

Cuban dad's lawyers: Law unconstitutional

A state law that could deny a Cuban father custody of his daughter is unconstitutional, the father's lawyers said. A Miami judge disagreed.

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Attorneys for a Cuban father seeking custody of his 5-year-old daughter have asked a Miami judge to declare unconstitutional a state law that would allow child-welfare administrators to strip him of custody permanently even though he has been found a fit parent.

The legal team for father Rafael Izquierdo, a farmer and fisherman from central Cuba, filed a 70-page motion Thursday asking Miami-Dade Circuit Judge Jeri B. Cohen to declare a portion of Florida's child-welfare statute in violation of the state and federal constitutions.

The legal challenge faces a difficult hurdle: Cohen, who has been presiding over the girl's unusual case for more than a year, indicated Monday she does not believe the state law is improper.

"I don't see any constitutional issues here, quite frankly, that can be attacked," Cohen said at a 90-minute hearing. "I want you to know where I'm going: I don't think this is an unconstitutional statute in any way, shape or form."

The dispute over custody of the auburn-haired little girl will enter its second phase Tuesday, when Cohen begins taking testimony about whether the girl would be "endangered" by a reunification with her father, who has been living in a Brickell Avenue condo since entering the United States on a humanitarian visa in May.

Jason Dimitris, the state's lead attorney, said his first of a possible 25 witnesses will be Miguel Firpi, the girl's longtime therapist. Izquierdo's attorneys announced they may call as many as 47 witnesses, though Cohen pointed out there is extensive "overlap" between the witness lists of the two sides.

The little girl has been living in the Coral Gables home of Joe and Maria Cubas since April 2006, four months after the girl and her older half-brother were sheltered by the Department of Children & Families after their mother, Elena Perez, slashed her wrists with a kitchen knife. The Cubases have since adopted the 13-year-old boy.

The DCF, the girl's guardian ad litem and the Cubases are asking Cohen to strip Izquierdo of custody over the girl forever, arguing that she has bonded with the Cubases and would be harmed by any separation from both her foster parents and half-brother.

Izquierdo's attorneys are arguing that the part of Florida's child-welfare law that permits judges to withhold custody from fit parents -- if "the court finds that such placement would endanger the safety, well-being, or physical, mental or emotional health of the child" -- violates the "fundamental" rights of parents to raise their children.

Jeffrey P. Bassett, a child-welfare lawyer with the Florida attorney general's office, asked Cohen to delay a hearing on Izquierdo's request, saying the attorney general is charged with defending state law and had not yet received a copy of the complicated motion.

The father's attorneys were hoping their motion would be heard by Cohen before the hearing is to begin Tuesday morning, but Cohen refused to hear arguments, saying state officials had insufficient time to prepare.

"To go forward with an unconstitutional proceeding for two weeks would be improper," said Steven Weinger, one of Izquierdo's attorneys.

Cohen ruled she would begin taking testimony on the child's possible endangerment, and rule on the motion later.

"They have a right to be heard if you are asking the court to declare a statute unconstitutional," Cohen said, referring to the attorney general. ``It won't do any good to argue this. My ears are closed. I don't want to delay this. . . . We're putting on witnesses [Tuesday]."