

MONOLOGUE
THE MOST IMPORTANT THING

*Linda Smith**

It was a Guardianship action filed by the Grandmother (Abuela) of a little girl. The mother had died while she and her daughter were living with Abuela. So Abuela sought permanent custody of the three-year-old child. The lawyer filed the papers in Massachusetts, and served the father (Padre) who was far away in Puerto Rico.

Padre contacted Legal Services because he wanted to raise his daughter, himself, in his home in Puerto Rico. The lawyer began to investigate the case in light of the law—Was the father a fit and suitable person to raise his child? The lawyer phoned the maternal aunt (Tia) who also lived in Puerto Rico. What did she think? Was Padre a suitable parent? Who should care for the child? Tia said,

Yes, he is a good father. But Abuela should raise the little girl. She is the Abuela. She is a woman. She has lost her daughter, the mother of the child. The child should stay with her Abuela. Besides, Padre lives in rural Puerto Rico (en el campo) with cows and chickens living under his house.

The Legal Services office accepted the case and began to seek a custody evaluation to obtain neutral evidence of Padre's fitness and to determine his concern for his daughter. Meanwhile, a notice was served on Padre, ordering him to appear in the Boston Court for a Pre-Trial Hearing. Before any investigation had begun, Padre called his lawyer. He was in New York, with his cousin, because the court Order had said he must appear. Fast forward the case—the attorney phones the Court:

My client has unexpectedly travelled from Puerto Rico to appear for this Pre-Trial Conference. Abuela does not have temporary custody or any right to prevent my client from taking his daughter back with him. I have to inform him of his rights. I would advise against his doing anything to upset the little girl. But I would suggest that instead of a Pre-Trial Conference, we have a hearing to see if Abuela has any evidence that would justify Guardianship against the wishes of the legal father.

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OK! The Court will grant that hearing. We have less than a week to prepare. Check the child support records. While the mother and daughter lived in Massachusetts, they received welfare. Did Padre provide any support? Whoa! The Welfare Department notified Padre of his duty to pay support to the state, and he paid everything requested, every month!

The client also brought correspondence—letters between him and his mother-in-law, and letters written to him by his wife. Padre wrote to Abuela:

I have lost my wife. Now you bring my wife's body to bury in Puerto Rico, but do not return my daughter to me. Senora, please, I have lost my wife; do not take my daughter from me as well.

There were many letters from the wife, written on thin stationery with questionable spelling and grammar. The couple had not “separated,” but were living apart because the wife had a serious health problem. She had travelled to Massachusetts to obtain the best medical treatment, not to “leave” her husband. The Legal Services secretary, also a puertoriquena, translated all the letters. They were love letters:

I am going to have the surgery soon. If I do not live, raise our daughter for me. You have been the best husband to me always.

Tragically, the wife died during the surgery. And the husband, Padre thought his desire for custody was his wife's final wish as well.

Within days the hearing took place. Abuela testified that she wanted custody of her granddaughter and could provide for her. Then, surprisingly, Tia arrived from Puerto Rico to testify. Tia testified that Abuela should receive custody. She continued:

My sister told me that her husband was abusive to her. He threw a bowl against the wall. He frightened her. He is dangerous and should not have custody of his child.

This was new . . . and inconsistent with Tia's prior account to Padre's lawyer. How to handle this?

When did your sister tell you of this abuse? Was it [this month]? Was it [that month]? Let me show you these documents. Can you identify them? What do these letters written by your sister say? So she was writing to her husband that he was the “best husband” and that he should “raise their daughter” at the same time she was telling you about his abuse?

Cross-examination in family law cases can be very powerful, because the parties are not experienced, sociopathic liars, but simply people in pain saying what they think they “need” to say. The secretary who had translated the letters said that the hearing was “just like Perry Mason!” in raising questions about the truthfulness of Tia’s testimony.

Second, was proof that the witness supported the Abuela’s custody not because of abuse, but due to her cultural views. How to raise that? (The lawyer might have to testify to the conversation, but then could no longer continue as the attorney.) Counsel went forward with the cross-examination, trusting the witness to be honest:

Didn’t I phone you and ask you who should have custody? Didn’t you tell me that Abuela should keep custody because the child was a girl, and her mother had died and therefore her mother’s mother—her Abuela—should raise her? You didn’t mention the abuse, did you? Yet that would be the most important reason to keep the child from her father. And you never mentioned it.

Caught, the witness finally responded: “But the language, the language was a problem.” Yet counsel pursued this rationalization, “But I was talking to you in Spanish, wasn’t I?” “Yes . . . [Tia the witness admitted] . . . you were speaking Spanish.”

A cultural or moral sentiment that an orphaned daughter should be raised by her maternal grandmother was not consistent with the laws of our courts that recognized the rights of a fit parent (of either gender) to raise his child.

The Judge called counsel to the bar. The Judge—who had practiced part-time with her husband while raising a large family—announced:

I am going to order that this little girl go back to Puerto Rico with her father. I want the parties to meet together and communicate this plan to the child. I want the father to visit over the weekend. Then, the father may take the child back with him next week. I want the child to be able to come back to visit her grandmother and Massachusetts relatives during the summers. She has lost her mother. These people have lost someone they all love. They must get together and share the child they love for the child’s best interest.

Counsel for Abuela began to argue that the Judge was putting the child’s health and safety at risk in light of the testimony about the violent Padre. The Judge looked hard at counsel—“I’ve heard the testimony and this is my decision.”

Immediately afterward the parties all went out into the hallways of the court and talked together as the Judge had decreed. “We are sorry we had to lie” said the Abuela and the Tia. “Our lawyer told us that we needed to say you were abusive.”

Actually, it is very unlikely the attorney was intentionally suborning perjury. Abuela's attorney did not speak Spanish. He no doubt counseled his client about the legal standards for guardianship without any intention of tipping her off as to what sort of testimony needed to be manufactured. Yet the dynamic of telling a client the sort of evidence that would be necessary and the client's presentation of that evidence was unsettling . . . and had the love letters not been available, might have carried the day.

The Padre had no hard feelings. He would go and visit over the weekend. They would all support the little girl returning to Puerto Rico with her father, even though she would live in the country with cows and chickens under the house. And he would be glad for her to visit her Abuela in Boston.

As the Padre was taking leave of the lawyer, he said: "What you have done for me is the most important thing anyone has ever done for me. I will pray for you to be blessed every day of my life."

Family law cases can be contentious and dysfunctional. Different views about what is "best" for children will conflict . . . and cultural norms about child-rearing will further conflict with legal standards. But occasionally, a wise judge and caring parties can extract a healing experience out of family tragedy. And then, the lawyers may be blessed to be involved.