

**Philip Moncla
Evidence
Court Observation Memo**

Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data.

I observed a family court proceeding to issue temporary orders for child custody. The hearing was scheduled to be an hour and a half and I observed the first hour. I attended the hearing with 2 other classmates.

Facts of the Case

The case involved two parents who had two children ages 16 and 12. The 12 year old had been diagnosed with leukemia a little over a year ago which seemed to be the catalyst for the ultimate collapse of the relationship between petitioner and respondent. The room was incredibly tense, with petitioner on the verge of tears multiple times while giving testimony and the respondent teetering on the brink of rage throughout. The petitioner wanted parenting time split 50/50 and the husband to ultimately be thrown out of the house. The respondent wanted the time split more sporadically with him receiving the lion's share of the time with the kids. He also wanted to remain in the house.

Evidentiary Issues

There were three evidentiary issues at the hearing. I will address each in turn. The first issue raised was when the petitioner was testifying about a document that had not yet been put into evidence. When counsel asked the petitioner what the document was, she immediately started describing the document's contents. At that point, the judge stopped her and told her to wait until the evidence was admitted. He then told opposing counsel that she should have objected to that testimony. She apologized.

The next issue raised was probably the most interesting. The petitioner wanted to read into evidence the contents of the "separation" letter that her husband had sent her a year before they had filed for divorce. The respondent objected on relevancy grounds which were denied. The petitioner was then allowed to read from the letter 2 sentences stating that she was a good parent and mother and had always done right by her kids.

The final issue raised was a relevancy objection to the petitioners offering of evidence of the respondents W2 tax form from 2 years before the case had begun. This objection was also overruled. The judge reasoned that it was admissible for the limited purpose of establishing who had greater funds to support the children.

Analysis

The first issue raised struck at the cornerstone of the rules of evidence. Evidence not admitted to the record cannot be used as a basis for argument. Consequently, his reminder to the attorney and petitioner was important.

The second issue raised was the objection to the contents of the letter based on their relevance. Relevance is controlled by FRE 401 which states that "evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Because this case largely hinged on the parenting skills of each of the parents, it seemed extremely relevant that at one point the

respondent believed and stated that he believed the petitioner was a good parent. I believe the judge got this ruling right.

The third issue raised was the relevancy of the W2 tax form from 2 years before the case had begun. The judge determined it was relevant for the sole purpose of determining who had more funds to support the children. I agreed with the judge's ruling even though there were other, more recent tax returns also admitted as well as bank statements which showed the salaries and savings of both the petitioner and respondent. While I think presenting this evidence constituted needlessly presenting cumulative evidence, Rule 403 states that "the court may exclude relevant evidence if its probative value is substantially outweighed by... wasting time" (irrelevant text omitted). Because the presentation of the evidence took a grand total of 1 minute, I do not believe that the waste of time or threat of the waste of time was substantial enough to allow for its exclusion.

Conclusion

I enjoyed this exercise because it was a great opportunity to see the rules of evidence in action. This exercise taught me that the rules of evidence are often somewhat relaxed in family court (the judge told me this when we spoke to him before the hearing). It also illustrated for me how evidence is used to build a case brick by brick. Overall, I really enjoyed this exercise.