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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 2003-67714

IN THE INTEREST OF	)	IN THE DISTRICT COURT OF
	)	
BRISA NICOLE GAWLIKOWSKI	)	HARRIS COUNTY, TEXAS
	)	
A MINOR CHILD	)	247TH JUDICIAL DISTRICT
_____	)	

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 REPORTER'S RECORD OF ORAL PROCEEDINGS  
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On the 28th day of August 2009,  
 the following proceedings came on to be heard in  
 the above-entitled and numbered cause before the  
 Honorable Bonnie Crane Hellums, Judge presiding,  
 held in Houston, Harris County, Texas.

Proceedings reported by computer-aided machine  
 shorthand.

COPY

A P P E A R A N C E S

1  
2 FOR BRANDI SIKES:

3 ROBERT KUEHM, Attorney at Law  
4 State Bar No. 11752400  
and  
5 MARY-OLGA LOVETT, Attorney at Law  
6 State Bar No. 0789289  
8441 Gulf Freeway, Ste. 600  
Houston, Texas 77017  
7 713-861-6166 = Office  
713-230-2221 = Fax  
8

9 FOR DANIEL GAWLIKOWSKI:

10 WALTER MAHONEY, Attorney at Law  
11 State Bar No. 12844600  
6005 Fairmont Pkwy, Ste. J  
Houston, Texas 77505  
12 281-998-9450 = Office  
281-998-9430 = Fax  
13

14 FOR THE MINOR CHILD:

15 WENDY BURGOWER, Attorney at Law  
16 State Bar No. 03383600  
3355 W. Alabama, Ste. 825  
Houston, Texas 77098  
17 713-529-3982 = Office  
713-522-5045 = Fax  
18  
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## PROCEEDINGS

1  
2 THE COURT: Gawlikowski. So what are we doing  
3 today?

4 MR. MAHONEY: Judge, well, the first thing I  
5 would ask you to consider is, this is my Motion for  
6 Continuance. On Tuesday or Wednesday of this week my  
7 client's sister was sexually assaulted and committed -- or  
8 attempted, that's the wrong word, attempted to take her own  
9 life. And she has been hospitalized and he has flown to, I'm  
10 not going to get the state right, but it's like Ohio to  
11 assist his family in taking care of her.

12 I filed this Motion as soon as I got that  
13 information. I've called Ms. Burgower and Mr. Kuehm and told  
14 them of the situation, but he is not here. He is in another  
15 state taking care of his sister. I spoke with him yesterday  
16 and her situation is grave. They don't know whether she is  
17 going to live or not live.

18 Well, I'll let Ms. Burgower state her position.

19 MS. BURGOWER: Huh?

20 MR. MAHONEY: I said, I would let Ms. Burgower  
21 state her position. I was going to tell the Judge that you  
22 and I had a discussion about possibly coming back next week.

23 MS. BURGOWER: I was not sympathetic at first,  
24 then I started thinking about it. I don't know how to  
25 respond when someone is in that kind of a crisis. I really

1 don't, Judge. But I did tell Mr. Mahoney that a week should  
2 not affect my client. Months will affect my client.

3 And I would like Mr. Gawlikowski present for  
4 this trial. I'm afraid if he is not here, it feeds into his  
5 position that he is being railroaded because of his position  
6 that he feels fathers aren't treated well. I didn't say it  
7 was a founded position. I said it was his position.

8 THE COURT: Good. Because about 60 percent of  
9 the time in this court fathers get their kids.

10 MS. BURGOWER: And we all know that fathers who  
11 litigate -- well, that's not the point.

12 THE COURT: Right. And you can't legally  
13 consider that.

14 MS. BURGOWER: The point is, you know, that the  
15 impact on my client, if this is going to be put off for some  
16 period of time there is an injunction I want. Otherwise, I  
17 have no dog in this hunt and I'm very sympathetic to anyone  
18 that has a family member that's been assaulted. That's my  
19 position. If we could hear it next week, Judge, I would have  
20 no opposition to a recess.

21 MR. KUEHM: Judge, can I respond, please?

22 THE COURT: Sure.

23 MR. KUEHM: Your Honor, the problem I have with  
24 this is, obviously, that we were here. Mr. Mahoney after  
25 anticipating the ruling of the Court decided to nonsuit their

1 case. We were ready to go forward on our case. We picked  
2 this date specifically to try to accommodate. I think  
3 Mr. Mahoney had some other trials to come down here on the  
4 28th and we set it for one day.

5 We have subpoenaed five different people  
6 from different schools where there has been problems on  
7 visitations with Mr. Gawlikowski constantly going up there,  
8 and problems they've at those schools. And those people are  
9 all on call planning on coming down here this afternoon to  
10 testify.

11 The problem I also have is that, this Motion for  
12 Continuance, it's just another one of the -- I mean, I agree  
13 with Ms. Burgower. It's hard to kind of respond to this  
14 issue because it's on the Motion for Continuance that  
15 Mr. Gawlikowski is the one that swore to it. He swears to it  
16 as the undersigned attorney. This is what he has filed with  
17 the Court. This is the same gentleman who has issued  
18 subpoenas out under Mr. Mahoney's name that he acknowledged  
19 the other time.

20 So I'm having a real hard time here trying to  
21 explain to my client after her husband took off work --  
22 excuse me, took off from traveling out of town for this date  
23 today and those witnesses and everybody is going to have to  
24 get recalibrated again. I'm sorry to hear if this is,  
25 indeed, true the situation of the young woman. This is

1 somebody, in fact, the Court has an injunction about the  
2 child ever being in the presence of the child without  
3 Mr. Gawlikowski present. This woman has a history of drug  
4 addiction and prostitution.

5 So I don't know what the truth is, Judge.

6 I just know that we're here ready to go to trial and I can't  
7 agree to this. And I'll just refer to the Judge's ruling on  
8 this, but I just -- it's bizarre.

9 MR. MAHONEY: Nobody plans a sexual assault,  
10 your Honor, and I let them know as quickly as I knew. I had  
11 to let them know, despite the fact that I was in trial some  
12 place else, that this had happened to my client's sister.  
13 He is there taking care of her and the rest of his family.  
14 It's an unfortunate circumstance. It's certainly not being  
15 done for the purposes of delay or to make Mr. Kuehm work  
16 harder or cause problems. It's not something that anybody  
17 anticipated or knew about or had any kind of control over.  
18 It happened and he is there taking care of his family.

19 And, Judge, I do anticipate that he will be back  
20 next week. But if his sister dies, what I said to  
21 Ms. Burgower is that, it may be that the funeral would be  
22 next week. But I will tell Mr. Gawlikowski whatever you tell  
23 me and he will be here.

24 MS. BURGOWER: And, Judge, when I said the only  
25 thing about getting set off, if this Court decides to put

1 this off and it becomes an indefinite put off, I'm requesting  
2 that Mr. Gawlikowski be enjoined from coming up to the school  
3 on occasions that are not scheduled events for all parents.  
4 It's an issue in this case. He is violently against it, I'll  
5 be frank with you, but that's my request.

6 Because this was supposed to be tried before  
7 school started. School has just started. He has already  
8 been at the school at lunch. This is his right. But until  
9 this Court does an order to limit that right, I'm asking that  
10 if this Court does continue it, they continue it with an  
11 injunction that he is enjoined from coming up and spending  
12 lunch time and coming up to the school, other than scheduled  
13 events, parent teacher conferences, that all other parents  
14 are at. That's what I think needs to happen for my client.

15 THE COURT: Mr. Chamberlian, are y'all going  
16 forward with Calloway?

17 MR. CHAMBERLIAN: Calloway is on the 1st, your  
18 Honor, yes, we are.

19 THE COURT: Okay. I'm just looking at my  
20 calendar trying to figure out.

21 MR. KUEHM: And I hope the Court understands my  
22 position here, that I don't know what to say.

23 THE COURT: I understand. And, I mean, I'm  
24 caught in the same thing because quite frankly it feels kind  
25 of gamey because as soon as he gets kind of backed into a



1 corner he doesn't like, he dismisses and then refiles and  
2 then dismisses and refiles. And this has happened several  
3 times.

4 MR. MAHONEY: Can we stop you right there,  
5 Judge.

6 THE COURT: Sure.

7 MR. MAHONEY: Because that is not an accurate  
8 reflection of what has happened, and I am very, very  
9 concerned that you have been told that or believe that and  
10 it's not accurate information.

11 THE COURT: Well, I thought that's what it said  
12 on the docket sheet.

13 MR. MAHONEY: And it's your handwriting, Judge,  
14 so it is probably your perception that that is the situation,  
15 but, in fact, that is not the situation. If you will  
16 recall, your Honor, you dismissed this case because they  
17 failed to enter an order. It was absolutely nothing to do  
18 with my client. You dismissed --

19 THE COURT: Oh, okay.

20 MS. BURGOWER: Judge, it doesn't matter.

21 MR. KUEHM: That's not correct, your Honor.

22 THE COURT: I'm concerned about this child and  
23 that's what I'm more worried about than any of these grownups  
24 and what they need to do. I think you need to go and talk to  
25 Carlene and find out when is the first time -- this is a

1 one-day trial that we're looking at?

2 MR. KUEHM: That's my understanding, Judge.  
3 And, Judge, I think the Court is accurate on this. I think  
4 after we left court, Mr. Mahoney's client or somebody filed a  
5 Petition to Modify again and then supposedly that's been, and  
6 actually got it set for a hearing, and that's been nonsuited  
7 again; has it not?

8 MR. MAHONEY: But it has absolutely nothing to  
9 do with anybody being backed into a corner, Judge, and for  
10 you to believe that, it is totally inaccurate.

11 THE COURT: Okay. That's fine. I'm taking your  
12 word for it. Have you dismissed it again?

13 MR. MAHONEY: Yes. I have dismissed -- well,  
14 I had to Judge because --

15 MS. BURGOWER: Wait. The issue --

16 MR. MAHONEY: And that has nothing to do with  
17 what we're here today about, okay.

18 MR. KUEHM: I think it has a lot to do with it,  
19 Judge.

20 MR. MAHONEY: It does not and I can explain.

21 THE COURT: Well, just --

22 MS. BURGOWER: Judge, even if that were true, if  
23 the man's sister is --

24 THE COURT: Absolutely. That's why I'm not  
25 going to force him into a hearing today because I feel sorry

1 for him and his sister. I mean, this is an awful situation.  
2 But I'd like you all to -- I have no problem granting your  
3 temporary injunction.

4 MR. MAHONEY: Can I at least point out, Judge,  
5 that there would take a pleading and there would take  
6 evidence that is strongly contested. I understand that  
7 you've made your decision and want to do that.

8 THE COURT: Yeah. I mean, I just think on a  
9 bandaid order. It's a bandaid until we can get in here and  
10 then --

11 MS. BURGOWER: Pleadings are on file to modify  
12 his rights, general pleadings, and I'm asking for a bandaid  
13 order and that's all I'm asking for.

14 MR. MAHONEY: Nobody gets an injunction. Okay.

15 THE COURT: On a Temporary Order on a bandaid,  
16 you can put a lot of stuff.

17 MR. MAHONEY: Okay, Judge.

18 MS. BURGOWER: We won't call it an injunction.  
19 I'd ask the Court to order him not to come up to the school  
20 during hours, and not use the word enjoined, but order him  
21 not to come up to -- or to authorize him only to come up to  
22 the school when all parents and teachers are invited at  
23 scheduled events. He is probably not going to be in town  
24 until we get --

25 THE COURT: Do we have Our Family Wizard in

1 place?

2 MR. MAHONEY: No, we don't.

3 MR. KUEHM: Yes, we do, Judge. I mean, he may  
4 not be utilizing it.

5 MR. MAHONEY: It's not in place right now,  
6 Judge.

7 MS. BURGOWER: My point, Judge, is no matter  
8 what it is, it's extremely temporary and if he is, in fact,  
9 out of town, it doesn't matter.

10 MR. KUEHM: And My Family Wizard is in place.  
11 My client has been operating with it. Now, whether  
12 Mr. Mahoney's client wants to use it or not --

13 MS. BURGOWER: Right now, I don't think that's  
14 on his mind.

15 THE COURT: No, for right now it's not. But I'm  
16 just saying, that would be a way for the message of when all  
17 the parents and children and everybody would be together --

18 MS. BURGOWER: No, that's not the problem.

19 THE COURT: -- to be on the calendar so he would  
20 know when that was and have an opportunity to be there to see  
21 his daughter then.

22 MS. BURGOWER: I just want a bandaid order to  
23 stop the lunch visits. It's that simple.

24 THE COURT: And the school people are here or  
25 they're on call?

1 MR. KUEHM: They're on hold.

2 MS. BURGOWER: They're on hold. I have talked  
3 to the school people about it and right now it would have to  
4 be a Court Order for him not to come up. And my point,  
5 Judge, is this is a bandaid and this is only being done  
6 because he is not here for trial.

7 So I think Mr. Mahoney's opposition -- we all  
8 have to weigh what's fair to everybody. And these people had  
9 fairness to anticipate this being resolved. So for him to  
10 protest so mightily about some sort of shortstop measure,  
11 while the man is probably out of town anyway, doesn't make a  
12 lot of sense to me. My concern is, we're going to go get  
13 another hearing date, someone is going to be in trial again  
14 and this lady is not going to get any relief. And so at the  
15 very least, my client needs a little relief.

16 And I would ask that if the Court does reset it,  
17 that they enter a Protective Order so Mr. Mahoney and  
18 Mr. Kuehm don't get back in trial and keep this lady and that  
19 kid still out there. I mean, we have to deal with the way  
20 things are but I think we can all do it --

21 THE COURT: First go find the date so I have an  
22 idea of what we're looking at.

23 MR. KUEHM: Tell me when to be here and I'll be  
24 here with bells on, Judge.

25 THE COURT: Well, go talk. Go find out from

1 Carlene when is the next available time I can give you a  
2 whole day.

3 MS. BURGOWER: Thank you, Judge.

4 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED)

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1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS )

3 COUNTY OF HARRIS )

4

5 I, Phyllis E. Gonzales, Official Court Reporter in  
6 and for the 247th District Court of Harris County, State of  
7 Texas, do hereby certify that the above and foregoing  
8 contains a true and correct transcription of all portions of  
9 evidence and other proceedings requested in writing by  
10 counsel for the parties to be included in this volume of the  
11 Reporter's Record, in the above-styled and numbered cause,  
12 all of which occurred in open court or in chambers and were  
13 reported by me.

14 I further certify that this Reporter's Record of the  
15 proceedings truly and correctly reflects the exhibits, if  
16 any, admitted by the respective parties.

17

18 WITNESS MY OFFICIAL HAND this the 3RD day of

19 September, 2009.

20 Phyllis Gonzales

21 Phyllis E. Gonzales, CSR #8483

22 Expiration Date: 12\31\10

23 Official Court Reporter

24 247th District Court

25 Harris County, Texas

1115 Congress, Houston, Texas 77002