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Social Reform for Kentucky's Judicial System: The Creation of Unified Family Courts

BY ERIN J. MAY*

INTRODUCTION

Cases involving the family have been labeled the "'stepchildren' of the justice system,"1 due to the low level of importance many courts and judges place on domestic issues. "Family courts in most states conjure up overcrowded facilities lacking the veneer of civility, let alone majesty, whose chaotic site itself speaks volumes to the frequently downtrodden and almost always traumatized families that pass through them."2 As a result of the lack of resources and the stigmatization surrounding family courts, "they are places in which only relatively few, exceptionally dedicated, legal professionals wish to spend their careers."3

However, family courts have the potential to impact the state, community, and individuals they serve in more powerful ways than may be possible through other courts. The pervasive impact of family courts is apparent when one realizes that domestic issues often "turn out to be the point of contact with the justice system that frames the average citizen's experience and understanding of courts, and their respect for, or alienation from, the legal system in its entirety."4 As a result, states have a unique

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* J.D. expected 2004, University of Kentucky. The author would like to extend her sincere gratitude to all of the Family Court judges who provided information for this Note, particularly Judge Reed Rhorer, Judge Julie Paxton, and Judge Stephen George.

1 Catherine J. Ross, The Failure of Fragmentation: The Promise of a System of Unified Family Courts, 32 FAM. L.Q. 3, 3 (1998). The author also states that "[s]uch courts are frequently viewed as the 'despised, entry-level kiddie court.'" Id. at 5.

2 Id. at 5.

3 Id. at 3.

4 Id. at 4. As evidence of the sheer number of individuals seeking court intervention for family related matters, the author notes that "[i]n the last few years, according to conservative estimates, domestic relations cases alone made up
opportunity to increase the legitimacy of their court systems simply by improving the way they deal with families.\(^5\)

In addition to the sheer number of people affected by family courts, the status of such courts should also be elevated due to the important theoretical issues implicated by rendering decisions affecting families.\(^6\) The autonomy of the family unit can be significantly affected by family court decisions, as "[t]he potential for state intervention in intimate life appears here in its most powerful form."\(^7\) Issues at the core of society, such as the "status of women and children, the tensions between the rights of parents and the state’s interests in protecting children, and the legitimacy of state intrusion, whether regarded as benevolent or not, play out in concrete form affecting real people in these cases."\(^8\) Because of the fundamental role the family unit plays in our society, it is vitally important that states understand the impact the judicial system can have on affecting social change in our communities, and respond accordingly.

Between 25 percent and 30 percent of all state court civil dockets. The National Center for State Courts emphasizes that domestic relations cases are the ‘largest and fastest growing segment of state court civil caseloads.’\(^9\) See id. at 6 (citing BRIAN J. OSTRUM & NEAL B. KAUDER, NAT’L CENTER FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, 1995: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 39 (1996). See also Barbara A. Babb, Where We Stand: An Analysis of America’s Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts, 32 FAM. L.Q. 31, 49 (1998) (“Divorce cases nationally constitute over 50 percent of all civil actions filed in trial courts. In the decade from 1984 until 1994, the number of juvenile cases has increased nationwide 50 percent and the number of family law cases has increased 65 percent.”).

\(^5\) See Ross, supra note 1, at 4:
[C]ases that at first glance may appear prosaic, and overly fact-specific, turn out to be the point of contact with the justice system that frames the average citizen’s experience and understanding of courts, and their respect for, or alienation from, the legal system in its entirety. The justice system gains or loses legitimacy, depending on the extent to which people feel that: (1) the justice system has helped them resolve disputes that they were unable to handle without outside intervention; (2) decision-makers listened to them and understood the complexity of the issues that brought them there; and (3) the legal system crafted responsive solutions to their problems.

\(^6\) See id. ("[F]amily matters that bring people to court raise theoretically complex issues of vulnerability, autonomy, and paternalism . . . . Moreover, the emotional dynamic behind many family cases may mask the fact that controversies decided in family courts often require complex doctrinal analysis.").

\(^7\) Id.
\(^8\) Id.
This Note will discuss Kentucky's attempt to respond to this challenge by reforming the manner its current court system interacts with families. Through the creation of unified family courts, Kentucky is restructuring its current court system in an attempt to enact a judicial model better suited to serving families. Part I of this Note is a brief overview of Kentucky's current court system and the problems such a system poses to families seeking relief through the courts. Part II explains the concept of the unified family court, which has been suggested as a possible solution to the problems associated with the traditional court model. Part III discusses Kentucky's past experience with unified family courts and the passage of the constitutional amendment that establishes a permanent place for unified family courts in Kentucky's future. Part IV details the defining aspects of a unified family court and specifically, aspects of Kentucky's family court system. Part V outlines the arguments for and against the creation of unified family courts. Part VI is a brief overview of the social policies furthered by the creation of unified family courts and the positive changes they will effect in Kentucky families.

I. Kentucky's Failed System: The Result of Fragmentation

Currently, Kentucky's court system is divided into a hierarchy comprised of four tiers: District Court, Circuit Court, Court of Appeals, and the Kentucky Supreme Court. Each tier within this system has a jurisdiction for which it is responsible, hearing appeals from the court directly below it in the hierarchy. Commonly, jurisdiction for family related matters is divided between the district courts and circuit courts. District courts handle matters relating to child dependency, abuse, and

9 See infra notes 15–42 and accompanying text.
10 See infra notes 43–51 and accompanying text.
11 See infra notes 52–76 and accompanying text.
12 See infra notes 77–110 and accompanying text.
13 See infra notes 111–53 and accompanying text.
14 See infra notes 154–57 and accompanying text.
15 Dep't of Family Court, Admin. Office of the Courts, Kentucky Family Court: A Look at... the Family Court Constitutional Amendment (2002) [hereinafter Constitutional Amendment, Pamphlet].
17 See Constitutional Amendment, Pamphlet, supra note 15.
neglect;\textsuperscript{18} some child support enforcement;\textsuperscript{19} domestic violence and emergency protective orders;\textsuperscript{20} paternity;\textsuperscript{21} and juvenile status offenses.\textsuperscript{22} Circuit courts decide matters involving adoption; termination of parental rights; dissolution of marriage; and child custody, visitation, and support.\textsuperscript{23}

Dividing family issues between two courts, as is presently done in the majority of Kentucky counties,\textsuperscript{24} results in a fragmented system that can prove harmful to families.\textsuperscript{25} Some of the most common harms associated with a fragmented court system include (1) unnecessary delays in adjudication and services;\textsuperscript{26} (2) inefficient use of judicial resources;\textsuperscript{27} (3) inconsistent rulings;\textsuperscript{28} and (4) lack of coordination among cases.\textsuperscript{29} Often, these factors are “magnified by increasing caseloads and the current status of society, [and] warrant immediate reform in order to save our children and families.”\textsuperscript{30}

For example, take the hypothetical case of the Smith family.\textsuperscript{31} Mr. and Mrs. Smith are going through a divorce, which will be heard in front of a judge in circuit court. While in the process of getting the divorce, Mr. and

\textsuperscript{18} See K.R.S. § 620.070.
\textsuperscript{19} See id. § 407.5102.
\textsuperscript{20} See id. § 403.725.
\textsuperscript{21} See id. § 406.021.
\textsuperscript{22} See id. § 620.010.
\textsuperscript{23} See id. § 23A.010 (mandating that circuit courts are courts of general jurisdiction with jurisdiction over all matters not specifically vested in some other courts).
\textsuperscript{24} Currently, individual family courts do not serve 78 of 120 Kentucky counties. See Kentucky Court of Justice, Family Court, at http://www.kycourts.net/AOC/FamilyCourt/AOC_FamilyCourt.shtm (last visited Feb. 13, 2004).
\textsuperscript{25} See Ross, supra note 1, at 7 (“In many respects, traditional, non-unified family courts themselves may constitute an additional threat to the parties who appear before them. Courts, like some medical treatments, sometimes have unanticipated harmful consequences.”); see also Babb, supra note 4, at 47 (“Particularly for litigants experiencing multiple family law problems, this traditional structure has created serious negative consequences.”).
\textsuperscript{26} Ross, supra note 1, at 8.
\textsuperscript{27} Babb, supra note 4, at 32.
\textsuperscript{28} Paul A. Williams, A Unified Family Court for Missouri, 63 UMKC L. REV. 383, 388 (1995).
\textsuperscript{29} Id. (“The lack of coordination among cases dealing with children and their families may be the primary force behind family court reform.”).
\textsuperscript{30} Id. at 390.
\textsuperscript{31} This hypothetical is based loosely on a situation described in Ross, supra note 1, at 8.
Mrs. Smith's teenage daughter begins to skip school and has to appear for truancy charges before another judge in district court. During the ongoing custody battle between Mr. and Mrs. Smith heard in circuit court, Mrs. Smith accuses Mr. Smith of domestic violence against her and sexual abuse of their teenage daughter. The domestic violence and sexual abuse allegations will be heard at the district court level, potentially by different judges.

A. Delay

In the case described above, a final resolution to the family's problems may be substantially delayed due to the numerous judicial proceedings. This delay, while an inconvenience to adults, can be detrimental to children. Here, the Smith's teenage daughter may have to wait to learn with whom she is going to live, if she will be able to see her father, and what type of punishment she may face for skipping school. In addition to the inconvenience posed by such delays, postponing a judicial resolution costs money.

B. Duplication of Efforts and Judicial Inconsistency

"Multiple actions and multiple judges can produce inconsistent decisions" as well as deplete limited funds available to state courts. To illustrate, in the Smith family hypothetical, one judge may order visitation with the father, while another judge may prohibit contact because of the sexual abuse allegations. Additionally, inconsistency may result if one judge orders the entire family to undergo counseling together, while another judge issues a protective order in which the father is not allowed to contact the mother. Such conflicting rulings put families in a terrible

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32 Id. (noting that "delays . . . have the equivalent of a multiplier effect on children because of children's sense of time (one year is half of a two year old's entire life)").

33 Williams, supra note 28, at 387 (noting that waiting for court action is "very costly, since attorneys and social workers are drawing salaries while they are waiting and are prevented from taking care of ordinary casework" (quoting President Clinton's Budget Proposal for New Funding for Child Welfare Services Targeted for Family Support and Preservation Services: Hearing Before the House Subcomm. on Human Res. of the Comm. on Ways and Means, 103d Cong. 201 (1993) (statement of Ernestine S. Gray, Judge, Juvenile Ct., New Orleans, La., on behalf of the ABA))).

34 Id. at 388.
situation—they must disobey one court order to comply with another. In addition to the negative effect multiple court appearances may have on families, the state will also waste resources because of the duplicative hearings.\(^{35}\)

The possibility of obtaining a favorable result in one court, even after losing in another, "leaves the individual courts and judges vulnerable to manipulation."\(^{36}\) For example, in the Smith family hypothetical, if the district court judge rules that there is not enough evidence to support a finding of sexual abuse, Mrs. Smith may attempt to convince the circuit court judge hearing the divorce case that the abuse did occur and that she should get her daughter.

Finally, repeated actions in different courts require "children . . . to undergo repetitive court appearances, testimony, and cross examinations."\(^{37}\) Such repetitive testimony raises "[t]he potential for irreparable emotional and psychological damage [particularly] to a child who is forced to repeatedly appear in court and explain how she was sexually abused by her father at the dissolution of marriage hearing, the protective custody proceeding, and the criminal trial."\(^{38}\) As these previous examples illustrate, the current judicial system "continue[s] to resolve legal issues at extremely high costs—costs paid by our children."\(^{39}\)

C. Lack of Coordination Among Cases

In addition to the previously described problems inherent in a fragmented judicial system, one crucial deficiency is that family issues are viewed as separate problems, instead of as part of an interrelated whole.\(^{40}\) In the Smith family hypothetical, many of the family's problems are interrelated; however, the current court system, treating each issue separately, may miss the connection. The culmination of all of the problems

\(^{35}\) See id. at 387.

\(^{36}\) Id. at 388.

\(^{37}\) Id. at 389.

\(^{38}\) Id.

\(^{39}\) See id.

\(^{40}\) Ross, supra note 1, at 7 ("Roscoe Pound observed nearly forty years ago that a court that treats a range of family problems as 'a series of single separate controversies may often not do justice to the whole or to the several separate parts. The several parts are likely to be distorted in considering them apart from the whole.'" (quoting Roscoe Pound, The Place of the Family Court in the Judicial System, 5 Nat'l Probation & Parole Ass'n J. 161, 164 (1959)).
inherent in a fragmented courts system has been labeled a "crisis in family law" and has resulted in a cry for court reform.

II. ADDRESSING THE PROBLEMS OF FRAGMENTED JUSTICE: THE CALL FOR UNIFIED FAMILY COURTS

Unified family courts have been proposed as a solution to the problems associated with fragmented family court systems. Although the meaning of family court may vary among jurisdictions, "[d]efined most simply, a family court is a single forum within which to adjudicate the full range of family law issues, based on the notion that court effectiveness and efficiency increase when the court resolves a family's legal problems in as few appearances as possible." Unified family courts help resolve many of the problems associated with fragmented courts by allowing the majority of issues affecting a family to be heard in one court, resulting in a more consistent, holistic approach to family issues.

The concept of "one family, one judge," or the idea that one judge should be assigned to hear all matters involving a specific family, is a

41 See Babb, supra note 4, at 32 (internal quotation marks omitted).
42 See, e.g., id. (noting "the need for court reform in this area"); Williams, supra note 28, at 390 (arguing that a fragmented court system, with "its inherent problems, . . . warrant[s] immediate reform in order to save our children and families").
43 See Babb, supra note 4, at 32 ("Based on its study on the unmet legal needs of children and their families, the American Bar Association (ABA) has recommended the establishment of unified family courts in all jurisdictions . . . . A recent national conference of bar presidents also has called for the creation of unified family courts.").
44 See id. at 35; see also Ross, supra note 1, at 14:
[E]ven in the eleven states that have unified family courts, the nature of those courts varies widely. Courts with similar characteristics, and outsiders observing them, routinely disagree about whether they would label each court a "unified family court." In part, the problem of devising a simple definition reflects the reality that no one system is perfectly adapted to all jurisdictions or all communities.
45 Babb, supra note 4, at 35.
46 See Williams, supra note 28, at 391 ("[A] unified family court would provide the help families need by allowing a more consistent approach to the resolution of legally-related family problems . . . provid[ing] a much more effective system of dispensing justice.").
recommended feature of any family court.\textsuperscript{47} In fact, “[t]he idea of ‘one family, one judge’ is believed by some to be the embodiment of the family court.”\textsuperscript{48} Underlying this belief is

\begin{quote}
[t]he assumption . . . that coordination will be improved, opportunities for inconsistencies and errors based on inaccurate or incomplete information will be reduced, if the same [judge] deals with the family. Ongoing involvement with a family permits a judge to develop a more complete understanding of the family’s legal problems and enables the judge to craft more effective resolutions.\textsuperscript{49}
\end{quote}

In addition to the idea of “one family, one judge,” four additional elements have been identified as essential components of a unified family court: “(1) comprehensive jurisdiction; (2) efficient administration designed to support the concept of [‘one judge, one family’]; (3) broad training for all court personnel; and (4) comprehensive services.”\textsuperscript{50} As this Note will describe, “[e]ach of these components was designed to overcome one or more problems in existing court organization or procedure.”\textsuperscript{51}

III. UNIFIED FAMILY COURTS FOR KENTUCKY

A. Family Court Pilot Projects

Along with several other states,\textsuperscript{52} Kentucky has responded to the call to reform the currently fragmented court system. In 1988, to determine the measures that would allow the judiciary to more effectively serve Kentucky families

\begin{footnotes}
\item[47] See Ross, supra note 1, at 17.
\item[49] Id. at 123.
\item[50] Ross, supra note 1, at 15.
\item[51] Flango, supra note 48, at 115.
\item[52] See Babb, supra note 4, at 38–40.

At present, only eleven jurisdictions in the United States determine family law matters for the entire jurisdiction within a separate family court or within a separate family division or department of an existing trial court. These jurisdictions are Delaware, the District of Columbia, Florida, Hawaii, Massachusetts, New Jersey, New York, Rhode Island, South Carolina, Vermont, and Washington. Among these eleven jurisdictions, five (Delaware, New York, Rhode Island, South Carolina, and Vermont) have a completely separate and distinct family court; five (the District of
\end{footnotes}
the Kentucky General Assembly adopted House Concurrent Resolution Number 30, which established the Family Court Feasibility Task Force. The resolution recognized that:

a) The American family is the framework upon which a prosperous and healthy society is maintained; and

b) The various courts of the Commonwealth are routinely required to make judicial determinations on a wide variety of subjects which drastically affect the character and viability of particular Kentucky families; and

c) The jurisdiction of the various courts of the Commonwealth can and do overlap concerning matters of dispute within particular families, thereby causing fractionalization and disruption of judicial decision-making continuity; and

d) The establishment of a court devoted to and specializing in family law might promote continuity of judicial decision-making and foster the development of expertise in the management and disposal of family law cases.\(^{53}\)

In response to these findings, Kentucky established a Family Court Pilot Project,\(^{54}\) which began operation in Jefferson County.\(^{55}\) "At its inception in 1991, of the 39 Jefferson County judges, six volunteered for the Family Court Project, three from the circuit bench and three from the district bench."\(^{56}\) To implement the concept of "one family, one judge" to the greatest extent possible,\(^{57}\) the pilot project required that judges at Columbia, Florida, Hawaii, New Jersey, and Washington) handle family law matters within a separate division of a trial court; and Massachusetts assigns family law cases to a separate department of a trial court.

On the other hand, fourteen states, Alabama, Colorado, Kansas, Louisiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, and Wisconsin, manage family law cases within a separate family court or within a separate family division of an existing trial court only in selected areas of the state . . . .

Nine states, California, Georgia, Illinois, Kentucky, Maine, Maryland, Michigan, New Hampshire, and Virginia, have planned or currently operate pilot family court projects in an effort to explore new ways to handle family law matters.


\(^{54}\) Id. at 10.

\(^{55}\) Id.

\(^{56}\) Id.

\(^{57}\) See id. at 11.
different judicial levels be cross-sworn so that jurisdictional limitations would not hinder the project's goals.\(^{58}\)

**B. The Concern over the Constitutionality of the Family Court Pilot Project**

The constitutionality of the Jefferson Family Court Pilot Project was called into question in *Kuprion v. Fitzgerald*.\(^{59}\) *Kuprion* arose after the petitioner, Penny Kuprion, had her marriage dissolution assigned to the Jefferson County Family Court Pilot Project in 1994.\(^{60}\) Ms. Kuprion's case was given to Judge Richard J. Fitzgerald, an elected district court judge in Jefferson County who had volunteered for the Family Court Pilot Project.\(^{61}\) Ms. Kuprion requested that her case be moved to Jefferson Circuit Court; but Judge Fitzgerald denied this request.\(^{62}\) Ms. Kuprion "then sought a writ of mandamus to request that her case be reassigned to the Jefferson Circuit Court and that the Family Court project be declared unconstitutional. The Court of Appeals denied mandamus," and she appealed as a matter of right to the Supreme Court of Kentucky.\(^{63}\)

In *Kuprion*, the court upheld the constitutionality of the Family Court Pilot Project.\(^{64}\) The court held that although a district court judge does lack jurisdiction to hear marriage dissolution cases, Judge Fitzgerald had been properly appointed as a special circuit court judge by the Chief Justice pursuant to powers authorized by the Kentucky Constitution.\(^{65}\) Thus, Judge

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\(^{58}\) *Id.* ("The Jefferson Family Court Pilot Project was designed with the circuit judges being cross-sworn as Special District Court judges and district judges similarly being cross-sworn as Special Circuit Court judges.").

\(^{59}\) *Kuprion v. Fitzgerald*, 888 S.W.2d 679 (Ky. 1994).

\(^{60}\) *See id.* at 680.

\(^{61}\) *Id.* at 680–82.

\(^{62}\) *Id.* at 680–81.

\(^{63}\) *Id.* at 681. The case involved the following issues:

[W]hether a district judge lacks subject matter jurisdiction to grant a decree of dissolution; whether the Chief Justice [of the Kentucky Supreme Court] can grant district judges the power to hear dissolution cases; whether the Jefferson Family Court violates . . . the Kentucky Constitution; whether [Ms. Kuprion was] denied equal protection of the law under the Federal and State Constitutions and whether the Court of Appeals erred in denying mandamus.

\(^{64}\) *Id.* at 680.

\(^{65}\) *Id.* at 686–87.
Fitzgerald did possess the authority to hear Ms. Kuprion's case. As a result, the court found the writ of mandamus sought by Ms. Kuprion was properly denied and that Ms. Kuprion had not been denied equal protection under the law. In upholding the constitutionality of the Family Court Pilot Project, the court ruled that authorization of the project did not create a new court, but rather used funds already allocated to the judiciary to fund a temporary project. The court stated that such temporary projects were authorized under the constitution; however, the court clearly indicated that the pilot projects did not permanently establish family courts in Kentucky. The court did not issue a ruling on how long such temporary projects could last. Instead, the court concluded that "it is not appropriate for this Court to advise the legislature as to when such a pilot project should be completed. Such a decision is within their sound legislative judgment."

In 2001, ten years after the initial Family Court Pilot Project was established in Jefferson County, the Kentucky legislature responded by passing Senate Bill 58. The bill "propose[d] an amendment to Section 112 of the Constitution of Kentucky to provide for the establishment of family courts [and to allow] the Supreme Court to designate one or more divisions of Circuit Court within a [judicial] circuit as a family court division." Kentucky voters overwhelmingly approved the constitutional amendment authorized by Senate Bill 58, with approximately seventy-six percent voting in favor of the change.

The passage of the Family Court Constitutional Amendment "carve[d] out a permanent place for Family Court in Kentucky." As a result, the twenty-six counties served by Family Court Pilot Projects at the time when the amendment passed have been assured that the family courts

66 Id. at 686–87.
67 Id. at 685.
68 Id. at 686.
69 Id. at 683–84.
70 Id. at 686.
73 CONSTITUTIONAL AMENDMENT, PAMPHLET, supra note 15.
established in their communities will not be abolished. In addition, it appears certain that family courts will spread throughout the state, especially since the goal of Kentucky Supreme Chief Justice Joseph Lambert is to establish family courts in every Kentucky county within ten years.

IV. DEFINING FEATURES OF A UNIFIED FAMILY COURT

A. Jurisdiction

One of the most unique features of a unified family court is its jurisdiction. The majority of district and circuit court cases involving one family are combined into a single family court. Because the purpose of a unified family court is to reduce the harms associated with a fragmented system, "it should come as no surprise that broad jurisdiction lies at the heart of any unified family court."

Recognizing the need for extensive family court jurisdiction:

The American Bar Association has long endorsed jurisdiction for unified family courts that includes:

- Juvenile law violations; cases of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings; appointment of legal...
guardians for juveniles; intrafamily criminal offenses [including all forms of domestic violence]; proceedings in regard to divorce, separation, annulment, alimony, custody and support of juveniles; proceedings to establish paternity and to enforce [child] support

Currently, Kentucky’s family court jurisdiction is outlined in K.R.S. section 23A, and includes, but is not limited to, the following: dissolution of marriage; child custody; visitation; spousal maintenance and support; equitable distribution of property; adoption; termination of parental rights; domestic violence, including emergency protective orders; paternity; dependency, abuse, and neglect proceedings; and juvenile status offenses.

By declining to grant family courts jurisdiction over criminal matters, Kentucky is in keeping with the majority of other family court states, which has also declined to extend family court jurisdiction to criminal offenses. The rationale behind the exclusion of criminal offenses is that sending the perpetrators of certain crimes to family court may “de-criminalize” certain actions, making them appear less serious.

B. Social Service Delivery System

Another critical function of family courts is their unique “ability, as a social service portal, to promote treatment for members of dysfunctional families.” The services ‘should optimally include . . . counseling services; social services liaison to community agencies; guardianship and conservatorship services, restitution, probation, diversion and detention ser-

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80 Id. (alterations in original) (quoting JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGS., Standard 1.1, Pts. 1, 5 (1980)).
81 See K.R.S. § 23A.100 (Michie 2002).
82 Id.
83 See Ross, supra note 1, at 16 (noting that “relatively few jurisdictions grant their unified family courts original jurisdiction over such cases”).
84 BROWN ET AL., supra note 53, at 11; see also Flango, supra note 48, at 119 (“Opponents are concerned that family courts, with their treatment orientation, will be more lenient on offenders than a criminal court.”).
85 BROWN ET AL., supra note 53, at 13. The importance of the family court as a social service agent was deemed so important that “[t]he 1990 National Family Court Symposium Conferees ‘overwhelmingly believed’ that a key function of the family court is to coordinate and centrally manage the court and community resources to efficiently deliver the social services needed by the children and families coming before the family court.” Williams, supra note 28, at 396.
The wide range of social service functions delegated to a family court illustrates the belief of family court founders that a court should not merely solve the legal problems of a family. Rather, family courts should address the underlying psychological and emotional issues causing the dysfunction, which will result in a lessened need for further court intervention.

The Kentucky Administrative Office of the Courts recognizes the role that social services must play in the success of any family court. It stated, "the family court system must be recognized as a social service delivery system, which requires and provides necessary services either directly, in-house, or by way of referral to outside agencies to address the complex and multi-dimensional social problems the family court faces daily." In addition to offering key services to families served by the court, involving community members and partners with a family court can help them "feel invested in the family court," offer a variety of views and suggestions on how to address problems, and create a "network of supporters." One form recommended to get community partners involved is to establish a family court counsel, which would include professionals who "consistently appear in family court settings," such as "social service workers, 'guardians ad litem, Court Appointed Special Advocates, foster care people, [personnel from] psychiatric hospitals,' and officials from the circuit court 'clerk's office.'"

It appears that in Kentucky's family courts, community partners are becoming involved with local family courts and are being utilized with great success. As Judge Stephen George explains, "the major players have

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86 Williams, supra note 28, at 396 (quoting SANFORD N. KATZ & JEFFERY A. KUHN, RECOMMENDATIONS FOR A MODEL FAMILY COURT: A REPORT FROM THE NATIONAL FAMILY COURT SYMPOSIUM 11 (1991)).
87 See id. at 396–97 ("[T]he unified family court should fulfill both the legal and social needs of families. Families taking their disputes to the courts need more than a simple resolution of those disputes.").
88 Id. at 397; see also Flango, supra note 48, at 128–29.
89 BROWN ET AL., supra note 53, at 14.
90 Id. at 40.
91 Id. at 40–41.
92 See id. at 41.
93 Id. (alteration in original).
94 See E-mail Interview with Judge Reed Rhorer, Franklin County Family Court, Ky., to Erin J. May (Oct. 25, 2002, 09:09:39 EST) (on file with author) ("Providers are very willing to assist in getting the resources delivered... We have had an active Family court Counsel from the beginning.").
a vested interest in the success of the [Family] Court. The comaraderie and teamwork is exceptional. After all, everyone has the same goal, and that is to help children and families in need.95

C. Case Assignment, Processing, and Management

In order to be effective, a unified family court must have an organized and efficient means of monitoring families to ensure that the social services available to the family are utilized in a time-efficient manner.96 It is recommended that a family court develop a “case management unit” to screen children and families as they enter the system to identify their specific needs and then immediately link them with the appropriate court and community-provided social services. This unit would also consolidate all pending cases involving the family and track the family in the court system to ensure that their legal and social needs are being addressed. Finally, the case management staff would review the family court’s orders to confirm the ordered services were provided and that no child’s or family’s need was overlooked.97

Taking a “team” approach to case management will allow for efficient use of judicial resources and reduce the burden administrative work can cause family court judges.98 Researchers examining critical features of family courts in Kentucky determined that

[c]ourt administration . . . play[s] a vital role in the court’s ability to create innovative programs in order to meet the needs of both the judiciary and [the] litigants. The administrative burdens associated with a specialized

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95 E-mail Interview with Judge Stephen George, Jefferson County Family Court, Ky., to Erin J. May (Oct. 15, 2002, 16:37:37 EST) (on file with author).
96 See Williams, supra note 28, at 398 (“Without a unified case processing and management system that promptly and effectively screens, assigns, monitors, and propels cases involving families toward a comprehensive resolution without delay, an eventual judicial resolution of the family dispute may be irrelevant.”).
97 Id. (citations omitted).
98 Ross, supra note 1, at 18:
Each court needs an intake team and a case manager for every family in order to relieve the judges of burdensome administrative work that currently eats away at their scarce time . . . . Staff members . . . normally earn far less money than judges, so it has been fiscally prudent to rely on staff where a system can do so without sacrificing due process rights.
court/community collaboration model were found to be too great to be handled exclusively by judges.99

As a result, Kentucky’s Family Courts include a judge, a court administrator, a law clerk/staff attorney, a support worker (social worker), a judicial secretary, a bench clerk, and other clerk support as required.100 These staff members are allocated specific responsibilities, and each plays an important role in the success of the family court.101

D. Court Administration and Organization

Despite the promise of the family court premise, in reality, the efficacy is directly related to the administrative structure and personnel employed in a given jurisdiction.102 Ideally, the family court “should be organized at the highest trial level in the jurisdiction to enhance the status of the family court and to promote allocations of resources, funding, and personnel equal to the family court’s counterparts, the civil and criminal trial courts.”103 Strong, caring, and interested judges and staff are also an integral part of an effective family court.104 According to Judge Robert W. Page, “[t]he family courts throughout [the] nation function best where there is a strong presiding judge and staff committed to the full implementation of established principles and performance standards.”105

In Kentucky, the passage of the Family Court Constitutional Amendment creates a family court division within the highest level of trial courts in Kentucky, the circuit court.106 Judges will be elected for a term of eight years,107 and will be required to have at least eight years of experience—a qualification required of any circuit court judge.108

100 Id. at 20–21.
101 See id.
102 See Williams, supra note 28, at 399 (“The success of a unified family court depends greatly upon the organization of the family court within the jurisdiction’s trial court structure and the firmness of the administration of the family court operations.”).
103 Id.
104 See id.
105 Id. (alterations in original) (citation omitted).
107 See E-mail Interview with Judge Stephen George, supra note 95.
108 Id.
In the counties where a Family Court Pilot Project has been established, judges have not been forced to work in the family court. Judge Stephen George explains,

[t]he existing District and Circuit Court judges will not be forced to sit in Family Court by the Supreme Court. When the need for an additional judge is certified by the Supreme Court, the state legislature determines whether to appropriate funds for the creation of a new court (perhaps a Family Court).\(^{109}\)

Current judges agree that the ability to volunteer and the choice to serve as family court judge is vital to effective administration and avoiding burnout.\(^{110}\)

V. THE DEBATE OVER POTENTIAL PROBLEMS RAISED BY THE IMPLEMENTATION OF FAMILY COURTS

A. Critics' Perspective: The Arguments Against Family Court

Although the benefits of family court appear obvious, many are still concerned by potential negative consequences that may result from such specialized courts. Among the most common concerns are that: (1) creating family courts will be extremely expensive;\(^ {111}\) (2) family court judges will lack the training and experience necessary to resolve family disputes effectively;\(^ {112}\) and (3) judges serving family court will suffer from a lack of objectivity\(^ {113}\) and an extraordinarily high rate of burnout.\(^ {114}\)

\(^{109}\) Id.

\(^{110}\) See id. at 401.


\(^{112}\) See Williams, supra note 28, at 402.
1. The Concern over Cost

Critics maintain that the cost of family courts seriously detracts from the practicality of such a system. Specifically:

[c]ritics assert that the improved legal and social services delivered by the family court come at an unmanageably high price because of the necessity of organizing and consolidating the family court system into a centralized facility, employing specially-trained judges and staff, and providing sufficient social services to adequately address the needs of children and their families. Opponents anticipate that costs will continue to increase as the court improves its functions because of the volume of children and families who will seek the benefits of the family court.\footnote{Id. at 400–01.}

In an era when budget shortfalls are commonplace, it appears many family court critics denounce the concept of family courts, based on the belief that the potential expenses related to their implementation cannot be justified.

2. The Concern over Lack of Training and Expertise

“Critics [also] claim the family court judges and staff lack the expertise and social science training necessary to provide meaningful resolutions of family disputes.”\footnote{Id. at 401 (citation omitted).} In order to be effective leaders, family court judges “need to be knowledgeable in child development, social work, family dynamics, psychology, and medicine, to name a few. Indeed, judges require training to know which questions to ask professionals from other specialized fields and how to interpret their responses.”\footnote{Flango, supra note 48, at 127.} Yet, critics point out, “[l]aw school does not necessarily train court personnel to address the medical, social, child development, and psychological issues that often occur in cases involving families.”\footnote{Id.}

3. The Concern over Objectivity and Judicial Burnout

Finally, “[a]t the heart of the one-judge/one-family question are tensions between the merits of specialization and continuity on one hand and the risk of a judicial burnout, lack of a career path, and a threat to judicial

\begin{footnotes}
\item[115] Id. at 400–01.
\item[116] Id. at 401 (citation omitted).
\item[117] Flango, supra note 48, at 127.
\item[118] Id.
\end{footnotes}
objectivity on the other." Some have speculated that family courts pose "a threat to judicial impartiality [when compared to] . . . individual case adjudication, . . . in one tricky area: moral, cultural, and religious bias." This belief is a reflection of the thought that the one family, one judge model of family court does not comport with "[o]ur formal system of judicial procedure, [in which] evidentiary rules, finite jurisdiction, case separation, and appellate review protect[ ] individuals from judicial bias." The lack of some of these protections, including case separation, has been seen by some as "the danger of family courts" due to "the [increased] risk of 'consistently unfavorable outcomes for a given family.'"

Other critics are concerned not over how the litigants will be affected by family court, but rather how the new system will impact judges. Critics assert that "family court judges must daily face an overflowing docket of emotionally-charged, family-related cases without reprieve, and they will eventually reach judicial exhaustion or 'burnout.'"

B. Supporters' Response: Why Critics' Arguments Lack Merit

Supporters of family court, however, feel that many of the critics' arguments have "significant limitations" and that the "necessity and benefits of family courts outweigh the speculative risks." They have countered critics' attacks on the idea of family court by arguing that: (1) the cost of family courts may not be significantly greater than that of traditional courts, especially when the savings of family courts are considered; (2) family court judges will receive specialized training and thus be more prepared to deal with family related issues than judges currently deciding such issues with no training; (3) procedural safeguards can be implemented to help reduce unjust decisions resulting from a lack of judicial objectivity; and (4) judicial burnout, while impossible to eliminate, will be lessened, as only judges who want to serve families will be assigned to family court.

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119 Id. at 123.
120 Folberg, supra note 113, at 451.
121 Id.
122 Id.
123 Id.
124 See Williams, supra note 28, at 402.
125 Id.
126 Id. at 401.
127 Folberg, supra note 113, at 453.
128 See Williams, supra note 28, at 400–02.
1. The Concern over Cost

In support of the higher costs associated with family court, supporters cite many factors suggesting that the family court may not be as expensive as anticipated. “First, although the family court concept envisions centralized control of the system, it does not require physical, centrally located facilities.” The expense of a separate family court may be minimized by using technology to provide services without necessitating the expense of a separate building and associated costs. “Second, the costs of judges, staff and providing the various social services utilized by the family court must be weighed against the high costs of the original fragmented system of resolving family disputes.” The rationale behind this argument is that under a fragmented system, judicial resources are being duplicated and family issues are not being resolved. Thus, the court system is currently spending too much money on a temporary fix to a problem that, very likely, will require the use of future judicial resources. This fact has led supporters to believe that “when compared to the alternative system, the unified family court is a substantial value.”

2. The Concern over Lack of Training and Expertise

Addressing the critics’ argument that family court judges lack the required expertise to properly resolve complex family issues, supporters cite the unified family courts’ “commitment to training judges and staff.” This training, they claim, will result in a knowledgeable and experienced staff capable of making informed decisions about families. Additionally, in normal, fragmented judicial systems, judges are making decisions regarding the welfare of families on a daily basis without the benefit of such training. Thus, any amount of training received by family court judges should result in more informed rulings. Finally, family court judges will be able to utilize expert opinions, which can serve to “supplement their knowledge and produce well-informed, reasoned determinations.”

129 Id. at 401.
130 See id.
131 Id.
132 See id.
133 See id.
134 Id.
135 Id. at 401–02.
136 Id.
137 Id. at 402.
3. The Concern over Objectivity and Judicial Burnout

In response to the fear that utilizing the one family, one judge approach will cause a judge to lose objectivity with respect to individuals or families seen repeatedly by the judge, supporters of family court feel that the risk of such an outcome is outweighed by the benefits guided by "greater consistency and predictability for a family." In addition, supporters cite a number of procedural safeguards that may be implemented to help diminish risks resulting from a lack of judicial objectivity. Finally, "[c]onstitutional restrictions and appellate review are available to counter these concerns if they become manifest."  

In response to the common argument that family court judges will experience an extraordinary rate of burnout due to the number of highly emotional cases they will face daily, supporters of family courts urge that instead of increasing frustration, "the family court’s one judge-one family approach allows one judge to address the totality of a family’s legal and social needs, which reduces the frustration normally experienced by judges in a fragmented, multi-court system." Other commentators have urged that special "incentives, such as pay differentials, additional retirement benefits, or additional vacation time" be given to family court judges to decrease the risk of burnout. Finally, "the most common solution [to judicial burnout] has been rotation."  

The benefits of rotation, however, must be balanced against the goal of family court—to maintain a specialized and experienced judiciary.  

According to current family court judges in Kentucky, the desire to serve as a family court judge may be one of the most important factors in avoiding burnout. In addition to having a desire to serve families, training

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139 See id. at 452 (noting that possible procedural safeguards include bifurcating the dispositional and remedy phases of a case and allowing a waiver of rights to be obtained).
140 Id. at 453.
141 See Williams, supra note 28, at 402.
142 Id. (emphasis added).
143 Flango, supra note 48, at 123.
144 Id.
145 See id. at 123–24.
146 See E-mail Interview with Judge Stephen George, supra note 95; see also E-mail Interview with Judge Julie Paxton, supra note 110.
opportunities, vacations and holidays, mediation, and the support of family court staff were all listed as factors that help to combat the possibility of judicial burnout. When asked, individual judges responded that they do not believe that added incentives or fixed terms are a solution to burnout. Instead, judges cited the benefit of helping families and children as the natural reward of serving as a family court judge.

VI. CONCLUSION

When considering the current relationship between the court system and the family, it is vital that we “recognize the burdens on the present judicial system; acknowledge that families are deteriorating and children are in danger; remember that healthy families are essential for rearing tomorrow’s parents; and reflect upon the duties each professional, parent, and citizen owes to each other and their community.” To deal effectively with the complex nature of family dynamics, it is imperative that the judicial system recognize the inherent problems and failures of a fragmented court system.

147 See E-mail Interview with Judge Julie Paxton, supra note 110 (“Conferences and seminars with our peers are very helpful in keeping our focus and finding/discovering ways to do things better.”).
148 Id.
149 See E-mail Interview with Judge Stephen George, supra note 95 (discussing how mediation allows litigants to feel satisfied that they have been heard, without necessitating the use of court time).
150 See id. (“The comaraderie of the Family court judges and staff is impressive. We are able to assist each other and work together as a team.”); see also E-mail Interview with Judge Julie Paxton, supra note 110 (“We have excellent staff that assists greatly and allows us to do the work that we do.”).
151 See E-mail Interview with Judge Reed Rhorer, supra note 94 (“I do not think that our term, pay, vacation, etc. . . . should be different from that of a regular Circuit Judge.”).
152 See E-mail Interview with Judge Stephen George, supra note 95; see also E-mail Interview with Judge Julie Paxton, supra note 110:
I do not think fixed terms is a solution. I believe families need continuity in their cases and it is a great help to have the same person hear the case all the way through. Some states shuffle judges around. While this may help with burnout with some judges, I believe it defeats the purpose of family courts.
153 See E-mail Interview with Judge Julie Paxton, supra note 110 (“I enjoy my work. I enjoy helping families and mostly being able to help children.”).
154 Williams, supra note 28, at 422.
A unified family court offers a unique opportunity for the judicial system to overcome these problems and to implement a means for social change in the community. Creating a specialized court should attract judges who have a true passion for serving families and children. In addition, the increased focus on training and limited focus of the family courts should result in a more knowledgeable staff with the background to make appropriate decisions and provide needed services. Perhaps most importantly, the creation of a unified family court is a way of acknowledging the importance of the family unit and giving families and children the time and attention they deserve.\textsuperscript{155}

Kentucky's Family Court Pilot Project has been successful thus far in the creation of a family court in several Kentucky counties. With the passage of the family court amendment, Kentucky citizens have acknowledged the need for social reform throughout the Commonwealth. "The success of this reform, and the welfare of our families, children, and community depend upon the efforts of judges, practitioners, and most importantly, citizens in the community."\textsuperscript{156} With the work and support of the entire community, family courts will bring about necessary and important improvements in the way Kentucky courts deal with families.\textsuperscript{157} As a result, all Kentuckians will benefit.

\textsuperscript{155} See \textit{id.}
\textsuperscript{156} \textit{Id.}
\textsuperscript{157} \textit{Id.} ("[F]amily court reform must be embraced and advanced to its fullest extent [by all segments of the community].").