

Parents with a Disability and the NSW Children's Court

by David McConnell, Gwynnyth Llewellyn and Luisa Ferronato
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Parents with a disability and child protection matters

Reviewed by Katie Kovacs

In the last decade there has been a continuation of a 30-year trend towards the deinstitutionalisation of people with disabilities, together with a shift to more firmly establish the rights of people with disabilities in society. As a result, increasing numbers of adults with disabilities are living outside of institutional settings, forming relationships, marrying and having children (Tomison 1996).

For some time there has been evidence of an association between being a parent with a disability – and particularly parents with an intellectual disability or psychiatric illness – and higher rates of identified child abuse and neglect (Tomison 1996). Unfortunately, little research has explicitly explored or delineated some of the reasons for this association, the families' greater involvement with statutory child protection services, and the consequences for parents and their children.

One of the first investigations of the experiences and outcomes achieved by parents with a disability involved in child protection care proceedings in an Australian jurisdiction was completed in August 2000 by David McConnell, Gwynnyth Llewellyn and Luisa Ferronato at the University of Sydney. Their research, described in a report entitled *Parents with a Disability and the NSW Children's Court*, was based around a study of the prevalence of parents with a disability appearing before the New South Wales Children's Court in child protection matters.

The researchers examined the outcomes for the children and parents in each case in order to determine whether parents with a disability were treated differently from other parents before the Court.

Defining disability

For the purposes of the study, McConnell, Llewellyn and Ferronato defined parents with a disability as "those with an identified impairment documented in the court file" which included those with intellectual disabilities, psychiatric disabilities, physical disabilities, and sensory disabilities.

Specifically, the authors (p. 5) define an intellectual disability as one which has been diagnosed by a psychiatrist or psychologist and includes those with "borderline; intellectual disabilities". Parents with a psychiatric disability were defined as having a mental disorder that has been "diagnosed by a psychiatrist for example – psychotic, mood, anxiety and personality disorders". Parents with a physical disability were defined as "including those with an acquired brain injury or other physical disability that is permanent or likely to be permanent". The study considered parents with sensory disabilities to include those "with a significant vision or hearing impairment that is permanent or likely to be permanent and is not likely to be corrected or compensated for by technological aids".

Method

In order to obtain a full picture of the outcomes achieved for parents with disabilities in care and protection proceedings, ►

McConnell and colleagues adopted a multi-method approach to data collection. This included a review of court files, interviews and focus groups with magistrates, legal representatives and child protection workers, as well as courtroom observations of care proceedings. It should be noted that the views of parents with a disability and their children are noticeably absent from this report. It could be suggested that their inclusion would have further strengthened the report. However, the authors acknowledge this limitation and offer methodological and ethical justifications for their decision not to interview this group.

The files of all 407 case care and protection cases finalised at the Campsie and Cobham Children's Courts over a nine-month period were reviewed and a case database created which included information about each case, such as family characteristics, case characteristics and court details and history.

Additional information was collected via focus groups and interviews with several groups of people in order to determine their views and experiences of parents with a disability who were involved in care proceedings. In total, eight specialist children's magistrates were interviewed and attended focus groups; 34 legal representatives who work in the Camden, Campsie or Cobham Children's Courts participated in an interview or focus group, as did 155 Department of Community Services (DoCS) (child protection) personnel from the Sydney Metropolitan area. All of the interviews and focus groups were audiotaped with participant permission and then transcribed for analysis.

The authors also conducted a series of courtroom observations over 35 days in the Campsie, Cobham and Camden Children's courts and these observations were made on Court list days as well as at contested hearings involving parents with and without a disability.

The cases

According to McConnell and colleagues, of the 407 care and protection proceedings finalised at Campsie and Cobham Children's Courts for the duration of the study, 80 per cent of cases were care applications, 14 per cent were variation applications and 6 per cent were rescission applications (request for a previous order to be revoked). Of the 407 cases, almost one quarter (24.3 per cent) were identified as involving parents with a disability.

With regard to the care applications, 326 cases came before the court and of these, 14 per cent were initiated by a party other than DoCS while the remaining 87 per cent were initiated by DoCS. Parents with a disability featured in nearly one third (29.5 per cent) of the DoCS care applications.

With regard to the cases where a parent or parents suffered from a disability, there was an over-representation of parents with an intellectual disability compared with general population estimates of incidence. Parents with an intellectual disability were substantially over-represented, featuring in 7.1 per cent of all cases and 8.8 per cent of cases initiated by DoCS. Similarly, parents with a psychiatric disability featured in 18.4 per cent of all cases and 21.8 per cent of DoCS-initiated cases. Further, there appeared to be an over-representation of single mothers in cases where parental disability was identified.

Family characteristics

Comparing cases where a parent had a disability with other cases in the sample, a number of trends were apparent:

- The average number of children subject to court proceedings that were initiated by DoCS was 1.64 children per

case, cases involving parents with an intellectual disability having the most number of children on average.

- The average age of children was five years and five months, with 50 per cent of cases involved children four years or younger. The children were significantly younger in cases where a parent was identified as having a disability.
- Of all families involved in care proceedings, 70 per cent lived in suburbs that fell below the median score on the Australian Bureau of Statistics (ABS) Index of Relative Socio-Economic Disadvantage (IRSED) for New South Wales, suggesting that these families lived in relative socioeconomic disadvantage.
- Suspected drug or alcohol use was noted in 69 per cent of parents with emotional disorders, 43 per cent of cases featuring parents with "other psychiatric disability", 42 per cent of cases featuring parents with personality disorders, and 21 per cent of cases featuring parents with psychotic disorders.

Case outcomes

The findings of the study suggest that parents with a disability are over-represented in care proceedings. A large proportion of the children whose parents had an intellectual disability were subject to wardship orders and placed in out-of-home care. The outcomes for parents with psychiatric disabilities were less extreme, (provided substance abuse was not identified in the family), with the children of these parents subject to less intrusive orders such as a supervision order of limited duration, where the children remained at home.

McConnell and colleagues attempted to determine some of the situational or systemic reasons that might explain the associations.

The role of DoCS workers' perceptions

Using the case data, focus groups and observational data, the authors were able to construct a detailed picture of some of the factors influencing DoCS child protection workers' decision to initiate care proceedings. They concluded that DoCS staff had three key questions in mind when assessing families: Is the child in immediate danger? Is the situation good enough for the child? Can the child's situation be improved and made good enough?

The authors suggested that with regard to these questions DoCS staff held quite pessimistic views about the parenting capacity of people with disabilities (as did other court personnel). The report found that "parents with intellectual disability were often thought unable to manage parenting" (p. 22).

"DoCS workers may hold the empirically invalid and prejudicial presumption that mothers with a disability ipso facto are not capable of caring for their children" and that notification and removal of children is "based on presumed incapacity rather than evidence that the child is at risk" (p. 18).

The authors suggested that this "pessimism" may be based on wider societal prejudices regarding the ability of parents with disabilities to care for their children. The report also suggested that DoCS staff were more pessimistic about the possibility for change in cases where parents with a disability had had long histories of involvement with DoCS and had shown little evidence of compliance or change previously. Analysis of information obtained in focus groups indicated that DoCS workers were likely to have less hope of affecting change and improving the situation for the child in cases that: involved newborn children where older siblings had been removed; where parents



had long histories of mental illness or substance abuse; and where there was non-compliance with medication or treatment.

Perhaps not surprisingly, the DoCS worker interviews suggested that when parental disability was the only issue present in the family, the case was more “manageable”, whereas the presence of other issues in the home (such as substance abuse or domestic violence) was often the grounds for a more pessimistic view of the potential for change. It is also interesting to note that the study found some differences in DoCS workers’ level of optimism for affecting change between parents with psychiatric disabilities and parents with intellectual disabilities. With regard to the former, DoCs workers saw it as easier to affect change with parents with psychiatric disabilities as they believed that “care concerns can usually be resolved with appropriate medications”. However, they showed more pessimism in terms of affecting change with regard to parents with intellectual disabilities where there were no “quick fix” solutions available for these families (p. 50).



Clearly, an objective and comprehensive protective assessment and case management plan should be undertaken for all cases. However, is the “pessimism” or prejudice of DoCS workers somewhat justified by their experiences? The child protection research literature has produced evidence of an association between increased risk to a child in families where there is a history of maltreatment of siblings, and mental disorder and/or substance abuse. On the face of it therefore, the DoCS decision making criteria as reported above is perhaps understandable – at least in theory. The context of the decision making process sheds more light on how workers may take a pessimistic view of families where a parent has a disability.

A number of additional factors were also identified by DoCS staff as affecting their decision making. First, from the DoCS point of view, the most important factor in weighing up the possibility of an improvement in parenting versus the decision to initiate care proceedings was the degree of parental compliance or cooperation with workers. Information obtained

from DoCS workers in the focus groups suggested that parental non-compliance was more often a problem with parents with psychiatric disabilities than with parents with intellectual disabilities, with strategies of non-compliance reported to include open hostility, threats of violence, non disclosure of information, non-cooperation with support services and non-participation in assessment. With regard to parents with an intellectual disability, DoCS workers stated that “parents with intellectual disability frequently welcomed DoCS workers into their homes and enjoyed their visits” (p. 24).

Despite this, it was apparent from the data that parental resistance to DoCS interventions was actually the grounds for initiating more care applications for children of parents with intellectual disability (41.2 per cent) than for children of parents with psychiatric disability (36 per cent).

Second, the availability and adequacy of support services for families where a parent had an intellectual disability was also a factor influencing DoCS hopes for change. Informal support provided by non-disabled partners or extended family was seen as a key protective factor. Often it was parents reported to be isolated or estranged from extended family members and other supports (many were identified in the case sample) who were more likely to lead to statutory proceedings before the Court.

Further, the lack of suitable professional supports for parents with an intellectual disability and a tendency toward the marginalisation of disabled parents in mainstream services was also identified as an issue impacting upon worker judgements. Funding restrictions were identified as making the provision of intensive and ongoing services for parents with disabilities impractical. The lack of available, suitable supports combined with limited specialist DoCS training and resources, were reported by many DoCS workers as impinging on their case management. The workers stated that they had limited training in working with parents with a disability, and limited time to carry out effective casework, making attempts at family preservation less possible. As Booth and Booth (1995: 31) suggest: “Parents with learning difficulties do not easily fit into the service system. They straddle the divide between services for families and services for people with learning difficulties.”

While McConnell and colleagues suggest that some workers held stereotypical views about parents with intellectual disabilities, it is unclear as to the extent of these views (the report used terms such as “widespread” rather than providing specific figures). It seemed that the conclusions drawn by the authors focused quite heavily on the perceived impact of child protection workers’ stereotypical beliefs about parents with a disability. They suggest that these stereotypical views reflect “widespread community attitudes toward people with a disability” and as a result “pessimism permeates the thinking of all involved about the hope of effecting change with parents with a disability” (p. 83).

In this author’s opinion, the lack of suitable support services available for parents with a disability can combine with DoCS workers’ prejudicial view of the potential for parental learning or change. However, it could also be argued that the perceived “pessimism” or stereotypical views of DoCS staff, while unfortunate, may have a basis in the realities of child protection work where there is reported to be a lack of well resourced support options, and thus, a more pessimistic prognosis for families in the long term. Perhaps, then, the main message here is that a lack of effective alternatives, in combination with limited training, may reduce professional objectivity and hamper the attempts of DoCS child protection workers to keep children safe from harm, yet maintaining them in the family unit. ►

In addition to addressing the need for services, a focus on encouraging more cross-sectoral work between disability workers and child protection workers or the introduction of specialised disability training for a selection of DoCS workers from each geographical region, would seem to offer a way of achieving a better outcome for parents, children and workers.

The court process

With regard to the experiences of parents with a disability in the Court system, McConnell and colleagues found that such parents were being marginalised by court processes, and noted that the Court experience often proved “stress magnifying” which in itself could lead discriminatory practices based on disability status: “Parents with psychiatric or intellectual disability were identified as being particularly disadvantaged by having to wait in crowds of anxious/angry people. The tension created undermines their mental state and subsequently effects their presentation in Court” (p. 54).

Other systemic issues were seen as being discriminatory. Parents with disabilities were usually represented by “duty lawyers” provided (or funded) by legal aid, who had not met the client until the morning of their first day in Court. The lack of preparation time meant that lawyers expressed concerns about representing disabled parents in these cases because of the difficulty of determining how much of the proceedings that the parent understood, obtaining reliable instructions from the parent, the difficulty of explaining legal strategies to disabled parents in a way which they could understand and accept, and of gaining assistance from the parents to scrutinise DoCS evidence.

Further, it was found that expert psychiatric and/or psychological reports were often used in care proceedings where there was a parental disability. The reports were used to provide “a diagnosis as an explanatory framework for the behaviour of parents and children” and to provide a prognosis of future parenting capacity (p. 74). A highly significant relationship between expert opinion and outcome was found, with a negative report significantly affecting the decision to place a child on a supervision or wardship order. The authors suggest that this may result from an undue emphasis on a diagnostic-prognostic assessment, which has little relevance when assessing parenting performance as it can not provide “an adequate explanation of parenting deficiencies (where these exist) or a valid prediction of parenting potential” (p. 84).

Finally, the authors found that individual Magistrates presiding over the cases did not significantly affect care outcomes (minimal individual differences in decision making). However, they did find that, similar to child protection personnel, court personnel held stereotypical views about people with disabilities. Some of these beliefs included a perception that all people with intellectual disabilities should be objects of pity, charity and are “eternal children” who are dependent and “incapable of taking responsibility for their children, or of developing and learning the skills necessary to do so” (p. 83).

Areas for change

In order to address the concerns raised in this study and to ensure fair and equitable treatment for families where a parent has a disability, McConnell, Llewellyn and Ferronato identified five main areas for action.

The marginalisation of parents with a disability in the court process

The authors recommended that the New South Wales Attorney General’s Department should consult with the

Senior Magistrate of the Children’s Court and court personnel in order to review the environment, court procedures and processes to ensure that parents with disabilities are given the accessibility they are entitled to under the Disability Discrimination Act (1992) and the Anti-Discrimination Act 1997 (NSW).

Further, a number of court-based support strategies should be employed to ensure a non-discriminatory environment for parents with disabilities. These could include:

- the development of a video and accompanying plain English resources which explain the court processes in detail, including the rights of participants;
- the creation of an internet site that lists support services that courts could use when making referrals for parents with disabilities;
- the development of a network of volunteers or advocates to provide support persons to assist parents with a disability; and
- additional funding to support adequate legal representation for parents with a disability.

The outmoded inaccurate beliefs and pejorative attitudes held by departmental and court personnel involved in care proceedings

The development of a joint training model such that child protection and Court personnel can be informed and educated on “up-to-date empirical research and the broad range of community experiences of parents with a disability” (McConnell et al. 2001:v).

The over-representation of parents with a disability in care proceedings

A professional development module should be developed on disabilities and parenting for child protection workers and assistant managers by DoCS. Such training should focus on empirical research on parental disability, and the inappropriate use of risk assessment as a proxy measure of parenting performance as well as appropriate measures of identifying parenting performance in relation to identified concerns. DoCS staff should also receive training on appropriate methods of identifying parents’ support needs and suitable services and supports to assist parents overcome concerns and ensure the safety and wellbeing of their child.

The inappropriate reliance on a clinical diagnostic-prognostic model in determining outcomes in cases involving parents with a disability

Magistrates should be informed of the limitations of using clinical diagnoses with regard to current and future parenting performance and of more valid alternative measures.

The lack of suitable support and services for parents with a disability

Acknowledging the clear need for support services (specialist or generic) for parents with a disability, the authors recommended that the New South Wales Attorney General’s Department should address this shortfall by looking at available research and expertise on the most effective forms of support services for disabled parents and then develop or modify current services to fulfil this need. Information about the availability of services should also be widely disseminated to court personnel.

Implications

McConnell and colleagues’ study has raised a number of important issues concerning the difficulties faced by parents with a disability who are involved in child protection care proceedings. Their report outlines how the court environment

and child protection assessment and procedures can be extremely stressful and confusing for parents with a disability. It highlights the disturbing fact that often these parents may not fully understand what is occurring in the Court and/or may have no real "voice" in the proceedings. As a consequence, there appears to be an increased likelihood that the parents' views are not accurately represented and that the reality of the family's situation may not be fairly documented. This may lead to the Court's failure in some circumstances to make decisions truly in the best interest of the child, removing a child from her/his family when appropriate family support may produce a reasonable outcome.

Given the increase in the number of people with disabilities becoming parents it is vital that accurate, comprehensive assessments are undertaken as a means of ensuring fair and equitable treatment of such parents. The recommendations the authors have produced, if implemented, would go some way towards ensuring disability issues are properly considered by child protection personnel, and improve parents' accessibility to the Court.

However, the authors' findings and interpretations also cause some concern. First, although it is implied to some extent, they focus their discussions on the needs and experiences of parents with a disability, with little mention of the needs of the child to adequate care and protection. For example, while the report notes that parents with disabilities are very visible and are therefore more likely to be scrutinised by DoCS staff, there is no discussion of the factors that may result in more parents with a disability abusing or neglecting their children. While a full discussion of these issues may have been outside the scope of this report, some acknowledgment would have been useful for contextual purposes.

It is acknowledged that the rights of these parents are extremely important, and that the majority of parents with a disability may be able to care adequately for their children. However, it should also be clearly acknowledged that there will also be a proportion of families who will require some form of external support to rear their children, and other families where the children will need to be removed in order to ensure they are adequately cared for or protected. Thus, while this author would agree with McConnell and colleagues regarding the need for more accurate assessment of each family's ability to care for a child, and a "fair go" for parents with a disability in the court system, it must be remembered that the primary objective must be to ensure that children are safe and appropriately cared for.

Often the child and family's needs will intersect, but in care proceedings which result from a clear risk of future harm "the mother's wish for autonomy in caring for her children and the best interests of the children need to be balanced" (Glaun and Brown 1999: 96). With specific regard to parents with a disability, "when reflecting upon the vulnerability of the child versus the vulnerability of a person with intellectual disability, it is clear that the child's vulnerability is greater" (Honey 1992: 2).

Second, the authors concluded that the case management decision making processes of DoCS child protection workers were strongly driven by misinformation and prejudicial beliefs about people with disabilities, and that the risk assessments made by these staff may be unreliable and discriminatory. This author would support McConnell and colleagues' recommendation for regular training for court and child protection workers on the issues associated with working with a variety of "at risk" populations, such as parents with disabilities. However, McConnell et al. appear to pay inadequate

attention to how these beliefs may be reinforced or shaped by the realities of modern child protection work.

Ideally, the best outcome in many of the cases described in the report may have been the provision of intensive and ongoing support services to parents with a disability rather than the removal of the children. As Rosenberg and McTate (1982: 37) state: "Our society has made a commitment to the rights of [parents with a disability] and to maintaining the integrity of families. Such a commitment implies that we must provide the services that are needed to make this goal a reality."

Unfortunately, the specialist and/or long-term services needed to work with families where a parent has a disability are often not available. Such services (specialist or generic) that are available often have to be rationed at a time when the number of families requiring assistance continues to grow (Tomison 1996).

Thus, in a climate where resources are scarce or non-existent, child protection workers will at times have to take statutory action to protect children because there are no appropriate support options available. This is clearly less than ideal for children and parents, but it is a reality of current practice. It is therefore important that the impact of the realities of child protection work, and the conditions that will lead to less-than-ideal decision making, (and their impact on the formation of stereotypical beliefs), be more clearly recognised.

Finally, although parents with disabilities make up a substantial proportion of care and protection proceedings brought to the Children's Court by DoCS, there has been little systematic research carried out in this area. The work of McConnell, Llewellyn and Ferronato is therefore extremely important as it is one of the first pieces of research in Australia to conduct an in-depth exploration of the experiences of families and professionals working in this area. The authors offer some important and timely recommendations for improving the procedures and quality of outcomes to ensure that these families, and their children, are given the best possible chances to thrive.

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Endnote

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Katie Kovacs is the Project Officer working in the National Child Protection Clearinghouse at the Australian Institute of Family Studies.