

Disposition of the Family Home at Divorce: An Ohio Study

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Abstract

One of the intended effects of the Ohio Divorce Reform Act of 1974 was to increase equity in divorce settlements. Equal division of the home between the spouses is one way of providing for equity in divorce settlements. Differences in factors affecting award of the home to the wife before and after the 1974 Act were examined using data collected from Ohio divorce records in 1973 and 1985. Weighted linear probability functions were estimated and the regression coefficients were judged by a Chow test to be stable in the two years. Hence, no evidence was found in this analysis that the Ohio Divorce Reform Act changed the probability of the wife's receiving the home.

Introduction

When couples divorce, the disposition of the family home can have far-reaching financial consequences for both spouses. For most homeowners, the home is the single most valuable asset they hold (McLindon, 1987). By virtue of its cost, location, and amenities, the home uses, as well as contributes, a variety of resources to the family. Thus, the award of the home at divorce affects the financial well-being of each spouse and many other aspects of the lives of family members.

The focus of this paper is the award of the home to wives. The rationale for this approach is provided by research on the post-divorce economic status of women and children. The economic well-being of women declines sharply after a divorce; whereas, that of divorced men improves (Duncan & Hoffman, 1985; McGraw, Sterin & Davis, 1981-82; McLindon, 1987; Weitzman, 1981; Wishik, 1986) and the discrepancy persists indefinitely (Weiss, 1984). Data from the Panel Study of Income Dynamics showed that five years after marital disruption, incomes of divorced and separated women were less than half that of married women (Weiss, 1984). The difference remained as long as the women remained single. Thus, the award of the home, typically the largest asset for most families, may play a significant role in economic status.

This paper examines factors affecting the award of the home at divorce. Data from divorces filed in Ohio in 1973 and 1985 were used to examine whether factors, particularly the effects of decisions made by the divorcing couple which influence disposition of the family residence, were different in the two time periods. These two time periods were chosen to permit comparison of awards before and after the passage of the Ohio Divorce Reform Act of 1974 (Ohio Revised Code, 1987). The intended effect of the Divorce Reform Act was to increase equity in divorce settlements, to reduce the contentiousness of the divorce process, and to lessen the role of guilt in deciding settlement awards. Means of achieving these purposes included the introduction of nonfault bases for marital termination and provisions for the equitable distribution of property. Use of data from 1973 and 1985 provides a means to test for the effectiveness of legal changes.

The Home as a Component of the Divorce Settlement

The asset nature of the family home often puts it at the center of property-division disputes (Patterson, 1981). For many families, equity in the home may be the family's only

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source of savings as well as the only source of money which the divorced spouses can use to reenter the housing market (Patterson, 1981). However, the home is not a source of income which can provide a flow of money resources. Rather, a home requires money resources in order to maintain quality and to build equity. McGraw, Sterin, and Davis (1981-82) found that only very rarely was provision made for mortgage payments or maintenance when the wife was awarded all or part of the equity in the family home. When resources for necessary maintenance or mortgage payments are not available, the home may fall into disrepair or may have to be sold.

The family residence is, however, more than a financial asset. The home is accompanied by a bundle of other goods and services such as the immediate neighborhood, schools, and parks. It may also be a source of status (Morris & Winter, 1978). Sale of the house, and the resulting move to a new neighborhood, whether decreed in the settlement or done at a later date because of a need for cheaper housing, can be traumatic, especially when children are involved. Weitzman (1981) notes that not only does a residential move change the standard of living of children, it also disrupts their education, friendships, and community life. Women with children may be willing to trade their right to other assets (e.g., pensions) or forms of support to retain the family home (Weitzman, 1985).

The award of the home may take one of several forms: upon divorce it may be awarded to either spouse or to both, or the sale of the home may be forced and a specified division of equity made to both parties. Using data from four Vermont court districts, Wishik (1986) reported the disposition of the home for 128 cases where a family owned a home. An award of a 50%-or-greater share of the home or home equity was made to the wife in 40.6% of the cases and to the husband in 37.5% of the cases. The home was equally divided in 20.3% of the cases. In California, a community property state, the house was divided equally between the husband and wife in more than one-third of the cases after passage of no-fault divorce laws (Weitzman, 1985). Equal division has two meanings: the home may continue to be jointly owned, or the house may be sold and the proceeds divided equally. Almost all of the equal divisions in the 1977 (post no-fault) California data specified an order to sell the home and divide the proceeds equally.

The award of a majority share in the home to wives declined after passage of no-fault laws in California. Prior to no-fault, 61% of cases in the Weitzman (1985) study awarded majority share to wives; in 1977, after no-fault, only 46%. In Ohio, Reiboldt (1989) concluded that there was no significant difference in the mean number of wives awarded the sole ownership of the family home in 1973 and 1985 (before and after introduction of no-fault divorce).

Ohio Law and Divorce Settlements

Divorce laws differ by state. Laws governing divorce were revised in many states after the formulation of the Uniform Marriage and Divorce Act in 1970 (Weitzman, 1985). One basic concept outlined in this act and followed by most states is treatment of marriage as an economic partnership to which both parties have contributed (Walther, 1988). Award of the principal residence of the marriage is a primary example of this treatment.

Changes also reflected a greater social acceptance of divorce, made it easier to dissolve a marriage (Stafford, Jackson & Burgess, 1987), and attempted to introduce more fairness and equity into divorce proceedings (Rowe, 1989). Rowe (1989) notes that under the traditional, pure fault divorce law systems, more than half of the property was usually awarded to the "innocent" party to the divorce.

The Ohio Divorce Reform Act of 1974 modified the traditional pure fault system by permitting marital termination on two non-fault bases: dissolution (a non-fault alternative action to divorce) and living separate and apart for two years (a non-accusatory ground in a divorce action) (McGraw et al., 1981-1982). The non-fault alternatives provided more amicable means for couples to end a marriage. Like the majority of states, Ohio now has an equitable distribution divorce law by which the courts have the power to determine the distribution of property as either property or maintenance upon divorce (Freed & Walker, 1985)

Marital property--property acquired during the marriage regardless of which spouse holds title--and nonmarital property--equity in property at the time of the marriage and ex-

penditures from nonmarital funds to pay debts on nonmarital property -- are treated differently with regard to distribution at divorce (Patterson, 1981; Walther, 1988). Property brought into the marriage by either spouse or received as a gift or inheritance is not subject to distribution (Freed & Walker, 1985); however, appreciation in the value of nonmarital property which occurred during the marriage is subject to division (Walther, 1988). The courts consider "reasonable returns on investment" and "reasonable reimbursement for marital funds spent" in ascribing values to both marital and nonmarital property (Walther, 1988).

Factors Affecting Divorce Settlements

Studies of differences in divorce settlement packages have focused on financial outcomes (Weitzman, 1985), demographic characteristics of recipients (Beller & Graham, 1986; Robins & Dickinson, 1985), and the effect of decisions made during the divorce process (Burgess, Jackson & Stafford, 1990). Many decisions are made by the divorcing couple during the divorce process. For example, each spouse must decide whether to initiate the proceedings, to be represented by an attorney, to cooperate with the other spouse, and to file motions for information or other purposes.

Burgess et al. (1990) found that the decisions made about the divorce proceedings by the divorcing couple significantly affected asset and income awards to women and children and consequently affected their economic status post-divorce. Divorce proceeding decisions included in the Burgess et al. (1990) model were the use of an attorney, the selection of action, the role in the proceedings, the contesting of the divorce, and the filing of motions.

The wife's decision to use an attorney was found to significantly and positively affect her receipt of the home (Burgess et al., 1990); whereas, the decision to initiate the process had an insignificant effect on the award. Contesting the proceedings produced no significant effects in the Burgess et al. (1990) research. In contrast, number of motions filed by the wife yielded favorable and statistically significant effects for her.

Model of Procedural Decisions Affecting Award of the Home

The analysis in this paper focused on the effects of a set of decisions made during the divorce process on the award of the home and the comparison of the effects of decisions in two time periods, before and after enactment of a no-fault divorce provision. The expectation was that decisions would be less influential in the second time period, after legal modifications increasing equity and decreasing contentiousness. The model is based on that of Burgess, et al. (1990)

Divorce proceeding decisions included in the Burgess et al. (1990) model were the use of an attorney, the selection of action, the role in the proceedings, the contesting of the divorce, and the filing of motions. The selection of action variable, dissolution versus divorce, was not included in the model for this paper because the choice of dissolution was not available in 1973 (see Figure 1). Indeed, the use of dissolution was part of the change in the law which is compared in this analysis. In Ohio, dissolution is considered a no-fault action and requires the presentation of a separation agreement signed by both spouses and implying voluntary agreement by the spouses (Ohio Revised Code, 1987). Dissolution was first available as a choice of action in 1974, as part of the Divorce Reform Act. Prior to that time, divorce was the only procedure possible, and there were no non-fault grounds from which to choose. In addition to procedural decisions, divorce settlement awards were modeled as being affected by both the legal environment and the investment in the marriage (Burgess et al., 1990). Legal factors included the interpretation of the judge and the social environment of the county in which the divorce is filed. Only two of the judges used in the Burgess et al. (1990) model heard divorce cases in 1973. Thus, variables for judges were excluded from the present model.

A variable for urban or rural area of residence was created by combining cases from all three rural counties into one group and included in the model as a control for legal environment. The rationale for including a rural/urban dichotomy as an indicator of legal environment was based on the concept of a distinct rural ideology (Miller & Luloff, 1981). Because divorce decrees are decided by the judge(s) in a specific county, residence in a county may

affect the financial outcomes of divorce. Indeed, in a study of the impact of "Judge" on setting child support awards, White and Stone (1976) found a high degree of individual predictability among judges. Thus, the smaller rural counties, in which one judge presides over a vast majority of cases, may well differ in probability and amount of awards from urban areas where several different judges hear cases.

The wife's investment in the marriage was measured by the number of dependent children and length of marriage. Both of these variables were expected to increase the probability and receipt of awards.

In this paper, the modified Burgess et al. (1990) model was used to estimate the effect of procedural decisions on the award of the home, most families' largest asset, to the woman.

Sample

The data were obtained from divorce records filed in 1973 and 1985 in one urban and three rural counties in Ohio. In the urban county, a 10% random sample of cases was drawn from the court records; in the rural counties a 50% random sample was drawn. A larger percentage of rural cases was drawn in order to produce comparable numbers of urban and rural cases. In 1973, 374 of the 1028 records (36%) involved an owned home, 450 of the 1066 records (42%) involved an owned home in 1985. In 1973 all records involving an owned home were divorces; in 1985, 196 (44%) were divorces and 254 (56%) were dissolutions. The wife received the home in 153 (41%) of the cases in 1973 and in 161 (36%) of the cases in 1985. The present analysis is confined to those cases involving the disposition of an owned residence.

Data

The major drawback of using court records is that they include little demographic information. Information on the income, age, education, occupations, or employment status of the divorcing spouses was not available. The court records did contain information on the presence and ages of children; use of attorneys by the spouses; dates of marriage, filing, and final decree; all documents filed during the case; and the final decree. The final decree specified awards of income, assets, and debts; however, no dollar value for the assets and debts was given in most records.

The dependent variable for this paper was award of the home to the wife. Wife's receipt of the home was coded one only if the wife received sole ownership of the home, zero if otherwise. Six other possible outcomes for the disposition of the home (sale of the home and division of equity; award to husband; award to both; undecided; or other) also were coded zero.

Wives filed 0.6 (SD. 78) motions on average and husbands 0.1 (SD. 40) motions in 1973. In 1985, an average of 1.6 (SD 2.86) motions were filed by wives and 0.6 (SD 1.49) motions were filed by husbands. The average number of motions was calculated by summing the total number of motions filed by each wife or husband and dividing by total number of divorcing parties.

One of 11 grounds for divorce must be declared when divorce, rather than dissolution, is sought. The most often cited ground was neglect, both singly and in combination with other contentious grounds and the frequency with which grounds other than neglect were cited was small. Since there was little variation in grounds, this variable was not included in the model. The incidences of other procedural decisions are reported in Table 1.

Length of marriage was calculated from information in the court records. The average length of marriage was 12.3 years (SD 9.82) in 1973 and 11.7 (SD 8.32) in 1985. Number of children was defined as the sum of children under 18 years of age. In 1973, divorcing couples had an average of 1.5 (SD 1.65) children compared to an average of 1.1 (SD 1.08) children in 1985.

Figure 1. Procedural decisions affecting award of the home.

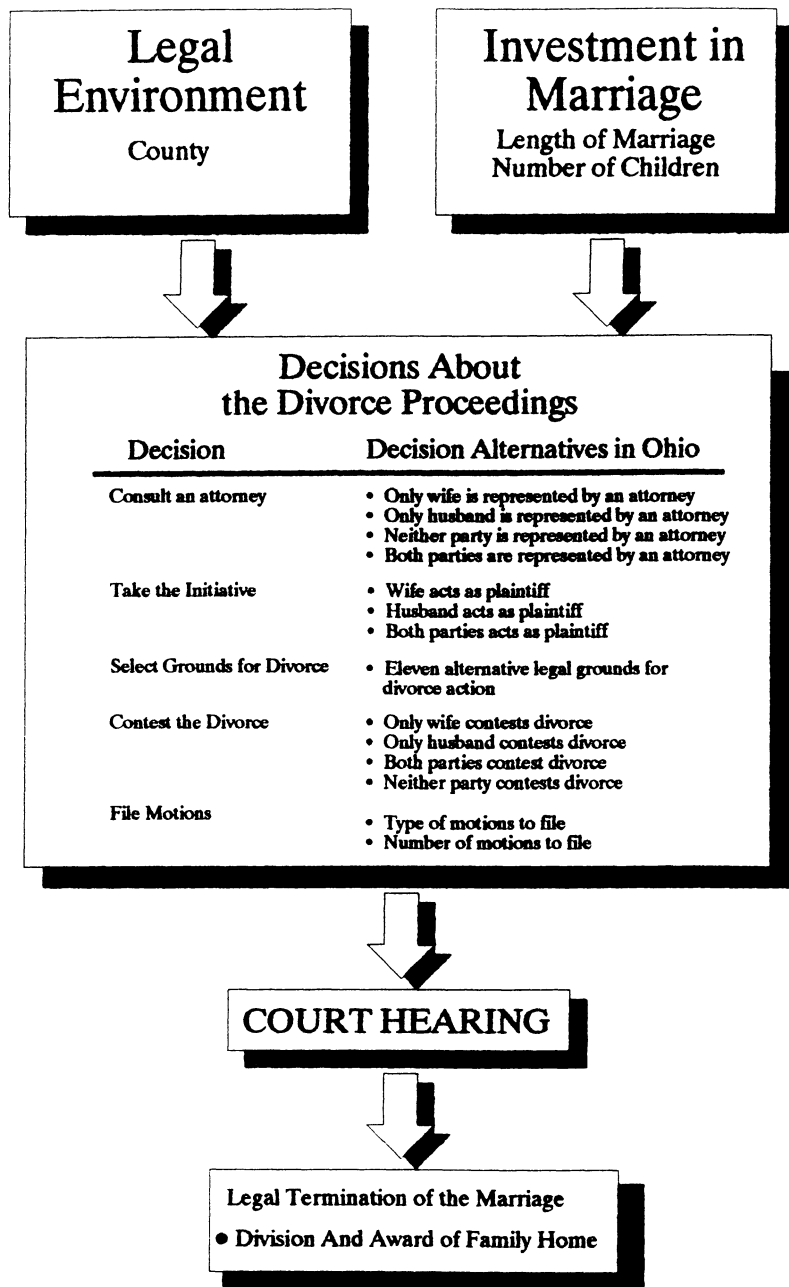


Table 1. Incidence of procedural decisions and legal environment factors.

Variable	1973		1985	
	Number (N=374)	Percent	Number (N=450)	Percent
Decisions				
Use of attorney				
Wife only	144	38.5	179	39.8
Both	194	51.9	165	36.7
Husband only	33	8.8	97	21.6
Neither	3	.8	9	2.0
Wife was plaintiff	283	75.7	137	30.4
Husband was plaintiff	91	24.3	56	12.4
Type of action				
Divorce	374	100.0	196 ^a	43.6
Dissolution	--	--	254	56.4
Wife contested	8	2.1	45	10.0
Wife did not contest	366	97.9	405	90.0
Husband contested	21	5.6	78	17.3
Husband did not contest	353	94.4	372	82.7
Legal environment				
Rural	116	31.0	167	37.1
Urban	258	69.0	283	62.9

^aThe total of Wife was plaintiff and Husband was plaintiff for 1985 does not equal the number of divorces of 1985. The difference is that plaintiff was not specified on some of the court records.

Analysis

The probability of the wife's receiving the home was modelled as a linear function of use of an attorney by the wife, use of an attorney by both parties, wife's role as plaintiff, neglect as grounds for divorce, wife contesting the divorce, husband contesting the divorce, number of motions filed by the wife, number of motions filed by the husband, rural county, marriage length, and number of minor children. Due to the exploratory nature of the research, a significance level of $\alpha = .10$ was used.

The obvious alternative to the linear probability model is the logit specification. The primary advantage of a logit model over the linear probability model is that with the logit model, the predicted probability cannot lie outside the bounds of (0,1), whereas, with the linear probability model, the predicted probability may exceed these bounds (Maddala, 1988). A predicted probability which exceeds the bounds is clearly unrealistic. However, least squares can be used as an approximation to logit if the mean of the dependent variable does not approach 0 or 1 (Pindyck & Rubinfeld, 1976). In this analysis, the mean of the dependent variable was 0.41 in the 1973 data and 0.36 in the 1985 data. Further, small-sample studies indicate that there is often little difference in the signs and magnitudes of coefficients obtained from linear probability as opposed to logit models (Pindyck & Rubinfeld, 1976). In addition, linear probability models offer a straightforward interpretation of the coefficients, in this instance, as the marginal effects of the variables on the probability of the wife's receiving the home. Therefore, the linear probability model was judged to be a satisfactory alternative to the logit specification.

Because the dependent variable is binomial, weighted functions were estimated to correct for heteroskedastic errors, using the procedure recommended by Goldberger (1964). Use of the weighting procedure results in coefficients that are unbiased, consistent, and efficient. First unweighted linear probability functions were estimated, then the coefficients from these functions were used to create the estimated probability of wife's receiving the home (P). Next, a weight variable (W) equal to the probability of the wife's receiving the home times one minus the probability of the wife's receiving the home was constructed ($W = P[1-P]$). Then weighted functions were estimated using this constructed weight variable.

The General Linear Models (GLM) procedure in SAS was used to estimate the linear probability functions for 1973 and 1985 (SAS Institute, 1985). In order to compare the two equations, a Chow test¹ of the equality of the regression coefficients was performed (Maddala, 1988).

Results

The explanatory variables explained 6% of the variance in the 1973 equation (Table 2). The model was significant at the 0.1 level. In 1973, the decision to use an attorney had a significant positive effect on the probability that the wife would be awarded the home. The probability of the wife's receiving the home rose 47% when the wife alone had an attorney and it increased 42% when both spouses had an attorney. The only other procedural decision that proved to be significant was the number of motions filed by the wife. Each motion filed by the wife increased her probability of receiving the home by 6%. The legal environment factor also was significant. Divorcing women in rural counties had a 17% higher probability of receiving the home than their counterparts in the urban county.

Table 2. Linear probability functions for wife's receipt of the home.

Explanatory Variables	1973	1985
Decisions		
Use of attorney		
Wife only	.4655*	.1898*
Both	.4176*	.1024
Husband only (omitted)		
Wife was plaintiff	.0237	.1112
Husband was plaintiff (omitted)		
Wife contested	.0670	.0109
Wife did not contest (omitted)		
Husband contested	-.1392	-.0195
Husband did not contest (omitted)		
Number of motions		
Filed by wife	.0601*	.0201
Filed by husband	.0143	-.0137
Rural	.1711*	.0378
Urban (omitted)		
Investment in marriage		
Years married	.0025	.0024
Number of minor children	-.0021	-.0152
Intercept	-.1244	.1622*
	R ² =.06	R ² =.05
	F _(10,358) =2.42	F _(10,439) =2.42

*p<.10

In the 1985 equation, 5% of the variance was explained and the model was significant at the 0.1 level (Table 2). As was the case in 1973, the wife's decision to use an attorney was significant. The probability of the wife's receiving the home rose 19% when she alone was represented by an attorney. In contrast to 1973, the decision by both spouses to engage

¹ $F = \frac{RRSS - URSS}{k + 1}$
 $\frac{URSS}{(n_1 + n_2 - 2k - 2)}$

where: URSS = residual sum of squares for the first data set (in this article, the 1973 data) + residual sum of squares for the second data set (1985 data)

URSS = residual sum of squares for the pooled data regression (1973 + 1985)

n₁ = sample size of the first data set

n₂ = sample size of the second data set

k = number of variables

legal representation was not significant. In addition, neither the wife's decision to act as plaintiff nor the number of motions filed by the wife was significant. Hence, the effects of procedural decisions of use of an attorney, role in the proceedings, and the filing of motions were diminished in 1985. Area of residence was not significant in the 1985 model indicating that the advantage of having a divorce heard in a rural county had disappeared.

The Chow test for the equality of regression coefficients yielded $F_{(11,797)} = 1.30$. Thus, while the coefficients might appear to be different, the test does not confirm the difference. That is, there was no difference between the influence of the set of procedural decision, legal environment, and investment in the marriage variables on the wife's receipt of the home between the two years. Because all cases in 1973 were divorces and the cases for 1985 were a mix of divorces and dissolutions, a model was tested for only divorces in 1985. This was done to find out whether that subset was more comparable to the 1973 sample than was the full data set for 1985. The model was not significant and thus, a Chow test was not performed for this model.

Conclusions and Implications

The results of this analysis indicated that the Divorce Reform Act of 1974 did not significantly change the probability of the wife's receiving the home. Despite the apparent differences in regression coefficients in the equations for 1973 and 1985, these coefficients were found to be stable. This result is not surprising given the low values of R^2 for the equations. Hence, the variables representing procedural decisions made during the divorce process, the legal environment in which the divorce takes place, and the investment in the marriage did not affect the probability that the wife would receive the home in 1985 differently than they did in 1973. The change in Ohio law from a traditional, pure fault system to one in which dissolution (no-fault) was allowed did not affect the probability of the wife's receiving the home. This result is consistent with previous research (Reiboldt, 1989).

Comparison of these findings with results in other states is not possible because time series data on divorce settlements associated with introduction of non-fault provisions are not available for most states. However, there are some reasons why the data from Ohio may be indicative of regional or national trends. Ohio was one of a majority of states that added a non-fault provision to their divorce laws during the 1970s. Further, Ohio divorce rates were comparable to national divorce rates in both of the sampled years. In 1973, the divorce rate was 4.4 per 1,000 population in Ohio and 4.5 nationally; in 1985, the divorce rates were 5.0 in Ohio and 4.9 nationally (Ohio Department of Health, 1973, 1985; U.S. Department of Health, Education, and Welfare, 1973, 1985).

A second issue related to disposition of the home is the benefit of the award. It is not entirely clear that receiving a home purchased on the basis of pre-divorce, married-household income is an unqualified good outcome for divorced women. Follow-up work on the subsequent financial status of women who were and were not awarded the home would be useful in order to have a better knowledge base from which to advise divorcing women whether or not to seek the home in a divorce settlement. Questions requiring further study include comparison of housing costs of women awarded the home with those of women not awarded the home and the extent to which homeownership becomes a financial burden due to maintenance costs. Additional study of possible trade-offs between award of the home versus other potential awards is also recommended.

Only awards of sole ownership to wife were considered in this analysis. Based on previous discussion by Freed and Walker (1985), Walther (1988), and Wishik (1986), obtaining sole ownership of the home is not the only, and may not even be the predominant way that the home is awarded to the wife. Thus, further analysis into award options could shed light on the financial well-being of women as a result of divorce.

The analysis was limited by the lack of demographic variables such as household income, age, education, and occupational status which might affect whether or not the wife was awarded the family home. Further, there was no measure of wealth in the model. The greater the household wealth, the more likely is the household to have assets other than the family home. As noted previously, the residence is an income draining rather than an income

producing asset. It would be useful to know how increases in household wealth affect the probability of the wife's receipt of the home. Further, some measure of the wife's income might be a useful indicator of her ability to maintain the home and pay the mortgage.

In addition, examination of which parent receives custody of minor children should be considered. In this sample, 46.6% of women who were custodial parents and 30.9% of women who were not custodial parents received the home in 1973, compared to receipt of the home by 41.7% of women who received custody and 16.3% of women who did not receive custody in 1985. The procedural decisions made during the divorce process, legal environment factors, and investment in the marriage may not be the best predictors of receipt of the family home. Other variables, such as an indicator for custodial parent and ideally, measures of wife's income and household wealth, should be considered in future analyses.

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