

MONDAY, AUGUST 26, 2019

PERSPECTIVE

Pyrrhic victories and the cost of family law litigation

By Scott M. Gordon

**“One more such victory
and we are undone.”**

— Pyrrhus of Epirus

Epirus was a region between what is now Greece and Albania. It is a rugged and mountainous place made up of the Pindus Mountains and jagged ridges of the Dinaric Alps. According to Greek mythology, Eperios was the daughter of two of the demi-gods that populated the Pantheon. Her brother Pentheus was slain after angering Dionysus, the God of Wine. Eperios died while helping carry the body of her slain brother through the mountains and she was buried in a small thicket that later became sacred. The surrounding country was named after her. Life in this tough land created tough hard scrabble people. This land give rise to fierce warriors, it is the derivation of a term still used today, “Pyrrhic victory.”

So how is a remote region of Ancient Greece relevant to the modern practice of family law? It comes down to one of the ancient kings of the region, Pyrrhus I (319 BCE–272 BCE). Pyrrhus was a gifted general and statesman. He rose to become the young king of the hard land of Epirus and was a strong opponent of the growing and expanding state of Rome.

In 280 BCE, Pyrrhus entered Italy in pursuit of the Roman legions. His army consisted of 20,000 infantry, 3,000 cavalry, 2,000 archers, 500 slingers and 20 war elephants. Through some brilliant strategy, Pyrrhus was able, as unlikely as it seemed, to defeat the vast Roman legions



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in the Battle of Heraclea in 280 BCE. It was a fierce and bloody battle. The Greek historian, Dionysius, reported that the dead included: 15,000 Romans and 13,000 Epirot. Many of Pyrrhus’ best troops and his most trusted friends and generals were lost.

The next meeting of the Romans and Epirots was in 279 BCE at the Battle of Asculum. Pyrrhus again defeated the Romans, but it was a costly victory. In the end, the Romans lost 6,000 legionnaires. Pyrrhus lost 3,500 troops including many of his officers. It was after his victory at Asculum, Pyrrhus famously said: “If we are victorious in one more battle with the Romans, we shall

be ruined.” (Plutarch, “Parallel Lives: Pyrrhus”)

Like King Pyrrhus and the Romans, most family law litigants come to the dispute with limited resources. In many, if not most cases, the primary issue is how to divide those same resources that will be used to fund the case. In other words, the pie being divided will become smaller and smaller as the conflict goes on and until they find themselves like the victorious but depleted Pyrrhus. In so many cases, the litigants take the short view focusing on the specific issue before them without considering the end game. It is hard for litigants going through a dissolution to focus on their

next evolution, but that is where they should be looking. It has been said that it is hard to write the next chapter of your life if you keep re-reading the last one.

Unfortunately, many family law litigants approach their case like they are playing out a scene from an old Three Stooges movie using that pie they are trying to divide as a weapon. While there is a deep and immediate satisfaction in seeing the object of your ire with a face full of pie, you are in the end, just left with a mess and no more pie. The cost of litigation must be considered throughout the case. Family law lawyers are called upon to do very demanding and technical work. The tracing of an asset or valuation of a business is time consuming work that requires a methodical and detailed approach. This is resource intensive work.

So, what are the options to ending up with nothing but pie in the face? Some inspiration can be taken from the legendary Yankee’s catcher Yogi Berra who said: “You better cut the pizza in four pieces because I’m not hungry enough to eat six.” When family law litigants spend their time talking about how to divide the pie instead of throwing it, a better outcome is reached, and they can divide the pieces however they want — even if the result is not conventional.

The ancient histories note that negotiations and settlement talks occurred between Pyrrhus and the Romans. After the Battle of Heraclea, Pyrrhus held a number of Roman troops as prisoners. Instead of acting harshly against them, Pyrrhus offered the prisoners gold to join his army and be

Mediation gives flexibility in family law cases

replacements for some of his lost troops. But, the offer of a bribe so offended the Romans' sensibilities that they rejected the offers out of hand. Out of respect for the intrepid Roman soldiers and in an attempt to further his attempts to find a peaceful settlement, Pyrrhus released the prisoners to the Roman commanders and again sued for peace. The requests were rejected. It is reported that the Romans would not consider peace unless the Greeks left the Italian peninsula.

There are lessons here for those of us involved in family law cases. Offers are creatures of context. What may seem a fair and generous offer viewed through the prism of the person making the offer can be viewed an insult to the person receiving the offer. Understanding context means taking a 360-degree view of the negotiation. Just like a pebble hitting water, every offer, counter-offer and position in a mediation will ripple in all directions.

For those with a single linear focus, this means missing out on most of what is happening around them. Every term must be viewed from the perspective each par-

ticipant in the negotiation. The reaction Pyrrhus had to the rejection of his offer, provides great insight. He was not offended by the rebuke of his offer. Instead, the Greek king made another try using a different tactic. The refusal of an offer is not the end of the process. It is a step on the way to resolution as long as the rejection is looked at in context and the lessons learned are taken into account in the next step of the process.

Just before the Battle of Asculum, the Roman Consul, Fabricius, was approached with a letter from Pyrrhus' personal doctor. In the letter, the doctor offered to poison the King of Epirus to spare Rome from further harm. The doctor asked for a reward in proportion to the service to Rome. Fabricius was so offended by the offer, that he sent a letter to his enemy warning of the treason and plot. Pyrrhus, in acknowledgment, released Roman prisoners without any request for ransom and sent an emissary to negotiate peace. Unfortunately, the efforts to find acceptable terms of peace were rejected by the Romans.

In every case, each side will

have some bad facts. Something they wish was not in the case and may in fact harm their side. In litigation, a great deal of effort is expended in trying to shield that information and those facts. But in most every case, they come out — and the later — the more harmful they will be. When parties embrace those facts and get them out in the negotiation — where they will appear anyway, and in most cases will have much less impact.

Using negotiation and mediation in cases gives the parties the most flexibility and opportunity for creativity in disposition. Going back to Yogi Berra's pizza, in a negotiation, the parties can carve to pizza up into as many pieces as they like, and in whatever shape they want (although Yogi's New York fans might have trouble with that — remember context). Once they get to trial, the judge will have fewer options and choices to resolve the matter. Those choices that may have been so important to the litigants just won't be available in trial.

So how are roof tiles involved? They deal with how King Pyrrhus left this world. Shortly after

his defeat of the Romans, he was involved in a battle in the city of Argos. He was locked in a fierce battle on a crowded city street against an Argive soldier. The soldier's elderly mother looked down from the roof top of her home to see her son about to be the next victim of the warrior king. She pried a tile off the roof and sent it flying toward her son's attacker. Above the din of the battle, the sound of the tile finding its mark could be heard. King Pyrrhus was knocked from his horse and killed. If only he had settled with the Romans.

Scott M. Gordon, a retired judge of the Los Angeles County Superior Court, is a mediator and arbitrator at Signature Resolution.

