

How to Keep Good Intentions from Leading to Disaster

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A soft-spoken Hispanic woman contacted our office last autumn. She had contacted a number of other attorneys that ultimately were not able to help her and she was facing a hotly contested guardianship hearing for her mother.

Her mother was elderly and lived with her. As many can relate to, her mother wanted to live at home as long as possible rather than in a nursing home. This daughter, whom we will call Celia*, worked full time to pay the bills. She cared for her mother herself as much as she could evenings and at night. During the time she was at work, she ensured her mother was cared for at an adult day care center.

As is common with many elderly persons, and exacerbated with certain medications; Celia's mother bruised easily, tended to fall and healed slowly. Celia's mother had fallen at the adult day care facility several times. Having paper-thin skin, the injuries were always quite apparent for some time. Celia felt the care facility was not as careful as it should have been but continued to try to work with them to obtain the best care for her mother.

Perhaps in an attempt to alleviate their own liability, the adult care center turned the tables by contacting Adult Protective Services and reporting that Celia was abusing her mother! Celia found herself caught in the middle of an ugly dispute. To make matters worse, her determination to abide by her mother's wishes for natural care wherever possible just added to the suspicion that she was neglecting her mother.

A social services case worker was immediately appointed as emergency guardian of Celia's mother. The proceeding took place without Celia being present or even knowing about it. As emergency guardian, the case worker refused to allow Celia to see her mother without a police escort.

After the required notice of the guardianship proceedings was given to Celia, she set about trying to obtain legal representation. However, the litigators she contacted advised her that there was simply not enough time for them to adequately prepare.

Celia showed up to Court on the day of first permanent guardianship hearing by herself. The attorney representing the interests of Adult Protective Services did not show up! Normally the party who fails to appear forfeits the case; however, not having an attorney, Celia did not know to ask the judge to dismiss the case. The judge contacted the attorney who explained that his office had gotten busy and forgotten about the hearing. The judge continued the hearing to another day.

That was when Celia contacted us. Obviously, it was a concern that other attorneys would not touch her case. There is the saying that the common denominator in all my failed relationships is me. Could Celia be the problem here?

After discussing the situation with Celia, we felt assured that her predicament was primarily a matter of the team of service providers misunderstanding a number of things about her culture, herself and her relationship with her mother. For example, in Celia's Hispanic family, it was accepted practice to kiss family members on the lips. Nevertheless, the Caucasian case worker felt this was "sexualized" behavior. A police

officer witnessed Celia's interaction with her mother. He tried to explain to the case worker that he was Hispanic as well and in his family, kissing on the lips was the norm. However, his explanation was mostly ignored by the case worker.

Having been assured that we could put on a good defense for Celia, we had a week to prepare for the hearing. Discovering as much evidence as was possible was imperative. We investigated the adult day care facility and contacted the ombudsman to subpoena their records. We were able to obtain copies of the evidence we needed, but only by the day of the hearing.

The hearing actually went well for Celia. We made substantial headway by asking why nude photos of Celia's mother had been taken while her mother was showering rather than accord this elderly woman some dignity by at least partially clothing her while capturing her bruised condition. We put on evidence that Celia was acting in her mother's best interests and had not subjected her mother either to abuse or neglect. When it came time for the ruling, the judge told Celia that she had done nothing wrong. The judge commended Celia for all she had done for mother, noting that it was more than the judge would have been capable of doing.

The judge appointed one of Celia's relatives and the case worker as co-guardians. While Celia now has her relative on her side to help care for her mother and Celia has been allowed unsupervised visits of substantial length with her mother, there is still significant tension given the history between Celia and the case worker.

As the ancient proverb says, an ounce of prevention is better than a pound of cure. If you need to step in and care for a family member, it can save you a great deal of grief to be proactive and obtain a guardianship for care of the person and a conservatorship for care of their financial affairs. This makes your role official and helps to keep the overprotective side of Adult Protective Services at bay. Adult Protective Services and care facilities can rest assured that the Court has approved of your serving in this role and is approving your reports as you fulfill your duties. Appointment as a guardian and/or a conservator also helps you to access information about your loved one that may otherwise be restricted to you because of privacy laws such as HIPPA. If you would like to learn more about how becoming a guardian and/or conservator can benefit you and your loved ones, please contact us at 720-524-2111.

* Name has been changed.