

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

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MAY 3 2021

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

IN RE:

Judge Thomas A. Placey
Court of Common Pleas
9th Judicial District
Cumberland County

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2 JD 2020

**JOINT STIPULATIONS OF FACT IN LIEU OF TRIAL AND
WAIVER OF TRIAL PURSUANT TO C.J.D.R.P. NO. 502(D)(1)**

AND NOW, this 3rd day of May, 2021, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board), and Judge Thomas A. Placey, by and through their undersigned counsel, and file these Joint Stipulations Of Fact In Lieu Of Trial And Waiver Of Trial Pursuant To C.J.D.R.P. No. 502(D)(1), as follows:

1. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether there is probable cause to file formal charges against a judicial officer in this Court, and thereafter, to prosecute the case in support of such charges in this Court.
2. From January 2, 2012, to the present, Judge Placey has served continuously as a Judge of the Court of Common Pleas of Cumberland County.
3. As a judicial officer, Judge Placey is subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct adopted by the Supreme Court of Pennsylvania.

Samento v. Samento

4. On October 5, 2017, Judge Placey was presiding over a hearing in a civil action in the matter of *Tony Samento v. Nanci Samento*, Cumberland County Docket No. 2009-08051 in which Nanci Samento asserted a breach of the marriage settlement agreement.
5. After Nanci Samento testified and presented a witness, Tony Samento took the witness stand to testify.
6. During Tony Samento's testimony, counsel for Nanci Samento voiced a hearsay objection whereupon the following exchange took place:

Judge: Well, I don't know what he is saying so I don't know.

Attorney: He was indicating what he learned from the State Police.

Judge: And I don't -

Tony Samento: I'm sure there's a record of this.

Judge: Sir.

Tony Samento: I'm sorry.

Judge: Sit down now. Down. Out of that seat.

Tony Samento: I'm sorry.

Judge: Move it like you have a purpose.

Tony Samento: I'm sorry, Your Honor

7. At this point, the judge stood and Tony Samento, who was seated in the witness stand, abruptly slid his chair back, colliding with the wall behind him.
8. As the judge stood to leave, the following exchange took place:

Judge: I'll tell you when I'm coming back. It's not going to be today. You get your client under control or I am going to tear him up on the stand. Do you understand me?

Attorney: I'm not sure, Your Honor, but I'll try to.

Judge: He talks over me one more time, I am going to rule summarily against him. Do you understand that?

Attorney: Yes, Your Honor.

9. An audio recording produced with the use of microphones during this proceeding established that at times during the exchanges described above, the volume of the judge's voice was excessively loud, to the point of yelling.
10. The exchanges described above can be heard beginning at approximately 1:43:30 on the audio recording of the proceeding. (Exhibit 1.)
11. The audio recording of the proceeding is the best evidence of the volume of the judge's voice and his demeanor.
12. At the conclusion of the above exchange, the judge left the courtroom and did not return to the bench that day relative to the *Samento v. Samento* matter.
13. Tony Samento was not afforded an opportunity to finish his testimony or to present further witnesses regarding the issue before the judge on October 5, 2017.
14. Immediately after concluding the hearing, counsel for the parties met with the judge in chambers.
15. During this meeting Tony Samento's counsel confirmed her in-court statement to possessing the previously sought video recording at issue.
16. Tony Samento's counsel was then directed by the judge to turn over the tape to opposing counsel within two weeks, which was not done and opposing counsel thereafter filed a motion to compel.

17. By order dated November 6, 2017, the Judge found partially in favor of Nanci Samento.
18. On December 5, 2017, Tony Samento filed an appeal in the Superior Court of Pennsylvania of the judge's November 6, 2017 order.
19. On December 28, 2017, Tony Samento filed a motion requesting that the judge recuse himself from the case, asserting that the judge had exhibited animosity and hostility toward him.
20. The judge denied the motion to recuse by order dated March 7, 2018.
21. On January 16, 2019, the Superior Court vacated the judge's November 6, 2017 decision and remanded the case "for a hearing before another trial judge."
22. In its January 16, 2019 opinion, the Superior Court called the transcript of the October 5, 2017 hearing "disconcerting."
23. In its January 16, 2019 opinion, the Superior Court stated that the audio recording confirmed the "hostility" of the trial court toward Tony Samento.
24. In its January 16, 2019 opinion, the Superior Court found that the judge had denied Tony Samento's due process rights by abruptly terminating the hearing.
25. In its opinion, the Superior Court found that the judge had abused his discretion when he denied Tony Samento's motion for recusal.

Commonwealth v. Moore

26. At approximately 9 a.m. on January 15, 2019, Judge Placey was presiding over sentencing in the matter of *Commonwealth v. D'Andre Moore*, CP-21-CR-2521-2018.

27. The guilty plea was scheduled for January 9, 2019. Sentencing guidelines, victim impact statements and restitution information are required in advance of the guilty plea.
28. At the time of the sentencing proceeding referenced above, the courtroom was open to the public.
29. At the time of the sentencing proceeding referenced above, members of the public, the media, the victim and a victim advocate were present in the courtroom.
30. Michelle Sibert, an Assistant District Attorney representing the Commonwealth called the case and noted on the record that the judge had just been provided a written restitution request.
31. The judge indicated that the request was "different from the one that was in the file."
32. Thereafter, the transcript of the proceeding indicates that the following exchange took place:

Sibert: I don't think there was anything in the file.

Judge: Oh, there was. I read the file. See, I come in on the weekends and read these files.

Sibert: Right. There was no restitution in the file. That's not restitution. It is saying there's no restitution.

Judge: Yes.

Sibert: At the time of the plea I informed - -

Judge: Yes. I'm saying it is different than what is in the file I read over - -

Sibert: I informed the Court - -

Judge: Why do you talk over me? Step out of here. Get out. Take him back down to the cell. I will deal with him when I am ready. You, out.

Sibert: Your Honor - -

Judge: Out. Now. Do you not listen? What is the problem with your hearing today? You, out. Out. Hand that file to somebody else.

33. At this point, the judge left the courtroom for a brief period of time.

34. When the judge reentered the courtroom, the transcript of the proceeding reflects that the following exchange took place:

Judge: Haul her out. She is the first one out of this courtroom. I walk back in here and she is still here. Get her out. Move it, sheriff.

Seibert: I'm sorry, Your Honor.

Judge: Move it. Quit talking. Lord have mercy. You show me enough disrespect all freaking day long. What is your problem? Get out of here. She does not walk back into this courtroom, sheriff.

35. An audio recording produced with the use of microphones during this proceeding established that at times during the exchanges described above, the volume of the judge's voice was excessively loud, to the point of yelling.

36. The exchanges described above can be heard beginning at approximately 0:44 seconds on the audio recording of the proceeding. (Exhibit 6.)

37. The audio recording of the proceeding is the best evidence of the volume of the judge's voice, demeanor and verbiage.

38. When deposed by Board counsel on February 5, 2020, the judge described his demeanor and tone and volume of his voice during the January 15, 2019 proceeding as "shouting" and "apoplectic".

39. The judge's conduct during the sentencing proceeding on January 15, 2019, was the subject of a published newspaper article by Matt Miller. The reporter, who was present in the courtroom during the January 15, 2019 proceeding, described the judge's conduct as an "explosion."

Gnazzo v. Gnazzo

40. On August 8, 2018, Judge Placey was presiding over a custody proceeding in the matter of *Gnazzo v. Gnazzo*, Cumberland County Docket No. 2017-07655.
41. The judge had advised the parties and litigants not to talk over each other.
42. During the cross examination testimony of one of the plaintiffs, Lucy M. Gnazzo, counsel for the plaintiffs, Melissa Greevy, voiced an objection prompting the judge to make the following statement:

Folks, are we going to fight? Or are we going to get this information. I am taking a break because you folks can't get to a landing. It is not a difficult case. Get me facts and I will get you a decision. Please, step down. We are taking a break.
43. An audio recording produced with the use of microphones during this proceeding established that at times during the statement described above, the volume of the judge's voice was excessively loud, to the point of yelling.
44. While making the above statement, the judge threw his glasses onto his desk.
45. The conduct described above can be heard beginning at approximately 1:15:50 on the audio recording of the proceeding. (Exhibit 9.)
46. The audio recording of the proceeding is the best evidence of the volume of the judge's voice and his demeanor.
47. After making the above statement, the judge left the bench.

48. When the judge returned to the bench, attorney Brett Shaffer, who had been cross examining Ms. Gnazzo before the break in the proceedings, declined to ask any further questions of her.

Wingard v. Wingard

49. On October 3, 2018, Judge Placey was presiding over a custody proceeding in the matter of *Kathryn Wingard v. Robert Wingard*, Cumberland County Docket No. 2015-05774.

50. During the direct examination of Kathryn Wingard, the witness exhibited some confusion leading to the following exchange between Kathryn Wingard, her attorney Joanne Clough, and the judge:

Clough: I'm going to stop you right now.

Kathryn Wingard: Sure.

Clough: Is this the November order or the May order are you - - do you want to take a minute and look at the November order first before I ask you these questions?

Kathryn Wingard: Sure.

Judge: No, no, no. No, no, no, no, no, no. You folks really don't understand me. You don't get this. No. You're not going to do this are you?

Clough: Yes, I am, Your Honor.

Judge: So you guys show her something already, for crying out loud. Get your witness prepared. Get off my witness stand. Call me when you're ready. I got other things to do.

51. Immediately after stating that he had "other things to do" the judge left the courtroom.

52. During the above exchange, the witnesses described the volume of the judge's voice as excessively loud.
53. Clough described the judge's tone during the above exchange as "blanket screaming" and said it was a "12" on a scale of "1-10."
54. Clough thought that the judge was going to hit the testifying witness during the above described exchange.
55. Leanne Miller, the attorney for one of the defendants, present in court when the above described exchange took place, described the judge's tone of voice as "screaming" "beyond anything [she] had ever seen by a judge."
56. Miller recalled being intimidated by the judge during the above described exchange to the point that she was "too frightened to move."
57. The judge returned to the courtroom four minutes later and made the following statement to the attorneys and parties in the courtroom:

Relax. Have a seat. Ma'am, get back up here. Parents, if you can't tell, I'm going to be hostile with you right now. Let me explain something, parents, all right. I haven't seen you folks before, but I give you an order to do something and it doesn't get done, you see my temperament. If you can't be nice to each other, don't even bother taking the witness stand. And if you're not ready to go when we start, you're going to get chewed up and spat out by me. Let's go, counselor.

Interaction with Attorney

58. On August 2, 2019, Attorney Corey Fahnstock was in the Cumberland County Courthouse waiting to meet with a client.
59. Judge Placey's law clerk, Bryan Bartosik-Velez, approached Fahnstock and told him that the judge wanted an attorney to appear on behalf of a defendant in a criminal proceeding in his courtroom.

60. Bartosik-Velez asked Fahnestock to appear on behalf of a defendant in a criminal proceeding.
61. Fahnestock was unfamiliar with the criminal proceeding referenced by Bartosik-Velez.
62. Fahnestock declined the request.
63. Bartosik-Velez then asked Fahnestock for his name and indicated that he would inform the judge that Fahnestock had refused to comply with the judge's request.
64. A few moments later, the judge approached Fahnestock and told him to follow him into a small conference-type room in the courthouse.
65. Fahnestock complied with the judge's direction.
66. When the judge entered the small conference-type room, it was being used by the Honorable Michael Martin, Cumberland County Magisterial District Judge as a courtroom.
67. The judge directed everyone except Fahnestock, Bartosik-Velez and Judge Martin to leave the room.
68. After the door was closed, Judge Placey told Fahnestock that when he tells an attorney to go somewhere, the attorney is required to do so.
69. While addressing Fahnestock in the small conference-type room, the volume of Judge Placey's voice was excessively loud.
70. Judge Martin, who was present in the room when Judge Placey addressed Fahnestock said Judge Placey "went off" on Fahnestock.

71. Subsequent to observing Judge Placey's conduct with Fahnestock, Judge Martin encountered him, at which time Judge Placey asked Judge Martin, "How'd I do?" Judge Martin replied, "Glad I wasn't him."
72. Dawn Lippert, an employee from Judge Martin's office was waiting outside of the room while Judge Placey met with Fahnestock and could hear Judge Placey "yelling."
73. Pam Martz, a court employee waiting outside of the room while Judge Placey met with Fahnestock could hear Judge Placey "yelling" and found the conduct to be "upsetting."

Kimmett v. Kimmett

74. On June 6, 2019, Judge Placey presided over a hearing on a Petition for Protection from Abuse (PFA) in the matter of *Brenda Kimmett v. Thomas Kimmett*, Cumberland County Docket No. 2019-04775.
75. During the proceeding, as Thomas Kimmett was testifying on direct examination, his attorney, Lawrence J. Rosen, attempted to approach the witness stand in order to show Thomas Kimmett a document.
76. As Rosen approached the witness stand, the judge addressed him, saying "Don't walk towards this witness. You will be out of the courtroom in a heartbeat."
77. Rosen, who is hearing impaired, replied, "I'm sorry, Your Honor?"
78. At no time did Rosen disclose he is hearing impaired and at no other point during the hearing did he notify the judge that he had difficulty hearing any part of the proceeding.
79. Before responding to Rosen's question, the judge quickly stood up.

80. While the judge remained standing, the following exchange between the judge and Rosen took place:

Judge: Do not walk towards the witness.

Rosen: Oh, I'm sorry.

Judge: You will be out of this courtroom in a heartbeat. Can you hear me now?

Rosen: I can.

Judge: Did you see Mr. Edger approach the witness?

Rosen: No.

Judge: Why do you think he doesn't do it?

Rosen: I want to give him an exhibit, Your Honor.

Judge: You can't.

Rosen: I cannot?

Judge: How did Mr. Edger do it?

Rosen: I don't recall.

Judge: Were you not here? Were you not paying attention?

Rosen: I was here Your Honor. I didn't mean to offend you.

Judge: You have.

81. An audio recording of the proceeding produced with the use of microphones established that at times during the exchange described above, the volume of the judge's voice was excessively loud, to the point of yelling.

82. The exchange described above can be heard beginning at approximately 1:15:44 on the audio recording of the proceeding. (Exhibit 13.)

83. The audio recording of the proceeding is the best evidence of the volume of the judge's voice and his demeanor.
84. Immediately after the exchange, the judge left the courtroom.
85. Approximately four minutes later, the judge returned to the courtroom and the hearing proceeded.
86. Prior to the exchange described above, Rosen was unaware of any protocol or rule preventing him from approaching the witness as he had attempted to do during the proceeding.
87. Earlier in the proceeding opposing counsel, Paul Edger, had utilized protocol for approaching a witness on the stand.
88. After the hearing concluded, Rosen went to the judge's chambers and apologized for approaching the witness in the manner that the judge objected to.
89. After hearing Rosen's apology and accepting it, the judge told Rosen that the reason for his insistence on not approaching a witness was due to a bad experience he had had in which an attorney was injured.
90. The parties stipulate to the authenticity and admissibility of all trial exhibits, attached to these Joint Stipulations of Fact in Lieu of Trial, as set forth below:

Trial Exhibits:

1. Audio recording of the October 5, 2017 hearing in the matter of *Samento v. Samento*, filed to Cumberland County Docket No. 2009-08051.
2. Transcript of the October 5, 2017 hearing in the matter of *Samento v. Samento*, Cumberland County Docket No. 2009-08051.
3. Plaintiff's Motion to Recuse filed December 28, 2017, in the matter of *Samento v. Samento*, Cumberland County Docket No. 2009-08051.


4. Court Order dated March 7, 2018, denying Motion to Recuse in the matter of *Samento v. Samento*, Cumberland County Docket No. 2009-08051.
5. Superior Court Opinion dated January 16, 2019, in the matter of *Samento v. Samento*, filed to 1890 MDA 2017.
6. Audio recording of the January 15, 2019 sentencing in the matter of *Commonwealth v. D'Andre Moore*, CP-21-CR-2521-2018.
7. Transcript of the January 15, 2019 sentencing in the matter of *Commonwealth v. D'Andre Moore*, CP-21-CR-2521-2018.
8. January 15, 2019 newspaper article by Matt Miller regarding Judge Placey's conduct during the January 15, 2019 proceeding.
9. Audio recording of the August 8, 2018 proceeding in the matter of *Gnazzo v. Gnazzo*, Cumberland County Docket No. 2017-07655.
10. Transcript of the August 8, 2018 proceeding in the matter of *Gnazzo v. Gnazzo*, Cumberland County Docket No. 2017-07655.
11. Transcript of the October 3, 2018 proceeding in the matter of *Wingard v. Wingard*, Cumberland County Docket No. 2015-05774.
12. Transcript of the June 6, 2019 proceeding in the matter of *Kimmatt v. Kimmatt*, Cumberland County Docket No. 2019-04755.
13. Audio recording of the June 6, 2019 proceeding in the matter of *Kimmatt v. Kimmatt*, Cumberland County Docket No. 2019-04755.

WAIVER OF RIGHT TO TRIAL

By submitting these Stipulations of Fact in Lieu of Trial, the Board and the Respondent agree they shall be bound by them and the Court of Judicial Discipline shall adopt them as the facts of the case upon which a decision shall be rendered. The Board and the Respondent expressly waive any right to trial under Article V, §18(b)(5) of the Pennsylvania Constitution and the Rules of the Court of Judicial Discipline as per C.J.D.R.P. No. 502(D)(1).

WHEREFORE, the parties, through their respective counsel, intending to be legally bound by this document, do hereby set their hand and seal.

DATE: 5-3-21

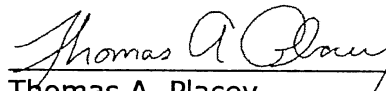


Melissa L. Norton, Esquire
Deputy Counsel
Judicial Conduct Board

DATE: _____

Heidi F. Eakin, Esquire
Counsel for Respondent

DATE: 29 April 2021



Thomas A. Placey
Respondent

WAIVER OF RIGHT TO TRIAL

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WHEREFORE, the parties, through their respective counsel, intending to be legally bound by this document, do hereby set their hand and seal.

DATE: _____

Melissa L. Norton, Esquire
Deputy Counsel
Judicial Conduct Board

DATE: 5.3.21

Heidi F Eakin
Heidi F. Eakin, Esquire
Counsel for Respondent

DATE: 29 April 2021

Thomas A Placey
Thomas A. Placey
Respondent

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

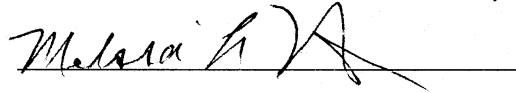
Judge Thomas A. Placey :
Court of Common Pleas : 2 JD 2020
9th Judicial District :
Cumberland County :

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Judicial Conduct Board of Pennsylvania

Signature:



Name:

Melissa L. Norton
Deputy Counsel

Attorney No.:

46684

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Judge Thomas A. Placey	:	
Court of Common Pleas	:	2 JD 2020
9 th Judicial District	:	
Cumberland County	:	

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below, a copy of the Joint Stipulations of Fact In Lieu of Trial and Waiver of Trial Pursuant to C.J.D.R.P. No. 502(D)(1) was sent via first class mail to Heidi Eakin, counsel for Judge Placey, at the following address and via email:

2807 Market Street
Camp Hill, PA 17011
heidieakin@gmail.com

Respectfully submitted,

DATE: May 3, 2021

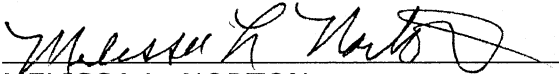
By: 
MELISSA L. NORTON
Deputy Counsel
Pa. Supreme Court ID No. 46684
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911

EXHIBIT 1

Samento v. Samento Audio of 10/15/17 Hearing

See Flash Drive

EXHIBIT 1

Samento v. Samento Audio of 10/15/17 Hearing

See Flash Drive

EXHIBIT 2

EXHIBIT 2

TONY DOUGLAS SAMENTO,
Plaintiff

v

NANCI MARIKO SAMENTO,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: CUMBERLAND COUNTY, PENNSYLVANIA
: THE NINTH JUDICIAL DISTRICT
:
: CIVIL ACTION - LAW
: 09-8051 CIVIL TERM
:

IN RE: TESTIMONY OF NANCI SAMENTO-YOCUM

Proceedings held before the HONORABLE
THOMAS A. PLACEY, C.P.J., Cumberland County
Courthouse, Carlisle, Pennsylvania,
on October 5, 2017, in Courtroom Number 4.

ORIGINAL

APPEARANCES:

Jeanne Costopoulos, Esquire
For the Plaintiff

Damian Destefano, Esquire
For the Defendant

149a

TRUE COPY FROM RECORD
In Testimony whereof, I hereunto set my hand
and the seal of said Court at Carlisle, Pa.

This 19th day of DEC, 2017
Prothonotary

Arene E. Mercer, DA



2009-08051-0106 F#1201478 Fee:30.00
TRANSCRIPT

Rep: Z181128 10/24/2017 11:09:45 AM
David D. Buell, County Prothonotary

INDEX TO WITNESSES

FOR PLAINTIFF

DIRECT CROSS REDIRECT RECROSS

FOR DEFENDANT

Nanci Samento-Yocum

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150 a

1 MR. DESTEFANO: Thank you. I would like to call
2 Nanci Samento.

3 Whereupon,

4 NANJI SAMENTO-YOCUM

5 having been duly sworn, testified as follows:

6 THE COURT: Do me a favor, ma'am. Look at counsel
7 and tell us your name.

8 THE WITNESS: Nanci Samento-Yocum.

9 THE COURT REPORTER: Can you spell your full name
10 for me?

11 THE WITNESS: N-a-n-c-i, S-a-m-e-n-t-o, Y-o-c-u-m.

12 THE COURT: Any hyphens in there?

13 THE WITNESS: Samento-Yocum.

14 THE COURT: Thank you. Go ahead.

15 DIRECT EXAMINATION

16 BY MR. DESTEFANO:

17 Q Nanci, you were involved in a divorce action; is
18 that correct?

19 A Yes, that is correct.

20 Q And when was that divorce action initiated?

21 A Initiated in 2010.

22 Q Okay. And when was the divorce finalized?

23 A October of 2014.

24 Q Okay. So approximately 4 years of litigation --

25 A Yes.

1 Q -- during this divorce proceeding? Was this an
2 amicable proceeding or a hostile proceeding?

3 A It was very hostile.

4 Q And what do you mean by that? If you could describe
5 what was hostile about the proceedings?

6 A The months leading up to when I left the home there
7 were some damages done inside the home. I was forced to go to
8 my bedroom when he would come home. He had removed light
9 bulbs in the house. It was like 30 percent of the house was
10 illuminated. I had my boys there.

11 THE COURT: Let me pause here for a second.

12 MR. DESTEFANO: Yes.

13 THE COURT: I have been a party to these things.
14 I thought this was a breach of the settlement agreement.

15 MR. DESTEFANO: It is, Judge, and to establish our
16 case there has to be a timeframe involved as to when --

17 THE COURT: Okay.

18 MR. DESTEFANO: It's going to be brief.

19 THE COURT: I'll give you a little leeway, but
20 recognize I was there.

21 MR. DESTEFANO: Yeah, just 3 minutes to touch on
22 some of the things.

23 BY MR. DESTEFANO:

24 Q Okay. About going to your bedroom?

25 A There was a hole that was -- a hole that was made by

1 some kind of saw that went into my closet into the bedroom.
2 There were nails littered on the driveway with the vehicles
3 that -- you know, to flatten my tires. It was extremely
4 hostile. The air conditioning was tampered with. There was
5 no air conditioning. There was no --

6 Q So you are indicating that there were things done to
7 the household that made you scared?

8 A Yes. Absolutely.

9 Q Were you ever threatened at all?

10 MS. COSTOPOULOS: Your Honor, I object to this.
11 She filed for a PFA. It was dismissed. We went through all
12 of this several times.

13 THE COURT: And I don't disagree with you. I
14 think I said that a few minutes ago. I already heard most of
15 everything that she has already said in one form or another
16 during these proceedings.

17 MR. DESTEFANO: Judge, that was the last question.

18 THE COURT: Okay. Move forward then.

19 BY MR. DESTEFANO:

20 Q And if you could answer that question?

21 THE COURT: No. I'll sustain the objection. Move
22 forward. Believe me, I get --

23 BY MR. DESTEFANO:

24 Q Was anyone following you during the divorce
25 proceedings?

1 A Yes, there was a private investigator that he had
2 hired to follow me.

3 Q Okay. And do you know how long or to the extent the
4 PI was following you?

5 A I'm not sure. It was during that time period though
6 that he was threatening my life and saying that he would -- he
7 wanted to bash my head in with a baseball bat and see my
8 brains splattered on the highway.

9 Q Were you aware that a PI was following you?

10 A I was not.

11 Q At what point did you find out that a PI was
12 actually following you?

13 A I think when he had said about the video.

14 Q What video?

15 A There was a video that was made and he had shared it
16 with other people.

17 Q When you say he, are you referring to Tony?

18 A Yes.

19 Q Okay. So you indicated that a PI was hired and a
20 video was made. Describe this video.

21 A The video was --

22 MS. COSTOPOULOS: Your Honor, I object. If we
23 don't have the video, what are we going to talk about the
24 video for? Are we playing the video? If so, let's just play
25 it. Otherwise we are sitting here listening to a description

1 of it.

2 THE COURT: And I missed that day in law school.
3 What was the objection?

4 MS. COSTOPOULOS: She is discussing a video that
5 --

6 THE COURT: I haven't seen it. Have you seen it?

7 MS. COSTOPOULOS: I think I have seen it, but I am
8 not sure what video she is referring to.

9 THE COURT: Okay. Well, let's allow the questions
10 to come in.

11 MS. COSTOPOULOS: Okay.

12 THE COURT: If we see it, we see it. Go ahead.

13 MR. DESTEFANO: Thank you.

14 BY MR. DESTEFANO:

15 Q If you could describe the video.

16 A The video was taken in the Boscovs parking lot. I
17 was getting out of my car and I went into the car of Tom
18 Tarsavage, who was a Pennsylvania State Police, and it was
19 taken inside the vehicle. We had kissed and we were fully
20 clothed, but it was -- that was the video.

21 Q How long was the video?

22 A Maybe 3 or 4 minutes.

23 Q And was the video -- what point of view was the
24 video shot from? Was it from another vehicle? Was it from
25 fifty feet away? A hundred feet away?

1 A It was from outside the vehicle. I'm not sure of
2 the distance, but through the front windshield of the car.

3 Q Then what happened with that video ultimately?

4 A That video was sent to friends of mine. He had
5 threatened to send it to Tom Tarsavage's parents. I learned
6 from my boys that he had shared the video with all of my
7 children and --

8 MS. COSTOPOULOS: I object to the hearsay of that.

9 THE COURT: Noted.

10 THE WITNESS: Then it ended up on You Tube.

11 BY MR. DESTEFANO:

12 Q Okay.

13 A And it had been edited.

14 Q And with respect to that, let me show you what has
15 been premarked as N.S. 2.

16 (Exhibit N.S. 2 was marked for identification.)

17 MS. COSTOPOULOS: I object to the hearsay of this
18 as well.

19 THE COURT: Well, pause. You folks have seen all
20 of these things. I have never seen anything that you are
21 handing me. So before you start doing anything, give me a
22 chance to see what this actually is. Now, I have Exhibit 2 in
23 my hand. It appears to be 5 pages of -- I'm not sure what
24 exactly it is. Now is there an objection?

25 MS. COSTOPOULOS: Yes. I object to anything in

1 here that isn't just the conversation between Nanci and her
2 attorney. Any other people that are involved in this e-mail
3 exchange that aren't here, I would object to them or anything
4 related to them.

5 THE COURT: And recognize I haven't read anything
6 so I really don't know what it says other than now that it's
7 e-mails of some sort. So let's get it identified. The
8 objection is noted at this point. I just don't know where it
9 is going to play out because I don't know what is going to be
10 requested out of this exhibit. Let me show you what has been
11 marked as Exhibit 2. It's 5 pages. Go ahead with your
12 questions.

13 BY MR. DESTEFANO:

14 Q Nanci, when was the original video taken --
15 produced? A timeframe? A month and year, if you know?

16 A I'm not exactly sure. 2010.

17 Q Okay.

18 A But I'm not sure when.

19 Q And then you indicated that this video ended up on
20 You Tube, correct?

21 A Yes.

22 Q How did you know this video was on You Tube?

23 A I had an e-mail that was sent to my e-mail address
24 as well as -- my husband also had the same link, and the name
25 of the sender -- I don't -- I just opened it. It said -- it

1 was from Hoes Get Caught II, and it said, well, this is
2 interesting. And then when you opened it up it said it's even
3 starring you. And so that's how I became aware of the video.

4 MS. COSTOPOULOS: Your Honor, I continue to
5 object. She just quoted a bunch of words in an e-mail from a
6 person who she doesn't know the identity of.

7 THE COURT: Well, the proof of the matter asserted
8 in there is not part of the evidence that I am hearing. The
9 question was how did you know about this video, and that is
10 how apparently -- I guess the next statement was going to be
11 there was a link somewhere in here. By link I mean hypertext
12 link.

13 MS. COSTOPOULOS: I understand.

14 THE COURT: Go ahead, Mr. Destefano.

15 BY MR. DESTEFANO:

16 Q In part of that e-mail was there that hypertext
17 link?

18 A Yes, there was a hypertext link.

19 Q And what did that hypertext link produce?

20 A It opened up a video. The video that was originally
21 taken, it had been edited, and it had my full name across the
22 video. It had music playing and it had some phrases, pigs and
23 hoes, and it was just narrated that way. It had my name just
24 scrolling across the screen.

25 Q And looking at that, you received that e-mail

1 November 1st, 2014, correct?

2 A Yes.

3 Q Okay.

4 THE COURT: Let me pause for a second. So that
5 e-mail that you are referencing with the link is somewhere in
6 that packet of information called Exhibit 2?

7 THE WITNESS: Yes, sir.

8 THE COURT: What page is it?

9 THE WITNESS: I believe it's on the first page.

10 THE COURT: Okay. So noted.

11 BY MR. DESTEFANO:

12 Q What was your reaction when you saw this?

13 A I was extremely frightened by this. This is on a
14 public website. I mean this is after the divorce. This is
15 affecting me at work. This is affecting me in my personal
16 life. My husband also received this link.

17 Q Do you know who else --

18 THE COURT: Let me take a pause here because I
19 need to get the scorecard right. Who is your husband?

20 THE WITNESS: Curt Yocum.

21 THE COURT: Thank you.

22 BY MR. DESTEFANO:

23 Q Do you know if anyone else received this link?

24 A I don't know about the link, but my fear immediately
25 was that this video is out there on You Tube. I mean it is a

1 public -- anybody who would Google me or whatever. And I
2 don't know who else he sent the link to.

3 MS. COSTOPOULOS: Your Honor, I object how she
4 said he sent the link to. There's been no evidence of who
5 sent this link or if it was a he.

6 THE COURT: We will give you a chance to
7 cross-examine on that.

8 BY MR. DESTEFANO:

9 Q With respect to that, what steps did you take then
10 with respect to this video being online?

11 A I was desperate to get this off of You Tube. I
12 tried to contact You Tube. I actually filed a -- in the
13 complaint process I had to do an e-mail to Google and it did
14 take time. I had contacted the local -- the State Police, and
15 I had gone there and spoken with a trooper. I had also been
16 referred to someone in their office through -- and I don't
17 remember who it was now.

18 Q Okay. And on the second page of Exhibit 2 you had
19 sent me an e-mail of all of the things that you have done,
20 correct?

21 A Oh, yes. Senator Dent's office, the Federal
22 Communications Commission. I had contacted all of these
23 parties.

24 Q Okay. And then page 3 of Exhibit 2 is basically
25 your communication to me, correct?

1 A Yes, that's correct.

2 Q And through your communications with You Tube were
3 you able to have the video removed?

4 A The video was removed. It was a painful two weeks.
5 I am also the sexual assault care coordinator at my clinic,
6 and I am responsible for taking care of cases. This was
7 totally humiliating and frightening for me.

8 Q Since this video was put on You Tube, how do you
9 feel now? What are your interactions? You said you were
10 cautious through your employment. Describe that.

11 A At work?

12 Q Yes.

13 A Well, I mean I had no idea who had seen the video.
14 I had actually gone -- my anxiety was so high I was actually
15 prescribed medication. I kind of stayed to myself in my
16 office, which is very -- you know, it was counterproductive
17 for me because I am supposed to be helping other people, and I
18 just felt very devastated.

19 Q You say you were scared to interact with people?

20 A Yes.

21 Q You weren't sure who saw this?

22 A I had no idea. I have patients that have come into
23 the clinic that have known me in my past life when I was
24 taking care of my kids at the sporting events, and some of
25 these parents are patients of mine in the clinic, and it is

1 very humiliating and embarrassing. I have no idea what they
2 know.

3 Q And to backtrack just a little bit, this video, to
4 your knowledge, based on the e-mail, was sent on November 1st,
5 2014, correct?

6 A Yes.

7 MR. DESTEFANO: Judge, if I may introduce what has
8 been premarked as Nanci Samento Exhibit 1. This is the
9 Settlement Agreement.

10 (Exhibit N.S. 1 was marked for identification.)

11 THE COURT: I am going to show you what is marked
12 as 1, Exhibit 1. It looks like 24 pages.

13 BY MR. DESTEFANO:

14 Q And, Nanci, when was the settlement agreement
15 executed?

16 A That would be October 2nd, 2014.

17 THE COURT: Give me that date again.

18 THE WITNESS: Excuse me?

19 THE COURT: What was the date again?

20 THE WITNESS: I'm sorry. October 2nd, 2014.

21 BY MR. DESTEFANO:

22 Q And does it sound right that the divorce decree was
23 issued on October 14th, 2014? It is not in the settlement
24 agreement, but shortly after the divorce?

25 A Oh, yes.

1 Q Okay. So it is your understanding that this video
2 was posted after the settlement agreement was entered?

3 A It was absolutely after.

4 Q And your understanding with the settlement
5 agreement, that you should be -- if you could explain?

6 A It was my understanding, you know, after we had
7 settled, because it had gone on for so long, it was my
8 understanding that we were to move on with our lives and we
9 were to not interfere, harass, malign. It is right in the
10 settlement agreement. I did my part, as difficult as it was,
11 but he won't allow me to move on from this. Every time --
12 this is something that has affected me. It terrifies me
13 actually, and my husband as well. I mean there have been
14 other things that have happened.

15 MS. COSTOPOULOS: Your Honor, I just want to again
16 object to her continuous use of the word he when she has not
17 presented anything as of yet that -- from my client or to
18 suggest that he's done anything.

19 THE COURT: The objection's overruled.

20 BY MR. DESTEFANO:

21 Q And so within 2 weeks this video is on You Tube?

22 A Yes.

23 Q Okay. You had said other instances during this
24 time. What other instances?

25 A I have had -- there has been a time when a friend of

1 mine, he has stalked her Linked In page. She brought that to
2 my attention.

3 MS. COSTOPOULOS: Your Honor, I object again.
4 This is hearsay.

5 MR. DESTEFANO: It is not hearsay. It is not
6 going to the truth of the matter asserted. It is the effect
7 on the listener and the knowledge of the declarant. So it's
8 not hearsay.

9 MS. COSTOPOULOS: We don't even know who the
10 declarant is. They are certainly not here.

11 THE COURT: So why the objection?

12 MS. COSTOPOULOS: All right. If she is saying
13 she's never going to name who this alleged declarant is --

14 MR. DESTEFANO: I mean she can, but she has had
15 friends who were stalked.

16 MS. COSTOPOULOS: How would she know that?

17 THE WITNESS: She told -- my friend told me. My
18 friend tried to block him as well.

19 THE COURT: Now this is not how it works, folks.
20 He asks questions, you make objections, she answers the
21 questions. I rule on the objections. Your objection's
22 overruled. Next question.

23 BY MR. DESTEFANO:

24 Q Anything with respect to you or your husband?

25 A Yes. Tony approached a good friend of my husband at

1 Sheetz parking lot and he had asked him if he knew my husband,
2 and he said, yes, he did.

3 Q Okay.

4 A And he asked if he knew me and said if he didn't
5 that he would. That was what Tony told his friend.

6 MS. COSTOPOULOS: My objection is ongoing, just so
7 we're aware of that.

8 BY MR. DESTEFANO:

9 Q So you are concerned not only that he is -- this
10 harassing is towards you, but there is also other people?

11 A He's including my family and my circle of friends
12 and support.

13 Q And now with respect to the harassment that was
14 going on, there was a You Tube video, but there was also
15 social media harassment by Tony as well?

16 A Yes. Facebook and Twitter.

17 MR. DESTEFANO: If I may, Judge, present what has
18 been premarked as Nanci Samento Exhibit 3.

19 (Exhibit N.S. 3 was marked for identification.)

20 THE COURT: I will show you what has been marked
21 as Exhibit 3, 6 pages.

22 THE WITNESS: Thank you.

23 BY MR. DESTEFANO:

24 Q Nanci, you did have a Twitter account during the
25 divorce proceeding; is that correct?

1 A Yes, I did. I also had Facebook during that time.

2 Q At any time during this proceeding did you tweet?

3 Was there a response back from someone?

4 A My Twitter has basically always been quotes and
5 people maybe that I have spoken with that I know. So this
6 exchange here is totally -- he is responding to my Twitter
7 page, but I had no clue that he was doing this. This was done
8 by a friend of mine.

9 Q So you had learned that -- and if we go through some
10 of these tweets -- if I might direct your attention to the
11 second page. If you can read the top four tweets from Tony
12 Samento?

13 A On the second page?

14 Q Yes.

15 MS. COSTOPOULOS: Your Honor, I object again.
16 Could we have some kind of timeframe because there is no dates
17 on the exhibit that I have been given to. I don't know if
18 this is before or after.

19 THE COURT: I don't even know what the exhibit is,
20 to be honest with you.

21 MS. COSTOPOULOS: They are some kinds of tweets
22 that are undated so I am objecting about her testifying to
23 things that happened prior to the settlement agreement, and I
24 just want to clarify when these were before she gets into all
25 of the details of them.

1 THE COURT: No. His case, he doesn't want to
2 present that sort of stuff, he's not going to give me anything
3 to rule on so it's not going to be difficult unless you want
4 to ask about it. You're just giving him hints as to what he's
5 got to do.

6 MS. COSTOPOULOS: I understand, Your Honor.

7 THE COURT: Go ahead, Mr. Destefano.

8 THE WITNESS: On the second page?

9 BY MR. DESTEFANO:

10 Q Yes.

11 A Where it says you are blocked by all. Don't you get
12 it?

13 Q Okay. The next one?

14 A Wrong, in capital letters. You were replaced.
15 Best decision ever. Just a shame it wasn't 20 years ago.
16 Ha ha, put that in your pipe and smoke it, ho. What part of
17 nobody wants to see you ever again don't you understand,
18 filthy rodent?

19 Q I would like to direct your attention now to the
20 next set of tweets. The second set, the fourth one down, what
21 does that say?

22 A One sick CD.

23 Q Now, what does that mean to you?

24 A He was referring to the DVD. He threatened to share
25 that with everyone, and I think that is what he did.

1 Q And then the next one under that one?

2 A Sign the papers skank.

3 Q The top of the third page, the second tweet?

4 A Soon the filth will be washed away. Maybe someone
5 needs to see a video. Explain that PLP.

6 Q The next one?

7 A Leave the children out of it, but take her Taylor,
8 nice try.

9 Q So these are references that tied back to your
10 tweets; is that correct?

11 A Yes.

12 Q And the one that says maybe someone needs to see a
13 video, how did you take that?

14 A As a threat. He is going to share this with whoever
15 he wants and --

16 Q Now, are there any other references that tie into
17 your case directly with respect to Domestic Relations or
18 anything that would relate that way through these tweets?

19 A I'm sorry. Is it related to what?

20 Q With respect to these tweets, is there anything else
21 that was related to your case that he makes reference to?

22 A Yes, the child support. When he talks about thank
23 you again 306 times, and then the next tweet, 66 more. Thank
24 you every month.

25 Q And that was in reference to Domestic Relations?

1 A Yes.

2 Q And what timeframe was that, that these
3 modifications to the Domestic Relations were taking place?

4 A Timeframe. I mean it was timely as it was
5 happening.

6 Q Was it like 2012? That timeframe?

7 A I'm not -- probably in 2012.

8 Q Okay. So in one instance one sick CD, sign the
9 papers skank, filthy rodent, ho. All addressed to you?

10 A This whole account was set up for me. I mean he is
11 one follower and he is following one person. I mean it is 40
12 tweets and it is basically all for me, all to destroy me.

13 Q You also said that you had a Facebook account; is
14 that correct?

15 A I did.

16 MR. DESTEFANO: I would like to introduce what has
17 been premarked as N.S. number 4.

18 (Exhibit N.S. 4 was marked for identification.)

19 THE COURT: I will hand you what has been marked
20 as Exhibit 4.

21 BY MR. DESTEFANO:

22 Q If you could describe the first page for the Court?

23 A This is from his social media Facebook page that my
24 children were friends with and everyone that we knew, entitled
25 devil's destruction, and he highlighted the divorce. He put

1 me right in the center of it and --

2 Q And who was the devil on this?

3 A He was referring to me, and the picture on page one
4 is my walk-in closet that he had cut a hole in, and a friend
5 of mine had dry walled it and replaced it and double boarded
6 it, but he tagged Dave and Lynn Gilmore, who were my close
7 friends. He tagged them so they would be intimidated by
8 seeing this photo as well.

9 Q And the next page, if you could.

10 A The next page, he tagged a friend, Mitch Eurich, so
11 that he would also be intimidated and brought into this and he
12 is accusing him of corroborating with me.

13 Q And what is the title of that?

14 A Devil's destruction.

15 Q The third page?

16 A That's devil's destruction, a picture of I guess dry
17 goods and he's throwing it out there trying to destroy my
18 reputation. At least the Jello requirement is covered, and
19 that is from a friend -- these are -- the people responding
20 are friends of my oldest daughter, and he is conversing with
21 them. Now, seriously, would you eat anything left in this
22 house? Remember, she peed on the floors and put s-h-i-t on my
23 toothbrush.

24 Q Page 4, if you could.

25 A Devil's destruction.

1 Q . And again, there's additional conversations by his
2 followers regarding this?

3 A Yes. The first one is someone at a company that he
4 did work for at Harley, and then the last one, Steve Lehmier,
5 was a friend of both of ours, but he says I never would have
6 believed it if I hadn't seen all of the photos. Un F-ing
7 believable. You are so lucky to have the house exorcised.

8 Q The next page.

9 A The next page -- these are all friends of my oldest
10 daughter. Brandi Samento is his niece, and then there's
11 comments on here. They are just friends of the family. And
12 some people do comment that they don't even know him, but they
13 can't believe what a crazy person I am.

14 Q So he posts pictures of devil's destruction and then
15 bashed you in the comments, correct?

16 A Completely.

17 Q Okay.

18 A And my kids all saw this. My kids were all friends
19 with him, and people that we knew could see this page. Here
20 is one on the next page, dude, I don't even know you, but I am
21 totally at a loss for words. There should be a way to
22 prosecute this crazy demonic loon. I mean for a woman to do
23 this to her own children and hubby just floors me. So sorry
24 you had to go through this. I mean he was trying to get as
25 many responses as he could.

1 Q And with respect to Tony's particular comments, I'd
2 like to point out two. So on page 4, Tony Samento's comment
3 at the bottom?

4 A I don't know if I'm on the right -- oh.

5 Q If could you read that, posted by Tony.

6 A On page 4?

7 Q Yes. Oh, 5. I'm sorry, page 5 at the bottom.

8 A I do believe she will get what is coming to her, but
9 I won't have anything to do about it. If you look at her
10 Twitter page she comes off like a baptist preacher. The
11 reality is she is as evil as they come. You reap what you
12 sow. Her day is coming.

13 Q Then turn the page. Tony's first comment on that
14 page.

15 A I do believe she will get what is coming to her but
16 I won't -- oh, that's the same one. She is pure evil. The
17 reality is these photos don't even tell the horror of what we
18 went through. She actually tried to kill Ciara by crashing
19 her van into Ciara's car while the boys were in the van with
20 her. The judge said it was the worst case he had ever seen.
21 She is not allowed to be near the children without supervision
22 after she goes through mental therapy. We haven't seen her
23 since July.

24 Q And then if you could go to the last page, the
25 second post by the last page and the first post by Tony?

1 A The first post. Thank you. I do believe she will
2 get her just reward all in due time, Karma.

3 Q Thank you. Now, after the divorce proceeding you
4 had to go through another proceeding; is that correct? In
5 Cumberland County regarding your children?

6 A Yes.

7 Q And what was that proceeding?

8 A That was termination of parental rights.

9 Q And how long did those proceedings last?

10 A They lasted 4 days of trial testimony.

11 Q And you were contesting the termination, correct?

12 A Absolutely.

13 Q Do you know when the termination became final? Was
14 it the middle of October, 2016? Does that sound about right?

15 A That sounds -- yes.

16 Q Did you receive anything following the termination
17 of parental rights?

18 A From the courts or?

19 Q From the courts or from anybody?

20 A After that I received a letter.

21 Q Okay.

22 A In the mail that was delivered to me and my
23 husband's residence.

24 MR. DESTEFANO: I would like to introduce what has
25 been premarked as N.S. number 5.

1 (Exhibit N.S. 5 was marked for identification.)

2 MR. DESTEFANO: Judge, that is a copy. I do have
3 the original. I don't know what you prefer, Judge, to look
4 at, but I have both.

5 THE COURT: I will show you what has been marked
6 as Exhibit 5. It looks like two pages.

7 BY MR. DESTEFANO:

8 Q Nanci, when did you receive that?

9 A It would have been -- it is postmarked October 28th,
10 2016. So it would have been shortly after that.

11 Q Okay. And what is on the envelope, I guess you
12 could say?

13 A In the top left corner it is coming from -- the name
14 is Karma A. Betch, B-e-t-c-h. The address is actually the
15 address of the Boscovs store, the parking lot there where the
16 video originated, and it is coming from Fairless Hills. My
17 husband knew where that was, but I am not familiar with it.

18 Q All right. And then what was inside the letter?

19 A Inside -- I was afraid to open it, to be honest, but
20 I did, and inside the envelope was a photograph of my boys
21 going through the adoption with Judge Masland. And it says
22 FYI I believe on the photo.

23 Q Now, I want to distinguish the two. Okay. There
24 was before the settlement agreement, correct?

25 A Yes.

1 Q And then there was after the settlement agreement.
2 And what you received after the settlement agreement was a
3 link for this You Tube video, correct?

4 A Yes.

5 Q And then this letter?

6 A Yes.

7 Q Okay. How far apart was the You Tube video and then
8 this letter?

9 A Maybe a year.

10 Q A year, year and a half?

11 A Um-hum.

12 Q Okay. Based on everything that you have been
13 through -- how have you reacted to this?

14 A He terrifies me. You know, I have tried to move on
15 with my life and he is so unpredictable. He is affecting my
16 family. He is affecting me. He is affecting my work. He is
17 affecting my whole support system.

18 Q And why is that?

19 A Because I don't know what he is going to do. I
20 don't know where this video is. I don't know who has seen it.
21 I don't know who he is contacting. I just don't know. I am
22 constantly -- I don't like coming over to the West Shore
23 because I don't know who is watching me, who is -- I don't
24 know that, and I am very agitated and irritable.

25 Q You said it affected your employment, prior friends,

1 new friends? What are your interactions now like?

2 A I have a good reputation at work, and I put myself
3 into what I am doing. I have been promoted 3 times. So my
4 work ethic is good, but I don't -- it affects me not knowing
5 who knows and who has been sent this video, what they have
6 been told, because I do still interact with some people and
7 patients that I have known previously.

8 Q Have you cut off certain interactions? Have you cut
9 off from social media?

10 A I used to be on Facebook through the divorce
11 proceeding, but I got off of Facebook because I was being
12 harassed on there. I would be tagged by his girlfriend, who
13 is his wife now, would like my photos or my comments. And I
14 just -- I got off of it and my husband agreed too so we just
15 -- we don't do Facebook.

16 Q Is there anything that happened to Tony's family or
17 anything that you are particularly paying attention to now?

18 A Shortly after the divorce, around that time period,
19 I had found an article that his older brother had committed a
20 murder suicide. They were both police officers in Colorado
21 and his brother had shot his wife while she was sleeping and
22 then turned the gun on himself.

23 Q Based on -- and this is based on the posting of the
24 You Tube and this letter, correct? How it affects you?

25 A Yes.

1 Q Okay. Have you changed -- and lastly, have you
2 changed your ways or what you do at home or anything like
3 that?

4 A I absolutely do. We are going to get a tighter
5 security system. My husband and I were at the store the other
6 day and there was a gentleman when I walked in the store, I
7 felt he was looking at me, and I was not sure who he was. We
8 came out of the store and he was standing there mumbling
9 something and my husband and I got in the car and we were just
10 very aware, very hyperaware of our surroundings. He is as
11 well.

12 Q To follow up on that, you are not sure if you are
13 being followed?

14 A I never know if I am being -- I am constantly aware
15 of that coming back from work, because I work on the West
16 Shore, or whenever I have any kind of business.

17 Q You said you had gone through some medication
18 management as a result of this. Can you explain that?

19 A Yes. I was put on Klonopin actually for my anxiety.

20 Q Did you have that prior diagnosis --

21 A No.

22 Q -- or prior medication prior to this?

23 A No.

24 Q Are you still on that?

25 A No, I am not taking that.

1 Q Are you seeking counseling or anything like that?

2 A I did in the past.

3 Q What do you want the Court to do based on these You
4 Tube videos and cards directed to you? What would you like
5 the Court to do?

6 A I am devastated by this because, as we had said, I
7 mean I thought the whole purpose of the settlement agreement
8 was to reach a decision and move on from there, but he cannot
9 leave me alone and it frightens me. It is unpredictable. It
10 might not be next month, but what if it is 5 years from now or
11 what if it is, you know, 7, 10 years from now? And it is
12 affecting my family. So I would like full relief.

13 Q And by full relief you want this to stop
14 immediately?

15 A Absolutely.

16 Q But you are also -- it sounds like you have gone
17 through emotional distress over this?

18 A Absolutely.

19 Q And you are seeking in a sense an emotional distress
20 award, correct?

21 A Absolutely, yes.

22 Q And what are you seeking?

23 A 200,000.

24 Q Okay. Have you done anything to base that number
25 off of?

1 A There were some previous awards around that amount.

2 Q Okay. You are referring to other verbal harassment
3 awards and stuff like that?

4 A Yes.

5 Q Okay. And that is where you came up with that
6 number?

7 A Yes.

8 Q Okay.

9 A I mean this has caused me like bad dreams. This has
10 made me agitated. I have a hard time making decisions at
11 times. It is affecting me, and I just want it to stop. I
12 want to move forward.

13 Q And you also are seeking reimbursement of legal fees
14 and expert fees as well?

15 A Yes. And lost time from work.

16 MR. DESTEFANO: Judge, I do have a copy of the
17 extended legal fees and expert fees if that is -- you would
18 like to have that introduced.

19 THE COURT: I am not telling you how to present
20 your case.

21 MR. DESTEFANO: Okay. If I may, it is not
22 premarked as an exhibit, but this would be number 6.

23 (Exhibit N.S. 6 was marked for identification.)

24 THE COURT: There's 3 copies. Tom Frederick, give
25 those back. I will show you what has been marked as Exhibit

1 6, it looks like 9 pages.

2 BY MR. DESTEFANO:

3 Q Nanci, do those look familiar to you?

4 A Yes. They are invoices.

5 Q Okay. I did the math for you, but is there a total
6 on the front?

7 A There is. It's \$4,492.06.

8 Q And that includes both my fees and Dr. Pittman's
9 fees as well?

10 A Yes.

11 Q And you would like that to be included?

12 A Yes, please.

13 MR. DESTEFANO: I have nothing further of this
14 witness. Thank you, Judge.

15 THE COURT: Ms. Costopoulos, questions here.

16 MS. COSTOPOULOS: Your Honor, before I
17 cross-examine, unless there is another witness that is tying
18 my client to anything, I would move for a dismissal of the
19 case based on the evidence established that my client has
20 anything to do with breaching this settlement agreement. That
21 he's done anything to breach the settlement agreement.

22 THE COURT: Premature and denied.

23 MS. COSTOPOULOS: Okay.

24 CROSS EXAMINATION

25 BY MS. COSTOPOULOS:

1 Q Nanci, the Exhibits 3 and 4, which were the Twitter
2 posts and the Facebook posts. Were any of them dated after
3 October 2014 when this settlement agreement was entered into?

4 A I am not certain about the Twitter.

5 Q So you don't know?

6 A I am not certain.

7 Q And when your attorney asked you earlier, you had
8 actually indicated that the only things that happened since
9 the settlement agreement were the link for the You Tube video
10 and the letter with the picture of the adoption. So you are
11 thinking you are not sure of that now?

12 A As far as those were the only things that happened
13 after the settlement agreement?

14 Q Correct.

15 A There was a phone call made to the business by a
16 good friend of mine, and she had called me after that and he
17 answered the phone and she was looking for me and he proceeded
18 to tell her everything, and she said I don't believe that.

19 Q Okay. I was asking --

20 A That happened also after.

21 Q Now, I am asking things that happened directly to
22 you.

23 A That is directly to me.

24 Q No, it was actually him talking to somebody else.

25 A But that was a friend of mine and this is part of

1 the problem.

2 THE COURT: Tell your friends to hang the phone
3 up. Answer her question.

4 BY MS. COSTOPOULOS:

5 Q Directly to you. What else happened directly to
6 you? Not him talking to other people, but directly to you.
7 Like did he talk to you at all since the October --

8 A No, not directly.

9 Q Do you have any idea who sent you the link for the
10 You Tube video?

11 A It was Tony.

12 Q Based on what evidence?

13 A Based on my knowledge of him and the language that
14 he uses.

15 Q Okay. Do you have any like actual physical
16 evidence, like something that would show that it came from his
17 computer or --

18 A I went to -- I tried to get that information from
19 You Tube, and it would have involved a tremendous cost.

20 Q Okay. So the answer is, no, you don't have that?

21 A I don't have that.

22 Q Okay. And the letter with the picture, do you know
23 who sent you that? Do you know whose handwriting that is?

24 A I don't know whose handwriting it is, but I believe
25 it came from Tony.

1 Q But how would you know that?

2 A Whether he wrote it or he had somebody else write
3 it, which is what it looks like, it was from him. I mean who
4 else would it be from?

5 Q Isn't it true that all of your adult children are
6 estranged from you?

7 A Because of what they have been told, yes.

8 Q But do you agree that none of them have a good
9 relationship with you?

10 A I don't know.

11 Q You don't know if you have a good relationship?

12 A I don't have a relationship right now with my
13 children.

14 Q So do you have any knowledge as to whether any of
15 them would have sent something like that?

16 A The address on the envelope is too -- it is not
17 coincidental. It is the address of the Boscovs location.

18 Q Well, I mean you admitted earlier that other people
19 have this video. I mean wasn't it true that I had personally
20 sent the video to Tom Tarsavage's wife at some point? So that
21 it was definitely out there in the world?

22 A I believe that it has been shared more than it
23 should have been, and I have no idea where these copies are.

24 Q And you would agree that there is I guess a number
25 of people out there that we have no way of knowing how many

1 may have copies of this video?

2 A As far as the letter being sent, I think it is --
3 there's no question where it came from.

4 Q Isn't it true you testified during the adoption
5 proceedings that you had already been in therapy prior to any
6 of that even starting?

7 A Yes, through the divorce I had been.

8 Q So would you admit that your psychological issues
9 didn't begin the day the settlement agreement was signed, but
10 had been ongoing prior throughout the entire divorce
11 proceedings?

12 A It is a totally different place that I am in now
13 because we are supposed to be at peace and that didn't happen.
14 So my anxiety is 10 times higher. I don't know what he is
15 going to do. I know what he is capable of. He has
16 threatened my life.

17 Q When was this life threat in relation to --

18 A During the divorce proceedings. The separation
19 period.

20 Q So we are back then to starting the day the
21 settlement agreement was entered into, other than this letter
22 that you are speculating came from Tony, but you don't have
23 any evidence of, you say that that's not his handwriting, and
24 this video that you are not sure who sent it or where it came
25 from, but you are speculating that it was Tony -- other than

1 those two things, what have you received personally that has
2 anything to do with my client?

3 A Those two things.

4 MS. COSTOPOULOS: Okay. I don't have anything
5 else, Your Honor.

6 MR. DESTEFANO: Just briefly.

7 REDIRECT EXAMINATION

8 BY MR. DESTEFANO:

9 Q With respect to the e-mail address. Okay? Hoes get
10 caught 2-99, correct? He called you a hoe on a Twitter
11 account, correct?

12 A Yes.

13 Q Is 99 significant? That wasn't the year you were
14 married?

15 A No.

16 Q Okay.

17 A I'm not quite sure what the 99 is.

18 Q Okay. And now with respect to the -- you had
19 mentioned the address on the letter is the Boscovs address; is
20 that correct?

21 A Yes.

22 Q And didn't he make reference to you will get what
23 you -- you will get Karma?

24 A He always said that, Karma.

25 Q And let me clarify some of the things. You had gone

1 through counseling because he had taken that video and
2 distributed it to all of your friends?

3 A Yes.

4 Q He had gone on Facebook, talked to all of your
5 friends as the devil?

6 A Yes.

7 Q He had gone on Twitter, called you a skank?

8 A Yes.

9 Q So this harassment was the cause of your emotional
10 state?

11 A Absolutely, yes.

12 Q And now you are saying that it is heightened because
13 it is still going on?

14 A Yes.

15 Q The divorce was initiated in 2009, and you received
16 this letter in October of 2016, correct?

17 A Correct.

18 Q The harassment's going on for 17 years?

19 THE COURT: Well --

20 MR. DESTEFANO: Eight years.

21 THE WITNESS: Eight years.

22 THE COURT: That's a nice segway but that's not
23 the claim.

24 MR. DESTEFANO: I understand.

25 THE COURT: It's post divorce.

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MR. DESTEFANO: Yes, Judge.

THE COURT: Which I can't remember the date, but I have it in my notes.

MR. DESTEFANO: Yes. I have nothing further.
Thank you.

MS. COSTOPOULOS: Nothing, Your Honor.

THE COURT: We will let you step down.

(The testimony of Nanci Samento-Yocum concluded.)

CERTIFICATION

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the above cause, and that this is a correct transcript of same.



Michele A. Eline
Official Court Reporter

The foregoing record of the proceedings on the hearing of the within matter is hereby approved and directed to be filed.

9 Oct 12

Date



Thomas A. Placey, C.P.J.
Ninth Judicial District

EXHIBIT 3

EXHIBIT 3

TONY D. SAMENTO,
Plaintiff

IN THE COURT OF COMMON PLEAS
OF CUMBERLAND COUNTY,
PENNSYLVANIA

V.

NANCI M. SAMENTO,
Defendant

NO. 2009-08051 CIVIL TERM
CIVIL ACTION - LAW (DIVORCE)

FILED-OFFICE
OF THE PROTHONOTARY
2017 DEC 28 AM 10:57
CUMBERLAND COUNTY
PENNSYLVANIA

MOTION TO RECUSE THE HONORABLE THOMAS A. PLACEY AS THE JURIST IN ALL FURTHER JUDICIAL DECISIONS MAKING REGARDING THE CASE

1. Plaintiff Tony D. Samento (hereinafter "Husband") was previously represented by Jeanné B. Costopoulos, Esquire. Since December 5, 2017 Husband has been represented by Steven Howell, Esquire
2. Defendant Nanci M. Samento (hereinafter "Wife") is represented by Damian J. DeStefano, Esquire.

Factual Basis Supporting Motion:

3. On October 5, 2017 a hearing was held before the Honorable Thomas A. Placey regarding a "Motion for Breach of Marital Settlement Agreement" filed by Wife on March 9, 2017.
4. Wife was allowed to present her case in chief over the course of more than one hour (from 1:33 PM to 2:43 PM) and 67 pages of transcription while Husband was allowed approximately five minutes and 6 pages of transcription before the hearing was terminated by the trial court.
5. Husband was denied the opportunity to present all of his direct testimony or his exhibit. The trial court did not hear the testimony of two witnesses present in court to testify that the parties' adult daughter (Ciara M.

Tabler) was likely the person responsible for creating, editing and posting the You Tube video at the heart of the case.

6. The trial court indicated that it would come back to continue the hearing (see Page 35 of 10/5/17 Transcript at Lines 14-15) but it never reconvened the proceeding and instead summarily ruled against Husband on November 6, 2017. The testimony appears in Exhibit "A" as follows:

Lawyer: And to your knowledge did the State Police investigate this whole issue?
Husband: I do believe they did, and from what I understand when they found out it was Corporal [T.T.] -

Wife's Lawyer: Judge, this is all hearsay.
The Court: Well I don't know what he is saying so I don't know.

Wife's Lawyer: He was indicating what he learned from the State Police.
The Court: And I don't -

The Witness: I'm sure there's a record of this.
The Court: Sir.
The Witness: I'm sorry.

The Court: Sit down now. **Down. Out of that seat.**
The Witness: I'm sorry.

The Court: **Move it like you have got a purpose.**
The Witness: I'm sorry, Your Honor.

The Court: **I'll tell you when I'm coming back. It's not going to be today. You get your client under control or I am going to tear him up on the stand. Do you understand me?**
Lawyer: I'm not sure, Your Honor, but I'll try to.

The Court: He talks over me one more time, **I am going to rule summarily against him.** Do you understand that?

Lawyer: Yes, Your Honor.
The Court: **Get him out of here.** I want to see both of you in chambers.

7. The view that additional testimony would be taken was shared by the trial court's own law clerk as shown on Exhibit "B" of this Motion where Bryan Bartosik-Velez, Esquire writes on October 6, 2017 at 9:46 AM:

Regarding yesterday's Hearing [sic], please contact me once both parties have copies of the discussed tape/video and **I will work on potentially scheduling the remainder of the Hearing** [sic] Kindly cc Ms. Hall, copied here. Please contact me if you have any questions. Best. Emphasis added.

66 a

8. There are several rules to show cause pending before the trial court including Husband's "Motion to Amend the Record Pursuant to Pa. R.A.P. 1926" which will directly challenge what was said during the "in chambers discussion" on October 5, 2017 that is specifically mentioned in the November 6, 2017 Order and Husband's challenge of what transpired during Pretrial Conferences on June 1, 2017 and August 2, 2017.
9. There is also a "Motion to Obtain a Copy of the Digital Audio File for the Hearing on October 5, 2017" because Husband intends to show that the trial court was screaming during the testimony set forth in Exhibit "A".
10. The trial court will be a necessary witness for both motions because: (1) the "in chambers discussion" on October 5, 2017 had no court reporter present and hence no transcript; (2) the June 1st and August 2nd Pretrial Conferences were similarly conducted "off the record" and (3) the tone and demeanor of the trial court on 10/5/17 is an issue on appeal.
11. Assuming the Digital Audio File is produced in accordance with R.J.A. 4016 (A) which states: "[e]ach judicial district shall make provision for the archiving, storage and retention of ...digital audio files" and the Comment which states "[e]ach judicial district is responsible for the preservation of the transcript production materials listed in Rule 4016 (A) in a form that guarantees their accuracy, authenticity and accessibility" then the trial court will not have to testify as to its demeanor and tone on October 5, 2017 because we will have the best evidence in the form of an audio record.

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12. If the Digital Audio File is not produced and forwarded to the Superior Court with the record then the trial court must testify as to its tone and demeanor because four (4) affidavits have been filed under oath stating the trial court was screaming during the testimony in Exhibit "A".
13. The trial court, however, will remain a necessary witness regarding the "in chambers discussion" that is mentioned in the November 6, 2017 Order because there is no transcript available. Similarly the discussions at the Pretrial Conferences on June 1, 2017 and August 2, 2017 can not be transcribed as no court reporter was present.

Legal Authority Supporting Motion:

14. Pennsylvania's Code of Judicial Conduct requires at Rule 2.6 that a "judge shall accord to every person...the right to be heard according to the law."
15. Pennsylvania Code of Judicial Conduct requires at Rule 2.3 (B) that a "judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice ..."
16. Pennsylvania Code of Judicial Conduct requires at Rule 2.8 (B) that a "judge shall be patient, dignified, and courteous to litigants...lawyers...with whom the judge deals in an official capacity."
17. Pennsylvania Code of Judicial Conduct requires at Rule 2.11 that a "judge shall disqualify himself...in any proceeding in which the judge's impartiality might reasonably be questioned including but not limited to the following circumstances: (1) the judge has a personal bias ...concerning ...a party's lawyer..."

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18. As stated by our Superior Court: "[W]hen a complaint is made of a particular remark on the part of the trial court, the record as a whole may be examined to determine whether it shows animosity toward counsel or a lack of judicial impartiality toward a [party]." *Malesh v. Chechak*, 342 Pa. Super. 446, 493 A.2d 106, 111 (1985) and *Commonwealth v. Smith*, 374 Pa. 220, 97 A.2d 25 (1953).
19. It is undisputed that it is prejudicial error for a trial judge to "**make remarks that clearly import his feelings of hostility toward [a party].**" *United States v. Bray*, 546 F.2d 851 at 859 (1976).
20. Our Supreme Court has stated that:
- [a] case is controlled by the general principle that the trial judge should recuse himself whenever he has any doubt as to his ability to preside impartially... or whenever he believes his impartiality can reasonably be questioned. See *Commonwealth v. Perry*, 468 Pa. 515, 364 A.2d 312 at 317 (1976).
21. Our Supreme Court has stated that:
- A tribunal is either fair or unfair. There is no need to find actual prejudice, but rather, the appearance of prejudice is sufficient to warrant the grant of new proceedings. A trial judge should not only avoid impropriety but also must avoid the appearance of impropriety. See *In the Interest of McFall*, 533 Pa. 24, 617 A.2d 707 (1992) and the concurrence observed: "Every judge must know that you can't play both sides of the fence without bringing into focus the question of impartiality. Under such circumstances, every judge must know that recusal is in order."
22. Our Supreme Court has thoroughly discussed when a judge should or should not hear a recusal motion concerning himself. In *Municipal Publications Inc. v. Court of Common Pleas of Philadelphia*, 507 Pa. 194, 489 A.2d 1286 (1985) the Court held that when a party in a suit files a recusal motion raising questions as to the judge's impartiality, the judge

must transfer the motions to another judge if two conditions are met. First, the judge must be personally knowledgeable about the facts in dispute. Second, he must "permit himself to be a crucial witness in the proceedings." *Id.* 507 Pa. at 196 and 489 A.2d at 1286. The inability of a judge to impartially rule on objections to his testimony or objectively assess his testimony's credibility is the rationale underlying this holding. *Id.* at 507 Pa. at 201, 489 A.2d at 1289.

23. As stated by our appellate courts: "[f]undamentally due process affords a party notice and an opportunity to be heard [and] requires an opportunity, amongst other things, to hear evidence adduced by the opposing party, cross-examine witnesses, introduce evidence on one's own behalf, and present argument." See *Weaver v. Franklin County*, 918 A.2d 194, appeal denied 593 Pa. 751, 931 A.2d 660 (2007) and *Panzone v. Fayette County Zoning Hearing Board*, 944 A.2d 817 (Pa. Cmwlth. 2008). As stated by our Supreme Court of Pennsylvania in *Callahan v. Pa. State Police*, 494 Pa. 461, 431 A.2d 946 at 948 (1981): "[a]djudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except upon hearing wherein each party has the opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross examine witnesses, to introduce evidence on his own behalf and to make argument.
24. In this case, the trial court clearly did not afford Husband the opportunity to be heard as required by Rule of Judicial Conduct 2.6 and the principles

of due process guaranteed under the United States and Pennsylvania Constitutions were simply ignored by the trial court.

25. In this case, the trial court's refusal to complete the hearing on October 5, 2017, foreclosed Husband from presenting the evidence, documents, affidavits, legal authority and testimony set forth in the "Statement in Absence of a Transcript Pursuant to Pa. R.A.P. 1923" and "Motion to Amend the Record" which conclusively show that he did not create, edit or post the You Tube video and that no damages are recoverable by Wife.
26. In this case, the trial court's comments of ***"move it like you have got a purpose"...*** ***"get your client under control or I am going to tear him up on the stand"...*** and ***"get him out of here"*** as well as his statement that ***"I am going to rule summarily against him"*** create the appearance of bias and hostility towards Husband and his former attorney. These comments do not demonstrate the trial court being patient, dignified, and courteous to Husband or his former attorney. In fact, they represent the exact opposite.
27. Husband intends to show that the trial court has expressed bias and hostility towards his former counsel.
28. A copy of this motion was emailed to Attorney DeStefano on December 26th with a request to concur or not concur by Noon on December 27th. In the event this Motion is filed it should be assumed he did not concur with the requested relief.

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WHEREFORE, Husband respectfully requests this Honorable Court to recuse itself from all further judicial decision making in this matter including but not limited to the pending "Motion to Amend the Record Pursuant to Pa. R.A.P. 1926", the "Motion to Obtain Copy of the Digital Audio File for the Hearing on October 5, 2017".

Respectfully submitted,

By: 

Steven Howell, Esquire
Howell Law Firm
619 Bridge Street
New Cumberland, PA 17070
(717) 770-1277
Supreme Court ID 62063
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below one true and correct copy of the foregoing document was served upon the persons and in the manner indicated below which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure (postage prepaid, 1st class United States Mail addressed as follows):

Damian J. DeStafano, Esquire
Suite 205
3800 Market Street
Camp Hill, PA 17011

Date: December 28, 2017

BY: 

Steven Howell, Esquire

72a

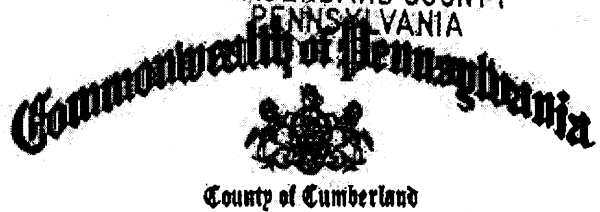
EXHIBIT 4

EXHIBIT 4

FILED-OFFICE
OF THE PROTHONOTARY

2018 MAR -7 PM 1:01

CUMBERLAND COUNTY
PENNSYLVANIA



TONY DOUGLAS SAMENTO,
Plaintiff

v.

NANCI MARIKO SAMENTO,
Defendant

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL DISTRICT

2009-08051 CIVIL TERM

**IN RE: MOTION TO AMEND THE RECORD
STATEMENT IN ABSENCE OF TRANSCRIPT
MOTION TO RECUSE and
MOTION TO APPROVE PLAINTIFF'S STATEMENT**

ORDER OF COURT

AND NOW, this 7th day of **March 2018**, upon consideration of Plaintiff's Motion to Amend the Record Pursuant to Pa.R.A.P. No. 1926, Plaintiff's Statement Absent of Transcript Pursuant to Pa.R.A.P. No. 1923, Plaintiff's Motion to Recuse the Honorable Thomas A. Placey as Jurist in All Further Judicial Decision Making Regarding This Case, and Plaintiff's Motion to Approve Plaintiff's Statement in Absence of Transcript Pursuant Pa.R.A.P. No. 1923, together with consideration of Defendant's Answers to the selectively issued Rules to Show Cause, the Motions are **DENIED**.

By the Court,


Thomas A. Placey C.P.J.

Distribution:

Steven Howell, Esq.
Damian J. DeStefano, Esq.

109a

EXHIBIT 5

EXHIBIT 5

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TONY D. SAMENTO	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
NANCI M. SAMENTO	:	No. 1890 MDA 2017

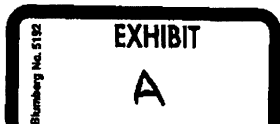
Appeal from the Judgment Entered November 6, 2017
 In the Court of Common Pleas of Cumberland County
 Civil Division at No(s): 2009-08051

BEFORE: OTT, J., McLAUGHLIN, J., and FORD ELLIOTT, P.J.E.

MEMORANDUM BY OTT, J.: **FILED JANUARY 16, 2019**

Tony D. Samento ("Husband") appeals from the judgment entered November 6, 2017, in the Cumberland County Court of Common Pleas awarding Nanci M. Samento ("Wife"), \$4,000.00 plus attorneys' fees, for Husband's willful breach of the parties' Marital Settlement Agreement ("MSA"). On appeal, Husband argues: (1) the trial court denied him procedural due process when it abruptly terminated the hearing during his testimony; (2) the trial court abused its discretion when it denied Husband's post-hearing recusal motion; and (3) Wife failed to state a cause of action for breach of the MSA. For the reasons below, we vacate the judgment, and remand for further proceedings before a different trial court judge.

Much of the long and contentious history between the parties is not pertinent to this appeal. Relevant herein, Husband filed a complaint in divorce in November of 2009, followed shortly thereafter by a complaint seeking



custody of the parties' three minor children.¹ On October 3, 2014, the parties executed an MSA, which provides, *inter alia*:

Husband and Wife shall not molest, harass, disturb or malign each other or the respective families of each other, nor compel or attempt to compel the other to cohabit or dwell by any means or in any manner whatsoever with him or her.

Marital Settlement Agreement, 10/3/2014, at ¶ 3. Paragraph 18 of the MSA permits a party to sue for damages upon a breach of the agreement. **See id.** at ¶ 18. A final decree in divorce was entered on October 14, 2014.

Sometime during the divorce proceedings, Husband hired a private investigator to follow Wife and find out if she was having an affair. The investigator obtained video of Wife with her paramour, a Pennsylvania State Trooper, in the parking lot of a Boscov's Department Store.² In November of 2014, Wife received an email with a link to a YouTube video titled, "Hoes Get Caught II." The video, posted publicly on YouTube, was an edited version of the private investigator's video set to music. It displayed her name across the video, and phrases such as "pigs and hoes." N.T., 10/5/2017 (before

¹ The parties have five children, three of whom were minors and still living at home at the time the custody complaint was filed: a biological daughter, C.M.S. (born in November of 1992), and two sons whom they adopted in 2005, A.M.S. (born in May of 1999) and E.D.S. (born in July of 2000). The parties also have two adult biological daughters, B.N.S. (born in January of 1983) and T.C.S. (born in January of 1986).

² The video was not provided to this Court as part of the certified record, and is described much differently by the parties. According to Wife, the video showed her and her paramour kissing while fully clothed. **See** N.T., 10/5/2017 (before recess), at 7. According to Husband, the video recorded a more explicit sexual encounter. **See** N.T., 10/5/2017 (after recess) at 33.

recess), at 10. The video was removed two weeks later; however, Wife was not able to uncover who posted the video.

Meanwhile, Husband sought to terminate Wife's parental rights with regard to their two adopted sons, so that his current wife, Stepmother, could adopt them. Wife's parental rights were subsequently terminated in November of 2015, and Stepmother later adopted the boys. After the adoption, Wife received a letter postmarked October 28, 2016, which included a photograph of the boys, Husband, and Stepmother, in the courtroom when the adoption was finalized. The photo had "FYI" written on it, and the return address on the envelope read, "Karma A. Betch," and listed the address of the Boscov's parking lot where the private investigator's video originated. *Id.* at 26.

On March 9, 2017, Wife filed a motion for breach of the MSA. Specifically, she asserted Husband violated Paragraph 3 of the agreement by (1) publicly posting an explicit and disparaging video of her to YouTube; (2) speaking to a co-worker of her current husband about her; and (3) mailing to her a photograph of Stepmother adopting her two children. **See** [Wife's] Motion for Breach of Marital Settlement Agreement, 3/9/2017, at ¶¶ 3-6. On July 26, 2017, Wife filed a Request for Discovery, seeking from Husband, *inter alia*, the name of the person who "produced the video of [Wife,]" and "any and all copies of the video in possession" of Husband. [Wife's] Request for Discovery, 7/26/2017, at 1. Husband filed an Answer and Objections to Wife's discovery request, asserting, *inter alia*, her request was "overbroad and

unspecific and does not include the date and time and subject matter of the video sought," and, in any event, was protected by attorney/client privilege. [Husband's] Answers and Objections to [Wife's] Request for Discovery, 8/25/2017, at 1.

A hearing was conducted by the trial court on October 5, 2017. Wife testified first, before a recess, after which her former psychologist testified. Husband then testified briefly until the trial court abruptly ordered him to step down from the witness chair, and stated the hearing would be continued another day. The court also directed both attorneys to meet in chambers; however, the in-chambers discussion was not transcribed. On November 6 2017, the trial court entered the following order and judgment in favor of Wife:

AND NOW, this 6th day of November 2017, upon consideration of the relevant testimony, which includes information that [Husband's] counsel had delivered a copy of the video at issue to an innocent injured spouse, counsel's revelation that resulted in an in-chambers discussion, wherein [Husband's] counsel further admitted to having a copy of said video in a box, in her garage, and that video was directed to be turned over as discovery to [Wife's] counsel, and, in review of the facts, which include [Husband's] gross inability to answer questions truthfully, Judgment is hereby GRANTED in favor of [Wife] on the claim of breach of the Marital Settlement Agreement.

Order, 11/6/2017, at 1. The court awarded Wife \$4,000.00 for Husband's willful breach of the MSA,³ and directed Husband to pay Wife's counsel fees in

³ The trial court specifically stated it was not awarding Wife any damages for intentional infliction of emotional distress. **See** Order, 11/6/2017, at 1.

the amount of \$3,742.26. **See id.** Husband filed a timely appeal on December 5, 2017.⁴

That same day, Husband filed three motions in the trial court: (1) a motion to obtain the digital audio recording of the October 5th hearing; (2) a motion to amend the record to include opinions and documents from the termination of parental rights proceedings; and (3) a statement in absence of transcript concerning the October 5th in-chambers discussion. On December 28, 2017, Husband also filed a motion seeking the trial court recuse itself from all "further judicial decision making regarding the case." Motion to Recuse, 12/28/2017, at 1. On January 16, 2018, the trial court entered an order granting Husband's motion to obtain a copy of the digital audio file from the October 5th hearing, with the stipulation that it would remain sealed. **See** Order, 1/16/2018.

On February 5, 2018, the trial court issued an opinion, pursuant to Pa.R.A.P. 1925(a), in support of its determination that Husband breached the MSA, and its corresponding judgment in favor of Wife. On February 14, 2018, Husband filed a supplemental motion seeking to "correct and amend" the record with regard to several statements in the trial court's opinion. Supplemental Motion to Correct and Amend the Record Pursuant to Pa.R.A.P.

⁴ On December 14, 2017, the trial court ordered Husband to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Husband complied with the court's directive, and filed a concise statement on December 28, 2017.

1926, 2/14/2018, at 1. Thereafter, on March 7, 2018, the trial court issued an order and opinion, denying Husband's outstanding post-judgment motions filed on December 5, 2017. It also issued an order on March 13, 2018, denying Husband's supplemental motion to correct the record.

In his first issue on appeal, Husband contends the trial court denied him procedural due process when, after permitting Wife to present testimony for 90 minutes,⁵ it terminated the hearing after Husband, himself, testified for only seven minutes. **See** Husband's Brief at 25-26.

By way of background, there were two videos discussed at the hearing. The first, obtained by the private investigator, featured Wife and her paramour engaged in some type of illicit encounter. The second video was an edited version of the first, which included music and text. That video was posted publicly on YouTube.

At the hearing, Wife testified in detail about the anxiety she felt after receiving an email with a link to the YouTube video. **See** N.T., 10/5/2017 (before recess), at 11-14. She also testified extensively regarding derogatory comments Husband posted about her on Facebook and Twitter. **See id.** at 17-24. The court ultimately ruled the social media posts were inadmissible for anything other than corroboration of the language later employed in the

⁵ Our review of the digital audio file from the hearing reveals Wife testified on her own behalf for almost an hour, after which she presented the testimony of her former psychologist. Husband's counsel was in the middle of his direct examination when the trial court terminated the proceedings.

anonymous letter Wife received about the adoption. **See** N.T., 10/5/2017 (after recess), at 24-27. Lastly, Wife described the letter she received at her home residence after her sons were formally adopted by Stepmother. She testified the envelope was postmarked October 28, 2016, and included the following in the return address area:

In the top left corner it is coming from --- the name is Karma A. Betch, B-e-t-c-h. The address is actually the address of the Boscov's store, the parking lot where the video originated, and it is coming from Fairless Hills.

N.T., 10/5/2017 (before recess), at 26. Wife stated that inside the envelope was a photograph of her sons "going through the adoption with Judge Masland," with "FYI" written on it. **Id.** Wife described her fear of Husband, and his unpredictability, and sought \$200,000.00 in damages for emotional distress. **See id.** at 27-30. Under cross-examination, Wife admitted the only two alleged contacts Husband had with her **after** the parties executed the MSA were the email link and the letter with the photograph. **See id.** at 33-34. She insisted the letter came from Husband, although she did not recognize the handwriting on the envelope, and admitted other people knew of the video of her in the Boscov's parking lot. **See id.** at 34-35.

The court then took a short recess, after which Wife's counsel called her former psychologist, Dr. Laurie S. Pittman, to testify. Dr. Pittman explained that she saw Wife for 11 sessions between August of 2014 and April of 2015. **See** N.T., 10/5/2017 (after recess), at 7. Dr. Pittman described some of Wife's symptoms, as well as her own concern that Wife may suffer from Post-

Traumatic Stress Disorder ("PTSD"). **See id.** at 10-11. However, Dr. Pittman acknowledged she did not diagnose Wife with PTSD, "[i]t was [just her] concern." **Id.** at 21.

After Husband's attorney objected to certain evidence, and renewed a motion to dismiss, she called Husband as her first witness. **See id.** at 29. Husband denied ever having seen the YouTube video Wife described, or sending Wife the photo of the adoption proceedings. **See id.** at 30-31. Husband explained the photo was taken in the courtroom, and later posted on his public Facebook page so that it would have been accessible to anyone. **See id.** at 31. Husband's attorney acknowledged that she took the photo and sent copies to Husband, his daughters, and the adoption Judge. **See id.** at 32. Counsel then questioned Husband regarding the unedited video of Wife obtained by the private investigator. Husband described in detail the sexual encounter he claimed he witnessed on the video, as well as lurid statements Wife allegedly made to him when he confronted her. **See id.** at 34. At that point, the following exchange took place:

Q [by Husband's Counsel:] So have you ever seen any video of [Wife] on You Tube?

[Husband:] No, I have not.

Q And has anybody you know told you they knew about a video on You Tube?

A No. No one's ever told me anything other than the fact that when you called me because the State Police had called.

Q And to your knowledge did the State Police investigate this whole issue?

A I do believe that they did, and from what I understand when they found out it was Corporal Thomas Tarsavage –

[Wife's Counsel]: Judge, this is all hearsay.

THE COURT: Well, I don't know what he is saying so I don't know.

[Wife's Counsel:] He was indicating what he learned from the State Police.

THE COURT: And I don't –

[Husband:] I'm sure there's a record of this.

THE COURT: Sir.

[Husband:] I'm sorry.

THE COURT: Sit down now. Down. Out of that seat.

[Husband:] I'm sorry.

THE COURT: Move it like you have got a purpose.

[Husband:] I'm sorry, Your Honor.

THE COURT: I'll tell you when I'm coming back. It's not going to be today. You get your client under control or I am going to tear him up on the stand. Do you understand me?

[Husband's Counsel:] I'm not sure, Your Honor, but I'll try to.

THE COURT: He talks over me one more time, I am going to rule summarily against him. Do you understand?

[Husband's Counsel:] Yes, Your Honor.

THE COURT: Get him out of here. I want to see both of you in chambers.

Id. at 34-35. The court then proceeded to conduct an in-chambers conference that was not transcribed.

It is important to bear in mind that while the trial court's November 6, 2017, order and judgment granting Wife relief referred only to the issue

concerning the video, the court clarified in its February 2018 opinion that Wife did not prove “the November 2014 YouTube video [was] a breach” of the MSA, since she was unable to “obtain sufficient proof of authorship.”⁶ Trial Court Opinion, 2/5/2018, at 19. Rather, the court determined Husband breached the MSA only with respect to the 2016 letter Wife received in the mail: “The evidence presented shows, by a preponderance of the evidence, that Husband sent the mail piece that contained the adoption photo, which is a clear breach of the MSA requirements[.]” *Id.* at 17.

With this background in mind, we turn to Husband’s claim that the trial court denied him procedural due process. **See** Husband’s Brief at 25-29.

“The fundamental requisite of due process of law is the opportunity to be heard.” **Grannis v. Ordean**, 234 U.S. 385, 394 (1914). At its core, procedural due process requires “adequate notice, opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case.” **Garr v. Peters**, 773 A.2d 183, 191 (Pa. Super. 2001) (citation omitted). **See Hahalyak v. A. Frost, Inc.**, 664 A.2d 545, 550 (Pa. Super. 1995) (“Due process requirements are satisfied when a person is given notice and opportunity to be heard and defend in an orderly proceeding.”). Essentially, “[d]ue process rights entitle [a party] ‘to be heard

⁶ Our review reveals Wife presented very little testimony regarding the purported conversation Husband had with her current husband’s co-worker. **See** N.T., 10/5/2017 (before recess), at 16-17. Moreover, the trial court did not even discuss this claim in its opinion. Accordingly, this alleged conversation provides no basis for relief and we need not address it further.

at a meaningful time and in a meaningful manner.” **BuyFigure.com, Inc. v. Autotrader.com, Inc.**, 76 A.3d 554, 559 (Pa. Super. 2013) (citation omitted), *appeal denied*, 84 A.3d 1061 (Pa. 2014).

Nevertheless, as Wife emphasizes in her brief, “a party’s due process rights are not without limits.” Wife’s Brief at 15. Indeed, while a criminal defendant has a constitutional right to be present at his trial, the United States Supreme Court has held:

[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.

Illinois v. Allen, 397 U.S. 337, 343 (1970) (footnote omitted). Similarly, in **Taylor v. Illinois**, 484 U.S. 400, 413-414 (1988), the Supreme Court rejected the defendant’s claim that his right to compulsory due process was violated when the trial court excluded the testimony of a last-minute witness who was not identified during discovery, rather than imposing a less drastic sanction. The **Taylor** Court reasoned:

A trial judge may certainly insist on an explanation for a party’s failure to comply with a request to identify his or her witnesses in advance of trial. If that explanation reveals that the omission was willful and motivated by a desire to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence, it would be entirely consistent with the purposes of the Compulsory Process Clause simply to exclude the witness’ testimony.

Id. at 415. Here, Wife insists that it was the “abhorrent behavior” of Husband and his counsel⁷ – which she claims included Husband’s “gross inability to answer questions truthfully,” and counsel’s actions in making “materially false statements to the trial court,” retaining a copy of the private investigator’s video in her garage, and sending a copy of that video to third parties – that led to the trial court’s decision to suspend the hearing. Wife’s Brief at 13, 19.

In its two opinions, the trial court provided the following explanation for its decision to stop the hearing, and subsequently enter judgment for Wife, without providing Husband a further opportunity to present his case:

Husband’s launch into an *ad hominem* attack of Wife, rather than relevant factual testimony, coupled with the use of legally dubious methods to gain advantage over Wife bespeaks of Husband’s blatant inability to be candid. In fact, Husband’s patent inconsistency in the pleading and discovery responses, in stark contrast to his testimony, was in a word – shocking. Husband’s prehearing responses did not indicate any testimonial facts beyond denials and offered no knowledge of demonstrative evidence. Husband’s pattern of dishonesty throughout the pleadings and testimony, coupled with Husband’s disingenuous and dilatory responses with discovery requests, support the finding that further proceedings would be a waste of judicial time.

Trial Court Opinion, 2/5/2018, at 18-19.

[Husband] places dramatic importance on the court “screaming” at [him]. Anyone who has been involved in organized sports would easily recognize the difference between projecting one’s voice through the use of the diaphragm to provide loud, firm command directions, versus screaming. The commands to [Husband] were not laced with profanity nor were any derogatory comments made. No comment was made that suggests hostility

⁷ Wife’s Brief at 15.

or bias. A judge has no friends to reward, no enemies to punish, only justice that is to be served. There is no animus toward [Husband] or [Wife].

Trial Court Opinion, 3/7/2018, at 4.

It is evident from a review of the court's opinions that its frustration with Husband and his counsel stems from Wife's discovery request for information regarding "the video." [Wife's] Request for Discovery, 7/26/2017, at 1. Husband's answer to Wife's request included an objection, as well as his assertions that her request was "overbroad and unspecific[,] ...protected from disclosure as attorney work product and by attorney/client privilege[, and] not relevant or material to the proceedings." [Husband's] Answers and Objections to [Wife's] Request for Discovery, at 1. However, during the in-chambers post-hearing discussion, Husband's counsel purportedly admitted she had a copy of the private investigator's video "in a box in her garage." Trial Court Opinion, 2/5/2018, at 14. The court concluded Husband's answers to Wife's interrogatories constituted "obfuscation." Trial Court Opinion, 3/7/2018, at 4.

Our review of the record, and particularly the transcript from the October 5, 2017, hearing and the digital audio recording of that hearing, reveals no basis for the trial court's sudden decision to terminate the hearing. Although Husband did provide a lurid description of what he alleged was recorded on the private investigator's video, and a conversation he allegedly had with Wife about her sexual escapades, the trial court did not provide Husband with any warning that his testimony had crossed a line. Moreover, the court had previously permitted Wife to read a series of disturbing

comments Husband had allegedly posted on social media about Wife *before* the MSA was executed. **See** N.T., 10/5/2017 (before recess), at 19-25. Therefore, its perception that Husband's testimony constituted an attack on Wife, while permitting Wife to attack Husband's character, is a mischaracterization of the proceedings.

The trial court's opinion appears to sanction Husband for a discovery violation. While a trial court has the authority to impose a discovery sanction under the Rules of Civil Procedure,⁸ here, it is important to recognize that Wife's interrogatories requested information regarding "the video" without explicitly stating which of the two videos at issue - the private investigator's video or the edited You Tube video - she was referring. [Wife's] Request for Discovery, 7/26/2017, at 1. Accordingly, Husband's counseled objection was appropriate. Wife could have, but did not, file an amended, more specific discovery request.

More importantly, while the court was clearly frustrated by what it considered to be legal gamesmanship regarding the video, it ultimately determined that Wife did not prove "the November 2014 YouTube video was a breach" of the MSA. Trial Court Opinion, 2/5/2018, at 19. Therefore, the fact that counsel may have had a copy of the original video (not the edited

⁸ **See** Pa.R.C.P. 4019(a)(1) ("The court may, on motion, make an appropriate order if[,] a party fails to serve answers, sufficient answers or objections to written interrogatories"). **See also** Pa.R.C.P. 4019(c) (listing actions the court may take upon a violation of subsection (a)).

You Tube version) in her garage is of no moment. The court's frustration with counsel should not have been used to prejudice Husband.

Here, the only breach the court sanctioned Husband for was the letter he purportedly sent to Wife with a picture from the adoption proceedings. **See** Trial Court Opinion, 2/5/2018, at 17-18. The trial court found that "the opportunity for this letter to get to Wife in this fashion with this specific detail is only with a finite number of people – Husband and his attorney." **Id.** at 18. However, the court made this determination without permitting Husband to complete his testimony or present any evidence or witnesses in his defense. Although the court justified its action, in part, by commenting that Husband's current defenses were not pled or revealed before the October 5th hearing, the court did not discontinue the hearing for that reason. **See** Trial Court Opinion, 3/7/2018, at 5. Again, our review of both the transcript of the October 5, 2017, hearing and the digital audio recording, reveals no basis for the court's abrupt termination of Husband's case. Moreover, the court has provided no legitimate reason for its failure to reschedule the hearing. Accordingly, we are compelled to conclude Husband's due process rights were violated, and he is entitled to a new hearing on Wife's claim that he breached the MSA.

In his second issue, Husband argues the trial court abused its discretion when it denied his motion for recusal. We agree.

Our review of a trial court's denial of a motion for recusal is well-settled:

We review the trial court's denial of the recusal motion for abuse of discretion. **Goodheart v. Casey**, 523 Pa. 188, 565 A.2d 757, 763 (1989). The trial court must conduct a two tiered analysis:

First, whether the Justice would have a personal bias or interest which would preclude an impartial review. This is a personal and unreviewable decision that only the jurist can make. Second, whether his participation in the matter would give the appearance of impropriety. [T]o perform its high function in the best way, justice must satisfy the appearance of justice.

Id. at 764 (internal quotation marks omitted).

Becker v. M.S. Reilly, Inc., 123 A.3d 776, 778 (Pa. Super. 2015). "Where a jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overruled on appeal but for an abuse of discretion." **Overland Enter., Inc. v. Gladstone Partners, LP**, 950 A.2d 1015, 1021 (Pa. Super. 2008).

In order to prevail on a recusal motion, the party seeking recusal must "produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." **In re A.D.**, 93 A.3d 888, 892 (Pa. Super. 2014) (citation omitted). It is important to bear in mind:

The inquiry is not whether a jurist was in fact biased against a party, but whether, even if actual bias or prejudice is lacking, the conduct or statement of the court raises "an appearance of impropriety." The rule is simply that "disqualification of a judge is mandated whenever 'a significant minority of the lay community could reasonably question the court's impartiality.'"

Commonwealth v. Stevenson, 829 A.2d 701, 705 (Pa. Super. 2003) (citations omitted).

Husband sought the trial court's recusal after the court forcefully terminated the proceedings during his testimony, and declined to reschedule the hearing before entering judgment for Wife. Husband encouraged this

Court to listen to the audio recording of the hearing in order to fully grasp the court's hostility toward Husband and his counsel, which we did. **See** Husband's Brief at 32-33. Moreover, Husband contends the court exhibited animosity towards him and his counsel throughout the proceedings, ignored facts of record, and prejudged his defense before he presented it. **See id.** at 36-41.

Upon our review of the record in the present case, we agree the trial court's abrupt termination of the hearing, and its subsequent comments regarding Husband and his counsel, raise an appearance of bias. While the transcript of the hearing is disconcerting - particularly since it does not appear Husband or his counsel was warned of any impropriety prior to the termination of the hearing - our review of the audio recording confirms the hostility of which Husband complains. Further, the court spent more than two pages of its February 5, 2018, opinion, listing malicious actions Husband had previously admitted to having taken against Wife in filings from 2010 and 2011, which were completely irrelevant to the alleged breach of the October 2014 MSA. **See** Trial Court Opinion, 2/5/2018, at 4-6. Moreover, after permitting Wife to read into the record social media posts Husband purportedly made about her prior to the execution of the MSA,⁹ the court chastised Husband for describing the encounter on the private investigator's video "in lurid detail, maligning and casting further aspersions against Wife that were not [pled] and had no

⁹ **See** N.T., 10/5/2017 (before recess), at 19-25.

relevance to this post-divorce action, which he would not refrain himself from presenting.” *Id.* at 14 (footnote omitted). Furthermore, the court characterized Husband as having exhibited a “pattern of dishonesty throughout the pleadings and testimony,” which “coupled with [his] disingenuous and dilatory responses with the discovery requests, support[ed its] finding that further proceedings would be a waste of judicial time.” *Id.* at 19.

However, while the court criticized Husband’s purported failure to comply with discovery requests, we must emphasize that Husband **did respond** to Wife’s request for interrogatories, albeit in the form of an objection. Moreover, as noted previously, Wife’s request for information concerning “the video” was not specific, as there were two videos at issue. This is not a case where Husband failed to respond at all to Wife’s discovery requests or ignored a court’s direct order to provide a more specific response. Therefore, the court’s hostility toward Husband based upon his discovery responses is unjustified.¹⁰

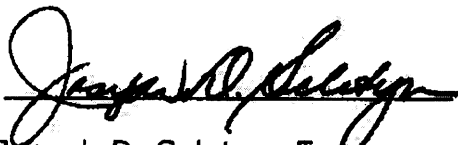
Accordingly, despite the trial court’s assurance that it harbored no animus toward Husband, we conclude upon review of the record before us

¹⁰ It merits mention that the court relied **exclusively** on concerns involving the supposed “video” discovery violation in its November 6, 2017, order granting Wife relief. It was not until the court issued its Rule 1925(a) opinion that it clarified it was granting relief only on Wife’s claim that Husband sent her the adoption photo in October of 2016.

that the court's comments regarding Husband and his counsel, as well as its actions during the hearing, were intemperate, and raise an appearance of bias. Therefore, we conclude the court abused its discretion when it denied Husband's motion for recusal, vacate the judgment entered in favor of Wife, and remand this case for a new hearing before a different trial judge.¹¹

Judgment vacated. Case remanded for a hearing before another trial judge. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/16/2019

¹¹ Because we conclude Husband is entitled to a new hearing, we need not address his final claim that Wife failed to state a cause of action for breach of the MSA.

EXHIBIT 6

Commonwealth v. D'Andre Moore Audio of
1/15/2019

See Flash Drive

EXHIBIT 6

Commonwealth v. D'Andre Moore Audio of
1/15/2019

See Flash Drive

EXHIBIT 7

EXHIBIT 7

1203

COMMONWEALTH : IN THE COURT OF COMMON PLEAS OF
 : CUMBERLAND COUNTY, PENNSYLVANIA
 : THE NINTH JUDICIAL DISTRICT
 :
 v : CP-21-CR-2521-2018
 : CHARGES: (2) UNLAWFUL RESTRAINT
 : (3) SIMPLE ASSAULT
 D'ANDRE MAURICE MOORE : AFFIANT: SGT. BRYAN L. RUTH
 OTN: X2054592

IN RE: SENTENCING PROCEEDINGS

Proceedings held before the HONORABLE
 THOMAS A. PLACEY, C.P.J., Cumberland County
 Courthouse, Carlisle, Pennsylvania, on
 January 15, 2019, in Courtroom Number 4.

APPEARANCES:

Michelle H. Sibert, Esquire
 Courtney Hair LaRue, Esquire
 Office of the District Attorney
 For the Commonwealth

Sean M. Owen, Esquire
 Office of the Public Defender
 For the Defendant

1 MS. SIBERT: Number 43 on today's list,
2 Commonwealth versus D'Andre Moore at docket 2521-2018.

3 THE COURT: Mr. Owen.

4 MR. OWEN: Good morning, Your Honor.

5 MS. SIBERT: Your Honor, this Defendant is here to
6 be sentenced.

7 THE COURT: Okay.

8 MS. SIBERT: The victim, Madison Hagelgans, is
9 present with her mother. She does not wish to speak. I
10 passed up a restitution request.

11 THE COURT: Which is different from the one that
12 was in the file.

13 MS. SIBERT: I don't think there was anything in
14 the file.

15 THE COURT: Oh, there was. I read the file. See,
16 I come in on the weekends and read these files.

17 MS. SIBERT: Right. There was no restitution in
18 the file. That's not restitution. It is saying there's no
19 restitution.

20 THE COURT: Yes.

21 MS. SIBERT: At the time of the plea I informed --

22 THE COURT: Yes. I'm saying it is different than
23 what is in the file I read over --

24 MS. SIBERT: I informed the Court --

25 THE COURT: Why do you talk over me? Step out of

1 here. Get out. Take him back down to the cell. I will deal
2 with him when I am ready. You, out.

3 MS. SIBERT: Your Honor --

4 THE COURT: Out. Now. Do you not listen? What
5 is the problem with your hearing today? You, out. Out. Hand
6 that file to somebody else.

7 (The judge left the courtroom.)

8 (The judge reentered the courtroom.)

9 THE COURT: Haul her out. She is the first one
10 out of this courtroom. I walk back in here and she is still
11 here. Get her out. Move it, sheriff.

12 MS. SIBERT: I'm sorry, Your Honor.

13 THE COURT: Move it. Quit talking. Lord have
14 mercy. You show me enough disrespect all freakin day long.
15 What is your problem? Get out of here. She does not walk
16 back in this courtroom, sheriff.

17 (A recess was taken.)

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1 AFTER RECESS

2 MS. HAIR LARUE: Number 43, D'Andre Moore, 2521 of
3 2018. And, Your Honor, I do, it looks like, have a copy of
4 the new restitution for Your Honor, if I could pass it
5 forward.

6 THE COURT: I have one.

7 MS. HAIR LARUE: Okay.

8 THE COURT: I have one, but it is different from
9 the one that I looked at over the weekend, is the point I was
10 trying to make.

11 MS. HAIR LARUE: Got it.

12 THE COURT: But somebody was trying to tell me I'm
13 not looking at the right things. I'm like, well, that's what
14 it says, restitution form right across the top. So I have to
15 redo what I looked at over the weekend, is all it means.
16 Now, I don't have my order from last week in the file. Does
17 anybody?

18 MR. OWEN: I do have a copy of it, Your Honor.

19 THE COURT: Okay. If you will hand that up to me.
20 Thank you. I needed to get the calculations so I can put it
21 in the order here. Anything else, Mr. Owen?

22 MR. OWEN: Not much, Your Honor. As indicated by
23 the order, this was an agreement for an 8 to 23 month
24 sentence, an aggregate of 4 to 11 on each charge.

25 THE COURT: Well, it is 4 to 12.

1 MR. OWEN: 4 to 12, yeah.

2 THE COURT: I misspoke in the order. I looked at
3 that. Okay.

4 MR. OWEN: Mr. Moore had no prior record before
5 this incident. The agreement was in part because of the
6 dismissal of the strangulation. I just ask Your Honor impose
7 the agreed-upon sentence with work release and reentry.

8 THE COURT: Right. And I'm going to do that.
9 The question that I am going to ask the Commonwealth -- and I
10 don't know that you are going to be able to ask that --
11 normally I say no contact.

12 MS. HAIR LARUE: Your Honor, I believe no contact
13 would be appropriate. The victim is present but does not wish
14 to make a statement to the Court but she does not want to have
15 any contact with him.

16 THE COURT: Okay. That will be done.

17 MS. HAIR LARUE: Thank you.

18 THE COURT: And I will apologize to you now, but I
19 don't know how to pronounce your last name. So I'm going to
20 butcher it so just forgive me. Thank you. Mr. Moore,
21 anything you need to say?

22 THE DEFENDANT: I just want to apologize for the
23 whole situation. You know, I feel really wrong for what I did
24 because I sat and had some time to think about it and nobody
25 should put their hands on anybody, no matter the circumstances

1 or no matter the situation that occurred, you know, prior to
2 all of this, and I just wanted to tell her -- I know I can't
3 direct it towards her because there is a no-contact order, but
4 as she is listening, I do want to apologize to her for the
5 whole situation. That's all.

6 THE COURT: Your apology is noted.

7 MR. OWEN: And, Your Honor, just a footnote,
8 Mr. Moore has credit from September 11th of 2018.

9 MS. HAIR LARUE: Correct.

10 THE COURT: We will do this order:

11 AND NOW, this 15th day of January, 2019, Defendant
12 appearing together with counsel in open court for sentencing,
13 and having reviewed the sentencing guidelines, the sentences
14 are as follows:

15 On Count 2, Unlawful Restraint, that indicates a
16 prior record score of 0, offense gravity score of 3, and
17 offense level of 2, the sentence is:

18 1. Defendant is to serve a term of confinement
19 of not less than 4 months nor more than 12 months in the
20 County Prison. Credit is to be given for time served from
21 September 11th, 2018. Defendant is authorized for reentry
22 plan if otherwise eligible. Defendant is authorized for work
23 release if otherwise eligible.

24 2. Defendant is to have no contact, direct or
25 indirect, with the victim.

1 3. Defendant is to pay restitution in the amount
2 of \$774 to Madison Hagelgans, and is directed to register and
3 fully cooperate in an ability-to-pay assessment.

4 4. Defendant is to follow and abide by the
5 written conditions of parole as adopted by the Court.
6 Further, Defendant is to obtain any evaluations deemed
7 necessary by Probation and comply with any recommended
8 treatment.

9 5. Defendant is to complete 24 hours of
10 community service, a minimum of 4 hours per month reported
11 monthly to Probation. Hour for hour credit may be given by
12 Probation for attendance at AA/NA or other similar type
13 treatment recovery meetings.

14 6. Lastly, Defendant is to pay the costs of
15 prosecution, all payments to be made to the Cumberland County
16 Clerk of Courts.

17 At Count 3, that indicates a prior record score
18 of 0, offense gravity score of 3, and offense level of 2, the
19 sentence is:

20 1. Defendant is to serve a consecutive term of
21 confinement of not less than 4 months nor more than 11 months
22 in the County Prison. Defendant is authorized for reentry
23 program if otherwise eligible. Work release is authorized if
24 otherwise eligible.

25 2. Defendant is to have no contact, direct or

1 indirect, with the victim.

2 3. Defendant is to follow and abide by the
3 written conditions of parole as adopted by the Court, and
4 comply with the previously imposed specific conditions.

5 4. Defendant is to complete 24 hours of
6 community service, a minimum of 4 hours per month reported
7 monthly to Probation. Hour for hour credit may be given by
8 Probation for attendance at AA/NA or similar type treatment
9 recovery meetings.

10 5. Lastly, Defendant is to pay the costs of
11 prosecution, all payments to be made to the Cumberland County
12 Clerk of Courts.

13 THE COURT: Anything I missed?

14 MR. OWEN: No, Your Honor.

15 THE COURT: You will go over any post-sentence
16 rights he needs?

17 MR. OWEN: Yes, Your Honor.

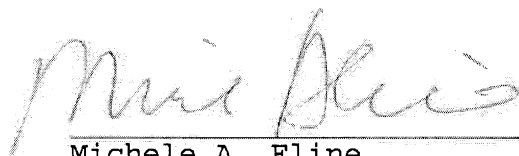
18 THE COURT: Defendant is to stand committed. Sit
19 fast, folks. Let them clear.

20 (The proceedings concluded at 10:10 a.m.)

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CERTIFICATION

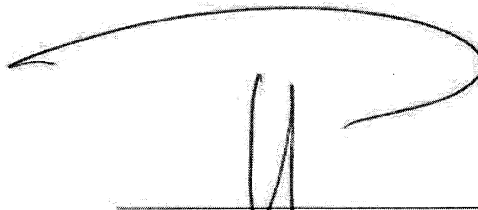
I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the above cause, and that this is a correct transcript of same.



Michele A. Eline
Official Court Reporter

The foregoing record of the proceedings on the hearing of the within matter is hereby approved and directed to be filed.

15 July 19
Date



Thomas A. Placey, C.P.J.
Ninth Judicial District

EXHIBIT 8

EXHIBIT 8

'You, out!' Judge rages at prosecutor, evicts her from courtroom

Updated Jan 15, 2019;
Posted Jan 15, 2019



Cumberland County Judge Thomas A. Placey

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By **Matt Miller** | mmiller@pennlive.com

The mood in a Cumberland County courtroom rapidly changed from calm and quiet to loud and tense Tuesday morning when the judge began shouting at a prosecutor and then evicted her.



Placey about the restitution.

The explosion came as both the judge and the DA spoke at the same time regarding the restitution matter.

“Don’t talk over me,” Placey said. Sibert kept speaking about the restitution.

“You, out!” the judge shouted. “Hand the (case) file to somebody else.”

Visibly angry, Placey got up, left the bench and went into his nearby office. Sibert didn’t leave, but went to the prosecution table, apparently to brief someone else on the case.

She was still in the courtroom when the judge returned.

“Sheriff, get her out of my courtroom now,” Placey yelled, pointing at Sibert.

“I’m sorry, your honor,” Sibert said.

“You show me enough disrespect all day long,” Placey shot back. “What is your problem?”

“She does not walk back into this courtroom, sheriff,” he said as Sibert left.

Calm soon returned and within moments Placey was counseling another defendant to “please, stay sober” as he sentenced him in an alcohol-related domestic violence case.

The case Sibert had called eventually was handled by another prosecutor, Courtney Hair Larue. Under a plea agreement, Placey sentenced that man, D’Andre Moore, 29, of

EXHIBIT 9

Gnazzo v. Gnazzo Audio of 8/8/2018 Hearing

See Flash Drive

EXHIBIT 9

Gnazzo v. Gnazzo Audio of 8/8/2018 Hearing

See Flash Drive

EXHIBIT 10

EXHIBIT 10

LUCY M. GNAZZO and PAUL M. GNAZZO : IN THE COURT OF COMMON PLEAS
: CUMBERLAND COUNTY, PENNSYLVANIA
: VS : NO. 2017-07655
: LUCY A. GNAZZO and BRANDON R. SHORTER : CIVIL ACTION - CUSTODY

TRANSCRIPT OF PROCEEDINGS

Proceedings held before the

HONORABLE THOMAS A. PLACEY C.P.J.

Cumberland County Courthouse, Carlisle, Pennsylvania

On Wednesday, August 08, 2018

In Courtroom No. 6

APPEARANCES:

Melissa P. Greevy, Esquire

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Lemoyne, Pennsylvania 17043-0109

For the Plaintiffs

Michael S. Travis, Esquire

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For Brandon Shorter

Bret Shaffer, Esquire

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Harrisburg, Pennsylvania 17110

For Lucy A. Gnazzo

Linda Clotfelter, Guardian ad litem

For Lucy A. Gnazzo



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TRANSCRIPT
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Dale E. Sabadish, County Prothonotary

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1 THE COURT: Thank you, Folks. Please be seated.
2 The first thing you should do on behalf of Lucy A. Gnazzo, we
3 have Mr. Shaffer and the Guardian Ad Litem. On behalf of
4 Brandon Shorter we have Mr. Travis.

5 MR. TRAVIS: Correct.

6 THE COURT: If I recall my Order, I do want to
7 review here to see how [REDACTED] is doing in school. Any
8 reports from school I would like to see them as well as other
9 issues that may have cropped up. So let's start in that
10 order. Ms. Greevy, what are you claiming on enlightening me
11 on today?

12 MS. GREEVY: Yes. We have Ms. Piastrelli
13 available by phone.

14 THE COURT: How about that? Ms. Piastrelli is
15 available by telephone and is expecting the courts's call
16 specifically to address the language that was in the Order in
17 the paragraph that addressed, rescheduling the hearing date
18 for today.

19 In addition, we have, in our exhibits, his report
20 card. And, there will be testimony regarding your
21 recommendations for what will be beneficial to [REDACTED] over
22 this summer.

23 THE COURT: Anything else besides that?

24 MS. GREEVY: Beyond that, for the school issue we
25 will have testimony from the Gnazzos and Mr. Travis' witnesses

1 on cross.

2 THE COURT: Well, I am trying to not hide the ball
3 here. I meant, to you crossing the witnesses. I am trying to
4 get this out before we go there. So are there some issues the
5 Gnazzos are going to testify to that isn't involving the
6 school?

7 MS. GREEVY: Yes.

8 THE COURT: Had you shared that with Counsel?

9 MS. GREEVY: He is well aware.

10 THE COURT: There are multiple accounts that I
11 heard.

12 MS. GREEVY: Yes. They are well aware, including
13 the guardian ad litem.

14 THE COURT: That's what I want to know. Okay.
15 All right. Let's go down to the others. Mr. Travis, do you
16 have some claim of witnesses? Just so I can know.

17 MR. TRAVIS: Just Mr. Shorter, Your Honor.

18 THE COURT: Okay.

19 MR. SHAFFER: Responsive testimony. We are not
20 going to assert any more issues.

21 THE COURT: First thing, we should probably do is
22 get this principal or teacher or whatever title he or she is,
23 get that testimony over and done with. If you want to set the
24 phone up for us. The problem is going to be, they are not
25 going to be able to hear me. So if you want to talk to this

1 person, you are going to have to come to the bar and use the
2 speaker phone. I will be able to hear them. The phone just
3 doesn't work well on the other end in the other direction.

4 Q It seems we are experiencing some technical
5 difficulties.

6 THE COURT: Why should today be any different from
7 the other days?

8 MS. GREEVY: Especially, since I talked to her
9 this morning.

10 THE COURT: What do you want to do? Do you have
11 another number? Another, do you have another e-mail? Text?
12 Something you can communicate with? And then we will pick up
13 other witnesses, and we can go from there.

14 THE WITNESS: Hello.

15 THE COURT: That works. Can you hear us?

16 THE WITNESS: I can hear you.

17 MS. GREEVY: Excellent. This is Melissa Greevy.
18 And I am counsel for the Gnazzos.

19 THE WITNESS: Yes.

20 MS. GREEVY: And you are on a speakerphone in the
21 courtroom with Judge Placey today.

22 THE WITNESS: Okay.

23 MS. GREEVY: And we have counsel for Mr. Shorter
24 here and counsel for Lucille A. Gnazzo, [REDACTED]'s mother, and
25 her guardian ad litem. And so we have some questions we

1 wanted to ask --

2 THE COURT: Before we want to do that, let's get
3 her sworn in. I want to make sure my court reporter can hear
4 and take all down everything she says. So, Stephanie, I am
5 looking for an eye sign. Okay. Swear her in, James.

6 Jillian Piastrelli,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 THE COURT: Introduction, please.

10 EXAMINATION BY MS. GREEVY:

11 Q Could you tell us your name for the record?

12 A Sure. Jill Piastrelli.

13 Q Where are you employed?

14 A West Shore School District at Newberry Elementary
15 School.

16 Q In the course of your employment there, what is your
17 job title?

18 A I am a kindergarten teacher here.

19 Q And in that role, have you come to know a student by
20 the name of [REDACTED] Shorter?

21 A Yes, I have.

22 Q So you may recall that you testified before this
23 court on February 15th, 2018?

24 A Yes, I did.

25 Q And what we wanted to inquire with you about today

1 is a timeframe from that date through the end of the 2017/2018
2 Academic Year.

3 A Okay.

4 Q So the Court, specifically, asked for input from the
5 District regarding parental action to step up and be more
6 aware of [REDACTED]'s school needs. So that's a lot of what our
7 questions will focus on today.

8 A Okay.

9 Q For example, I believe you last testified about a
10 reading calendar and the family participation?

11 A Yes, I did.

12 Q And how did that go after February 15th with Lucille
13 A. Gnazzo and her participation?

14 A As far as I know, Lucille A. Gnazzo did not
15 participate in the family reading calendar. It was Mr. and
16 Mrs. Gnazzo that filled out the reading calendar. And Brandon
17 did not complete the reading calendar at all. Although, it
18 was sent home. A separate one was sent home to his household.

19 Q So the District sent two different sets?

20 A I did, yes. I made sure that two sets of paperwork
21 for everything was sent home. One to the Shorter household
22 and one to the Gnazzo household. And I labeled it with their
23 last name.

24 Q Okay. What about parental communications? Were
25 there any interactions that you had around that with

1 Lucille A. Gnazzo?

2 A Lucy would often e-mail me, you know, asking
3 different questions for things but she just specifically
4 e-mailed me. Is that what you are asking?

5 Q Yes. Did you hear me?

6 A Or there are some different things that I wanted to
7 share regarding this. Okay? One thing that we had discussed
8 last time were the different types of communication that I
9 provide for my parents so that they can be involved parents.
10 Last time that I had testified I, specifically, told everyone
11 that just because parents cannot come to school that does not
12 make them an uninvolved parent.

13 However, I provide different means of communication.
14 For example, "Remind" is an app that parents can sign up for
15 to allow me to send text messages to remind parents to send
16 their children wearing sneakers or bring library books to
17 school or to remind them that we are having a book fair.

18 There is an app called Seesaw, that allows parents to
19 see their children's work. Ms. Pines the, KAP teacher, often
20 used that one. So with regards to that, Lucy A. Gnazzo had
21 contacted me in an e-mail and she was asking me how to set up
22 the Remind account. It was at the end of March. It was
23 specifically on March 27th.

24 And I gave her directions on how to do that. And so
25 she had signed herself up and Brandon to do that. Even with

1 her limited abilities she signed Brandon up for that. He
2 didn't take the initiative to do that for himself, she did
3 that for him.

4 Q Did the Gnazzos sign up for any of these apps?

5 A They had already been signed up. As I testified
6 earlier, they had signed up for everything. They were on
7 Remind, they were on Seesaw, they contacted me through e-mail,
8 they came in and speak to me.

9 So I've only had contact with Lucy A. Gnazzo through
10 e-mails. And then, as the school year progressed, my contact
11 with her became less and less until it became nonexistent at
12 all. Between the last 4 to 6 weeks of school, I never saw her
13 at all. I never saw her at all. She stopped coming to school
14 when Paul would bring [REDACTED] to school. She just wasn't
15 there.

16 Q Okay. Was there voluntary participation from
17 Vinny's parents at the school?

18 A Absolutely.

19 Q Who do you mean?

20 A Ms. Gnazzo. Okay. The grandmother would come to
21 the parties. She came to Field Day and participated. Again,
22 I had tried to help Lucille A. Gnazzo sign up to be a
23 volunteer at school because you have to get the clearances
24 that are needed and it's quite a process.

25 I gave her the link. I gave her specific directions

1 but she needed more help. And there were several occasions,
2 at least four occasions, that I had talked to Paul or Lucy
3 Marie about that she needed help. And they were aware of that
4 but each time when I approached the subject, they told me the
5 same thing, that she did not want their help.

6 So she was unable to obtain her clearances to come in
7 and help because she refused their help.

8 Q What about [REDACTED]'s reading? How did his reading
9 progress from February until the end of the school year?

10 A In February, I think, we had discussed that in our
11 District, one of the tools that we use to assess is called a,
12 Developmental Reading Assessment. And what that does is
13 assess a child's independent reading level and their
14 instructional reading level. So there are books that each
15 child reads and that we mark off. What words they're able to
16 read, what words they miss, and come up with a score.

17 At the end of kindergarten, the children are able to
18 read DRA Level 4, which [REDACTED] was able to obtain.

19 Q And remind us where he was at the beginning of the
20 school year.

21 A At the beginning of the school year, we gave the
22 DIBEL Test and he had scored a 0 on that. And he wasn't even
23 scoring any prereading skills.

24 Q And so -- Go ahead.

25 A He had come such a long way but he needed not only

1 my help, but he had the extra help with the KAP Teacher. He
2 was in our extended day reading program.

3 Q That's what KAP is? The extended day?

4 A Yes. It stands for Kindergarten Acceleration
5 Program.

6 Q Is he ready for first grade?

7 A Yes. And with that said, I gave Paul and Lucy
8 suggestions for things that they could do over the summer
9 because of the amount of instruction that [REDACTED] needed to be
10 successful over the school year. Excuse me.

11 The amount of instruction that he needed to be
12 successful in the school year, children also slide back and
13 they lose ground. Especially, when they are off for three
14 months.

15 So I gave them a list of things they can do with
16 [REDACTED] to help keep him engaged in the summer. Tutoring was
17 one of the things I suggested.

18 Q What form did your recommendations or suggestions
19 take?

20 A I e-mailed the Gnazzos, Mr. and Mrs. Gnazzo, and
21 Lucille A. Gnazzo and Brandon with the suggestions. I believe
22 that was at the end of May, May 31st, I think, it was.

23 Q Have you had a chance to review that e-mail?

24 A Yes. I have it in front of me.

25 MS. GREEVY: I am going to introduce the exhibit

1 here. It's premarked as Plaintiff's Exhibit 40.

2 Q And can you tell us what you suggested in e-mail
3 that might be useful for [REDACTED] through the summer? In terms
4 of interventions that the parents or grandparents could do
5 with him?

6 A So one of the first things that I suggested was that
7 everyone continue to read with him because, of course, reading
8 is extremely important. And I gave them some statistics about
9 why reading is important. And because he was doing well with
10 kindergarten sight words and had almost all of them mastered,
11 I gave them the first grade sight words to start working on
12 and then suggested, if they wanted any ideas, you know, games
13 and things they could work on, they can go on Pinterest to
14 find things.

15 I absolutely encouraged them to have individualized
16 tutoring for [REDACTED]. Ms. Pines, the KAP teacher, was willing
17 to tutor him one-on-one, one to two times a week during the
18 summertime. I suggested West Shore Recreation Commission, The
19 Rec Board, they have wonderful summer camps. And I sent home
20 a West Shore Rec booklet and provided the website in the
21 e-mail. And I went through the booklet and picked out summer
22 camps that would be appropriate for [REDACTED], such as youth
23 swim lessons, et cetera. One is called, "Make It, Take It
24 Home Science Camp," "Can You Dig It Dinosaur Fossil Hunt."
25 And one for video game design.

1 Q Okay.

2 A And I had also suggested Redlands Community Library,
3 that was a free activity. They have a wonderful summer
4 program called, Summer Quest, and they have different
5 activities like musicians come and magicians are there. They
6 have Froggy, who is the character from Jonathan London's book.
7 They have prizes, they have different LEGO builds that you can
8 do. And they were all things [REDACTED] would like to do and
9 everything that had revolved around Redlands Community is
10 free.

11 Q Did you hear back from anyone in response to your
12 e-mail?

13 A Lucy A. Gnazzo sent back an e-mail that said, "Thank
14 you," with the letter N, "enjoy your summer too." And the
15 Gnazzo's wrote me a lovely letter thanking me for all of the
16 ideas.

17 Q Did you hear from Mr. Shorter?

18 A No, I haven't heard from Mr. Shorter at all since
19 February.

20 Q Is part of the DRA, that you described earlier, an
21 interview with the child about his reading experiences?

22 A Yes, it's called the Reading Engagement Part. And
23 one of the questions is, who reads with you at home? And
24 they, the children, you know, have to tell who reads with them
25 at home and [REDACTED] answered this question.

1 When I had testified in February, we did the first DRA
2 in February and he answered it the exact same way. Mimi and
3 Pop Pop read to him, that his mom reads to him, and when I
4 pressed for more. Does Daddy read to yo,u? No. Sometimes?
5 No. Well, how about Jess? Does Jess read to you? No. Not
6 ever? Never. That was his response.

7 Q During the times since February were there any
8 behaviors you observed, which would cause you concern about
9 their presence at an activity in terms of the parent's
10 presence?

11 A There seemed to be quite a lot of instability going
12 on in the Shorter household for a time. Brandon and Lucy were
13 not together -- I'm sorry. Brandon and Jess were not together
14 and at one point in time Lucy A. Gnazzo was telling me that
15 Jess had moved out of the house and [REDACTED] overheard her and
16 he said, yup, that's right. My dad kicked her to the curb.

17 Q Were there times --

18 A Go ahead. There are more. He often spoke about how
19 he --

20 MR. TRAVIS: Your Honor. Objection. Your Honor.

21 THE WITNESS: -- first grade lunch. Because he
22 was able to pick his own lunch.

23 THE COURT: Pause for a moment for me, please.

24 MR. TRAVIS: I'd like to object to that statement.

25 THE COURT: You can stop. I can rule on that

1 objection. I am very well capable, that is hearsay.

2 MR. TRAVIS: Yes.

3 Q We are going to change the question now,
4 Ms. Piastrelli?

5 A Sure.

6 Q Were there times when you were concerned about his
7 behavior in the classroom that you had observed?

8 A I could tell [REDACTED] had spent the weekend with dad
9 as opposed to the weekend at Mimi and Pop Pop's house.

10 Q What behaviors were you seeing that made you think
11 that?

12 A The behaviors reminded me of the same behaviors that
13 he had when he first came at the beginning of the school year.
14 It was more difficult to get him to settle down. He didn't
15 want to listen. He would have to have a timeout. Where we
16 went for a very long amount of time where he didn't need to
17 have any timeout.

18 And, again, as we got closer to the end of the school
19 year the behaviors were increasing, same type of thing.

20 [REDACTED] just didn't want to listen. I had to repeat myself
21 multiple times, more timeouts.

22 Q What types of topics or behaviors that you were
23 seeing required this kind of limit setting other than, not
24 listening?

25 A I hate sounding like a broken record but it was

1 basically the same types of things that we've talked about all
2 year, about things we weren't allowed to discuss. We are not
3 supposed to be talking about killing. We are not supposed to
4 be talking about video games. Just certain kind of language
5 you are not supposed to be using, being unkind.

6 Q How did he respond, generally, to the classroom
7 structure?

8 A [REDACTED] responds very well to structure and
9 authority. So I really had no problem with him but he does
10 need that consistency.

11 Q Thank you.

12 MS. GREEVY: I am going to let you listen -- pause
13 for a moment while you have questions from Mr. Shorter's
14 attorney, Mr. Travis.

15 MR. TRAVIS: No questions, Your Honor.

16 THE WITNESS: Okay.

17 MS. GREEVY: He has no questions. So I am going
18 to offer to Mr. Shaffer.

19 MR. SHAFFER: No questions.

20 MS. GREEVY: The Court has no questions?

21 THE COURT: No.

22 Ms. Greevy: So you can be done with this phone
23 call. And we thank you for your time.

24 THE WITNESS: Thank you.

25 MS. GREEVY: We also have --

1 THE COURT: Just let us hang up.

2 MS. GREEVY: On the educational topic, we also
3 have his -- a report card that was shared with counsel prior
4 to today. And we wonder whether they would like to stipulate
5 to the report card as an objection?

6 MR. SHAFFER: No objection.

7 MR. TRAVIS: No objection.

8 MS. GREEVY: That was Exhibit Number 41. We
9 provided the court reporter with a chart that tracks all this
10 and the number of pages of each of the exhibits. This --

11 THE COURT: Just give her a second. You have to
12 pause. See what she is doing? She is marking things.

13 MS. GREEVY: It's a two-page exhibit. This is the
14 second page of that. So now, we will call Lucy M. Gnazzo as a
15 witness.

16 LUCY M. GNAZZO

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: I do.

20 THE CLERK: You may have a seat.

21 THE COURT: Look at your attorney and tell us your
22 name.

23 THE WITNESS: Lucy M. Gnazzo.

24 THE COURT: Go ahead.

25 EXAMINATION BY MS. GREEVY:

1 Q You are the -- one of the plaintiffs in this matter,
2 correct?

3 A Yes.

4 Q And [REDACTED] Shorter's maternal grandmother?

5 A Yes.

6 Q So have you read the Order that was issued after the
7 last hearing?

8 A Um-hum.

9 Q What was your understanding of what the Court wanted
10 you, your husband, your daughter, Lucy A. Gnazzo, and Mr.
11 Shorter to do in terms of co-parenting?

12 A To be a team and put [REDACTED]'s interest first and
13 paramount. To work together communicating with one another,
14 whether it was regarding education or family or scheduling or
15 holidays. Just to work as a team and to really engage in a
16 child-centered, child-focused strategy. To help [REDACTED] and
17 set him up to be successful in life. And to also, make sure
18 that we tried to avoid conflict as much as possible, not
19 putting him in a position among each other and not to be
20 obstructionists.

21 Q So you had an opportunity then to read the Order
22 that the court issued?

23 A Yes.

24 MS. GREEVY: Your Honor, may I approach?

25 THE COURT: No.

1 MS. GREEVY: I would like the witness to be able
2 to refer to the Order.

3 THE COURT: I have one sitting right here.

4 MS. GREEVY: I know what you have, Your Honor.

5 THE COURT: Yes. You are not going to approach.
6 Nobody goes near a witness in my courtroom. If you haven't
7 gotten that figured out yet, I will tell you again. Nobody
8 goes near them. I am very protective.

9 MS. GREEVY: That's fine. I just want to make
10 sure that she has this.

11 THE COURT: Why does she need this? I know what
12 it says, I wrote it. What's the problem?

13 MS. GREEVY: I would like to have some testimony
14 about how this Order, as a practical matter, has been
15 implemented by --

16 THE COURT: Ask her those questions. You don't
17 have to -- I am not going through this Order page by page.

18 Q Have there been any problems with the nightly phone
19 calls that were ordered to occur?

20 A Yes. There have been many.

21 Q And how many occasions did you not receive these
22 calls?

23 A Around a dozen.

24 Q What did you do when they did not occur?

25 A Typically, we would try to text or call Brandon, or

1 we would go and talk to Lucy and ask if he she has talked with
2 Brandon, and if we can talk to [REDACTED].

3 Q And what happened when you were initiating the
4 calls?

5 A If we were initiating a call, often times, to
6 Brandon's phone, it would go directly to voicemail. And then,
7 we would try to leave a voicemail. And all year, since last
8 fall, the voicemail has been full. So we couldn't even leave
9 a voicemail.

10 So often times my husband would text him and say, do
11 you want to talk to [REDACTED] tonight? And sometimes, we would
12 get a call back. And sometimes, we wouldn't.

13 Q What do you understand the reason would be that you
14 didn't receive phone calls on those occasions?

15 A Apparently, our number had been blocked, do not
16 call. And in fact, on a screen shot that Brandon sent one
17 night, when there was an altercation or conflict going on at
18 their residence, and we were trying to reach him. He had
19 tried to call my phone and I was on another phone trying to
20 reach Jess. And he said that, it says right across there
21 those words. And also, Lucy has informed us on multiple,
22 multiple occasions that Brandon had had our lines blocked.

23 Q I ask you to look at this document and identify it.

24 MS. GREEVY: This is one-page exhibit marked for
25 identification as No. 43.

1 A Do not answer.

2 Q Can you tell the Court what the exhibit shows?

3 A Sure. This is the evening I was trying to reach
4 Brandon to make sure things were safe at their household. And
5 I tried to call his phone and when he didn't pick up, he had
6 tried to call my phone. But at the time, Paul's phone was in
7 use. And he wanted to show me that he, in fact, did try to
8 call my phone back, and that's his number. The call is, do
9 not answer, and that's been an issue for the past year plus.

10 Q Okay. So in the times that you did receive phone
11 calls?

12 A Yes. And there were. Um-hum.

13 Q Okay. How did the phone calls go?

14 A So we were appreciative when we did receive phone
15 calls. Sometimes they -- well, a lot of times at the very
16 beginning of the court Order, the calls would go to Lucy and
17 we'd have to ask Brandon to call Lucy. And we were told that,
18 we didn't need to call as we weren't the parents, we were only
19 the grandparents. So we could have to then, ask if we can
20 please talk to him.

21 Sometimes, we would get to and sometimes, we wouldn't.
22 And on the occasions that we didn't, we would either try to
23 contact Brandon or we would ask Lucy to please call. If Lucy
24 tried to call Brandon, he would pick up, mostly for her right
25 away. Where maybe I had tried to call and it went right to

1 voicemail.

2 Moving forward. We would also, during that time
3 period, we would get calls and talk to [REDACTED]. And there
4 were a number of occasions where [REDACTED] was extremely upset
5 or he was crying. And he just seemed to be emotionally
6 feeling unstable in particular.

7 And there were issues where Lucy -- we know if she was
8 up there, which that was the time she was staying up there for
9 months. He was being, you know, Lucy would admit that he was
10 upset because he was going to bed hungry. And we would say,
11 why is he going to bed hungry?

12 And that one occasion, Brandon, we heard in the
13 background, telling him to eat what was put in front of him
14 and he didn't know what it was. And this was all going on
15 while we were on the phone with him.

16 And [REDACTED] was extremely upset and he was very hungry
17 and telling us how hungry he was. And we asked Lucy about it
18 and she said, well, he can wait until the next morning and get
19 food. We served slop for dinner and, you know, he didn't know
20 what that was. So things like that occurred.

21 There were times where it was really, good night. I
22 love you. I've gotta go. And when we pushed, what was going
23 on with that? He said, you know, again, that he wanted him to
24 be very short and not talk to us.

25 There was another occasion where he was hysterical and

1 it was on or around July 24th, he called and he said how upset
2 mommy was. And, you know, we were like, why is mommy upset?
3 Because she says you're going to be rude to her when she comes
4 back. Lucy had been staying with Brandon, [REDACTED], [REDACTED], and
5 [REDACTED] for months not coming home. And what occurred at that
6 point was Lucy had been asked to leave again.

7 And that occurred after an initial incident prior, when
8 she was kicked out of the trailer park and her phone was taken
9 by Brandon. This time she went back and she was asked to
10 leave again. And that night, I tried to call because it was
11 chaos going on. Lucy was screaming in the background, crying
12 sobbing.

13 We were concerned what was going up there. Trying to
14 reach Brandon and then, clearly we didn't get him. Then, I
15 tried to reach Jess and another friend that they said was up
16 there. And finally, Jess did pick up the phone and told me
17 that, yes, in fact, things were chaotic. Things were out of
18 control, that Lucy needed to leave.

19 She was putting the food stamps and medical assistance
20 at jeopardy, that Brandon was at work, because he was working
21 nights at this point, and that there was, earlier on during
22 the day, a lot of screaming at the kids. And it was hard to
23 control. Lucy, they couldn't manage her anymore. That it was
24 an unhealthy environment.

25 And the call was very direct that Lucy wasn't taking

1 her medications correctly, that they all threw away the guide,
2 what she used to take her morning and afternoon medication.
3 And I could go on and on. But [REDACTED] redialed his mother's
4 phone to talk to my husband and Paul calmed him down during
5 all of this. While I was on the other phone talking to Jess.

6 Q So it sounds like there was a period of time when
7 Lucy was not living at your house?

8 A Yes.

9 Q And then, she left Brandon, went back?

10 A Yes. That occurred on -- the Court had put after
11 the last time we were together, the Court had put in, based on
12 Lucy's desire to have some independent time away from us. As
13 well as Brandon stating his work schedule was daytime hours,
14 basically, weekends off, that they wanted time with [REDACTED].
15 The Court allowed optional Friday-night visits, for a family
16 activity.

17 And what occurred from the very first week the court
18 Order came out, was Lucy going up to Brandon's, and we were
19 supposed to have saying that, if her health permitted it and
20 if she earned that through parental duties and doing things
21 with [REDACTED]. I was trying to encourage her to do activities
22 with him and to help grow that and nurture that.

23 So from that day forward, Lucy began going up because I
24 said that was Brandon's time and we didn't have a say in it.
25 And, Lucy was never returned home. Even when we tried to

1 contact Brandon multiple times over the days but she did not
2 come home. And that continued, it went from a night, to two
3 nights, to eventually three days.

4 Even when we had [REDACTED] in our care, our custodial
5 time, and Lucy had supervision. She chose to and they chose
6 to have her at that their house. And then, it turned into
7 staying there full time until July 20 -- I believe, it was
8 around July, the 25th. When we got a frantic call from Lucy
9 that Brandon had left her in the middle of the trailer park
10 and taken her phone.

11 And she found her way to a friend's trailer to call us
12 to come get her because all of her belongings, including her
13 laptop, clothing, and everything. And my daughter, her
14 sister, had to go and get her that day.

15 Q Was that July 25th?

16 A Yes.

17 Q Two week ago?

18 A Yes. No. I'm sorry. June. I am getting dates
19 mixed up. June 21st, I want to correct that. June 21st, that
20 he had kicked her out of the trailer park and left her without
21 a phone.

22 Q Okay. And so then she came and lived with you?

23 A Yes. And the next day was the optional Friday
24 visit. And the only way he could take him, according to the
25 court Order, was if Lucy went back. And you had communicated

1 with his counsel that, that based on the incident that
2 occurred, that we would be exercising our custodial weekend --
3 that we were permitted to through Saturday at 5:00, and that
4 she would not be going.

5 No communication to us and he showed up at our house,
6 revving his engine. And I was out with [REDACTED] because we
7 told [REDACTED] that he had another sleep at our house, that
8 gives him comfort knowing how many sleeps, that gives him
9 security and stability.

10 And he was crying, a mess, and I pulled in when I, you
11 know, came from shopping for shoes, I pulled in and they're
12 out waiting. And, Lucy said she was returning up there. They
13 had found a way to communicate without her phone. And that
14 was also the trick that he texted on her phone, you can go
15 fuck yourself, to my husband and I, that was our
16 communication.

17 Q So --

18 A Excuse me for saying that.

19 Q -- how long did she stay up at Brandon's house after
20 June 25th or so?

21 A Yes. So after June 21st, when he kicked her out of
22 the trailer park, then it was, she was up there again until
23 July 27th. It was a Wednesday, I believe, or the 29th.
24 Whatever that Wednesday was. And it was the night before that
25 all the chaos was going on.

1 During the phone call ██████ found a way to redial my
2 husband, so we can calm him down.

3 Q Where is Lucy now?

4 A Lucy is back at our home, thankfully.

5 Q Is she still participating with you and your husband
6 in the counseling that the Court has asked you to continue?

7 A No. She ended that. We participated in, we were in
8 counseling from January through June. When Lucy was staying
9 with Brandon often she would cancel appointments, including
10 family therapy with no notice or communication.

11 And I would reach out to Brandon asking what was going
12 on with Lucy, reminding them about the appointments, and
13 nobody would answer me back. When that was ended, Lucy ended
14 it, and we did not support her ending it.

15 Q Is she still receiving treatment for mental health?

16 A Yes, she is.

17 Q Tell me how the vacation and holiday schedule got
18 handled. That was something the Court had left for the
19 parents and grandparents to work out?

20 A We were very much disappointed about that. We
21 thought we would be able to work that out. The Court asked us
22 to work that out and communicate. For example, Easter, we had
23 communicated again about Easter and we didn't get a response.

24 And then, we had to talk to you because we had extended
25 family and so forth coming for Easter. And we had planned

1 things that were child-centered for [REDACTED] around Easter and
2 no answers. And Lucy kept saying, you know, she didn't want
3 us taking [REDACTED] away from Brandon for Easter, that was his
4 Sunday.

5 So then, you had to get involved with his attorney and
6 got a schedule back for a couple holidays with no detail in
7 them. And clearly, the system wasn't working when we didn't
8 get clear-cut details, unfortunately.

9 So and then, we responded back before Easter and we
10 didn't get a response from Brandon or his counsel. And we
11 went into Easter weekend, it was Good Friday, it was another
12 optional Friday visit. We had plans for [REDACTED] for Friday at
13 school. We were making bunny cake, dyeing eggs, and taking
14 them bowling with our daughter and her brother.

15 And Brandon and Lucy ended up showing up at Trindle
16 Bowl that day, unannounced, no communication with us directly,
17 peeling into the parking lot. Lucy came up to the door and
18 said, we want our son. We are here to get our son. Brandon
19 just wouldn't even talk to me.

20 I asked him to talk to me and he wouldn't. And I said
21 this is no way -- this is not a healthy exchange for a child.

22 Why are you doing this? And he wouldn't look at me.

23 He stared straight out. [REDACTED] was in hysterics
24 crying. [REDACTED] was hysterical, it was awful. And we were
25 trying to calm him down.

1 I got out with him, I gave him a kiss. We were going
2 to take him back to our home, get him a snack, and then do a
3 healthy transition. And, then we asked about Easter. Still
4 because it was Good Friday and we had extended family coming,
5 expecting to see him and, no answer.

6 No answer about Easter or anything. Lucy took off for
7 the weekend with him. He peeled out of the parking lot,
8 squealed the tires, ran the stop sign, peeled out on to
9 Trindle Road in front of the bowling alley with my grandson
10 and daughter in the car.

11 The other few kids were mortified and scared. And we
12 were distraught because [REDACTED] was so upset. Once again, an
13 unhealthy exchange, which became a pattern on a number of
14 occasions. I can give other examples.

15 Q Can you give any concerns that you may have had
16 about the adequacy and supervision that [REDACTED] has received
17 at Brandon's home?

18 A Absolutely. So, you know, Brandon, I should say,
19 pleasantly surprised me when we were coming back from
20 vacation. We went on vacation -- I want to add, was also, he
21 had said that he couldn't go on vacation initially. He said
22 that was an issue. We had to work it out with the lawyers.

23 And so the night we got back from our vacation, Brandon
24 called me that evening and we talked. And, you know, he
25 mentioned that he hadn't had steady work since last fall. So

1 when we were in court, you know, he had been fired from
2 Meineke. And then, had some side jobs, some contracting.

3 Then, he had started Fed Ex apparently, and now, he had
4 a cleaning job. But he called and we had a nice discussion.
5 And I was presently surprised. I was thinking that, I wish we
6 can always talk this way.

7 And he said, he was working nights, so he was bond on
8 the nights, anywhere from he said, like, 7:00 to 8:00 at night
9 to anywhere from 3:00 to 7:00, 8:00 in the morning. And
10 that's when a lot of issues were going on at his household.
11 He said, around Lucy and [REDACTED] and, you know, arguments and,
12 you know, getting -- talking to online people about business,
13 that stuff was going on, you know, through his gaming. And,
14 you know, at that point in time he had wanted her probably to,
15 again, get out.

16 Well, in terms of supervision, that was our concern
17 who was watching [REDACTED]. Brandon had never signed an
18 affidavit with the Court, Jess had never signed one. And we
19 weren't sure who was watching the kids or what was going on.
20 And if he was out of town overnight, who was watching the
21 kids?

22 So we went, for example, July 2nd to pick up [REDACTED]
23 before 4th of July holiday and our vacation. And [REDACTED] was
24 running up the road in the trailer park, you know, nobody was
25 outside with him. And we sat -- we went, [REDACTED] get back

1 here. What are you doing?

2 And then, we sat outside because we were a little
3 early. And ten minutes nobody came out, nobody was with him.
4 We were, like, what are you doing? And, he often would tell
5 all of us that, well, he's allowed to be in the trailer park,
6 at 6 years old by himself.

7 So that night -- finally, Jess came out and she was
8 surprised. Oh, I thought Lucy was out here. None of the
9 adults knew where the other adults were and he was out running
10 up the road in the trailer park by himself.

11 Q When you mentioned the affidavit, are you
12 referencing the affidavit for supervising Lucy?

13 A Yes.

14 Q And that had not occurred?

15 A No.

16 Q And you were concerned about [REDACTED] at the trailer
17 park. Were there other concerns about his safety?

18 A Yes.

19 Q So Lucy -- part of the reason she loved being there
20 as she told us, was all the freedom she had out there. She
21 was able to have alone time with [REDACTED] a lot. She was left
22 with [REDACTED] a lot. She can do activities with him, bathe
23 him, go on walks.

24 And she was driving their car. And Lucy has not been
25 medically cleared to drive and they all knew that. And Lucy

1 has never been medically approved to drive. In fact, we had
2 instructions on what needs to occur if she can even be
3 considered to drive, again. Even though she still has a valid
4 driver's license.

5 So she was driving Brandon's car and she has been
6 driving, not just her self alone in the trailer park with
7 Brandon's car but also with kids in the car. And she has not
8 been medically cleared or gone through a training course for
9 all of us to evaluate if she is safe to drive again.

10 Q Was there was a concern you had for ██████'s safety
11 that you discussed with Brandon?

12 A Yes, there was. So ██████ had been telling us and
13 telling Ms. Pines, who had been tutoring in the summer, all of
14 us, that he was bullied and being shot up with BB guns. And
15 he came to our house, after that occurred two weeks straight,
16 he came to our house with a bruise on his cheek, right under
17 his eye. And he had said that, when he was out in the trailer
18 park with his little friend Memphis and, I think, it was
19 Mason, just a couple of years older, that -- um -- they were
20 shooting him in the privates, in the leg, in his face, missing
21 his eye, and down his arms, and it hurt.

22 And he would also hide under abandoned trailers so he
23 wouldn't get shot and of course, we were concerned. So
24 immediately, it was during the evening, I did a group text to
25 everybody, to the parent's phone numbers. You know, the

1 parent's phone numbers because apparently message was.
2 Apparently, it's him living there with this dad.

3 So we were told they didn't know anything about this
4 incident, didn't know this was even going on. I had pressed
5 for the numbers of the parents so we can call to find out what
6 was going on and to tell them what occurred and to tell them
7 that BB guns could take out an eye.

8 And just continued texting. I didn't need the number.
9 I didn't the name. I just need to know that they had taken
10 care of it.

11 I was happy that night that Brandon did call my phone
12 and he told me that he had dealt with it and that he wasn't
13 going to let the BB gun come out any more when the older kids
14 were around. And that it was handled, not to worry about it.

15 Q Were there other examples of either you and your
16 husband and Lucy A. Gnazzo or you and your husband and Brandon
17 working together in a positive interaction --

18 A Yes.

19 Q -- for [REDACTED]?

20 A Yes. A couple of things come to mind. Tee-ball,
21 that was wonderful. Brandon did sign [REDACTED] up for tee-ball
22 this year.

23 He had a wonderful experience. He loves baseball. He
24 is really good at it and that was great. Also Paul's
25 birthday, Poppy's birthday, this past weekend. It was our

1 custodial time through Saturday at 5:00, that was that
2 alternate Friday weekend.

3 And we had reached out because we wanted to take
4 ████████ to a family fun festival to celebrate Paul's birthday.
5 And you know, he said, sure. He would do that. Also, we on
6 our end, it was our custodial time over one weekend, where we
7 worked together.

8 We were taking ████████ to a Senators game because they
9 were recognizing ████████ and his tee-ball team. And Brandon
10 and Lucy didn't want to go. So they said, go ahead, that's
11 not our thing, get tickets. We did.

12 ████████, you know, prior to that when they realized
13 that it was an optional Friday weekend that we did that, we
14 could have him until Saturday at 5:00. Clearly, they want
15 control. They wanted to come pick him up at 10:00 at night.
16 Well, there was no family activity on their end that night.

17 It was us taking him. So we said, that wasn't good for
18 ████████. How about tomorrow morning? Well, Brandon's father
19 apparently was going to be coming into town and we could have
20 him until 5:00.

21 But we said, no. We were not going to keep him from
22 Brandon's father. So he can see his grandfather. So we said,
23 sure. You can pick ████████ up the next morning. He had a
24 tee-ball game, so we could have done exchange there.

25 So we went to the tee-ball game on that occasion and

1 his dad didn't come up. He wasn't coming until the next day.
2 So we gave away our custody, our custodial time, to try and
3 help. And again, we were trying to work together.

4 Father's Day was another example. It was our entire
5 weekend but we asked. We had Big 33 plans, and tickets. And
6 they have family fun fest area and all of that.

7 We worked through that. And, you know, and offered, do
8 you want to come get him that night? So you can have him all
9 day Father's Day? Or do you want to get him the next morning?
10 And Brandon said, no. Go ahead and take him. We will pick
11 him up the next morning at 9:00.

12 Q What about the recommendations from Ms. Piastrelli
13 that had been sent out to both parents, and you, and your
14 husband? Were you able to work together to have activities
15 recommended by the teacher?

16 A Not at all. That was really heartbreaking for us
17 and [REDACTED]. Summer is such a wonderful opportunity to have
18 children, of course, have fun. You know, and have downtime
19 and playtime.

20 Also, you know, getting the amount and intensity time
21 that we invest in [REDACTED], educationally, to get him where he
22 is today as well as in school. We knew it was vital for him
23 to have tutoring and to stay on par. And, so we had put
24 together a list of things we looked at. Getting [REDACTED] a lot
25 of free time in our household but also to be tutored by

1 Ms. Pines.

2 We were concerned for his safety, for swimming. And
3 we've done swimming lessons in the past. There was also an
4 art camp. [REDACTED] loves art, and it was with a former
5 preschool teacher. We had asked about the half day art camp,
6 it was just a couple of hours one week.

7 And also, two day camps through Siebert Park in Camp
8 Hill. And then, there was a little basketball camp he did
9 last year. Brandon said, no, to the art camp. We even
10 offered that we were happy to support it financially and just
11 do it on our days. And we could work that out.

12 He said, no. Then, when we came back with the bigger
13 list of tutoring, swim lessons, and day camps, he said, what
14 part of, no, don't you understand? Do not enroll my child in
15 anything. However, we did pursue the tutoring and we really
16 believe that is helping.

17 I mean, [REDACTED] is flourishing because of it and we are
18 already working on first grade sight words with him. And I
19 forgot one thing on holidays that really upset me. And I
20 would love to go back to. If that's okay?

21 Q We are going to move on. We have a lot to cover
22 today in a short period of time. During the time that you are
23 in the home when Lucy A. Gnazzo has been living with you?

24 A Yes.

25 Q How has she been doing with carrying out parental

1 duties?

2 A Sadly, she doesn't carry out many parental duties,
3 even with our encouragement. And sadly, she is gone for the
4 majority of the time when [REDACTED] was in our home. However,
5 we do encourage. I mean we encourage, going out, swimming,
6 reading but sadly nonexistent.

7 Q How has she been when she returned to your home most
8 recently?

9 A Again, it been really tough. We love Lucy very much
10 and we understand that she is having a tough transition. She
11 has been severely depressed. She was in her room and in bed
12 for days not eating, detached, not involved with [REDACTED].

13 Using very colorful language, that is inappropriate.
14 Undermining our restrictions around a particular video game
15 and violent video games, that he has played or is allowed to
16 play. In which she, the dad, Jess, and a friend that comes in
17 and out. And that involved killing.

18 And often times it's very difficult because we have
19 limits on tablet time, on devices, and we prohibit violence in
20 the house for [REDACTED]. And she encourages it sometimes, oh,
21 you can play that at Daddy's. And even last week when he came
22 back because Lucy was so depressed and a mess from, it was,
23 like, a break up all over again with him, with Brandon.

24 She and Brandon had arranged to do online gaming with
25 [REDACTED] for Fortnite, which is a teen violence rated game,

1 that he shouldn't be involved in. And [REDACTED] got extremely
2 upset, had a meltdown, took his rage, you know, and emotions
3 were all on me because we weren't permitting it. And so then,
4 he called Brandon on the phone, trying to get Brandon to calm
5 him down. And they wanted to do these games, and we said, no.

6 Q Are there games that you agree that he can play?

7 A Yes. There are some different things, the
8 Playstation we don't have up anymore. It is a point of
9 contention because of the differences in the households. What
10 we allow versus what they allow.

11 But he does do some educational ones and things that
12 are non-violent. There are modes that you can put things in
13 that you can't kill, shoot, or play with zombies. Other than
14 that [REDACTED]'s behavior sometime he is so upset because he
15 cannot there do some of those things and not here. He will
16 come after me sometimes because he is so angry.

17 Q What concerns have you had about the stability of
18 [REDACTED]'s arrangements at home with Brandon?

19 A We've been very concerned just that our households
20 are very different in terms of, particularly, gaming. You
21 know, that is not a priority in our household and that's not
22 an activity. We prefer to take him out and do things.

23 So that is something that is a concern, not just that
24 environment but also what that does to his little mind and its
25 growing and developing. Also, Brandon had talked to me on the

1 phone, he had called me the night we got back from our
2 vacation and said that there was eviction notices, which
3 concerns us. You know, their instability as well as all the
4 different jobs, three or four different jobs. Can he pay the
5 bills? The rent?

6 You know, there was an occasion this winter when we a
7 had desperate phone call. [REDACTED] was cold, you know, had
8 mittens going to bed. So it's, like, again, can the bills be
9 paid? Medical assistance -- Excuse me.

10 Food stamps. Again, that was a point of contention.
11 Apparently, why Lucy was asked to leave the second time
12 because there was Jess and Brandon's food stamps assistance
13 were being put in jeopardy. And he was blaming that on us,
14 that we were changing Lucy's address, when we weren't. Lucy
15 had done that.

16 And we had to go to every agency and change it back to
17 our address. And then, again, he was pretty mean about that
18 with us.

19 Q What about the content of the household?

20 A The content of the household itself?

21 Q Yes.

22 A Well, [REDACTED] talks a lot about knives and guns and
23 weapons. And even those occasions at school where he got in
24 trouble for talking about that.

25 Q And the people that live there?

1 A The people that live there? You know, we don't
2 always know who is living there.

3 Q You had mentioned about -- heard Ms. Piastrelli
4 talking about Jess, at some point, and Brandon were being
5 broken up?

6 A Yes. So the very first week that the court Order
7 came out -- in fact, the very first night that the court Order
8 came out to all of us, Brandon had kicked Jess out of the
9 trailer and had harassment charges against him, the police
10 were called.

11 Q Where was [REDACTED]?

12 A The kids were there that night. And it was very
13 upsetting to hear. And I can't imagine the emotional upheaval
14 going on for Brandon as well as [REDACTED]. And as the days
15 progressed and Lucy -- that was one of the alternate Friday
16 weeks, that very first week.

17 And, we were concerned because of [REDACTED]'s wellbeing
18 as the well as childcare, who was caring for him? We offered
19 to Brandon if he needed help during this time period, we were
20 happy to help, take [REDACTED], or whatever he needed. And it
21 was our understanding at the time due to a conversation that
22 we had with Brandon that he had Jade off and on. Because Jess
23 at the time was home once with the individual that she was
24 with.

25 Then, that weekend, which was the optional Friday when

1 they took [REDACTED] and Lucy, for his enjoyment of additional
2 time, other friends that are mutual friends actually had
3 [REDACTED] that weekend. And they came to our house for a visit.
4 And then, they had [REDACTED] overnight and the next day called,
5 me because they had trouble with means and they had to take
6 [REDACTED] and [REDACTED] to their worksite to take care of them. And
7 I had to go and I had to buy food for all of them and drink
8 and toys and sippy cups to try and help.

9 So, you know, things like that have been really
10 disheartening. And my husband and I would say, just reach out
11 to us. Let's work together as a team for [REDACTED] and his
12 welfare and his safety.

13 Q Were there any concerns about Brandon or Lucy trying
14 do anything that would turn [REDACTED] away from his
15 grandparents?

16 A Yes. We were told all the time how much Brandon
17 hates us. And not just by Lucy but by [REDACTED] and others.
18 And back in April, late April, I got a very disturbing phone
19 call off of my daughter's phone from Brandon so that I would
20 pick up. And Lucy is giggling about it now because she
21 thought it was funny and it's not.

22 THE COURT: Let's talk about it to me.

23 THE WITNESS: Okay. It's just, it's very
24 disturbing that day.

25 A Where, he, Brandon, screamed at me for ten minutes

1 on the phone. I put him on speaker so my husband can hear.
2 He told me, what a bitch I was. How he could make my life
3 miserable, and he would make my life miserable for the next
4 15 years. How he would come after me and he wasn't afraid to.
5 That he would show up at the tee-ball game. He didn't care
6 who was around, whether it was parents or kids, and make our
7 life a living hell quote on quote.

8 That he didn't want us near his son, even if he had to
9 say, Poppy did Vinny's butt, which is disgusting. That he was
10 in control, that everything had to come through him, and that
11 regarding our daughter, he was in control of Lucy. And that
12 is none of our business what was going on between him and the
13 three of them.

14 And he just kept telling me, he never liked me, he
15 hates us. And that's how much I was -- excuse me, a fucking
16 bitch. After that call, it was just so disturbing because I
17 remember back in September I had a slew of calls, when we were
18 coming to court. It was indicative of what they say in front
19 of [REDACTED]. And some of the stuff he says to us, it's
20 repeated.

21 The things he says to us are the things that his dad is
22 saying or Lucy is saying about us. And that weekend in
23 particular is disheartening because we had all been at
24 tee-ball the night before, we would pick [REDACTED] up. And for
25 [REDACTED]'s sake and his security, we were taking him to school,

1 telling him who is picking him up after school for him to have
2 some routine and security and trust in people.

3 And then to have them, just the day when it just
4 turned, all of that upside down. And then, I had to call the
5 school and have a conversation with [REDACTED] so he is not upset
6 or thinking that we are abandoning him.

7 Q So what impact do you think that he's going to have
8 on your ability to try to work with your daughter and Brandon,
9 Mr. Shorter, moving forward?

10 A It's already had a grave impact. They have both
11 made clear to us on calls, occasions, and conversations, that
12 we are not parents, we are only the grandparents. And that
13 often, most times, the majority of the time, we have no idea
14 of what's going on, what they're planning. If it's an
15 alternate Friday, whether they are showing up or not. What's
16 going on?

17 I mean, and it's such a hostile, hostile way to live,
18 an angry way to live. And it is just very disappointing. I
19 would have thought that we can all work together for the
20 benefit of [REDACTED]. In a healthy manner, not an angry,
21 obstructionist, vial manner.

22 And the name calling it's just disgusting. And it's
23 so, so unhealthy. And it's unhealthy for [REDACTED] and his
24 emotional stability and wellbeing. It truly is.

25 MS. GREEVY: Thank you.

1 THE COURT: Are you done?

2 MS. GREEVY: That is all the questions that I
3 have.

4 CROSS EXAMINATION

5 BY MR. TRAVIS:

6 Q Mrs. Gnazzo, do you have any demonstrable proof of
7 non-likely phone calls today?

8 A I didn't bring them but we'd be happy to do whatever
9 it is you need.

10 Q Do you have them today?

11 A No, I don't.

12 Q I would like?

13 MR. TRAVIS: I believe that is Defendant's 5 from
14 the prior hearing, Your Honor.

15 THE COURT: I wouldn't know.

16 MR. TRAVIS: Is it okay if they are marked out of
17 order from our last hearing?

18 THE COURT: That's fine. I am tracking whatever
19 you mark here today.

20 MR. TRAVIS: (Handing.)

21 Q I would like to show you what's been marked as
22 Defense Exhibit 5.

23 THE COURT: You've got to pause.

24 Q Have you ever missed any nightly phone calls?

25 A One night and we did get back. [REDACTED] had fallen

1 asleep that day and one time.

2 Q Would you take a look at that text? Do you
3 acknowledge that that's a copy of the text saying that you did
4 not make your phone call that evening?

5 A Yes.

6 Q When did your daughter move from your residence, the
7 first time, since the last hearing, which, I think, you said
8 was February?

9 A I mean --

10 THE COURT: Obviously, she may have changed her
11 address. She wasn't given the legal authority to do that?

12 THE WITNESS: No.

13 THE COURT: So when did she stop spending nights
14 overnight at your house?

15 THE WITNESS: Well, she began spending overnights
16 at his house the very first week of the court Order, that
17 Friday night.

18 Q And how many, if you can give me a percentage of
19 those days she's spent until now, this August 8th, what
20 percentage of time would you say she has not been to your
21 house?

22 A Well, every other Friday she was always at
23 Brandon's. At least one night, to three night, to five nights
24 from March, April, May. In April she would go up for multiple
25 nights. And then, from mid-May through June 21st she was up

1 there. And would only come back whenever there was a custody
2 exchange, typically Jess would come to get [REDACTED]. And she
3 would come back with Jess.

4 And again, the next day Brandon came and took her
5 against, without our approval, again, after communications
6 with you. Yeah.

7 Q I asked for an approximate percentage of time that
8 your daughter --

9 A I can't give you a percentage. I am giving you the
10 number. I am telling you what the scenario was but I don't
11 have a paper in front of me.

12 Q Is it possible that it's more than 50 percent of the
13 time that your daughter spent at Brandon house since the last
14 order?

15 A I can sit and figure that out.

16 Q If I can draw your attention to the statement that
17 you made regarding Mr. Shorter's employment, I gather you do
18 not like his employment situation; is that correct?

19 A I did not say that. We are happy that he is
20 employed.

21 Q Thank you. Now, at the end of June were you aware
22 of his new employment?

23 A No.

24 Q You were not aware of his of new employment?

25 A No. He never communicates with us when he is taking

1 a job. No.

2 Q So when your counsel demanded that Mr. Shorter
3 obtain a drug test?

4 A No. Yes.

5 THE COURT: Wait a minute, Folks. While I can
6 listen to this back and forth, it doesn't look good for me but
7 I can listen to it. The court reporter can't take it down.
8 Remember Ally Moore?

9 THE WITNESS: Yes.

10 THE COURT: He waited until they asked a question,
11 he paused, he breathed, and then he answered the question. Be
12 Ally Moore. Go ahead.

13 Q Did you instruct your counsel to ask that Brandon
14 obtain a drug test?

15 A Yes.

16 Q And at that time were you aware that Mr. Shorter had
17 started new job?

18 A Which job?

19 Q That's not the question.

20 A I am only asking which job --

21 THE COURT: No. You don't get to ask questions
22 here. Forget it. Ally Moore. You breathe. The question
23 was, were you aware that he started a new job? Your answer
24 is, no, because he never told you when he had any job.

25 THE WITNESS: No. Right.

1 THE COURT: Next question.

2 Q Did your daughter ever give you a reason why she was
3 moving out of your residence?

4 A Yes.

5 Q What was the stated reason?

6 A When she came back and forth she would say that she
7 loved it up there. She loved the freedom. She loved her time
8 alone with [REDACTED]. And she didn't have rules. She could do
9 what she wanted. She said she could take walks in the
10 mountains. Basically, that there wasn't supervision.

11 Q And did you take any action at that point to have
12 her brought back under supervision --

13 A Yes.

14 Q -- in to your household?

15 A Yes. We tried on numerous, numerous occasions.

16 Q Okay. She has two separate counsel her today?

17 A Um-hum.

18 Q And I have not heard anything, anything in that
19 regard --

20 MS. GREEVY: Objection. You are testifying.

21 THE COURT: Very true. And she doesn't have two
22 sets of counsel.

23 MR. TRAVIS: I have Mr. Shaffer and Ms. Clotfelter
24 here. I thought ostensibly they were representing her.

25 THE COURT: Mr. Shaffer may be. Ms. Clotfelter is

1 doing what I am asking of her.

2 MR. TRAVIS: Okay. I understand that, Your Honor.
3 But I did ask her prior to the hearing today what her role --

4 MS. GREEVY: Objection.

5 THE COURT: Folks, are we going to fight? Or are
6 we going to get this information. I am taking a break because
7 you folks can't get to the landing. It is not a difficult
8 case. Get me facts and I will get you a decision. Please,
9 step down. We are taking talking a break.

10

11

(A recess was taken.)

12

13 THE COURT: Mr. Shaffer, any questions for the
14 witness?

15

MR. SHAFFER: No, Your Honor.

16

LUCILLE A. GNAZZO

17

having been duly sworn, testified as follows:

18

DIRECT EXAMINATION

19

20 THE CLERK: Do you swear or affirm that the
21 testimony you are about to give will be the truth?

21

THE WITNESS: Yes, I do.

22

23 THE COURT: Have a seat. Do me a favor look down
24 and tell us your name.

24

THE WITNESS: Lucy A. Gnazzo.

25

THE COURT: Good job. Go ahead, Mr. Shaffer.

1 BY MR. SHAFFER:

2 Q Lucy, about how long did you spend at Brandon's
3 house this summer?

4 A Um -- the beginning of May until about -- I left
5 for, like, one day.

6 Q And while you were there at Brandon's house,
7 Mr. Shorter's house, did you observe him interacting with his
8 son?

9 A Yeah. He was always with his son.

10 Q How does [REDACTED] act around Brandon?

11 A He loves his dad.

12 Q Were there differences between how [REDACTED] acts at
13 Mr. Shorter's house versus at your parent's house?

14 A Oh, yes.

15 Q Okay. Can you tell the Court?

16 A Where do I begin? Well, he is not allowed to play
17 different types of games. And, like, my mom had said he got
18 violent after the one. And, they were trying to go calm him
19 down. And, he came crying to me. And, I was trying to calm
20 him down. And then, I called Brandon. And, he was able to
21 calm him down but he was laughing.

22 Q Do you feel that there is a difference in how the
23 rules are set up between the houses?

24 A Yes.

25 Q Does that create a negative effect on [REDACTED]

1 A Yeah.

2 Q What are the differences that you think make a
3 negative effect?

4 A He has -- I don't know. It's hard to tell, like, I
5 know he has more stuff to do at his dad's and he can go more
6 places and whatever. But, like, at my mom and dad's, he
7 always has a device in his hands. He either has my dad's
8 phone or an iPad.

9 Q Is there a difference between how he acts out
10 between one house and another?

11 A If he doesn't get his way, he gets really
12 aggressive.

13 Q And is that different between whether he stays at
14 Mr. Shorter's house --

15 A I've only seen him that way at my mom and dad's. I
16 have never seen them like that at his dad's.

17 Q Do you have any concerns about [REDACTED] staying at
18 your parent's house?

19 A I don't really want him to stay there.

20 Q Can you explain to the Court why?

21 A Just because he has, like, more things to do at his
22 dad's. And, he has his sister to play with, who barely gets
23 to see him as is and she misses him.

24 Q And that's Jade?

25 A Yes.

1 Q And how old is she?

2 A She will be two in February. Year and a half, I
3 guess. I'll just say she is going to be two.

4 Q Can you tell the you Court what happens with
5 therapeutic counseling?

6 A I don't get along with my mom and dad as much. And
7 we have, like, differences. So we were always fighting and
8 they were bringing stuff up that I don't want to. But they
9 don't listen, they just kept bringing it up.

10 So I just ended it because I was tired and I wasn't
11 getting anywhere. There was just more fighting. And I didn't
12 want to fight anymore.

13 Q Is there a difference in how you are allowed to
14 interact with [REDACTED] at your parent's house versus
15 Mr. Shorter's house?

16 A I don't have to deal with my mom and dad.

17 Q Are you more hands-on for instance at one house than
18 the other?

19 A I do a lot more stuff with [REDACTED] at his dad's.

20 Q And what kinds of things is it?

21 A Um -- I read to him. Like, we will do arts and
22 crafts. I play with him and his sister. I will give him
23 baths, and we will just, like, chill in his room.

24 Q Is there anything that prevents you from doing those
25 types of things at your parent's house?

1 A Yeah. My mom doesn't let me bathe him. She always
2 has to be watching him. And she is, like, well you have to be
3 supervised. And I am, like, well, I shouldn't have to be
4 supervised to bathe my own kid.

5 Q Is the supervision something that is constant?

6 A I don't like the supervision.

7 Q And I mean the supervision of your parents
8 supervising you. Is that what you are talking about?

9 A Yeah. I don't like them being supervision. Having
10 to -- I can't talk. I'm sorry. Having them to supervise me.

11 Q How active would you describe your involvement with
12 the school?

13 A I talk to the teachers every now and again.

14 Q Has anybody prevented you from doing more in the
15 school then you would like to?

16 A No.

17 Q Can you talk about what your ability is to drive a
18 vehicle?

19 A Um -- well, since my trauma last year, I still have
20 my license but I haven't been cleared to drive because of
21 illnesses that have been because of that. So they don't
22 recommend me driving right now. But I am still able to but I
23 don't because I haven't been cleared.

24 Q Your mom mentioned that you have driven a little
25 bit; is that true?

1 A Not very far.

2 Q And, was anybody in the car with you when you were
3 driving?

4 A Yeah.

5 Q Who was in the car with you?

6 A Brandon was at once and then Jess and Jade.

7 Q And do you still have a valid driver's license?

8 A I do.

9 Q Do you know who stands between you and any kind of
10 clearance that you would need from the doctor so that they
11 would --

12 A Probably, like mental. Mental stability.
13 Mentalwise, probably. Because I talked to her about that
14 because she wanted to get my depression under control because
15 it was getting worse.

16 Q Do you feel like your medical condition has improved
17 since the last time you were in court?

18 A Not really. Its gotten worse.

19 Q Are you doing anything, like, starting employment
20 that --

21 A Yes. I started back to work on Monday and I work
22 tomorrow morning.

23 Q How many hours a week are you going to be working?

24 A Um -- they are just easing me back into it. So I am
25 9:30 to 12:00 but I want to do more hours. I didn't want to

1 leave.

2 Q In the long term, what is your hope as far as your
3 personal housing situation?

4 A I would like to get out on my own. Be able to be
5 independent again.

6 Q And if you were independent, what would you like
7 your ability to see [REDACTED] to look like?

8 A Like, if I wanted to go -- if I wanted to go down
9 south just ask his dad if I was allowed. Because he said
10 before I am not going to stop you from seeing your child.

11 Q And do you have any concerns if you were living by
12 yourself, in the future, that you would want a regular
13 schedule where [REDACTED] would come to you at certain times?

14 A Not if me and Brandon can work anything out, if that
15 makes sense.

16 Q Do you know right now, when you might be able to
17 live by yourself again?

18 A Um -- no.

19 Q Is anybody helping you to try to get help to get
20 housing?

21 A Yeah but that is taking forever.

22 THE COURT: I'm sorry. I didn't understand your
23 answer.

24 THE WITNESS: Yes but it's taking a while.

25 Q Is that a county assistance program?

1 A Whatever my mom is working through. I think, it's
2 DDI or something OPR, social work.

3 Q So the communications happen between your parents
4 and the county? Does that sound familiar?

5 A Exactly. I know because I have had a meeting with
6 the one, the lady from DDI or I forget what the company is
7 called but that's all I know.

8 Q Do you have a feeling about where [REDACTED] should be
9 going to school?

10 A West Shore.

11 Q And that's where he goes now; is that right?

12 A Yes.

13 Q Is there a reason why you would like him to continue
14 going there?

15 A Because that's where he likes going. All of his
16 friends are there. It's right down from his house. Well, his
17 dad's house.

18 Q Do you have any objection to [REDACTED] having summer
19 activities like swimming or --

20 A I think, he should just be a kid. Be able to have
21 fun. If he wants to do it, he can but I am not going to force
22 him to do it.

23 Q Were there any of the activities that you know of
24 that your parent's proposed that he wanted to do?

25 A They didn't really tell me about any activities.

1 Like, I just found out that he was being tutored. I just
2 found that he had swimming lessons and a bunch of stuff. They
3 don't really talk things over with me.

4 MR. SHAFFER: I don't have any other questions for
5 this witness unless you do, Your Honor.

6 THE COURT: Ms. Greevy, any questions?

7 CROSS EXAMINATION

8 BY MS. GREEVY:

9 Q Did your folks send you an e-mail that they sent
10 also to Brandon about the summer activities?

11 A If they did, I probably don't have it anymore.

12 Q Were you going to talk to Brandon about basketball?

13 A I don't remember.

14 Q Did you have a meeting with some folks this week
15 from vocational rehabilitation?

16 A A gentlemen. I think it was yesterday or the day
17 before.

18 Q And has your mom been working with you and other
19 folks from the county programs to try and locate a plan for
20 housing?

21 A I believe so.

22 Q And is she or your dad helping you get back and
23 forth to your medical appointments?

24 A Yeah. My dad mostly because my mom works a lot, so
25 she is never home.

1 Q And so do they attend your appointments?

2 A They take me but they don't come in with me.

3 Q Did your mom come into an appointment with you just
4 within the last week or two?

5 A My mom and dad.

6 Q There was a recent time when you had a blood test
7 taken in preparation for dental surgery?

8 A Oh, yeah. I'm sorry.

9 Q And did that test result show that you were positive
10 for marijuana?

11 A Yes.

12 Q And is that something that continues to occur with
13 you?

14 A No, ma'am.

15 Q And have you been asking your psychiatrist to
16 prescribe more medication for you to help you with your
17 anxiousness?

18 A I like to try new things out because I don't think
19 my medicine is helping. And a lot of stuff have gotten worse
20 since I came back.

21 Q Did you ask for a medical marijuana card?

22 A Yeah but since Hershey doesn't do that I am kind of
23 just going to let it go.

24 Q Are you willing to continue to work with that
25 psychiatrist there?

1 A Yeah.

2 Q Are you willing to work in the therapy and
3 counseling with your parents?

4 A Nope. I won't do it.

5 MS. GREEVY: I think that's all, Your Honor.

6 THE COURT: Mr. Travis, questions?

7 MR. TRAVIS: No questions.

8 THE COURT: Thank you. You may step down.

9 Mr. Travis, witness?

10 MR. TRAVIS: Brandon Shorter.

11 THE COURT: Certainly. You've seen the drill.

12 THE CLERK: Before you are seated.

13 BRANDON SHORTER,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. TRAVIS:

17 Q Since implementation of the court's Order on
18 March 5, have all of the parents had access to medical
19 records, school records, et cetera?

20 A As far as I am aware, yes. I got to ask for them,
21 it takes a minute, but I do get them.

22 Q Would that include the report card?

23 A The report card is provided to all Parties.

24 Q Have all Parties participated in executing all legal
25 authorizations, such as physicians' forms and school records

1 within ten days of being requested?

2 A Negative.

3 Q What has not been executed within ten days?

4 A Well, there is the one psychiatrist that they have
5 been trying to get me to sign. Every time I try to talk to
6 her, they've been trying to talk to them too. It's been
7 3 months now and they said they want to see what happens after
8 today.

9 Q All right. Well, let's back up a little bit. Who
10 are we talking about?

11 A [REDACTED]'s psychiatrist, play therapy.

12 Q Play therapy. And where is that taking place?

13 A All the way out in Hershey.

14 Q Okay. And how many times has he been there since we
15 saw the court in February?

16 A 6 to 9. It's alternating between me and the
17 parents -- the grandparents going to visits.

18 Q And are the Gnazzos aware that they needed to sign a
19 release form in order to complete that treatment?

20 A I have said something.

21 Q And to --

22 A I brought it with me today.

23 Q You brought it with you today? When was the last
24 time [REDACTED] was in treatment?

25 A Yesterday.

1 Q Yesterday. Have you maintained text or e-mail
2 contact with the Gnazzos?

3 A Yes.

4 Q And you have been exercising custody approximately
5 alternating weekends, Sunday through Wednesday, on Week 1.
6 And Week 2, Saturday through Wednesday?

7 A Week 1, Sunday to Wednesday. Week 2, would usually
8 be Friday, occasionally Saturday.

9 Q What is your view of how the school activities are
10 going?

11 A School activities? He did great. I was always
12 informed. I had the app. on my phone. So I kept track of
13 what was going on. Make sure I brought his library books to
14 school and wore sneakers like he was supposed to. I was
15 paying attention. I mean, I was paying attention. I always
16 responded back to the teacher because a lot of those apps sh
17 was talking about, you can't respond to, you have to send her
18 an e-mail. There is no response option on those apps.

19 Q Have you had any problems in your relationship with
20 Mom, Lucy?

21 A We had our ups and downs, not really. Just normal
22 minor argument but nothing major. Nothing we can't handle out
23 in ten minutes. If it comes to [REDACTED], it's usually pretty
24 straight forward. We are usually on the same page. Between
25 me and her we are, sometimes we would be heads up. On other

1 things, like, what Vin can watch and what he can't. Like, I
2 don't let him play Fortnite. I don't let him play no Black
3 Ops. I tell him no all the time. He throws a fit. And he
4 throws a nasty fit every time.

5 Q You are throwing those terms out there pretty fast.
6 But the court might not be familiar with that Fortnite or
7 Black Ops, if I am not mistaken.

8 A They are --

9 Q Very popular --

10 A -- very popular first-person shooting games.

11 Q Everybody wants to play them?

12 A The entire world is playing right now.

13 Q Have you tried to curtail that?

14 A I have. I do not let him play.

15 Q How about your interaction with the Gnazzos? Would
16 you say overall it's been positive or negative?

17 A Depending on the day. For the most part, I make
18 phone calls to them to try to work things out, it is some what
19 positive. And then a week later, I get an e-mail with a whole
20 bunch of other stuff that is negative and is just ongoing back
21 and forth, back and forth. There is never a happy medium.

22 Q So they said that there were some problems with
23 school schedule and vacation schedules. Have you tried to
24 work through those problems?

25 A The Court said for to us set up a schedule. So they

1 came up with a schedule and asked me if this was okay. I
2 asked them if they can pick different days because the days
3 they chose happened to just fall purposely on my time.

4 So I asked them to change to a different days. Maybe I
5 wouldn't lose all of my time with him. And they said, can't.
6 Already paid for it. So there is no point in even asking
7 them.

8 Q Have there been instances where they come to you and
9 say we want additional time and you acquiesced and allow them
10 some additional time?

11 A Yeah.

12 Q Can you give us an example?

13 A Yes. Just this past weekend I did it. They asked
14 for extra time for Paul's birthday and I said, yes. Fine. I
15 understand totally.

16 Q At the last hearing Mrs. Gnazzo raised an issue that
17 was unknown to me at the time, that you had previously been
18 diagnosed with a bipolar disorder?

19 A That's what I was told since I was, like, ten years
20 old.

21 Q Since that hearing, at my suggestion, did you get
22 evaluated?

23 A I did.

24 Q For that condition?

25 THE COURT: This exhibit will be marked as

1 Defendant's Exhibit No. 6.

2 Q Do you recognize that exhibit?

3 A I do.

4 Q Can you tell me what that is?

5 A That is my doctor's diagnosis of myself.

6 Q So you have been treating with a new physician at my
7 request?

8 A Yes.

9 Q And what -- did you ask him to take a look at this
10 bipolar issue?

11 A Correct.

12 Q Do you have a bipolar issue today?

13 A I do not.

14 MS. GREEVY: Objection.

15 THE COURT: Basis.

16 MS. GREEVY: Well, he is asking for hearsay.

17 THE COURT: Is it in this report?

18 MS. GREEVY: A report with no witness.

19 THE COURT: I will give you a chance to
20 cross-examine. Objection overruled. What's the answer?

21 THE WITNESS: He told me that I have adjustment
22 disorder with anxiety symptoms. And my bipolar was repressed
23 if I had it all.

24 Q Okay. And do you feel that you are on the right
25 treatment track at this time?

1 A I do.

2 Q Are you taking any steps to get your life in order
3 in that regard?

4 A He said the combination between diet and medication
5 -- he said to diet and go and do medication, if need be.

6 Q And do you feel better today?

7 A I do. I took a lot of food out of my diet that I
8 liked but --

9 THE COURT: Welcome to adulthood.

10 THE WITNESS: Right.

11 Q It was Mrs. Gnazzo's testimony today, she indicated
12 that you were having some problems with jobs. What would you
13 describe your job situation as currently?

14 A My job situation is currently the night time floor
15 job where I strip and wax department floors and scrub them
16 during the off season. We only strip and wax once per year,
17 per store. There is 58 stores.

18 Q Are you doing anything currently to improve
19 yourself?

20 A I am trying to go back to school.

21 Q And what are you going back to school for?

22 A I am going to go back to school for HVAC technician.
23 I will get my diploma, not just a certification. I am getting
24 my whole diploma.

25 Q What, if any, consideration have you taken into

1 account with your time with [REDACTED] and your other child as a
2 result of your work schedule and your school?

3 A I had to bounce around from job to job trying to
4 make this all work out. So I can spend time with my kids and
5 everything. Sometimes the jobs don't work with the
6 scheduling. They understand you have a life but they have
7 also have a business to run. So they have to do what is best
8 them.

9 Q Very good.

10 MR. TRAVIS: That's all I have, Your Honor.

11 CROSS EXAMINATION

12 BY MS. GREEVY:

13 Q Are you working full time?

14 A I am.

15 Q And what are your days of work and hours?

16 A I don't know.

17 Q You have no consistent days off?

18 A No.

19 Q And you have no consistent hours?

20 A No. I have to work around the businesses' schedule
21 and them being open and closed. They are usually closed when
22 I am working. Say it can range between 2 hours to 8 hours a
23 night, plus dry time.

24 Q How much notice do you get of your schedule on any
25 given week?

1 A A week. They usually give you a schedule first
2 thing on Thursday night, Friday night. And it rolls in to the
3 next Friday. Sometimes things change. They might cancel, so
4 we get the day off. They might put something else in its
5 place. It's hard to say. Sometimes things change and in the
6 cleaning industry, that's how it is.

7 Q So sometimes you are off on the weekends and
8 sometimes you are not?

9 A Sometimes I am off during the weekend. Sometimes I
10 am off during the week. It depends on the schedule that they
11 gave me.

12 Q You said the schedule is generally nights?

13 A Usually nights.

14 Q And so what time is your usual start time?

15 A Anywhere from 6:00 and 9:00. We are working when
16 businesses are closed. They can close anywhere from 6:00 and
17 10:00. We have to be there a little early so that we can be
18 prepared.

19 A So if a business closes and you start at 6:00, what
20 kind of drive time do you have to get to work?

21 A Depends on where I am going.

22 Q Are your assignments local?

23 A If you consider Pennsylvania local, yes.

24 Q So there are times when you are out of town?

25 A Oh, yeah.

1 Q Are you out of town for several days?

2 A That happens sometimes. I have been out of town for
3 two days.

4 Q And, has that happened in the last two weeks?

5 A Past two weeks. One night for two days. It was
6 supposed to be three but someone canceled and we came back
7 early.

8 Q At that point did you follow the requirement from
9 the Order to make arrangements for the Gnazzos to have
10 [REDACTED]?

11 A I'm sorry. I missed the question.

12 Q During the time that you knew you were going to be
13 out of the down, during your custodial time, did you make
14 arrangements for the Gnazzos to have [REDACTED] in their care?

15 A In this instance, this is a Tuesday night where I
16 left in to a Wednesday where they picked him up in the
17 morning. Did I do an instant to call them for a one-night
18 visit. I had help put him to bed and then I went to work.
19 And the next morning, they came to pick him up.

20 Q Was there was a time that you left on a Sunday and
21 came back on a Tuesday?

22 A Not that I can recall. I work a lot of nights, it's
23 hard to keep track of them all.

24 Q First night, that the schedule took you out of town?

25 A Are you referring to the one that you sent me to the

1 drug test for? The day I started my now job?

2 A No.

3 Q Because, I believe, that was also a Sunday into a
4 Monday night. Or -- Sunday night, Monday night. So yes, I
5 came back early Tuesday morning. I am talking about 6:00 in
6 the morning.

7 Q And there is no predictability to that schedule?

8 A There can be. I am working with the owner right now
9 to figure that out.

10 Q Okay. And where are you planning on going to a HVAC
11 program?

12 A HACC.

13 Q And what are the hours for that program?

14 A I am not sure yet. I have not got my schedule for
15 it. I just signed up for it.

16 Q Have you been accepted to the program?

17 A I have.

18 Q And how many days a week will that be?

19 A I don't know yet. I have not received my schedule.

20 Q So you don't know the hours or when this is going to
21 be?

22 A Not quite yet. Still working on some more
23 paperwork.

24 Q Have there been times when you and others have been
25 playing games such as Black Ops or Fortnite when [REDACTED] has

1 watched you playing?

2 A I don't start playing Black Ops and Fortnite until
3 after 8:00 at night. When he is supposed to be in bed. He
4 does get up, to come out to see who is out there, and I tell
5 him to go back to bed.

6 Q So your testimony is that he has not watched you
7 play these violent games?

8 A I let him watch the little dances that show. I show
9 him the dance that I get every single day. Other than that,
10 no.

11 Q And he doesn't play these games at all?

12 A Not at my house. I refuse to let him play anything
13 violent.

14 Q Would it surprise you that he thinks that --

15 A Oh, he loves to talk to the people. Just because he
16 is not watching doesn't mean he can't hear. Everything
17 projects through the surround sound, if I am playing I have my
18 VR headset on, which means the only one who is seeing anything
19 is me. He can hear it through the speakers through the other
20 room.

21 Q So it wouldn't surprise you that he talks about
22 playing and you letting him shoot people?

23 A He talks about that all the time, he loves that.
24 That's one of his of favorite games to do dances with. I have
25 him do dances. I tell him, come and pick one.

1 Q Is [REDACTED] still living with you now?

2 A She is.

3 Q And she came back after about a month?

4 A Yes.

5 Q And at the time that she or -- pardon me. At the
6 time of the Hearing Order coming out in March, were there
7 problems at your house that involved the police to come?

8 A There were.

9 Q And was there a physical altercation between --

10 A There was not. Are you talking about the harassment
11 charges that were dismissed. Then, there was was not because
12 obviously it was dismissed for a reason.

13 Q Was it dismissed because she didn't go to the
14 hearing?

15 A Partly. Even if she did go it would have still been
16 thrown out. And this happened at 11:00 at night when the kid
17 was passed out.

18 Q Do you believe then that [REDACTED] didn't hear or see
19 anything?

20 A No. [REDACTED] didn't hear or see anything because I
21 checked on him.

22 MS. GREEVY: All right. That's all.

23 MR. SHAFFER: I have no questions, Your Honor.

24 THE COURT: Two quick questions.

25 THE WITNESS: Yes, sir.

1 THE COURT: I had a Supervision Order attached.
2 Did you sign one of those?

3 THE WITNESS: I did not. I didn't realize that
4 was attached to the Order. All of my stuff came digitally in
5 multiple files.

6 THE COURT: And you are talking about some Order
7 that hasn't been or some medical report that you haven't been
8 given access to. And I am not sure -- I wrote it down.
9 Psychiatrist seeking to replace therapy --

10 THE WITNESS: Do you have that sheet?

11 THE COURT: I am asking you about it. I want to
12 make sure that I know what this is. Is this something
13 everybody takes [REDACTED] to? You take your turn?

14 THE WITNESS: Right.

15 THE COURT: So are you meeting with the
16 psychiatrist?

17 THE WITNESS: I do.

18 THE COURT: Okay.

19 THE WITNESS: We have a half hour conversation
20 before he goes in.

21 THE COURT: Okay. So what aren't you getting?
22 I'm not understanding.

23 THE WITNESS: They need a signature from the
24 person that's in control of the medical, in order for to us go
25 any further.

1 THE COURT: Now, I understand. You had me
2 confused saying that you were going some place and doing
3 something.

4 THE WITNESS: Right. I would love to sign it but
5 I am not allowed.

6 THE COURT: Okay. I've got you now. That's two
7 questions.

8 THE WITNESS: Thank you, sir.

9 THE COURT: You may have step down.
10 Ms. Clotfelter, you have a report for me? Why don't you come
11 down.

12 Linda Clotfelter,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 THE COURT: Say your name for the record.

16 THE WITNESS: Linda Clotfelter.

17 THE COURT: Move the microphone. Say it again.

18 THE WITNESS: Linda Clotfelter.

19 THE COURT: You're the guardian ad litem. Did you
20 have an oral report or in writing?

21 THE WITNESS: I did not put one in writing.

22 THE COURT: I'd like your own little report.

23 MS. Clotfelter: Your Honor, as you know I am not
24 really part of the custody action but I am working with Lucy
25 as her guardian ad litem. I have had a significant center of

1 contact with Lucy and seeing this Order implemented. Lucy has
2 been having a very difficult emotional time. I think, there's
3 been some physical health manifestations, from what I
4 understand, from her because she has a heart condition.

5 I think, a lot of Lucy's, her problems do not
6 center around [REDACTED] and the actual schedule that we are here
7 to talk about today but it's more related to her relationship
8 with her parents and the current living situation.

9 She is very unhappy being supervised. She is very
10 unhappy feeling controlled. She is working with a physician
11 and she has some physicians on board. They are adjusting her
12 medications.

13 She assured me that she has been following the
14 dosage requirements and she has been keeping up with that.
15 She has expressed to me a strong desire to separate from her
16 current household with her parents. To her that is one of her
17 significant priorities. And, I think, emotionally for her she
18 will improve.

19 It may even help her with the period of
20 incapacitation and feeling she has a little more control and a
21 little more ability to try to do things for herself.

22 I will say that in all of our conversations, Lucy
23 wishes to be able to be a mom again. She wants to do the
24 bathing, the feeding, all of it. She feels that she can't do
25 it and she feels very strongly that she is able to. She would

1 like the opportunity to do some of that at Brandon's. That
2 actually makes her very, very, very happy.

3 I am not a physician or a psychologist so I don't
4 know how this comes into play but we do know she has a bit of
5 an impairment as far as the understanding of her own
6 capabilities. One thing she has requested because she feels
7 so strongly that she is constantly improving is a new
8 evaluation. I know that is not for today but that's how she
9 feels about this. She wants to improve. She is doing all she
10 can and she thinks she can be a mom again.

11 THE COURT: Do you think she understands that I am
12 the one that requires her supervision?

13 THE WITNESS: Yes. She does understand that and
14 we talk about that consistently.

15 THE COURT: What can I do, not in the custody side
16 of things, to help her?

17 THE WITNESS: The only thing and I don't think you
18 have the power to do this is, is to facilitate alternative
19 housing. And you don't have that power but that is the only
20 thing that will help her at this point. Is a change in the
21 housing situation. Just my opinion.

22 THE COURT: Ms. Greevy, is there anything that we
23 haven't heard from the guardian ad litem on that you know she
24 has knowledge of?

25 MS. GREEVY: I think, she does have some knowledge

1 about what's being made to assist Lucy in variety of services
2 through DHS.

3 THE COURT: I think, she testified to that.

4 MS. GREEVY: The concerns we've had about
5 structure of medical care for [REDACTED].

6 THE COURT: Can you address either of these?

7 MS. GREEVY: Flu shots, in particular, would be an
8 example.

9 THE WITNESS: I only have information on that that
10 I heard from that on the flu shot part of it. I do know that
11 they are doing all that they can to try and develop a change
12 in health.

13 THE COURT: And when you say, they, you are
14 talking about her parents?

15 THE WITNESS: Through counsel. Through counsel.
16 I don't speak directly to parents.

17 THE COURT: Any other area?

18 MS. GREEVY: For her, no. I imagine she has
19 something to address about Lucy's incorporate use of
20 marijuana. When she has been medicating for multiple
21 conditions and it's illegal.

22 THE WITNESS: Your Honor, most of the information
23 I have about that incident, a lot of the factual basis, I
24 learned from counsel.

25 THE COURT: Something that she would have the

1 ability to give me feedback on.

2 MS. GREEVY: I believe she spoke with Lucy about
3 it.

4 THE COURT: Lucy was on the witness stand. Lucy
5 told me what her parents were doing in trying to help her get
6 out on her own. She's told me about the other things. I am
7 not concerned about that.

8 She's given me the practical side and knowledge.
9 I am trying to figure out how do I help this situation. So
10 anything else, meaning, anything I can do to help this
11 situation, that she has in her knowledge.

12 MS. GREEVY: I am not thinking of anything in
13 addition.

14 THE COURT: Mr. Travis, anything?

15 MR. TRAVIS: No questions.

16 THE COURT: Well, it was questions. I am
17 questioning the guardian ad litem. Do we get them to talk
18 about an area?

19 MR. TRAVIS: No, Your Honor.

20 THE COURT: Thank you. I appreciate your time. I
21 hate to ask this but I will. What changes, Ms. Greevy, are
22 you looking for in regard to the plan of March 5?

23 MS. GREEVY: We have a proposed Order. We would
24 like [REDACTED] to be in our client's primary custody. We think
25 he needs to attend the Camp Hill School District. They need a

1 very specific Order around holidays in terms of return times
2 and his schedule that we have attached.

3 THE COURT: No doubt that I am giving an Order. I
4 was trying to see if they can work together. I really was.
5 And that's the reason why I did this review session in
6 essence, that's what it looks like in my court calendar. It
7 says, revisit their potential.

8 MS. GREEVY: We certainly understood that you were
9 taking the developmental approach to see what the folks could
10 do to step up to the plate. Unfortunately, it seems that
11 hasn't materialized in the way that you would have hoped. And
12 we believe that by clear and convincing evidence, we've
13 overcome the presumption in favor of Father. And we have to
14 focus on [REDACTED]'s best interest at this point. And where he
15 can have the stability and security and the educational
16 support that he needs. The dilemma will be getting a
17 reduction of the conflict between these Parties no matter what
18 you do with the schedule.

19 THE COURT: If I do as you ask, I am incurring
20 additional conflict without a doubt. Do you have a copy of
21 that order that you want me to look at?

22 MS. GREEVY: Yes.

23 THE COURT: If you can just hand it to James.

24 MS. GREEVY: (Handing.)

25 THE COURT: And for housekeeping purposes, we will

1 admit your Exhibits 40, 41, and 43. And then, return to
2 Mr. Travis. I will ask you the same question. Would you like
3 to before me modify the plan of March?

4 MR. TRAVIS: I am almost afraid to say, Your
5 Honor.

6 THE COURT: Well, I know it will be the exact
7 opposite. You know, I --

8 MR. TRAVIS: I don't think Mr. Shorter's position
9 has changed since the time of the Custody Conciliation. He
10 wants all the time he can possibly get with his son. He
11 values every minute and I agree with what Your Honor said.

12 I would however, Your Honor, if I may. We have
13 not seen you since the last Order came down. And there is
14 something that the Court addressed in there and the Court
15 seemed outraged by it and I wonder if I might bring that to
16 the Court's attention.

17 THE COURT: Which was?

18 MR. TRAVIS: The Court seemed very outraged by the
19 fact that grandparents had a part time custody that had been
20 reduced at the time Mom and Dad were attempting to work it
21 out. At the time, the Superior Court had just come down with
22 case MJS versus PD and the cite of that is 172 --

23 THE COURT: But that's not going to make any
24 difference to me because she is not competent. I deemed that
25 such.

1 MR. TRAVIS: Well, that was not the point. The
2 point was, the case was very similar to the fact in the case
3 here where the grandparents were living with the Mother. And
4 my client definitely wants to get this point across that it is
5 parents' rights that are supposed to be paramount to the
6 grandparents rights.

7 THE COURT: Oh, without a doubt. Without a doubt.
8 That's not --

9 MR. TRAVIS: I just want to get that point across
10 because I felt that the Court had a sense of outrage about the
11 fact that the grandparents were involved, and the situation
12 where things went wrong, and all of a sudden they weren't
13 seeing the child anymore. In that case that it admonished the
14 Father for not doing something about it when the grandparents
15 had stepped in and taken over the roles of the parents.

16 I think, that that's where we were at the time
17 when we came to see, Your Honor, about the situation. And, I
18 think, it was based on the appeal at the time.

19 THE COURT: If there was any outrage it was over
20 the trying to do a Parenting Plan with somebody, who within
21 the first few minutes of her testimony, I knew she couldn't
22 handle it.

23 MR. TRAVIS: Okay. Fine. The point was the
24 Defendant and counsel who was advising him, did what he felt
25 the Court had directed. We got into Court as quickly as we

1 could. I just wanted to point that out because this was the
2 first time to address, Your Honor, since you wrote that
3 opinion.

4 THE COURT: Not an issue for me. I move forward
5 hundreds of cases a week. I don't have time to dwell on those
6 that are done. We move on to the next. Like, I will tomorrow
7 morning with my next custody case. Your Exhibits 5 and 6 are
8 are admitted.

9 Mr. Shaffer? Well, I know your client wants
10 Paragraph 3-A vacated in terms of not having to go to
11 counseling.

12 MR. SHAFFER: Correct. And it would be our
13 opinion that Mr. Shorter should have as many parental rights
14 and as much custodial time as possible.

15 THE COURT: I wish I had a magic wand to make that
16 happen. I will take it under advisement, Folks. I will have
17 a decision for you shortly. I know school is starting
18 quickly. I will get this sorted out. I will get a decision
19 as quick as I can. Thank you.

20

21

(The proceedings concluded at 3:56 p.m.)

22


23

24

25

CERTIFICATION

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the above cause and that this is a correct transcript of same.


Stephanie Vandora Mosby
Official Court Reporter

The foregoing record of the proceedings on the hearing of the within matter is hereby approved and directed to be filed.

14 October
Date

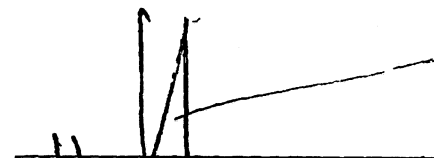

Judge
Thomas A. Placem

EXHIBIT 11

EXHIBIT 11

1 KATHRYN A. WINGARD : IN THE COURT OF COMMON PLEAS OF
n/k/a KATHRYN A. MARTIN, : CUMBERLAND COUNTY, PENNSYLVANIA
2 Plaintiff :
3 V. :
4 ROBERT B. WINGARD, : CIVIL ACTION - LAW
Defendant : 2015-05774 CIVIL TERM
IN CUSTODY

6 TRANSCRIPT OF PROCEEDINGS

7
8 Proceedings held before
9 THE HONORABLE THOMAS A. PLACEY, C.P.J.,
10 Cumberland County Courthouse,
11 Carlisle, Pennsylvania,
12 On October 3, 2018,
13 In Courtroom No. 4.

14
15
16 APPEARANCES:

17 Joanne H. Clough, Esquire
For the Plaintiff

18 Leanne M. Miller, Esquire
19 For the Defendant

20 :rjs

21
22 ID# 1349
23
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25

INDEX TO WITNESSES

FOR PETITIONER	DIRECT	CROSS	REDIRECT	RE CROSS
Kathryn A. Wingard	4	24	35	37

FOR RESPONDENT	DIRECT	CROSS	REDIRECT	RE CROSS
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EXHIBITS

FOR PETITIONER	MARKED	ADMITTED
1 Screenshots of Text Messages	9	24
2 Our Family Wizard App	9	24
3 Cease & Desist Letter	17	24
4 Legal Fees Invoice	19	24

FOR RESPONDENT

(None)

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October 3, 2018

Carlisle, Pennsylvania

(The following proceedings were held at 1:02 p.m.)

THE COURT: Now what I have in front of me is contempt petitions, Martin v. Wingard. I forgot to put that in my order. Remember when I said who goes first? Who filed the first petition?

MS. CLOUGH: I have a petition for contempt. There's a counter-petition, Your Honor.

THE COURT: You filed the first petition. That's what I need to know. That's who's going first then, okay. So let's hear from mom.

MS. CLOUGH: I call Kate Martin.

MS. MILLER: Your Honor, before we proceed, I don't know who's sitting in the back, but I would just request that the witnesses be sequestered.

MS. CLOUGH: I don't -- that's fine. My only concern is time constraint-wise, sometimes it's nice to say do you have anything to add to the testimony, but if you want to do that.

THE COURT: She's requesting sequestration. That's fine with me.

MS. CLOUGH: That means you have to wait in the hall, and we have to get you one by one.

THE COURT: Chairs are right down at the end of

1 that hall.

2 KATHRYN A. MARTIN,

3 having been duly sworn, testified as follows:

4 THE COURT: And you can move the chair around and
5 move the mic around to accommodate you. Do me a favor. Look
6 out at counsel and tell us your name.

7 THE WITNESS: Kathryn Martin.

8 THE COURT: And it's Martin now, right?

9 THE WITNESS: Correct.

10 THE COURT: I said that correctly. Go ahead,
11 counsel.

12 DIRECT EXAMINATION

13 BY MS. CLOUGH:

14 Q Kate, can you please tell the Court the name of
15 your son and his birthdate?

16 A [REDACTED], [REDACTED].

17 Q So how old is he right now?

18 A Four.

19 Q And what do you call him?

20 A [REDACTED]

21 Q And does his dad call him the same name?

22 A Yes.

23 Q And did you have an occasion to file a petition
24 for contempt that's before the Court today?

25 A I did.

1 Q And you had an updated custody order entered in
2 November of -- excuse me -- November 3rd of 2017, I believe,
3 following a custody conciliation conference with Custody
4 Conciliator Maryann Murphy, is that correct?

5 A Yes, it is.

6 Q And in that custody conciliation, were certain
7 obligations set forth that the father was to complete?

8 A Yes.

9 Q And what was one of the obligations that he
10 failed to complete that led in part to you filing --

11 MS. MILLER: Your Honor, I'm going to object. I
12 think she's testifying for the witness as well as --

13 THE COURT: Objection's overruled. Let's go.

14 THE WITNESS: We were supposed to start using My
15 Family Wizard to communicate. I was ordered to first get the
16 app.

17 THE COURT: Slide back a second. You're booming
18 out now. Go ahead.

19 THE WITNESS: Better?

20 THE COURT: Start again. My Family Wizard?

21 THE WITNESS: We were ordered to use the My Family
22 Wizard app to communicate. I was ordered after that
23 conciliation date to go install the app, make sure Rob was on
24 it, and we were to use that within two weeks, I believe it
25 was. He never purchased the app. We were also supposed to

1 set up play therapy through Georgi Anderson for [REDACTED]

2 BY MS. CLOUGH:

3 Q I'm going to stop you right now.

4 A Sure.

5 Q Is this the November order or the May order are
6 you -- do you want to take a minute and look at the November
7 order first before I ask you these questions?

8 A Sure.

9 THE COURT: No, no, no. No, no, no, no, no, no.
10 You folks really don't understand me. You don't get this.
11 No. You're not going to do this, are you?

12 MS. CLOUGH: Yes, I am, Your Honor.

13 THE COURT: So you guys show her something
14 already, for crying out loud. Get your witness prepared. Get
15 off my witness stand. Call me when you're ready. I got other
16 things to do.

17 (Court adjourned at 1:07 p.m. and reconvened at
18 1:11 p.m.)

19 THE COURT: Relax. Have a seat. Ma'am, get back
20 up here. Parents, if you can't tell, I'm going to be hostile
21 with you right now. Let me explain something, parents, all
22 right. I haven't seen you folks before, but I give you an
23 order to do something and it doesn't get done, you see my
24 temperament. If you can't be nice to each other, don't even
25 bother taking the witness stand. And if you're not ready to

1 go when we start, you're going to get chewed up and spat out
2 by me. Let's go, counselor.

3 BY MS. CLOUGH:

4 Q Kate, with reference to the first -- the November
5 3rd, 2017 order, that you ended up filing a petition for
6 contempt for in March?

7 A Yes.

8 Q Can you tell the Court what were the concerns
9 that you had that you believe were not being followed in that
10 particular order?

11 A There were a couple of them. The main one was
12 how we were supposed to treat each other and not talk
13 disparagingly about the other party, especially in front of
14 [REDACTED] because he is at an age where he's listening and
15 repeating, so that was one of the main points. Rob was also
16 supposed to contact Inner Works. Last February we were to go
17 to the seminar for parents in conflict and complete that. I
18 had done it. He had not, so they put it back in the order
19 that that needed to be completed. No smoking around [REDACTED].
20 He was still coming home smelling -- his clothes -- of smoke,
21 saying daddy was blowing clouds of smoke.

22 MS. MILLER: Objection. Hearsay, Your Honor.

23 THE COURT: Overruled. Keep going.

24 BY MS. CLOUGH:

25 Q Now, at -- so at the time that you filed this,

1 what was the main method of communication you and Rob were
2 using for -- to communicate to each other about [REDACTED]

3 A We had tried E-mail, but it wasn't working, so we
4 were still texting.

5 Q And as part of our pretrial statement in this
6 case, did we make copies of the text messages that you were
7 going to be testifying about today and provide them to
8 opposing counsel?

9 A Yes, we did.

10 Q And at --

11 THE COURT: She wouldn't know about that. Just
12 show her the exhibits we got. Let's rock and roll with this.
13 This way.

14 MS. CLOUGH: I apologize, Your Honor.

15 THE COURT: Right up here.

16 MS. CLOUGH: There was a large person there, so I
17 was going to go that way to him. You don't want me to try to
18 step over it.

19 THE COURT: Are these two exhibits/.

20 MS. CLOUGH: Yes, Your Honor, I've marked.

21 THE COURT: Okay. You have them numbered?

22 MS. CLOUGH: I have marked the one that appears to
23 be screenshots of text messages that's Exhibit 1, and I've
24 marked it for identification --

25 THE COURT: You misunderstood my question. Do you

1 have them numbered in terms of pages?

2 MS. CLOUGH: No, they are not.

3 THE COURT: So when you refer to this to her,
4 you're going to be saying the page that starts whatever,
5 whatever on the top. You're not going to have any correlation
6 for the record.

7 MS. CLOUGH: No. What we have is Your Honor this
8 Exhibit 2 is the actual app that you had suggested in chambers
9 that we printed out.

10 THE COURT: That has dates and times on it,

11 MS. CLOUGH: It has dates, times on it and we did
12 the time frame of these other ones, but we are not using every
13 one in the Court-applicable app. The ones in the stack is the
14 ones we're focusing on, Your Honor.

15 (Petitioner's Exhibit Nos. 1 and 2 were marked for
16 identification.)

17 THE COURT: Show you what has been marked as
18 Petitioner's 1 and Petitioner's 2.

19 THE WITNESS: Thank you.

20 THE COURT: She has two exhibits.

21 THE WITNESS: Do I hang onto these?

22 THE COURT: Yes. She's going to ask you questions
23 of them.

24 THE WITNESS: Thank you.

25 BY MS. CLOUGH:

1 Q And Kate, you've had time to look over these text
2 messages?
3 A Yes.
4 Q And these are actual text messages between you
5 and Rob?
6 A Yes, they are.
7 Q And sometimes on Exhibit 1, it has a date, but
8 lots of times it just has the times, is that correct?
9 A Right.
10 Q And then you printed the app out?
11 A So that we could, yes.
12 Q Now, on Page -- on the first page of this app,
13 there's a -- or this Exhibit 1, there's a message at 12:05
14 p.m. and who is that message from?
15 A The one that starts no habit, that one?
16 Q And the one in the middle that's the lighter
17 color?
18 A Rob.
19 Q What's the last sentence in that app to you or
20 that app to you?
21 A So fucking drop it.
22 Q And Page 2, is there another -- and these are
23 dispute -- in this particular manner, you guys were arguing
24 about what?
25 A We were talking about [REDACTED] hair.

1 Q And had there been an incident involving his
2 hair?

3 A Yes.

4 Q Can you say briefly what happened?

5 A Sure. Rob liked to buzz [REDACTED] hair, and he had
6 asked if he could start using gel in his hair and spiking it,
7 so we had discussed and agreed that we would take him to a
8 salon to get his hair cut and that -- it wasn't happening. I
9 would take him for a haircut, and he'd go to Rob's for the
10 weekend; and he would buzz it off.

11 Q And on the second page, the first text on Page 2
12 of Exhibit 1 is you talking about him not cutting his hair
13 after he's been to the barber?

14 A Correct.

15 Q And could you share to the Court?

16 A Do you want both of those?

17 Q Yes.

18 A He said what are you talking about. You had his
19 hair cut last time, and I haven't touched it since then.
20 Fucking suck a dick, you cunt. Push you. You're fucking
21 insane.

22 THE COURT: You can stop now. Get the rest of
23 this. Those are all the text messages?

24 MS. CLOUGH: Yes.

25 THE COURT: That's all I need to hear. Next,

1 other than the text messages because he's already in contempt
2 on that.

3 BY MS. CLOUGH:

4 Q With reference to the smoking, the November 3rd
5 court order says nobody can smoke in his presence?

6 A Yes.

7 Q And does anybody at your house do that?

8 A No.

9 Q Can you explain to the Court what's been
10 happening?

11 A Sure. Even on the friends that I've gone out to
12 the car to help get [REDACTED] out, Rob's car does smell like
13 smoke. There's cigarettes and lighters on his front seat.

14 Q And what does [REDACTED] smell like?

15 A Smoke.

16 Q And did [REDACTED] talk about dad smoking?

17 A Yes. He --

18 THE COURT: Well now, that's not an applicable
19 answer. Any answer you give there is hearsay. The Court
20 hearing that is going to ignore that.

21 BY MS. CLOUGH:

22 Q Have -- in addition to these text messages, has
23 Rob spoken to you in this manner personally in front of [REDACTED]
24 at custody exchanges?

25 A Yes, he has.

1 Q What types of words has he called you in front of
2 your son at custody exchanges?

3 A He's told me to fuck off and called me a cunt.
4 Those are usually the two.

5 Q And have you ever heard [REDACTED] use words his
6 father uses in text messages to you about you?

7 A Yes, I have --

8 Q Has he retired her reading those words --

9 A He used to come home and say mom, are you going
10 back to bitch house because that what he was told my house
11 was, bitch house.

12 Q Now, in addition to --

13 THE COURT: Again, not evidence, but that's fine.
14 You can get it in, go ahead.

15 MS. CLOUGH: With an all due respect, Your Honor,
16 the other side may have the same problem. Different judges do
17 different things on hearsay with children. I don't want to
18 try to dance around your rules. I haven't had that --

19 THE COURT: I'm letting you bring it in, but I'm
20 telling you a Court sitting as fact finder is presumed to
21 ignore the improper and prejudicial evidence as it comes in.
22 Now, I know the rules. I've been doing it for years, all
23 right. I'm not worried what he calls the house. You know,
24 you say he calls the house derogatory names. I got that.

25 BY MS. CLOUGH:

1 Q And in addition to [REDACTED] do you have any other
2 children?

3 A Yes, I do.

4 Q And what other child do you have?

5 A I have a son who is going to be one on the 22nd.
6 His name is [REDACTED].

7 Q And are you married?

8 A Yes, I am.

9 Q And what's your husband's name?

10 A Jacob Martin.

11 Q And when were you married?

12 A We were married actually on October 3rd of last
13 year.

14 Q And does Jacob have any children?

15 A He has two, two sons.

16 Q And when [REDACTED] was born, did you have any concern
17 about [REDACTED] -- Rob's -- first of all, were there text
18 messages from rob calling your son a half-bred?

19 A A half-bred, yes.

20 Q And did you have concerns about [REDACTED] comments
21 about his own brother?

22 A I did because we have brought all those boys up
23 in a house. We don't say, you know, stepbrother,
24 half-brother. They're all just brothers and [REDACTED] was coming
25 home saying well, I was told [REDACTED] is not my brother, mom. He's

1 my stepbrother which is not.

2 Q He's your biological son?

3 A Yes.

4 Q And have you asked Rob to stop doing that?

5 A Yes.

6 Q And has he complied with stopping doing that?

7 A No.

8 Q As -- how -- you filed this contempt petition in
9 March. Did we have another conciliation conference in April?

10 A Yes, we did.

11 Q And at that time had Rob completed the seminar?

12 A No, he did not.

13 Q And was another court order issued on May 1st of
14 2018?

15 A Yes, it was.

16 Q And in that order -- court order, was he directed
17 to immediately --

18 A Yes.

19 Q Do the seminar?

20 A I believe he even told Conciliator Maryann Murphy
21 that he had scheduled it already or paid for it.

22 Q And then at our subsequent third conciliation
23 conference, had he, in fact, not even attended that one?

24 A Correct.

25 Q And finally after our third conference, he

1 completed one in York, Pennsylvania, is that correct?

2 A Yes.

3 Q Did the custody -- did the May order also direct
4 that the parties utilize -- I'm losing my orders here -- the
5 Our Family Wizard app?

6 A Yes, it did.

7 Q And was that problematic?

8 A Yes, it was. We were told that within two weeks,
9 we both needed to be using the app, and that was to be our
10 means of communication. The app -- we were both told at the
11 conciliation -- costed money. We both agreed to it and said
12 we would use it and sent him the invitation. We already used
13 tried to use the app before, and he after a week said, you
14 know, he wasn't interested in using it. He was not going to
15 spend money on it. Anything that I sent to him he was not
16 going to get. So again, we had to go back to communicating on
17 it when it had things to do with [REDACTED] either text or E-mail.

18 Q And before the November order was entered, the
19 November 2017, order, was that entered in part due -- was your
20 complaint at that time again a large stack of these same type
21 of text messages and Rob's behavior at your place of
22 employment?

23 A Yes.

24 Q In fact, did -- where do you work?

25 A I work at Merrill Lynch which is a branch of Bank

1 of America.

2 Q And where is that office located?

3 A 7th Avenue, Camp Hill.

4 Q And was there an incident in July of 2017 at that
5 location?

6 A Yes, there was.

7 Q And can you tell the Court?

8 A Rob -- I had signed a loan when we were married,
9 so Rob makes payments on it because it is still attached to my
10 name. He was bringing up a payment for it and got in my face
11 and was yelling at me in my place of business in the lobby
12 with clients coming in and out of elevators. He called me a
13 cunt, and the resident director called our security; and they
14 issued a stay away letter telling him he was barred from Bank
15 of America premises.

16 Q So that and that was in -- I have what is marked
17 as Plaintiff's Exhibit 2, Plaintiff's --

18 THE COURT: She hasn't seen anything. You got to
19 give the court reporter time to mark this up.

20 THE COURT: She has Petitioner's 3.

21 (Petitioner's Exhibit No. 3 was marked for
22 identification.)

23 BY MS. CLOUGH:

24 Q And this is, in fact, the cease and desist letter
25 that they sent to him forbidding him to be on the property?

1 A Yes, it is.

2 Q And they actually had that on video surveillance,
3 the incident?

4 A Yes.

5 Q And so just to make it clear, you did not come in
6 for contempt the first time this happened and the first time
7 you had months of these types of disgusting text messages?

8 A Right. We had kept going to conciliation asking
9 for the language and just us to be able to work it out and
10 co-parent with ██████ At the end of the day, I would just
11 like us to get along enough that if there's an issue with
12 ██████ I don't have to, you know, send an E-mail and hope that
13 he doesn't come back out yelling at me.

14 Q And at this point, did the two of you also start
15 -- let me back up a minute. In the May order, were you guys
16 directed to also -- were you directed to do co-parent
17 counseling?

18 A Yes, we were.

19 Q And did the two of you start that?

20 A We did start. We were told that we could search
21 for whoever. We realized my insurance does not cover it. We
22 agreed to go to Riegler Shienvold and Associates in
23 Linglestown, and they assigned us John Sivley.

24 **BY MS. CLOUGH:**

25 Q And did you do some co-parenting sessions?

1 A We did.

2 Q And recently did John Sivley recommend you change
3 the type of counseling you're doing now?

4 A Yes. At our last appointment together, Rob
5 wasn't really engaged in asking questions, so John Sivley
6 asked, you know, what do you hope to get out of co-parent?
7 And he said, quite frankly, that he does not wish to co-parent
8 with me. I should do things my way, and he'll do things his
9 way; and he is not interested in co-parent counseling. He was
10 only there because of the order.

11 Q And did John Sivley subsequently recommend that
12 you guys do parallel parenting where each of you works alone
13 and try to get you to the point where you'd go back together?

14 A He had told us that he would talk to our
15 attorneys and have a conference call, but yes, he knew that
16 co-parent was not going to be helpful.

17 Q And is he still willing -- is he still willing to
18 participate in that process to see if it will make things
19 better?

20 A Yes.

21 (Petitioner's Exhibit No. 4 was marked for
22 identification.)

23 **THE COURT:** Show you what's been marked as
24 Petitioner's 4.

25 **BY MS. CLOUGH:**

1 Q Kate, during -- since November of 2017, have you
2 continued to incur significant legal fees with my office?

3 A Yes, I have.

4 Q And have we been sending you invoices throughout
5 that time period?

6 A Yes, you have.

7 Q And were those fees only for the issues we are
8 here today, the contempt issues?

9 A Yes.

10 Q Do you represent yourself on the collection of
11 the monies from him and the other thing you talked about
12 briefly before? I don't go to any hearings where you --

13 A Right, no. This is just strictly for the custody
14 and E-mails.

15 Q And I'm showing you an exhibit which has a
16 summary sheet on top which has three invoices and was your --
17 do these bills accurately reflect the amount of time that we
18 have billed you for the services we have provided on you
19 through --

20 A Yes.

21 Q The 18th of September?

22 A Yes, they do.

23 Q And several of them are hand bills. For some
24 reason our computer didn't do the summary --

25 A You tried to explain that to me.

1 Q And so what's the total amount of fees and costs
2 you've had just on this before you, very important issue?

3 A \$4,924.08.

4 Q And what, Kate, would you hope today would happen
5 at the conclusion of this court hearing?

6 A As far as Rob and I?

7 Q As far as the contempt petition. If you can wave
8 a magic wand and have a resolution that you think would work,
9 what would you want to happen?

10 A At the end of the day, I want what's best for
11 [REDACTED] I think that he needs to have two parents who can work
12 together and not pick up on hostilities between the two of us.
13 I think I would just like to have a -- he doesn't have to love
14 me. He doesn't have to like me, but just to be treated with
15 respect and be able to make decisions about our son together.

16 Q Now, right now how many face-to-face custody
17 exchanges did you actually have overall?

18 A The only one where we see each other is the
19 Sunday of the weekend when Rob has him. I pick [REDACTED] up at
20 5:00 at the York County -- I think it's Springettsbury
21 Township Police Department.

22 Q And is that some of the locations where he has
23 called you names and acted --

24 A Yes, it is.

25 Q And do you have a suggestion to the Court of how

1 you would like to perhaps eliminate that particular
2 face-to-face exchange?

3 A We have asked before if Rob would be open to --
4 if on the weekends that he had [REDACTED] instead of me picking him
5 up on Sunday if he would keep him overnight and then that
6 Tuesday --

7 Q And then where would that be?

8 THE COURT: Hold on. Let her finish and that
9 Tuesday?

10 THE WITNESS: Where Rob normally would get [REDACTED]
11 on that week, I would just keep him if it went back and forth
12 in light of flip flopping, and then Rob and I don't have to
13 keep seeing each other every time.

14 THE COURT: So Sunday night he would?

15 THE WITNESS: Every other weekend he goes to his
16 dad's through Sunday, and instead he could keep him Sunday
17 night; and that week I would keep him Tuesday.

18 THE COURT: What would happen Sunday -- Monday
19 mornings?

20 THE WITNESS: He goes -- [REDACTED] goes to school.

21 THE COURT: So dad would take him to school?

22 THE WITNESS: Correct.

23 THE COURT: Or get to school. I got you. Sorry
24 to interrupt you.

25 THE WITNESS: And then on the weeks where I have

1 ██████ he would still get him in Tuesday night.

2 BY MS. CLOUGH:

3 Q So right now he has Tuesday overnight every week?

4 A Yes.

5 Q And your suggestion is so he can follow, the
6 Tuesday following your weekend, you eliminate that so he can
7 keep him till Monday morning?

8 A Correct.

9 Q So he would not lose time with him?

10 A Right. We would just eliminate a face to face
11 with Rob and I.

12 Q And are you asking for the other relief that you
13 sought in your petition to be in -- to be reimbursed for your
14 counsel fees?

15 A Yes, I am.

16 Q Would you like the Court to direct Rob to be
17 involved in some type of counseling or anger management?

18 A We have requested that. Yes, I mean, if that's
19 doable.

20 THE COURT: I can lead horses to water. I can't
21 make them drink. This has been going on far too long for me
22 to fix any of that. I mean, you have -- and I'm not saying
23 that you didn't try. I'm saying you had an opportunity with
24 Maryann Murphy to do that. I'm not Maryann Murphy. I'm not
25 going to sit here and try to work things out with you folks.

1 I'm going to direct things. If you can't do it, you know,
2 there will be consequences.

3 MS. CLOUGH: Your Honor, that's all -- I had
4 questions for her on her counter-petition. Do you want me to
5 do that now or wait till --

6 THE COURT: See what comes up here.

7 MS. CLOUGH: Okay. Then with that -- in that
8 case, I would just ask that Petitioner's Exhibits 1 through 4
9 be entered.

10 THE COURT: Any objection?

11 MS. MILLER: May I have one minute, Your Honor?

12 THE COURT: Sure.

13 MS. MILLER: I have no objection.

14 THE COURT: 1 through 4 are admitted.

15 (Petitioner's Exhibit Nos. 1 through 4 were
16 admitted.)

17 THE COURT: Any questions for the witness?

18 MS. MILLER: Yes.

19 THE COURT: Please go right ahead.

20 CROSS-EXAMINATION

21 BY MS. MILLER:

22 Q You testified that Rob never purchased the Our
23 Wizard app, correct?

24 A No. I said within the time period, he did not.
25 We are using it now, but we were ordered within two weeks of

1 the conciliation to do it.

2 Q Was that in the March 2017 order?

3 A No. That was in our later order.

4 Q So it wasn't in the March 2017 order?

5 A No.

6 Q It wasn't in the November 2017 order?

7 A November, no. It was March.

8 Q The one that we're here on the contempt petition
9 for, correct?

10 A Correct.

11 Q Are the two of you using that Our Family Wizard
12 app now?

13 A Yes and no. There are some times where I can
14 E-mail Rob, and he'll read them even know it's 24 hours, but
15 we still primarily text.

16 Q Hasn't Rob told you not to text him?

17 A Some of these texts are initiated by Rob.

18 Q But had -- that's not my question. Has Rob ever
19 told you don't text me?

20 A Yes.

21 Q And specifically don't text me when I'm at work,
22 correct?

23 A Correct. But I don't have his work schedule
24 which we already addressed at conciliation.

25 Q Do you know where Rob works?

1 A I believe he's still at the Left Bank, I think it
2 is, but no, other than that, I don't have any updated work
3 history for him.

4 Q You're aware he's a bartender?

5 A Bartender or server. I don't have any specifics.

6 Q So you're not aware that he works most evenings?

7 A He tells me he works some days and some nights.

8 Q And isn't it true with these text messages,
9 sometimes you text him messages minute after minute on the
10 same subject?

11 A Not unless he is responding back and forth with
12 me.

13 Q Has Rob ever told you to stop texting me?

14 A Yes.

15 Q Do you stop texting him?

16 A When he says that, yes, the same --

17 Q So if we were to go through these, there would be
18 -- if he said stop texting me, we would see that you
19 immediately stopped texting him?

20 A You should, yes.

21 Q Okay.

22 A For the record, did I say that sometimes, too,
23 and I think there is one exhibit where he just continued to
24 text stop, stop, stop for about 20, 21 text messages, and that
25 was while I was at work.

1 Q Have you ever texted him real early in the
2 morning?

3 A Define early. I mean, like when I take [REDACTED] to
4 school, around that time or?

5 Q Have you ever texted him before 8:00 in the
6 morning?

7 A If [REDACTED] has been sick, yes.

8 Q Would you agree to stop texting Rob except for
9 emergency situations?

10 A Sure, if Rob would agree to respond to the fact
11 that in the E-mails that he hasn't answered.

12 Q When has he not responded to, for example, that
13 are in the E-mails?

14 A For example, two weeks ago I E-mailed him and
15 it's in the app about [REDACTED] setting up a dentist appointment,
16 and I needed to know if it could be on a Tuesday. Rob just
17 got back to me on that. I mean, there are certain things that
18 he needs appointments here and there, and you have to schedule
19 things; so certain things like that or what's going on with
20 [REDACTED] school.

21 Q And by school, you mean his day care provider?

22 A He's in pre-K.

23 Q Is that pre-K program all day?

24 A Yes, it is.

25 Q There's no day care component on that?

1 A I mean, it's a combined day care, goes up through
2 kindergarten or first grade.

3 Q The Bank of America letter dated July 25th, 2017,
4 correct?

5 A Yes.

6 Q Since that, has Rob ever appeared at your office
7 to make a payment to you?

8 A In the parking lot.

9 Q And you didn't object to him being there?

10 A That's not -- it's not owned by Bank of America,
11 the parking lot. I did check with the building because we are
12 not the only office in that building. It is a public lot.

13 Q So you weren't afraid of him coming to work,
14 making another scene?

15 A I mean, I always have somebody that stands at the
16 door, and there are video cameras.

17 Q And you testified -- your only testimony
18 regarding the text messages was about the hair. I believe
19 it's Exhibit No. 1. Do you still have that in front of you?

20 **THE COURT:** She does not. She doesn't have it.

21 **BY MS. MILLER:**

22 Q What's the date of that text?

23 A They're not on these. It's on the ones, the
24 Exhibit 2.

25 **THE COURT:** She has Exhibit 2.

1 **THE WITNESS:** Thank you. This might take me a
2 minute to go through these.

3 **THE COURT:** She asked the question.

4 **BY MS. MILLER:**

5 Q I can ask it a different way. Was that on or
6 before November of 2017?

7 A It may have been before November.

8 Q So it wouldn't be in contempt of that order then,
9 correct, if it was before November of 2017?

10 A I don't know because it does reference per our
11 lawyers, so it -- now, these also are the ones we submitted
12 are from November 5th, so I have my phone here. I can go
13 through them.

14 Q That's okay. But they could be before November
15 of 2017?

16 A I don't believe it is, but yeah.

17 Q You don't know, okay. Has Rob ever told you that
18 he doesn't want [REDACTED] to call your husband dad?

19 A Yes. We discussed that and we actually in the
20 last order in May or March of this year, we were told to
21 contact the therapist, but Rob never followed through. I did.
22 I took [REDACTED] out there. I went out there twice, and Rob never
23 addressed it. I actually E-mailed Rob on it, telling him that
24 I have talked to [REDACTED] [REDACTED] knows that Jake, my husband, is
25 not his father and anytime you want to put things up, the more

1 you draw attention to it, the more he will do it. So we did
2 reprimand [REDACTED] Occasionally he will be able to say daddy.

3 Q I'm going to stop you there, and I'm going to
4 refer you to a text message from December 2nd of 2017.

5 A Okay.

6 THE COURT: That would be Exhibit 2?

7 MS. MILLER: Exhibit 2, Your Honor.

8 THE COURT: Just wanted to make sure.

9 BY MS. MILLER:

10 Q Are you there?

11 A Yes.

12 Q Halfway down the page -- and it's my
13 understanding Rob's text messages are in gray and yours are in
14 blue?

15 A I don't have a color copy, but.

16 Q In Rob's text message and it would have been
17 December 2nd, 2017 at about 5:00, Rob says he's great except
18 for what he told me that he has two dads, and that's what you
19 told him and then --

20 A You say December 2nd?

21 Q Yes.

22 A I don't have it.

23 MS. CLOUGH: It appears -- Your Honor, can we
24 direct her that it appears in the middle of a page.

25 THE WITNESS: Maybe mine aren't in.

1 BY MS. MILLER:

2 Q It's December 2nd, 2017?

3 A I'm on the December 2nd page, but I don't see
4 that one.

5 Q At 5:21 p.m.?

6 A I'm missing some because mine go from 11/29, the
7 date. Then it goes to 12/2, but at 5:52, so I might be
8 missing a page.

9 MS. CLOUGH: I think it's just a different front
10 and back.

11 MS. MILLER: She may have my copy, Your Honor.

12 THE COURT: No. Put a Post-It note or turn the
13 page down so you can find it if it's missing a page. I'd like
14 to know because when I go through those, it would be nice if I
15 have a good copy.

16 THE WITNESS: I think it's missing a page.

17 MS. MILLER: It's missing a page, Your Honor.

18 THE COURT: Okay.

19 MS. CLOUGH: I have another copy here, Your Honor.
20 I can give you my copy. We can remark my copy as. . .

21 THE COURT: Make sure they're in the record.

22 MS. CLOUGH: I'll leave it open to that page. Do
23 you want to -- and sometimes when things copy through, copy
24 three times, some things don't come out. I apologize if that
25 happened. I guess it got shuffled in neither spot, but.

1 THE COURT: Give you the now Exhibit 2.

2 THE WITNESS: Okay.

3 BY MS. MILLER:

4 Q Do you see the text message from Rob on December
5 2nd, 2017?

6 A Yes.

7 Q He sent it at 5:21, and you viewed it at 5:31
8 p.m.?

9 A Yes.

10 Q And in that he addressed the issue that [REDACTED]
11 told him that you told [REDACTED] he has two dads. Do you see that
12 message?

13 A Yes. I see Rob's text message.

14 Q And in your response to him, you didn't tell Rob
15 I'll have a conversation with [REDACTED] that that's inappropriate?

16 A I said Jacob's his stepdad and like a father
17 figure to him.

18 Q But you never said I'll have a conversation with
19 [REDACTED] and tell him not to call him daddy?

20 A No, I did not.

21 Q And continuing on that, you'll see another
22 message from Rob where he says please stop texting me, Kate,
23 correct?

24 A Yes.

25 THE COURT: No. Pause me there because I don't

1 have those, and I'm taking down the notes from there. Give me
2 date and time.

3 MS. MILLER: It would be December 2nd, 2017 at
4 5:46 p.m.

5 THE COURT: Go ahead. Ask your question on that
6 again.

7 BY MS. MILLER:

8 Q And then just following along, he said seriously
9 do you enjoy talking to me or something, correct?

10 A The next one that I have from him said I don't
11 text you when [REDACTED] with you. It'd be nice if you did the
12 same, and then it says I don't care. His next text message
13 after mine says I don't care? Fuck you. You're psychotic,
14 Kate. There's something very wrong with you and what you're
15 doing to my son. That's the next one that I have.

16 Q And again, Your Honor, these are all -- this
17 message -- I'm not sure we have complete packets of these text
18 messages because that's not in my packet.

19 THE COURT: Well, I tell you what we'll do. I'm
20 not here to adjudicate that. We're going to let you step down
21 with all these packets, and we'll put the pause on here; and
22 call me when you get a chance to look at them and then call me
23 back in.

24 (Court recessed at 1:43 p.m. and reconvened at
25 1:52 p.m.)

1 **THE COURT:** Back to Exhibit 2. Go ahead,
2 counselor.

3 **BY MS. MILLER:**

4 Q I'm going to direct you to a text message on
5 December 3rd, 2017 at 4:24 p.m.

6 A I'm sorry. Which time?

7 Q 4:24 p.m.

8 A Okay.

9 Q The text message at 4:24 p.m. and you said and
10 you wonder why [REDACTED] wants to call Jake and why he loves him
11 so much. Jake is there for him. Takes care of him. Supports
12 him. And surely doesn't talk like that, correct?

13 A Yeah.

14 Q But again, you still haven't told Rob that you're
15 going to have a conversation with him about not calling Jake
16 dad, correct?

17 A That was discussed when we went to conciliation
18 this last time --

19 Q That wasn't my question. In these text messages,
20 did you ever tell Rob that you were going to have a
21 conversation with your son about not calling your husband dad?

22 A He didn't say that [REDACTED] was calling him dad. He
23 said he told Rob that he had two dads.

24 **MS. MILLER:** Your Honor, I'm going to ask for you
25 to direct the witness to answer my question.

1 **THE COURT:** I have no idea. Let her answer the
2 question. Go ahead, ma'am. Go ahead and answer the question.

3 **THE WITNESS:** I -- no, I never said that I would
4 talk to [REDACTED] because he wasn't calling Jake dad. He was
5 saying he had two dads was what was relayed back to me.

6 **BY MS. MILLER:**

7 Q Would you agree with me that the last several
8 months since you've been using Our Family Wizard,
9 communication is better?

10 A It's improved, but not -- not much. There are
11 still other instances and outbursts.

12 **MS. MILLER:** That's all I have, Your Honor.

13 **MS. CLOUGH:** Just real briefly on redirect, Your
14 Honor.

15 **REDIRECT EXAMINATION**

16 **BY MS. CLOUGH:**

17 Q Kate, if you turn to the -- now that we all have
18 a copy of the same page, if you turn to the message on
19 December 2nd, 2017 when he asks about [REDACTED] saying he has --
20 it's the 12/2/17, 5:21 message --

21 A Yes.

22 Q From [REDACTED] to you. Opposing counsel only read
23 you the first sentence. Can you please read the entire two
24 sentences?

25 A Sure. Let me see if I have the page.

1 Q It's the 5:21 p.m. and it's in the center of the
2 page.

3 A Here it is, okay. The 5:21?

4 Q Yes.

5 A He said he's great! Except for when he told me
6 he has two dads, and that's what you told him. I told him
7 that he doesn't have two dads and not to let mommy lie to you.

8 Q Then on December 3rd when she asked you about his
9 -- your text message that you put on at 4:24 p.m. on December
10 3rd -- now I went too far -- that she had you read out loud
11 and you wonder why [REDACTED] wants to call Jake and he loves him
12 so much. What was the next text message immediately at Line
13 2?

14 A Stop texting me, you fucking retard.

15 Q And that's what you were referring to that Jake
16 certainly doesn't talk like that?

17 A Correct.

18 Q And without reading through every one, there are
19 various other texts in here where he calls you the F word and
20 the C word?

21 A Correct.

22 Q And that's just through February?

23 A Yeah.

24 Q Now, when she asked you since Our Family Wizard,
25 has it gotten better, have you continued since the Our Family

1 Wizard's been used, do you get text messages from him that
2 still call you those names?

3 A Yes.

4 Q But they're not part of this exhibit --

5 A Right. Because it was after we filed.

6 Q And can you please tell the Court in the
7 counter-petition that Rob has filed, he claims that you're
8 teaching ██████ to call his stepfather dad. Does he call Jake
9 dad?

10 A No, he does not.

11 Q What does he call Jake?

12 A He calls Jake Jake most of the time.

13 Occasionally he does still say daddy Jake and we correct it,
14 but again, it's not difficult for the therapist. She has said
15 the more we draw attention to it, the more he will continue to
16 do it, so we're to say hey, Jake and just reuse his name and
17 keep doing it, but not to keep drawing attention and punishing
18 or grounding him when he says daddy Jake.

19 Q And are there also in here messages of where he
20 calls you that you have half-breeds at your house?

21 A Yes.

22 MS. CLOUGH: Nothing further, Your Honor.

23 THE COURT: Back to you, Miss Miller.

24 **RE-CROSS-EXAMINATION**

25 **BY MS. MILLER:**

1 Q There's also numerous texts in there where Rob
2 says stop texting me, correct?

3 A Yes.

4 Q And you don't stop texting him, correct?

5 A Again, no, and he continued to reply. It's the
6 same when I would say it.

7 MS. MILLER: That's it, Your Honor.

8 THE COURT: Let me ask with the use of Our Family
9 Wizard, are you using that in lieu of texting?

10 THE WITNESS: Text is still going on.

11 THE COURT: How -- give me the ratio. Give me the
12 circumstances.

13 THE WITNESS: It's probably still 85 percent
14 texts, 15 percent app.

15 THE COURT: Can you hand me that exhibit? I'm
16 missing Exhibit 1, I think. I know I am.

17 MS. CLOUGH: I might. I have it.

18 THE WITNESS: I'm sorry. I brought it down.

19 MS. CLOUGH: She carried it down.

20 THE COURT: That's fine. I'm getting all exhibits
21 in order. Thank you, kind sir. I'll let you step down if you
22 do so carefully, please.

23 THE WITNESS: Thank you.

24 THE COURT: Ms. Miller, father's turn. Come on
25 up, dad.

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ROBERT B. WINGARD,

having been duly sworn, testified as follows:

THE COURT: Slide up just a tad and we'll test it and adjust from there. Look out at counsel and state your name.

THE WITNESS: My name's Robert Wingard.

THE COURT: Go ahead, Ms. Miller.

DIRECT EXAMINATION

BY MS. MILLER:

Q Do you go by Rob?

A Yes.

Q Rob, what's your address?

A 113 Shelbourne Drive, York, Pennsylvania 17403.

Q And is that in York County?

A Yes.

Q Who resides with you?

A Just my mother and myself.

Q And where do you work, Rob?

A The Left Bank in York.

Q What is primarily your work schedule there?

A Many evenings, but it varies. I do Wednesdays all day, Fridays usually all day.

Q What's your job there?

A I'm a bartender.

Q And is mother aware that you bartend there?

1 A Yes.

2 Q Is she aware of your work schedule?

3 A Yes.

4 **BY THE COURT:**

5 Q Well, let me stop you there. The Left Bank, is
6 it open on Sundays?

7 A No.

8 Q And what hours does it operate regardless of when
9 they schedule you?

10 A So Mondays, they open at 4. The rest of the
11 week, Tuesday through Friday, open at 11.

12 Q A.M.?

13 A A.m. And Saturday, we open at 5:00.

14 Q 5 p.m.?

15 A Yes.

16 Q And closing hours?

17 A Vary. There's really no closing hours.
18 Typically I'm out there --

19 Q Well, there is with the LCB.

20 A Sure. Well, we don't follow strict LCB closing
21 times. You know, we're usually out there by anywhere between
22 10 and 12:00.

23 Q Max it out about 12. Do you ever get later than
24 12?

25 A No.

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THE COURT: Go ahead.

BY MS. MILLER:

Q Are you permitted to receive -- or are you permitted to respond to text messages at work?

A No.

Q Have you informed mother of this?

A Yes.

Q Does she text you when you're at work?

A Oftentimes, yes.

Q Repeatedly?

A Yes.

Q And what does she text you about majority of the time?

A Mainly money owed.

Q I'm sorry?

A Mainly money owed. Excuse me.

Q Is that money as part of your divorce?

A Yeah.

Q Does she ever text you about [REDACTED]

A Yes.

Q Are they emergency situations about [REDACTED]

A No.

Q And would you admit that your responses are inappropriate?

A Yes.

1 Q Is that out of frustration?

2 A Yes.

3 Q Would you prefer to communicate through the Our
4 Family Wizard entirely?

5 A Yes.

6 Q Except for an extreme emergency?

7 A Yes.

8 Q If you think we were to do that, would your
9 behavior improve?

10 A It already has, but yes.

11 THE COURT: Well, his frustration level would
12 reduce.

13 BY MS. MILLER:

14 Q Now, let's talk with the haircuts, nails. Did
15 you agree to that in the custody order?

16 A Yes.

17 Q Why?

18 A Religious to please her and try to reduce the
19 conflict.

20 Q So prior to it being in the order, was that a lot
21 of the back and forth with the text messages?

22 A Yeah. Yes.

23 Q Would she text message you a lot if you cut his
24 hair and his nails?

25 A Yes.

1 Q After putting it in the order, did you cut your
2 son's hair?

3 A No. Not myself, no.

4 Q Did you trim his nails?

5 A Yes.

6 Q And why did you trim them?

7 A Because just the natural growing needs, you know.

8 Q And when you trim his nails, it's because they're
9 long?

10 A Absolutely.

11 Q Do you think it's necessary to have those two
12 items in a custody order?

13 A No.

14 Q And I see your hair is short and has gel in it.
15 Did your son want to wear his hair like you?

16 A Yes.

17 **THE COURT:** As James and I would say, follically
18 envious. I'll skip to myself.

19 **BY MS. MILLER:**

20 Q Do you smoke in front of your son?

21 A No, never.

22 Q Do you smoke in your residence?

23 A No.

24 Q Does your mother own that residence you reside
25 in?

1 A Yes.

2 Q Does she smoke?

3 A Yes.

4 Q Do you smoke inside?

5 A No.

6 Q Does she smoke inside?

7 A No.

8 Q Do you smoke outside?

9 A Absolutely.

10 Q Do you smoke in the car with your son?

11 A Never.

12 Q Do you smoke in the car when you don't have your
13 son?

14 A Yes.

15 Q Now, you heard mother testified that you speak
16 inappropriately to her in front of your son. Do you do that?

17 A No.

18 Q Do you want more time with your son?

19 A Yes.

20 Q You heard mother's proposed custody schedule. Do
21 you have one -- are you proposing something today?

22 A I mean, what we talked about before would be
23 great, keeping him on my weekends through the return back to
24 the day care Wednesday morning.

25 Q So currently you get him Friday, and you return

1 him to mother on Sunday?

2 A Evening many times, yes.

3 Q So you're saying Friday through Wednesday
4 morning, you would like to have him?

5 A Yes.

6 THE COURT: Let me just get my note on this.
7 Friday after day care, so you pick him up at day care?

8 THE WITNESS: Yes.

9 THE COURT: And you would return him to day care
10 on Wednesday mornings. Would you use day care Monday,
11 Tuesday?

12 THE WITNESS: No.

13 THE COURT: Go ahead, counsel.

14 BY MS. MILLER:

15 Q With your work schedule, are you -- would you be
16 able to accommodate that where you could have off on Monday
17 and Tuesday?

18 A Yes. I'm already off Tuesday and I would be
19 giving up the Monday shift.

20 Q And that would give you more time with your son?

21 A Yes.

22 Q And he's currently not of school age, correct?

23 A Yes.

24 Q But soon will be?

25 A Yes.

1 Q And you realize that you won't have as much
2 time --

3 A Yes.

4 Q So you might as well have it now?

5 A Yes.

6 Q The following week, would you still like to have
7 your son Tuesday overnight?

8 A Yes.

9 THE COURT: Again, that's from after day care
10 Tuesday to return to day care on Wednesday?

11 THE WITNESS: Middle of the day, day care. I pick
12 him up around 11:30.

13 BY MS. MILLER:

14 Q On Tuesday?

15 A On Tuesdays.

16 Q Is the preschool component in the morning for
17 your son?

18 A Is it?

19 Q In the morning?

20 A Yes.

21 Q Was there a time when you became aware that
22 mother's husband had a D.U.I. conviction?

23 A Yes.

24 Q Do you remember when you became aware of that?

25 A Before one of the conciliations when they had to

1 fill out the paperwork of a record.

2 Q Did you ask mother about that?

3 A Yes.

4 Q Did she give you information about it?

5 A No.

6 Q What was your concern about that D.U.I.?

7 A Just obviously that my son wasn't anywhere

8 involved, but.

9 Q Did you ever receive a response from that?

10 A No, no.

11 Q Did you attend custody workshops?

12 A Yes.

13 Q And was that in York County?

14 A Yes.

15 Q And did you complete it in July 2018?

16 A Yes.

17 Q Prior to July of 2018, did you try to attend a

18 different workshop?

19 A I did. I attempted one time to attend a workshop

20 up in the Harrisburg area.

21 Q Do you remember the name of that?

22 A No.

23 Q Was that over the weekend?

24 A Yeah. It was on a Saturday morning.

25 Q Did you have directions to that?

1 A Yeah.

2 Q Where did those directions take you?

3 A To an empty, closed building.

4 Q Do you remember when that was?

5 A Saturday morning, I know that, very early.

6 Q Remember what the month of the year?

7 A Maybe November.

8 Q Of 2017?

9 A Yeah.

10 Q And this workshop that you attended in York, they
11 only offer that every Saturday, correct?

12 A I believe so.

13 Q And it's -- was it difficult to get in there?

14 A No.

15 Q Moving forward, are you going to be more
16 appropriate with your text messages with mother?

17 A Yes.

18 **THE COURT:** I can answer that for you, too.

19 **MS. MILLER:** What was that?

20 **THE COURT:** I can answer that for him, too,
21 because while I'm thinking broad construction of agreed-to
22 orders, once I get involved, it becomes a lot stricter and a
23 lot more exact and I will be very specific in what sanction I
24 am going to impose for any uncivilized words.

25 **MS. MILLER:** I have nothing further, Your Honor.

1 MS. CLOUGH: Just brief redirect.

2 THE COURT: Go ahead.

3 MS. CLOUGH: Or excuse me, cross.

4 CROSS-EXAMINATION

5 BY MS. CLOUGH:

6 Q So you would agree with me, Rob, it took three
7 separate conciliation conferences before you finally separated
8 from Kathryn?

9 A Yes.

10 Q And each time you would tell Maryann Murphy and
11 myself that you were going to go to one and the date you
12 scheduled them, and then you wouldn't go, the first two times?

13 A Yes.

14 Q And finally your attorney got you one to complete
15 when we agreed to let you do it in York?

16 A No. I did it myself, but yes.

17 Q But you didn't even go to the first one in York
18 that you had agreed to go to, isn't that correct? You missed
19 that one?

20 A Yes.

21 Q Now, if I understand today, you're asking the
22 Court -- and let's talk about your counter-petition for
23 contempt. You filed that on April 13th, 2017, is that
24 correct?

25 A Yes.

1 Q And in that counter-petition, you claimed that
2 mother failed to ever disclose to you that father was child --
3 and I quote, "mother failed to disclose to father that
4 stepfather was charged with a driving under the influence in
5 July 2016." That's what you claimed in asking this Court to
6 hold my client in contempt, correct?

7 A Yes.

8 Q But my client filed -- her husband filed on March
9 9th, 2018. A month and a week before that, he filed the
10 notice of his D.U.I. with this Court, and you were served with
11 that?

12 A Okay. Is there a question?

13 Q The question is you asked this Court to hold her
14 in contempt for something she had already told you and filed
15 with the Court?

16 A Is that contempt what we're here about?

17 Q Yes.

18 A No.

19 Q You're here asking this judge to hold my client
20 in contempt for not telling you something she told you a month
21 and a half before you asked to hold her in contempt, is that
22 correct?

23 A Yes.

24 Q And just for the record, she wasn't married to
25 Jake at the time that D.U.I. happened, was she?

1 A I don't know.

2 Q And you never contacted Georgi Anderson to make
3 the appointment to go up there to do the child therapy on the
4 issue of father, did you?

5 A No. I have made several attempts to get in touch
6 with Georgi Anderson with no response.

7 Q Last time you were at the conciliation
8 conference, you told us you had not even called her back, is
9 that true?

10 A Correct.

11 Q So the last time you were in -- since the last
12 time you were at the conciliator, subsequent to that you then
13 tried to call her?

14 A Yes.

15 Q And if you could look at Exhibit 2, the text
16 messages between the two of you?

17 **THE COURT:** He has 2.

18 **BY MS. CLOUGH:**

19 Q Now, first of all -- and Exhibit 1 which are just
20 blown-up versions of some of the texts in Exhibit 2, you can't
21 show the Court anywhere in these documents where my client has
22 called you any of these filthy words, can you?

23 A No.

24 Q And in fact, on December 3rd or the December 2nd
25 text that we already talked about, you said he's great.

1 Excuse me. December 2nd at 5:21, he's great! Except for when
2 he told me he has two dads, and that's what you told him. I
3 told him that he doesn't have two dads and not to let mommy
4 lie to you?

5 A Yes.

6 Q So you told your three-year-old son that his
7 mother was lying to him?

8 A Yes.

9 Q And then on the next page at 12/2/17 at 5:58, can
10 you tell the judge what you texted to Kate then?

11 A Sorry. That time again?

12 Q 12/2 at 5:50 -- 5:48 p.m. It's in the center of
13 the page.

14 A The pages are out of order. Sorry.

15 Q They were not out of order when I handed them up
16 to the Court.

17 A 12/2, 5:54?

18 Q 5:48. Might be on the back of the page that you
19 have.

20 A 5:48, I don't care? Fuck you. You're psychotic,
21 Kate. There's something very wrong with you and what you're
22 doing to my son.

23 Q And then without her responding, what did you
24 text back? Without her responding, you sent her another text.
25 What does that say?

1 A I can't wait till [REDACTED] is old enough to realize
2 what you have done to him. And then he can make a decision on
3 where he would like to live. I can't wait for the day!

4 THE COURT: That would be when he's 18?

5 THE WITNESS: That would.

6 BY MS. CLOUGH:

7 Q And on the next -- on the top of the next page,
8 12/2/17 at 5:52 p.m., what did you text to Kate?

9 A Sorry. At the bottom of the page?

10 Q Top of the Page, 12/2/17, 5:52 p.m.

11 A I mean, I have one at 5:52 that says I've never
12 once lied to my son. But you continue to fill his head with
13 falsehoods and lies.

14 Q Okay, the one after that. That's on the bottom
15 of the page. The top of the next page, 12 -- you didn't even
16 wait another -- a full minute and you texted her again. Can
17 you read that 12/2 5:52 text?

18 A Going the wrong direction. Keep doing what
19 you're doing, Kate. [REDACTED] will never want to be with you and
20 your sorry excuse for a family.

21 Q And then again no response from Kate and what did
22 you then text her at 5:53?

23 A House full of half breed kids must be awesome!!!

24 Q And you're asking this Court in response to the
25 petition for contempt today for you talking to Kate this way

1 to her and about her family that you want this judge to expand
2 your periods of time with your son to give you more time to
3 talk to him this way about this family?

4 A No.

5 Q You have told [REDACTED] Jake is not his -- he's not
6 to call Jake daddy, correct?

7 A No.

8 Q What have you told Kate that you told him that
9 his mother was a liar?

10 A I've told my son that Jake is not his dad, yes.

11 Q And you told your son that [REDACTED] is not his
12 brother?

13 A No. I have not said that.

14 Q You've told him he's his half-brother, is that
15 correct?

16 A That would be correct.

17 Q And you've told him that his stepbrother is not
18 his brother, too, correct? When he calls his stepbrother his
19 brother, you have corrected him and told him it's not his
20 brother?

21 A They are stepbrothers, yes.

22 Q So you don't think it's okay for a three- or
23 four-year-old boy to love his siblings? You think it's
24 necessary to put qualifiers on the degree of relationship?

25 A No. I never said that.

1 Q Could you allow for the possibility that that's
2 harmful to [REDACTED] to tell him [REDACTED] is only his half-brother?

3 A Sure.

4 Q What possible benefit to [REDACTED] is there to
5 qualify [REDACTED] as his half-brother?

6 A None.

7 Q Makes you feel like a man, though, doesn't it?

8 MS. MILLER: Your Honor, I'm going to object --

9 THE COURT: He didn't have to say that. I was
10 about to jump out and refuse. Next question.

11 BY MS. CLOUGH:

12 Q And further on 12/3 at 4:20 p.m.?

13 A Where do you want me to start?

14 Q What did you text her at 4:20 p.m.?

15 A There's lots of texts at 4:20.

16 Q There were some texts from her --

17 A Stop texting me? Which one would you like?

18 Q And then the next one you texted her.

19 A Do I need to read it myself?

20 Q You texted her stop texting me, and what was the
21 next one you texted her at 4:20?

22 A I'm sorry. If you just didn't hear me, I said
23 fuck you, cunt.

24 Q And on the next page?

25 A Yes.

1 Q What did you -- actually the time's at the bottom
2 of the page before, but at 12/3/17, 4:22 p.m. and the text is
3 at the top of the following page --

4 MS. MILLER: Your Honor, I'm having a hard time
5 following.

6 MS. CLOUGH: Excuse me.

7 THE COURT: She's running, running, running.

8 THE WITNESS: Yeah. Just tell me where you want
9 to start.

10 BY MS. CLOUGH:

11 Q At the top of the page.

12 A 12/13, 4:26?

13 Q Yes. What --

14 A Suck a dick, bitch.

15 Q And then --

16 A Oh, that's right, you don't do that! LOL.

17 Q Yeah. And you think that's helpful in your
18 communication regarding your son?

19 A No, absolutely not.

20 MS. CLOUGH: I have nothing further.

21 THE COURT: Ms. Miller.

22 REDIRECT EXAMINATION

23 BY MS. MILLER:

24 Q Rob, you can keep those.

25 A You want me to keep them?

1 Q Yes, please. You would agree with me there's
2 some nice exchanges in these text messages as well, correct?

3 A Yes.

4 Q And so if the two of you need to make some type
5 of decision with respect to [REDACTED] do you always tend to work
6 those out?

7 A For the most part, yes.

8 Q And there's an exchange in here about what a
9 holiday schedule, modified holiday schedule?

10 A I'm not sure.

11 Q Like Christmas if you need to modify it, did the
12 two of you mostly agree?

13 A Yeah, absolutely, yeah. Yes.

14 Q The custody schedule that you suggested, that
15 would have you picking up and dropping off at day care?

16 A Yes.

17 Q So there would be no exchange between you and
18 mom?

19 A Yes.

20 MS. MILLER: Nothing further, Your Honor.

21 MS. CLOUGH: I guess really quick on cross for
22 that.

23 **RE-CROSS-EXAMINATION**

24 **BY MS. CLOUGH:**

25 Q You still have to face exchanges for holidays

1 from time to time?

2 A Yes.

3 Q But the custody schedule that Kate exchanged --
4 suggested, that did not expand your custody, didn't restrict
5 it, didn't take any time away. It eliminated one face-to-face
6 exchange with you not getting extra time, correct? If you
7 return him Monday instead of Sunday night, you don't lose an
8 overnight?

9 A What she proposed, though, would be taking time
10 away from my son. It would be taking away my Tuesday.

11 Q When do you pick him up on Tuesday?

12 A 11:30.

13 Q So if you kept him till -- take him up to school
14 Monday, Monday afternoon, you wouldn't lose any time, took him
15 up Monday afternoon?

16 A Sure.

17 MS. CLOUGH: Thank you. Nothing further.

18 BY THE COURT:

19 Q I got a couple quick questions for you.

20 A Sure.

21 Q The class you took in York, what was that called?

22 A I really don't remember. I think the label is
23 CSR, something like that. I really don't know.

24 Q And the Our Family Wizard, is this something you
25 can use from your phone?

1 A Yes.

2 Q So you're at work. I don't know what you do with
3 your phone at work. Mine sits in the back, so I, too, don't
4 text while I work or I don't answer my E-mails if that's going
5 through there while I work. But it just sits there and the
6 Our Family Wizard would get -- would send you a --?

7 A Alert.

8 Q An alert like a text?

9 A Yes.

10 Q I've not used it, so I'm asking.

11 A Yes.

12 Q So well, what's the difference between using Our
13 Family Wizard and texting for you?

14 A You know, honestly because I can respond to it on
15 my time when I'm at work and for the past four months or so,
16 things have been very, very good using the My Family Wizard.

17 Q You can respond to the texts on your time when
18 you're not at work, can you not, just ignore those? I mean,
19 if I got 20 texts sitting back there on my phone now, I
20 haven't looked at them.

21 A Sure.

22 Q You know, I wait till 4:30. Then I'll look at
23 them again. So again, the question is what -- how does Our
24 Family Wizard help you over a text? I'm trying to grasp that.
25 I'm not saying you're wrong. I'm saying I don't understand.

1 A No. I mean, it's made things much easier just
2 because you can see when she reads a text. Also, there's been
3 no vulgar language whatsoever when we've used -- since we've
4 begun using the My Family Wizard app. I don't know why, but
5 it's easier to communicate with her.

6 Q But it's still -- for you it's the same process,
7 pick the phone up?

8 A For the most part, yes.

9 Q Read and respond?

10 A Yes.

11 THE COURT: That's the questions I have. Thank
12 you. Please step down carefully.

13 THE WITNESS: Sure.

14 THE COURT: What's next for mother?

15 MS. CLOUGH: Your Honor, I have three witnesses,
16 but maybe what I would do is give you an offer of proof for
17 them first because I think some of them --

18 THE COURT: You're reading my mind.

19 MS. CLOUGH: I'm sorry. Because I heard you on
20 the hearsay issue. Some of them will be things they've heard
21 that the child say and some -- basically all three of them are
22 going to talk about [REDACTED] smelling like cigarette smoke every
23 time he gets out of the car at exchanges.

24 THE COURT: And if somebody smokes in that car
25 regardless of whether they were smoking while the child was

1 there or not, that is residual having been a child of smokers,
2 but I don't disagree with that. We just have to figure out
3 how to deal with that. The smoking's an issue that concerns
4 me, and I have to give that some more thought; but
5 communication should always take place between the parents
6 without using the child as an intermediary.

7 MS. CLOUGH: And one of my witnesses will be able
8 to testify indirectly to hearing Rob call Kate some of the
9 same names we've seen from the text messages.

10 THE COURT: I don't need any more. That's
11 uncivilized.

12 MS. CLOUGH: I mean, that would basically be the
13 offer of proof, the smoking and the language and the child
14 saying I'm going back to the bitch's house.

15 THE COURT: Understood.

16 THE COURT: Ms. Miller, you dispute that's what
17 the witnesses would say?

18 MS. MILLER: Probably not.

19 THE COURT: Anything else other than that then?

20 MS. CLOUGH: No.

21 THE COURT: Anything, Ms. Miller?

22 MS. MILLER: No.

23 THE COURT: I got some things to read and review,
24 things like that. But I can tell you right now, I'm going to
25 do something here. I need to help you folks. I am not

1 Maryann Murphy. You want to go back to Maryann Murphy because
2 she's nice and she helps you out and she sits there and holds
3 your hand because that's what we ask her to do, that's great.

4 If you can't tell, I'm not that touchy feely kind
5 of person. I get paid to make decisions, right or wrong, and
6 I sleep well at night. My decision is not to say who's the
7 better parent. My decision is to promote this child and this
8 child's relationship with both parents.

9 And while I correct father right now when he uses
10 the word can't wait till my son -- I can't remember the
11 E-mail, but he used of the word mine. It's not my son. It's
12 your son. It's our son. And it will be forever and a day.

13 I am going to doing something to address the
14 uncivilized communication. I'm going to do something to
15 address the texting issue. I'm going to do something to
16 address limitation of the parents seeing each other at
17 exchanges. What I'm specifically going to do just yet, I
18 don't know. I've been taking a lot of notes.

19 I need to review some things in here, but I will
20 get decisions for you on this; and that's what it is for me.
21 It's a decision. Obviously if you folks can jointly agree to
22 some things on your own, but when you can't, it calls for me
23 and then your decision making day is over because then it
24 falls upon me to make that decision and absent an above court
25 changing my mind, my decision becomes final. And I am that

1 way, right or wrong.

2 I tell you I will add language in there about
3 emergency. I will specifically define what an emergency
4 decision is. Generally emergencies is something where if you
5 don't take the child to the hospital or do something
6 immediately with the child, serious situation at school, needs
7 to get picked up, that sort of thing, it's not an emergency.
8 I recognize hair is a dispute, and I am follically challenged,
9 so I say this with great envy. Hair grows back, you know.
10 That's not an emergency. But discussing it, it shouldn't be
11 done, but doesn't necessarily have to be done on an emergency
12 basis. Now, one question I want to ask counsel about,
13 something is said in here about parallel parenting.

14 MS. CLOUGH: Correct.

15 THE COURT: Is that something -- that's not
16 something -- I'm going to just cut the order out and be done
17 with it, but if parallel parenting is going to help the
18 parents and I can encourage it, I will, but I can't -- I can
19 take a horse to water. I can't make them drink, so you know,
20 define your possession on that.

21 MS. CLOUGH: I think they should do the parallel
22 parenting. If you give the Our Family Wizard, John Sivley can
23 log on that and look at their communications. He'll be
24 working with just dad. He can work with him on any issues he
25 sees on that. When he's working with just mom, he can see --

1 help her with issues of how she responds to help them see
2 triggers in ways they're not interacting so that they each can
3 improve the ways they interact or do not interact with each
4 other. So I think they tried the co-parenting. I think they
5 -- it would be a chance to see if the parallel parenting might
6 work.

7 **THE COURT:** I can't answer that question. Let me
8 ask Ms. Miller. Ms. Miller, does your client have a position
9 either way because I've not been in the parallel parenting.
10 I've never been in the co-parenting classes. It's like when
11 I'm dealing with addicts, and I deal with them every day.

12 You know, I get somebody that can't get off
13 alcohol. They can't get off opioids. I can tell them till
14 I'm blue in the face to have gone to treatment. They're not
15 ready to go, they're not ready to go. It doesn't help, you
16 know, regardless of what treatment I order. I don't know if
17 this is helpful to your client or not.

18 **MS. MILLER:** I mean, I think he's willing to do
19 whatever is in his child's best interest.

20 **THE COURT:** And I appreciate that. I just don't
21 know if it is. I mean, something that -- if jointly they want
22 to explore it, that's great. If they want to discuss that
23 with somebody like Maryann Murphy, that's great. If they want
24 to agree to that with somebody like Maryann Murphy, that's
25 also great, but me simply saying cookie cutter approach, go to

1 here, I don't know that that works, hence the reason why I
2 asked your client what was the program you went to in York
3 because I'd like to know what the other programs are just so I
4 have a reference.

5 MS. MILLER: It's actually a co-parenting class.
6 It's a course that everyone in York County is required to if
7 they're before the Court on a custody issue --

8 THE COURT: Is that one they make them pay for?

9 MS. MILLER: Yeah. It's a kids -- it's a custody
10 workshop.

11 THE COURT: There's a free online program,
12 uptoparents.org run by a couple of psychologists out of
13 Indiana. I've had numerous communications with them, and it's
14 a great introductory. I mean, you find once you get there,
15 then you go to the next step which could be these other
16 things. It's like when they do the D.U.I.s, they say
17 everybody has to get a CRN evaluation.

18 Yeah, that's worthless. Without the precursors
19 necessary, it doesn't help us, so I'll put some language in
20 about counseling if either parent wants to. They can't agree,
21 come to me and I'll make a decision on a petition to
22 designate, but I don't want to order it and financially strap
23 folks in doing so. I mean, I'm cognizant to this.

24 Everything you hear costs money, and I'm not
25 trying to throw money in the problem. I don't think it's

1 going to get resolved. We have to -- I want to let the
2 parents parent to their abilities. Some parents -- I have to
3 micromanage.

4 Other parents, you know, I just have to give them
5 a decision which a child -- which school does the child go to
6 and I never hear from them again. I can make decisions. I do
7 it all the time. That phases me none, but I can't parent this
8 child. That's just not going to happen.

9 I will have a decision for you folks. I'm going
10 to spend some time here, and I'd like to have it done by the
11 17th; but we're in criminal trials that week, so I'll have a
12 decision out for you counsel on the 19th of October one way or
13 another. And then from there, you'll make a decision, and
14 again, I'll put it on the record. I love Maryann Murphy.

15 I mean, I think she's wonderful because she can
16 talk to you folks in ways that I just simply cannot do. She
17 can suggest things and cajole things, move things down the
18 road that doesn't happen with me. You know, my position is
19 okay, I got to make decisions, not, you know, what do I have
20 to do to help these parents get to that next parenting level
21 because I can't. They don't -- they don't give us the tools
22 to do that nor is that a wise idea for judges to start telling
23 parents how to parent, but you're more than welcome to do
24 that. I'm more than happy to make decisions for you.

25 I do it on a regular basis on petitions to

1 designate whether it's parallel parenting, co-parenting,
2 orthodontist, dentists, primary care physicians, schools, that
3 sort of thing. I do it regularly, but that's just me making
4 the decision. That's not the parents making the decision
5 which is probably the better plan. With that said, I tell you
6 I'll have a decision again for you the 19th of October. Thank
7 you.

8 **MS. MILLER:** Thank you.

9 **MS. CLOUGH:** Thank you.

10 (Court adjourned at 2:36 p.m.)

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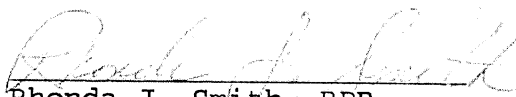
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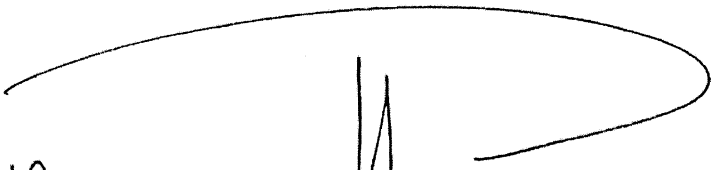
CERTIFICATION

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the above cause and that this is a correct transcript of same.


Rhonda J. Smith, RPR
Official Stenographer

The foregoing record of the proceedings on the hearing of the within matter is hereby approved and directed to be filed.

27 Nov 19
Date


Thomas A. Placey, C.P.J.

Office of the Court Administrator

Cumberland County

1 Courthouse Square, RM 301

Carlisle, PA 17013

Ph: 717-240-6200 Fax: 717-240-6460

Email: courtadmin@ccpa.net



Receipt Number: 1002156

Receipt Date: 2019-12-18

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Invoice Number 1002254

Item Requested: Hearing

Case Caption: Kathryn A. Wingard V. Robert B. Wing Docket Number 2015-05774 Civil

Total Cost \$170.00

Deposit \$165.00

Balance Due: \$5.00

Amount Paid \$5.00

Payment Type: Government Check

Check Number: 6260-3003727472

EXHIBIT 12

EXHIBIT 12

#1239

BRENDA KIMMETT, : IN THE COURT OF COMMON PLEAS OF
 Plaintiff : CUMBERLAND COUNTY, PENNSYLVANIA
 : THE NINTH JUDICIAL DISTRICT
 v :
 : CIVIL ACTION - LAW
 THOMAS DAVID KIMMETT, : 2019-04775 CIVIL TERM
 Defendant : PROTECTION FROM ABUSE

IN RE: TRANSCRIPT OF PROCEEDINGS


Proceedings held before the HONORABLE
 THOMAS A. PLACEY, C.P.J., Cumberland County
 Courthouse, Carlisle, Pennsylvania, on
 June 5, 2019 & June 6, 2019 in
 Courtroom Number 4.

APPEARANCES:

Paul D. Edger, Esquire
 MidPenn Legal Services
 401 East Louthier Street
 Suite 103
 Carlisle, PA 17013
 For the Plaintiff

Lawrence J. Rosen, Esquire
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 1101 North Front Street
 Harrisburg, PA 17102-3324
 For the Defendant

ORIGINAL



2019-04775-0019 F#1318976 Fee:\$0.00
 TRANSCRIPT
 Main (Public)
 Rcpt: Z252964 8/19/2019 8:24:48 AM
 Dale E. Sabadish, County Prothonotary

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1:35 p.m.

June 6, 2019

THE COURT: Thank you, folks. Please be seated.
Ms. Kimmett, come on back forward.

Whereupon,

BRENDA KIMMETT

having been duly sworn, testified as follows:

THE COURT: Now, do me a favor, look out at
counsel and tell us your name.

THE WITNESS: Brenda Kimmett.

THE COURT: Mr. Rosen, we left off with you. Any
additional questions?

MR. ROSEN: Thank you.

CROSS EXAMINATION (CONTINUED)

BY MR. ROSEN:

Q Can I call you Brenda?

A Absolutely.

Q Brenda, I want to go over some things from
yesterday. It has been several hours. I want to refresh my
recollection, perhaps yours as well. I am talking about the
period from January of 2018 to June of 2018. During that
period did you ever purchase illegal drugs?

A No.

Q From January of 2018, to June of 2018, did you ever
have a drug dealer come to your home?

1 A No.

2 Q During the period of January of 2018 to June of
3 2018, did you purchase a pound of marijuana on several
4 occasions from a drug dealer?

5 A No.

6 MR. EDGER: Objection to the relevance of the line
7 of questioning. It has nothing to do with abuse,
8 respectfully.

9 THE COURT: Your response.

10 MR. ROSEN: Your Honor, we will have testimony
11 later in this hearing that Ms. Kimmett did, in deed, purchase
12 marijuana from a drug dealer and prepared something called
13 Rick Simpson Oil and used that.

14 THE COURT: You are going to -- setting up denial
15 so we will conditionally accept your position and allow you to
16 continue overruling the objection.

17 MR. ROSEN: All right. Thank you.

18 BY MR. ROSEN:

19 Q And isn't it true that a drug dealer was referred to
20 you by a doctor, Dr. Turnpaugh?

21 A No.

22 Q Now, isn't it true that during this period that you
23 spoke about, from January of 2018 to June of 2018, that this
24 marijuana was used to prepare something called Rick Simpson
25 Oil?

1 THE COURT: And that was already denied yesterday.

2 MR. ROSEN: I'm sorry?

3 THE COURT: That was already denied yesterday.

4 MR. ROSEN: Okay.

5 THE COURT: New material for me, please.

6 MR. ROSEN: That is denied. Okay.

7 THE COURT: Yes. It was denied yesterday.

8 Unless it has changed. Have you changed your mind overnight?

9 THE WITNESS: No, I did not.

10 THE COURT: Okay. Go ahead.

11 BY MR. ROSEN:

12 Q And have you ever had occasion to ingest Rick
13 Simpson Oil?

14 A I have a medical marijuana card which I used, I
15 think three times, and I did try that.

16 Q And you tried what?

17 A Rick Simpson Oil through the medical marijuana
18 clinic.

19 Q You did. Okay?

20 A Yes.

21 Q On one occasion?

22 A I purchased the Rick Simpson Oil one time. The
23 other times I got CBD oil, which is non-psychoactive.

24 Q Okay. And isn't it true that when you were
25 processing the marijuana, creating Rick Simpson Oil at home,

1 there was an explosion at home?

2 A No and no.

3 Q And isn't it true that when you were preparing the
4 Rick Simpson Oil at home using the marijuana there were, in
5 deed, two fires started in the home?

6 A No.

7 Q And isn't it true that on both occasions with both
8 fires you screamed for your son Brian to come help?

9 A No.

10 Q And isn't it true that during the first fire you
11 ended up burning your arms?

12 A No.

13 Q Okay. And isn't it true that on the second fire
14 there was substantial damage to the cabinets in your kitchen?

15 A No. Can I tell him about the small kitchen fire we
16 had?

17 THE COURT: He didn't ask about the small kitchen
18 fire. He didn't ask that specific question.

19 THE WITNESS: Okay. No.

20 MR. ROSEN: Okay.

21 BY MR. ROSEN:

22 Q Over the past -- well, let me define some terms
23 first, if you don't mind. If I use the term meltdown, what I
24 am referring to is yelling, screaming, and cursing from
25 anywhere from 5 to 10 minutes up to 3 hours.

1 My question is, during the past 4 or 5 years have you
2 had between two and three hundred meltdowns with your family?

3 A No.

4 Q Okay. Do you remember tipping over your kitchen
5 table with all of your pills on that table onto the floor?

6 A No.

7 Q And do you recall Tom and [REDACTED] grabbing on the floor
8 to get the pills and to keep your dog from eating your pills?

9 A No.

10 Q And do you remember Tom and [REDACTED] searching all over
11 the floor for upwards of 2 hours to make sure that they had
12 each and every one of the pills you spilled on the floor?

13 A Okay. I don't understand the question. Is this a
14 sub-question that I flipped over the table and this happened?
15 Because it's no.

16 Q Okay.

17 A That's no.

18 Q All the same time?

19 A Okay. No.

20 Q Okay. Do you remember ever threatening to kill your
21 husband while holding a hunting knife?

22 A No.

23 Q And jabbing the knife into your dish in the living
24 room?

25 A No.

1 Q Do you remember telling Tom on multiple occasions
2 that you pray he dies, yelling, cursing over and over again?

3 A No.

4 Q Now, yesterday you testified that sometime between
5 June 16th and June 29th of last year you were engaged in a
6 drug trial?

7 A Yes.

8 Q And I believe you talked about Peptides, and isn't
9 it true that you had some side effects from this drug trial?

10 A Yes.

11 Q And this included paralysis in both of your legs?

12 A Yes.

13 Q Okay. You had memory loss?

14 A Yes.

15 Q You had dizziness?

16 A Yes.

17 Q And you had confusion?

18 A Yes.

19 Q Okay. And those symptoms occurred between the time
20 of around June 16th until around June 29th?

21 A Yes.

22 Q And you testified that Mr. Kimmett stopped you from
23 calling 911 during that period of time?

24 A I was not able to dial the phone or call anyone. I
25 did testify that Mr. Kimmett did not use the written down

1 information, that there was a file that I had for 5 years that
2 said if something ever happens, stop the last thing I started
3 and call these two doctors. I did testify that he did not
4 follow the binder with the medications and he did not follow
5 the instructions, what to do if something went wrong. I did
6 testify to that.

7 Q I guess what I asked was did Mr. Kimmett call the
8 hospital or call 911 even though you wanted him to during that
9 period? Did he refuse?

10 A Sir, I did not ask for anything other than food and
11 water. I don't remember asking him for anything.

12 Q It could have happened, you just don't recall?

13 A Sir, I am sorry. What did you say happened?

14 Q I said that may have happened, you may have asked
15 your husband to call 911, but you just can't recall now
16 because of your condition? Is that what you are saying?

17 A I cannot testify to that.

18 Q Okay. And during this time, we are talking again
19 about the 16th to the 29th, did you testify that Tom and Brian
20 and [REDACTED] refused to call 911 or EMS; is that correct?

21 A I did not testify to that.

22 Q Did Tom, Brian, and [REDACTED] call 911 or EMS?

23 A Not -- one time they called EMS because I had fallen
24 and they couldn't get me back up onto the bed, and they came
25 and they evaluated me and they saw that I was coherent but I

1 was just unable to get -- physically get up because both of my
2 legs were paralyzed.

3 Q And do you recall what date that was?

4 A I don't have that here. It was in June and it was
5 during -- between June 16th and June 29th. I have that sheet
6 at home, but I don't recall exactly.

7 Q And isn't it true when EMS did come to the house
8 they offered to take you to the emergency room?

9 A No, they said I did not need to go.

10 Q So you didn't refuse, they just didn't think you
11 needed to go?

12 A No, not at that time.

13 Q Okay. And isn't it true that at the time EMS was
14 present, and because you refused to go, you had to sign a
15 statement refusing care?

16 A I don't have that information.

17 Q You were present when EMS came?

18 A Yes, sir.

19 Q Okay. And therefore you can't recall signing --
20 being required to sign a statement refusing the care that they
21 offered?

22 A I signed a statement that they came and they
23 evaluated me and I was oriented times 3, and that I was having
24 difficulty with my legs due to my MS. I signed that -- there
25 was a statement that I signed.

1 Q And that did not indicate you were refusing the care
2 that they were offering then, correct?

3 A No.

4 MR. ROSEN: Okay. That's all I have, Judge.

5 THE COURT: Back to you, Mr. Edger.

6 MR. EDGER: Thank you. Very briefly.

7 REDIRECT EXAMINATION

8 BY MR. EDGER:

9 Q Tell us about the small kitchen fire.

10 A We have a gas stove and I was boiling water for tea
11 in a teapot, and then to the right there was scratch marks on
12 the counter from someone chopping stuff on there, and while
13 the tea was boiling I made the poor decision to clean that
14 with rubbing alcohol, and as I was cleaning it, I spilled it
15 and it went right into the gas thing and it lit up. So it was
16 a small fire.

17 Q Did you have to call the fire department?

18 A Oh, no, no. We just put a blanket on it and it
19 killed it.

20 Q Okay. So it had nothing to do with what they keep
21 alleging is Rick Simpson Oil?

22 A No, no.

23 Q All right. Let's talk about the Peptide that you
24 were prescribed. This is what your doctor had at least
25 suggested during the experimental phase to help with the MS

1 conditions, correct?

2 A Yes. That was the Peptide injections. It was
3 highly concentrated.

4 Q Okay. And the dosages and duration, who was told
5 how often and how much to give you of the Peptide injections?

6 A I was told, and it was written on the bottle, that
7 it was .2 milliliters injection per day.

8 Q Now, you did earlier testify on cross that the
9 Peptide -- a side effect was potentially memory loss, correct?

10 A Yes, and I had multiple concussions because I was
11 allowed to fall down the steps many times. So there's two
12 things with the memory loss.

13 Q All right. Your earlier testimony on direct, when
14 you testified your husband kicked you in your thigh, were you
15 on the Peptide when that occurred?

16 A Yes, and I had fallen.

17 Q How was it that you recall your husband kicked you
18 with the side effect of memory loss?

19 A Well, see I have lucid moments in between medication
20 doses, and I do remember various things when it would be in
21 between the time when they would give me the wrong doses at
22 the wrong -- that type of stuff, which made everything worse.

23 Q So at the moment your husband kicked you in the
24 thigh was a lucid moment and you were able to remember that?

25 A I remember it because I was trying to get out of the

1 way because he was angry and I was -- I had fallen and I
2 couldn't pull my leg. I remember it.

3 Q Okay. I believe your earlier testimony yesterday
4 was that on June 29th was when you overheard him trying to
5 give you too much Benadryl and you stopped taking medicine,
6 correct?

7 A Yes. I mean I had to do that privately because -- I
8 had to go into the bathroom after I was given it. I started
9 to refuse certain medications, and that was or was not at
10 different times but that -- when I heard about -- that my son
11 [REDACTED] said mom could overdose on that much Benadryl, I realized
12 something was wrong. I started to throw the medication up
13 when I was in the bathroom and turn the water on so they
14 couldn't hear me.

15 Q When you stopped taking medicine on June 29th, was
16 Peptide one of the medications you stopped taking?

17 A Yes. I had not been injecting myself from June 16th
18 on. So I don't know who was injecting me because all the
19 medicine -- a month's supply was gone in 2 weeks. I don't
20 know who did it. I didn't give it to myself. So I'm not
21 sure, but there were no injections after the 29th, and then
22 within 12 to 24 hours I was clear, and then around July 1st is
23 when I realized what had been done to me, and I could not
24 remember exactly all of the falls or all of the stuff so I
25 took those pictures.

1 Q So on July 5th, when you earlier testified about
2 your husband slamming you back into the Rollator, which made
3 your arms go limp, and bending your thumbs backwards, which
4 caused the one tear to the tendon, when was the last time you
5 had any of the Peptide injections?

6 A Oh, that was before June 29th. So they were done
7 way before then.

8 Q Okay. So on July 5th Peptide had not been in your
9 system for some time?

10 A Right.

11 Q Were you taking any other medication which would
12 have caused you significant memory loss?

13 A Not at all.

14 Q So is there any -- were you on any medication which
15 would have caused your memory of July 5th to be fuzzy or
16 questioned in any way?

17 A No.

18 MR. EDGER: That's all I have, Your Honor.

19 THE COURT: Back to you, Mr. Rosen.

20 MR. ROSEN: I have nothing else, Your Honor.

21 THE COURT: All right. Thank you, ma'am. You may
22 step down, if you do so carefully.

23 THE WITNESS: Yes. Thanks.

24 THE COURT: And thank you. Back to you,
25 Mr. Edger.

1 MR. EDGER: The second witness for the Plaintiff,
2 Your Honor, is Sharon Stine.

3 Whereupon,

4 SHARON STINE

5 having been duly sworn, testified as follows:

6 THE COURT: Slide up towards the microphone, look
7 out at counsel, and tell us your name.

8 THE WITNESS: Sharon Stine.

9 THE COURT REPORTER: Can you spell it for me?

10 THE WITNESS: S-t-i-n-e.

11 THE COURT: Go ahead, Mr. Edger.

12 DIRECT EXAMINATION

13 BY MR. EDGER:

14 Q Ms. Stine, how do you know -- first of all, do you
15 know Brenda and Tom Kimmett?

16 A Yes, since I have been taking care of Brenda.

17 Q Okay.

18 A And helping her.

19 Q Do you care for her in a professional capacity?

20 A Yes.

21 Q Okay. What is it that you do?

22 A I help her to do exercises and therapy. I do
23 dishes. I am going blank here. I help to make meals. I do
24 laundry. Just about anything that they would need help with.

25 Q Are you doing this work through an agency or an

1 employment?

2 A No.

3 Q Okay. Do you have a title for what you do?

4 A Just a caregiver.

5 Q Okay. How long have you been caring for
6 Ms. Kimmett?

7 A I think it was the end of July I started.

8 Q Okay.

9 THE COURT: July?

10 THE WITNESS: 2018.

11 THE COURT: Thank you.

12 MR. EDGER: I apologize.

13 BY MR. EDGER:

14 Q Were you present during Ms. Kimmett's testimony both
15 yesterday and today?

16 A Yes.

17 Q Were you one of the two individuals who brought
18 Ms. Kimmett to the hospital back on July 18th of 2018?

19 A No.

20 Q Okay. Were you hired by Ms. Kimmett at that point
21 or the Kimmetts at that point?

22 A It was the end of July. I don't think I was
23 involved at that time.

24 Q All right. What interaction in July would you have
25 for Mr. Kimmett, specifically requirements for what you were

1 to do for Ms. Kimmett?

2 A The day that I was hired by Mr. Kimmett I had asked
3 him, as I was leaving and I had met Brenda, what he needed me
4 to do, if she needed bathed or fed, what she needed help with
5 because I have taken care of a lot of people and I just wasn't
6 sure what she needed help with.

7 He had said that she is going to have morphine and that
8 she -- that Hospice will take care of her as far as bathing
9 her, that I didn't need to do that, that I could like do
10 dishes and laundry and help to make meals and read a book or
11 whatever needed done at the time, to be with Brenda.

12 Q At any time did Mr. Kimmett order or advise you to
13 withhold treatment to Ms. Kimmett?

14 A No.

15 Q How often were you in the home?

16 A Usually once a week.

17 Q Okay. And was there a specific day during the week
18 you were in the home?

19 A Usually Mondays. If it didn't work out Mondays then
20 another day for a couple hours.

21 Q Okay. Have you ever personally witnessed
22 Mr. Kimmett be -- yell or scream at Ms. Kimmett while you have
23 been in the home?[?]

24 A There was one time when he had come home and she had
25 said something to him and he got loud. So the son Brian

1 came downstairs and said that he thought I should leave. And
2 I went out of the garage with him and I said, I will leave but
3 I want to make sure that she is going to be okay. So will you
4 stay with her because I knew that she was afraid of
5 Mr. Kimmett.

6 Q Why did you believe she was afraid of Mr. Kimmett?

7 A Every time he would come home she would start
8 shaking and she was just afraid of him, from what I could
9 tell.

10 Q How long into your employ did you begin to see what
11 you believed was her being fearful of the Defendant?

12 A It was -- I think it was several months until I
13 actually put it all together and realized what was going on.

14 Q Do you continue to care for her up to today?

15 A Yes, I have been.

16 Q And do you still have the same frequency of being in
17 her home once a week?

18 A Yes.

19 Q Leading up to April, when Ms. Kimmett obtained -- or
20 first sought the Court for a protective order, did you see any
21 change in her behavior, what you witnessed as her being
22 fearful?

23 A It has always been the same. I mean she has always
24 just been, I don't know, just not feeling safe.

25 Q How about since April, ever since the Court first

1 issued a temporary order, have you seen a physical change in
2 her behavior regarding what you believe was fearfulness?

3 A You mean since she had ordered the PFA?

4 Q Yes?

5 A Yes. She has been more relaxed. She -- yes, she's
6 just a total different person. She doesn't have to worry
7 about things. She's just so much more relaxed. It is a
8 different person.

9 Q Have you in -- since July when you started, 2018,
10 have you ever seen Ms. Kimmett have a tantrum or an outburst?

11 A Never.

12 Q And I apologize. I asked you and I already forgot
13 the answer. How long during that one day a week are you
14 physically at the home?

15 A It is usually 3 hours or so.

16 Q Okay. And this has been every week once a week
17 since July of 2018?

18 A Pretty much, yes.

19 Q When you are there, how often are you physically
20 engaged with her?

21 A I would say like an hour out of the three we do
22 things together for her, and then the others is more or less
23 helping out with the things around the house.

24 MR. EDGER: May I have one moment, Your Honor?

25 THE COURT: Certainly.

1 BY MR. EDGER:

2 Q Ms. Stine, when you first began working for the
3 parties, did Mr. Kimmett ever express to you how much time he
4 believed his wife had remaining?

5 A Oh, yes. Yes. The first time he said -- when he
6 told me what she needed, he said that she only had like about
7 a month to live.

8 Q And in your capacity in your work, did you have any
9 reason to doubt what he was saying?

10 A I was very surprised because I have seen a lot of
11 people, and when you have hospice coming in and when you have
12 morphine drip it is near the end, and she was nowhere near the
13 end.

14 Q Now, did Hospice actually come into the home?

15 A I never saw them. I don't know if they had or not.

16 Q And isn't it true Hospice is meant for a person's
17 final days?

18 A Yes.

19 Q Or end of life?

20 A Yes.

21 Q All right. And this statement that Ms. Kimmett only
22 had a month to live was made when you first started?

23 A Yes, the first day.

24 Q Had he ever repeated statements similar to that
25 between July 2018 and April before he was removed from the

1 home?

2 A No.

3 MR. EDGER: That's all I have, Your Honor. Thank
4 you.

5 THE COURT: Mr. Rosen, any questions?

6 MR. ROSEN: Yes.

7 CROSS EXAMINATION

8 BY MR. ROSEN:

9 Q Ms. Stine, who hired you to work in Mr. Kimmett's
10 home?

11 A Mr. Kimmett did.

12 Q He contacted you?

13 A Yes.

14 Q Directly?

15 A Um-hum.

16 Q And you are not a nurse?

17 A No, I am not a nurse. I'm a caregiver.

18 MR. ROSEN: Okay. I have nothing else, Judge.

19 THE COURT: Have you ever worked with other folks
20 that have had MS?

21 THE WITNESS: No, I have not.

22 THE COURT: Okay. That's the only question I had
23 for you. Let me see --

24 MR. EDGER: Nothing further.

25 THE COURT: Thank you, ma'am. I'm going to let

1 you step down. Please do so carefully.

2 THE WITNESS: Thank you.

3 THE COURT: Additional?

4 MR. EDGER: I rest.

5 THE COURT: Mr. Rosen, any witnesses?

6 MR. ROSEN: Yes. I call Tom -- I am sorry, Mary
7 Lou Swiscoski.

8 Whereupon,

9 MARY LOU SWISCOSKI

10 having been duly sworn, testified as follows:

11 THE COURT: You can move the chair around.

12 THE WITNESS: Thank you.

13 THE COURT: Do me the kindness, look out at
14 counsel and tell us your name.

15 THE WITNESS: Mary Lou Swiscoski, M-a-r-y L-o-u.
16 Swiscoski, S-w-i-s-c-o-s-k-i.

17 THE COURT: Go ahead, Mr. Rosen.

18 DIRECT EXAMINATION

19 BY MR. ROSEN:

20 Q Mary Lou, what is your relationship with the
21 parties?

22 A Brenda is my sister and Tom is my brother-in-law.

23 Q Okay. And how often -- well, how long have you
24 known Tom and Brenda together?

25 A While they were still dating, maybe 30 years ago.

1 Q How many?

2 A Thirty years ago while they were still dating.

3 Q And they were married when?

4 A November 9th, 1991.

5 Q Okay. And from that time going forward, how often

6 would you be in the company of your sister and Mr. Kimmett?

7 A Holidays and other times during the year.

8 Sometimes multiple times in the warmer months.

9 Q And during that period of time leading all the way

10 to the recent past, will you describe the relationship you

11 observed between Mr. Kimmett and your sister?

12 A Well, when we were there things were normal, just

13 normal family life. We would sit around the table, have food,

14 laugh, tell jokes.

15 Q Okay. Did you ever see Mr. Kimmett abuse your

16 sister in any way verbally or otherwise?

17 A I never saw that.

18 Q Okay. Now, I am going to again define the term of

19 meltdown. A meltdown is crying, screaming, cursing, yelling,

20 for anywhere from 5 minutes to 3 hours. When I say meltdown,

21 that's what I mean. Okay? Did you ever have occasion to see

22 your sister engage in meltdown behavior?

23 A With myself.

24 Q I'm sorry?

25 A Yes, with me.

1 Q With you. Okay. And when did that happen?

2 A In 2018 she sent me a text that she wasn't doing
3 well and needed more help, wanted me to come more often, and
4 so I said I would. I came on 5/29. I think I got the text on
5 5/29, please come more often, I could use some help, and so I
6 came then. I came in July of that year. I came in August of
7 that year, and there was a meltdown.

8 When she had had the injuries to her legs, not the
9 bruising, but she had some pieces of flesh missing on both
10 sides of her thigh and a section under her thigh, she wanted
11 me to take a look at it. It was red. It was infected. I
12 went to CVS to buy some appropriate wound care things.

13 I brought them back and she wanted to look at them,
14 which is perfectly fine. She didn't like the ingredients in
15 some of them and she didn't like the gloves so I said I won't
16 use them, I'll put them aside, and she thought that I -- she
17 was very agitated with me over that.

18 Q And did she engage in a meltdown?

19 A At that time. And then there was one following that
20 in August. I was there, you know, to do a few things because
21 with her MS it is very difficult for her to get around and be
22 stable on her feet, and she wanted me to hang some pictures
23 and a few other things.

24 Her bed at that time was in the formal living room, and
25 she said it was so nice that Tom had paid for a massage

1 therapist to come recently. You know, if I could rub her feet
2 it would feel nice. So I rubbed her feet and it was nice and
3 she fell asleep and I thought, well, you know, rather than sit
4 here watching her sleep, I should do something productive.

5 So I went out into the garage and they have an old
6 fridge there, and there was all this water coming out from
7 underneath of it like clear to the garage -- the exterior
8 garage door, and I thought, well, I should clean it up.

9 It wasn't the refrigerator having a malfunction, it was
10 what was inside of it. There was a big container of water.
11 It must have had a little hole somewhere near the bottom, and
12 so there was a long stream of water going across the garage in
13 the passageway that you would get into the house, and so I
14 cleaned it up.

15 You know, Brian wasn't around. I said, I'll just clean
16 up this water spill area. He came home from the bus, came in
17 through the open garage door, and I told him I was cleaning
18 this up, there was a water spill. And Brenda had woken up and
19 come to the garage door and had a meltdown, what are you
20 doing? That's his fault. You shouldn't be cleaning it up. I
21 want him to clean it up. And she had a meltdown that I
22 cleaned up the water.

23 Q Was there yelling?

24 A Yes.

25 Q And screaming? Was there profanity? Cursing?

1 A It was just a general meltdown, loudness.

2 Q And how long did that last?

3 A That one was just a couple of minutes, and then I
4 said I just need some time. I said, I'm going to go in
5 another room and think about this. And so I came out and
6 said, I am going to leave, I said, but you had asked me to
7 hang the pictures on the wall. So I'm still going to do that,
8 and but I still love you, and I'm going to do that and leave.

9 Q Okay. And just to be clear -- you were talking
10 about wound care. You are a nurse?

11 A Yes. I am an RN.

12 Q You're an RN?

13 A Yes.

14 Q Okay. Now, what is your current relationship with
15 your sister today?

16 A We were texting and communicating through early May.
17 Our niece had graduated in Indiana; Indianapolis, Indiana, and
18 so we were texting pictures back and forth. I made her aware
19 of the plans that we were going to go out, did she want to
20 come along? I said, I knew you probably couldn't, but I
21 wanted to make the offer. She said, oh, thanks so much for
22 including me, but I can't. I can't go any further than
23 fifteen minutes in a car. So we were texting back and forth.

24 Q Okay. Well, I am talking about your relationship
25 with your sister as of right now.

1 A Well, I haven't talked to her since I got the call
2 from you.

3 Q Is there a reason why you have not been speaking
4 with your sister?

5 A Well, I was going to come to court. I didn't know
6 if I was supposed to or not so I didn't. I usually kept the
7 door open. There has been times in the past when she stopped
8 communication, but I would still send greetings like happy
9 anniversary, no reply in 2018. Happy Thanksgiving, no reply
10 in 2018. Brian's birthday is December 15th. I usually say
11 I'm going to call him now. Is that okay? I usually text him
12 to say I am sending you a birthday card, not much of a reply,
13 and even for Christmas there wasn't much of a reply, but I
14 always do the effort to keep, you know, the pathway open
15 because it has worked in the past when she has gone silent so
16 --

17 And then she -- you know, she responded, you know,
18 please pray for Brian or [REDACTED] They have a test or they have
19 a sports event coming up, and I'm, sure, I'll pray for them.

20 Q Do you recall sometime late last summer sending a
21 text message to Mr. Kimmett that created a problem between you
22 and your sister?

23 A Yes. Yes, I did send that text.

24 Q And what was that text about?

25 A Well, on the way home after she had, to use your

1 term, the meltdown because I cleaned up the water in the
2 garage, I was driving home. It takes me two hours to get
3 home, and I was just thinking, you know, what could this be?
4 You know, MS, the most common side effect is depression, and I
5 thought this was more than just depression, there's something
6 else going on, and, you know, the sections of flesh gone from
7 her thigh, there is no explanation for that, and the big one
8 underneath her leg. So I went home and put in some of the
9 symptoms and it came up with borderline personality disorder.
10 The person is easily --

11 MR. EDGER: Objection. This calls for hearsay,
12 and this is outside of a lay witness's testimony. She can't
13 --

14 THE COURT: If she were only a lay witness. She's
15 an RN, and I am going to give you a chance to cross-examine.
16 Go ahead, Mr. Rosen.

17 THE WITNESS: So I put the symptoms in to see.
18 Like flying off the handle quickly. It is always somebody
19 else's fault. There was a handful of things, and so it seemed
20 to fit, and so I sent that link to Tom and said, it is just my
21 opinion, but I think she might have borderline personality
22 disorder, but it would take a professional to render a
23 diagnosis. And I have a copy of that text in my binder.

24 MR. ROSEN: Okay.

25 THE WITNESS: So I wasn't diagnosing her. It was

1 just, you know, loving my sister and trying to figure out what
2 could be wrong.

3 BY MR. ROSEN:

4 Q And that was sent out of concern?

5 A Oh, yes.

6 Q Okay. All right. And are you aware of whether or
7 not your sister became aware of that message you sent to
8 Mr. Kimmett?

9 A Yes. She called me one night. I was the night
10 shift supervisor. So she called me on my night shift and was
11 swearing F-ing what are you doing? You F-ing can't diagnose
12 me. I can report you. And I just hung up the phone because
13 I'm at work. I can't get drawn into a conversation.

14 Q And would that be another meltdown?

15 A Well, the swearing, yes.

16 Q And yelling?

17 A Yes.

18 Q Yes. Okay. And you terminated that meltdown by
19 hanging up?

20 A Yes, I did. I hung up on her.

21 Q Okay. Have you had a phone call with your brother
22 very recently?

23 A Yes. So when I got the call from you, I was unaware
24 of what had transpired. I was unaware of the protection
25 order. So when I work a nightshift I tend to sleep very late

1 into the next day. So it was 8:00 p.m., I woke up, listened
2 to the message from you, and it is the first I heard of it.
3 So I called our older sister, Cathy, and said I just got this
4 message from the attorney. Did you get a message? What is
5 going on? And she had, you know, updated me that Brenda --

6 MR. EDGER: Objection.

7 THE COURT: Yes. That is sustained.

8 THE WITNESS: Okay.

9 THE COURT: That wasn't the question. You asked
10 about a call to a brother?

11 MR. ROSEN: Yes. I had asked her if she had had
12 any phone calls from her brother recently.

13 THE COURT: That is the question.

14 THE WITNESS: Because the phone call to my sister
15 led to the phone call from my brother. So my sister said,
16 well, what are you going to do? And I said, I don't know.
17 This is all new to me. I just woke up at 8:00. And she said
18 to me, you can't do this. You're going to --

19 MR. EDGER: Objection again. Respectfully it's
20 hearsay.

21 THE WITNESS: So then she called. My older sister
22 called my younger brother and then my younger brother called
23 me and said, what are you going to do? And I repeated to my
24 brother, I don't know. I just got this information at 8:00.
25 And he said, if you do this, I will never talk to you again,

1 and I will come to your house and do horrible things to you.

2 BY MR. ROSEN:

3 Q And is that the last time you spoke to your brother?

4 A Yes. And he hung up the phone.

5 Q And you don't want to be here today?

6 THE COURT: Nobody wants to be here today. Let's
7 ask a question that can be answered by the witness. You don't
8 have to answer. He is going to ask you another question.

9 THE WITNESS: Okay.

10 BY MR. ROSEN:

11 Q It is uncomfortable for you?

12 A It is very uncomfortable because I love Brenda.

13 Q And so why did you decide that you needed to be here
14 and testify today?

15 A I was hoping that she could get the help that she
16 needs beyond the physical help. I think she needs some
17 emotional support.

18 Q And from many, many years of experience you had with
19 your sister and Mr. Kimmett -- and you were here yesterday?

20 A Yes.

21 Q And you heard your sister's testimony?

22 A Um-hum.

23 Q Does that sound like the man that you have known for
24 the last 30 years?

25 A No, but, you know, I am only there --

1 Q I understand, but you've had a long period of time
2 that you've known them?

3 A Yes.

4 Q And that doesn't sound like the same Tom Kimmett you
5 know?

6 A No.

7 MR. ROSEN: That's all I have, Judge.

8 CROSS EXAMINATION

9 BY MR. EDGER:

10 Q Counsel cut you off, but I think you were about to
11 say you are only there a handful of times a year for a few
12 hours, correct?

13 A Some years. Some years it is more.

14 Q Sure. So it is not like you are constantly there
15 where you really see the workings or how -- you are around
16 them for so much longer that you could really see more of
17 their relationship?

18 A Well, over 30 years, that's a long time to be around
19 people.

20 Q Okay. In your earlier testimony with what you
21 Googled and what you looked up, you have never at any time
22 looked into my client's medical records, correct?

23 A Oh, I don't have access. No.

24 Q Right. Have you ever, as a nurse -- or do you have
25 a psychology or psychiatry degree?

1 A No, I don't.

2 Q In your role, do you have any specialized training
3 when it comes to people with multiple sclerosis?

4 A Yes.

5 Q Okay. And is this something that you just treat in
6 the normal course of work?

7 A Yes. Any of the patients that we would have may
8 have that condition. Your patients are going to have a
9 variety of conditions.

10 Q And you report that as the RN to whatever treating
11 physician is treating the patient, correct?

12 A Would report what?

13 Q Your -- what you have seen in those patients?

14 A You mean their physical harm?

15 Q Physical or what you believe is depression, as you
16 testified earlier?

17 A Yeah. We do a nursing summary. You assess all the
18 body systems. You take the vitals, and then you pull it all
19 together in a clinical note.

20 Q Have you ever testified in court as an expert
21 witness?

22 A No, sir.

23 Q Have you ever testified regarding symptoms or mental
24 conditions of someone suffering from MS?

25 A No.

1 Q All right. Now, let me go back to your other
2 testimony. You stated my client, using your words --
3 or using Mr. Rosen's word was a meltdown that my client had,
4 correct?

5 A Yes.

6 Q In fact, she was upset because of the ingredients
7 for what you wanted to help her treat the wounds that you had
8 seen of her legs, correct?

9 A Yes.

10 Q And, in fact, it was because she had told you that
11 what you wanted to treat her with would cause a serious
12 reaction because she was allergic to the ingredients in that
13 product?

14 A And I put them aside.

15 Q But that caused a little strife between you two
16 because you were adamant about trying to care for her using
17 those products?

18 A Yes.

19 Q When you returned, after you left it was actually
20 Brian and [REDACTED] who had said it is time to go or just please
21 don't come back, mom is upset?

22 A I don't recall that.

23 Q Okay. You said up until May you and your sister
24 would talk on occasion when things would come up, correct?

25 A Yes.

1 Q In fact, one of those times she actually reached out
2 to you and said, hey, I am a victim of domestic violence; do
3 you recall that?

4 A No.

5 Q You don't recall telling your sister, it is not my
6 problem, go call someone else?

7 A I did not say that.

8 Q Okay. Are you saying she never told you that she
9 was being abused in the home?

10 A She had told me over the years that Tom has been
11 mean. Tom is evil. But I have never seen it, and I didn't
12 have any examples.

13 Q In those few times that you would see them over the
14 years?

15 A She had made those statements over the years.

16 Q Right. But you never physically witnessed it the
17 few times you were personally --

18 A Correct, I had never witnessed it.

19 Q All right. So before today, this is not the first
20 time you have heard my client say to you, I need help, he's
21 being mean or evil to me?

22 A She has mentioned it before.

23 Q When was the first time she mentioned it to you?

24 A I couldn't put a date on that.

25 Q Months? Years?

1 with your sister, how would you describe, in your opinion, her
2 credibility?

3 MR. EDGER: Objection to relevance.

4 THE COURT: Sustained. I will deal with that.

5 MR. ROSEN: That's all I have, Judge.

6 BY THE COURT:

7 Q All right. You are an RN where?

8 A In Virginia.

9 Q In what type of facility in Virginia?

10 A It was Virginia Hospital Center for 3 years, and now
11 for the past year and a half it has been at Erickson, a
12 continuing care facility.

13 Q And continuing care for?

14 A It's for older adults who need acute nursing care.
15 Some are bedfast. Some have J peg feeding tubes. Some have
16 mobility issues. We have a memory care unit.

17 Q Now, let me show you what had been presented to me
18 as Exhibit 2 and ask you to look at picture 5 out of Exhibit
19 2, and see if you recognize that as any of the things that you
20 described for me earlier?

21 A Yes. That's the one from under her leg that I was
22 worried about because it was red around the border, which is a
23 sign of infection and --

24 Q And what is that?

25 A I couldn't put a name on it. At the time the edges

1 were very jagged. She didn't have an explanation for it, but
2 it was clearly infected, and what she had in the home was like
3 Bactine to clean it with and not for this level of a wound,
4 and so we had agreed that I would go out to CVS and buy the
5 appropriate things, and when I brought them back and showed
6 her she said she didn't care for those. So I put them aside.

7 Q Now, is that a scar or is that an opening? And I'm
8 just trying to get it described for the record.

9 A This is in a stage of healing.

10 Q So it is, for my terminology, for the record's
11 terminology, it is a scar?

12 A This is now a scar. At the time it was an open
13 wound.

14 Q And had you -- I am going to show you what has also
15 been marked in the same Exhibit 2, pictures 1, 2, 3, and 4,
16 and see if you recognize seeing those at any time?

17 A The bruising like this, I did not see because when I
18 was there to see her -- well, this one here --

19 Q What is the number at the bottom?

20 A Number 4.

21 Q Thank you.

22 A With the big bruise on the back of the leg, there is
23 some little markings there, but what I saw when I was there,
24 there aren't pictures of, which looked like the curve crescent
25 of fingernail marks.

1 Q Okay. And where were they?

2 A On the lateral side of both of her thighs.

3 Q Is that common, to see that in your patients?

4 A No. So for those marks she explained it was
5 incontinence because Tom wouldn't allow others to clean her
6 up, but in all of my experience, that is not where you get
7 incontinence wounds, and they are not flesh removal wounds.
8 It is a breakdown of the skin, and it wouldn't have been on
9 the outside of the thigh.

10 THE COURT: Thank you. That's the questions I had
11 for you. I am going to let you step down, if you do so
12 carefully, please.

13 MR. ROSEN: Your Honor, I would call Sandra
14 Downey, please.

15 Whereupon,

16 SANDRA DOWNEY

17 having been duly sworn, testified as follows:

18 THE COURT: Move that chair up a tad and look out
19 at counsel and tell us your name, please.

20 THE WITNESS: My name is Sandra Downey. The first
21 name is spelled S-a-n-d-r-a. The last name is D-o-w-n-e-y.

22 THE COURT: Go ahead, Mr. Rosen.

23 DIRECT EXAMINATION

24 BY MR. ROSEN

25 Q Sandra, where do you live?

1 A Where do I live?

2 Q Where do you reside?

3 A I live in Mechanicsburg.

4 Q Okay.

5 A Lower Allen Township specifically.

6 Q Okay. And how are you acquainted with Mr. Kimmett?

7 A I worked for him since March of 2013.

8 Q And what is it that you do for Mr. Kimmett?

9 A We work for an investment company, and he is a
10 financial advisor, and at one firm I was called a branch
11 office administrator. Where I work now I am called a client
12 associate. So I do administrative work for his clients.

13 Q Okay. So you work directly with Mr. Kimmett and his
14 clients?

15 A Yes.

16 Q Okay. And do you have one office that you share or
17 are you in different offices?

18 A We are in different offices, and I have worked for
19 him at two different locations. At both times I was -- we
20 were in separate offices.

21 Q Okay.

22 A Basically he is inside of an office, and I am in a
23 more open area that is more accessible to folks coming in.

24 Q Are you right next to his office?

25 A I am outside of his office, yes.

1 Q Right outside of his office. Okay. And during your
2 time in working with Mr. Kimmett, have you had occasion to
3 have contact with his wife Brenda?

4 A Yes. She would call into the office and -- I mean
5 if he was on the phone or something, she would ask to speak to
6 him. That was the most frequent type of contact.

7 Q And how frequent would that contact be?

8 A Oh, my. I would say that when I would answer the
9 phone it might be twice within a 3 week period. A lot of
10 times she would call and he would not be on the phone.
11 Basically I would only be answering the phone if he was either
12 with a client or if he was on the phone. So she called with
13 frequency, but not that I would have spoken to her.

14 Q Okay. But you were aware that she called more
15 frequently than you picked up the phone for?

16 A Oh, yes. Yes. At our former branch where we worked
17 before, the last digits of her phone number were the same as
18 the branch phone number. So it was very easy to recognize
19 that number just because it was what I was telling people all
20 day to call.

21 Q And because of your close proximity to Mr. Kimmett,
22 were you privy to any content or information or nature of
23 those calls over time?

24 A There were times when Brenda would call in and would
25 ask to speak to him, and I would put the call through and then

1 he would pick up and I would hear screaming. And I could not
2 hear what was being said, but it was loud enough that I knew
3 she was upset about something and I would hear screaming.

4 And obviously that's a little uncomfortable when you
5 have a professional relationship with someone, you don't
6 really want to hear that. So I would sometimes get up and --
7 if it went on for any period of time I would close the door or
8 I would often run the printer just to sort of mask that
9 because I didn't really feel the need to hear about that.

10 Q Is it safe to say that Brenda's calls would have
11 been the only calls you would have been aware of in which
12 there were screaming going on? Was anybody else calling Tom
13 that you would hear them screaming at him over the phone
14 besides Brenda?

15 A Not that I recall.

16 Q Okay.

17 A Once in a while we would have a disgruntled client,
18 but I don't really know that I was hearing that.

19 Q And on how many occasions, if you can recall, you
20 had calls that you answered yourself or calls that went
21 directly to Mr. Kimmett, did you hear screaming on the other
22 end?

23 A I truly have no idea, and it seemed to me as if --
24 it was not like a set time, but there would be maybe a 2 or 3
25 week period where there would be an increased frequency, and

1 then it could be 2 months or more and it wasn't like that.
2 So it seemed as if there were times where there was like
3 tension or some kind of an issue.

4 Q And when these situations occurred, what was
5 Mr. Kimmett's reaction on his end of the line?

6 A I would sometimes hear him saying, Bren, that's not
7 true. That's what I would usually hear. And I have never
8 heard the nickname of Brenda as Bren. He's the only person
9 that I have ever known to use that. So it is very clear, but
10 that is what he would frequently say, Bren, that's not true.

11 And I would try to -- if it went on for any -- he
12 didn't usually say much, but he would look -- I would look in,
13 and he would look very stressed. And to be very honest, I
14 would be concerned because I know he has a stent, and I would
15 just sort of know he would be upset.

16 There were times that it looked like -- that his eyes
17 were bulging in his head and I just -- I just wanted to make
18 sure that if anything happened to somebody, that I would be --
19 not intrusive, but monitoring that if I had a responsibility
20 to call 911 or something that I would take care of things in
21 an appropriate manner, but we didn't really ever discuss it.

22 THE COURT: Let me pause you there for a second.
23 Step down and have a seat in the back. I have to deal with
24 something else. This is not my only assignment. I will be
25 back.

1 (A recess was taken.)

2 (Defendant's Exhibits 1 and 2 were marked for
3 identification.)

4 AFTER RECESS

5 THE COURT: All right. Let's see, Ms. Downey,
6 come on back up. I am sorry to have to do that.

7 (SANDRA DOWNEY resumed the stand.)

8 THE COURT: You were answering the questions from
9 Mr. Rosen. Back to you, Mr. Rosen.

10 DIRECT EXAMINATION (CONTINUED)

11 BY MR. ROSEN:

12 Q Yes. On the times that Brenda would call, did Tom
13 always take her calls?

14 A He always took her calls, and it wasn't always this
15 screaming and yelling kind of thing. There were also times
16 when she would call and she needed something, and he would
17 have to leave almost immediately. He would always say it is
18 an emergency and he would leave, because I also spent a lot of
19 times like rescheduling appointments and those kinds of
20 things.

21 And sometimes like I would ask if everything was okay,
22 and he didn't usually give me much information about what the
23 emergency was. Sometimes he would run out and get medicines,
24 and I know that's what he did because some things had to be
25 refrigerated, and when we were at the other office there was a

1 small refrigerator there and he would come back with a bag of,
2 you know, something and he put it in the refrigerator, and
3 then he would tell me that I needed to remind him to make sure
4 that he took the meds out of the refrigerator when he left
5 that day. That is the only reason I would even know what he
6 put in there.

7 Q And these calls were fairly frequent?

8 A There were times, yes. Sometimes -- he usually
9 would go out. We would call them drug runs, and he would run
10 out for things like 2 to 3 times a week, and I think because
11 some of those things needed to be refrigerated, there had to
12 be more frequency with that because usually if a drug needs to
13 be refrigerated it has a limited shelf life.

14 Q And you testified earlier that there were some
15 occasions when you could hear Brenda yelling at Tom over the
16 phone in the next office?

17 A Yes.

18 Q And did you ever hear Tom yell back at her?

19 A I did not. I would just mostly -- I mean we were at
20 work. So primarily I would just -- he wouldn't say anything,
21 and he would often -- I would often hear him say that's not
22 true, but I didn't really ever hear him say much. And as I
23 said, I did close the door. Sometimes it was very -- it would
24 be prolonged and I would like make noise or close the door.

25 Q Okay. Now, do you have your own direct line at the

1 office?

2 A I do where I work now, yes.

3 Q Okay. Someone could call you directly without going
4 to the main number?

5 A Correct.

6 Q Has there been any occasions recently, 2 or 3
7 months, that you got direct calls from Brenda?

8 MR. EDGER: Objection, relevance.

9 THE COURT: I don't know where you are going with
10 this so I can't --

11 MR. ROSEN: Your Honor, we are talking at great
12 length about these meltdowns, and we are going to talk about
13 meltdowns that were observed by Ms. Downey on the telephone
14 from Brenda. That's highly relevant.

15 MR. EDGER: If I may respond?

16 THE COURT: Go ahead.

17 MR. EDGER: First of all, we object to the
18 continued use of the term meltdown.

19 THE COURT: He has defined it. That's not an
20 improper term, the way he's defined it. I recognize it is his
21 term, not yours and not mine.

22 MR. EDGER: I am sorry?

23 THE COURT: I recognize it is his term as he has
24 defined it, not yours, not mine.

25 MR. EDGER: That's fine.

1 THE COURT: I'm not making a legal conclusion upon
2 the use of the term meltdown.

3 MR. EDGER: All right. I have nothing else to add
4 to my objection.

5 THE COURT: Okay. It is overruled. Go ahead.

6 THE WITNESS: You specified within the last few
7 months. No. There were two occasions the end of last summer
8 into fall. I would say August to September, maybe as late as
9 October, where I received two calls from Brenda on my direct
10 dial. It wasn't that I picked it up off of his line, they
11 were my direct dial number.

12 And in the one call she started out asking me if I
13 knew what she could get him for their wedding anniversary, and
14 you know, I said like I don't really know him like that. The
15 only thing I knew he liked basically are sports and food, that
16 I didn't really know how to respond, but if he mentioned
17 something I would let her know.

18 And we talked, and after a while she was crying.
19 And the call probably went on for about 20 minutes, maybe
20 more. And she kept saying she loves him so much and she
21 wanted to buy him something and all of these kinds of things,
22 and then she asked me some other things about going to a nail
23 salon, and I tried to steer the conversation about the kids
24 and she told me she was feeling better and I said I was glad
25 about that, but at one point she was crying a lot and I was

1 concerned. I asked her if she was alone because she could not
2 -- it seemed like she couldn't stop crying, and I didn't want
3 her to be alone if she was inconsolable. And the call
4 eventually ended that -- she said that she was going to go
5 pray.

6 And then probably within the next 3 weeks, 2 to 3
7 weeks, she called another time on my direct line, and she was
8 very different that day. She had this edge to her voice, and
9 she talked about a variety of topics and it was all over the
10 place. And the most disturbing thing about that call was the
11 language. Her language was very foul. I am in the office,
12 and it was F-ing this and F-ing that and all of these things.

13 She said nasty things about Tom. She talked a lot
14 about sneakers, and it would just go -- the conversation just
15 kind of bounced all over the place. And I remember telling
16 her that I felt bad for her because she sounded very unhappy,
17 and she just said a lot of nasty things and just kept using
18 foul language and eventually I said that I hoped that she --
19 because she sounded so sad, that I hoped she would have a
20 happy day, and then the call abruptly ended.

21 And after that, I didn't say anything to Tom, but
22 a few days later I told him that -- maybe even a week later, I
23 told him that I had picked up a call. I didn't tell him that
24 she had called directly to me, but that I had picked up a call
25 and that she was very upset and that if it was all right with

1 him, I wasn't probably going to pick up those calls anymore
2 because it is a place of business, and after that second call,
3 I have to be honest, I probably wasn't worth much at all for
4 at least a half an hour or more. It was just upsetting to me.

5 Q How long did the call last?

6 A Oh, my. That was probably almost half an hour.

7 Q Okay. And during that call did Brenda seem
8 coherent?

9 MR. EDGER: Objection. Calls for speculation.
10 Especially if it is a telephone conversation. How would she
11 know?

12 MR. ROSEN: It is not an expert opinion.

13 THE COURT: And I am going to overrule the
14 objection. Mr. Edger will have an opportunity to
15 cross-examine on that basis. Go ahead.

16 THE WITNESS: Am I to answer that?

17 THE COURT: Sure. Go ahead.

18 THE WITNESS: Well, she was coherent, but her
19 thoughts were disorganized. I didn't feel that she was
20 unaware of what she was saying. There was this edge to her
21 voice that I almost felt as if she had wanted to tell me all
22 of these things, and then we would be talking about something,
23 and then she would recall something else. So it was not --
24 her thoughts were not well organized, but I mean she was
25 coherent. I don't think she was unaware.

1 My definition and understanding of the word
2 coherent, I'm sure she was aware of what she was saying, but
3 it was -- I never had a conversation like that with her. She
4 was always -- when she would call in and I would answer, even
5 if when I would transfer it and it was obviously an unpleasant
6 conversation between them, she was always very kind and
7 pleasant to me. I never had an interaction like that with her
8 before. And I didn't agitate her. I just really didn't know
9 what to do.

10 BY MR. ROSEN:

11 Q And you were in court yesterday?

12 A Yes, I was.

13 Q And you heard testimony?

14 A Yes.

15 Q And today. Have you ever seen Mr. Kimmett behave in
16 a manner that you would deem to be inappropriate, unkind,
17 cruel, argumentative, abusive?

18 A I have not, no. I mean I have seen him be very
19 annoyed sometimes with decisions that were made by the home
20 office or something like that, but I have never seen -- I have
21 never seen any kind of an over-the-top reaction.

22 Q You have never seen a display of bad temper?

23 A No, I have not.

24 MR. ROSEN: The Court's indulgence.

25

1 BY MR. ROSEN:

2 Q Do you recall anything about Brian's graduation?

3 A Yes. When Brian was going to be graduating from
4 high school, I would overhear him on the phone, and he made a
5 lot of calls, I would say over a one to two week period,
6 trying to arrange for special seating so that it would --
7 Brenda wouldn't have as far to walk to see graduation.
8 Either special seating or something like that. And it was a
9 lot of time spent on that. And that would be in 2014. So
10 that's a while back, but I do remember those calls.

11 Q Okay.

12 A Because sometimes I was taking a lot of messages
13 with those calls.

14 MR. ROSEN: That's all I have, Judge.

15 THE COURT: Mr. Edger.

16 CROSS EXAMINATION

17 BY MR. EDGER:

18 Q You have actually never spent time with both
19 Mr. Kimmett and Ms. Kimmett together for a great length,
20 correct?

21 A There was only one time that Brenda ever came into
22 the office.

23 Q And so other than that you've never seen really the
24 two of them together?

25 A No.

1 Q It has just been answering phone calls?

2 A No, not at all.

3 Q So at least for when you have been working for
4 Mr. Kimmett answering calls, doing the rest of your work, you
5 have never viewed him in those limited times being abusive
6 towards my client?

7 A No. There was only one other time that I ever like
8 met Brenda face-to-face. She came into the branch when we
9 worked at the other office to bring their son [REDACTED] in, and he
10 was going somewhere else.

11 Q And how many years ago was that?

12 A I think that would have been maybe 2 years ago.
13 Maybe 2 to 2 1/2 years ago. I know it was the spring or
14 something.

15 Q Right.

16 A And it was at the other office. So I would say
17 within the last 2 years. And she came in, we spoke briefly,
18 and then he helped her out to the car.

19 Q All right.

20 A So I don't really know that relationship.

21 Q How long have you worked for Mr. Kimmett?

22 A Since March 25th of 2013.

23 Q And I know you gave your earlier titles. Are you
24 essentially his assistant or do you work for Mr. Kimmett and
25 obviously the company as a whole?

1 A Well, I am actually an employee of the firm.
2 Q Sure.
3 A But I -- I mean like he is the person that I work
4 with.
5 Q Direct supervisor?
6 A He is not my direct supervisor, no.
7 Q Do you still continue to work for him though?
8 A Yes.
9 Q Like today you still do?
10 A Yes.
11 Q Okay. That's all I have.
12 A I mean we have -- I service his clients, you might
13 say.
14 MR. EDGER: Okay. Thank you. That's all I have.
15 MR. ROSEN: No redirect.
16 THE COURT: Thank you, ma'am. You may step down.
17 Please do so carefully. Additional?
18 MR. ROSEN: I do, Your Honor. Tom.
19 Whereupon,
20 THOMAS KIMMETT
21 having been duly sworn, testified as follows:
22 THE COURT: Slide the chair up. Good. Look out
23 at counsel and tell us your name.
24 THE WITNESS: Thomas Kimmett, K-i-m-m-e-t-t.
25 THE COURT: Go ahead, Mr. Rosen.

DIRECT EXAMINATION

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BY MR. ROSEN:

Q Mr. Kimmett, how are you employed?

A I am a financial adviser for Wells Fargo.

THE COURT: For who?

THE WITNESS: For Wells Fargo.

THE COURT: Wells Fargo.

BY MR. ROSEN:

Q And you have been married for how many years?

A Twenty-eight.

Q Twenty-eight years. Okay. And you have been in court the whole time this hearing has been going on?

A Yes.

Q Okay.

THE COURT: Is the green light on your microphone?

MR. ROSEN: Thank you.

THE COURT: Go ahead.

BY MR. ROSEN:

Q And you have read this document, which would be the complaint in this case, in its total?

A Yes.

Q Okay. And I want to go back to the beginning of the complaint and the first allegation in the complaint that took place on Saturday of April 27th of 2019.

A Okay.

1 Q Do you recall those circumstances of that date?

2 A I do. I do. I woke up early that day. I usually
3 do. It was a Saturday. I took care of the dog. I did the
4 dishes. I went grocery shopping. I came back. I put the
5 groceries away. Nobody was up yet. I went to work. I had a
6 seminar on Wednesday to prepare for and I started to prepare
7 for the seminar. At some point I received a call from Brenda
8 --

9 THE COURT: Do me a favor, push the mic away a
10 little bit.

11 THE WITNESS: That usually happens to me.

12 THE COURT: That's okay. Go ahead. You received
13 a call from Brenda.

14 THE WITNESS: I received a call from Brenda. She
15 was upset and we started to argue. And it went on -- I heard
16 her testimony yesterday and she said 90 minutes. I thought it
17 went on for about 35 minutes or so. I thought it got resolved
18 at the end of the 35 minutes. It seemed like it got resolved.
19 I continued to work on my seminar.

20 At some point, about two hours later, I went home.
21 When I did I went to see her. I asked if she was okay. I
22 asked if she needed anything. She said she was fine and she
23 did not need anything. That was a Saturday. I believe we all
24 ate dinner together that day. I am not positive. I usually
25 cook on the weekends because I am limited to grilling because

1 it is my only skill. And it was little interaction for the
2 rest of the night that night.

3 The next day, you know, Brenda -- I get up early
4 again. Brenda left I guess somewhat early for her. She said
5 she went to church, and I found out yesterday she did not.
6 She usually tries to goes to church on Sunday. She came back
7 about 2:30. We were all there, myself and the two boys, and
8 we kind of were just talking.

9 At some point she said, I'm going to go to Patient
10 First. I said, oh, is everything okay? She said, yes. I
11 said do you want me to take you? She said, no, I'm just going
12 to pick up the x-rays from a couple weeks ago and give them to
13 Dr. Smith. Okay.

14 So she left. I went out. I weeded the yard or
15 was weeding the yard. At some point an hour or so later she
16 came back. I popped my head around the garage because I saw
17 her, and I asked how did everything go? She said fine. I
18 said okay. You know, later that night I did cook dinner. So
19 we all ate together later that night.

20 I heard nothing at all about any type of cardiac
21 event until the next day when two police officers came to my
22 office and served a PFA on me, and I saw that there was
23 something about a cardiac event, you know, Saturday or Sunday.

24 Q In the complaint, do you recall saying something
25 like it is not my fault that you are useless and pathetic?

1 A Never. I would never, ever say anything like that,
2 never. I mean I don't even know how to say it forceful enough
3 to say that that's just not what I do or who I am, anything.

4 Q And again, in the complaint, have you ever then or
5 before threatened to withdraw your support for necessitates,
6 medicine, treatment?

7 A Absolutely not. And I read that and I was shocked.
8 We spent hundreds of thousands of dollars over the last couple
9 of years on Brenda's medical condition, and that's fine.
10 Literally anything she wanted or needed, we bought. I mean we
11 have, you know, what they call a rollator. We must have 5 of
12 them. We have 2 wheelchairs. We have a big wheelchair. We
13 have a scooter.

14 She had some type of contraption that she put on her
15 leg. Quite frankly, if you look at it you would think it is
16 worth \$150. We paid \$12,000 for it. Recently she asked a
17 couple months ago to do stem cells. I said, yes. My American
18 Express bill 3 months ago was \$48,000. I don't make \$48,000
19 every month. I had to take money out of my IRA. I had to
20 take money out of the bank to pay for that. Right now my
21 America Express bill is \$27,000.

22 I used to go to pick up medicine 2 to 3 times a week. The
23 medicine was for Brenda. We have spent hundreds of thousands
24 of dollars at Dr. Turpaugh's office over the last 3, 4 years.
25 So when you say withhold -- everything we have -- everything

1 we have done -- we don't go out to dinner. We don't go on
2 vacations. I don't buy anything. I drive an old car.

3 All our money has gone to Brenda and her condition over
4 the last 4 or 5 years. Anything she thought that would help
5 -- and she would come to me and say, I want to try this -- we
6 would get it. So that can't be more false.

7 Q And is that on top of any insurance payments?

8 A Yes. Most of the stuff from Dr. Turnpaugh's office
9 is not covered by insurance. So, you know, we are putting out
10 -- it was nothing for me to go to Dr. Turnpaugh's office a
11 couple times a week and have the bill be \$1,100, \$1,200. You
12 know, they would feel sorry for me, you know, but...

13 THE COURT: Don't walk towards the witness. You
14 will be out of the courtroom in a heartbeat.

15 MR. ROSEN: I'm sorry, Your Honor?

16 THE COURT: Do not walk towards the witness.

17 MR. ROSEN: Oh, I'm sorry.

18 THE COURT: You will be out of this courtroom in a
19 heartbeat. Can you hear me now?

20 MR. ROSEN: I can.

21 THE COURT: Did you see Mr. Edger approach the
22 witness?

23 MR. ROSEN: No.

24 THE COURT: Why do you think he doesn't do it?

25 MR. ROSEN: I want to give him an exhibit, Your

1 Honor.

2 THE COURT: You can't.

3 MR. ROSEN: I cannot?

4 THE COURT: How did Mr. Edger do it?

5 MR. ROSEN: I don't recall.

6 THE COURT: Were you not here? Were you not
7 paying any attention?

8 MR. ROSEN: I was here, Your Honor. I didn't mean
9 to offend you.

10 THE COURT: You have.

11 (A recess was taken at 3:14 p.m., and court
12 resumed at 3:17 p.m.)

13 THE COURT: Thank you, folks. Okay. You got it
14 marked and ready to go?

15 MR. ROSEN: I do, Your Honor.

16 THE COURT: All right.

17 MR. ROSEN: James, I am passing forward a document
18 I have marked as Exhibit 3, and one for the Judge as well.

19 THE COURT: I don't need that. Just the one you
20 want.

21 (Defendant's Exhibit 3 was marked for
22 identification.)

23 THE COURT: I am going to show you what has been
24 marked as Defense 3, two pages.

25 THE WITNESS: Thank you.

1 BY MR. ROSEN:

2 Q Mr. Kimmett, can you identify that document, please?

3 A Yes. I ran a search on American Express as far as
4 just the money that we spent at Turnpaugh's Chiropractic over
5 the last 2 years, and this is just for America Express, and it
6 came to \$60,000; \$59,804 so --

7 THE COURT: Sir, say that full number again; 59?

8 THE WITNESS: \$59,804.

9 THE COURT: Okay.

10 THE WITNESS: -- and this doesn't include money
11 spent for health savings account, PSECU or other credit cards.
12 I just wanted to get a feel for, you know, how much we have
13 spent at Turnpaugh's over the last couple of years.

14 MR. ROSEN: Okay. James, I am passing up another
15 document, Exhibit 1.

16 THE COURT: I am going to hand you what has been
17 marked as Defendant's Exhibit Number 1. It's 6 pages, and I
18 put in little pencil marks in the lower right-hand corner each
19 page. If there is a specific page you are referring to,
20 reference that page number for me, please.

21 THE WITNESS: Okay.

22 THE COURT: Thank you. Go ahead, Mr. Rosen.

23 BY MR. ROSEN:

24 Q Mr. Kimmett, will you please identify this document?

25 A Yes. During the period of June 29th out of, you

1 know, 3 weeks, 3 1/2 weeks, Brenda was experiencing major,
2 major problems. Major problems. Hallucination, paranoia, and
3 it was so bad that basically the boys and I provided 24/7
4 care.

5 And what I did is I did, contemporaneous with what was
6 happening, do like a daily journal of the things that
7 occurred. Sometimes it would be two days later, sometimes it
8 would be three days later, but it was contemporaneous with the
9 care that we were providing because it was so overwhelming.

10 And it really was. We were exhausted. I took
11 virtually almost every day off work. If I went in, I would
12 get a call from Brian or [REDACTED] to come home right away. We
13 canceled numerous appointments. We canceled seminars.
14 Whatever we needed to do, we did. And this kind of is that
15 journal of that -- those days.

16 Q And you did that and provided it today to help you
17 remember everything that was significant that occurred during
18 that time; is that correct?

19 A Yes.

20 Q Okay. On Monday, July 9th, and Tuesday, July 10th,
21 you testified as to what the substance of -- (inaudible)

22 THE COURT REPORTER: I'm sorry. Is that
23 microphone turned off again?

24 BY MR. ROSEN:

25 Q Your notes for July the 9th into July 10th?

1 A Yes, all different things happened during this time.
2 July 9th and 10th Brenda went around --

3 MR. EDGER: Your Honor, before he starts to go
4 through this document, I would object to it. Without them
5 being authenticated it was actually made at that time, there
6 is nothing that shows that they did not do this even in the
7 last 24 hours in preparation for today's trial. It is nothing
8 more than it looks like a word document. There's no way that
9 it should be used, and it is cumulative, if anything, to his
10 testimony.

11 THE COURT: Any response to that?

12 MR. ROSEN: Your Honor --

13 THE COURT: No, no. You don't get to respond to
14 that. The attorney does. That's why he is getting paid the
15 big bucks.

16 MR. ROSEN: My client testified to what he did and
17 how he prepared this document, and it is up to the Court to
18 decide his credibility.

19 THE COURT: I am going to overrule the objection.
20 Go ahead. Ask your question again.

21 BY MR. ROSEN:

22 Q Yes. Let's begin at page 1.

23 MR. EDGER: If I may then, to save the Court time,
24 this document then should be able to speak for itself. If he
25 is reading from the document, he either needs to be able to

1 testify with his own knowledge and the document respectfully
2 helping him remember if he needs to or the document should
3 speak for itself.

4 THE COURT: Well, I haven't even gotten a question
5 out of the document yet. So I don't know.

6 MR. EDGER: I understand respectfully, but he is
7 asking about dates and this witness is then looking straight
8 to the document and starts reading from it. So without it
9 then opening that door, I am trying to prevent that from
10 occurring, if I may.

11 THE COURT: I am not concerned about that door
12 because I can certainly separate the wheat from the chaff.

13 MR. EDGER: I understand.

14 THE COURT: Go ahead with your question.

15 BY MR. ROSEN:

16 Q You were saying?

17 A So during that period of time, just talking the big
18 picture, a lot of different things were happening. On those
19 days, the 9th and the 10th, she was literally walking around
20 the house moaning and groaning loudly saying, God, let me die.
21 God, let me die. Let me die.

22 And the kids were home, and, you know, they were up in
23 their room, and I had talked to her a couple times, I said,
24 Brenda, is there anything we can do? You know, can we help
25 you? Anything? And she was unresponsive during that and she

1 was almost inconsolable. So that's what that, you know,
2 speaks to.

3 Q And that is the period from the end of June through
4 the middle of July?

5 A So a lot of different things occurred, and I don't
6 even -- so there were periods of times where she didn't seem
7 to realize what was going on. There were periods of times
8 where both of her legs were paralyzed, and, you know -- so let
9 me just start from the beginning. It started on -- because I
10 don't need this document.

11 It started on June 29th. I got a call from my son. I
12 needed to come home right away. Come home right away. I did,
13 and then Brenda was falling and she kept on falling and she
14 was yelling and screaming at us. And she said, my right leg
15 is paralyzed. Her left leg was almost all paralyzed, and she
16 said my right leg is, and she had to go to the bathroom. And
17 I don't know if it is the MS, but she has to go a lot.

18 And she kept on falling down. But we could not help
19 her because when we tried to pick her up she would just flail
20 her arms up. So there was nowhere to grab her. And as we
21 tried to move her to the bathroom so she could go to the
22 bathroom -- sometimes we would put her leg a certain way that
23 would hurt her and she would scream at us, and, Your Honor,
24 could I be blunt as far as the language?

25 THE COURT: Well, you are not going to say

1 anything I haven't heard before.

2 THE WITNESS: So she was screaming at us, you are
3 hurting my fucking leg. You are hurting my fucking leg. We
4 would move the leg, and she would be like, not there you
5 fucking idiot, and so that went on for hours, literally hours.
6 And I kept on saying, Brenda, we got to call 911. We have to
7 call 911. No. No.

8 At some point I called 911. They came. They
9 could see her because at this point she was on the floor.
10 She had bruises on her, and when they came up I said, listen,
11 we are having trouble getting her from the bed to the
12 bathroom, and then when we would get her to the bathroom, you
13 know, sometimes she would fall hard on the toilet and that
14 would cause -- and I'm sure that caused bruises.

15 So they came. Three big guys from EMS came.
16 They saw her. They saw her laying on the floor. They put a
17 sheet over her. They picked her up and brought her to the
18 bed. Now, we want them to take her into ER because we are not
19 -- we can't handle it. We are hoping that if she goes into
20 the ER they will give her something. They will be able to get
21 her to rest.

22 They put her on the bed. She sits up in the bed
23 and she -- all of a sudden it was like, no, I'm fine. No.
24 No. I don't know why they called you. And we are sitting
25 there, the 3 of us, in shock. So at some point -- and they

1 pushed the issue.

2 The EMS, we can see the bruises on you, let us
3 take you in. Please let us take you in. No. No, I'm fine.
4 No. I fell a little bit. I'm okay. At some point he said,
5 okay. He turned to me and he said if she doesn't want to go
6 there's nothing I can do. And they made her sign a statement
7 saying she refused to be transported to ER or refused care,
8 and they made me sign the statement too.

9 They left. And it was almost like this wave came
10 over her and she's like, oh, I can't believe you did that to
11 me, and she started cursing and yelling at us. And that went
12 on, literally that where we could not help her, pick her up,
13 for 2 days because in day 3 my older son, Brian, figured out a
14 way to pick her up. The next day her friend -- her friend at
15 the time Laura Dimino came over. She came over, I'm going to
16 say at 6:00 at night, and she brought over a bottle of wine,
17 and that was nice. And Laura Dimino -- when Laura Dimino came
18 over she wrote down all the medicines she was taking because
19 up to that point nobody knew what medicines she was taking.
20 Only her. Only her. So Laura Dimino wrote down all the
21 medicines, and she came out and she said, do you know all of
22 the medicines she is taking?

23 MR. EDGER: Objection, calls for hearsay from
24 Ms. Dimino.

25 THE COURT: I'm going to overrule. Go ahead.

1 THE WITNESS: She said -- she came out to us and
2 said, do you know? And we did not. She said, well, okay.
3 I'm going to call a doctor at some point and try and get it
4 analyzed because there might be some bad interactions with the
5 different medicines, supplements, vitamins, whatever, all the
6 different stuff.

7 So at some point Ms. Domino left. Well, it ends
8 up the wine causes diarrhea. So it was a nightmare. It was a
9 nightmare because we had to be taking her back and forth to
10 the bathroom repeatedly. At some point my older son said,
11 mom, I'm going to kill myself. I can't take this any more.
12 It went on from 11:30 at night until 4:30 in the morning until
13 she finally went to sleep. It was so hard. We were spent,
14 you know, after that.

15 The next day my oldest son, Brian, who is, you
16 know, a nice size boy, figured out a way to lift her up. So
17 Brenda is about 5, 10, Brian's about 6, 2. So it was a way
18 that he could lift her under the arms and he could pick her up.
19 As long as she didn't hit the floor, we could take her from
20 the bed to the walker or rollator and we would roll her into
21 the bathroom.

22 At that point Brian would come in and pick her up,
23 you know, depending, at different stages. Sometimes he need
24 me to pull down her pants so she could go to the bathroom,
25 and, you know, I would. She would go the bathroom. We would

1 wait outside obviously. She would call, and then we would
2 come back in and do it again.

3 And we did that over -- over a couple weeks. That
4 was the routine, and we had to stay close to her and she --
5 for whatever reason, you know, she just goes to the bathroom a
6 lot, but that's -- you know, that is what we would do.

7 Q And yesterday there was testimony that there were
8 occasions when you had to clean up the bathroom when the
9 toilet overflowed or things happened there?

10 A So there -- yes. So the one time where we got her
11 up, we took her to the bathroom, and it was all 3 of us
12 because it was a 3 person job. Now, normally most of the time
13 I would have to pull down her pants and underwear. Sometimes
14 I did not. This time she said I don't need you to. Okay.

15 Then basically we wait outside the bathroom for her to
16 call. So after about a half hour she didn't call, so, you
17 know, we are like, Brenda, are you okay? Yes. Twenty minutes
18 later, still nothing. Brenda, are you okay?

19 And then, you know -- and I've done this I don't know
20 how many times. I break into the bathroom. So our bathroom
21 lock is always broken. I'm always breaking in to help her at
22 different points, and it ended up she sat -- she was there
23 sitting on the toilet. She had soiled herself. She had not
24 taken her clothes off.

25 It took us 2 1/2 hours to convince her for us to help

1 her, to get her up and to clean her off. And it is hard to do
2 because she can't stand. At that point she wasn't able to
3 stand because both her legs were paralyzed or partially
4 paralyzed. So, you know, we did the best we could because
5 obviously, you know, we didn't want her -- I don't know how to
6 say this -- to be completely naked in front of her sons. So
7 we tried as best we could, and then we took her and brought
8 her to bed.

9 Just to continue on that. The next morning I heard
10 commotion. So I went to bed, let's say it was 10:30, 11:00, I
11 don't know. We were exhausted. I am exhausted telling the
12 story, but the next day I hear at about 4:00 commotion
13 downstairs. So I go down because her -- where she was
14 sleeping at the time was right underneath the bedroom.

15 So I go down and she is laying in bed and she's all
16 upset because she had soiled herself in bed. Now, it is about
17 4:30 in the morning. I didn't want to wake up the two boys.
18 So I just took care of it. And let me just say this, because,
19 you know, I've been branded -- I could not have been nicer. I
20 could not have been more caring.

21 I cleaned her up. I took the bedsheets and threw them
22 in the washer. I got new bedsheets. Obviously I got new
23 clothes for her, and, you know, just waited outside the
24 bathroom. I made her tea. She wanted different things.
25 Whatever she needed I did, and then at some point I brought

1 her back into the bed so --

2 Q You heard testimony yesterday that at one time when
3 you were cleaning up the bathroom with her shirt you made her
4 put the soiled shirt back on?

5 A Oh, please, absolutely not. That is so out there,
6 we can't even believe -- I can't believe that she said that.
7 There is no way. And she had -- there were a number of times
8 where she had overflowed the toilet. A couple times
9 intentionally, and I'm not sure why because she was just in a
10 bad mood. And I would have to clean. And so there would be,
11 you know, feces and urine that were coming out of the toilet,
12 and I would, you know clean it up, but I always clean it up
13 with towels and sheets, and obviously we would wash them
14 afterwards. Never, ever did I do that. Never.

15 Q Now, earlier you heard me question Brenda regarding
16 something called Rick Simpson Oil. Do you know what Rick
17 Simpson Oil is?

18 A I do. Only from Brenda. So here is the background.
19 At some point Brenda started doing --

20 THE COURT: Again, you have got to push the
21 microphone away from you. I have got a speaker right
22 underneath my kneecap and when you talk into it so heavily, it
23 is resonating in my ears. Go ahead, start again. Rick
24 Simpson Oil.

25 THE WITNESS: Okay. So Brenda read about Rick

1 Simpson Oil. Basically Rick Simpson Oil -- he is some guy out
2 in California. It is supposed to help with cancer and MS.
3 But Rick Simpson Oil is processed or cooked using marijuana.
4 So at some point she started buying marijuana, large amounts
5 of marijuana, illegal marijuana. In fact, the drug dealer
6 came to our house.

7 Now he was referred by a doctor. Because people
8 asked me how do you get a drug dealer to come to your house?
9 Well, that's how. So the drug dealer came to our house. At
10 different periods she would buy a pound of marijuana, and she
11 would cook it. And if you look on the website when it talks
12 about Rick Simpson Oil, it says a number of things.

13 One, it says how dangerous it is to cook it
14 because sometimes you have explosions and fires. Well, guess
15 what? That is what we had. Twice we had little explosions
16 and fires in the house. You know, both times Brian happened
17 to be home. One time he was down in the basement and he was
18 up there quick. So he was able to put it out quick. My
19 understanding is that her arms got burnt a little bit.

20 The next time he was just about to take a shower
21 and he heard her screaming and screaming. And it's a good
22 thing he didn't get in the shower because if he got in the
23 shower and started playing his music, he would not have been
24 there to put out this fire. So he goes running down. At this
25 point this fire -- it is a fire.

1 MR. EDGER: Your Honor, I would move to strike
2 this line of -- or this answer as he only received this
3 through what he would have gotten from hearsay testimony. His
4 testimony has shown he wasn't even present. It's what he's
5 learned from Brian. Therefore, it should not be permitted
6 testimony.

7 MR. ROSEN: Your Honor, my client can certainly
8 testify that he saw the remnants of the fire, the results of
9 the fire.

10 THE COURT: Okay. And now -- but now he is
11 testifying as to the source of the fire, for which he wasn't
12 there for.

13 MR. ROSEN: Well, you can testify to what you saw.
14 You --

15 THE COURT: The objection is sustained. Let's
16 move forward. Re-ask him a question.

17 MR. ROSEN: Okay.

18 BY MR. ROSEN:

19 Q What do you know from your personal knowledge
20 regarding the two fires that occurred in your home? Not what
21 someone told you, but what you know from your personal
22 knowledge.

23 A They were caused by cooking Rick Simpson Oil.

24 Q And you know that because?

25 A It was common knowledge.

1 MR. EDGER: Objection. Move to strike that
2 answer.

3 THE COURT: No. I'm going to accept that answer.

4 MR. EDGER: Move to strike it -- well --

5 THE COURT: I accept the answer. Recognize I know
6 what that answer means. Go ahead.

7 MR. EDGER: I understand.

8 THE WITNESS: So the second one, there was -- all
9 the cabinets burned. All the cabinets burned from the -- over
10 the microwave to over the sink and everything in between.
11 They were all burnt, you know, from this.

12 So for -- and, you know, if you look at the number
13 of cases -- or the side effects of Rick Simpson Oil, it is
14 paranoia, it's delusions, it's hallucinations. It is kind of
15 everything she talked about, you know, as far as having.
16 Well, she has had that throughout that period of June and July
17 that I am making reference to.

18 BY MR. ROSEN:

19 Q And do you know for a fact that Brenda was actually
20 taking and using the Rick Simpson Oil?

21 A Yes.

22 Q And how would she take it?

23 A I think she would take it orally. I think I saw it
24 once. I don't remember. I tried not to be around. The rule
25 was -- because we had fights about this over and over again

1 because I didn't -- at certain points she wanted to try
2 marijuana. It didn't seem like that big of a thing to me, but
3 now she's buying a pound of marijuana every two weeks, costing
4 us a thousand dollars every two weeks, she's taking out of the
5 joint account, and a pound of marijuana -- so the rule was,
6 none of us need to be there when the drug dealer shows up and
7 none of us should be there when she cooks it because you have
8 a pound of marijuana coming into your house, and if the cops
9 are following this drug dealer, they don't believe anybody's
10 using a pound for possession. All of a sudden you become a
11 distributor, and we all were vulnerable; Brian, my 16 year
12 old, and myself.

13 So we had fights about this. At some point I just cut
14 it off. I just cut it off. She had, you know, what you've
15 referred to earlier, you know, as a meltdown. So we knew it
16 was going to come. So we got into an argument, and she was
17 yelling and screaming at me because she wanted the marijuana
18 and the Rick Simpson Oil.

19 Q And at any time prior to the two fires, had there
20 been fires in your kitchen before?

21 A No.

22 Q Were there any fires afterwards?

23 A No.

24 Q It was only during this particular period of time?

25 A Yes.

1 MR. ROSEN: I'm going to pass forward a document
2 as Defendant's Exhibit 2 (sic), please.

3 (Defendant's Exhibit 4 was marked for
4 identification.)

5 THE COURT: I will show you what has been marked
6 as Defense 4. It is 4 pages. And again, I have marked it in
7 pencil in the lower right-hand corner.

8 BY MR. ROSEN:

9 Q Would you identify that document for the Court,
10 please?

11 A Yes. When we bought the Rick Simpson Oil -- drug
12 dealers don't take checks. So we had to make withdraws from
13 the bank. This just represents, you know, how many times we
14 did it. I forget the number, but it runs out to about \$10,000
15 or something like that.

16 Q So this happened more than once?

17 A I think it was over a 6 month period. I am not
18 sure. It could have been longer. It started smaller so it
19 didn't start off right away with the pound.

20 Q Now during this time were you making calls to any
21 people seeking help for Brenda and the family?

22 A Yes. Yes. I don't know how to say this. We were
23 spent. The other thing is none of us, the two boys and
24 myself, have any type of medical training on any of this. So,
25 you know, we called EMS hoping that, you know, she would go to

1 the emergency room. She refused.

2 I called Hospice because Hospice has both end of life
3 care and also what they call palliative care. So you don't
4 have to be end of life. So I called Hospice hoping they would
5 come in, and they did to do an evaluation. I called -- well,
6 actually the cleaning lady, Pattie Irvin (phonetic), saw the
7 kids came over and cleaned. And now she has a cleaning
8 business. She saw how spent we were, and she said can I come
9 over and help out? Yes.

10 So she came over. Brenda -- when she came over, Brenda
11 was kind of out of it. She wasn't coherent, and Pattie came
12 in and she said what can I do? I said, Pattie, you can wash
13 her hair, and if you could, could you clean her up because she
14 had soiled herself the night before, and, you know, we tried,
15 but I'm not sure if we did a great job. She said okay. So
16 she did.

17 When she was done -- and let's say she hung out for an
18 hour, hour and a half or whatever it was, she came out and she
19 said, holy cow, Tom, you guys need help. Do you mind if I
20 come back with Christy Delano (phonetic)? I said we would
21 love for you to come back with Christy Delano.

22 Two days later they came back with Christy Delano. In
23 fact, it was the same day that we were able to get the Hospice
24 nurse to come in to do an evaluation. So the Hospice nurse
25 came in in the morning.

1 Now, this is middle of July, and Brenda is still
2 incoherent, whether it was -- sometimes she was coherent.
3 Most of the time she was incoherent. So when the hospice
4 nurse was in to do an evaluation, she would ask her questions.
5 The first thing she did is she looked at all her medicines,
6 and Brenda didn't want her to because Brenda didn't let
7 anybody near her medicines, whether it was supplements, all
8 the other stuff that she was taking.

9 It wasn't just -- I don't want to make it sound like it
10 was all prescriptions. There was supplements. There was
11 oils. There was lotions, whatever. So she looked at that,
12 and she was concerned that a lot of these -- because it was
13 also steroids -- would have an inverse reaction or a bad
14 reaction, and she asked if she could take it back to have one
15 of her doctors look at it. Brenda said, no, you cannot. I
16 know, and I'm a doctor, and she kept on saying, I'm a doctor.
17 I understand what I'm taking. And she was very, very
18 protective of that -- her medicines.

19 Three or four times the nurse, who could not have been
20 nicer, just asked her, can I just take your blood pressure?
21 Could I listen to your heart? No. No. And at some point the
22 nurse left. I talked to her outside. She said she will
23 follow up. Yes, I agree that you need to have some care in
24 the house.

25 After that Brenda called Hospice and told them to never

1 talk to me again. So when I followed up with Hospice they
2 indicated to me -- they were very nice, saying we have been
3 advised not to talk with you.

4 Q There was testimony yesterday that on one occasion
5 during this period you didn't place Brenda in her wheelchair,
6 you slammed her into the wheelchair. Is that an accurate
7 description?

8 A Absolutely not. Absolutely not. I remember that
9 day. That was July 5th. So you remember we talked about on
10 July 29th and 30th both her legs were paralyzed. Remember, we
11 couldn't get her back and forth to the bathroom? It wasn't
12 until July 1st that Brian figured out a way to pick her up.
13 So that is what we did over the next couple weeks.

14 Brian would pick her up. We would put her in the
15 wheelchair or the rollator. [REDACTED] and I would roll it to the
16 bathroom. Brian would come in, pick her up, try to put her on
17 the toilet, where I pulled her pants down sometimes. So she
18 had very little mobility in her legs. In fact, she had told
19 us that they were paralyzed. That wasn't from us. What do we
20 know?

21 So on July 5th I hear commotion. I go downstairs.
22 Brenda, what are you doing? Nothing. Okay. And then at some
23 point she went into the bathroom and she overflowed the
24 bathroom. She overflowed the toilet. So there was again
25 feces and urine. I go running into the bathroom, and I hear

1 her trying to get to the garage. And she has her rollator. I
2 go out, what are you doing?

3 Now, again, her legs are paralyzed. She can barely
4 walk. You know, all night long we are picking her up and we
5 are moving her around. She said, I'm going to my doctor's
6 appointment. I said, I can't let you go. I can't. Now,
7 quite frankly I don't think she would have made it to the car.
8 I think she would have fell in the garage, but again she would
9 have gotten hurt.

10 So all I did was stand in front of her and she was
11 screaming and yelling. The boys came down. The boys came
12 down at that point. What's going on? And I told them, you
13 know, mom wants to drive. Mom wants to get in her car and
14 drive to the doctor. Both boys said, mom, you can't drive.
15 You can't drive.

16 And so she started screaming and yelling at me. She
17 had a water bottle. She started throwing the water at me. At
18 some point she threw the bottle at me. She was cursing. She
19 grabbed the phone. She dialed 911, you know, called the
20 police, said I'm violating her constitutional rights, and just
21 continued to cuss at me and kept on saying, you're going to go
22 to jail. You're going to go to jail and you're going to lose
23 your job. You're going to lose your job. You're going to go
24 to jail today, and you're going to lose your job. They are
25 going to put you in cuffs. And that is what she said over and

1 over again.

2 The police officers show up. You know, I'm in the
3 garage. So I meet with one outside and one comes inside to
4 talk with Brenda, and as I understand it Brian. The one
5 outside asked me, what is going on? I explained what is going
6 on. In fact, if I had let her drive that day, you know, then
7 I should be a defendant because if she had killed anybody
8 because of how her legs were, I would never forgive myself,
9 and I am sure I would be liable for allowing her to go into
10 the car in that state when both her legs were paralyzed or
11 partially paralyzed.

12 So the police officer on the outside talked to me, and
13 I told him, this is what is going on. She tried to drive.
14 She's had trouble walking. You know, we think both of her
15 legs are close to being paralyzed, and we just had a -- and we
16 kind of talked about what was going on.

17 He indicated to me -- at that point we started talking
18 about how to get help in. Oh, here's who you might want to
19 call, the County. The other officer came outside and
20 basically said, you know, we don't have anything here. And
21 then we had -- the 3 of us had a conversation about how to get
22 help in the house because we needed help based on what was
23 going on.

24 Q And they didn't suggest that you let her drive?

25 A No.

1 Q Now, there was also testimony that -- I think on the
2 same occasion -- you bent both of her thumbs back so far that
3 you tore a ligament in one and I guess caused significant --

4 A Let me say, I have never touched Brenda in a harmful
5 way or in any intent to harm whether during MS, prior to MS,
6 dating. Nor have I ever touched any of the kids. It is just
7 not what I do. It is not what I do. I have never, ever
8 touched her to harm her or in a harmful way.

9 Q Now, there has been a lot of talk today and
10 yesterday regarding these meltdowns, as I have defined already
11 for the Court. Share with the Court your experience over the
12 last several years with Brenda's meltdowns.

13 A Oh, it has been unbelievable. We are living in a
14 bizarre world at the house, and we kept it all quiet because
15 out of respect for her we didn't want people to know. It is
16 only a few close people of -- my friends know about it, and
17 only know about it recently. She would have meltdowns almost
18 on a daily basis yelling, screaming about everything, about
19 everything, things she would think about in the past.

20 You know, we talked about at some point she -- I forget
21 what it was even about, where she had a hunting knife and she
22 kept on stabbing it into the desk. She said I'm going to kill
23 you. I'm going to kill you. I'm going to kill you. Come
24 over here, I'm going to kill you.

25 So there were meltdowns repeatedly. She tipped over

1 the table one time when she was doing her pills. And she took
2 about, you know, pills and supplements and vitamins, I don't
3 know, 30 or 40 pills a day. So there were all of these pills,
4 she tips over the table and she is yelling and screaming. The
5 pills go everywhere.

6 [REDACTED] and I were there, my youngest son. We dive on the
7 floor because we have a dog. Because now the dog sees all of
8 this commotion and he is running towards these pills. So we
9 dive on the floor. We throw the dog into the basement, and
10 then we spend the next 2 hours looking for pills because they
11 molded to the carpet. They are all over the kitchen. We
12 don't want the dog to lick them up and get -- or eat any of
13 the pills.

14 So there were repeated meltdowns. I mean there had to
15 be ten times over the last five years where she came up to me
16 and said, I hope you die. I hope you fucking die and I pray
17 that you die. So that has happened. So over and over we had
18 these meltdowns.

19 There was one where -- just to show you how trivial it
20 is sometimes. I'm upstairs. I hear her yelling and
21 screaming. She is down at her desk, which is in the living
22 room. Somebody put a small box on her desk, and she said I
23 told you not to put boxes on my desk. I told you. What is
24 this box doing here? What the fuck are you doing? I said,
25 Brenda, I haven't touched a box all day. I haven't touched a

1 box. I don't even know what you are talking about.

2 Well, how did it get here? I didn't do it. [REDACTED]
3 didn't do it. You had to do it. Brenda, I haven't touched a
4 box all day. All day. I haven't touched a box. No. You had
5 to do it. I just went upstairs and she kept on yelling. I
6 just went upstairs. We found out later that Brian had stopped
7 in real quick from school. The box happened to be outside.
8 He picked up the box. He dropped it on the desk, and then he
9 went back to school.

10 So anything. Anything. And, you know, Sandy testified
11 that earlier she would call the office. I would direct the
12 call. I would take the call. She would be screaming and
13 yelling so loud, you know, I could see Sandy walk around very
14 politely and shut my door just in case a client came in, and I
15 would never yell back.

16 Now, at different times at home, I did yell back. So
17 at some point after a couple years of taking the meltdowns and
18 the yelling and screaming, I would yell back at her. It
19 didn't help that much, but it made me feel a little better
20 sometimes.

21 Q There was some earlier testimony regarding knives.
22 On one occasion --

23 A She had this kind of -- this little hunting knife,
24 and I'm not even sure where she got it. I'm not sure what
25 upset her, but if you go look at the desk, you'll see, you

1 know, kind of stab wounds or knife marks in the desk, 20 or 30
2 of them, as she threatened to kill me.

3 Q And these meltdowns, as continual as they were, how
4 often were they -- either or both of your boys present?

5 A They were present a lot. Not at all times, but they
6 were present a lot. And if they weren't there, they could
7 hear them. Now, if they were up in their room, a lot of times
8 they would stay there. Sometimes they would come down, but a
9 lot of times they would stay there because they didn't want to
10 see or hear this any more than I did.

11 Q And what concerns, if any, do you have regarding
12 their having to live in this condition for a long period of
13 time?

14 MR. EDGER: Objection, relevance.

15 THE COURT: Sustained. That's not what I'm here
16 to decide.

17 BY MR. ROSEN:

18 Q Yesterday there was testimony that you stomped on
19 your wife's thigh while she was lying on the ground.

20 A Never. Absolutely not. I go back to what I said
21 before, that I have never touched Brenda in a harmful way or
22 with intent to harm her. Never. In fact, all we did, all of
23 us, we have cared for her for the last 5 years. We have spent
24 all our money on her, and our whole lives revolve around her
25 and her MS. So that was even more shocking than any of this.

1 I'm sorry.

2 Q And you have read this in detail?

3 A I have read it.

4 Q Did you see anything in there about stomping on her
5 thigh?

6 A No.

7 Q What else do you want to tell the Court that you
8 haven't already or I didn't ask you about?

9 A At the moment I can't think.

10 MR. ROSEN: Cross.

11 THE COURT: Mr. Edger.

12 MR. EDGER: Thank you.

13 CROSS EXAMINATION

14 BY MR. EDGER:

15 Q Sir, Defense Exhibit 3, which was your American
16 Express transactions with Turnpaugh Chiropractor. Your
17 testimony was that you spent \$60,000 there for Brenda over the
18 last -- what was it year? Whatever it may be?

19 A Actually it is 2 years, and some of them might be
20 for Brian too.

21 Q Right. Brian, [REDACTED] yourself, you all see
22 Dr. Turnpaugh's office?

23 A Ninety percent of it is for Brenda.

24 Q All right. You have also, as you testified, and I'm
25 sure Brenda is very thankful for, spent significant funds that

1 insurance did not cover to make sure that she was able to have
2 treatment or try to battle her MS conditions, correct?

3 A Yes.

4 Q You always tried to make sure that she was
5 financially taken care of?

6 A Yes.

7 Q The minute this PFA was filed you withdrew \$11,000
8 out of your bank account and have made sure she had not one
9 penny up to this morning's Domestic Relations hearing?

10 A That's not true.

11 Q You're not --

12 A That's not true.

13 Q Wait. Stop. I get to ask the questions. Are you
14 denying that you withdrew over \$10,000 from your bank account
15 the day after -- the days after the PFA was filed?

16 A No, I did not. That money was transferred to pay an
17 American Express bill. I mentioned to you that our American
18 Express bill was \$48,000 3 months ago.

19 Q So the day after -- the day after this joint account
20 that you and my client both had access to -- the day after is
21 when that payment went through, and since then she had not --

22 A Well, let me tell you what happened that day. The
23 payment came in from our tax return. We got \$11,000 from our
24 tax return. That came in. I was waiting for that to come in.
25 I got notice that that came in. I wanted to make sure that I

1 used that money to pay off our American Express bill because
2 she spends a lot of money on -- Turnpaugh has the card. So
3 right now our American Express bill is \$27,000.

4 Q All right. Earlier you had a couple witnesses
5 testify on your behalf saying they have never seen you have a
6 bad temper. Do you think you have a bad temper?

7 A I do not.

8 Q Weren't you fired by Cumberland Valley basketball
9 team because you had such a bad temper that the parents said
10 you needed to go?

11 A No.

12 Q In fact, this morning during the Domestic Relations
13 hearing you had such a bad temper the security guards had to
14 be nearby you to keep an eye because of such an outburst and a
15 temper?

16 A That's not true.

17 Q Okay.

18 A And I have my attorney as a witness.

19 THE COURT: He is not going to be a witness.

20 BY MR. EDGER:

21 Q Okay. With the EMS, you said things were signed.
22 You haven't presented anything today that verifies EMS or any
23 medical emergency medical services were at your home sometime
24 in mid-July?

25 A June 29th.

1 Q June 29th. You have nothing here that shows that?

2 A I'll get it. I mean there is no question --

3 Q So the answer to my question is you do not have
4 anything today that can show or verify EMS was at your home,
5 correct?

6 A I do not.

7 Q All right. Now, for the medicines, your earlier
8 testimony was that nobody knew what medicines Brenda was
9 taking, only she would know, correct?

10 A Yes.

11 Q But, in fact, in her desk she kept a binder for the
12 past 6 years that has every single thing that has worked, that
13 has not worked, and instructed you, being who she trusted and
14 relied on, what to know?

15 A That's not true. That's not true. That's why when
16 Laura Dimino came over on June 30th she put together a list of
17 all of the different drugs she was taking. And when I say
18 drugs, supplements -- I don't want to make it sound like it
19 was drugs. She put together that.

20 Up to that point, no, I did not know anything. I was
21 not allowed to touch anything -- anything. All I could do is
22 periodically she would say to me, bring my pills over because
23 there was so many. It literally took up 3 rows of the kitchen
24 cabinets. I put them --

25 Q So you deny there was any binder that had any

1 information in there, dosages, how much, reactions? Nothing
2 like that?

3 A Oh, there might be. I had no knowledge of it.

4 Q Okay. So the past 6 years, even when you have been
5 giving her medicine, you have never known --

6 A I have never given her her medicine.

7 Q Even in this 2 week experimental trial when you
8 stated that she was so -- she was not lucid and that you had
9 to carry her back, you never once gave her medicine?

10 A That's right.

11 Q Who did?

12 A I don't know.

13 Q You were living in the house. You don't know who
14 was giving your wife these pills?

15 A She took her pills.

16 Q Now, leading up to today, you have been pretty upset
17 that your wife -- or your ex-wife now would have --

18 A She is still my wife.

19 Q I was correcting myself. That Brenda -- you've been
20 upset that she is separating, she has obtained divorce
21 counsel, correct?

22 A No.

23 Q Not upset?

24 A No. That's what is the shame about this whole
25 thing. Had she just come to me and said, hey, I want a

1 divorce, I would have said okay. I wouldn't be sitting here
2 right now.

3 Q Isn't it true you told her in the past that if she
4 left you that she would never have the boys?

5 A Never.

6 Q And that you would make sure that the boys knew
7 about what she was doing?

8 A Never.

9 Q Well, isn't it true in the weeks leading up that you
10 had your attorney not only subpoena both boys, you copied the
11 protective order and said, I want you to know what I am being
12 accused of?

13 A You know what? That's a good question because I was
14 told by my attorneys to do that. So I would have preferred
15 not to.

16 Q Are you aware that your attorney's letter said at
17 your direction I am sending -- yours being you, Mr. Kimmett,
18 that he is sending a copy of the page of a Temporary Order so
19 that Brian and separately [REDACTED] know what mom is saying?

20 A No, I did not know that.

21 Q Do you deny that the letter said that or you just
22 don't know it?

23 A I just don't know it.

24 Q Okay. So if your attorney said that it was your
25 direction, that's not true?

1 A My attorney told me that they are going to send out
2 subpoenas. They attached the PFA order. I thought that was
3 standard. I didn't realize that it wasn't.

4 Q Okay.

5 A And as a matter of fact, I thought -- I don't know
6 that they had seen it or not at that point.

7 Q If --

8 MR. EDGER: May I have a moment to put my last
9 question together, Your Honor?

10 THE COURT: Sure.

11 MR. EDGER: Thank you.

12 THE COURT: Be careful. I might hold that to you.

13 MR. EDGER: I will.

14 THE COURT: You said it is your last question,
15 singular.

16 MR. EDGER: Questions, but yes. I said plural.

17 BY MR. EDGER:

18 Q Is it true that you had a rule that Brenda was not
19 allowed to use the master bathroom when you were there between
20 8:00 p.m. and 8:00 a.m.?

21 A Absolutely not.

22 Q And, in fact, she said she had to text you for
23 permission when she could shower, and if you said no, or
24 didn't respond, she didn't get to do it?

25 A Absolutely not. Absolutely not. So Brenda ran the

1 house. Brenda ran the house. Whatever she wanted, she got.
2 We catered to her and have catered to her for the last 5, 6
3 years.

4 Q And that's hard, right?

5 A Pardon?

6 Q It is hard work to take care of a loved one who is
7 going through what she is going through with MS?

8 A Yes.

9 Q And you indicated there are days that are hard?

10 A I am sorry. Say that again.

11 Q Some days are really hard on you?

12 A Yes.

13 Q All right. So it would be natural then that you
14 would have a day where you would snap and get mad at her?

15 A No. The only times that I responded is after she
16 started yelling at me. So she would yell and she would say
17 some vile things. And I'm an adult. You know, for the most
18 part, a tough guy from a tough neighborhood, but when somebody
19 yells at you and says I want you fucking dead. I wish you
20 would fucking die. And says it over and over again, you know
21 what? That hurts and that's troubling.

22 And that was done repeatedly. So there were times,
23 yes, when I yelled back at her. And that was after -- you
24 know, the first couple of years for the most part I didn't. I
25 would just kind of walk away.

1 Q Now the first time you have -- well, let me rephrase
2 that. You never called the police, reported to adult
3 protective services, nothing like that when, as you testified,
4 Brenda allegedly used a knife and said, I'm going to kill you,
5 or saying I wish you dead? You never called anybody or told
6 anybody else?

7 A I never called anybody officially. We rarely told
8 anybody about anything that was going on. None of us. We
9 kept everything quiet because -- out of respect. We did not
10 want to offend Brenda or hurt her reputation.

11 Q Finally, after -- you testified that EMS came on
12 June 29th. Shortly thereafter nobody followed up from like
13 Adult Protective Services or anybody who is designated to help
14 people like Brenda based on what EMS had seen that day, did
15 they?

16 A Not that I am aware of.

17 MR. EDGER: Okay. That's all I have. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. ROSEN:

20 Q Tom, who is paying the bills since you left?

21 A I am.

22 Q All bills?

23 A All bills.

24 Q The mortgage?

25 A Yes.

1 Q Utilities?

2 A Yes.

3 Q Food?

4 A Yes.

5 Q Anything your family needs, you continue to pay for?

6 A Yes.

7 MR. ROSEN: That is all I have.

8 MR. EDGER: Nothing based on that.

9 THE COURT: Thank you, sir. You may step down.

10 MR. ROSEN: The defense rests, Your Honor.

11 MR. EDGER: Brief rebuttal by Ms. Kimmett.

12 THE COURT: Come on forward. You are still under

13 oath so just have a seat up here. Please do so carefully.

14 (BRENDA KIMMETT was recalled.)

15 THE COURT: Slide up. Good. Look out at counsel

16 and tell us your name.

17 THE WITNESS: Brenda Kimmett.

18 DIRECT EXAMINATION

19 BY MR. EDGER:

20 Q Just to verify, you have been sitting through the

21 hearing ever since -- or all day today, correct?

22 A Yes.

23 Q All right. Earlier your sister Mary Lou had

24 testified that when she saw you in August, among the bruises

25 there were fingernail scratches on you. Do you remember there

1 being scratches on your body?

2 A Yes.

3 Q Do you know where those scratches came from?

4 A Tom Kimmett.

5 Q And tell me how he caused the scratches on your
6 body.

7 A Grabbing my legs.

8 Q Okay. Was this to pick you up or is this in an
9 attack?

10 A Both. He was very angry any time he had to help me.
11 He was very rough with me. So it felt like an attack, but he
12 was trying to move my legs on the bed.

13 Q Earlier, either yesterday or today, I don't recall
14 which day it was, you had testified that the last day you took
15 your pills was June 28th or 29th. Do you recall that?

16 A Oh, yes.

17 Q Do you recall which day it was that you stopped
18 taking your pills?

19 A June 29th.

20 Q Do you have memory of that day?

21 A Absolutely.

22 Q Do you at any time remember any emergency medical
23 EMS, police -- anybody like that being at your home?

24 A No, it was not that day. That happened earlier in
25 June.

1 Q Okay. Did you refuse service or refuse to be
2 transported?

3 A After I talked with them and told them what was
4 going on, they had said that I did not need to go. We agreed
5 together. So I didn't think I was refusing. We were
6 discussing it together.

7 Q All right. You heard a lot of your husband's
8 testimony. He says you would, you know, say fuck you, fuck
9 this, things like that. Is that how you talk around the
10 house?

11 A Absolutely not.

12 Q Is it possible that you have moments where you were
13 so upset that you just couldn't control what you were saying?

14 A No.

15 Q All right. Lastly, do you recall the incident where
16 a table fell over -- or pills spilled?

17 A Yes. The table was not turned over in any way. I
18 could not do that. It is much larger than the table you are
19 at right now. I could not do that. But I was putting my
20 vitamins in my pill boxes and I spilled one. I had a spasm
21 with my hand and I spilled one, and I was picking it up and I
22 called for the boys -- for [REDACTED] to put Zack in the basement so
23 he didn't eat one. He wasn't interested in them at all. And
24 so we were looking, and I couldn't find one that matched the
25 color of the carpet, and so [REDACTED] helped me, and we were there

1 for awhile and Tom just happened to walk by getting food and
2 he looked for a few seconds for it.

3 Q You said the table is about the size of this. What
4 kind of table? Like solid wood?

5 A Solid pine, a very heavy table. Maybe if you put
6 both of those together, it might be that big.

7 Q With your condition and, you know, your paralysis on
8 the one side, are you physically able to turn or move this
9 table?

10 A Absolutely not.

11 Q Okay.

12 A Could I say something about the language?

13 THE COURT: No. Wait until your attorney asks the
14 questions.

15 THE WITNESS: Okay. Thank you.

16 BY MR. EDGER:

17 Q What is it about your language that has you upset
18 that your husband would say that F this and F that?

19 A Yes, because I don't speak like that. It is not my
20 personality. I have a lot of training in psychology. I have
21 a lot of tools to remain calm and to speak calmly, and I, in
22 particular, don't care for that word. I'm not a perfect
23 person. I have at times said s-h-i-t, but I feel really bad
24 about it when I do, but the f-u-c-k word, which he used many,
25 many times when he sat here is part of his vocabulary, but not

1 mine.

2 MR. EDGER: Could I just have one moment, Your
3 Honor? Very briefly?

4 BY MR. EDGER:

5 Q You testified earlier -- you acknowledged that you
6 tried the Rick Simpson Oil one time, correct?

7 A It is through the Pennsylvania medical marijuana
8 program.

9 Q Did you have to purchase physical marijuana in order
10 to do that?

11 A Oh, no.

12 Q Did you ever have some individual coming to sell you
13 a pound of marijuana every -- oh, I think the bank statement
14 shows every couple of weeks?

15 A No, I did not.

16 Q Do you know why \$500 categorically kept getting
17 withdrawn every couple weeks?

18 A I do not know. Tom takes control of all of the
19 money, and he doesn't let me know, but I know that in the past
20 he has had gambling problems. So I would hope that wasn't it,
21 but I am not sure what he did with the money.

22 MR. ROSEN: Objection, Your Honor.

23 THE COURT: We have got to take a pause. Come on
24 in. Just have a seat, ma'am. I'll be back in a few moments.

25 MR. EDGER: Your Honor, could she remain there?

1 THE COURT: I said just have a seat.

2 (A recess was taken at 4:11 p.m. and court resumed
3 at 4:18 p.m.)

4 AFTER RECESS

5 THE COURT: Thank you, folks. Please be seated.
6 I am sorry. Back to you.

7 (BRENDA KIMMETT resumed the stand.)

8 BY MR. EDGER:

9 Q Brenda, there was earlier testimony that you had on
10 repeated occasions called Mr. Kimmett at work, for example,
11 just screaming at him. Do you ever recall an incident where
12 you had ever done that?

13 A No, I have never done that, and I know that I would
14 never because when he would come home there would be severe
15 consequences. I could get hurt.

16 Q Why do you feel that way?

17 A Because it happened before.

18 MR. EDGER: All right. That's all I have, Your
19 Honor.

20 THE COURT: Anything else?

21 MR. ROSEN: No.

22 THE COURT: Thank you, ma'am. You may step down
23 if you would do so carefully.

24 THE WITNESS: Yes, sir.

25 THE COURT: Anything else, Mr. Edger?

1 MR. EDGER: No further rebuttal, no.

2 THE COURT: Do you want to move for the admission
3 of your exhibits? You've got 1, 4, and 3 as exhibits.

4 MR. ROSEN: We will move for their admission, yes.

5 THE COURT: Any objections?

6 MR. ROSEN: But I do have one short surrebuttal.

7 THE COURT: Exhibits.

8 MR. EDGER: Three and 4, no. One, I still object
9 that it has not been properly authenticated. To say it's been
10 made at the time, but I believe that goes more to the weight
11 Your Honor has to give.

12 MR. ROSEN: Your Honor --

13 THE COURT: It's admitted; 1, 3 and 4 are
14 admitted.

15 (Defendant's Exhibits 1, 3, and 4 were admitted
16 into evidence.)

17 MR. ROSEN: Thank you.

18 THE COURT: Now, you have some surrebuttal?

19 MR. ROSEN: I do. Sandy Downey.

20 (SANDRA DOWNEY was recalled.)

21 THE COURT: And you know the drill. So slide up a
22 little bit for us, look out at counsel, and tell us your name.

23 THE WITNESS: Sandra Downey.

24 THE COURT: And you are still under oath so go
25 ahead, Mr. Rosen.

DIRECT EXAMINATION

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BY MR. ROSEN:

Q It will be very short, Sandra. You heard Ms. Kimmett's testimony just now?

A Yes.

Q And she testified that profanity is not part of her language and that she would never call Tom at work screaming. Does that comport with your experience?

A It does not, and, as I said, she would call at times and sometimes I would speak to her, and except for two phone calls it was always just brief but cordial and appropriate, and the one time she cried a lot, but I do not recall -- and there was no foul language.

But the last time I spoke to her on the phone, truly I was very stunned because, as she said, she doesn't talk like that. My experience has been that she did not speak like that, but that day she did. I mean -- and I don't talk that way. I guess I am an older lady and that's just not the way I was raised, but that day she was -- everything was F-ing this and F-ing that, and I knew she was upset and full of emotion, but, no, she used that word repeatedly.

MR. ROSEN: Nothing else, Your Honor.

MR. EDGER: None. Thank you.

THE COURT: Thank you, ma'am. You can step down carefully.

1 MR. ROSEN: The defense rests, Your Honor.

2 THE COURT: Hearing a family's laundry is not the
3 purpose of a PFA, and this is a case that cries out for a
4 settlement, but counsel did not find that suitable middle
5 ground. These are not criminal people, rather they are
6 imperfect people facing life issues that they are not equipped
7 to handle on their own.

8 The case now requires a decision from this Court
9 that will not help to promote the family nor fix the issues
10 that they have, but it will be a decision within the limits of
11 the protection statute based on a preponderance of evidence
12 standard.

13 At issue is whether Defendant knowingly engaged in
14 a course of conduct or repeatedly committed acts toward
15 another person under circumstances that placed that person in
16 reasonable fear of bodily injury.

17 In the context of a Protection From Abuse case,
18 the Court's objective is to determine whether the victim is in
19 reasonable fear. The intent of the Defendant, be it
20 malevolent or benevolent, is of no moment.

21 Plaintiff is viewed as found in this case
22 suffering from the effects and treatments for secondary
23 progressive multiple sclerosis.

24 It is clear that Defendant has engaged in conduct,
25 albeit in his mind not abusive, but to this Plaintiff is and

1 it has placed her in fear. Is this fear rational? The Court
2 does not judge on that basis, but rather is it reasonable for
3 her? With that in mind, we will enter this order:

4 AND NOW, this 6th day of June, 2019, following
5 the conclusion of a hearing on Plaintiff's Petition For
6 Protection From Abuse, the Temporary Abuse Order previously
7 entered is made into a Final Order and the Petition is
8 granted.

9 Paragraph 5 of the Temporary Order is deleted in
10 total. This is about custody of a 17 year old child. It will
11 be handled via the conciliation process if necessary for that
12 child. However, neither party is to do any action that will
13 impede that parent/child relationship.

14 THE COURT: Mr. Edger, anything?

15 MR. EDGER: No. Thank you, Your Honor.

16 MR. ROSEN: Your Honor, two things.

17 THE COURT: Sir.

18 MR. ROSEN: The length of the order?

19 THE COURT: It would be in the Temporary Order
20 that would go to -- I looked at it and now it has escaped me
21 after I put it back in the file.

22 MR. EDGER: The expiration date, Your Honor?

23 THE COURT: I am sorry?

24 MR. EDGER: You are asking about the expiration
25 date?

1 THE COURT: Yeah, it's in the file. I just have
2 to go look at it. April 29th, 2022, unless modified by Court.

3 MR. ROSEN: And, Your Honor, we would like to make
4 arrangements today for my client to go to the marital
5 residence to pick up his personal property.

6 THE COURT: Without a doubt. If you need Court
7 assistance on that after you two gentlemen talk let me know,
8 but I can certainly give you orders for the same, but I can't
9 give you directions on how you can reach that mutually on your
10 own. Thank you. Anything else? All right. We are in
11 recess.

12 (The proceedings concluded at 4:31 p.m.)

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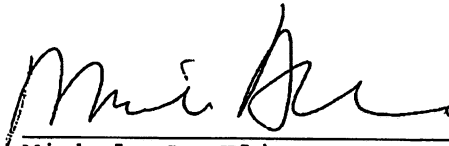
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CERTIFICATION

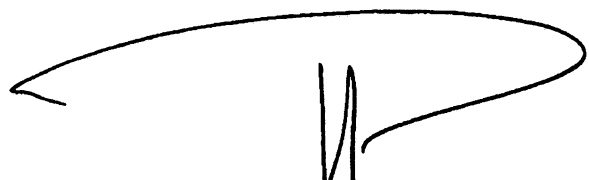
I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the above cause, and that this is a correct transcript of same.



Michele A. Eline
Official Court Reporter

The foregoing record of the proceedings on the hearing of the within matter is hereby approved and directed to be filed.

4 Aug 19
Date



Thomas A. Placey, C.P.J.
Ninth Judicial District

EXHIBIT 13

Kimmatt v. Kimmatt Audio of 6/6/2019

See Flash Drive

EXHIBIT 13

Kimmatt v. Kimmatt Audio of 6/6/2019

See Flash Drive