The Parenting Coordinator
By Joel R. Brandes

It is well established that a Court may not delegate its authority to resolve issues affecting the best interests of the child. (Matter of Gadomski v Gadomski, 256 A.D.2d 675, 681 N.Y.S.2d 374, (3 Dept., 1998); Matter of Henrietta D. v Jack K., 272 A.D.2d 995, 707 N.Y.S.2d 560 (4 Dept., 2000)). Thus, it may not delegate its responsibility to determine issues related to custody and visitation to either a parent or a child (William-Torand v. Torand, 73 A.D.3d 605,901 N.Y.S.2d 601 (1s Dept, 2010), a mental health professional (Holland v. Holland 92 A.D.3d 1096, 939 N.Y.S.2d 584 (3d Dept.,2012), a counselor (Camacho v. Camacho, 115 A.D.3d 1327, 983 N.Y.S.2d 182 (4th Dept.,2014) or other expert.(Rueckert v. Reilly, 282 A.D.2d 608, 723 N.Y.S.2d 232 (2d Dept.,2010)

Similarly, disputes concerning child custody and visitation are not subject to arbitration because "the court's role as *parens patriae* must not be usurped", and such agreements may not be enforced. (Glauber v Glauber, 192 A.D.2d 94, 600 N.Y.S.2d 740 (2 Dept., 1993); Matter of Hirsch v Hirsch, 4 A.D.3d 451, 774 N.Y.S.2d 48 (2 Dept., 2004)).

However, in a contested custody or visitation case the Court may appoint a mental health professional, such as a psychiatrist, or psychologist to conduct a forensic evaluation and testify as an expert to assist the court in making such determinations. Occasionally, Courts have appointed mental health professionals as Parenting Coordinators to assist them in complying with their parenting plan. (See Silbowitz v. Silbowitz, 88 A.D.3d 687, 930 N.Y.S.2d 270 (2d Dep't 2011); Headley v. Headley, 139 A.D.3d 855, 31 N.Y.S.3d 186 (2d Dep't 2016)).

No New York appellate court has defined the term "parenting coordinator."

In 2008 the American Psychological Association established guidelines for the practice of parenting coordination which defined the parenting coordinator process. (See https://www.apa.org/pubs/journals/features/parenting-coordination.pdf (Last accessed November 30, 2023). These guidelines have not been adopted or even mentioned by any New York Court. New York's Eighth Judicial District also adopted Guidelines for Parenting Coordination in 2008 which define Parenting coordination. These guidelines have not been referred to by any other New York court.

Authority of Court to Appoint Parenting Coordinator

The first case in which a parenting coordinator was appointed appears to be LS v. LF (10 Misc.3d 714, 803 N.Y.S.2d 881 (Sup Ct, 2005)). There, the Court found that the appointment of a parent coordinator was warranted where intensive therapeutic intervention was necessary to assist the parties in halting their destructive behavior

toward each other and themselves. The Court pointed out that the utilization of parenting coordinators had not been widespread in New York State, but the Second Department had ruled that it is not an improper delegation of authority to appoint a case manager for visitation.(citing Zafran v Zafran (306 A.D.2d 468, 761 N.Y.S.2d 317 (2 Dept., 2003)). In LS v. LF, the parenting coordinator was appointed to assist the parties in re-establishing regular visitation under their stipulation and divorce judgment. The Court wrote that the parent coordinator "can act as a go between the parents and child to assure that there are open lines of communication. The parent coordinator shall assist the parties in establishing regular visitation with the child, the ultimate goal being overnight parent child time consistent with the stipulation, judgment and this decision. It is anticipated that the coordinator will meet with the parents and child bi-weekly at the beginning of the process, expanding to monthly, and hopefully assisting the parties and child in re-establishing meaningful parent time."

The cases appointing a parenting coordinator rarely explain the reasons that the court deemed it necessary to appoint or refuse to appoint one. For example, in Raviv v Ravid,(60 A.D.3d 675, 875 N.Y.S.2d 155 (2d Dep't 2009)) the court granted the plaintiff's motion to appoint a parenting coordinator to assist the parties with their co-parenting responsibilities. In Koegler v Woodard, (96 A.D.3d 454, 946 N.Y.S.2d 139 (1st Dept, 2012)) the Appellate Division held that there was support in the record for the Family Court's conclusion that a parent coordinator would be useful in minimizing conflicts between the parents. In Florio v. Niven, (123 A.D.3d 708, 997 N.Y.S.2d 728 (2d Dept.,2014)) where the Court directed that the parties engage a parent coordinator chosen by the attorney for the child the Appellate Division held that considering the extreme acrimony between the parties, there was no sound and substantial basis in the record for the Family Court's determination. In Anonymous, 2011–1 v. Anonymous 2011–2 (136 A.D.3d 946, 26 N.Y.S.3d 203 (2d Dept.,2016)) the Appellate Division held that the court properly appointed a parenting coordinator, who can assist the parents in resolving any disputes they may have concerning decisions about the children. In Shannon v. Shannon, (130 A.D.3d 604, 11 N.Y.S.3d 689 (2d Dept.,2015)) the Appellate Divison held that under the circumstances of this case, a parent coordinator was properly assigned to the parties. In Lew v Soberl, (46 A.D.3d 893, 849 N.Y.S.2d 586 (2d Dept.,2007)), the Appellate Divison affirmed an order that appointed a parenting coordinator to assist the parties.

Limited Role of Parenting Coordinator

The case law indicates that the role of a parenting coordinator is to oversee the implementation of their parenting plan. Like a forensic expert, he may not communicate with the court without the consent of the parties, make recommendations to the court without their consent, or resolve issues between the parties since this constitutes an improper delegation of the Supreme Court's authority.

In Edwards v. Rothschild (60 A.D.3d 675, 875 N.Y.S.2d 155 (2d Dep't 2009)) the Appellate Divison modified an order of the Supreme Court which authorized the Parenting Coordinator to resolve issues between the parties. It held that this constituted an improper delegation of the court's authority to determine issues relating to visitation.

In Silbowitz v. Silbowitz, (88 A.D.3d 687, 930 N.Y.S.2d 270 (2d Dep't 2011)) the Appellate Division affirmed an order of the Supreme Court which, in effect, granted the former husband's motion to appoint a parenting coordinator to assist the parties in implementing the terms of their child custody and visitation agreement. It observed that although a court may properly appoint a parenting coordinator to mediate between parties and oversee the implementation of their court-ordered parenting plan a court may not delegate to a parenting coordinator the authority to resolve issues affecting the best interests of the children. Although the parenting coordinator was empowered to issue a written decision resolving a conflict where he was unable to broker an agreement between the parties, the Supreme Court's order also provided that the parties may seek to have the parenting coordinator's decision so-ordered by the Supreme Court and that they "retain their right to return to Court and seek a modification of their parenting plan at any time." Here, despite the expansive scope of the issues entrusted to the parenting coordinator by the Supreme Court's order, his power was properly limited to implementing the terms of the existing child custody and visitation arrangement, subject to the Supreme Court's oversight.

In Matter of Headley v. Headley (139 A.D.3d 855, 31 N.Y.S.3d 186, (2d Dep't 2016)), the judgment of divorce incorporated but did not merge a stipulation under which the parties agreed to joint legal custody of the child. The Supreme Court denied the father's post-judgment motion to modify the judgment of divorce to award him physical custody. However, the court concluded that the appointment of a parenting coordinator would be in the child's best interests because, among other reasons, the mother's attitude and behavior created a "very negative climate," which hindered visitation. The court appointed a licensed clinical social worker as the parties' parenting coordinator, to help them implement the custody and visitation provisions of the judgment of divorce and to reduce conflict and detrimental impact upon the child. It pointed out that the parenting coordinator may not resolve issues between the parties, since this constitutes an improper delegation of the Supreme Court's authority to resolve issues affecting the best interests of the child.

In R.K. v. R.G. (169 A.D.3d 892, 94 N.Y.S.3d 622 (2d Dep't 2019)) the parties' marriage was annulled and the mother was awarded sole legal and physical custody of the child. The father moved to modify the custody provisions of the judgment to award him sole physical and legal custody of the child. Following a hearing, the Supreme Court awarded the parents "equal legal rights and responsibilities to the child." The Court directed the parents to retain a parenting coordinator and authorized the parenting coordinator to resolve issues between the parties. The Appellate Divison

modified the order by deleting the provision which authorized the parenting coordinator to resolve issues between the parties since this constituted an improper delegation of the Supreme Court's authority. It held that if the parents could not reach a mutual agreement after consulting with the parenting coordinator, "the Parent with whom the parenting coordinator agrees shall make the final decision."

It appears that provisions in custody agreements that are incorporated into an order or judgment that authorize a parenting coordinator to determine issues related to custody or visitation constitute an improper delegation of the Court's authority. Agreements that grant the parenting coordinator the authority to make recommendations that are in effect, subject to oversight by a court, are no less improper. (See Gaitor v Morrissey, 47 A.D.3d 975, 849 N.Y.S.2d 324 (3 Dept., 2008).

Frequently, custody agreements that contain provisions for the parties to utilize the services of a parenting coordinator provide that, if the parties cannot agree on whether an existing parent coordinator should be replaced, a party may seek relief from the court. Courts have enforced these provisions in custody agreements for the replacement of a Parenting Coordinator. In Mastrocola, v. Alcoff, (204 A.D.3d 471, 166 N.Y.S.3d 166 (1st Dept, 2022)) the custody stipulation provided that, if the parties cannot agree on whether an existing parent coordinator should be replaced, a party may seek such relief from the court. It was undisputed that the parent coordinator violated the custody stipulation's description and express limitation of her role by recommending a particular schedule and creating new scheduling rules that diverged from the schedule in the custody stipulation. Furthermore, the relationship between the mother and the parent coordinator, which the motion court found to be characterized by "conflict," was incompatible with the intended role of the parent coordinator under the custody stipulation to assist the parties in "resolv[ing] Major Issues" on which the parties were unable to agree. The Appellate Division held that the trial court should have granted the mother's request to replace the parenting coordinator. Under these circumstances, directing the parties to continue working with the current parent coordinator was not in the child's best interests, and further proceedings were necessary to appoint a new parent coordinator under the terms of the custody stipulation.

Fees of the Parenting Coordinator

The fees of a parenting coordinator can be exorbitant, well above the means of most people. We are aware of court-appointed parenting coordinators in the New York City Metropolitan area who charge the parties $450 an hour.

In cases where the courts have appointed a Parenting Coordinator, they have usually directed the parties to share the cost of the parenting coordinator's fees. It has been held that in the absence of any clear indication that one party was more culpable than the other, the parties should share equally in paying the fees of the parenting coordinator. However, it is error for the Supreme Court to require a parent to pay the fees for the parenting coordinator and therapist without considering her financial status. (Ragone v. Ragone, 62 A.D.3d 772, 877 N.Y.S.2d 909 (2009); See Domestic Relations

Law § 237[d][4]). In light of that holding fairness dictates that in those cases where the payment of a parenting coordinator's fees is under consideration, the parties should be required to submit the same net worth statement and financial information that is required on an expert fee application.

The authority of the Court to direct the parties to pay the fees of a Parenting Coordinator it has appointed is questionable. It does not appear that the Court is authorized to direct the parties to pay the fees of a parenting coordinator. The Supreme Court does not have inherent powers to direct the parties to pay legal fees and expenses. Under the general rule, attorneys' fees and disbursements are incidents of litigation and the prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties or by statute or court rule (Matter of A.G. Ship Maintenance Corp. v Lezak, 69 N.Y.2d 1, 511 N.Y.S.2d 216 (1986)). Legal fees, costs, and expenses depend upon statute, and, in the absence of any statute allowing them, none can be recovered. (City of Brooklyn,148 N.Y. 107, 42 N.E. 413 (1895).

Parent Coordinator fees are not authorized by statute or court rule. Domestic Relations Law § 237(b) authorizes the court to award … expenses '[u]pon any application … for custody, visitation, or maintenance of a child, …, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, visitation or maintenance of a child. It provides, in part, that "the court may direct a spouse or parent to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse or parent to enable the other party to carry on or defend the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires." Domestic Relations Law § 237 (d) defines the term "expenses" as used in subdivision (b) to include, but shall not be limited to, accountant fees, appraisal fees, actuarial fees, investigative fees and other fees and expenses "*that the court may determine to be necessary to enable a spouse to carry on or defend an action or proceeding under this section*." (emphasis supplied)

We are not aware of any scenario where the fees of a parenting coordinator are necessary t*o "enable a spouse to carry on or defend an action or proceeding under this section*."

Nor are the fees of the Parenting Coordinator authorized by 22 NYCRR § 202.18. It provides that the court may appoint a psychiatrist, psychologist, social worker, or other appropriate expert to give testimony with respect to custody or visitation… The cost of such expert witness shall be paid by a party or parties as the court shall direct." Since a parenting coordinator is not engaged to be an expert to give testimony with respect to custody or visitation it appears that 22 NYCRR § 202.18 does not apply to the appointment of a parenting coordinator.

Conclusion

The utilization of parenting coordinators had not been widespread in New York State. This is because a court cannot delegate its authority to determine custody and visitation issues to a mental health professional, and the legislature has not deemed the fees of a parenting coordinator necessary to enable a spouse to carry on or defend a custody action.

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