

Divorce

Continued from Page A1

men, ranking it among the lowest in the nation, according to 2013 American Community Survey estimates.

“People still don’t know about collaborative divorce here,” said Denise Wennogle, a Morristown family law attorney and mediator who likes doing collaborative divorce work. “The challenge is getting the word out to the world that your divorce does not have to be a ‘War of the Roses.’”

“There are people who believe only an adversarial relationship works in a divorce,” she added. “I do not.”

The idea started taking shape in the 1990s when Minnesota lawyers and California family psychologists, who’d each been working on aspects of collaborative divorce, put their heads together, according to Talia Katz, chief executive officer of the International Academy of Collaborative Professionals, which has 5,000 members in 24 countries.

“We all quickly realized that divorce is not just a legal event,” Katz said. “It’s an emotional event. It’s a financial event.”

“Probably our biggest population of members in the U.S. are on the coasts,” she added. “Collaborative divorce has really taken off on the East Coast, West Coast, and in Texas, Florida and Georgia. Now it’s making its way toward middle America.”

How it works

Anne Vogt, 51, of Mount Tabor had a collaborative divorce that began in November 2012 and ended in October 2013.

“At the end, we spent 10 minutes in front of a judge,” said Vogt, who stumbled upon the collaborative option while visiting the Environmental Education Center in Lord Stirling Park in Bernards on Mother’s Day 2012.

“I was sitting on a bench when a lady on a bicycle came by and sat next to me,” Vogt said. “We got into talking. She obviously realized I was a very unhappy woman and told me she had a friend who is a divorce lawyer and was doing something really new.”

Vogt met Wennogle, who wound up representing her in a collaborative divorce. As is the case with all such divorces, her then-husband had his own legal counsel, and they all signed a participation agreement.

“You’re not really doing a collaborative divorce if you do not sign a participation agreement,” Wennogle said. “Everybody stipulates they will not leave the process and will cooperate in good faith.”

“The whole idea of a collaborative case is that it’s not adversarial,” Wennogle said, adding that the lawyers call each other colleagues instead of adversaries.

“We sit at round tables, too, so that nobody can be on anybody’s side,” she added. “The very first meeting, we talk about goals and interests, which is totally different than having positions. The process is not position based. Nobody says, ‘I know what the law is and I can get x.’”

Only joint experts

In the case of Vogt and her husband, talks immediately focused on how life would be for their daughter after the divorce and how finances would work out. In classic collaborative divorce style, a mental health professional and a financial expert — only one, in each specialty — were drawn into the process.

They help with the complexities of the case.

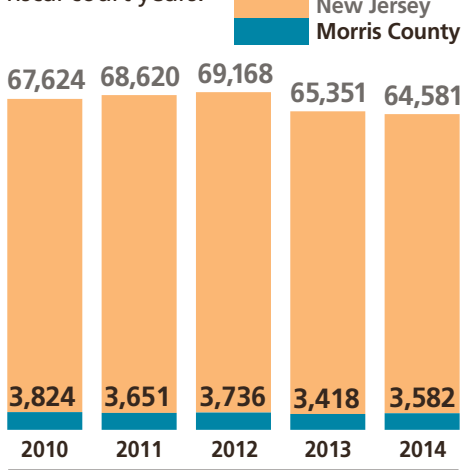
“My husband and I each had our legal advisers, but the other team members were pretty much unbiased and independent,” Vogt said. “My husband and I accepted their judgment as guidance. They were not in anybody’s camp. That’s real-



Family lawyer Denise Wennogle of Morristown is president-elect of the New Jersey Collaborative Law Group.

Divorce filings

Below are the number of new and reopened divorce cases in the indicated fiscal court years:



Source: Administrative Office of the Courts

ly important.”

Having joint experts, instead of each party calling in his or her own, can be a big savings in the divorce process, said Holly Friedland, a family lawyer with the law offices of Shauger and Friedland in Florham Park. She, too, represents clients in collaborative divorces.

“With litigation, you could end up with two or three experts that all have to be paid,” Friedland said. “Let’s say there’s an issue with a business that has to be valued because there’s a divorce. The wife hires her accountant for \$10,000. The husband hires his accountant for \$10,000. Then the judge appoints another expert for another \$10,000 to see which of their two reports is the more valid one.”

Significantly, New Jersey’s new law extends the privilege of confidentiality to all the professionals on the collaborative team, according to Valerie Brown, who lobbied for the New Jersey Family Collaborative Law Act on behalf of the New Jersey Council of Collaborative Practice Groups.

The extension means that confidentiality of the divorce proceedings can’t be breached without the permission of the client, Wennogle said.

“What happens on the team, stays in the team,” Brown explained, “and when everybody is protected, the spirit and the letter of collaborative practice is protected.”

Experts are drawn onto the team only if they’re needed. A range of mental health experts — including clinical psychologists, licensed clinical social workers, licensed professional counselors, psychiatrists, substance abuse specialists, and compulsive behavior specialists — can be drawn into the process as needed, as can real estate and financial specialists.

Jody D’Agostini, financial planner and certified divorce financial analyst at The Falcon Financial Group in Morristown, who participates in collaborative divorce teams, said she uses family law software to help divorcing spouses see how different financial arrangements can play out down the road.

“The financial part is usually the one that makes people reluctant to sign the paper, because they’re worried about what their future looks like,” D’Agostini said. “Divorce financial planners look at the tax impact of their alimony, their child support, and their income, and ask: What does your financial world look like one year from now, three years from now, five years from now, 10 years from now, and, especially if you’re divorcing later in life, in your retirement?”

“We help people make the right decisions so they don’t hurt themselves financially,” she added. “Divorce is very emotional and that’s very right brain sided. They’re not thinking with their left brains, logically.”

Managing emotions, even minimizing them, is the role of the divorce coach, a role played by Aaron Welt of Morristown, a clinical psychologist with a doctorate. A divorce coach, he said, keeps an eye out for the well-being of the individuals involved but also for the divorce process itself.

“In divorce there are many feelings—hurt, sadness, anger, loss—which can create roadblocks to progress in a divorce process,” Welt said. “If there was ever a time when you needed to be able to analyze clearly and formulate an effective strategy, it’s when you have to get yourself through a divorce.”

“You must be able to recognize a fair deal when you see it,” he added, “and you can’t let certain emotions, like anger, regret or resentment, cloud your judgment.”

97 percent settle

The high cost of divorce was the reason Assemblyman Holly Schepisi (R-District 39) introduced the New Jersey Family Collaborative Law Act in the first place. The cost of a litigated divorce, she said, can range from \$10,000 to hundreds of thousands of dollars.

Add that to the cost of real estate closings and what Schepisi called the already “ferocious cost of living in New Jersey,” and it’s all too much.

“We’re finding that, after a divorce, a lot of people can’t even afford to maintain separate residences,” she said. “As a woman in my early 40s, I have friends who are currently divorced and still living in the same home.”

Friedland, the family lawyer, said collaborative divorces save money just by staying out of court.

“The couple is going through a very structured process,” she said, “and they’re not called to court, where a couple with a litigated divorce can sit in the hallway while 27 other cases are being dealt with.”

The stark reality, too, Friedland said, is that 97 percent of the people who litigate their divorces in New Jersey settle

their case along the way — a statistic that she has heard presiding judges cite from the bench in Morris, Sussex, Somerset and Essex counties when they address couples at early settlement panels that are part of the litigation process.

“The judges bestow upon the people the importance of trying to settle their cases,” Friedland said. When they, ultimately, don’t go to trial, it’s in large part because of the cost and time involved.

Good for children

Some attorneys say collaborative divorce is particularly good in cases involving children.

Some 1.5 million children a year — 40 percent of all children — experience the divorce of their parents, according to the National Institute of Mental Health, which also reports that 20 to 25 percent of those children will suffer significant adjustment problems as teenagers that they will carry into adulthood.

Vogt says the collaborative divorce process greatly benefited her daughter who, at age 7, did not understand what the term “divorce” meant, as her team clinical psychologist discovered. Vogt was concerned about breaking the news about the divorce to her daughter.

“To say to her that mommy and daddy are getting divorced wouldn’t tell her anything,” Vogt said. “So, with the help of the team, we decided to tell her that we were going to reorganize the family, that mommy and daddy would have two houses and that she would have two houses.”

“That became so natural to her: At daddy’s house there are two cats and at mommy’s new house there are two dogs,” Vogt added. “Mommy’s house is a mile away — a six-minute drive — from daddy’s house.”

With their mental health and financial experts, Vogt and her husband also were able to come up with a co-parenting plan, an attachment to their divorce decree, and establish a mutually agreeable system of handling their daughter’s finances through a joint checking account and joint credit card.

Creative agreements

The truth, Friedland said, is that people able to work out their own agreements collaboratively often can come up with solutions more creative than those made by judges, who select from options set forth in statutes.

“The judge’s options are almost like a Chinese menu. For example, judges have been told there are certain kinds of alimony and that’s it,” Friedland said. “You can do open duration, term, rehabilitative or reimbursement. If you’re going to do alimony, it has to fit into one of these criteria.”

“When you do collaborative divorce or you settle issues outside of that courtroom,” she added, “you can try to negotiate other arrangements.”

Couples tend to embrace an agreement that they’ve played a part in forming, some collaborative divorce lawyers say, as opposed to one imposed by a judge.

“If you are an old-time litigator, collaborative divorce presents a dramatic shift in how you have to think,” Friedland said. “There’s also the realization that if collaboration fails, the collaborative attorney is out of the case. ‘For some attorneys, that’s a huge fear.’”

Yet, Brown emphasized, collaborative divorce is an idea whose time has come, as evidenced by the fact that the New Jersey Family Collaborative Law Act unanimously passed both houses of the Legislature.

“There wasn’t a single no vote from any person — Democrat, Republican, man, woman, minority, nonminority,” she said. “That means the most conservative person and the most liberal person agreed.”

Today, she said, it breaks her heart when her friends opt for a traditional divorce with litigation.

“I know the money they’re going to be spending on a divorce,” she said, “is money that could be spent in another way.”

Staff Writer Lorraine Ash: 973-428-6660; lash@njpressmedia.com

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