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FAMILY LAW

One year later, Zion raid has ripple effect

Stronger ad litem roles; more focus on religion in custody battles.

Tresa Baldas / Staff reporter

March 30, 2009

The April 2008 raid on a Texas polygamist sect's ranch that triggered national headlines has impacted family law on a number of fronts, providing new ammunition in custody disputes and warning lawyers about potential pitfalls in cases alleging abuse.

Among them: Don't rush to judgment when abuse is suspected. That was the strongest message that came out of the raid that one year ago this week led to the largest custody battle in U.S. history when law enforcement agents raided the Yearning for Zion Ranch.

They removed more than 450 children from their homes due to concerns of alleged abuse and forced underage marriages. A 16-year-old girl's claim that she was abused by her 50-year-old husband led to the raid. The ranch is located in Eldorado, about 160 miles northwest of San Antonio.

The Texas Supreme Court concluded last May that there was a rush to judgment, holding that, for the vast majority of children, there wasn't ample evidence to show they were in danger. *In re Texas Department of Family and Protective Services*, No. 08-0391 (Texas).

'Profound lessons'

"The case offers profound lessons for family lawyers who must be especially careful in distinguishing between conduct which harms children, versus our views regarding religious practices," said family law attorney John Mayoue of Atlanta's Warner, Mayoue, Bates & Nolen, who has given several presentations about the Zion case to attorneys and judges.

Mayoue believes the ranch case highlighted a trend in family law: parents feuding over religious decision-making. One parent doesn't like the other's religion and claims harm to the child.

That is what he suspects happened in the Texas case: Authorities may have been more concerned about nonconventional religious beliefs held at the ranch, run by the Fundamentalist Church of Jesus Christ of Latter Day Saints, than about actual harm to children.

This same scenario, Mayoue said, is popping up in family court, and lawyers have to learn how to deal with it.

"It heightened our awareness of the importance of religion in custody matters," Mayoue said of the ranch case.

It also provided more ammunition for defense lawyers trying to protect the parent-child relationship in termination cases, said Tracy Willi, a civil appellate lawyer at the Willi Law Firm in Austin, Texas. "It certainly provides some protection for a parent where authorities are seeking to take their child away for whatever issue," Willi said of the ranch case. "Even though there was evidence that there were bad things going on over there, it wasn't sufficient to interfere with the family relationship."

Perfect timing for attorney John Ohlson of Reno, Nev.'s Bowen Hall Ohlson & Osborne, who is citing the Zion case in a pending lawsuit filed on behalf of 33 children who were taken into protective custody after a 2005 raid on a Christian-based school for troubled teens, the Abundant Life Academy in White Pine County, Nev. The raid, he said, was triggered by a parent upset about the treatment of a child and a licensing dispute. A judge eventually found that the children were taken without cause or reason, triggering a \$1.3 million verdict for the school. That's now on appeal. *Xtreme Faith Academy v. Landrym*, No. CV-0512156 (White Pine Co., Nev., Dist. Ct.).

Meanwhile, Ohlson is pursuing a civil rights action, claiming that the state "swooped down and took their kids out of the school without reason, and against their wishes, and threw them in jail." *Barragan v. Landry*, No. 08-16790 (9th Cir.).

"The claims are almost identical," Ohlson said of the ranch case and his, noting that he filed his lawsuit in 2006. "The principles are real similar — the idea that a state can't come in and pick up a kid without some reasonable cause."



Warner Mayoue's John Mayoue

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Nevada officials were unavailable for comment.

The ranch case also made divorce lawyers more child-friendly and more aggressive on the ad litem front, said Betsy Branch, a family law attorney whose firm helped reunite four Zion ranch children with their parents after being placed in foster care. "It was beneficial to learn to represent children. More often than not, we represent mom or dad," said Branch of Dallas-based McCurley Orsinger McCurley Nelson & Downing.

Branch said the Texas case highlighted the need for attorneys ad litem to be more aggressive and hands-on in cases involving child protective services. It demanded they challenge evidence more and have face-to-face visits with children prior to every hearing, as opposed to telephone conferences.

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