

## THE BABY BOOK SKIRMISH

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As I study my textbook in preparation for teaching Property for the first time, my mind wanders, looking for parallels between the cases and things that have happened in my own life. The work of cognitive psychologists tells us that this is roughly how our minds work, that we're more likely to understand someone else's story if we can tie it to one of our own. And property is personal; it's about who owns what and thus concerns some of the most central relationships in our capitalist society. So it's not surprising to find my mind trying to connect property cases to what I know from my own life. But what does surprise me is how unsatisfactory it is to apply some of these property concepts to my own personal history.

For example, reading *Willcox v. Stroup* reminded me of lingering questions I have about items of personal property—and specifically a baby book—that my father left in the house with my mother and me when he decided to move out and seek a divorce.<sup>1</sup> *Willcox* is about whether a man owns 444 documents he finds in his deceased stepmother's attic. The documents are very valuable because they're gubernatorial papers that pertain to the Confederacy. The court decides that the man owns the documents, largely because he currently possesses them. In the notes after the case, the author of the textbook discusses the difference between mislaying something, abandoning it, and losing it, and specifically notes that intent is required to abandon property.<sup>2</sup> The history of the baby book and the dispute surrounding it, if you can call it that, links my world, albeit tenuously, with the issues in *Willcox*. The question of ownership of the now-destroyed baby book still nags at me.

My father moved out when I was eight, leaving a large number of personal things, from clothes to college notebooks, in the house with my mother and me. Most of them, he never inquired about again. One of the things he left was his baby book. I remember reading through it at some point and enjoying it very much. I must have mentioned this to him.

Fast forward a few years. When I was around thirteen, my father remarried and he and his wife had a baby within a couple of years. My

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<sup>1</sup> 467 F.3d 409 (4<sup>th</sup> Cir. 2006). Personal names have been changed in this essay.

<sup>2</sup> Joseph William Singer, PROPERTY LAW: RULES, POLICIES, AND PRACTICES 175 (Aspen Publishers, 5<sup>th</sup> ed., 2010).

stepmother was difficult in that she was very critical of me, from the way I dressed, to the way I washed dishes, to my shyness in interacting with her (despite the fact that she was painfully shy herself). Additionally, she was very jealous that my father still tried to maintain a somewhat close relationship with me. She seemed to see me as a threat, almost as though I were “the other woman” who could woo him away from her.

Needless to say, by the time she was pregnant, things had progressed from bad to worse. I saw my father only for one afternoon on weekends, rather than staying over at his house, because my stepmother’s criticism had gotten to be too much. My father’s reaction of trying to placate her by attempting to get me to do whatever she was complaining about differently did not provide any genuine resolution. So I spent most of the time that had been allotted to my father for visitation at one of my grandparent’s houses. My dad’s financial support had also dwindled to the bare minimum that he paid in child support, rather than his buying anything extra for me as he had sometimes done in the past. This turn of events left me feeling that I had lost my father, or that he had been stolen, as I would have put it then.

So when my father’s wife was pregnant and he asked, on her behalf, for the baby book back, I simply said that I couldn’t find it. I remember the conversation well. He said something like, “Kathy would really like to have my baby book since she’s having a baby now. She wants to see what Grandma wrote about me when I was little.” I said I didn’t know where it was but that I would look for it. Later, I said that I hadn’t been able to find it.

One of the reasons that I remember this conversation so well is that I rarely lied, but I absolutely could not contemplate giving the baby book to my stepmother. In a way it seemed like she and I were fighting over my father and that to give her the book would be to admit utter defeat. You could say that my father was the Confederacy and she and I were the North and the South. In *Willcox*, the court speculated that the then-governor had given the State documents to the finder’s great great uncle, a Confederate General, to keep them from coming into possession of the Union. In other words, even if the Confederacy were conquered and ruined, the documents were meaningful and warranted safekeeping.

Of course, I was losing whatever battle my stepmother and I were fighting and probably had long since lost it by then. But that just made the baby book all the more important to me as a last symbolic shred of my father, or of a past version of my father that I could use to remind myself of—and to prove the existence of—the relationship that we had once shared. At any rate, it was not in my power to turn over that book to him although it may well have been rightfully his.

I knew at the time where the baby book was and meant to take good care of it, but it ended up being destroyed when the house I grew up in was bulldozed. By then, the house had fallen into such disrepair that public officials had forced my mother to move out of it. After that, the town foreclosed on it for back taxes, and my mother sold in the nick of time to someone who planned to rebuild on the site. In the months leading up to the sale, she asked me what I wanted out of the house. I asked repeatedly for the baby book, but she couldn't find it amongst the inordinate amount of stuff the house was packed with. At last, the bulldozers came. My mother watched them from a neighbor's yard, but the new owner would not let her go through the piles of stuff that were left after their work was done.

I know that I should have brought the book with me to college or at least taken it when I moved out after college, but I clung to the belief that the house I grew up in was a stable place where items of personal property could be safely kept, despite the house's extreme disrepair and wild disarray.

The loss of the book saddens me deeply, especially now that I'm a mother myself, because of the history of my father that it held in its pages. Also, my grandmother died last year, and it's sad to think of having lost forever stories about my father tinged with her kooky humor and written in her distinctive handwriting. It's even sad to think of my father and stepmother not being able to compare their own child's progress to that of my father at the same young age. And yet I know the girl that I was needed that book and could not have given it to my stepmother, so I can't say I regret not turning it over. From my standpoint at that time, giving the book to her would have been to effectively destroy it. Perhaps the governor who gave the documents at issue in *Willcox* to the Confederate General saw the Union's potential possession of the documents in the same way (although it's probably equally possible that the then-governor was concerned about actual destruction of the documents or about the Union's gaining some strategic advantage as a result of the documents). At any rate, the *Willcox* case leaves me puzzling over who owned the baby book.

First, I don't think it was a gift to my mother or me because it doesn't seem that there was intent to transfer title inherent in my father's simply having left a large amount of personal property in the house when he left. Probably, he imagined he would collect it at some point. If he did intend to give me the book, he didn't express the intent. Moreover, it does not appear that my father abandoned the book because his leaving it in the house probably did not indicate that he intended it to go to the first person who picked it up. Looking at it as a *de facto* gift feels more accurate than deeming it abandoned, but my doubt regarding

my father's intent still bothers me. Finally, the book does not seem to have been lost or mislaid because he knew roughly where it was (in the sense that he knew it was in the house). Most likely, as a legal matter, it was still his, although the seven years he left it in the house without asking for it may have been enough to allow me to claim the equitable defense of laches, given the personal investment in the book that I developed during that time.

But all of this seems very unsatisfactory. Can you really leave sundry items of personal property in an ex's house for years on end without making specific arrangements and expect to get them back? Does the answer depend on the level of hostility between the owner and the ex, which, in this case, was often considerable? Perhaps the amount of time and the hostility would lead a court to hold that it was abandoned. This seems like a real possibility but a far from certain one.

The issues surrounding the baby book remind me how poorly the rules of law fit real life and, as every first year law student learns, how uncertain the law can be. Maybe this all means that the law, at least in the context of personal property, is a blunt instrument to resolve disputes rather than a nuanced system of discreet rights. Perhaps, as Walter Wheeler Cook, one of the founders of modern conflicts law, taught us, you can't know if you have a right or not until the court decides the question.<sup>3</sup> When I was first teaching Conflicts, this approach seemed troubling, especially when I thought of more fundamental rights, like the right to not be beaten up by police, but it does seem to fit many aspects of property law.

Still, I know as an ethical matter I should have given the book back to my father. But even my own personal feelings about the book seem to be contradictory—I'm very sad about the book's having been destroyed but don't wish I had given it up when asked. Perhaps it's too much to ask for clarity from the law in such a case. And that brings me to a final question—why do I care about who really owned a piece of personal property that had no commercial value and that has now been destroyed? Maybe this just points to how invested I am in the Anglo-American legal system and how important property law is to me, which is probably why I wanted to teach it in the first place.

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<sup>3</sup> William M. Richman & William L. Reynolds, UNDERSTANDING CONFLICT OF LAWS § 63[c] (LexisNexis, 3rd ed., 2002).