

Committee on Ethics of the Georgia Commission on Dispute Resolution

Advisory Opinion 2

Findings of Fact

1. In December 1995, Complainant applied to the magistrate court for a restraining order against the father of her child because of an incident occurring October 7, 1995. She was told that the magistrate court could not issue a restraining order and that she should apply for an arrest warrant and explain the situation to the magistrate judge at the warrant hearing.
2. At hearings January 8 and January 9, 1996, Complainant told the court that on October 7, 1995, the father of her child struck her when she had their 14 month old son in her arms. She told the court that the father of her child began abusing her when she became pregnant. In spite of the abusive behavior, she had allowed him visitation with the child until the October 7 incident. She said that after her refusal to let him visit the child he had harassed her with telephone calls and unwelcome visits. The court asked Complainant whether she wanted to have the father of her child arrested. She said that she did not wish to have him arrested but that she would not have come to court if she had not wanted some action taken. The magistrate court ordered that the parties attend a mediation session.
3. On January 19, 1996, Complainant spoke with the ADR program coordinator and voiced her concerns about mediation to the program coordinator. The program coordinator told her that the violence itself would not be mediated and that the only issue to be mediated was visitation for the father of her child. Complainant said that until the issue of violence was addressed, she was not willing to mediate the issue of visitation. The program coordinator asked Complainant a series of questions concerning whether Complainant was fearful of the father of her child. Complainant says that she answered truthfully that she was not intimidated by the father of her child but that she was concerned about the effect of his increasingly unpredictable behavior upon their son. She continued to raise this concern in a second conversation with the program coordinator on January 22.
4. In an order of February 1, 1996, the magistrate court judge rescinded his order of January 9 ordering the parties to mediation since “[t]he Court ... from its own observations of petitioner’s representations and demeanor, finds petitioner . . . not amenable to the mediation process, and vociferously unwilling to consider or positively approach such process.” He found that although there was probable cause to arrest and prosecute the father of her child for simple assault, simple battery, and harassing telephone calls and to require that he post bond for good behavior, Complainant had “unambiguously” told the court that she did not wish to have the father of her child arrested and prosecuted. The court admonished the father of her child about the seriousness of possible charges against him and “... admonished both parties regarding their respective

responsibilities as parents of the minor child”

5. Since the dismissal of the warrant application by the magistrate court judge, the matter was brought up again in the state court of the county. The father of her child pled guilty and was given probation on the condition that he go through a counseling program for batterers. Complainant is apparently pleased with this outcome and is willing to consider the question of visitation after he completes the counseling sessions.

6. An issue which underlies much of Complainant’s distress about this matter is a pending action for legitimation, custody, and name change brought by the father of her child. The action was originally filed in another county but was dismissed and refiled in the superior court in the county where Complainant lives with her son. Complainant continues to be very concerned that the actions of the magistrate court, and particularly language in the order of February 1, 1996, will adversely impact her position in the action for legitimation.

Conclusions

1. This complaint illustrates the complexity of handling cases which involve issues of domestic violence. The Georgia Commission on Dispute Resolution has spent two years studying the appropriateness of mediation in these cases. The general guidelines set out by the Commission in April 1995 state emphatically that mediation is not the appropriate forum to address the underlying criminal act of violence.

2. The Commission guidelines which indicate that the issue of violence is not appropriate for mediation should not be interpreted as precluding any discussion of the violence. To the contrary, other issues cannot be decided without a discussion of the important issue of safety for all parties.

3. In this case the magistrate judge ordered the victim to participate in mediation of issues of visitation which were not before the court. The victim, who states in her complaint that she feared that the violence could escalate, did not wish to participate in mediation of any issues. Further, she argued that the question of visitation could not be addressed without also addressing the issue of the violence. The court’s order rescinding the order of mediation recites the number of times that the victim objected to mediation and notes that both the Victim-Witness Assistance Program and the Coordinator of the ADR Program contacted the court about the victim’s reluctance to participate in mediation.

4. This case illustrates the important safeguard in the Commission’s guidelines that cases involving serious domestic violence [defined as systematic use of force or threat of force, or serious injury] should never be sent to mediation against the wishes of the victim. In its order rescinding the order sending the case to mediation, the court found probable cause to arrest the father of the victim’s child for the offenses of simple assault, simple battery, and harrassing

telephone calls. This finding certainly places this case within the category of cases involving issues of serious domestic violence which should never be sent to mediation absent the consent of the victim. That the case was inappropriate for mediation is further illustrated by the Complainant's feeling that she was mistreated by the court system because she was forced to make repeated contacts with the court before the court rescinded the order to mediation and because she was chided by the court in its order rescinding the order to mediation.