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Murder trial delayed months while judge, prosecutor feud

Mom dead; dad held; family frustrated

John Craig

Kristen Cosby has no patience for quarrels among Stevens County judicial officers.

Cosby's mother was the victim of an Oct. 3, 2009, homicide. Her father, Craig Raymond Cosby, is the suspect.

In addition to the usual delays in a first-degree murder case, Craig Cosby's trial was on hold for 10 months while Prosecutor Tim Rasmussen and now-retired Superior Court Judge Rebecca Baker battled each other over whether Baker should preside over the trial.

Rasmussen's strife with Baker began in July 2010 when he learned, while campaigning for re-election, that it was she and Superior Court Judge Al Nielson who filed a bar complaint against him in September 2009.

Baker and Nielson said they wanted the Washington State Bar Association to investigate what they described as "persistent rumors and reports" that Rasmussen was soliciting or accepting charitable donations for a Guatemalan orphanage from Spokane defense attorneys.

Nielson was more circumspect than Baker and has repaired his relationship with Rasmussen. However, the feud between Rasmussen and Baker spilled into court, with the judge at one point hiring her own lawyer and the murder trial left in limbo.

"Everybody has lost sight of what the issue is," said Kristen Cosby, 28. "The issue is that there is a man sitting in jail who needs to be prosecuted, and my family needs closure."

Indeed, said Reiko Callner, executive director of the state Commission on Judicial Conduct, "It's hard to think of a greater human tragedy befalling an individual than the daughter.

"To have that compounded by the professionals who are supposed to dispassionately do their jobs, that's pretty hard."

'A judge's highest duty'

Cosby's 70-year-old father is charged with pumping 10 .40-caliber bullets into his wife, Susan, 53, in their Marcus, Wash., home as she prepared to leave him.

Rasmussen and Craig Cosby both appealed Baker's insistence on presiding over the murder case on grounds that her impartiality couldn't be trusted.

Baker wrote a 25-page decision explaining her reasons for refusing to step down. Then she hired an attorney to ask the Court of Appeals to let her intervene in Rasmussen's and Craig Cosby's appeal.

She said she was the "real party in interest" – a claim that proved her bias, according to Craig Cosby's attorney, Paul Wasson.

"Nothing shows prejudice more clearly than the argument that your interests somehow are paramount to the interests of the actual litigants," Wasson told the Court of Appeals.

Baker's action was "very unusual ... very foreign to our structure of court," Callner said in an interview.

If a court ruling is appealed, "the trial judge's actions are supposed to speak for themselves," Callner said.

The circumstances in Baker's request to intervene are reminiscent of those in the conduct commission's 2004 admonition of Grant County Superior Court Judge Evan Sperline. He wrote letters to appellate judges criticizing their rulings against him in unresolved cases.

"A detached, neutral arbiter is the hallmark of our justice system," Callner said. "That is a judge's highest duty."

On the other hand, she said, indiscriminate calls for a judge to step down can cripple the judicial system in small counties. "That shouldn't be happening."

Baker contended Rasmussen was attempting to prevent her or Nielson from presiding over any criminal cases.

A family waits

Kristen Cosby said she and other family members have been on an emotional roller coaster as court dates have come and gone without progress.

"After the trial, we'll be able to scatter my mother's ashes," Cosby said. "I'd like to be able to say goodbye to her, and not just goodbye to her but goodbye to everything that happened."

Cosby's younger brother lives in Marcus, north of Kettle Falls, and there are other relatives in the Spokane area, but Cosby lives in Pittsburgh. She said each delay undoes extensive travel preparations.

Cosby blames a "selfish" quarrel she thinks professionals should have nipped in the bud.

"I can understand reasonable delays, but I can't understand unreasonable delays," she said. "And what is unreasonable is Tim (Rasmussen) and Judge Baker and their petty dispute."

Baker and Rasmussen should have communicated, not litigated, Cosby suggested.

She said Rasmussen might have resolved the problem by apologizing for bad judgment in soliciting charitable contributions from defense attorneys.

Cosby said she doesn't trust Rasmussen because he wasn't candid with her about the bar investigation. She said he blamed election politics instead of acknowledging that he set himself up for an appearance-of-fairness complaint.

"He didn't really think this through," Cosby said. "He needs to remember that it's not just his life that he's affecting, because he's in a public role."

The same goes for Baker, Cosby said. "They're supposed to get along."

Working through the thicket

Baker said she had feared such a “justice delayed, justice denied” reaction. She said preventing another delay was one reason she refused to step down.

“I can certainly relate to her frustration,” Baker said. “I can relate. She has a point.”

Rasmussen said he also understands Cosby’s frustration about the trial delay, but “it is very important to avoid errors in a trial, which can cause an unjust result or can lead to a new trial several years later.”

If she could do it over, Baker said, she probably would attempt her own investigation of Rasmussen’s charitable solicitations. But she thought a simple come-to-Jesus talk would have been insufficient if Rasmussen were trading favors for donations.

A three-member review committee unanimously dismissed the complaint for lack of evidence.

A bar investigator had recommended a warning about avoiding the appearance of impropriety, but none was issued. Nevertheless, Rasmussen said he told bar officials “that I would no longer do anything along these lines.”

Baker said she recognizes her prejudices and had none in the Cosby case.

In comparison, Baker said, she “cannot be impartial as to anything put forward” by one of the attorneys who contributed to the charity Rasmussen recommended.

A three-judge panel weighing whether Baker should have to step down dismissed the appeal Oct. 3 on grounds that Baker would retire within two weeks.

No decision has been made on which judge will handle the Cosby trial, but Rasmussen said he has had “cordial conversations” with Nielson and newly appointed Judge Pat Monasmith.

“We’re trying to work our way through this thicket,” Rasmussen said. “I believe we will do it.”