**Private Divorce**

**(“Impasse” C:\Users\joryn.JORYNJENKINSLAW\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\KT6NODZY\3007[1].jpg “Failure”)**

Last week, I got a phone call from a guy who had interviewed me two years ago for his divorce. At the time, between us, we had decided that the collaborative option, a “private divorce,” would best serve his family, that being himself, his wife, Deirdre, and his small daughter. However, ultimately, he opted to retain another collaborative attorney, a gentleman in my practice group for whom I have a great deal of respect.

When he called to tell me his decision about whom to retain, and to assure me that it was no reflection on my value, I mentioned that I was in the process of writing another book, one of those about the stories of divorce, both those conventional divorces that take place in the courtroom and those that are resolved, instead, collaboratively. So, when he called, last week, he told me that he wanted to get together to share the story of his divorce, if I was still interested.

“Of course, I am!” I exclaimed, happily. I’m always looking for tales that illustrate the magic that we collaborative professionals are able to manifest when we work, even if I’m not directly involved in the magic-making! We arranged to get together for lunch.

Mr. Smith is a man of average height, about 40 years old, and fairly soft spoken, so it had come as no surprise to me when he chose a male attorney who gives the impression of being reasonably aggressive. After we had placed our lunch orders, I eagerly asked him how his collaborative divorce had progressed, expecting yet another story about the healing that happens in the process.

I was nonplussed when he announced, without hesitating, that he and his wife had impassed after just six months (which is fairly long in the collaborative process, but brief compared to the conventional courtroom divorce).

"Stan," I exclaimed, "why are we even having this conversation? I don't really want to spread the word about how collaborative cases fail." I smiled, ruefully, disappointed.

Stan also smiled, and, eyes closed, he held up his hand, palm facing me. "Well, now, I didn’t use the word ‘failed.’ I said ‘impassed.’ Give me a minute and let me tell you what happened."

I leaned forward in my chair, and put my elbows on the table, resting my chin on my open palms. “Ok. Now you’ve got my attention.” I raised my eyebrows questioningly.

"So Deirdre chose Ted Blackthorn as her attorney.” I recalled him telling me about her, an intelligent woman, but, as so many spousal partners are, not versed in the family finances. So many wives have anxiety and mistrust in their divorce processes because of this. It's not because they're uneducated. They’re just not up-to-speed.

Stan continued, “He came across as financially savvy, as well as emotionally intelligent. In retrospect, though, I suppose I should have called you to find out if the personalities would work, but I was in too deep distress to think to do that."

I recalled that when Stan had alerted me to the fact that he was not retaining my firm, which I had appreciated very much, we had not had an extensive discussion of who else would be on the team.

"As you explained when we first met, the attorneys chose our facilitator, and we started the process with her, identifying our goals and interests. That was very productive for me, and, according to Deirdre, she thought so, too. We met several times over the next six weeks.”

“My wife was initially adamant that she would only agree to 70/30 timesharing. Eventually, when she realized that one driving reason for our divorce was her failure to allow me to be an equal parent, she and the facilitator worked it out so that I was going to have 50/50 timesharing with our daughter. So I was very happy."

I interrupted. "Did you meet with the facilitator together at any point or were these all separate meetings?" I was curious as to how the facilitator had worked with this couple. I'd worked with her in the past, and she has a fabulous reputation here in Tampa. But my first experience with her had involved no children. Instead, we dealt with a spouse who was emotionally dependent on her husband and unwilling to allow him a separate life. And who had no life outside the home, despite that she was employed. We had managed to finalize that divorce collaboratively, although it was not without a great deal of hard work by everyone on the team, including the spouses.

"It was not easy to collaborate directly with Deirdre on this issue. Once we had worked to establish our goals, we began meeting together with the facilitator to problem solve and brainstorm solutions to the parenting plan. But it seemed that our facilitator was able to accomplish a lot more when I wasn't in the room, and she and I made sure that she understood how I felt when she was alone with my wife.

“Ultimately, I think that Deirdre was able to hear the gal because of her mental health education and experience when she explained the importance of a daughter’s relationship with her father, especially during her formative years, better than she had ever listened to me telling her the same thing. But it's always been hard for her to admit when I'm right. I learned a long time ago that neither side ever “wins” an argument."

"So did you reduce the time sharing agreement to a signed parenting plan?" I was quick to ask.

"Oh, yes," he was just as hasty to respond, a big, fat grin sliding onto his face. You could tell that he was just tickled to death. "And we started our 50-50 timesharing immediately." He added, "In fact, we accomplished that within the first two months of starting our collaboration. Then we got ourselves organized around living separately, as well. It wasn't until we started talking long-term what we would do with the assets and debts that her trust issues caused us to impasse."

I recalled the details of this consultation. "Valuing your ownership share in the business was the big problem?"

"Yes," he confirmed. "Deirdre simply did not trust that I was being open and transparent about my interest in the partnership."

"So," I began, "Why didn’t you just retain a neutral business valuation expert that you could both agree on?"

"Oh, we did," he exclaimed. "Got him to sign the confidentiality agreement and everything. But that didn't work either. My wife was convinced that I wasn't sharing all of the pertinent information with the neutral, and she was absolutely convinced that my two partners were in on my ‘scam.’" He went on "When, in fact, the three of us were all concerned that our lender would discover that my divorce was happening and call the $2.5 million loan, because they would deem it ‘a significant event.’"

“You’ll recall that was the big reason I went for the ‘private divorce’ option in the first place; you had explained to me that, if successful, it was likely that the details of our separation and finances could be kept private in a collaborative environment. And that we could be creative in ways that a judge can’t be in the conventional divorce case.”

He took a deep breath, and continued. "No, I think the problem that we had was not just the trust issue so much as . . . her attorney was not strong enough for her, not aggressive enough. Is that possible in collaboration?"

"’Aggressive’ is probably not the right word. Perhaps ‘assertive,’ though. Sometimes that happens," I sighed. "In this case, her lawyer is a nice guy. In fact, he's always been a nice guy, even in litigation mode. And now, he's getting close to retirement and spending a lot of time with his grandkids. So he probably wasn't even as assertive as he used to be."

"Yes," Stan agreed. “He was just too nice, and Deirdre needed a lawyer who would ‘stand up for her.’ Which is not to say that he wasn't doing that. Just that that was not her perception."

"Sometimes," I explained, "in collaboration, one lawyer will explain to the other that she (the one explaining) needs to be more forceful and that it's just because her client needs to feel that she's got a lawyer ‘on her side,’ ‘fighting for her,’ if you will. Sometimes it’s not the attorney who brings it up; it's the facilitator who explains to both lawyers what's needed, from the emotional perspective, by one party or the other."

"Well, that was the problem, more than anything. And what eventually happened," Stan continued, "was that we impassed the collaboration and hired two ‘aggressive’ trial lawyers." I smiled at his use of the term, but, when he named the lawyers, I sucked in a breath of alarm. They were both known to be “highly litigious.”

"The litigation dragged on for a while. But we were both concerned about the money we were spending on legal services so we both controlled our lawyers pretty well. And, because of all we had learned in the collaborative process, when the time came to consider an offer for my shares of the partnership by a third party joint venturer, we were able to discuss it together without the lawyers stirring it up. My wife realized, because I wanted to take the offer, how generous it was, and we agreed to share the profits 50-50.”

Stan took a deep breath and shrugged. “And that was it. The case was over."

“So how do you feel about the collaborative process?” I asked.

“Joryn, it was better than I could possibly have hoped.” He sighed. “Given my wife’s control issues and her trust concerns, it was truly amazing to me that we were able to resolve both the parenting plan in a way that I could (happily) live with, as well as solve the financial distribution issues, albeit after having impassed the collaboration itself.”

He summed up. “Deirdre and I spent six months with the collaborative process and got in place the two important agreements needed to live separate lives, a parenting plan and the mechanisms to live financially independently. The subsequent 12 months was the time I needed to let my partnership dust settle and sell my shares. This would have been a huge risk with a public divorce. But, once that was accomplished, we almost didn't need the lawyers.”

“Bottom line, my private divorce was a huge success.”

I dropped my fork on the floor in my astonishment to hear him put it that way.