



The Florida Senate

Interim Project Report 2005-145

November 2004

Committee on Judiciary

Senator Daniel Webster, Chair

PARENTING COORDINATORS AND DOMESTIC VIOLENCE

SUMMARY

The practice of parenting coordination as a method to resolve parenting disputes has been growing in use in Florida and across the country. Parenting coordinators are typically mental health professionals who have been trained to help parents in high-conflict parenting disputes reduce their level of conflict and focus on the best interests of their children. Successful parenting coordination may reduce psychological damage to children. The conduct of parenting coordination in Florida, however, varies from jurisdiction to jurisdiction. In 2004 the Legislature passed, but the Governor vetoed, legislation that would have standardized the practice of parenting coordination. The Legislature may wish to revise and re-enact its parenting coordination legislation to ensure that it is available as another tool for all judges to use to reduce conflict in parenting disputes and thereby reduce post divorce litigation.

BACKGROUND

Introduction

Parenting coordination is a practice in use in many Florida judicial circuits to help parents resolve parenting disputes arising out of divorce proceedings. During the 2004 Legislative Session, the Legislature passed Senate Bill 2640, which would have expressly authorized the practice of parenting coordination and created uniform qualifications, training, and standards for its use throughout the state. The legislation, however, was vetoed by the Governor because of the costs of hiring a parenting coordinator and because of concerns about the use of parenting coordinators for domestic violence victims. The Governor stated that he would support a revised bill.

Parenting Coordination

Parenting coordination may be defined as:

a process in which a parenting coordinator helps the parties [to a parenting dispute] implement their parenting plan by facilitating the resolution of disputes between parents or legal guardians and, with the prior approval of the parties and the court, by making decisions within the scope of the court order of appointment.¹

A parenting plan is defined as:

a temporary or final court order setting out the residence, parental responsibility, visitation, or other parental responsibility issues in a dissolution of marriage proceeding or any other civil action involving the custody or parenting of a child or children.²

The parenting coordination process is similar in some respects to mediation and arbitration. Parenting coordinators will help parties separate issues related to their children from other disputes between the parties. Once the issues affecting their children are isolated, a parenting coordinator will help the parties agree to a solution that is in the best interest of their children. If an agreement cannot be reached, a parenting coordinator may arbitrate the dispute for the parties if authorized to do so by the parties or a court order. Parenting coordination is different from mediation and arbitration in that parenting coordination: allows a parenting coordinator to independently gather information about a dispute; educates parents about the impact of conflict on their children; and teaches communication skills to parents.

¹ Senate Bill 2640, 1st Engrossed (2004).

² *Id.*

Current Use of Parenting Coordination

Of the 20 circuit courts in Florida, judges in 15 circuits have appointed parenting coordinators.³ Several of these circuits have an administrative order governing the use of parenting coordination or a standard order for referring a case to parenting coordination.⁴ Some circuits have neither.⁵ The orders used by the circuits differ on the authority of a parenting coordinator to make decisions, qualifications required of a parenting coordinator, and length of service. Additionally, the circuits differ on the specificity of the responsibilities of the parenting coordinator.

Reasons for Appointment of Parenting Coordinator

High-conflict divorces cause psychological harm to children.⁶ According to psychological literature, parenting coordinators may help reduce “interparental conflict for the benefit of the children.”⁷ Further, the appointment of a parenting coordinator for high-conflict divorces may reduce judicial workloads.

Authority for the use of Parenting Coordinators

No Florida statute or Florida Supreme Court rule expressly authorizes the use of parenting coordination. However, potential statutory bases to appoint a parenting coordinator were described in *Hastings v. Rigsbee*, 875 So. 2d 772, 777 (Fla. 2d DCA 2004). The court stated:

We recognize that it is the practice of some trial courts to appoint parenting coordinators. We also recognize that section 61.20, Florida Statutes (2003), authorizes a trial court to order a “social study and investigation” in cases where child custody is in issue and that Florida Family Law Rule of Procedure 12.363 authorizes a trial court to appoint a mental health professional or other expert to conduct a home study investigation when visitation or

residential placement of a child is in controversy.

An additional source of authority for parenting coordination may be the inherent authority of the court. Lastly, parties may consent to a referral to a parenting coordinator. Some judges, however, believe that express statutory authority for the practice is necessary.⁸

2004 Parenting Coordinator Legislation

During the 2004 Legislative Session, the Legislature passed Senate Bill 2640, which expressly authorized the use of parenting coordinators. The bill also would have created uniform qualifications, training, and standards for their use throughout the state.

Parenting Coordinator Appointment

Under the bill, the court, a party, or the parties in agreement could move the court to appoint a parenting coordinator. A parenting coordinator could be appointed by the court upon finding that:

- the parents failed to implement their parenting plan;
- mediation was unsuccessful or inappropriate; and
- the appointment of a parenting coordinator is in the best interest of the child or children.

Parenting Coordinator Authority

Under the bill, the authority given to a parenting coordinator would be limited by the court order appointing the parenting coordinator. The parenting coordinator could make determinations related to the implementation of the parenting plan with the written consent of the parties. If the parties consented, the determinations of a parenting coordinator would be binding until overruled by a court after *de novo* review. With or without the consent of the parties, a parenting coordinator would be authorized to:

- Assist the parents in implementing the parenting plan.
- Develop guidelines for communication between parents.
- Assist the parents in developing parenting strategies in a manner that minimizes conflict.
- Teach communication skills and principles of child development.

³ Linda Fieldstone, Supervisor of Family Court Services for the 11th Judicial Circuit, Parent Coordinator Utilization Per Florida Circuit Survey, Sept. 2004. (unpublished survey results) (on file with the committee).

⁴ *Id.* The judicial circuits having an administrative order or standard order on parenting coordination include the 3rd, 4th, 6th, 9th, 11th, 12th, 15th, and 20th.

⁵ *Id.* Some judges in the 7th, 8th, 10th, 13th, 17th, and 18th judicial circuits use parenting coordination but have no standard or administrative order.

⁶ CARLA B. GARRITY & MITCHELL A. BARIS, CAUGHT IN THE MIDDLE: PROTECTING THE CHILDREN OF HIGH-CONFLICT DIVORCE 41 (1994).

⁷ *See id.* at 119-120.

⁸ Conversation with Judge Hugh Starnes, Aug. 14, 2004.

- Refer parents to appropriate resources for the development of parenting skills.
- Educate both parents about the sources of their conflict and its effect on the children.⁹

Parenting Coordinator Qualifications

The bill specified that parenting coordinators must be licensed mental health professionals or physicians with certification from the American Board of Psychiatry and Neurology. These individuals were also required to have additional parenting coordination training including training for domestic violence issues. However, the bill exempted experienced parenting coordinators from the requirement of having a mental health license and three years of post-licensure practice. Additionally, attorneys and clergy serving as parenting coordinators *pro bono* would not be required to have any additional training or qualifications.

Parenting Coordinator Compensation

Under the legislation, a court was authorized to refer the parties to a parenting coordinator who charged a fee if the parties had the ability to pay the fee. Alternatively, the parenting coordinator could be compensated from available public funds, or a member of The Florida Bar or the clergy could provide *pro bono* parenting coordination services.

Governor's Veto Message

The Governor listed the following five reasons for vetoing the parent coordinator legislation:

- The bill allows courts to order parenting coordination without the consent of the parties.
- The bill fails to provide adequate safeguards for domestic violence victims.
- The bill allows parenting coordinators to serve in the dual role of judge and jury of parents' and children's rights.
- The Governor was concerned about future funding of parenting coordination programs.
- The Governor believed that "parenting coordinators should serve as volunteers and not be limited to an exclusive class of licensed professionals."¹⁰

The Governor also stated:

I will support a revised bill during the 2005 legislative session that makes the appointment

and selection of a parenting coordinator subject to the consent of both parents. Also, I believe that we must limit the risk of "professionalization" of the parent coordinator role by limiting it to volunteers. While I respect the Legislature's policy choice to allow only licensed professionals, clergy or attorneys to quantify as parenting coordinators, I believe that any volunteer, especially any faith-based volunteer, who meets certain minimum criteria should be allowed to serve as a parenting coordinator.

Proposed Court Parenting Coordination Rule

Creation of Proposed Rule

The Florida Supreme Court appointed a committee to develop a parenting coordination rule to implement the parenting coordination legislation. The committee was composed of three members from the Alternative Dispute Resolution Rules and Policy Committee and three members from the Steering Committee on Children and Families in the Court. Advocates against domestic violence were consulted to craft the proposed rule. The committee created a draft rule before it disbanded following the Governor's veto.

Comparison of Proposed Rule and 2004 Legislation

The proposed parenting coordination rule clarified and gave detail to the concepts contained in the legislation. The proposed rule:

- Provided that consent to parenting coordination must not be coerced.
- Clarified that parenting coordination should not be conducted if the process compromises the safety of the parties, children, or parenting coordinator or compromises the integrity of the process.
- Directed a parenting coordinator to determine whether any issue of domestic violence exists that would create a danger to the parties, children, or parenting coordinator.
- Required a court order to proceed with parenting coordination if the existence of domestic violence is discovered after the commencement of parenting coordination legislation.
- Permitted a parenting coordinator to withdraw from the parenting coordination process if the existence of domestic violence is discovered after the commencement of parenting coordination.

⁹ Senate Bill 2640, 1st Engrossed (2004).

¹⁰ Governor's veto message for Committee Substitute for Senate Bill 2640, June 18, 2004.

- Required parenting coordinators to file a report with the court detailing safety measures to be used to protect the domestic violence victim and the children if parenting coordination is to be used for parties having a history of domestic violence.
- Prohibited a parenting coordinator from bringing parties within proximity to each other if domestic violence is present or suspected and which would create the opportunity for violence or abuse.
- Stated that parties retain the right to legal counsel in the parenting coordination process.
- Required confidential identifying information of a domestic violence victim to remain confidential.
- Provided that communications by the parenting coordinator to health care providers may only be undertaken with the informed written consent of the parties.
- Made information gathered from third parties confidential unless the party to whom the information pertains gives written consent to the release of the information.
- Permitted the court to apportion the parenting coordination fees between the parties.
- Authorized parties to object to fees charged by a parenting coordinator within 10 days of parenting coordinator appointment.
- Directed the parenting coordinator to file reports with the court detailing progress implementing the parenting plan.
- Directed the parenting coordinator to report lack of cooperation by the parties or their attorneys.
- Required notice to the parties and an opportunity to be heard when a parenting coordinator communicates with the court.
- Limited the term of appointment of a parenting coordinator to one year. However, that term can be terminated earlier or extended.
- Provided that the parenting coordination process adjourns pending the disposition of a motion seeking to remove a parenting coordinator for misconduct.
- Permitted parties to agree on the selection of a parenting coordinator before one is selected for the parties by the court.
- Authorized sanctions for failure to appear at parenting coordination sessions.

Practices in Other States

Parenting coordination is practiced to some extent in at least 11 states. Three of these states, Oregon, Idaho, and Oklahoma, have enacted statutes expressly authorizing parenting coordination.¹¹ Eight of these states, Arizona, California, Florida, Kentucky, Massachusetts, North Carolina, Ohio, and Vermont, have no express statutory authority for the practice.¹² Parenting coordination in these states is conceptually similar to the parenting coordination legislation vetoed last year. Some differences from last year's legislation that the Legislature may wish to consider for future legislation are described below.

Idaho Code s. 22-717D(2) allows parties to agree to accept the services of a parenting coordinator who does not satisfy the qualifications established by the Idaho Supreme Court. Additionally, the Idaho statute requires parenting coordinators to submit to a background check. The Oklahoma Parenting Coordinator Act provides that parenting coordination is designed to address high-conflict cases which may involve physical aggression and threats of physical aggression.¹³ Under Oregon law, a parenting coordinator's duties may include monitoring compliance with court orders.¹⁴

An Ohio court rule authorizes a parenting coordinator to decide the following:

- (1) dates, time and method of pick up and delivery;
- (2) minor or occasional adjustment in vacations or holiday schedules;
- (3) transportation to and from parenting time;
- (4) participation in child care/daycare and babysitting.
- (5) school attendance, homework;
- (6) bedtime;
- (7) diet;
- (8) clothing;
- (9) sports, lessons and recreation;
- (10) enrichment activities and summer camp;
- (11) discipline;
- (12) parent participation in routine at-home health care and hygiene;
- (13) occasional schedule adjustments which do not substantially alter the basic time share agreement;

¹¹ Christine Coates et al., *Parenting Coordination: Implementation Issues* 6-8, (Arl 2003).

¹² *Id.*

¹³ OKLA. STAT. TIT. 43 s. 120.2.

¹⁴ ORE. REV. STAT. s. 107.425(3)(a)(B).

- (14) participation in parenting time by significant others, relatives, etc.;
- (15) communication between parents and between parents and children.¹⁵

METHODOLOGY

Committee staff reviewed case law from Florida and other states on parenting coordination and delegation of judicial authority; reviewed literature on parenting coordination; and interviewed interested parties including representatives of the Florida Coalition Against Domestic Violence, judges, therapists and court personnel.

FINDINGS

Concerns of Opponents to Parenting Coordination

The Florida Coalition Against Domestic Violence and legal aid societies opposed the 2004 parenting coordination legislation. These organizations sent similar and in some cases nearly identical letters to the Governor urging him to veto the parenting coordination legislation.¹⁶ The main issues from the letters urging the Governor to veto the parenting coordination legislation are summarized below, followed by an analysis of each issue.

Measures of Success

Issue. The opponents claim that they have not seen any evidence that parenting coordination reduces litigation or is cost effective.¹⁷ They also claim that a judge's contempt power and the remedies available in ch. 61, F.S., are sufficient in most cases to achieve compliance with child custody orders.¹⁸

¹⁵ Lucas County Common Pleas Domestic Relations Rule 20.04(A).

¹⁶ See the letters to the Governor from the following: Mary Anne De Petrillo, Executive Director, Legal Aid Society of the Orange County Bar Association, Inc., May 24, 2004; Ann Perko, Senior Family Law Attorney and Kent R. Spuhler, Executive Director, Florida Legal Services, Inc., May 21, 2004; Robert A. Bertisch, Executive Director, Legal Aid Society of Palm Beach County, Inc., May 21, 2004; Cara Hallmon, Staff Attorney, Legal Aid Society of the Orange County Bar Association, May 24, 2004; and John P. Cunningham, Executive Director, Gulf Coast Legal Services, Inc., May 21, 2004.

¹⁷ Perko, Spuhler, Cunningham, and Bertisch, *supra* note 16.

¹⁸ *Id.*

Analysis. A law review article discussing the success of parenting coordination states:

Although research is sorely lacking on the effectiveness of parenting coordination, there is evidence that the intervention can substantially reduce relitigation rates. In one California study, in the year prior to the appointment of a PC, 166 cases had 993 court appearances. The same 166 cases had 37 court appearances the year following the appointment. Another survey found that the majority of parents working with a PC reported being satisfied and experiencing decreased conflict with the other parent.¹⁹

Treatment of Poor Litigants

Issue. The opponents state that the parenting coordination services that poor litigants will receive will not be equal to that received by wealthier litigants.²⁰ Under the 2004 legislation, litigants who cannot afford to pay a parenting coordinator may receive *pro bono* services from an attorney or clergy. These attorneys and clergy do not have to have the same training and education as other service providers.

Analysis. Research indicates that parenting coordinators charge between \$75 and \$275 per hour.²¹ In some Florida circuits grant monies have been used to subsidize parenting coordination. Without public funding of parenting coordination, however, indigent litigants will not likely have access to the most highly qualified parenting coordinators.

Nevertheless, not all cases may require a mental health professional to provide parenting coordination. According to the pioneers of the parenting coordinator concept, a parenting coordinator:

may be a mental health professional, a court-appointed guardian, or a well-trained paraprofessional. It is essential that he or she be familiar with family law, conflict resolution, and mediation as well as family therapy and child development.²²

¹⁹ Christine A. Coates et al., *Parenting Coordination for High-Conflict Families*, 42 Fam. Ct. Rev. 246, 247 (2004).

²⁰ De Petrillo, Perko, Spuhler, Bertisch, Hallmon, and Cunningham, *supra* note 16.

²¹ Coates, *supra* note 11 at 24.

²² GARRITY & BARIS, *supra* note 6 at 84.

Access to Courts

Issue. The opponents state that the parenting coordinator is another layer between a litigant and the court. The opponents also state that parenting coordination may unconstitutionally limit access to courts.²³

Analysis. Section 21, Art. I, State Const., states:

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

As stated earlier, parenting coordination, in some respects, is similar to mediation. Mediation is used regularly in divorce proceedings to help parties resolve custody, visitation, and other parental responsibility issues.²⁴ Family mediation which delays judicial resolution of disputes is constitutional.²⁵ Nothing in the 2004 legislation would have prevented a party from seeking relief at any time in court.

In some cases parenting coordination may be like arbitration where the parenting coordinator makes determinations to resolve disputes. Mandatory arbitration has been upheld where meaningful opportunity for review by a court exists.²⁶ Under the legislation, parenting coordinators had authority to make determinations with the consent of the parties. In any event, the legislation provided the parties with the right to *de novo* review of any determination made by a parenting coordinator. Accordingly, parenting coordination as described in the prior legislation does not likely deny access to courts in violation of s. 21, Art. I, State Const.

Coercion and Power

Issue. The opponents are concerned that in domestic violence situations, the abuser may be able to coerce the victim to agree to engage in binding parenting coordination to the disadvantage of the victim.²⁷ The opponents also state that the bill creates an imbalance of power between the parties by allowing a parenting coordinator to be appointed upon the motion of one of

the parties.²⁸ Additionally, the opponents are concerned that the party making the motion may be able to solely select the parenting coordinator.²⁹

Analysis. According to research on domestic violence, “Coerciveness is widely recognized as a central quality of battering men.”³⁰ However, it is unclear how the risk of coercion by a batterer will be reduced in any other dispute resolution mechanism. Additionally, mental health professionals who have had training on domestic violence issues may be able to recognize and respond to coercive behaviors better than judges who do not have a mental health education. Nevertheless, the bill directed judges to take the existence of a domestic violence injunction into account when determining whether to appoint a parenting coordinator. Lastly, nothing in the legislation requires a court to appoint a parenting coordinator and no party was given authority to impose his or her choice of a parenting coordinator on the other party.

Unlawful Delegation of Judicial Authority

Issue. The opponents to the 2004 parenting coordinator legislation cite to *Ruisi v. Thieriot*, 53 Cal. App. 4th 1197 (Cal Ct. App. 1997), in support of their contention that judicial power should not be delegated to a parenting coordinator. The opponents stated:

A California appellate court held that an order for “any and all issues regarding custody” to be resolved by a special master (performing similar functions to parent coordinators here) was unconstitutional because it exceeded the power given to the court by statute, which was limited to “issues of fact.”³¹

Analysis. In *Ruisi*, however, the court only prohibited decision-making by a parenting coordinator without the consent of the parties.³² Likewise, the 2004 legislation prohibited parenting coordinators from making determinations without the consent of the parties. Moreover, the *Ruisi* court expressly recognized that parenting coordinators may make determinations with the consent of the parties.

²³ See De Petrillo, Perko, Spuhler, Bertisch, Hallmon, and Cunningham, *supra* note 16.

²⁴ See *Giventer v. Giventer*, 863 So. 2d 438 (Fla. 4th DCA 2003), s. 44.102(2)(c), F.S., and s. 61.183, F.S.

²⁵ *Kurtz v. Kurtz*, 538 So. 2d 892 (Fla. 4th DCA 1989).

²⁶ *Chrysler Corporation v. Pitsirelos*, 721 So. 2d 710, 713 (Fla. 1998).

²⁷ See Perko, Spuhler, Cunningham, and Bertisch, *supra* note 16.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Lundy Bancroft, *The Batterer as a Parent*, 6 SYNERGY, 6 (2002).

³¹ Perko, Spuhler, Cunningham, and Bertisch, *supra* note 16.

³² *Ruisi v. Thieriot*, 53 Cal. App. 4th 1197, 1209 (Cal. Ct. App. 1997).

Upon agreement of the parties, the court may order a reference to try “any or all issues in an action or proceeding, whether of fact or of law.”³³

Further, the *Ruisi* court encouraged the use of parenting coordination when it stated:

We readily acknowledge that reference of time-consuming factual questions, with costs borne by the parties themselves, can provide needed relief to the overburdened judicial system.³⁴

Protection of Domestic Violence Victims

Issue. According to the opponents of the parenting coordination legislation, domestic violence victims may be in danger during separation and divorce. As such, the opponents argue that domestic violence victims should not be required to participate in parenting coordination when the process endangers them.

The opponents also state that the bill did not protect adequately the safety of domestic violence victims.³⁵ They further state that the bill does not prohibit the use of parenting coordination during a domestic violence injunction.

Analysis. The bill required courts to consider the effect of a domestic violence injunction when determining whether to appoint a parenting coordinator. Psychological literature is unsettled as to whether parenting coordination is appropriate in all cases involving domestic violence. According to one source, “Any situation that brings the parties face to face is an opportunity for violence”³⁶

Not all cases can or perhaps should be resolved in a collaborative manner. For example, domestic violence cases involving a substantial imbalance of power and serious safety concerns are inappropriate for mediation and other collaborative processes.³⁷

³³ *Ruisi v. Thieriot*, 53 Cal. App. 4th 1197, note 13 (Cal. Ct. App. 1997).

³⁴ *Id.* at 1211.

³⁵ See De Petrillo, Perko, Spuhler, Bertisch, Hallmon, and Cunningham, *supra* note 16.

³⁶ Clare Dalton, *When Paradigms Collide: Protecting Battered Parents and Their Children in the Family Court System*, 37 FAM. & CONCILIATION CTS. REV., 288 (1999).

³⁷ Gregory Firestone, *Models of Collaboration in Family Law*, 42 Fam. Ct. Rev. 200 (2004).

Other psychological literature states that cases involving domestic violence may be appropriate for parenting coordination.³⁸ As such, a foundation exists to allow a judge to determine on a case-by-case basis whether parenting coordination is appropriate for parties with a history of domestic violence.

The bill directed courts to “consider the effect that any domestic violence injunction affecting the parties may have on the parties’ ability to engage in parenting coordination.” Similarly, s. 44.102(2)(c), F.S., prohibits courts from referring a case to mediation if it finds that there has been a history of domestic violence that would compromise the mediation process.

As a practical matter, to protect the safety of the parties during parenting coordination involving parties with a history of domestic violence, some parenting coordinators hold individual sessions with the parents instead of joint sessions.³⁹ In a less severe case, parties have been separated by a wall that prevented parties from observing each other during parenting coordination.⁴⁰

Ex Parte Communications

Issue. The opponents to the parenting coordination legislation are concerned that the legislation is silent on ex parte communications between the parenting coordinator and the judge.⁴¹

Analysis. The proposed Supreme Court rule prohibited parenting coordinator communications to the judge without notice to the parties except in an emergency. The Legislature could address this issue in future legislation.

Article V Funding

Issue. The opponents to the parenting coordination legislation argued that parenting coordination services are not included in Article V funding.

Analysis. The bill provided that parties to a divorce may only be referred to a parenting coordinator who charges a fee if the court determined that the parties had the ability to pay. As such, no funding is necessary for parties having the ability to pay for parenting

³⁸ See GARRITY & BARIS, *supra* note 6, at 130.

³⁹ Conversation with Dr. Michael Spellman, a parenting coordinator, Sept. 28, 2004.

⁴⁰ Conversation with Dr. Debra Carter, a parenting coordinator, October 5, 2004.

⁴¹ See De Petrillo, Perko, Spuhler, Bertisch, Hallmon, and Cunningham, *supra* note 16.

coordination. Further, no funding is necessary for parties who participate in *pro bono* parenting coordination.

Parenting Coordinator Immunity and Accountability Issue. The opponents to parenting coordination legislation stated that no method of supervision of parenting coordinators was created by the bill.⁴² They also state that no adequate public purpose was stated in the bill that would constitutionally authorize parenting coordinator immunity.

Analysis: No method of supervision of mediators is provided by statute either. However, the Florida Supreme Court adopted rules to regulate mediators.⁴³ The Court could adopt similar rules for parenting coordinators. Additionally, licensed mental health professionals may be disciplined for misconduct by their licensing agencies. Lastly, an aggrieved party could always petition the court to remove a parenting coordinator who has engaged in misconduct.

In *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973), the Florida Supreme Court held that in certain circumstances the Legislature cannot abolish a statutory or common law right that existed before the adoption of the 1968 State Constitution without a showing of necessity. Parenting coordination did not exist prior to the 1968 State Constitution. As such, immunity granted to a parenting coordinator will not violate s. 21, Art. I, State Const. and no statement of necessity justifying the immunity is needed. Further, no case law has been found that authorized a cause of action against a mediator or arbitration pre-dating the 1968 State Constitution. Additionally, no statement of necessity was included in similar laws granting immunity to *guardians' ad litem*, mediators, and arbitrators.⁴⁴

Delegation of Judicial Authority

The authority of a court to delegate the duty to determine custody and visitation rights is limited. Under, s. 44.104(14), F.S., parties to a divorce may not agree to arbitrate a dispute involving custody or visitation. Similarly, in *Lane v. Lane*, 599 So. 2d 218 (Fla. 4th DCA1992), parties to a divorce agreed during mediation to have a psychologist determine whether the father, who was a convicted child molester, should have unsupervised or supervised visitation with his

son. The psychologist recommended that the father have unsupervised visitation with his son.⁴⁵ The court stated:

A trial court's responsibility to the child cannot be abdicated to any parent, any expert. That heavy responsibility mandates that a court is not bound by any agreement between parents, nor by the opinions of any expert or group of experts.⁴⁶

Agreements between parties to a divorce, however, may be upheld by a court. In *Schulberg v Schulberg*, 2004 WL 2101991 (Fla. 3rd DCA 2004), a court upheld an arbitration agreement incorporated into a divorce decree that required parties to arbitrate whether children should attend a private school. In other cases, mediated custody and visitation agreements that have been incorporated into divorce decrees have been upheld.⁴⁷

Accordingly, a parenting coordinator could likely have the authority to resolve disputes of less significance than custody and visitation. The parenting coordinator could also facilitate agreements on custody and visitation that could be submitted to a court for approval.

RECOMMENDATIONS

Based on the foregoing, parenting coordination may be an effective tool to resolve some high-conflict parenting disputes. If the Legislature wishes to ensure that this tool is available to all judges in this state, it should modify the 2004 legislation in response to the Governor's concerns and adopt the provisions relating to domestic violence from the draft Supreme Court rule. If the Legislature chooses to take no action, the parenting coordination process may continue without express protections for domestic violence victims and without standardized training and qualifications for parenting coordinators.

⁴² *Id.*

⁴³ Rules 10.100-10.990, Rules for Mediators.

⁴⁴ See s. 5, ch 98-31, L.O.F., for mediator and arbitrator immunity and s. 1, ch. 95-163, L.O.F., for *guardian ad litem* immunity.

⁴⁵ *Lane v. Lane*, 599 So. 2d 218, 219 (Fla. 4th DCA 1992).

⁴⁶ *Id.* (rejecting the decision of a psychologist that a convicted child molester have unsupervised visitation with his son) and see *McAlister v. Shaver*, 633 So. 2d 494, 496 (Fla. 5th DCA 1994).

⁴⁷ See *Giventer v. Giventer*, 863 So. 2d 438 (Fla. 4th DCA 2003).