

Mythbreakers: Chapter 39 Injunctions Transcript

Addie: What you're about to see is for trained court personnel. **Do not** try any of this at home.

Jeffrey: Ever!

(Theme music – upbeat guitars and horns)

Narrator: In this very special episode of Mythbreakers, the team will be looking at Chapter 39 injunctions. First, Addie and Jeffrey take on the myth that attempting to do a Chapter 39 injunction will make the case files spontaneously combust. Then Kati and Brant put the protection in protective order. Just who are the Mythbreakers?

Narrator: Addie Salvage.

Narrator: Jeffrey Himmerman.

Narrator: Between them more than 10 years experience in court analysis and shrinking tall tales down to size.

Narrator: They're joined by Kati Boron and Brant Harawitz.

Narrator: They don't just analyze the myths, they **break them down**.

(CRASH!!!)

Narrator: The first myth on the docket is the myth "Up in Flames."

Judge: So who brought this petition today?

DCF attorney: I did. I'm from DCF, and I filed this on behalf of Johnny Doe.

Judge: But you're not the victim! Even with all the revisions to the law, this is still so – **woah!!**

(Whoosh!)

(Roaring flames!)

Jeffrey: Something tells me we're not going to be doing pirate myths today.

Addie: No. Today we're talking Chapter 39 injunctions. All our myths today come from judges in Florida. According to them, Chapter 39 injunctions are a lot of trouble.

Jeffrey: And really hot to handle.

Addie: The first myth is that Chapter 39 injunctions are so complicated, every time a judge tries to do one, the case files explode in flames.

Jeffrey: We don't want that.

Addie: No, we definitely don't want that.

Jeffrey: So, how do we test it?

Addie: If we want to do this right, we need to get some information about Chapter 39 injunctions. Then, I think we need to test it out by simulating a judge actually using the Chapter 39 injunction process.

Jeffrey: And hopefully the case won't go up in smoke.

Narrator: With a plan in mind, Addie and Jeffrey go to the Leon County Courthouse to talk to the experts about this volatile myth.

Narrator: The team sits down with Robert Nowittal, a self-proclaimed authority on Chapter 39 injunctions.

Addie: So how difficult is the Chapter 39 injunction process.

Expert: It's *not* difficult.

Addie: Have you ever seen or heard about anyone's case files bursting into flames when they tried to do a Chapter 39 injunction?

Expert: Never.

Jeffrey: So if Chapter 39 injunctions don't make case files combust, how are they different from Chapter 741 injunctions?

Expert: There're a lot of little differences, but the main differences between a Chapter 741 injunction and a Chapter 39 injunction are that a Chapter 39 injunction is aimed at protecting the child from being harmed by abuse, whether or not the child is the victim of the abuse, and that a Chapter 39 injunction can be sought by a number of people other than the victim. Who the respondent may be is broader also; the person doesn't need to reside in the home, be related, or be a parent. The 741 injunctions, on the other hand, are aimed at protecting the

victim, and have to be sought by the victim – with the exception that, if the victim is a minor child, his or her parent or legal guardian can file a petition on his or her behalf under chapter 741.

Narrator: Sounds pretty simple. So what about Chapter 39 injunctions puts the case files in the hot spot?

(Bursting of flames)

Addie: So the Chapter 39 process, it's based in Florida law?

Jeffrey: Yes, Florida Statute §39.504. Law enforcement, state attorney, Department of Children and Families, the court, or any responsible person can petition for a Chapter 39 injunction any time. And jurisdiction attaches when the petition is filed.

Addie: Usually the Department of Children and Families will file the petition for a Chapter 39 injunction on behalf of the child. The non-offending parent or custodian doesn't need to ask for or even want the petition. If, through the child protective investigation, DCF has cause to believe the child might be exposed and harmed by abuse, DCF can, of its own volition, petition for a Chapter 39 injunction.

Jeffrey: And once a shelter or dependency petition is filed, a judge may enter a temporary injunction if he or she feels that it's necessary to protect the child. Then both the offending and non-offending parents or custodians are served with the petition and notice of the hearing, which should be held at the earliest possible time.

Addie: If the judge believes the child is in imminent danger, but the court is closed for the transaction of judicial business, the judge may issue an immediate injunction without notice. If the judge does enter an immediate order, the court must hold a hearing on the next judicial business day to dissolve, modify, or continue the injunction.

Jeffrey: At the injunction hearing, several parties are usually present: the offending parent/custodian and non-offending parent/custodian, attorneys for each parent, a Guardian ad Litem to represent the child's interests, a Child Legal Services attorney or Attorney General attorney, and possibly a case manager, depending on the particular case. Other relatives or caretakers may be present also. If the judge feels sufficient evidence has been presented in support of an injunction, he or she can issue an injunction.

Addie: Right. And remember, the primary purpose of a Chapter 39 injunction is to protect and promote the best interests of the child AND take into consideration the preservation of the child's immediate family.

Jeffrey: Chapter 39 injunctions should be granted only if there is reasonable cause. Reasonable cause exists when there's evidence of abuse OR a reasonable likelihood that abuse will occur. And reasonable likelihood is based on recent overt acts or failures to act.

Addie: And Chapter 39 injunctions are effective until modified or dissolved by the court.

Narrator: With their facts straight, Addie and Jeffrey start preparing a trial by fire.

Narrator: Meanwhile, Kati and Brant are back in the lab.

Kati: Addie and Jeffrey got combustible paperwork, so what do we get – car chases in judge robes?

Brant: Not this time. We get to tackle some serious myths. These myths can't really be tested, but there's a lot of misinformation that we've been hearing that we can dispel right now.

Kati: Sounds good. What do we have lined up?

Brant: Well, our first two myths are tied together. (*pause*) The first myth is that if there's abuse the non-abusive parent or custodian has to leave or has to do something to protect the child or children. And the second myth is that a chapter 39 injunction can't protect adult victims and puts them in greater danger.

Kati: I know that adult victims and custodians often believe that they can't leave the abuser. They don't have anywhere to go, they don't have enough money to leave or are dependent on the abuser, or they just don't feel safe leaving – after all, 74% of women murdered by their partners are murdered during or soon after leaving them. One benefit to chapter 39 injunctions is that they can be used by someone other than the non-abusive parent to protect the child or children.

Brant: Right. And we know that, because the injunction petition may be filed by DCF and not the adult victim, the adult victim may be less likely to become a target for the batterer. He or she can rightfully claim to be an innocent bystander in the injunction process and deflect a lot of the batterer's anger away from herself or himself.

Kati: So we can break those two myths right now. What else?

Brant: Well, the third myth is that in order to get a Chapter 39 injunction, the child has to be the victim of the abuse.

Kati: Yeah, I've heard that one before. But that's not necessarily true. "Child abuse" is a term that can cover many different kinds of activity. Child abuse can be physical, emotional, or psychological. If a parent or custodian is the victim of abuse and the child is harmed in any way or is at risk of being harm, it could be child abuse.

Brant: Exactly. The last myth isn't really a myth at all – it's an overlooked fact that domestic violence has a horrible impact on children who are exposed to it.

Kati: That's right.

Kati: We wanted to talk about ways in which battering affects children.

Brant: The reality is that if domestic violence is present in a household, the children will know about it and will suffer because of it.

Kati: The batterer can abuse a child in much the same way he or she abuses the other partner in the relationship. Targeted children can be physically abused, threatened or humiliated, abandoned, or excessively punished for normal interactions; and children often become unintended victims when they try to intervene to protect the adult victim.

Brant: The batterer can also use treatment or threatened treatment of the child to manipulate and emotionally or psychologically abuse the other parent or custodian and affect the child indirectly. The child might not be physically harmed, but the effect's still there. The batterer can any number of things, including denial of interaction between the adult victim and the child, threaten violence to the child, threats about taking the child away, actively setting the child against the other parent, destroying the child's possessions, or even abusing the child in front of the parent – who is often too terrified to intervene.

Kati: And the effects of abuse can be long-lasting. Children can have physical problems like headaches or ulcers; psychological problems like trouble sleeping, anxiety, nightmares, depression, or low self-esteem; and social problems like aggression or difficulty making friends. Exposure to domestic violence can even negatively affect brain development.

Brant: These myths were serious business alright.

Kati: But by spreading the truth, we can break them just as effectively as if we tested them.

Brant: Yeah, these myths are all broken.

Kati: Broken.

(Crash!)

Narrator: Addie and Jeffrey are finally ready to test their myth.

Addie: Well, we were able to get some space at the Leon County Courthouse to test our myth.

Jeffrey: We got volunteers to play the roles of the parents, attorneys, and professionals at the hearing.

Addie: And we found a real judge brave enough to dive headlong into this myth.

Jeffrey: Judge Masterson, how're you feeling?

Judge: Pretty good.

Addie: Have you ever heard of this myth?

Judge: At every judicial conference I go to.

Jeffrey: Do you believe it?

Judge: It sounds like a bit of a stretch.

Addie: Well, are you ready to test it?

Judge: Lets give it a shot.

Jeffrey: Now, for this test to work, we need to simulate an actual hearing.

Addie: Yeah, but actual hearings can vary in length. Some uncontested hearings can be quick, but contested hearings might take a while.

Narrator: A real Chapter 39 hearing can take a long time if there are difficult issues, and the guys don't have much film left. So the judge will simulate a Chapter 39 process, and we'll just show the critical parts – like when the case files become too hot to handle.

Judge: I'd like everyone to please state their name and their relationship to the child.

DCF Attorney: I'm an attorney from DCF; we filed this petition on behalf of Johnny.

Case Manager: I'm the case manager, assigned to work with Johnny and his family.

Father Attorney: I'm the attorney representing Johnny's father.

Mother Attorney: I'm the attorney representing the Johnny's mother.

G.A.L.: I'm the volunteer Guardian ad Litem, representing Johnny's best interests.

Judge: Alright. It says that DCF filed this petition. Why is that?

DCF Attorney: A child protective investigation was initiated as a result of a domestic disturbance incident. The police were called, and, upon arriving on the scene, saw evidence of violence to the child and called us to evaluate the situation. In the course of our investigation, we determined that the child was a victim of abuse, and was in danger of further physical harm, so we filed this petition.

Judge: Since this petition was filed after a dependency petition was filed, I have jurisdiction to hear it and rule on it. DCF filed this petition, so they will get to present testimony and evidence first. Everybody's been sworn in. Each attorney can question the witnesses. If a party wants to testify or present relevant witnesses, they will have an opportunity to do so. *(Looks at DCF attorney)* You may begin.

DCF Attorney: As I said, this began with a domestic disturbance at the home, at about 8:00 p.m. The police were called. When they arrived at the home, Mrs. Smith and Johnny both had bruises on their cheeks and arms. Mr. Smith was drunk and was talking loudly in the living room. The police contacted DCF and told us that they suspected child abuse based on the bruising to the child. We initiated a child protective investigation. After interviewing Johnny, Mrs. Smith, and neighbors, we determined that he had been abused and filed a dependency petition. Due to concerns about Johnny's safety, we filed this petition for an injunction.

Narrator: Now that you've seen how a Chapter 39 injunction is initiated, let's fast forward a bit.

(Tape fast forwards, then slows)

Judge: I've heard from all parties today. Based on the testimony I heard, I find DCF has met its burden of proof and I'm granting this petition. There's evidence of abuse to the child. Leaving Johnny in the home with Mr. Smith places him in danger of further violence. While I'd like to preserve the immediate family unit, I can't find that to be in the child's best interests until I know that Mr. Smith isn't a threat to him. How would you suggest the contact order be written? **DCF Attorney:** Based on our investigation, we think that "no contact" and "stay away" provisions are best for the time being. If those are in place, we'd feel comfortable returning the child to the care of Mrs. Smith.

Judge: I'm ordering Mr. Smith to vacate the home immediately. Mr. Smith, you'll have someone from the sheriff's office accompany you to the home today to gather your possessions. You may have no contact with Johnny, directly or through others – not at the house or the school or anywhere else he goes. Mrs. Smith doesn't have the authority to invite

you over to the house to see her. If you both want to meet in person, it has to be somewhere other than the home, and it can't be in Johnny's presence. Further, I'm ordering you to complete a batterer intervention program and substance abuse evaluation. Once those are successfully completed and services are in place to ensure Johnny's safety, you can petition to modify or dismiss the petition.

G.A.L.: What if Mr. Smith violates the injunction? How can we make sure Johnny is properly protected by this injunction?

Judge: If Mr. Smith violates the order – let's say he attempts to contact Johnny – Mrs. Smith, Johnny's teacher or principal, or any responsible person present can contact the authorities on his behalf. Law enforcement has the specific power to arrest if there's a violation, and a violation is a first degree misdemeanor. Remember though, that this injunction is designed to protect Johnny, and so the provisions apply only to him. If Mrs. Smith feels that this injunction doesn't provide her with enough protection, and she feels she needs protection for herself individually, she can file for a domestic violence injunction herself.

Narrator: Looks like this myth isn't as hot as the guys heard.

Jeffrey: So how do we wrap this up?

Addie: I'd say totally broken. We had a judge do a Chapter 39 injunction hearing and didn't see any fire. I don't think we could have asked for a more conclusive result.

Jeffrey: Yeah, there were no flames there.

(Theme music)