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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
_____)	

REPORTER'S RECORD OF ORAL PROCEEDINGS

On the 29th day of September 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.

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A P P E A R A N C E S

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SEPTEMBER 29TH, 2009

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(PROCEEDINGS)

THE COURT: Gawlikowski.

MR. MAHONEY: Can I, your Honor?

THE COURT: Sure.

MR. MAHONEY: When last we were here, I had requested time to file an additional response to what they had filed and we, in fact, did that. And then on Friday, I guess, someone from the court called all the lawyers and said that we were no longer the number two case, that we were now the number one case and that we should appear and be here ready to start the trial of this case, so we're all here.

THE COURT: Uh-huh.

MR. MAHONEY: But, obviously, before any of us can start, we need you to make a determination as to how you've ruled and then ask that once you tell us that, give us an opportunity to just meet briefly with our clients and then report back to you. So that we will know -- I mean, we've spent the weekend and, actually, the case has been ready for quite some time so everybody is ready to go to trial but we just don't know which way we're going to trial.

MS. LOVETT: Your Honor, I think perhaps the references to the pending Motion for Sanctions seems axiomatic. If his pleadings are stricken, if Mr. Gawlikowski's pleadings are stricken, that would be the

1 pleadings that contain the jury demand. And so the Court's
2 determination on the Motion for Sanctions, and we have
3 submitted suggested findings, will determine whether or not
4 we are having a bench trial on Mrs. Sikes' pending
5 counterclaims or whether we're going with the jury trial on
6 Mr. Gawlikowski's August 28th filed Petition, which the Court
7 will recall, was filed on the date that the Court granted his
8 Motion for Continuance, on grounds that we found spurious.

9 MR. MAHONEY: And the Court will also remember
10 that the pleadings that they're attempting to go forward on
11 were also filed after that continuance in terms of their
12 request for injunctions about the school, because we all
13 discussed the fact that there were no pleadings requesting
14 injunctions against my client going to the school.

15 And so the pleadings that they're proceeding on
16 today, or at least a portion of them, are also filed after
17 that continuance was granted.

18 MS. LOVETT: Your Honor, first of all, those
19 were supplemental findings, not amended. And, second of all,
20 these were in response to the --

21 THE COURT: Wait a minute, supplemental
22 findings?

23 MS. LOVETT: The supplemental suggested --

24 MR. MAHONEY: Pleadings.

25 MR. KUEHM: Supplemental Counterpetition.

1 MS. LOVETT: Sorry, I feel like a bad
2 ventriloquist here. I'm getting everybody's ears.
3 Supplemental Counterpetition, but it was to address the
4 Bandaaid Order that the Court -- the Court did not enter the
5 injunctions, per se. The Court ordered a Bandaaid Order to
6 deal with those issues until we could get before you, yet
7 again today.

8 THE COURT: Ms. Burgower is raising her hand.

9 MS. BURGOWER: You want me to --

10 THE COURT: Yes. I can hear you. I can see
11 you.

12 MS. BURGOWER: Are you ready for me?

13 THE COURT: Yes.

14 MS. BURGOWER: All I was going to point out,
15 Judge, there is quite a difference between the filing of a
16 Counter to a Counterpetition, than a Request for Supplemental
17 Orders. If this Court thinks that the Request for
18 Supplemental Orders was not timely filed, then the Court
19 goes forward on the Original Counterpetition.

20 But their Counterpetition was not amended until
21 the 31st of August to include the injunctive relief, that I
22 don't think they needed to. Mr. Mahoney's was filed on the
23 28th, the day of it. If you find neither one of them were
24 timely filed, you still have the Original Counterpetition
25 filed by Ms. McDonald. That's my position.

1 MR. MAHONEY: And I would respectfully disagree
2 with Ms. Olga Lovett in terms of our jury demand. And I
3 think a jury demand is presumed to be timely filed if it's
4 paid more than 30 days before the case is set for trial.
5 This case was reset and that jury demand was paid more than
6 30 days before the case was set for trial.

7 And so I believe we are entitled to a jury on
8 the issues of material and substantial change of circumstance
9 and domicile restriction. And change of custody is what we
10 have pled for, or a modification of periods of possession,
11 which is what they have pled for.

12 MS. LOVETT: Your Honor, if I might, just to
13 make this easier on Mr. Mahoney, for the record he doesn't
14 have to keep saying Olga Lovett because Olga is my middle
15 name, just Lovett.

16 MR. MAHONEY: I apologize.

17 MS. LOVETT: No, that's easiest. It's just
18 easier.

19 MR. MAHONEY: No. I apologize.

20 MS. LOVETT: But our point was not that the jury
21 demand wasn't timely filed. Our point was that the jury
22 demand wasn't timely filed in light of the fact that the
23 continuance made enabled them to file it, I know the Court
24 recalls our argument on this point, and was obtained by
25 fraudulent purposes. That's our position.

1 If the Court agrees with us with that, then we
2 say the jury, the whole thing was untimely filed. We ask for
3 -- not even untimely filed, we're asking the Court to strike
4 it.

5 MS. BURGOWER: And I also maintain that
6 pleadings, whether stricken are not, are admissions. And
7 Mr. Gawlikowski by his continued filings of Counterpetitions
8 alleging a material change of circumstances are, in essence,
9 a stipulation of a material change in circumstance.

10 MR. MAHONEY: Not if our pleadings were struck
11 because --

12 MS. BURGOWER: They have been filed repeatedly.
13 They still stand as an admission against the party interest,
14 whether they are a pleading or a statement.

15 MR. MAHONEY: If we don't have a pleading on
16 file, we are entitled to a jury to make that determination.
17 That's our belief.

18 MS. BURGOWER: And that all centers on whether
19 or not the Court grants the pending Motions for Sanctions.

20 MR. MAHONEY: And the nature and extent of what
21 the Court does is why we're standing before the Court now to
22 know exactly how we're going to proceed.

23 THE COURT: Well, I took these home and studied
24 them over the weekend in great detail. I did not mark them
25 up because I think I had the original copies.

1 Was there not appointed which -- the jury was
2 waived or was that, it's always been a jury trial?

3 MR. MAHONEY: This is very, very interesting but
4 it's my recitation of the way I believe we proceeded. We
5 filed, we requested and were put on your jury docket. That
6 case was dismissed because they did not put a -- or file an
7 Order in a Motion to Compel and you dismissed the case
8 pursuant to your policy on dismissing cases that don't submit
9 an Order.

10 THE COURT: Right.

11 MR. MAHONEY: We then refiled and never made a
12 jury demand. But we came down here before you and we said,
13 we're going to take everything from this prior case, we're
14 going to carry it over to this subsequent case, which
15 includes Dr. Gordon's report, evaluation, assessment, all of
16 our Discovery Responses, all of our information, depositions
17 and things that had been done in case one would carry forward
18 to case two and we did that. On the record, we presented
19 that. And then we were again set on your jury docket, okay,
20 for a two-week period of time. And we all represented to you
21 that it was going to be a jury trial.

22 Within seven days of that case being presented,
23 they filed a Motion with you and they said, Mr. Gawlikowski
24 has not properly assessed or made a determination in his
25 194 (H), (G), whatever number it is, a designation of fact

1 witnesses or what the witnesses were going to say about
2 facts and they asked you to prohibit Mr. Gawlikowski from
3 presenting any evidence in his case.

4 At that point you said, I want to look at that
5 issue. You asked me to do a brief. I did a brief. We came
6 back. We met in your chambers. You indicated that you
7 thought they were valid and you were going to strike our
8 pleadings and we nonsuited our case. Again, at that point
9 no jury demand has been made or jury fee tried. But all
10 counsel are relying upon the fact that we're on a jury
11 docket because we have already done our Motions in Limine
12 to you, we had presented them, you ruled on them. Everybody
13 believed we were trying this case to a jury, there is no
14 question about it, and we had proceeded in that fashion.

15 We then nonsuited our case and they represented
16 to you that there are no jury issues. Then, they submitted a
17 proposed parenting plan. And in that proposed parenting
18 plan, they talk about there not being a domicile restriction
19 and that Mr. Gawlikowski should not be allowed to go to the
20 schools or things like that.

21 Then the Motion for Continuance occurs.
22 We come down. We argue the Motion for Continuance.
23 When you rule on the Motion for Continuance, there is then
24 an Order signed resetting the case for 30 days, okay,
25 actually, 31 days or 32 days, something along those lines.

1 At that time, Mr. Gawlikowski, through my office, files
2 a jury demand or makes a jury demand and files a
3 Counterpetition, which is then filed with this Court.

4 He has previously filed another Counterpetition
5 but he nonsuits that because it's filed within seven days of
6 trial of when the case was set for trial originally. And he
7 can't proceed with that, because he has to have leave of
8 court to file within seven days of trial, so he nonsuits that
9 case the day after it's filed.

10 We then make our jury demand, which has been
11 made in this case. And we file a Counterpetition, which has
12 been made in this case. They then, on August 31st, which is
13 within 30 days of the trial of this case, file a Supplemental
14 Petition to support the injunction that you have entered on
15 the Friday before, because that's when you granted the
16 continuance and say, because we pointed out at the time that
17 you granted that injunction, that there were no pleadings to
18 support that injunction.

19 And they amend their 194, the very same thing
20 that they complained about Mr. Gawlikowski not doing. They
21 amend their 194 within 30 days of trial to put in information
22 about the requested injunction that they have now pled for.
23 And then this case comes up on your trial docket for today,
24 and that's how I believe we are where we are and where we
25 are.

1 And so it's our position that, number one, the
2 jury demand was timely paid and we're entitled to the jury
3 trial on the issue of a domicile restriction, which is one
4 of the things that Mr. Gawlikowski has pled for in the
5 pleadings that were filed on the Friday that you granted the
6 continuance. And, number two, he is entitled to try the
7 issue of primary physical residence to a jury because he made
8 his jury demand before 30 days of trial, more than 30 days
9 before the trial. And the law says that if you make a jury
10 demand more than 30 days, it's presumed to have been timely
11 filed.

12 MS. LOVETT: Your Honor.

13 THE COURT: Yes.

14 MS. LOVETT: I think we dance around the
15 800 pound elephant. Mr. Mahoney makes my point. When he
16 says, we knew we couldn't file a jury demand, we knew we
17 didn't have the jury demand, we knew we nonsuited that second
18 nonsuit that came in that last month of August was because we
19 knew we were within seven days. And then we get to, how do
20 we get the ability? How does Mr. Gawlikowski get the ability
21 to get a continuance?

22 And our position is, and we have made this out
23 to the Court in the evidentiary hearing last week, he lies,
24 and what he told this Court was a lie. And that can't be
25 countless because you can't set that precedence here. That's

1 our position. That's why we moved to strike and that's why
2 we asked for the sanctions that we did. Because based on
3 those lies, he got his continuance. We all sympathized.
4 And then on that very day, he files the pleadings because,
5 guess what, now I've got 32 days and I can make this jury
6 demand that we all now acknowledged had existed.

7 I agree with Mr. Mahoney that we all agreed all
8 the discovery would carry over but we can't reresurrect a
9 jury demand where there isn't one. There is nothing in the
10 Rules of Procedure that says, the parties can all agree that
11 there's a jury demand and even though we didn't pay a fee, we
12 get a jury. What we agreed to was to carry over the
13 discovery, so that we didn't reinvent the wheel on that and
14 cost more money to these people even though it's already been
15 spent.

16 So the issue still before the Court is, can you
17 lie in the 247th and get a continuance and then use that to
18 your benefit to plead again and make a jury demand? If the
19 Court grants our Motion to Strike and for Sanctions, then
20 what we proceed on is the jury trial -- I mean, is the bench
21 trial on Ms. Sikes' Counterclaims. And the issues on that,
22 the domiciliary restrictions that Mr. Mahoney keeps
23 referencing, the child is six. The one that was in the
24 original decree expired when she turned five, July of 2008,
25 and so we would contend that that restriction is gone.

1 And we're not seeking any jury issues. We're simply seeking
2 on her Counterclaims what's in our suggested findings.

3 So our position with the Court still is, that
4 if the Motion for Sanctions is granted, as we believe it
5 should be because of the method by which the continuance was
6 granted and the pleadings are stricken, we proceed on the
7 bench trial today and that's what we're prepared to do.

8 MS. BURGOWER: Judge, I think if you strike
9 pleadings in accordance with the sanctions, the jury is
10 stricken with it because those were the concurrent pleadings.
11 And, you know, if they want to take it up, let them take it
12 up. But I believe it's a bench trial if you strike the
13 pleadings. I think if you don't strike the pleadings, then
14 it's a jury trial. I think it's that simple.

15 Now, they keep dancing around about these
16 amended, her amended Counterpetition. If you say, no, I
17 think that's wrong too, then they go on their Original
18 Petition. I don't think they needed to make those requests
19 anyway, but they did in an abundance of caution. They can
20 ask for leave of court during the trial. They don't have to.
21 But they still have a standing Counterpetition and they
22 followed everything by the book.

23 And when we were back in that room, the one
24 thing I want to correct on the record, this Court never made
25 one statement that verbally indicated that she was about to

1 strike Mr. Mahoney's pleadings. And he has said that
2 repeatedly and I take offense to it, this Court should take
3 offense to it.

4 When we were back there in chambers, you made
5 absolutely no verbal like, I think I'm gonna, huh-uh. He
6 nonsuited before you made any comment of that nature. And
7 you may not remember but I do, and I take offense to that.
8 This Court did not make a statement that made him any more
9 inclined or less inclined. And I think that needs to be
10 cleared on the record because I was there and you did not,
11 Judge.

12 MR. MAHONEY: I don't disagree with the fact
13 that you did not say anything, Judge, but Ms. Lovett made the
14 same representation to you last week in open court and
15 Ms. Burgower was on the phone and she made no protest, said
16 absolutely nothing, and may be able to say she didn't hear,
17 but I am offended by the fact that she would attack one side
18 of the case and not equally attack the other side of the
19 case.

20 MS. BURGOWER: Your Honor, I stand by my
21 statement.

22 MR. MAHONEY: Because I think the record will be
23 very clear that Ms. Lovett made the exact same representation
24 that you indicated that you were inclined to grant the
25 motion. I would have no reason to nonsuit the case if I

1 didn't believe you indicated you were inclined to grant the
2 motion.

3 MS. BURGOWER: I'm going to object to that
4 because that's goes to his thought process, Judge. You know,
5 the facts are the facts.

6 MR. MAHONEY: Well, Judge, --

7 THE COURT: Is there anything else?

8 MR. MAHONEY: Yes, Judge, one more thing.

9 If, in fact, these people knew there was no
10 jury demand, for them to come in and argue Motions in Limine
11 in front of you, okay, would indicate that they knew there
12 was no jury demand, that this case wasn't a jury trial, but
13 they took your time to make presentations on Motions in
14 Limine. We all believed this case was going to be tried to a
15 jury. We all relied upon the fact that it was going to be
16 tried to the jury. We did Motions in Limine. There would be
17 no need to do those if, in fact, this was a court trial, as
18 they're trying to make the presentation to you.

19 They believed it was a jury trial. We all
20 believed it was a jury trial. And a jury demand is not a
21 pleading, Judge. It's a request for your right under the
22 Constitution, the laws of the state to have a jury.

23 MS. LOVETT: Judge, I need to clarify that one
24 point on the record. We're certainly not saying that we
25 thought there was -- we thought Mr. Mahoney paid the fees,

1 we were mistaken, and we have learned that.

2 What we're saying is, is that based on his
3 argument, you can't just resurrect and create a jury demand
4 where this is none.

5 MR. MAHONEY: I appreciate that they can be
6 mistaken but I can't, Judge.

7 MS. LOVETT: I object to that side-bar and that
8 the Ad Hominem attack.

9 MR. MAHONEY: Well, it's not an attack. It's
10 the fact. If I say something that's incorrect, it's not a
11 mistake, it's a lie. If they say something that's incorrect,
12 it's just a mistake.

13 THE COURT: You have no idea how badly I would
14 like to get this case settled and get it over with.

15 However, I'm finding at this time that I cannot
16 dismiss their suit with prejudice. That would not be
17 appropriate. I am, however, going to sanction both
18 Mr. Mahoney and Mr. Gawlikowski. It will be \$45,000.00 for
19 Mr. Gawlikowski and it will be \$5,000.00 for Mr. Mahoney for
20 the misrepresentations made to this Court. And those
21 sanctions need to be paid to Ms. Sikes.

22 This Court is appalled at the way in which this
23 all was handled. But, I don't think that I can strike his
24 pleadings right now. So I guess we're going to be going to a
25 jury trial on it. But I need those sanctions paid timely,

1 which would be within the next two months. The entirety
2 needs to be paid to Ms. Sikes.

3 MS. BURGOWER: Judge, I'd like you to put us
4 in trial so we don't keep having these refilings when we keep
5 getting postponements. You can put us in trial right now,
6 and if these people want to stir up something again --

7 THE COURT: Well, but they also want a jury
8 trial.

9 MS. BURGOWER: Yes, they do.

10 THE COURT: So, consequently, I don't have -- I
11 mean, if I called a jury, I could handle them today and
12 tomorrow probably but it wouldn't, you know, I can't make the
13 jury go away for another three weeks while I get the rest of
14 my docket taken care of because I've already got --

15 MS. BURGOWER: Judge, you had put us in trial
16 last time. Even if you reset it for 31 days, they would be
17 in trial and the pleadings would be frozen and these
18 shenanigans would stop.

19 I've been out quite a bit of time and money
20 myself. Mr. Gawlikowski still has -- he's never made his
21 initial court-ordered deposit to me.

22 THE COURT: I want those paid as well, counsel.

23 MR. MAHONEY: I understand, Judge.

24 MS. BURGOWER: Never. He paid two, didn't like
25 what I said, and just stopped and smiled because I have no

1 recourse.

2 MS. MAHONEY: Judge, that's kind of like -- I'm
3 sorry.

4 MS. BURGOWER: It's a fact.

5 THE COURT: Well, lets --

6 MS. LOVETT: Your Honor, would you like for us
7 to submit an Order for the Court on those findings?

8 THE COURT: Yes, I would.

9 MS. LOVETT: We will do that today.

10 THE COURT: Okay.

11 MR. KUEHM: We have to get with Carlene about a
12 day, Judge; am I correct?

13 THE COURT: Yeah. It looks like it may be in
14 March before we're able to -- yeah. And what I can do is put
15 you to trial today and then just recess us until such time,
16 so that we don't have this continuing --

17 MS. BURGOWER: That's what I was suggesting,
18 Judge.

19 THE COURT: -- this continuing dismissing of
20 pleadings and repleadings and all that kind of stuff. We'll
21 be frozen exactly where we are. So let's get a date from --
22 oh, there she is.

23 MS. BURGOWER: Judge, there needs to be a date
24 certain on those fines or they're really meaningless.

25 MS. LOVETT: November 29th?

1 THE COURT: Sure, November 29th would be great,
2 right after Thanksgiving and before the money gets spent on
3 Christmas.

4 MS. BURGOWER: And I'd ask the Court maybe to
5 amend and also order him to make his final payment of
6 \$2,500.00 to me by that date. That's the original, from the
7 original \$7,500.00. I just didn't want Mr. Gawlikowski to
8 think that money was going to get me off this case because
9 it's not. But I would ask the Court --

10 THE COURT: Well, he needs to take care of all
11 his financial obligations. And it's now \$45,000.00 to you
12 guys. It's \$5,000.00 from Mr. Mahoney, all of it to
13 Ms. Sikes. And he needs to pay the remaining amount to
14 Ms. Burgower.

15 MS. BURGOWER: It's \$2,500.00.

16 THE COURT: It's \$2,500.00 that he owes to
17 Ms. Burgower.

18 MR. MAHONEY: Of the \$10,000.00 or \$20,000.00?

19 MS. BURGOWER: No. Actually, he's never been
20 ordered to pay more than -- he was ordered to pay \$7,500.00.
21 He paid 5 of the 75.

22 MR. MAHONEY: Okay. That's what I was asking.

23 MS. BURGOWER: He made the first payment of 15
24 until -- he made his first payment as ordered. He did not
25 ever make his second payment as ordered.

1 THE COURT: Okay. If you all would step over
2 and --

3 MS. LOVETT: Your Honor, may I submit those
4 Orders separately, one for the sanctions and one for
5 Ms. Burgower or how does the Court prefer?

6 THE COURT: Sure. That's fine.

7 MS. LOVETT: All right. We'll do that.

8 MR. MAHONEY: Judge, there is no way that I'm
9 going to be able to review that Order by this afternoon.

10 Can we just set it for entry in the morning?

11 THE COURT: That will be fine as well. But I do
12 want to get a date certain before everybody leaves, so if you
13 can go talk to Carlene and let her look at the calendar.

14 MS. BURGOWER: Judge, the only thing I know I
15 have in March is the AAML. Can I call my office and find out
16 when it is?

17 THE COURT: Sure. What are we looking at?

18 THE COORDINATOR: I don't know, Judge.

19 THE COURT: Oh, okay.

20 MR. KUEHM: Judge, if we can do this entry by
21 this Friday?

22 MS. LOVETT: I'm sorry, I'm in trial tomorrow in
23 Beaumont. I forgot.

24 THE COURT: By Friday is fine.

25 MR. MAHONEY: Actually, Judge, I'm in trial. I

1 think I'm in either Anahuac --

2 THE COURT: Well, you'll have an opportunity to
3 look at it by then. So if you want to just fax your
4 signature over.

5 MR. MAHONEY: So?

6 THE COURT: They need to get it to you by
7 tomorrow.

8 MR. MAHONEY: Okay.

9 THE COURT: So that you have an opportunity --

10 MR. MAHONEY: Okay. Judge, I'm not going to be
11 here because I'm going to be in Anahuac, is what I'm saying.
12 I don't want you to think I'm not just showing up.

13 THE COURT: No. I know that. I know that,
14 Mr. Mahoney.

15 MR. MAHONEY: Okay. Thank you.

16 THE COURT: But don't leave yet until you have
17 an opportunity to go back and talk to Carlene.

18 MR. MAHONEY: I'm not. Thank you, Judge.

19 THE COURT: Uh-huh.

20 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

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

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

WITNESS MY OFFICIAL HAND this the 4th day of

October, 2009.

Phyllis Gonzales

Phyllis E. Gonzales, CSR #8483

Expiration Date: 12\31\10

Official Court Reporter

247th District Court

Harris County, Texas

1115 Congress, Houston, Texas 77002

PHYLLIS E. GONZALES, C.S.R. No. 8483