

# Unusual issues define Cuban girl's custody battle

## The custody battle over a 4-year-old Cuban girl is filled with unusual circumstances.

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His 4-year-old daughter needs to go to the bathroom. In a public park. He doesn't want to let her go alone. But he doesn't want to go into a women's restroom, or take the girl into the men's room.

Fathers face such predicaments every day. But to this man, it's more like a test, and he can't afford to fail. A child welfare caseworker, who will help decide whether he's fit to rear the girl, is watching. The entire visit is being videotaped.

To complicate matters, he's a Cuban national whose country has spent almost a half-century telling tales about the evils of American life. He's been in Miami six weeks. His daughter barely knows him.

"Of course I know what to do with my child," he said in Spanish at a court hearing this week, "but in my country."

The case, which held its first public hearing Wednesday after a year of closed-door sessions, is filled with cultural nuances and political overtones.

At the center of the dispute: a girl whose caseworker says cries at night, gnashes her teeth, and sneaks into her Cuban-American foster parents' bed out of fear she will be taken from them. At age 4, her only memories are those of the well-heeled Coral Gables family that has raised her for more than a year.

The names of the girl, her father, and her caregivers are not being revealed in this article to protect her privacy.

The picture of the girl emerging in court is that of a happy, even precocious child who has never doubted that her caregivers, and their children, are her real family.

She goes bike riding with them. She attends summer camp. She is petrified her life will be upended.

"She does not want to go to Cuba," said psychologist Miguel Firpi, who is working with the girl. "She becomes very, very hyper. She grinds her teeth at night. She wakes up with nightmares."

Said Julio Vigil, another psychologist in the case: "When [her birth father] tries to give her a kiss, most of the time she rejects it."

Anita Bock, who oversaw Miami-Dade's child welfare programs in the 1990s, said heart-wrenching custody battles are not rare, though they are seldom easy.

This dispute, however, includes some real curveballs:

- A Department of Children & Families lawyer, Rebecca Kapusta, told the judge the state would not be asking to terminate the father's rights to his daughter -- an action akin to the "death penalty" in custody disputes -- and that the father had been given a "reunification case plan" that would allow him to regain custody.

But when asked by the judge what was the state's "goal" for the girl, Kapusta said the state wanted the girl to live with the caregivers in a "permanent guardianship."

- The presiding judge's desire to protect the girl -- and the Miami community -- from details of the case was so strong she closed all hearings to the public and issued a gag order prohibiting insiders from talking. The judge even threatened to jail courtroom participants who violated her secrecy order. After The Miami Herald filed a complaint, an appeals court forced the hearings open.

- For months, the U.S. State Department refused to grant the birth father permission to enter the country to fight for custody -- until the Miami judge pushed to get him a visa. Yet in court, DCF has accused him of "abandoning" his daughter because he didn't arrive sooner.

- A psychologist recently insisted that the Cuban man tell his daughter, with whom he's had only supervised visits, that he is her father. When the news made her yell and cry, a caseworker complained the father's visits were emotionally harmful.

Following the harrowing visit, the caseworker, Maria Zamora, said she asked the child why she appeared so angry. "She told me she only had one father, and it's [the caregiver]," Zamora said.

On the drive home from the visit, psychologist Firpi said, the girl tore up a toy her father had given her.

The girl, who has been described in court as mature and insightful, entered the country legally in March 2005 with her mother and older brother -- who has a different father.

The tug-of-war began that year when the girl's mother was hospitalized after a suicide attempt. The Gables family, given formal custody by DCF, decided they wanted to adopt both kids, and neither the children's mother nor the boy's father objected.

The girl's father, however, refused to surrender his rights. After a protracted battle with the State Department -- which Circuit Judge Jeri B. Cohen, who presides over the case, said she helped resolve -- the father was allowed into the country about six weeks ago.

Hearings in the case have been closed to the public for a year. Wednesday's, the first that was open, unleashed hostilities among all parties, with red faces, finger-jabbing and shouting.

Some people have drawn parallels to the Elián González case, but the difference is that the girl's case has gone to child welfare court, while Elián's did not.

The key issue before the judge is the father's fitness to care for his daughter, and lawyers with both DCF and the Miami Guardian-ad-Litem Program have visited Cuba to observe the father and his living conditions and interview family and neighbors.

Sources say child welfare administrators view such visits with a jaundiced eye, fearing they are manipulated by the Cuban government.

For the most part, a parent who has committed no egregious offense, such as severe physical abuse, is given a "case plan" with tasks he or she must complete in order to gain custody. The "goal" of the case plan typically is the reunification of parent and child.

But the DCF's stated goal in court Wednesday of permanent guardianship for the Gables family seems to conflict with the agency's decision to offer the birth father a chance to win back his daughter, several observers said.

Bock, who oversaw foster care in Miami, said her former agency's reunification plan might be "a fiction."

"If there is no credible evidence this father has abandoned his child, either at birth or later in life, and no evidence he abused the child, there ought to be a sincere effort at reunification," she said.

In 1995, in one of Miami's most controversial cases, Bock overruled caseworkers and lawyers and asked a judge to allow the relatives of "Baby J" to adopt her, and foster mother Kathryn Reiter, who had cared for the girl for two years, absconded with her for 25 days before surrendering.

"These cases are very complicated," said Bock, a lawyer who is now deputy clerk of the U.S. District Court in San Francisco. "The emotions on either side are so raw."

Jess McDonald, who headed the Illinois Department of Children & Family Services before retiring in 2003, said Illinois caseworkers occasionally would require parents to complete plans they knew were impossible.

"You have to wonder if the case plan is really a case plan, or just a series of hoops unrelated to correcting any conditions" the father may have, McDonald said. "Let's see if we can prove the guy can't jump through the hoops."

"I wonder if it isn't, in fact, a little bit of a setup," McDonald added.

Andrew Lagomasino, the Cuban father's therapist, described DCF's actions in the case in precisely the same language in court Wednesday: "It is a setup for failure," he said.

"It's wonderful that so much attention is being paid to the anguish of this child," Lagomasino said. "But I don't see any attention being paid to a father who did nothing wrong but could lose custody of his child."