

In prior stories from the Bray Building, Judge Carlton considered incarceration, legal ethics, criminal cases, and contentious civil trials. Now he presides over an unusual family law matter.

Hopkins' Choice by Justice James Marchiano

Judge Raymond Carlton would not soon forget that Friday morning in 2017, when a case like no other, arrived in Department 47 in Martinez. While waiting for his jury to reach a verdict, Judge Carlton savored his espresso from Legal Grounds on Main Street and emailed the presiding judge to offer to take a short case. Judge Carlton was willing to help out because he knew the family law judges in the Spinetta Family Law Building were always backed up with a Sisyphean workload. But he watched with dismay as his clerk maneuvered a shopping cart with files piled almost as high as she was into his chambers. Buried in the stack were pleadings for a severed issue, half day trial, assigned to him as a reward for his altruism. He would soon meet Hopkins.

Adjusting his bifocals Judge Carlton looked at the well-worn, earmarked West's Annotated Codes on his book shelves and wondered which of the 20,003 Family Code sections this case would involve. The legislature enacted 20 Divisions with up to 20043 sections that govern the relationships among husbands and wives, children, domestic partnerships, same sex marriages, adoptions, and the effects of the rupture of those relationships. Family Law is *sui generis* within the legal system, with its own rules, case law, and delegation of broad judicial discretion.

Each court file was numbered from I to XXI under *Marriage of Barbara R. Thomas, Petitioner vs. William G. Thomas, Respondent*. The multitudinous pleadings revealed a twenty-four-year marriage ending due to irreconcilable differences, the principal difference being William Thomas' relationship with a younger lady friend. The Thomases owned a 3,600 square foot home in Alamo. Mr. Thomas ran a successful insurance brokerage business in Danville. Mrs. Thomas occasionally worked outside the home and spent much of her time doing volunteer work.

The family law judge granted the dissolution, and after refereeing many rounds of name-calling disagreements, resolved most of the support and property issues and reserved a large attorney's fees issue.

Uncivil lawyers and uncivil parties engender uncivil fees. Unable to control the mounting fees, Barbara belatedly turned off the spigot and discharged her attorney. Now her focus turned to Hopkins, the prized object of her affection.

The severed issue assigned to Judge Carlton involved the custody of "Hopkins." But who was Hopkins? The Thomases were childless. Judge Carlton ascertained from the files that Hopkins was not a dependent, but the Thomas' pet dog, an intelligent, personable, male Welsh Corgi, with a resplendent light brown, black, and white fur coat, named after the distinguished Welsh actor Anthony Hopkins. A Welsh Corgi has a life span of around twelve years, and Hopkins had spent almost every minute of his nine years with the doting Thomases, going everywhere with them. Hopkins filled a void for them, which they scarcely realized they had. Unwilling to compromise, the parties drew a line in the sand, each seeking sole, exclusive custody of Hopkins during his remaining years.

Hopkins' was a dog of a different color who could have been sent to King Solomon's court instead of Department 47. Judge Carlton listened intently as pro per Barbara Thomas and Bill Thomas testified about their devotion to Hopkins and why it was in Hopkins' best interest sole custody be awarded to him or her. Only Barbara who spent each day with Hopkins, while Bill was at work or his girlfriend's town home, completely understood Hopkins' needs. On the other hand, Bill selected

Hopkins from a purebred litter, trained him, took him for his vet visits, and brought out Hopkins' best traits as he led him on walks on weekends. Inflexibly deadlocked, neither wanted to share custody, and each maintained Hopkins would be disconsolate and traumatized if left in the custody of the other. An aura of intransigence mixed with antagonism filled the court room as Hopkins, with his large ears perked up, listened as he sat next to Judge Carlton's bailiff.

Hopkins' long-standing veterinarian, subpoenaed by the family law court, offered reluctant expert testimony that was at best equivocal, without offering any insights to the court. He maintained a cautious distance behind shadowy testimony and was not about to take sides. The veterinarian was not asked to place a personal property value on Hopkins because both Barbara and Bill felt Hopkins was priceless.

Often in custody disputes involving mature children, the child's preference is given great weight by the judge under Family Code section 3042. But Hopkins only spoke a Welsh dialect that no one understood and wagged his stubby tail not his tongue. Department 47 was subjected to a final round of remonstrations, and then both sides rested.

Judge Carlton recessed into chambers to ponder over the dilemma, with the 20043 sections of the Family Code casting little light on how to decide this personal property case in which the evidence seemed evenly divided. Family Code section 2605, governing custody of a pet, had not yet been enacted. Finally, after a burst of inspiration, he returned to the anxious court room to announce his decision. The judge paused to look over at Hopkins, and then ordered the parties to meet at the Monte Vista High School football field on Saturday at 9:30am. Judge Carlton would attend like a referee, poised at the fifty yard line where he would restrain Hopkins. Each of the disputants was to stand alone at the opposite twenty-five yard lines, and on the judge's signal, call simultaneously for Hopkins. Whomever the corgi ran to would be awarded custody. Hopkins himself would decide since a Welsh Corgi legally cannot be cut in half. Neither side objected to the procedure.

On an overcast Saturday morning with supporting friends on the sidelines, everything was in place. Barbara called out to Hopkins, waving her hands frantically. Bill bent over and rubbed his palms with his fingers and called to Hopkins accompanied by an echoing, muffled clicking sound. Hopkins darted immediately to Bill. With the eagle eye of a sports referee, Judge Carlton saw Bill held a little, hard biscuit in the palm of his hand, the same biscuit that Bill gave to Hopkins as a reward for good behavior during their walks, which he always offered with an echo of clicking sounds. Hopkins' choice became a Hobson's choice.

Hopkins left with Bill and Bill's smiling girlfriend. But on the following Tuesday, in a carefully written decision, Judge Carlton reconsidered, and exercising his broad judicial discretion, explained that under all of the circumstances, it was in Hopkins' best interest to reside with each party for two alternating months, then to be returned to the other. Like a snapshot downloaded from an SD memory disk, the judge could not forget the image of a reluctant Hopkins looking back wistfully at a weeping Barbara as Bill guided him to his BMW. Judge Carlton understood the unspoken words from the empathetic Hopkins. Every dog has its day. No man can serve two masters, but this perceptive Welsh Corgi could serve a master and a mistress and be spoiled by each.

After the files were returned to the Family Law Department, Judge Carlton reflected and hoped he showed a bit of the wisdom King Solomon had. Judge Raymond Carlton had learned "wisdom" in Welsh is "callineb," also the Welsh word for "common sense."