

LAWYERS AND DIVORCE

This is for all those who sometimes think about getting divorced. Maybe you've just had another one of the same fights you've had a million times before...or you may be sitting home alone wondering why your spouse hasn't come home yet...maybe the sex hasn't been good for a long time...or the spark has died and you know you can do better.

There's hardly a marriage that hasn't had the notion of divorce enter the mind of one or the other partner. Heaven knows it's easier to end a marriage now in our country than at any time. With the relative ease of breaking the bonds has come a growing recognition in the legal community that the normal processes of litigation create armies of wrecked psyches and souls (and depleted financial resources). There has been an urgent call to create an approach to soften the blows. Mediation arose out of this recognition. Now the collaborative law movement has taken up the challenge to create a "safe container" in which the transition out of a nuclear family can be supported with compassion, emotional guidance and competent legal counsel. It's the best we have to offer so far and when it works (which is often) it is in the words of my colleague, Holly Hohlbeni - a Bellevue, WA collaborative divorce attorney, "magical." But it's not enough. Anyway you slice it, divorce is a personal shipwreck. It is in the words of writer Abigail Trafford, "A savage emotional journey."

Divorce is about loss, heartwrenching, seismic loss. It is loss we don't understand when we are contemplating the end of our marriage because staying in the marriage feels so intolerable. Yet, time and again in my work as a divorce lawyer I see the ache of the challenges that were never fully appreciated.

Nick is a hard worker and a good provider. He loves his kids Amy (3) and Nolan (6) with all his heart. After, all, that is why he works so hard. He kind of resents the fact that Nikki, his wife, gets a lot of the best times with the children but it's part of the deal they made. Anyway, he sees them every night when he gets home and loves making breakfast for them on Saturday mornings. Even when his relationship with Nikki became more distant, he got a kick out of the kids. His own father was hardly ever home and he vowed that he wouldn't be as absent and, while he's not, he's constantly feeling the pressure from work to produce and business challenges are often on his mind - on the way home, while he's at dinner and even when he's giving Amy a bath. However, with all the stress swirling around him and the growing silence between him and Nikki, his home - his family - is his anchor. When he and Nikki finally decide to separate, he moves out into a two bedroom apartment so he can be close to his children. He sees them now every other weekend. He calls them every night during the work week to say good night and those 5 minutes are precious, though fleeting. He finds himself retreating. Judith Wallerstein and Joan Kelly in their powerful and poignant study *Surviving the Breakup* note that the most involved fathers during a marriage recede from their children's lives after divorce. We might ask, "How can that be?" Surely if he loved them he'd stay involved. Yet, the loss of the day-to-day relationship can be quite shattering. The notion of going to the house that was once his to pick up his children for a "visit" is mind-boggling. Good men become overwhelmed by this circumstance. The pain, which they cannot articulate floods them and they close down. The day-to-day involvement is gone. The time is so short - so precious,

that you have to make the most of it, so you go overboard with activities and expense and your ex complains that you are a Disneyland Dad. However, as hard as you try, there is no way that you will regain the normalcy of the daily intimacy.

While men often lose their sense of family when a marriage ends, women in our society are still frequently in a position of facing financial stress and insecurity. The simple fact is that the income that used to sustain one family must now accommodate two and the deal that was made long ago about who fulfills what tasks now pays a dark dividend for the economically dependent partner. The years cannot be recaptured. Training and experience cannot be compressed into a short period.

Holmes and Rahe in their seminal study in the early 60's found that divorce and separation impose the most significant stressors on individuals short of the death of a spouse or child. Small wonder that this is the case. What strikes me as a divorce attorney is the many times people of good will come to me faced with challenges not even Solomon could untangle. I've seen people struggle with the loss of not sharing Halloween with their beloved 8 year old; put money away for years for a joint retirement only to see it turn into his and hers (with radically diminished value); invest heart and soul (and time and money) into a home and then lose it forever in exchange for various financial assets; support a spouse for years and then find that you can be left and still support them for years because you did it for so long already.

Divorce became a no-fault institution in the 1970's - for good reason. The state was forcing people to remain in unions which were dead and from which each partner wanted release. People were taking the witness stand and colluding with one another to create a picture of "mental cruelty" or other wrong or depravity just to escape a moribund marriage. The charade was an embarrassment to a sophisticated society and the no-fault revolution swept across the land. Now it is irrelevant who walked away. Marital vows are of no legal significance, so lawyers aren't interested in who broke someone's heart and dashed their hopes. Yet in life, it matters a great deal.

I had the mixed pleasure of acting as an arbitrator in a post divorce matter this week. I read the submissions of the lawyers and each one acted as a surrogate for their client and it felt like one of those round and round arguments with no point or resolution that couples have. I thought how sad it is that adversarial lawyers get involved in peoples' lives when they are most wounded and least need to be attacked. This is just one more element of the injuries inflicted by divorce.

When a marriage is failing and good people are feeling pushed away from each other, divorce can feel like a release - even a balm for an exhausted and battered spirit. I write this to remind us all that it is not that easy. The collaborative law movement is a valiant effort of lawyers to heal. It should be honored and encouraged. Yet true healing after divorce is much more illusive than we would wish. The heartache much more raw than we anticipate. The loss much more visceral than we might imagine. How we lawyers struggle with all of this will mark the course of our profession and the kinds of people we are as individuals.