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# A Survivor's Tale

Jane Massey Licata

I have been a lawyer for over 30 years and have taught law school for about half of that. Although I had some litigation experience, I was totally unprepared for the New Jersey Family Court experience I encountered when I sought a divorce and a protective order after many years in an abusive relationship. While I expected it to be a difficult experience, I did not expect to be told my testimony was not credible. The judge commented that (1) if the abuse was as bad as I claimed, I should have left long before I did, (2) I could not be considered a battered woman under New Jersey law because I was an educated, professional woman with resources, and (3) I did not have the right to protect my children. I would like to share some of that long and difficult journey through the court system and in the years following. The ramifications of some of the court's decisions and misperceptions have impacted my family in ways that I do not think the court considered or even imagined. I am going to highlight a few of the issues that led to flawed decisions and orders, all of which ultimately were undone, but at a great cost both in monetary and human terms.

Domestic violence and abuse happen at all economic and social levels. I have heard this said often, but in practice, if you are an educated professional woman, it is difficult to convince a court that you could be a victim of domestic violence. I have spoken to many women who are doctors, lawyers, and CEOs who have had very similar experiences to mine. When confronted with an allegation of abuse, the court often finds it difficult to believe that such a woman would tolerate domestic violence, cannot understand why she would stay, and even blames the woman for the problem. Blaming the victim has a number of very important ramifications. I was told I could not be considered a battered woman under New Jersey law because I had options. The court could not square my appearance and résumé with that of a victim of domestic violence. But what does a victim look like? It could be your mother or sister or daughter. I have heard a partner of a major U.S. law firm speak with tears in his eyes about how difficult it was for him to see and accept what was happening to his daughter, an accomplished attorney, until it was almost too late. My mother and sister testified in my case, but the court preferred to view this as a litigation tactic rather than to seriously consider that they feared for my life. My mother was afraid that I was going to end up being a story on the evening news, but the court could not fathom this. My former husband was also an attorney, and it was difficult for the court to accept that the man who was appearing in the courtroom could be capable of abusing his family. In fact, the court appeared to go to great pains to explain away testimony and evidence that suggested that his behavior was dangerous or ongoing. It was just not believable to the court that domestic violence could occur in our zip code.

While the county prosecutor would not get involved in the matter because a complaint for divorce had been filed, I was able to obtain a consent order, which replaced a temporary restraining order issued by the court. The consent order prevented my former husband from coming into my home or office as a result of his threats and behavior at both places. He was able to maintain his license to practice law, and the order protected me, my mother (who had come to live with me and the children), and my law partner, and it continues to this day. The court also restricted his communication to two parenting e-mails a week that were reviewed by the court when necessary. All contact was through our attorneys for many years, and there was ongoing litigation by my former husband until it ended by my filing for personal bankruptcy. The police in my town were very kind and have kept an eye on my home and office for years. I live under a domestic-violence safety plan. Yet, in its final order concerning custody, the court required that if both parents attended an event with the children present, the parents were to sit with the children in between as a buffer. As you can imagine, I was unable to attend many events without making separate, secure arrangements where I sat apart from my children to protect both them and me. Why a court would impose such a requirement was dumbfounding.

The court granted my former husband's request for joint legal custody. I was the custodial parent, but for many years every parenting decision was challenged or scrutinized. My former husband threatened to take the children from me unless he received what he wanted in terms of equitable distribution and other things. He demanded a parenting-time schedule based on a calculation where he would not be required to pay child support, although he did not respect the schedule and paid for nothing for the children. He was unwilling to pay education costs. The court did not require him to contribute anything, and it was too expensive and frightening to fight about it. Every time he wanted something, he would file a motion, legal fees would pile up, and the court would seek to find a middle ground, which did not work well when he always started from an extreme position. Eventually he litigated me into bankruptcy. This was something the family court did not see coming. However, it turned out to be a blessing because it ended his aggressive litigation tactics and brought in a very thoughtful and effective bankruptcy judge who finally brought some sanity into the situation and removed the children as pawns in a dangerous and high-stakes game that my former husband was playing. The children and I spent seven years in bankruptcy, but we survived and moved on with our lives.

In New Jersey, there is a preference for settlement. There is a so-called blue-ribbon-panel process where experienced family-law attorneys review the case and suggest an equitable settlement. We went through two such panels, and I agreed to

both panels' recommendations. My former husband would not agree to anything. This delayed the final divorce, racked up huge legal bills, and eventually frustrated the court because the case did not settle. The court did not understand that this was just another facet of the power and control aspect of domestic violence and that there was no settlement possible in such a dynamic. The more pressure the court put on us to settle, the more extreme my former husband's demands became until, eventually, there was no option but bankruptcy. Literally tens of thousands of dollars of assets were wasted on protracted and contentious litigation. When my attorney asked for the court's help in controlling the situation, she was rebuffed soundly. If the court had understood the domestic-violence dynamic, a great deal of time, expense, and hardship could have been avoided.

There has been a huge cost to my family. The children suffered terribly. There was no stability or safety at their father's house, and there were constant threats to our safety and well-being. However, if I complained to the court, I was perceived not as being a protective parent, but as seeking to undermine the relationship between the father and his children. Even though experts were brought in to evaluate and a parenting coordinator was appointed for a time, it was an impossible situation. The court-appointed coordinator resigned eventually, indicating that it was not a workable solution due to the domestic violence. After only a few years, all that remained of the court's various orders was the protective consent order. All other attempts to try and overlook the domestic-violence component and effect a traditional divorce settlement and custody arrangement imploded. However, since I was under bankruptcy protection at that point and the litigation threat was removed, I sought and received help from other sectors. I had established effective counseling for my children, their schools and coaches were involved in a protection plan, and my neighbors and co-workers joined together to form a community of love and respect to help my family heal and remain safe. Eventually we were able to establish a safety and recovery plan that the court was unable or unwilling to do.

I am writing this in the hope that if confronted with a domestic-violence situation, especially involving children, perhaps the court will stop and consider that it cannot be business as usual. Mediation does not work in a situation where there is fear for personal safety and the need to protect children. It is difficult for a victim to recount and explain the domestic violence. It is frightening to lose economic security and a way to support your family on your own, even with an education. It is difficult to lose your home and your savings and to be confronted with the threat of constant litigation. It is hard for children to tell a judge what is really going on with their parents. It is difficult for them to even understand the complexity and cruelty of the situation. Understanding that things may not be as they seem and thinking like a protective parent may prevent not only injustice, but tragedy. It is important to understand that power and control must be considered and balanced.

Many of the traditional remedies simply are not workable in a situation where one party holds all the power and control in a relationship. Using aggressive litigation tactics and seizing assets can make it very difficult for even a professional to create a safe and independent life for her family. Forcing a domestic-violence survivor to continue to suffer ongoing abuse and threats in the name of the best interests of the children is simply wrong. While the children need to figure out a way to have a relationship with both their parents throughout their lives, placing young and vulnerable children in constant conflict, uncertainty, and fear is not helpful. Assuming that the harm that has come to their mother will not necessarily be visited on the children is a very high-risk calculation. Taking time and figuring out why a parent wants and needs protection for the children, and giving some benefit of the doubt, can make a significant difference in children's lives. The informality of the family-court process can also create benefits and risks. Unlike other civil matters—and inconsistent with due process or the rules of evidence or procedure—in my case, most of the discussion with the court and presentation of information to the judge was in chambers, so it was difficult to understand or appeal the court's decisions. It is hard to prove what happens behind closed doors, and when there is misunderstanding and stereotyping about domestic violence, opportunities to fashion humane and effective remedies can be missed. It is much easier to look away from domestic violence than to engage in the situation. However, if a case does not seem to make sense, a closer look can reveal that business as usual can do great harm. I would ask that if a case gives you pause, please pause and think about whether there could be domestic violence involved. If so, seeking information and expertise could significantly impact the outcome for a family for years after the final divorce decree.



*Jane Massey Licata, J.D., Ph.D., is a partner in the biotech-patent and FDA boutique law firm of Licata & Tyrrell and also teaches patent and FDA law at Rutgers School of Law and Drexel Law School. Professor Licata writes and teaches about emerging legal and bioethical issues concerning biotechnology, including genetic privacy and nondiscrimination. Her firm concentrates in the nonprofit sector. Dr. Licata has been translating science into invention® for over two decades.*