LETSTALKLAWYERING

He Brought a Lawyer. She Brought Receipts.

HON. ROY FERGUSON

Young lawyers often assume that a trial against a self-represented litigant is a guaranteed win. Not so fast, my friend! Represented parties can and do lose to self-represented litigants, often for one key reason: *they lied to their lawyer*. Case in point—a divorce trial in my court where the husband was represented and the wife wasn't.

He brought a lawyer. She brought receipts.

I want it all. I want it all. I want it ALL . . . and I want it now.

At trial, the husband asked for primary custody, confirmation of his "separate property" business and building, the marital home, and "all property in his name or possession" (which he said was minimal). His sworn inventory showed that the only property of value was the marital home and a small shipping business with a minimal bank account, so basically, he wanted, well . . . everything.

His lawyer was understandably confident, facing off against a non-English speaking, self-represented mother of two. Little did he know that his confidence was woefully misplaced.

This ends here and now.

The husband started by confirming that his sworn inventory was true, correct, and complete. He testified that the business only brought in $200,000 per year and "barely breaks even." He offered his tax return, showing negligible income, hardly worth mentioning.

The wife was shaking her head and angrily shuffling papers—but didn't interrupt. She stewed. And when he passed the witness, she attacked. "We own no other property except what's in your inventory?" "Yes." "You swear?" "Yes."

This is the point where the lawyer should have realized that things were about to go horribly wrong.

She picked up a bag from under the table, rummaged around in it, and pulled out a document. "What about *this*?" The husband's lawyer stood, "Judge, I've never seen this document before, so I object." I inquired, "Did you request documents in discovery?" "Um . . . no." "Overruled."

The document was a deed to a downtown lot in the husband's name, purchased during the marriage. He confirmed that it was accurate. She pulled out another deed—the same response from her husband. Then another. *And another*. Deed after deed materialized. Turned out they had purchased a dozen lots of valuable

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commercial real estate during the marriage, all put in his name. Satisfied, she turned to the business.

"How much did you say you made in the business last year?" she began. "Under $200,000." Another reach into the bag, this time producing a stack of 1099s, ranging from $190,000 to $400,000. Another objection, but before I could rule, the husband interrupted loudly, "Yes, those are correct." His lawyer snapped at him, "Wait for me to finish the objection!" to which he barked back, "Why? She's got the proof right there!"

I jumped in. "Why didn't you include these amounts in your business valuation or inventory?" He shrugged cavalierly. "I didn't know she knew about them." I nodded.

"Makes sense."

That was a huge mistake.

By the time she was done, he'd admitted to roughly a million dollars in annual receipts. But he clearly wasn't worried. He flippantly testified that all the money was gone anyway. There was only one business bank account, and it held maybe $25,000. Operating costs ate up all the profits, he explained. I asked, "Did you bring a bank statement to show that?" "No," he said innocently, "I didn't know I would need to because it's *mine*."

"Okay," the wife continued, "Where is that business located?" "On your lot." I interjected, "Hang on. Did you say *her* lot?" He replied, "Yes, she inherited it from her mom. But *I* built the building on it!"

She stared him down unflinchingly. "With what money?"

"The insurance proceeds."

I interrupted again. "Insurance proceeds? *What* insurance proceeds?" He explained that she received a hefty fire insurance payment after a fire destroyed the original improvements to the property that he used to build the new building.

She was mad that he used the insurance proceeds without consulting her. But what she didn't realize was that in Texas, his using those proceeds to build the building makes both the lot *and the building* her separate property—not his. Oh, and "his" business that he started in that new building? Well, that's community property.

Wow, right?

But wait, there's more.

Soon both sides rested and closed. In closing argument, his attorney asked me to give the husband all property in his name and possession (which I then knew included all the downtown lots and the marital home) and the business and all assets. The husband had not even mentioned the kids in his testimony—it was all about money and stuff. So, I asked whether the husband was abandoning his request for primary custody. The attorney assured me he was not.

This was a huge mistake.

You see, Texas allows a judge to interview the children privately if custody or possession is at issue.

So, after they finished their arguments, I ordered the parties to remain in the courtroom and directed the bailiff to bring the children around the back to chambers. I announced, "I'll interview the children in chambers." The husband turned to his lawyer and whispered frantically, "Can he do that??"

Yes. Yes, I can.

The attorney rose. "Objection!" "Basis?" "Um." "Overruled."

I soon knew why the husband was unhappy. It turned out that the husband secretly had another family across the border in Mexico that their mom didn't know about, complete with a wife and kids. That's where Dad took them during every visit. He had a big house and a huge farm there.

The hammer falls.

Time to rule. And I was ready.

I confirmed the commercial lot and building as the wife's separate property. I named her primary custodian of the children. I ordered him to pay the presumptive max of child support under the guidelines. I awarded her the marital home and all the other lots. I awarded him the shipping business and its tangible assets (giving him 90 days to vacate)—except that I awarded *her* the business's "small" bank account.

At that, the husband came *unglued*, and started yelling at his lawyer in Spanish. I waited while they argued. Finally, the attorney stood. "Judge, we ask you to reconsider on the bank account." "Why?" I asked. "Well," he replied sheepishly, "my client isn't certain about the balance."

Peering over my glasses, I muttered, "You don't say." I continued, "I will rely on his sworn testimony on that point. Have a seat." With that, I shifted my gaze and locked eyes with the husband. "And finally, I award to the husband the home and farm in Mexico." His eyes flew open, wide as saucers. The wife and husband's attorney exclaimed, almost in unison, "WHAT home and farm in Mexico??" I responded softly, "Ask your client later."

The husband was deflated. He knew he was caught. His attorney, having no idea what had just happened, stood, ranting about an appeal as I walked out.

He brought a lawyer. She brought receipts.

Being the only attorney in a trial definitely gives you the edge—but only so long as your client tells you the truth or you don't woefully underestimate the opponent. If so, the results can be catastrophic, as this poor lawyer learned.

Listen critically to your clients. Probe and test their story. And prepare for trial as if the outcome depends on it. Because it just might.

Oh, and the "small" bank account? Turns out it had almost a million dollars in it.

As I said . . . He brought a lawyer. She brought receipts.

HON. ROY FERGUSON PRESIDES OVER THE 394TH DISTRICT COURT—THE LARGEST JUDICIAL DISTRICT IN TEXAS—AND SERVES BY ASSIGNMENT ON THE 8TH DISTRICT COURT OF APPEALS. YOU CAN FOLLOW HIM ON TWITTER @JUDGEFERGUSONTX.

WORD!

"THE WILL TO SUCCEED IS IMPORTANT, BUT WHAT'S MORE IMPORTANT IS THE WILL TO PREPARE."

—BOBBY KNIGHT

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