

Fighting War and for Custody

Army Sgt. Stephanie Greer was serving with a vehicle-maintenance unit in the volatile Iraqi city of Ramadi, part of President Bush's "surge" strategy to stabilize the country, when she learned of a far-off and most unexpected battle: Her estranged husband was going to fight her for custody of their daughter.

Greer had temporary custody of Mackenzie when she began her second deployment to Iraq in early 2007. Her husband was to care for the 7-year-old while Greer was overseas, but soon he challenged that arrangement in divorce proceedings. "He said I was unstable because I was deployed or training too much," she said.

As a result, throughout her 15-month combat tour, Greer had to mount from 4,000 miles away a legal campaign to keep her daughter.

"If I had not deployed, I know I never would have faced this situation," said Greer, 39. "I don't think it should be held against you, and I don't think my time away, or me deploying, affects my ability to be a mother or provide for my kids."

If she expected support in that position from the military, she was disappointed. Instead, the message she said she received from her superiors was: Deal with it.

"In the midst of the deployment, everything goes to pieces . . . and they say, 'Just let it go and fix it when you get home,'" Greer said. "But most of the time when you do that, it is too late."

The military does not track statistics on custody disputes, but as military divorce rates rise -- particularly among enlisted female troops such as Greer -- so do child custody struggles in which military service overseas has become a wedge issue, according to experts in military family law.

"More and more, a service member is deployed and the service member's spouse is seeking to use that to their advantage," said Greg Rinckey, a former Army judge advocate general.

"We are seeing a substantial increase in cases . . . challenging the custody of military parents and the return of custody when they come back from mobilization or deployment, compared to virtually none 10 years ago," said Mark E. Sullivan, a retired Army Reserve judge advocate general who practices family law in North Carolina. The increase has been greatest in states with large military populations, such as Virginia and Texas, he added.

Female troops may be particularly at risk, because mothers are more likely to have custody of children after a divorce. "For them to go away for 15 to 18 months, it opens the door to these challenges," said A.J. Balbo, Greer's attorney and a former Army judge advocate.

These conditions create an impossible quandary for service members who are devoted parents and yet must fulfill their obligation to their country, Rinckey and other experts said.

Under Army regulations, soldiers can request emergency leave because of the threat of divorce or related problems at home, although unit commanders retain ultimate discretion to

grant approval. However, Balbo said, "most of the time the chain of command is not going to view the custody fight as an emergency."

"Typically, when someone . . . is on emergency leave, it's understood that he has a family member who is dying or just died," said Lt. Col. George Wright, an Army spokesman. "But the regulation clearly states that there are provisions for that type of thing," he said, referring to marital problems.

The Pentagon has supported protections for deployed troops facing custody disputes, Wright said, including giving them the power to request a delay of at least 90 days in child custody proceedings. President Bush signed such a measure into law in January. Wright said the military has also stepped up programs to help service members and their families cope with the stresses of deployments through counseling.

More than 20 states have passed legislation over the past two years to limit the impact of deployments on custody decisions. "More states are recognizing the need for statutes which protect the rights of service members and their children," said Sullivan, who helped write North Carolina's statute.

The states' approaches vary, but several prevent deployment from being a factor in determining or modifying custody. In a statute passed this year, Virginia bars any permanent change in custody while a service member is deployed.

Still, such protections are incomplete and do not exist in the District and more than 20 states, including Maryland -- which killed a bill similar to Virginia's in a House committee this year -- and Georgia, where Greer's custody hearing took place.

Congress is expected to hold hearings on the issue next year. Meanwhile, experts said, many cases fall through the cracks, such as that of Army Staff Sgt. Dan Diaz.

Diaz gained temporary custody of his daughter, Talia, in February 2002 because her mother was unfit, Diaz said. But when he deployed to Iraq with his engineer battalion in April 2003, he had to delegate joint custody to his mother and Talia's mother. When he came back, Talia's mother refused to return the child.

This year, Florida enacted a statute saying that courts should reinstate custody decrees in place before deployment, but for Diaz, the change came too late.

"If I had not deployed in 2003, I would not have lost custody," he said. "That's unfair. We are trying to serve the country, but to lose custody because you did the right thing is pretty hard." He said he will keep trying to get his daughter back: "If there is a small bit of an opening anywhere, I will take that opening."

Another problem, legal experts and advocates say, is the military protocol that requires service members to devise a family care plan for dependents before deployment -- effectively delegating legal decisions about minor children to a chosen relative. Such military arrangements are not equivalent to legal custody, though, and civilian courts may choose to ignore the care plan if the non-deploying parent challenges it. Yet the range of state approaches to family law makes it all but impossible for the military to create a plan that would be legally binding nationwide, experts said.

"It's wonderful to have protections" for deployed parents, but they should be adopted at the state not the federal level, Sullivan said. "The federal judges would not know what to do. It would be a nightmare," he added.

"There's an imperfect fit between military policy and the civilian family court system," said Rachel Natelson, coordinator of the Veterans and Servicemembers Project at the Urban Justice Center in New York.

Spec. Jonathan W. Maldonado learned so the hard way. Maldonado, currently deployed in the northern Iraqi city of Mosul, is struggling to regain custody of his son and daughter after officials placed them in foster care in New York. He said he gave his mother guardianship and power of attorney over the children. But the courts did not recognize the military's power-of-attorney arrangements, said Natelson, who is working on Maldonado's case.

"I can't contact my kids, I can't speak with them, and it's hard 'cause they're with a foster mother, when they could have been with my family," Maldonado wrote in an e-mail from Mosul, where he is with the 3rd Armored Cavalry Regiment.

"No one ever wants to help me out in this situation, no one wants to tell me anything, I'm left in the dark pretty much," he wrote. He plans to return stateside in January and says he will file again for custody.

Such ordeals have become increasingly common recently as the rate of divorce among military members has risen, particularly among enlisted troops in the Marine Corps and Army, the services with the longest deployments. Nearly 10 percent of enlisted female soldiers and Marines obtained divorces in fiscal 2008, up from 7.1 percent and 8.3 percent, respectively, in 2004. "There are a lot of single moms out there. This is very worrisome" for them especially, Rinckey said. Greer was a single mother in Richlands, N.C., when she approached a military recruiter in 2003, in search of a career that would allow her to better provide for her two daughters, Sheressa Carr, then 14, and Mackenzie, then 3. The recruiter told her that the military did not take single parents. (As recently as the 1970s, the military required women to give up their children if they wanted to enlist and discharged those who became pregnant.) Greer signed over custody of Mackenzie to the child's father, Stephen Greer.

In May 2004, the two married when Greer was on leave from training, ending that custody arrangement, and within seven months she left for her first Iraq deployment. The relationship suffered while she was abroad, and Greer she filed for divorce after she returned.

Although she gained temporary custody before deployment from Fort Stewart, Ga., Stephen Greer strongly believed that Mackenzie would be better off with him, given the prospect of more deployments by her mother, said his attorney, John Harvey.

Harvey said the main focus of the custody challenge was to emphasize the "positives" of his client, a schoolteacher. But "deployments obviously do affect custody cases," he said, and "we certainly raised that as an issue" about Stephanie Greer.

"We weren't attacking her personally for serving her country," Harvey added.

But in Ramadi, it felt that way to Greer.

"I had to prove I was sending money, and prove I was taking care of her. That is hard to do" while deployed in a combat zone, she said.

Serving with a maintenance unit with the 3rd Infantry Division, Greer had trouble gaining even the most rudimentary contact with Mackenzie, waiting over the course of weeks in long lines for the phone where her combat brigade was based, trying repeatedly to reach her daughter. Meanwhile, Greer needed to stay alert for fellow soldiers and their mission. "We are trained tears are a sign of weakness," she said. "I had to keep my composure for my soldiers."

Greer returned home in the spring, and her custody hearing was held in June, after which the judge took seven days to make a decision. "It was the worst week in my life," Greer recalled in an interview at her home at this Army base near Richmond.

Finally the phone call came from her attorney. Mackenzie, now 8, was to stay with Greer. Her father, now in Jacksonville, N.C., would get regular visitation. "I think I blacked out," Greer said. In a blur, she put down the phone and went flying out the door, embracing her daughter and sobbing.

"I guess I get to stay with you, don't I?" Mackenzie asked. All Greer could do was cry.