

# Family Court Chronicles.com

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Opinion #28

*What the newspapers won't tell you!*

July 16, 2007

## Child Abuse/Neglect

# JUDGE HARDCASTLE

*goes back to*

# *Beanie Babies*

***The once-feared jurist says he will be leaving abuse/neglect on July 30 and returning to ordinary divorces. Who will go mad first: him or us?***

BY GLENN CAMPBELL

Judge Gerald Hardcastle isn't dead yet.

He's merely "resting."

In an exclusive interview with Family Court Chronicles on Friday, the 61-year-old elected judge easily dispelled the courthouse rumors of his demise. He looked quite good, in fact. His color was not at all cadaverous, and we might even say that he was "glowing." We didn't check his vital signs, but they appeared to be quite vital.

He did confirm, however, that he will be permanently quitting child abuse/neglect cases in two weeks. Effective July 30, he will be taking over Judge

Dianne Steel's divorce calendar, and Judges Steel and Jones will together be trying to fill Hardcastle's shoes.

Depending on how you look at it, either (a) child welfare in Las Vegas has lost its greatest champion, or (b) the reign of terror is finally over.

We know, we know: He has quit before and taken it back. This time, however, it seems for real. It's that glow we mentioned. He looks comfortable this time, and there seems to be nothing anyone can offer him that he wants.

The bane of a thousand caseworkers won't be kicking them around anymore. However, before anyone starts dancing upon his still-undug grave, we urge caution. Don't celebrate the passing of one era without understanding what might happen in the next.

### **The Legacy of Hardcastle**

Hardcastle has been a Family Court judge for fifteen years, since the Family Court was first spun off from the main District Court in 1992. Of the six original judges, only he and Gloria Sanchez still remain. Some were taken out during the Attack of the Inexper-



*Hardcastle can handle your Beanie Baby problem—and not figuratively.*

perienced Females. If you are a dimwit voter, and you get to the bottom of the ballot to Family Court Judge, who are you going to vote for: a male name you don't know or a female name you don't know? After all, this is *Family Court*, and who knows more about families?

Hardcastle was saved (we surmise), by his solid yet unjustified name recognition. *Hardcastle and McCormick* was a popular TV series in the 1980s that was still in reruns in the 1990s. On the show, a retired Judge Hardcastle in Los Angeles joins forces with one of his probationers to engage in a lot of car chases and solve crimes that fall through the cracks of the traditional justice system.

Our own Judge Hardcastle engages in very few car chases, but simply by putting up signs on street corners with his own innocent name, he tapped into a vast cultural zeitgeist. Dimwit voters, many of whom had recently moved to town, said to themselves: "Hmmm, Hardcastle. Where have I heard that before? Sounds tough but fair. He's willing to take the law in his own hands. I think I'll vote for him."



Judge Hardcastle takes the law into his own hands.

In 2004, with memories of the show fading, Hardcastle was challenged and nearly defeated by an attractive and substantial feminine name, Elizabeth Halverson. It made little difference to the voters that the name was attached to an obnoxious fat lady on a scooter with no family law experience who was only seeking revenge against Hardcastle's wife. It almost seemed like poetic justice for Hardcastle to be defeated by the same kind of linguistic fluke that got him elected, but the tough guy image held out by a narrow margin, and Halverson went on to provide our current wave of entertainment at the main courthouse downtown.

It was only by luck of the draw that the voters got, in our Hardcastle, a judge who truly cared about the law. He had been practicing family law for 19 years before becoming a judge, and he certainly had some well-defined opinions.

Hardcastle can be described as a staunch legal traditionalist and a firm believer in the "adversarial system." For the uninitiated, this is the theoretical process by which decisions are reached in a courtroom. When there is a conflict, two trained advocates present each side to the judge, and the judge, who is largely passive except in the matter of procedure, chooses between the two.

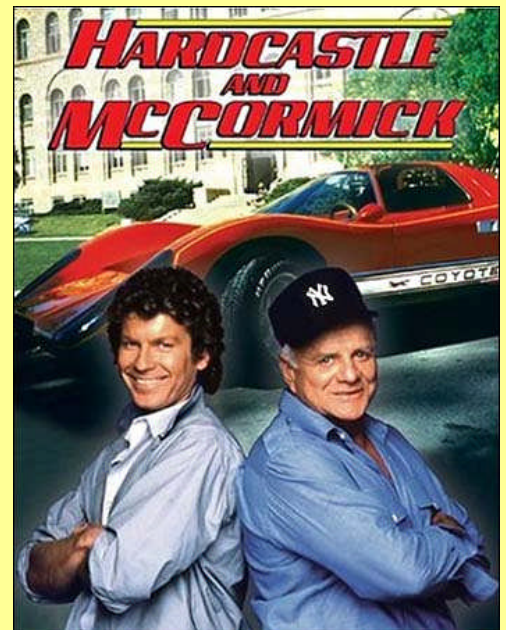
The alternative is an "inquisitional system," where the judge tries to go out and find the truth. This is more like the Judge Hardcastle on TV, who actively investigates crime and chases bad guys. Our own Hardcastle is content to remain on his high bench and rule upon the evidence delivered to him. He scoffs at any notion of judges reaching out to solve problems that haven't explicitly been given to them.

Hardcastle is not a touchy-feely judge. He doesn't get bogged down in sentiment, and the feelings of the moment have little sway over him. His job, as he sees it, is to provide unequivocal "decision services" based on the law and on a disciplined prediction of future outcomes.

If you have to come to court, it is because, for one reason or another, you can't make a decision yourself. Hardcastle is fully prepared to make the decision for you, rapidly and brutally.

He has no delusion that he is always making the *best* decision. It is just as important to him that a decision be made quickly and definitively and that people be able to move on with their lives. Hardcastle isn't the kind of judge who is going to leave a matter "under advisement" for months. He is going to make a decision, cut off a limb, and be done with it.

We believe it is not by coincidence or fluke that Hardcastle has been the judge for "dependency" (abuse/neglect) for most of his years on the bench. This position is elected by the other Family Court judges, not by the people, and there seems to have been a grudging



recognition that only Hardcastle was equipped to handle it.

Nevada law requires that all child welfare cases be reviewed by a judge (or his proxy) at regular intervals and that the judge approve every major change in the case. Dependency involves a huge caseload and requires dealing with a chaotic child welfare agency that perpetually lacks leadership. In our opinion, the only kind of judge who could survive here has to be both tyrannical and a solid theoretician. When so much tragedy is paraded in front of you, day after day, you have to have a well-defined conceptual system for processing it. You also have to be able cut through the B.S. quickly to get to the heart of any matter.

Hardcastle is a natural systems guy, an engineer of the law. As with other engineers, the main criticism you can level at him is that he cares too much about his calculations and less about the people in front of him. If you are a caseworker, and your position does not compute, Hardcastle is going to let you know it with a minimum of nicety. He has little tolerance for the fact that you may be hamstrung by circumstances beyond your control. That's not his problem. He has been asked for a ruling based on the facts, and now he is making it.

No other judge better elicits the fear factor in those who appear before him. Several years ago, we felt that fear personally—an unspeakable dread in the pit of your stomach before you even step

into his courtroom. No other judge is more a stickler for courtroom decorum. When the bailiff says, “All rise!” and the judge marches in, you really get the feeling that God himself has taken the bench.

Now we know he is a marshmallow inside, but the image of stern authority is part of his legal philosophy. Lawyers and caseworkers need to know, when they walk into the courtroom, that they better have their ducks in a row, or he’s going to slaughter them.

There was a time when Family Court Chronicles naïvely believed we could reform the man. We thought that through a program of psychotherapy and sensitivity training, we could get the judge to be “nice” on the bench. We wanted to introduce the concept of diplomacy into his theoretical framework.

Sadly, our efforts were a dismal failure. The problem turned out to be a deeply entrenched personality issue, so no therapy or psychotropic medication was likely to help. Furthermore, he lacked the will to change, which is an essential element in any 12-step program.

Nonetheless, we did get him to be nice to us. Hardcastle seemed to grasp better than anyone else in the courthouse what Family Court Chronicles was all about. We both saw child welfare as a systems problem more than a sentimental one, and we seemed to have a common language.

Since FCC had never been to law school, there were several key principles of law that he clued us into. Among other things, he trained us to respect “the process,” which has since become our mantra. The structural system by which a decision is made is at least as important as the decision itself. If the process is defective, then the final decision is going to be suspect.

When you become a judge—or any kind of leader—then you have to start thinking about tragedy at the wholesale level rather than retail. You may make some bad decisions and some good ones, but your overall concern should be the methods and policies you use to reach decisions. If the methods are sound, then you are probably going to do more good for more children in the long run, even if there is some collateral damage.

The general public is only concerned with retail tragedy. They are worried about what happens to their little Johnny, and they can’t bear to see him suffer. A judge—or a Family Court activist, or a manager at DFS—may have to step back, let this Johnny go, and start thinking about all the Johnnies instead.



### The Change

“Why did you resign?”

The question, of course, comes from the 1960s TV series, *The Prisoner*. If Hardcastle didn’t answer us, he couldn’t leave the Village and would be chased down by a giant weather balloon whenever he tried.

The answer was pretty predictable: The time had come to move on. After 12 years in dependency, Hardcastle needed a change. He had done what he could for child welfare, and this was the time to step aside and give new blood a chance at it.

We have our own explanation: Gods don’t like to share power. The Chief Justice of the Nevada Supreme Court had recently ordered Family Court to provide a second judge for dependency. When Hardcastle told us about the change, he seemed to welcome it. His crushing workload would finally be reduced. We suspect, however, that he began to see the inherent problems of shared power.

Hardcastle had been the absolute authority in child welfare for years. He told the hearing masters how to interpret the law, and when he made his rulings, he only had to be consistent with himself. Now, he would be an equal member in a bureaucracy of two. Hardcastle seemed to have no beef with Judge Jones. It was the prospect of sharing power with anyone at all that we believe pushed him over the edge.

Anyway, Hardcastle doesn’t regard divorce as a come-down at all. Intellectually, he says it is just as fascinating to him as dependency. Each divorce, he says, is “a little puzzle.” It is challenging to figure out how the pieces fit together.

In divorce, he has his own well-established opinions. Joint custody, he says, may be a good idea when the parties can agree on it themselves but not as a default position when they can’t agree on anything and the court has to impose it. By not putting one parent clearly in charge of a child, you may be guaranteeing confusion and perpetual conflict for decades to come.

His public position against joint custody, which he has even outlined in a scholarly article, made him a prime target for “peremptory challenge” when he was previously a divorce judge. Judges are normally assigned to divorces at random, but once an assignment has been made, each litigant has one opportunity to pay a fee, reject the assignment, and roll the dice again. If your divorce judge turns out to be Hardcastle, and you suspect that you are going to be on the losing end of a primary custody decision, then you won’t want Hardcastle for your judge. In fact, he was the Number One recipient of these challenges in 1999.

In 2005, Hardcastle actively lobbied the state legislature to defeat a bill that would make joint custody the default solution by law. He is a believer, of course, in judicial discretion. A judge should be free to craft his own unique solution for each case without unnecessary meddling by lawmakers.

Hardcastle also believes that divorce decisions should be made quickly. “The only good divorce is a fast divorce,” he says. Which parent gets custody seems less important to him than making a prompt and clear decision so the parties can start rebuilding their lives. Whatever the decision is, the parties will adapt. They can’t adapt, however, if the decision drags on for months, as it does for some judges.

In fact, Hardcastle processed his own divorce in 2005 with lightning speed—a matter of days.

“How did you get it done so fast?” we asked with awe.



“I know how to do them,” he said with a sly smile.

The question remains how divorced he really is. At this point, there seems to be only one woman in his life: Judge Kathy Hardcastle, his ex-wife.

This brings up the problem of power-sharing. Can two judges of equal power rule the same roost? For that matter, can two people in any position of authority truly share that power equally? How many great movies have two directors, and how many companies have two equal CEOs? Is “joint custody” really a good idea in any domain? To make things work, doesn’t one person have to clearly be in charge—at least for each project?

This is more than an academic question. It is an issue that may affect the fates of hundreds of children.

### The New Bifurcated System

Now that Hardcastle is moving on, what is going to happen to the supervision of child welfare cases? What will the post-Hardcastle era look like? Will children be better off, or worse? Below are our own opinions, not Hardcastle’s.

2007 may go down in history as the year our fine legislature totally screwed up child welfare. Last year, there were obvious problems in Clark County, and this year the legislature “fixed” them with new lame-brained laws that we predict will cause more damage than

good.

Supreme Court Chief Judge William Maupin—an elected politician like everyone else—recently climbed on the bandwagon by assigning a new elected judge in Clark County to “help” with dependency. With Hardcastle’s departure, the two judges will be Steven Jones and Dianne Steel. (Jones is already hearing foster care reviews, and Steel will presumably start on July 30.)

Each has their own personality and reputation. In spite of his personal problems of last year, Jones is generally regarded as a competent and even-handed jurist. Judge Steel has a reputation for being almost as dour and crotchety as Hardcastle—which might be a good thing. Each judge has their known quirks and personality flaws, which they may or may not rise above.

The fundamental defect, however, has nothing to do with which judges have been selected. It is a matter of structure. The real problem now is that we have two celebrity chefs in the kitchen, both of equal inherent power, trying to produce the same meal? Is this any way to run a restaurant?

Having multiple divorce judges isn’t a problem because they are handling separate cases. In dependency, we now have two judges trying to manage a single child welfare agency. What happens if Judge Steel interprets the law one way, and Judge Jones interprets it another? How will the agency know

which directive to follow?

With Judge Hardcastle, there was no such problem. On most things, he had a single coherent position, which he conveyed to the agency over and over again through his rulings. What is going to happen when this coherence is lost? Is oversight by the judiciary really going to be effective?

At the big dependency court in Los Angeles County, there are about 20 courtrooms and hearing masters (or equivalent), compared to our three or four courtrooms. However, they are all supervised by a single elected judge. How can it be done any other way?

Our only hope for coherence is to cleanly divide up the tasks between the two judges, but no such plan has yet been announced. In our view, there are two ways the cases can realistically be divvied up: vertically and horizontally.

In the vertical case, several DFS units and one hearing master are assigned to each judge. This is like saying that Judge Steel is going to take the west side of Las Vegas and Judge Jones will take the east side. Rulings would be consistent for each set of caseworkers, but you would still have two judges issuing potentially conflicting rules to the same agency. And what happens when we add a third hearing master, which seem imminent? Who will they report to without throwing off the balance of power?

In the horizontal division, one judge would handle Termination of Parental Rights (TPR) cases exclusively and the other would handle the management of abuse/neglect cases prior to TPR. Since TPRs are filed as separate cases, this is about as clean a division as you are going to get. The judges, however, would have to agree among themselves who is going to do what. The workload probably wouldn’t be equal. TPR cases by law must be heard by an elected judge, while the abuse/neglect judge wouldn’t be legally required to hear any cases at all: He/she could pass all the work to the hearing masters.

What we may have, thanks to Maupin, is the potential for a massive and unsolvable jurisdictional conundrum. Instead of an additional judge “helping” with dependency, judicial oversight could be crippled instead.

Prior to 2003, child welfare was “bifurcated,” with the county handling the investigation and short-term management of abuse/neglect cases and the state being responsible for longer-term foster care. That system, by most accounts, with a nightmare.

Now that we have “unified” child welfare, Maupin has come along and bifurcated it again, this time at the judicial level. What the system may need is more hearing masters, but that is within the county’s discretion, not Maupin’s. Maupin can only assign more elected judges—and possibly mess up child welfare worse than it is.

So, is the post-Hardcastle era shaping up to be a happy one? Much rests on personalities: whether Steel and Jones rise to the occasion, become strong and consistent advocates for children and learn to work smoothly with each other in spite of the flawed structure.

In six months or a year, we could be begging for Hardcastle to return, but time is running out. He vows that he will retire when his term expires in 2010, so we have to deal with his passing sooner or later.

Being undead, as he currently is, has its advantages. At least he can offer a word of advice from time to time. Whether anyone will listen is another matter.

### **The Beanie Babies**

“Tell us about the Beanie Babies.”

We knew this was almost as sensitive an issue as “Why did you resign?”

When we discussed the initial

rumors about Hardcastle with an attorney who has known him for a while, the attorney shared our doubts that the judge could ever be happy again in divorce. We both calculated that he would go mad within a year, probably sooner. The attorney said he couldn’t imagine Hardcastle going back to “dividing up Beanie Babies” in divorces.

We thought he was being metaphorical. Turns out, he was being literal.

Do you remember Beanie Babies? They were oh-so-valuable once—supposedly “collector’s items”—but now they’re the equivalent of 8-track tapes at a garage sale.

In the late 1990s, there was a gap of about three years when the vote of the other judges sent Hardcastle back to divorce. In 1999, in a lingering divorce before him, a couple had successfully divided up everything except for their precious Beanie Baby collection, worth somewhere between \$5000 and zero dollars. Neither side would budge.

This is what it always seems to come down to: one final crumb to squabble over before the divorce is done. The couple may think they are fighting over Beanie Babies, but they’re not. They are fighting over the last thread of the relationship that once meant so much to them.

Hardcastle, however, had run out of patience. In the absence of cooperation between the two parents, he ordered the Beanie Babies themselves into court.

The parties returned the next day, still with no agreement but with the full armada of small stuffed animals. Hardcastle gave the woman the first pick, and she chose Maple the Bear. The

man then had the second choice, and they continued until all the Beanie Babies were duly assigned.

The *Las Vegas Sun* got wind of the event (because Hardcastle called them) and was present at the division. The resulting story got international coverage, and both parties were suitably humiliated.

As amusing as it was, this story illustrates both Hardcastle’s strengths and weaknesses. Was the conflict absurd? Of course. Was Hardcastle technically and poetically correct in his Solomon’s solution? Maybe.

He was wrong, we think, to alert the press.

What he may have overlooked is that this sort of thing is going to happen in every divorce, and it has nothing to do with logic or the law. The couple needed more than a technical ruling from the bench and a fair division of their Beanies. As much as Hardcastle derides “therapeutic justice,” what they really needed was some gentle counseling from a figure of authority. There ought to have been a more humane way to sever this final thread.

As Hardcastle drifts into his twilight years, we haven’t given up hope for his soul. If he is “saved” anytime between now and the end, he’s saved for eternity, right?

Realistically, we aren’t asking for any huge conversion at this point. All we want is to regress him back to what he should have learned in kindergarten.

He’s got to learn to be nice.

—G.C



*Maple the Bear*  
(Current Ebay price: 99¢ + shipping.)