

Few Solutions for Stopping Gun Violence in Custody Cases

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Bitter, highly emotional custody battles ending in gun violence are, unfortunately, familiar occurrences according to two attorneys who represent parties in family disputes. The attorneys said judicial oversight and psychological counseling may reduce future incidents, but, overall, very little can be done to solve the problem of gun violence in custody disputes.

“Custody cases are very emotional and we are just not handling them properly,” said Lynne Z. Gold-Bikin, a partner with Weber Gallagher Simpson Stapleton Fires & Newby. “To say that every case should result in 50-50 custody between the mother and father is not the answer.”



The scene outside the Wilmington courthouse

On the day Thomas Matusiewicz opened fire at the New Castle County Courthouse, killing his ex-daughter-in-law, Christine Belford, and her neighbor, Laura Mulford, Attorney General Beau Biden told reporters the incident was “the result of a custody dispute that has lasted in our court system for a number of years” between Belford and Matusiewicz’s son, David. According to press reports, the custody battle was so contentious that in 2007, roughly a year after David Matusiewicz divorced Belford, he kidnapped their three kids and fled to Mexico and, later, Nicaragua.

David Matusiewicz was arrested by U.S. marshals in 2009, served 48 months in prison and was freed under a five-year supervised release in September 2012, according to court documents. David Matusiewicz and his mother, Lenore Matusiewicz, the wife of the shooter, are currently being held while authorities investigate whether they participated in the courthouse murders. According to an affidavit to secure a search warrant for David Matusiewicz’s home, a courthouse video shows Thomas Matusiewicz hugging his son in the courthouse lobby prior to the shooting.

No statistics are kept on the number of custody cases ending in gun violence, so it is unclear whether such incidents are on the rise. One attorney told the [Delaware Law Weekly](#) that the problem of gun violence in custody cases has always been an issue, but now the incidents are getting more media coverage.

Mark Spencer Williams, an attorney with Rice Law, a Wilmington, N.C., firm, represents clients in family disputes and has written about gun control in custody cases. He said his partner, former North Carolina District Court Judge Charles E. Rice III, handled divorce and custody cases and was always concerned about his safety on the bench. Williams said Rice carried a gun with him on the bench, and, in one case, an individual disgruntled with a decision in a domestic dispute case hired a hit man to kill the judge.

According to Williams, because of the increased media scrutiny on gun violence in custody disputes, it has become a more pressing issue with some of his clients.

“We are seeing the issue of guns come up more frequently in custody cases,” he said. “It has become an issue at trial.”

Williams said that under the U.S. Constitution, the courts cannot force a parent involved in a custody dispute to surrender his or her weapon and can only limit a parent’s gun use if his or her ex-spouse is concerned that the firearm may jeopardize a child’s safety.

“The court can set parameters when a child is in an ex-spouse’s physical custody because it has the intrinsic authority to act in the child’s best interest,” he said. “It is no different than if one parent is an alcoholic and the court says you can’t have custody unless you go to Alcoholics Anonymous.”

In the case of Thomas Matusiewicz, however, the court’s power would be even more limited because he was not a party to the custody dispute.

“The court cannot apply such parameters to third parties,” Williams said. “The court does not have the jurisdiction over a nonparty in a lawsuit to surrender their weapon. They are not subject to the powers of the court.”

The court’s limited power to reduce gun violence in domestic cases has forced others to look for different solutions to the problem, but no concrete answers are available. Gold-Bikin said increasing courthouse security is not an effective solution because a determined individual can commit a crime outside the courthouse. For example, in the Columbia shooting, the murder occurred in the courthouse parking lot.

“How do we solve this problem? I don’t know that we can,” she said. “Putting guns in everyone’s pocket is not the solution. There were guns all around the Wilmington courthouse and still two women died.”

Gold-Bikin advocates increased gun control and more stringent background checks for potential gun owners as one possible solution, an issue that is currently being debated in the U.S. Congress in the aftermath of the Sandy Hook Elementary School shooting.

“The Matusiewicz family had guns,” she said. “You have two people in the family who went to jail for felonies. Is this a family that sounds like they should have guns?”

Vice President Joe Biden is currently leading a task force looking for ways to reduce gun violence, but it is too soon to know if any of the task force’s recommendations will result in new legislation or if that legislation will have an impact. For now, attorneys and judges involved in bitter custody disputes are stuck trying to solve the complex problem themselves.

Williams said he tells clients to file a custody suit right away if he or she is concerned about the

behavior of an ex-spouse or relative for any reason, including alcohol, drugs, domestic abuse or firearms.

But again, even in such situations, the court's authority is limited.

Gold-Bikin said counseling could help reduce violence in domestic cases as well possibly limiting an ex-spouse's interaction with a child or former partner if he or she is found to have mental health issues.

"Good counseling in marriage would help, both before and after the marriage," she said. "We also need to recognize that what goes on in marriages has influence in what involvement, if any, a parent should have in their childrens' lives."

However, limiting David Matusiewicz's ability to own a firearm or interact with Belford would likely not have saved her life, because he wasn't the shooter. Gold-Bikin said such scenarios are extremely rare.

"It was such an unusual and unique situation in Wilmington that we cannot determine a lot from it," she said.

With few solutions available, the only thing attorneys and judges can be certain of is that emotions will continue to be heated in child custody cases.

"You ask any judge in family court and they will tell you that custody cases are their least favorite," Gold Bikin said. "It is raw emotions impacting the future of a child. Judges are making life and death decisions regarding a child's welfare and it is the single worst thing they have to do. It's painful."