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Redefining “pro bono”

Two Raleigh attorneys undertake a lengthy, heartbreaking case that sought to undo an adoption

By Ned Barnett, Correspondent



Attorneys Catherine Bailey, left, and Erin Mulligan Graber spent hundreds of hours working for nothing — expect satisfaction. Photo by Jim Sleeper

Pro bono cases are often simple matters in which a lawyer donates a few hours to resolve a legal tangle on behalf of someone who can't afford counsel.

But sometimes the cases

taken on for free can have a huge cost in time and emotion — and a huge payoff in personal and professional satisfaction. That was the kind of case two young Raleigh attorneys worked on for months and finally brought to a successful end this summer.

The situation was messy and convoluted. A young man and his girlfriend, both in their 20s, had been engaged, but when she became pregnant, she said she was going to abort the child. The couple broke up over that decision.

According to court documents, the woman told the man several stories. She first said she had aborted the child, then that the child wasn't his and that she'd had the child, but it was stillborn. Finally, she told the father she had given birth to a baby boy who looked just like him and had given the child to an adoption agency.

The man, desperate to claim his son, repeatedly called the adoption agency, but his calls received no direct response. Instead, the agency sent a letter from its attorney asking the father to cooperate with the adoption and submit to DNA testing to confirm his paternity. (He did, and the child was proven to be his.)

The father turned to Legal Aid of North Carolina for help and Legal Aid turned to Erin Mulligan Graber, a sole practitioner and family lawyer who regularly participates in the Wake County Volunteer Lawyers Program.

Graber, a former social worker, knew her way around custody cases, but she realized she would need help with one aspect of the case: the father's parental rights, which had been terminated. For that, she teamed with Catherine Bailey, a Raleigh family lawyer Graber knew. Together they embarked on a legal odyssey

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2. **Workers' Compensation – Causation – Shoulder & Neck Conditions – Altercation With Intruder – Notice to Employer**
Smith v. Wake County Government (Lawyers Weekly No. 11-08-0905, 12 pp.) (Danny Lee McDonald, Commissioner) (Christopher Scott, Commissioner, dissenting without a written opinion) Appealed from Opinion & Award of Deputy Commissioner Bradley W. Houser. I.C. No. W60926. Holding: Plaintiff's altercation with an intruder constituted an interruption of plaintiff's regular work routine and the introduction thereby of unusual conditions likely to result in unexpected consequences. However, plaintiff failed to show that his subsequently-treated neck and shoulder conditions were caused by the altercation. Plaintiff's claim for workers' compensation benefits is denied.
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Cobb v. Pennsylvania Life Insurance Co. The disability insurance policy provided to the plaintiff-landscaper explained that he would not be considered disabled if he could engage in "any employment"; since plaintiff had a duty to read the policy, he cannot prove that he reasonably relied on any alleged misrepresentation made by the defendant-insurance agent. We affirm summary judgment for defendants.
4. **Criminal Practice – Jury & Jurors – Venire – African-American Representation –**

that ended with the child in his natural father’s arms and both lawyers feeling a mix of jubilation and tearful exhaustion.

“I put more hours into this than in all my years practicing law,” said Graber, 36, who made 10 court appearances and invested more than 250 hours. “But the day that he got his son back is one of the days I’ll never forget.”

For Bailey, 34, the feeling was the same.

“It was very difficult, very emotionally draining,” she said. “While I’m super happy to have helped [the father] and the child is where he belongs, it was exhausting and it’s not the kind of case I would like to have going all the time whether it was paying or not.”

The biological mother admitted the truth of the father’s version in an affidavit, but otherwise ignored the case and never made an appearance in court. But the adoption agency fought the father’s claim on his child. The agency first stonewalled the father’s requests for his son, according to the court order, and then used a multitude of legal maneuvers to slow the progress of the case.

Initially, the agency succeeded in winning an order severing the father’s parental rights, saying that he was unknown. In requesting the order, the agency did not disclose to the judge that a man claiming to be the father had come forward. Graber and Bailey had to get that order set aside and then halt an adoption that was already underway.

Bailey called the case “a procedural nightmare.” To see it through, she and Graber leaned on each other and occasionally turned to other lawyers for advice.

“We thought splitting up the work would help, but we spent a lot of time conferring and even bringing in other attorneys familiar with the termination of parental rights side,” Bailey said. Sharing the case, she said, “didn’t cut the work down a whole lot, but it was nice to have someone else to help shoulder it.”

Caught in the middle was the adoptive family. The prospective adoptive parents had received the infant boy with joy. Their other children had become attached to their new brother. The case was so drawn out that the child was 13 months old before he was given to his father.

Bailey said she was thrilled to have the child reunited with his father, but it was hard to see the adoptive family give up a child they thought would be their own.

“Having the adoptive family testify about basically losing their child after a year was really, really heartbreaking. The judge said it was one of the saddest days she’s had in court,” said Bailey, herself an adoptive mother.

Graber said, “The hardest day of my life was having to cross examine the adoptive mother because all she did was love this child.”

The case was ultimately about more than one couple’s problems and a child caught between families. Graber said the outcome established an important precedent in a murky area of the law, the parental rights of an unmarried father.

“Unwed fathers should have an opportunity to be a parent if they want to be one,” Graber said.

The father is a nursing assistant who was taking college courses. He lives with his extended family in Durham County, Graber said.

“He’s a great young man,” she said. “I keep up with him and by all accounts he and the baby are doing just great.”

Under an informal arrangement, she said, the adoptive family remains in touch with the child.

For both lawyers, winning case was also a winning argument for pro bono work.

Graber said all lawyers should donate their skills on behalf of those who otherwise would be trampled by legal opponents with greater resources.

“I think every lawyer should do pro bono work,” she said. “I think it should be mandatory.”

Bailey said pro bono cases help lawyers to learn by letting them go where their instincts and interests take them, rather than being limited by a paying client’s budget.

“With pro bono, you can delve into issues as deeply as you want without a client saying, ‘Wow! This is costing a lot of money,’” Bailey said. “It does expose the attorney who takes these cases to areas of law they wouldn’t normally practice.”

Pro bono work has its intellectual and emotional benefits, but isn’t without a toll. It can cost an attorney plenty in time lost and fees foregone. Still, Graber says it’s worth it. “I took a significant hit financially to handle this case,” she said. “In my soul I felt it was that important.”



By Ned Barnett
Published: September 9, 2011

Armed Robbery – Acting in Concert – Identification

State v. Jackson Defense counsel asserted that the number of African-Americans (three) in the 60-person jury venire underrepresented the county’s African-American population. Neither counsel’s assertion nor the numbers at issue were sufficient to require the trial court to discharge the jury venire based on underrepresentation of the county’s African-American population. We find no error in defendants’ conviction of robbery with a dangerous weapon.

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