

Gut Punch...No Regrets

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Sometimes a “win” feels like, well, . . . not a win. Sometimes a “win” comes at such a significant cost that the diminished value of the victory forces one to question whether it was a win at all. The Battle of Bunker Hill is a notorious “pyrrhic victory” during which the British troops occupying Boston eventually overran the vastly outnumbered rag-tag assemblage of defending militiamen but not without suffering substantially greater casualties than expected. The battle, nominally a British victory, proved to be an encounter the British would much rather forget than tout as a win. Similarly, a prize fighter’s successful defense of his boxing title by technical knockout leaving him perceptively weak and vulnerable to challengers, perhaps even severely injured, might leave him questioning whether, in hindsight, the public beating taken in the ring was truly a “win” for which it was worth fighting.

I recently experienced an unqualified “win” for a client followed by a sucker punch I didn’t see coming . . . a “gut punch” unexpectedly bringing me to my knees and requiring the equivalent of a “standing 8-count” to shake off and get my head right. While it didn’t come with bloodshed or a championship belt, it did come with loss of life and a serious cause for pause.

The Set-Up

I’d been contacted and engaged by a non-familial attorney-in-fact on behalf of a lovely 90-year-old, bed-ridden, “stage 4” diagnosed, short-timer. For these purposes, I’ll call her “Joy” -- because she certainly was! Joy was a pistol. Although end-stage, unable to leave her bed, and receiving hospice care when I met her, Joy was feisty. I certainly had no doubts about her mental capacity. She knew what she wanted and had no issue telling you! What she didn’t want was a guardian or conservator appointed for her – least of all her 30-year estranged family member (“Pat”) who, from thousands of miles away, had only begrudgingly made the trip to see Joy and, even then, chose to disrespect her by removing and requisitioning Joy’s dining room chandelier before bothering to say “hello!” Soon thereafter Pat had returned home and engaged local Virginia counsel to assist Pat in securing complete control over Joy as both guardian and conservator. Suit was filed and a Guardian *ad litem* (GAL) already appointed by the time I got the initial call. Joy was having none of it and was non-plussed. For her part, Joy, with the help of her attorney-in-fact, had engaged reputable counsel to redo her estate plan writing Pat (and Pat’s equally estranged sibling, who couldn’t be bothered to pay respects) completely out of her will. I know what you’re thinking at this point – was the non-family member taking advantage of Joy and now the object of all of her bounty? Nope. Joy kept it in the family but skipped a generation leaving everything she owned to the grandchildren she’d never been allowed to know. In what turned out to be her final days, Joy wanted nothing more to connect with and meet the now adult grandkids she’d never met, but my requests through counsel on her behalf went unanswered.

The “Win”

Having personally met with and preliminarily concluded Pat needed no guarding or conservation, I was easily able to convince Pat’s counsel that there was no need to rush to judgment and coordinate a cooperative approach to allowing an independent

assessment by the court-appointed GAL – who, by the way, was equally easily convinced of Pat’s mental acuity and just as willing to minimize her involvement so as to avoid unnecessarily running up legal fees. I convinced Joy to allow me to share her new estate plan documents so Pat’s counsel could see and share with Pat that mom was not giving it all away to who knows who and clearly had a plan – a plan reflective of the non-existent relationship Joy had had with her children . . . a plan without Pat. With no basis for denying Joy her freedoms of choice, Pat’s counsel pursued a voluntary dismissal. With everyone doing the “right thing,” a lot of money and heartache was spared and I had successfully defended Joy’s interests without so much as having filed a single pleading or attended a single hearing. No formal discovery was needed; judicial economy was maximized. Joy was happy. Joy’s attorney-in-fact was happy. I was happy. Joy was at peace. Joy passed several days later.

The “Gut Punch”

With Joy’s passing, there was still work to be done, of course. In keeping with Joy’s wishes, Joy’s attorney-in-fact, now Executor under Joy’s will, made arrangements for the final disposition of Joy’s remains with no public service or ceremony. I reviewed the published eulogy with interest and a strange deference, considering I’d only twice met Joy in person and only known Joy for a few weeks. Count this one as a “win,” I thought. Hold this out as a case study on how every case should go, I concluded. I’d even begun composing the article in my head. That’s when I got the call.

Joy’s other long-lost offspring had been given my number. It seems there’d been no love lost between Joy and himself over the years and he’d deferred to Pat to address mom’s final illness. With news of Joy’s death still fresh, he was calling to let me know that Pat had just taken her own life. There it was – his own self-described “1-2 punch combination” which had apparently left him feeling weak in the knees, was the punch to the gut I didn’t see coming. I sat dazed and speechless as he shared the unsolicited gruesome reality of Pat’s disposition as his story morphed into the impact on Pat’s situation on the grandkids – remember the grandkids?

He transitioned effortlessly again to talk of wanting to be “fair to the kids” (appearing now to be indirectly referencing Joy’s estate and believing, based on apparently nothing in particular, that Pat’s kids would somehow be short-shrifted with Pat’s untimely demise). In that moment, I caught my breath and lifted myself off the mat with the revelation that he had been written out of the will and the grandkids were to receive everything. “So that’s it, then, huh.” “Yes.” Conversation over. After an awkward silence, he hung up.

The Aftermath

I’m not sure which had hit harder, news of Pat having taken her own life or the impact of her doing so on the sibling and children she’d left behind. I suppose that in my line of work I ought to be grateful I’ve not faced more such situations. Quite candidly, I’ll concede I’m not sure this would still be my line of work!

There was no championship belt for my performance, nor was one deserved. Still, a win’s a win, right? I take solace in knowing that I served my client’s interests cost-effectively, efficiently, and professionally. I successfully protected her legal rights and helped her die with dignity and at peace. The tragic aftermath left in her wake was not of my doing, but rather the apparent consequences of lifetimes of regret about which I know little more than hinted at here and with which I had no involvement. I think it’s important to recognize that our wins and losses as litigators are life-altering events for our clients and their “adversaries” (aka family members, in my specific line of work). I think the struggle comes from the juxtaposed need to be independent-thinking, dispassionate, third-party trained professionals and the inherent value in appreciating the emotional toll and impact the circumstances have on not only our clients but also those caught up in outwardly expanding ripples left in litigation’s wake.

My takeaways? If nothing else, I learned I could take a punch. I still what I do . . . for now, at least. Personally, I suggest calling your mom; hug your kids before it’s too late. Professionally, in a personal services context, caring still matters. It’s important to remember that people generally don’t care what you know unless they know that you care, but if they don’t care that you care, you don’t need them.