From the Bench

PARENTAL ALIENATION IS ONE THING, BUT WHAT ARE YOU GOING TO DO WHEN THEY COME FOR YOU?

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A trial judge knows there has been, or there will be, that one case—that *one* case—you will remember best. Perhaps that one case will deal with a complex question of law that you are the first to decide. Or perhaps that one case will define how you deal with controversy, "bad" press, or an attack on your very livelihood.

Fourteen years ago, when I took the bench, I never dreamed a custody dispute would turn into two trials, the creation of a nonprofit organization to fight "corruption" (my decision, among others) in the family court, and the enlistment of a published author who pushed a false narrative with the desire to take down judges who disagreed with his profit-motivated agenda. Rather, I thought that one case I would most remember would be my work as a prosecutor in presenting the case of a small-town mother who deliberately torched her home, thereby murdering her daughter. Or, looking forward, it would have been an equally high-profile trial I presided over involving a cold-case double homicide in which a brother executed his sister and brother-in-law. Yet, that one case that still resonates and still has impact is a custody case from 10 years ago.

How the Case Began

The Michigan county in which I serve is a conservative community that can accurately be described as being of Dutch ancestry with significant Calvinistic influence. Why bring up the denominational influence of the community? Well, this custody dispute involved an associate pastor and his wife who attended a large and influential church in my county. Obviously, marital problems occurred, so the couple, after counseling, decided that a change of congregation, community, and state would be best for their family. That plan did not work.

A few months after arriving in Colorado, the plaintiff mother fled the marital home and returned to Michigan with both children because "god directed her to flee." In fact, according to her emails sent to friends, Jesus was sitting in the seat next to her and providing encouragement for her to abandon her husband. Divorce cases were filed in both states. While procedurally the case took some twists and turns, those issues were relatively straightforward to resolve with the custody case being determined in the children's home state of Michigan and the separate maintenance/divorce case being adjudicated in Colorado. I anticipated there would be issues with parenting time due to distance, but it was hoped the parties would work together given their presumed morals and values. I was wrong.

During the custody trial, both parties were represented by exceptionally well-qualified attorneys. Six days of trial, 18 witnesses, and 64 exhibits later, I issued an opinion explaining in depth why the court awarded primary physical custody of the minor children to the defendant father. The plaintiff mother was awarded liberal parenting time. The Michigan Court of Appeals affirmed the decision. The plaintiff was also found in contempt for denying the defendant his court-ordered parenting time. The opinion documented that the plaintiff began a campaign to drive the children away from their father. In other words, the court determined that the plaintiff had sown the seeds of parental alienation. The court found that the plaintiff lacked the ability to tell the truth or discern fact from fiction.

While the plaintiff could not discern the truth, she certainly loved her children and presented exceptionally well—in isolation. She was pleasant and extremely intelligent. Therefore, the opinion went on at length memorializing the plaintiff's deception and manipulative behavior. In short, the opinion established the mother engaged in a campaign to damage, distance, or demonize all who opposed her version of reality. However, the plaintiff's

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demonization of all who disagreed with her had only just begun.

A few months after the trial and unbeknownst to me, even though my court had jurisdiction over the children, the plaintiff filed numerous complaints with the authorities in both Colorado and Michigan, alleging sexual abuse and neglect committed by the defendant against the children. The nine-year-old daughter was subjected to medical examinations and forensic interviews with child protective authorities in both states. In short, the plaintiff dropped the nuclear bomb in a custody dispute—false allegations of sexual abuse. How better to alienate a parent?

The plaintiff, while physically present in Michigan, filed a verified emergency ex parte motion in Colorado requesting a modification of parenting time for both children due to ongoing sexual and other abuse of the children by the defendant. As the motion was filed in Colorado, I was unaware of any custody issues with this case. The Colorado court denied the motion.

The plaintiff, again unbeknownst to me, filed a second verified emergency motion to modify and restrict the defendant's parenting time in Colorado. Again the plaintiff claimed the children were victims of sexual and emotional abuse and the defendant had neglected them. At the time of this filing, both the plaintiff *and* the children were physically present in Michigan. On that same day, the Colorado court denied relief.

The plaintiff next engaged in self-help and secreted the children. She took the children and fled Michigan and sought refuge in a "safe house." While in hiding, she dyed each child's hair and limited the children's ability to go outdoors. An arrest warrant was issued by the local authorities, who requested the help of federal authorities in locating the plaintiff. Two weeks later, she surrendered herself and the children to the authorities in Colorado. The children were reunited with their father.

Seven months later, a second custody trial was conducted. Both parties were once again represented by competent counsel. The minor children testified during this hearing and denied that the defendant abused them. The minor children further testified that the plaintiff pressured them to make false allegations against their father. After two days of trial, I penned a 19-page opinion setting forth facts establishing that the plaintiff's testimony was false and that she manufactured false claims of abuse against the defendant and unjustifiably denied the defendant's parenting time. The defendant was awarded sole custody and the plaintiff's parenting time was restricted.

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The plaintiff was ordered to undergo a psychological evaluation prior to reviewing any modification of parenting time. In addition, she was held in contempt and ordered to serve 90 days in jail due to her egregious misconduct of violating the custody order by fleeing Michigan with the children. The plaintiff did not appeal this decision. She later moved to California while the children remained with the defendant in Colorado.

Notably, during the trial and immediately after the children testified that the defendant did not abuse them, both counsel met with the court in chambers. At that time, the plaintiff's counsel expressed his client's relief that no abuse had occurred and that the plaintiff would now cooperate and obey further custody orders. Perhaps the most frustrating aspect of the second trial was that this representation was short lived—upon the court reconvening, the plaintiff's counsel advised that there was no agreement and the plaintiff was maintaining her position that the defendant abused the children. With this background, we move on to the attacks on the judiciary.

Attacking the Judiciary

Concurrent with her attempts to alienate the children from their father, the plaintiff and her confederates attempted to intimidate the judiciary. Shortly before the second custody trial, the plaintiff and her associates "investigated" me and my family. They conducted internet research in an attempt to learn of my religious affiliation and any other issue that would disqualify me from presiding over the case. After their research, the plaintiff argued I should be disqualified because I attended a church of the same denomination as the parties' church and was therefore biased in favor of the defendant pastor. They argued that my spouse worked for the defendant's ultimate boss (the general secretary of the Reformed Church of America)—an assertion that was patently inaccurate. While their research was flawed, it nevertheless signaled the beginning of a campaign to paint the judge and the court as biased.

Next, the obligatory complaints to the Michigan Judicial Tenure Commission were filed alleging bias and corruption. A bench mate was also claimed to be part of the conspiracy because he had attended the same church as both of the parties but, according to the plaintiff's associates, was hopelessly biased against the plaintiff. Of course, that judge had nothing to do with the case, but it provided fodder for the conspiracy theorists.

At some point, all of this caught the eye of a nationally known author in domestic violence. After listening to the plaintiff's

tale of woe, he immediately concluded that whatever the plaintiff said was reality. The author began to blog and post comments regarding the case and criticizing evidentiary rulings, including claims that I erroneously prevented the admission of the Colorado protective services' forensic interview report. Ironically, neither counsel moved for the admission of that report. The author then began an attack on me *and* the court. For instance, it was alleged the court had declared war on mothers. The Ottawa County Family Court was declared to be "corrupt."

The plaintiff later formed a nonprofit corporation based in Orange County, California, in response to the perceived "corruption" in the family court. She traveled at various times throughout the country telling her story and how the family court system is corrupt and does not protect children. At one point, the aforementioned author teamed up with the plaintiff when she returned to Ottawa County and said it was time to "name names" of "corrupt" and "abusive" judges. And he did just that, claiming I was not protecting families and, in fact, was doing the opposite—protecting abusers.

Lost in their presentation of how the court "got it wrong" were updates regarding the children. That is because there were no more problems. After the second trial, there were no further allegations of abuse leveled against the defendant, nor did the plaintiff file any other court action in any state alleging custody concerns. While I ordered that the plaintiff's parenting time be suspended until she had a psychological evaluation, something she never did, the parties apparently agreed at some point to a parenting time schedule. From my understanding, the defendant allowed the children to visit the plaintiff and repair that relationship. However, the children continued to reside with the defendant even after becoming adults and maintain a strong bond with their father.

It can be unnerving for a judge to be the recipient of negative comments or publicity. Let's face it, most state judges

Illustration by Dave Klug

are elected and there may be the concern about the next election. This is particularly true because judges cannot tailor their decisions to appease the public. Rather, decisions must be based on the rule of law and sometimes those decisions are unpopular. So what can judges do when faced with unjustified criticism? Based on my experience with this case and a few others, I have several suggestions for my colleagues on the bench.

How to Deal with Unjustified Criticism

Judges, while in control of the courtroom, have very little control outside it. We must realize that our decisions are not always popular and that individuals and groups have the absolute right to criticize them, even if that criticism is "unjustified" from our perspective. To blunt that criticism, it is important to always treat those who come in front of you with dignity and respect and render the decision based on the law and the facts. Once this reputation is built, the judge will have natural allies who will come to his or her defense. I would encourage my colleagues to review and use the resources of the ABA Committee on the American Judicial System, specifically its *Rapid Response to Fake News, Misleading Statements, and Unjust Criticism of the Judiciary*.

When the plaintiff and the author came to my county and spun their unexpected tale at the local women's shelter, their comments were not well received by those who were familiar with the court. In fact, the plaintiff and the author were never invited to return. While some in the audience shed tears at the claimed "injustice" of the plaintiff's treatment, those with knowledge of the local court system were upset regarding the condemnation of the local family court. That is because the court had built a strong reputation with the local women's shelter of appropriately deciding cases in which domestic abuse had been alleged. In other words, those with knowledge discerned that the tales spun were not based in reality.

Judges, to a certain extent, must develop a "thick skin." Again, some decisions are unpopular and may be erroneous, so criticism is to be expected. In this day of social media, aggrieved parties quickly can convey a false and misleading version of events to a significant part of the population. However, most of the complaints soon dissipate because there is so much internet noise. In other words, there are so many conversations and complaints on social media that very few of these complaints have legs. Thus, where there is an outrage in the blogosphere or social media, often the best advice for a judge is to simply ignore the posts. A hundred "likes" on a comment may be unnerving to the judge, but when there are a quarter-million persons living in the county, those 100 "likes" are irrelevant.

If the judge believes a public response is necessary, it is important to check the state's judicial ethics code to determine what can and cannot be done. Also, bear in mind that your response may be protected by the First Amendment and Supreme Court precedent. Because judges are generally elected and are thus presumably politically astute, they should have enough savvy to frame a discussion to avoid implicating ethical boundaries and case specifics. But, even if the ethical rules permit a direct response to a specific case, comments about that specific case may require recusal. If that happens, you have simply shifted your problem to a bench mate who will surely return the favor at the earliest possible convenience!

Lessons Learned

This custody dispute is the one case I will remember best. At the time, it was surprising to me that such "good" people would go on such an evil campaign to alienate children from their parent. In retrospect, it was fortunate that the alienating behavior was rather quickly arrested. The unfortunate aspect is that it took, in part, the contempt power of the court to dissuade the alienating behavior. However, but for those firm court orders, the children's healthy relationship with their father may have been irrevocably broken. The lesson to be learned in a parental alienation case is that significantly modifying parenting time along with the judicious use of the contempt power can be appropriate to stop alienating behavior.

There are also lessons to be learned regarding false claims against the judiciary. Treating all litigants with dignity and respect is a critical element of procedural fairness and will help in situations where certain litigants are uncertain of what to do and consequently lash out at the judge. Building strong community relationships and developing a positive reputation will assist any trial judge when the inevitable and unfair criticism arises. Developing a "thick skin" and a willingness to let some comments go with no response (especially ill-conceived social media posts) will help with overall judicial job satisfaction. Where a response to an unjustified attack is necessary, consider referencing or contacting the ABA and your state or local bar association for assistance. Be aware of the ethical limitations set by the judicial canons of ethics in your jurisdiction to navigate these uncomfortable situations.

These are some of my "lessons learned" from what started out as a "simple" custody case. Please consider sharing your judicial epiphanies so we can continue to support and learn from each other. ■