



I'd go to jail for my kids

**Why I have to protect them from
their grandfather—even if the law's
not on my side**

Photographs by Erika Larsen

Last winter, a judge sentenced me to 120 days in county jail if I didn't let my children see their grandfather. The dates, times, and circumstances of these visits were determined by a "visitation-time expeditor," someone who stated—before she'd ever met me or talked to my two kids—that in her opinion, the children's best interests would be served if I were incarcerated.

Before you picture me as a drunken-driving, welfare-frauding mama, let me clarify. I live in a modest house with my two kids, 7 and 9, and my husband, Jack*, a teacher. His 10-year-old daughter from his previous marriage visits regularly. We have a plaque in our family room that says "Thou Shalt Not Postpone Joy," which to

us means, among other things, that it's good to dance if the music moves you. I'm my son's Scout troop leader. I consider myself a law-abiding citizen, but more important—and perhaps this is my downfall—a good mom.

The one strike against us is that we aren't considered an *intact* family—defined as a biological mother and biological father living under the same roof as their kids. I certainly don't consider us a "broken" family. But my previous marriage was: The children's biological father, Lee, hasn't seen the kids since they were toddlers. I don't even know where he is. By divorcing and starting over with a man who treats my children as his own, I've made it possible to give my kids a childhood.

But because I'm divorced from my kids' father,

**The names and identifying details of the people involved in this court case have been changed.*

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the law made it easier for my ex-husband's father to sue for grandparent visitation, which he did, a little over four years ago. Now what was once grief over lost love and a failed marriage has oxidized into rust that tarnishes every aspect of our daily lives.

Secrets from my first marriage

After I'd been married to Lee for six months, one of his sisters visited us and told us that their brother sexually abused her from the time she was 6 until she was 13. As we worked through the shock, Lee began to wonder: Did this brother "learn" his abusive behavior from their dad?

Then Lee shared his own secret. "When I was five, my dad used to teach me how to shower. I remember that he used to hold me upside down by the ankles in the shower. Even then, it felt wrong."

Years went by. Ellen couldn't bring herself to tell her parents what had happened, nor could Lee talk to his father,

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Rob, about his memories. Their mother died before our son, Shawn, was born; Claire was born two years after that.

Unable to confront his father, and guilt-stricken because he hadn't protected his sister, Lee retreated emotionally. He was drinking now, more than he'd ever done before. When his dad asked to visit, Lee told him he wasn't allowed on our property. He warned me to keep our babies away from his dad. He said his dad was a dangerous man.

I felt trapped inside this family tragedy. I couldn't reveal their secret, because it wasn't mine to tell. I couldn't join forces with my husband, because my father-in-law held the mortgage on our house, and thus had the upper hand.

To keep the peace, I'd bring the children to see their grandfather whenever I traveled to his city. I always kept a close watch, afraid that as soon as I left the room, Rob's awkward horseplay with Shawn would turn into abuse.

The battles begin

When it became clear that Lee wasn't going to quit drinking, I filed for divorce. Lee went into a cycle of treatment, disappearance, and reappearance. As of today, he's been missing for years.

Shortly after the divorce was final, Rob wrote a letter to the judge for my divorce case, asking for an investigation into my household. "Jane has changed," he wrote. He reported that I had a boyfriend and that he feared for my mental stability and the safety of the children. The judge wrote back (and sent a copy to me, which is how I learned of the request), explaining that the court could not investigate a single mother at the discretion of an ex-father-in-law.

Because I was financially beholden to Rob—he threatened to evict us if I fell behind on the mortgage payments—I brought Shawn and Claire to see him and his new wife a few times over the next two years. But after years of living with the fear of eviction, I sold the house and gave Rob \$30,000 from the sale. The move put us geographically closer to him, but it also brought me closer to Jack, who was by then my fiancé.

Around the same time, I heard from Rob's lawyer. Rob wasn't satisfied with the visits. Unless I let the kids stay overnight with him twice a month, plus a week in the summer, he'd sue for grandparent visitation.

In the process of packing for our move, I'd found a letter Lee had written to his father that he never sent; in it, he'd written of the incest

between his siblings. I hired an attorney, who sent copies of Lee's letter to Rob. When I finally heard from Rob, it was in the form of a lawsuit.

In court, Rob produced affidavits, signed by Lee and his two siblings, in his support. Lee's siblings acknowledged the incest between them but said their father hadn't known about it. Each described their father as a good dad. They said I was the problem—I had changed. The judge granted Rob's request to sue for visitation.

Grandparents' rights

Most states have some form of visitation statutes allowing grandparents the right to go to court to maintain a relationship with their grandchildren. With more parents getting divorced, these laws evolved out of real need, and to benefit children. The vast majority of grandparents are loving, good people. When parents are found to be unfit, grandparents are often the best candidates to raise the child, and these laws have made it easier for them to do that.

While most cases settle out of court, the most acrimonious ones are difficult if not impossible to mediate. Judges are supposed to give special weight to

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How do you explain to your kids that you're not allowed to come along during visits to their grandfather?

the parent's wishes—grandparents must prove how their visits benefit their grandchild. The problem is that every state has a different standard on how much evidence grandparents need to overrule a parent's right to decide what's best for her child, says Stephen Newman, a professor of law at New York Law School in New York City. The lack of clear guidelines makes these particular cases harder to decide.

In my state, a grandparent is granted more visits if that is deemed to be in the best interests of the child—and if it wouldn't interfere with the parent-child relationship. The court also considers the amount of prior contact between the grandparent and the child.

I go to court

I'd submitted copies of Lee's unsent letter to his father as evidence of the incest. At the hearing, the family-court judge said that wasn't enough to deny Rob visitation. I explained how Lee had described memories of his bathtime games.

"I've asked my son about this," Rob said, and began to describe how he'd bring Lee through his legs and then flip him over while they were in the shower. "It was kind of a playful thing. I think I did it once or twice."

I was sure Rob had hung himself. But the judge called

for an investigation—of both parties—by Domestic Relations, the family-court agency that deals with divorced parents and children. Rob and I were to undergo psychological testing, and a social worker would interview Shawn and Claire, then ages 5 and 3.

Following the evaluation, the department recommended that visits be supervised, first by Rob's brother and then by Rob's wife, and that I seek counseling to deal with my "unresolved issues" surrounding my previous marriage.

The judge issued an order for four-hour visits six times a year, even though she agreed with me that no previous relationship existed between my father-in-law and my kids. Looking back, I should have appealed based on that. But my lawyer at the time warned that it would cost me \$10,000, with little guarantee of winning. He advised against an appeal.

Now, four years later and \$40,000 in debt, I wish I hadn't taken his advice. But it's too late.

The strain on my family

I hadn't told Shawn and Claire about my fears that Rob could molest them, but I did explain that their grandfather sued me for visits with them. As this dragged on, it was impossible to explain why, on dates not of their

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choosing, they had to be delivered like a package to an old man they didn't really know.

My heart ached for Shawn and Claire. Because they were so stressed and confused by the visits, I let them know about each one only a few days ahead of time. Shawn, normally easygoing, would become withdrawn; Claire, who generally never says a thing when she bangs a knee or an elbow, complained about neck pains.

Before each visit, Claire would beg me to ask Rob if I could stay. It was hard to explain that I wasn't allowed to be there, that he didn't want me in his home. "He never asks us what we want to do," Shawn once said. "He just tells us. If we say we don't want to build a birdhouse or ride around in his car, he says, 'Did your mother tell you to say that?'"

The system takes over

After a year the social worker withdrew from the case, citing budget cuts, and we wound up in court again. I'd learned that Rob wanted to take the kids wherever he pleased and, representing myself, I argued against that.

Without a county agency to turn to, the judge appointed a freelance visitation-time expeditor named Pam to help us hash out the issues. These expeditors are independent contractors, often psychologists or lawyers, who are chosen from a list of professionals known as "neutrals" and are supposed to work with both parties to resolve visitation issues. Given the number of cases and the level of conflict, family-court judges have to rely on objective third parties to, literally, expedite the cases. Of course, some expeditors aren't necessarily neutral or objective and stand to make a great deal of money the longer a case goes on.

Upon Pam's appointment, she asked for a \$750 retainer and presented me with a contract that made it clear I'd have to pay hourly fees in addition to this. I wasn't receiving child support, and Jack, with a fresh college degree, was starting a second career as a teacher. When I said that I didn't have the money and wouldn't sign the agreement, she said that without payment in full, she would not allow my input into the process.

Rob could afford to pay Pam, and they discussed his case for hours; she had his payment and his side of the story. My not having any input meant that my attempts to discuss conditions of the visits—such as who would be supervising and where they might go—were ignored.

Pam scheduled nine visits between my kids and Rob, on dates Rob chose. I was to deliver them to his house, then pick them up four hours later. The first two visits were scheduled on days that Shawn and Claire had birthday parties and scouting activities. When Rob refused to discuss rescheduling, I skipped the visits, even though I knew that could get me in trouble. When I delivered the children for the third visit, Rob wasn't home. Then I received a letter from Pam saying that everything was off until the judge could consider contempt charges against me.

Instead of a contempt charge, the judge decided that Pam would oversee mediation between Rob and me. As angry as I was, I thought I should make peace for the sake of the children. During mediation, Rob and Pam ignored my concerns about how Shawn and Claire were

I was near tears when I pleaded with the judge to vacate my jail sentence.

reacting to the visits. I suggested that they take place at our house, which would create a more normal family atmosphere. Rob refused because, he said, he was perceived as being difficult there. After two hours, we agreed on nothing.

My life hits rock bottom

After our failed mediation, Pam filed a court order scheduling three visits. She didn't specify whether Rob's wife would be there to supervise, and now he could take my kids anywhere within a five-mile radius. In mediation, I'd requested the kids be able to call me on a cell phone I'd given them; Pam's order stated they couldn't bring it.

Worried for my kids, I skipped the first scheduled visit. Within days, I was served with a contempt motion.

At the contempt hearing I explained to the judge how the visits affected my children and asked to have a guardian ad litem appointed, a person chosen by the judge to talk to the kids and tell the court how they feel. I also requested that Pam be removed as expeditor, citing her decisions in favor of Rob and against my children.

The punishment that Rob urged was about \$36,000 for his legal bills and Pam's fees. Our annual income would barely cover this. >>

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On my third wedding anniversary, the judge found me in contempt and sentenced me to 120 days in jail but stayed the sentence as long as I complied with the visitation schedule. I was ordered to pay a \$2,000 bond and \$2,000 worth of Rob's legal fees, and to work out a payment plan with Pam to pay the \$4,000 that she said I owed to her—even though I never signed her contract or fee agreement. There was only one bit of good news: The judge granted my request to appoint a guardian ad litem to evaluate my children's best interests.

I fight back

Three months later I was back in court, arguing that the conditions Pam had set—prohibiting the kids from bringing a cell phone and allowing Rob to take them anywhere he pleased, against my wishes—were unconstitutional. I reminded the judge that she could no more force me to sign a contract with Pam than she could force me to sign one with a roofer to put new shingles on my roof. I was near tears when I pleaded with the judge to vacate the jail sentence. "For missing four hours of visits, I could go to jail for four months," I said. I couldn't tell where her sympathies lay, and felt humiliated by my loss of composure.

The judge scheduled another court appearance, after she'd heard the report from the guardian ad litem.

Our family decided to celebrate Shawn's 9th birthday by staying overnight at a hotel with a water park. It was an indulgence—Jack and I had just borrowed several thousand dollars to pay the court-ordered bond and fees—but worth every cent. The four of us took turns down the twisted tube of the water slide, with Claire going twice as often as the rest of us.

At the time, we were just having fun, enjoying ourselves like any other family. Now I realize the hotel pool helped us reclaim some joy from the man who has threatened to litigate it out of every aspect of our lives.

A ray of hope

Finally, at this last hearing in late summer, the judge made a few decisions in my favor. First, she removed Pam from the case. She

asked the guardian ad litem—who after interviewing everyone in the kids' lives (including Rob) testified that my children are smart and fun and that she found me to be "not malicious, just a really strong advocate for her kids"—to stay on it. And she agreed that it wouldn't be fair to send me to jail.

We now await her orders regarding future visits, whether I am in contempt, and, if I am, how I will be punished. I could hear in six weeks or in four months—I just don't know.

Although I feel more optimistic, I'm still disappointed and frustrated by the system: by the judges who know nothing of the children they claim to protect, the lawyers and expeditors who have a financial interest in keeping the controversy brewing, and a grandfather who uses his money to buy control over my children. I've vowed to help other moms who find themselves in my situation.

And yet I can't show my anger, not around Shawn and Claire. This is their childhood, the only one they get. So we dance in the living room. At night before bed we read *A Series of Unfortunate Events*. I set aside the thought that we are deeply in debt. I try to shake off months of 4 A.M. panic attacks and pace myself for the next phase in a lawsuit now entering its fifth year.

All the while, I think, This can't be real. In real life, eventually, luck changes, justice prevails, and God smiles on children—right? ■

Jane Smith is a pseudonym.

If you're threatened with a lawsuit

- Try to work it out in mediation. Don't sign anything in the first session; take the visitation schedule home and think about it until you feel comfortable with the terms. Once you've signed an agreement, it's set in stone as far as the courts are concerned.
- Very few lawyers have any experience with grandparent visitation. Interview several who specialize in family law, and if they do have experience, ask them which side they represented. If they don't, ask about their knowledge of your state's statutes and whether they believe that a parent has the ultimate right to make decisions regarding her child's well-being.
- Stay cool when dealing with the judge, social workers, and the litigating grandparent. (This was a tough lesson for me.) Everyone gets emotional when her kids are threatened, but family-court personnel are more likely to side with the calmer party. —J.S.