

Gardner mother's nightmare of losing custody of her daughter recounted

By Paula J. Owen TELEGRAM & GAZETTE STAFF

Posted Sep 21, 2014 at 6:00 AM

GARDNER -- Kathy S. Maki lived every mother's nightmare three years ago when she lost custody of her 9-year-old daughter after her attorney at the time botched her divorce case in Worcester County Probate and Family Court.

She said she went from having her only daughter home 365 nights a year to only 26 nights. At one point, she did not see her at all for seven months, when her ex-husband, Keith Maki, allegedly refused to let her take her for court-ordered visitations. Eventually, her visitation was reduced to only three hours on Saturdays and Sundays every other weekend, when she would pick her up and drop her off at the police station, she said.

Though she now has physical custody of her daughter again, Ms. Maki said she lost three precious years with her and went through hell fighting to get her back. (Ms. Maki asked that her daughter's name not be used.)

New clothes, purchased earlier, hang in her daughter's closet with the tags still attached, too small now to fit her at 12. Though she loves the ocean, the 54-year-old former newspaper sales representative said she waited three years to go the beach, until she could go again with her daughter. In her daughter's bedroom, which she kept exactly the same as it was the day she left, sits a decorated box with a slot in the top. Ms. Maki made it for family and friends to drop in letters for her daughter to read when she finally returned home. (She did not believe her daughter was receiving the letters she mailed, she said.)

If Ms. Maki had a crystal ball, she said she would have chosen a different attorney and the outcome may have been different.

The Supreme Judicial Court suspended Gardner lawyer Peter T. Sargent's right to practice law for three months -- but stayed the penalty for six months of probation with conditions.

The court ruling was made Feb. 13 at the recommendation of the Board of Bar Overseers, an independent agency established by the SJC that investigates and evaluates complaints against lawyers.

If Mr. Sargent had not complied with conditions, including allowing an audit of his practice by an independent agency and participating in an ethics program, the court would have imposed the three-month suspension of his right to practice law, according to a court filing. Attorney Dorothy Anderson, first assistant bar counsel for the Board of Bar Overseers, prosecuted the case.

According to court documents, Ms. Maki was involved in a pending divorce filed by her then-husband Keith Maki. Ms. Maki was also fighting her husband to keep physical custody of her daughter and the court had appointed a guardian ad litem -- a guardian to represent the interests of children. She and her husband shared legal custody, the document said.

On Oct. 4, 2010, Ms. Maki retained Mr. Sargent to represent her.

Though the guardian recommended in two reports that Ms. Maki retain physical custody of her daughter, at trial on July 19, 2011, her husband's lawyer successfully moved to exclude those reports because Mr. Sargent failed to subpoena the guardian ad litem, who was not in court for cross-examination. Mr. Sargent also made many other mistakes in the case, according to the board.

On Nov. 3, 2011, the court awarded sole legal and sole physical custody of the couple's daughter to Mr. Maki.

In its summary, the board said Mr. Sargent failed to provide competent and diligent representation to Ms. Maki by failing to respond to discovery requests, interview potential witnesses, adequately prepare his client to testify, subpoena the guardian ad litem, and file his witness lists within the time period set by the court.

As a mitigating factor, the board said, Mr. Sargent's sole assistant in his practice "ceased being diligent" during this time period. The assistant failed to inform Ms. Maki of deadlines, phone messages and other communications, the document said.

Ms. Maki subsequently tried to sue Mr. Sargent so she would have the money to hire another attorney to help get her daughter back, but she said Mr. Sargent did not have insurance. The \$18,000 she received in the settlement was only enough to pay the Boston attorney she hired to sue him, she said.

Mr. Sargent did not respond to requests for comment.

Michael A. Fredrickson, general counsel for the Board of Bar Overseers, said lawyers certify they carry insurance with the agency, but they are not required to carry it.

“But, it is a good idea for them to, to protect themselves and their clients,” Mr. Fredrickson said.

If a lawyer is sued who does not have insurance, a judgment against them is good for 20 years and can be renewed, he said. “One hopes someday a lawyer will have assets,” he said.

Ms. Maki’s current attorney, Robert G. Clark of Hudson, has been helping her pro bono since she lost her daughter in 2011.

“She needs the help and deserves it,” Mr. Clark said. “I wanted to get it finished for her. She was stuck with a judgment that didn’t make a lot of sense and I did not want to leave the child in that situation and leave Kathy under the level of stress she was dealing with.”

He said he immediately reopened the evidence in the case to allow the guardian ad litem to testify and allow her recommendations into evidence.

Then, in the summer of 2013, things heated up, he said, when her ex-husband ignored the custody order and denied Ms. Maki contact with her daughter for seven months.

“He left a note on his porch door that said I would not see her again until we went to court,” Ms. Maki said.

Mr. Clark filed contempt motions and modifications, but when Judge Joseph Lian Jr. would not enforce his own orders, Ms. Maki requested Judge Lian recuse himself from the case.

When he refused, she filed a complaint against Judge Lian with the Commission on Judicial Conduct for failure to be heard and failure to enforce his own order. Subsequently, Judge Lian removed himself from the case, according to court documents.

“I did not see my daughter for seven months from May 2013 until January 2014,” an emotional Ms. Maki said. “I thank God for Judge (Ronald) King because if it wasn’t for him, I would still be fighting to see her. Judge Lian is the one who wouldn’t allow the GAL report. It cost a little shy of \$9,000 and Judge Lian wouldn’t even open it. Yet, the first thing Judge King did was open it and start reading it in the first five minutes we were in front of him.”

When contacted, Mr. Maki at first said, “What he (Mr. Sargent) did was totally wrong and unfair.”

He said he had not read the summary of the disciplinary action taken against his ex-wife’s attorney. When provided with the information, he said the agency was lying and it was all fabricated. He went on to demean and belittle Ms. Maki and said he loves his daughter and was only trying to protect her.

Mr. Clark said he plans to see the case through to the end. He said they are hoping for a good, solid outcome in the final judgment.

“When she finally did get (her daughter) back, that was a moment we’d been hoping to accomplish for a really long time,” Mr. Clark said. “We did it and it felt terrific. Kathy is a good, sincere person and a lot of this was completely needless. It really did come down to one piece: of getting the GAL report into evidence.”

In general, most judges follow the guardian ad litem’s recommendations pretty closely, he said.

“Based on the GAL’s findings, she shouldn’t have lost custody of her daughter,” he said. “Given this GAL and the nature of her findings that were very balanced, you would have expected the recommendations by the GAL would have been followed in this case.”

As she waits for a final judgment from the court, Ms. Maki is facing foreclosure of her home. When she married Mr. Maki, she placed his name on the deed and needs his signature to move forward with a loan modification, she said.

“I spent every penny I had -- I used everything fighting for (my daughter),” she said in her dining room recently. “I could have easily given up and walked away and probably many women would have. I spent hours and hours on Black’s Law Library, on the phone, my tablet and notebook, searching for legal help to get my daughter back. I went to great lengths to try and find somebody who could help me and reached out to anyone who would listen. I never gave up and every day I did something toward getting (my daughter) back. Some days it was little and some days it was huge, but every day I did something and that is what got me through.”

Contact Paula Owen at powen@telegram.com. Follow her on Twitter [@PaulaOwenTG](https://twitter.com/PaulaOwenTG).