it has been observed that a woman's safety and the safety of her children fails to hold considerable weight when making orders for residency or contact. It is apparent that domestic violence is given very little consideration in making orders for contact or residency (Kaye, Stubbs and Tolmie, 2003: 1). In some cases contact or residency orders are granted which reflect the control that was exerted over the woman whilst she was in the domestic violence relationship. Often orders are made which ensure that every aspect of a woman's life is controlled and monitored. At Brisbane Domestic Violence Advocacy Service we have worked with a number of women who have expressed that the Family Court has mandated contact orders which replicate characteristics of the control exerted over them whilst they were in the relationship. Some examples of these controlling conditions include: stipulating where the woman and her children reside; even if this is not within a safe distance from the perpetrator, whom she associates with; this can often limit the woman's contact with relevant social support networks which have assisted her to leave the violent relationship, what sort of contact she is made to have with the perpetrator; in many instances women are subject to further violence during change over contact times, the order can also stipulate what times women and children are to remain at their home waiting for the perpetrator to call or for change over contact ;in some instances women have expressed that they felt that their home had been turned into a prison due to the conditions of the contact order.

Re-enforced victimisation and re-traumatisation:

The affects on women who go through the Family Court process can vary, and in some instance are severe. During the many stages of the family court process women are often placed in positions where they experience extreme disempowerment or are subjected to further abuse from the perpetrator. Often orders are granted in which conditions of the order offer opportunities for the perpetrator to further abuse the woman and her children. If the matter goes to trial the woman will be subjected to quite pervasive questioning about all facets of her life. Often a woman's background and whether or not she fits into the conventional gender or parental role is questioned, rather than her ability to provide adequate care for her children. In some circumstances the court process can act to reinforce learnt feelings adopted in the domestic violence relationship, that she is powerless and can't control what is happening to her or what is going to happen to her and her children. Advocate workers report women's reluctance to proceed with legal action and signing over residency of their children out of their fear of confronting the violent partner at court. Likewise, women often comment that they feel incredibly intimidated and unsafe throughout many stages of the family court process, particularly in circumstances where the court has requested that mediation occur (Kaye, Stubbs and Tolmie, 2003). These feelings of fear and victimisation can mean that a woman's ability to adequately articulate her experience is decreased.

In some instances women and children are required to partake in interviews with a court appointed report writer. This process can be very traumatic for women and their children, as it requires that they re-visit and re-tell what are often horrific memories of instances of past abuse. It has been the experience of women supported by BDVAS through this process that some court appointed report writers do not always take into consideration the seriousness of the history of violence, nor do they recognise the complexities associated with being a victim of domestic violence. Likewise, in many cases court report writers trivialise the violence by utilising their own personal bias to fabricate their perceived history of the relationship. We have added some quotes taken from reports prepared for women BDVAS has supported. (The names have been changed for privacy reasons)

"Mr Smiths account of the relationship is much more bland. As I understood it they separated because she had been sleeping around. He said **that** when he was leaving Brisbane to attend work

she applied for a Domestic Violence Protection Order in order to get emergency accommodation”.

“Mr Smith maintains that she has taken out Domestic Violence Protection Orders and/or Family Court applications as a means of procuring emergency accommodation when she has found herself in difficult circumstances”.

“He spoke of having two previous convicted charges for assault for which he was imprisoned”. He clearly regards himself of being misjudged”.

“I am unable to say to what extent conflict involved physical violence, she stated she felt scared and intimidated by him. A closer examination of the rows as she described them however suggests that this escalating conflict was caused by mutual provocation” (Next paragraph **clearly contradicts the aforementioned comments**) “She said that he threw her around and kept hitting her and making her call herself names like *slut*”.

This lack of recognition of the seriousness of the violence can mean that reports are written which greatly distort the reality of the woman’s experience. The impact of this is that women’s experiences of violence are minimised and questioned, this process can act to strengthen learnt feelings that the violence “was not that bad” or “was her fault”, often feelings that maintained that she remained in the domestic violence relationship. It is important to highlight that these reports are given considerable weight by the family court in its decision making process. Often these reports make recommendations, which ensure children have unsupervised contact with violent fathers, or that residency be granted to the father.

Court orders can be made which put women and children in a position where there is the potential to be subjected to further abuse: Perpetuating Risk.

Court orders made by the Family Court have the jurisdiction to override Domestic Violence Protection Orders. Therefore contact arrangements are made which fail to take into consideration the serious nature of the domestic violence, nor do they include adequate conditions to ensure the safety and well being of women and children.

Due to the overriding emphasis on the Family Court order over the Domestic Violence Protection Order women often have no legal recourse to ensure their safety. When the perpetrator over steps

the boundaries of the Domestic Violence Protection Order and is violent, women often find that their ability to breach the perpetrator is almost always impossible.

At present the Family Court has a strong position that children have the right to know and have meaningful relationships with both parents. It is apparent that orders are made which reflect this position, even when the father is known to be violent and there is a history of violence towards the mother and children. The law quite clearly states that 'the best interests of the child' is the paramount consideration whilst making family court orders regarding contact and residency (Debenham, 2003). However, anecdotal evidence suggests that there is an apparent waning of this long held court position.

Brisbane Domestic Violence Advocacy Service's response to women who have experienced domestic violence who are going through the Family Court process: providing formal advocacy/outreach services:

An advocacy outreach service has a particular and significant role to play in supporting women who have experienced domestic violence through the family court process. A major strength associated with being able to provide court support in the Family Court is that we may assist women to overcome the particular barriers they face when accessing the family court system. BDVAS employs a number of approaches to assist and support women during the Family Court process.

Practical support: The provision of practical support is essential to women going through the Family Court process. Breaking down barriers to access allows women to focus on the issues at hand and work towards the outcome desired. BDVAS provides some of these practical supports to women such as childcare, transport and emergency relief. An employee of BDVAS who is a qualified childcare worker provides childcare; BDVAS also has the capacity to provide transport to women and children to access childcare, Family Court and legal appointments. On occasion BDVAS has also provided emergency relief for accommodation, transport costs or other essentials. For example BDVAS recently paid for accommodation for a women coming from interstate after Legal Aid had refused to fund the airfares and accommodation for her to attend a trial in the Family Court. Without the support from BDVAS this women would have faced great difficulty in being able to attend the trial.

To be believed and have her story validated: In the Family Court process the perpetrator or perpetrator's legal representation will attempt to discredit the woman. The implication of this is that the woman may start to question her own experience, and therefore is likely to minimise her experience of domestic violence. As advocates it is vital to stand alongside the woman in her current experience, not to criticise or condemn, but to support and confirm. Clients of BDVAS have commented that they found it extremely comforting having someone stand alongside them during the court process, someone who is not going to question or discredit their experience.

To be given all adequate information regarding the court process, her rights and her options: Advocate workers aim to minimise the trauma and maximise the woman's control over the process. Advocates provide information about the court process and make appropriate referrals, i.e. legal or counselling. Advocates endeavour to assist women to understand the organisations and systems, which they are required to interact with during the family court process. A number of women we work with have expressed that this type of advocacy has been a significant component of the support as they are not always in a space where they can retain all of the legal information, which is presented to them. Advocate workers can attend relevant appointments with women and can ensure that they have all of the relevant info, which can later be clarified with the woman. This information sharing aims to ensure that the woman has all the relevant information in preparation for court proceedings. It is anticipated that by providing the woman with as much relevant information as possible she is then able to make some decisions and take some control of her own process (as within the constraints of the court). In providing information regarding the family court process advocates support and encourage women to question legal processes which may be inaccurate and inappropriate.

To provide support that recognises the complex nature of DV and respects the choices and decisions made by the woman:

BDVAS adopts a client directed practice model. Working within a client directed framework invites women to make decisions regarding which steps she wishes to take in the process. It is important to acknowledge that in most cases the woman is the person best placed to make decisions about the issues which impact on her life. Advocates seek to acknowledge and build upon the existing strengths of the women we are supporting. Through encouraging and supporting women Advocates can assist women to

experience a sense of personal power and control whilst they attempt to navigate the family court process.

Formal Advocacy: As formal advocates we are often asked by women and other services to advocate on behalf of the woman. Our role is to be a voice for the woman that we work with at a time when they are feeling unable to articulate their needs fully. We work in partnership and under direction of the woman and attempt to break down the barriers that prevent the woman accessing the services and supports she is entitled to.

Alongside of the individual advocacy, BDVAS also advocates for women and children who have experienced domestic or family violence on a systemic level. Opportunities such as this conference allow us to speak out about the issues with the aim of making changes that will improve women and children's access to services and enhance their experiences in the Family Court system. By raising awareness of the impacts of domestic and family violence it is hoped that entrenched beliefs and attitudes may be shifted and significant reforms implemented in the area of family law

Conclusion:

Going through the family court process is usually a very daunting and stressful experience for women who have been subjected to domestic violence. This paper has only touched on the devastating impact family court proceedings can have on victims of domestic violence. It is also important to highlight that the issue of child protection has not been discussed. Child protective services have come to recognise that child witnesses of domestic violence is a form of child abuse and necessary steps must be taken to protect children from the harmful effects of this abuse. Unfortunately the Family Court system is not giving the same weight to this issue. Too often domestic violence is seen as secondary to the high importance placed on children having access to both parents. I put it to you, is a man who is violent towards his children's mother a father that children should be having contact with. Or is it more important that children are provided with good male role models, whoever they may be, that will positively influence their development and improve their life chances.

REFERENCES

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