

Keep Family Law Case Files Confidential

By Fred Silberberg

Last year, the battle for confidentiality of family law files in California was short-lived. The Legislature briefly considered the concept of keeping financial information in such files from the public eye, but in the face of opposition from the media, the bill was swept quickly into the dust pan, where it has sat ever since.

Although that battle was only over keeping confidential a very limited amount of information, the past two weeks have shown an even larger need for overall confidentiality of family law files, in the same

manner as paternity files are kept confidential.

The bad behavior of the press in the face of Kim Basinger and Alec Baldwin's never-ending custody battle, and the unwitting further victimization of their 11-year old daughter as a result, should give rise to a renewed effort on the part of lawmakers to make all family law proceedings confidential.

In the Paleolithic era, the Legislature saw fit to make all paternity case files confidential in an effort to protect children born out of wedlock from public scorn. At that time, it was thought that children should be protected from such em-

barrassment and that sealing the files and proceedings would give at least some protection.

In the media-frenzied society in which we live today, the need for such protection is even more pronounced. The advent of the Internet and the onslaught of Web sites geared toward publicizing celebrity gossip, formerly the province only of tabloid newspapers, makes the need for such protection even more significant than when the paternity statutes were implemented.

For two weeks now, not a day has gone by when the names of Alec Baldwin, Kim Basinger and their daughter, Ireland, have not been mentioned in the media. The release of the recorded telephone message by the Web site TMZ.com has been followed by an onslaught of exposure in every major media outlet and has been fodder for every news talk show on the air.

This frenzy reached a local crescendo Friday, when the Los Angeles Times found it necessary not only to run a feature story on the debacle in its Calendar section but also to post not one but two photographs of Ireland in the paper. The battle over custody of Ireland has even overshadowed the tragedy at Virginia Tech.

It is bad enough that neither Baldwin nor Basinger can give thought to their daughter's well-being and make peace, but now the media has insured that this child will be the subject of ridicule and embarrassment for the balance of her adolescence, if not her lifetime. If she were not recognizable before, she is recognizable now.

If that were not enough, she has a plethora of self-declared media pundits offering their opinion about whether she wanted the telephone message made public and whether it was in her interest to have that happen.

Our courts have an obligation to protect children. However, the courts can fulfill that obligation only to the extent the law permits them to do so. Although the judge has issued gag orders in this case, whether those orders were violated by the release of the telephonic message is the subject of dispute.

Although protecting against the release of such information by one of the parties may be difficult, a blanket confidentiality provi-

sion protecting the content of the court files and the nature of the proceedings would provide some protection to children who are the innocent victims of these disputes and would keep such information from the media.

This is, in fact, the model in New York, where all family law files and proceedings are confidential.

Advocates for access to family law files, such as the press, argue that constitutional considerations dictate that the files remain public. The purported public interest in oversight of the court system and in allowing the public to access information under the guise that it is in the public interest was the death knell for the brief attempt to seal some parts of court files.

To allow such concerns to trump the protection of children is absurd. If these were, in fact, legitimate concerns in all family law proceedings, the statutes sealing paternity actions would have been overturned years ago. Nowhere are the media challenging the lack of access to information in paternity cases.

The dichotomy of the law in this regard results in a bizarre twist of fate for the children of warring parents. Those children who had the good fortune of being born out of wedlock are protected, but those whose parents decided to get married are not.

If the Legislature does not have the resolve to recognize the need for the overall protection of family law files, at the very least it should have the resolve to undertake action to protect children and seal those portions of the files dealing with custody and visitation issues. It should go even beyond that to restrain the dissemination of any



Associated Press

Alec Baldwin and his daughter, Ireland, pose happily together in 2005. Custody issues between Baldwin and Kim Basinger flared when a phone message from Baldwin to his daughter was made public.

information relating to those issues by the parties.

It is a small step in the overall need for confidentiality in family law proceedings, but at the very least it would give children born in wedlock similar protection to those born out of it. And perhaps the next

set of public-figure parents who can't make peace won't put their children in the spotlight because they can't restrain themselves.

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