



Women's Legal Services Australia

Supplementary Submission in response to the family courts merger bills*

Prepared by Women's Legal Services Australia
(WLSA)

3 November 2020

Women's Legal Services Australia

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🌐 www.wlsa.org.au

* Federal Circuit and Family Court of Australia Bill 2019 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019

Additional information

1. On the 9 October 2020, prior to our appearing before the Senate Legal and Constitutional Affairs Committee that day, Women's Legal Services Australia's Opening Statement and copies of news articles to be tabled at the hearing on 9 October 2020 were emailed to the Committee secretariat.
2. The articles were going to be discussed in our Opening Statement which we were unable to make due to disruptions to the hearing.
3. We understand our opening statement will be tabled.
4. We provide the attached articles as a supplementary submission:
 - 4.1 ["Calls for change, dedicated family law courts, after Lone Tree murder-suicide"](#) by Jennifer Kovalski in *Denver* 7 on 8 October 2019; and
 - 4.2 An opinion piece by Todd Burnham and J.P. Prentiss ["A family court system could prevent further tragedy"](#), *Daily Camera*, 1 October 2019
5. These news articles highlight calls by domestic violence experts and lawyers in Colorado in the United States for a dedicated specialist family court in Colorado. These calls follow reports of a father killing his 10 year child and himself shortly after being informed by the Court that he would likely be losing custody of his son. It would appear the child was placed in the father's care while the Court made its final decision.
6. The articles outline that in Colorado judges preside over matters in a range of areas of law rather than having a specialist family court and highlight the importance of specialisation.
7. This is relevant to the Australian context as we strongly advocate to retain a stand alone specialist family court. If there is to be a court merger, we recommend the Federal Circuit Court judges presiding over family law matters be merged and included as Division 2 of the Family Court of Australia as outlined by the New South Wales Bar Association.
8. We believe this will provide a greater probability of appropriate judicial appointments as it will always be more obvious if an inappropriate appointment is made in a specialist court.
9. Our opposition to the Government's proposed merger of the family courts is centred on ensuring the safety and best interests of the child and the safety of adult victim-survivors of family violence in family law proceedings. Retaining and strengthening specialisation in family law and family violence through a stand-alone specialist family court is essential.

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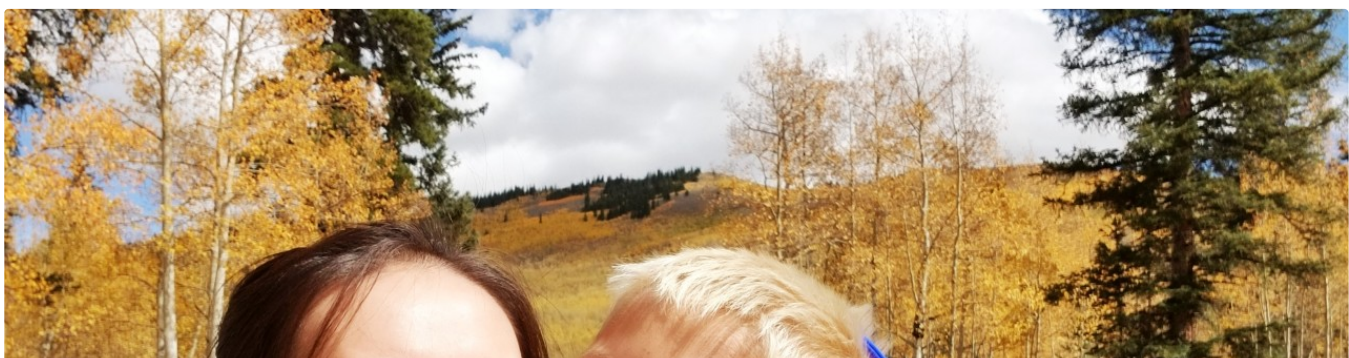
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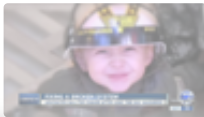
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Calls for change, dedicated family law courts, after Lone Tree murder-suicide

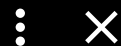
10-year-old Ty Tesoriero was killed by his father



**⚡ 25 weather alerts**By: **Jennifer Kovaleski***Posted at 6:01 PM, Oct 08, 2019 and last updated 11:32 AM, Oct 09, 2019*

LONE TREE, Colo. -- More than two weeks after a tragic murder-suicide in [Lone Tree where a father murdered his 10-year-old son and then killed himself](#), attorneys and domestic violence experts are calling for changes to Colorado's family law court system.

Ty Tesoriero was murdered at the hands of his own father eight hours after Anthony Tesoriero, a known domestic abuser, learned he was likely going to lose custody of his son. But still [the judge ruled to let Ty go home with his father for one last night](#).

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"Family courts are failing miserably to protect our children," said Maralee McLean, a domestic violence expert, in an opinion letter to the Denver Post. "If you think children are protected by our courts, please think again. It makes me cry, she said."

McLean has been speaking and writing about domestic violence and child abuse for over 30 years after she said Colorado's courts failed to protect her child.

"All I could think of is that mother's anguish and the [pain of the death of her child when she knew what was happening](#)," she said in response to Ty's story.

Calls for a dedicated family law court in Colorado

McLean is one of dozens of experts now pushing for better trained judges and a dedicated family court system in Colorado. She believes a judge with more training on domestic violence would have made a difference in Ty's case.

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"Colorado has no specialized family courts, rather all lower court judges rotate through family court," said McLean. "We need to have judges trained in domestic violence, child abuse, child sexual abuse. We need a separate court."

[An Op-Ed published in the Daily Camera from Burnham Law](#) called Ty's story "a complete systemic failure." The letter states, "We are dedicated family law attorneys with decades of experience. Our conclusion, and the consensus of our peers, is that we need — families need — a dedicated family law court."

A dedicated family law court would mean district court judges would only be assigned to family law matters and could go through specialized training. Currently, with exception to the dedicated juvenile court in Denver, judges rotate through different courts from criminal, civil, probate, juvenile, and family law.

"District court judges are forced by the system to be generalists. Most them have zero family law experience before they take the bench and seem to receive little training in the complex dynamics of family law, domestic violence, and allocation of parental responsibilities," the opinion letter in the Daily Camera points out.

McLean also said the system needs to do a better job of making child safety a priority.

She's calling on Governor Jared Polis and the legislature to fix Colorado's

flawed system and make changes to the law that force judges to protect children before they're hurt, not after, when it's often too late.

"Hopefully, Governor Polis will take a hold of it and say ok - enough!" said McLean. "The children, I don't think are mattering, that's what I see. I don't see the children being protected."

Dedicated family court systems have worked in other states

North Carolina, for example, has what it calls [Unified Family Courts](#). There, each district can decide to have one and those judges only work on family court cases and go through specialized training.

MORE:

Judge found Lone Tree dad had 'zero credibility' just hours before murder, but didn't remove boy

Man who killed son, himself should not have had gun due to law regarding domestic violence abusers

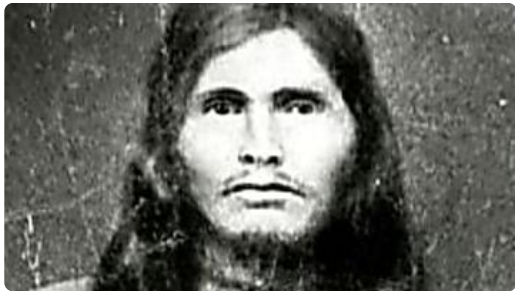
'Nobody did anything': Colo. mother says system failed to protect her murdered son

Colorado mother tried for 15 months to protect murdered son from ex, but 'nobody wanted to investigate'

'Maybe they were scared': Worker on Lone Tree custody case says father bullied system to get his way

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OPINION > GUEST OPINIONS

Opinion: Todd Burnham and J.P. Prentiss: A family court system could prevent further tragedy

By [DAILY CAMERA GUEST OPINION](#) |

openforum@dailycamera.com | Boulder Daily
Camera

PUBLISHED: October 1, 2019 at 1:54 p.m. | UPDATED:
October 3, 2019 at 7:40 p.m.

By Todd Burnham and J.P. Prentiss

In [Lone Tree last month](#), police say a father killed his 10-year-old son and then himself. This tragedy was entirely preventable. It is an abject failure. Not just a human failure, or a mistake or error in judgment, but a complete systemic failure. This happened because our current judicial system is set up in such a way that children, and adult parties, are left in dangerous situations until something egregious happens. Our system faces two major problems when it comes to family law:

First, and perhaps foremost, the decisions about these people's lives are being made by individuals who, while undoubtedly good, smart, talented jurists, lack the experience and training in complex family law matters that are fundamental to understanding the myriad issues families face when separating.

As our system is currently set up (with the exception of the dedicated juvenile court in Denver), judges rotate through terms focused on civil, criminal, probate, juvenile and family law matters. We are family law attorneys with decades of experience. Our conclusion, and the consensus of our peers, is that we need — families need — a dedicated family law court.

District court judges are forced by the system to be generalists. Most of them have zero family law experience before they take the bench and seem to receive little training in the complex dynamics of family law, domestic violence and allocation of parental responsibilities.

Family law is often derided, but far from being an area of the law confined to couples fighting over dishes and wall hangings or griping about the other party because of a relationship gone bad, family law includes some of the most important decisions our courts can make. What does a person's future look like financially? What happens to a person's retirement plans? Where will children be safe? What is in a child's best interest? Is this person a threat to the other party? Is this really a case of domestic violence, or is one party trying to leverage overblown claims to gain an advantage?

Submission 12 - Supplementary Submission

Family law judges need to be experts in mental health, domestic violence, child development, attachment, retirement planning, household budgeting and relationship dynamics. The interaction of these areas of knowledge, and more, is unique to family law. Judges need the time to develop long-term experience in this complicated area of the law. Creating a dedicated family law court in each judicial district, with judges who are specially trained for and actually want to hear these types of cases, is the first, and most important, step to fixing our system.

Additionally, we must address the fact that our system leans towards second, third and even more chances for people who have been found to be dangerous. Even in the case of proven abusers, limiting a dangerous, abusive parent's contact with their children is nigh impossible. Trying to prevent an instance of abuse, or limit it before it becomes serious, is even harder. In short, until a child is actually injured or put in a proven dangerous situation, the law and the courts appear unable to act. Too often it seems that the safety of a child is not made a priority. In Lone Tree a child was sent with a known domestic abuser who apparently had a history of making serious threats to people's safety and who had apparently been told he would be losing custody. We now know the devastating outcome of that decision.

We are not suggesting that courts should sever parent-child relationships more frequently or that the law should change to make it easier to do so. But there must be statutory changes that direct courts to err on the side of caution and safety and to act swiftly and decisively in the face of threats to a child's safety. The law should not require a child to be injured physically or emotionally before action can be taken. All too often we have to counsel clients that we must demonstrate actual harm to children, not just the threat of harm, before we can protect them.

The Legislature must act to create a dedicated family court system, with judges who are trained in, and want to be doing, the difficult but amazingly necessary work of deciding family law cases. And we need changes to the law that direct judges to protect children and parties from domestic abusers before they are hurt. Call your representative. Make this an issue that is front and center before another child is killed by a known abuser and a flawed system.

Todd Burnham and J.P. Prentiss are partners with [Burnham Law](#) in Boulder.

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