

IN THE INTEREST OF

BRISA NICOLE GAWLIKOWSKI,

A CHILD

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IN THE DISTRICT COURT

247TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

FIRST AMENDED FINDINGS AND ORDER ON MOTION TO STRIKE PLEADINGS AND FOR SANCTIONS

The Court has before it Brandi McDonald Sikes' September 8, 2009 Motion to Strike Pleadings and for Sanctions. The Motion has been fully briefed and such briefing consists of the Motion, a Response, a Reply, and a Sur-Reply (entitled "Final Response"). The Court held an evidentiary hearing on September 22, 2009. Having considered the pleadings, the evidence, and the arguments of counsel, the Court hereby makes the following Findings and Order:

Findings

1. Dan Gawlikowski (also "Gawlikowski") is a litigant and real party in interest in Cause No. 2003-67714, and the biological father of the child made the subject of this lawsuit, Brisa Nicole Gawlikowski. Walter P. Mahoney (also "Mahoney") is Gawlikowski's counsel.
2. Dan Gawlikowski filed a petition seeking modification of the conservatorship of the child on December 9, 2008.
3. Brandi McDonald Sikes (also "Sikes"), mother of the child made the subject of this lawsuit, filed a Counter-Petition to Gawlikowski's petition referenced in Paragraph 2, above, on June 11, 2009.
4. Dan Gawlikowski took a voluntary nonsuit of the petition referenced above in Paragraph 2 on August 17, 2009, immediately prior to the commencement of a two-week jury

trial preferentially set for that date.

5. Following Gawlikowski's non-suit of his jury-determinative claims, this Court set August 28, 2009 as the new trial date for the bench trial of the counterclaims of Brandi McDonald Sikes.

6. Dan Gawlikowski re-filed a petition seeking modification of the conservatorship and domiciliary restriction of the child on August 19, 2009.

7. On August 21, 2009, Dan Gawlikowski filed a voluntary nonsuit of the petition filed on August 19, 2009.

8. On August 26, 2009, Dan Gawlikowski filed a Motion for Continuance of the August 28, 2009 trial setting.

9. Dan Gawlikowski verified his own Motion for Continuance as "counsel of record." In the Motion, Gawlikowski averred that he had a family emergency in which a "family member was assaulted and requires medical attention."

10. On August 28, 2009, Sikes appeared with counsel and announced ready for trial. Gawlikowski's attorney presented Gawlikowski's Motion for Continuance.

11. In his argument on the Motion for Continuance, Gawlikowski's counsel identified the assaulted "family member" as Gawlikowski's sister, Mary Deanna Gawlikowski. On the record during the hearing, Gawlikowski's counsel told the Court that Ms. Gawlikowski: (1) had been sexually assaulted; (2) had attempted suicide; (3) was hospitalized in Ohio; and (4) was in "grave condition." Gawlikowski's counsel further represented to this Court that it was unknown whether Ms. Gawlikowski's sister "was going to live or not live." Gawlikowski's counsel further represented to the Court that he had spoken to his client the preceding day to confirm this version of events. Based on the representations of Gawlikowski through his counsel, the Court

granted the Motion for Continuance and re-set the bench trial for Brandi McDonald Sikes' pending counterclaims for September 29, 2009.

12. On August 28, 2009, the same day that this Court heard and granted Gawlikowski's Motion for Continuance, Gawlikowski filed another petition (this one entitled a "Counter-Petition") to modify custody and domicile of the child, and paid a jury fee.

13. Brandi McDonald Sikes filed her Motion to Strike Pleadings and for Sanctions on September 8, 2009.

14. All parties were given notice and hearing was held on Sikes' Motion to Strike Pleadings and for Sanctions on September 22, 2009.

15. The Court finds that Mary Deanna Gawlikowski had not been sexually assaulted during the week prior to August 28, 2009 as represented by Gawlikowski during the hearing on Motion for Continuance.

16. The Court finds that Mary Deanna Gawlikowski had not attempted suicide during the week prior to August 28, 2009, as represented by Gawlikowski during the hearing on Motion for Continuance.

17. The Court finds that Mary Deanna Gawlikowski was not hospitalized on August 28, 2009, as represented by Gawlikowski during the hearing on Motion for Continuance.

18. The Court finds that Mary Deanna Gawlikowski was not "in grave condition," nor in peril of death on August 28, 2009, as represented by Gawlikowski during the hearing on Motion for Continuance.

19. The Court finds that Mary Deanna Gawlikowski's whereabouts and condition were, in fact, unknown to Dan Gawlikowski and his counsel on August 28, 2009.

20. The court finds that Dan Gawlikowski never saw his sister at any time during his

visit to Ohio which took place from August 26-August 30, 2009.

21. The Court has examined the facts available to the litigant and the circumstances existing when Gawlikowski filed each of the referenced pleadings.

22. The Court has examined all matters in the litigation to date, including the parties pleadings for attorneys' fees in the underlying litigation.

23. The Court finds that Gawlikowski acted in bad faith by non-suiting his case on August 17, 2009, on the day of trial despite the massive costs and fees incurred by the parties since the filing of Gawlikowski's December 9, 2008 petition.

24. The Court finds that Gawlikowski acted in bad faith by filing -- and then non-suiting -- his case a second time on August 19 and 21, 2009, respectively.

25. The Court finds that Dan Gawlikowski and his counsel filed and argued their Motion for Continuance for the purpose of delay and harassment, as Gawlikowski could not have filed his August 28 "Counter-Petition" without leave of court unless he obtained a continuance, because the parties were within seven (7) days of a trial setting. The Court finds that in Gawlikowski's Response, he judicially admits that he was only able to file the Counter-Petition because the September 29, 2009 trial setting, obtained as a result of the filing of his Motion for Continuance, was "more than 30 days" away at the time that Gawlikowski filed his Counter-Petition on August 28.

26. The Court finds that the "Counter-Petition" filed by Gawlikowski on August 28, 2009 was filed in bad faith and predicated on the conscious doing of wrong for dishonest and malicious purposes.

27. The Court finds that the "Counter-Petition" filed by Gawlikowski on August 28, 2009 was brought in bad faith and for the purpose of harassment.

28. The Court finds that Gawlikowski's filings are groundless and his egregious conduct and abuse of the judicial process justify the presumption that his claims lack merit.

29. The Court finds that Gawlikowski's repeated nonsuiting and re-filing of his case was in bad faith and for the purpose of harassment.

30. The Court finds that Gawlikowski's repeated nonsuiting and re-filing of his case was for the purpose of needless increase in the cost of litigation.

31. The Court finds that the Motion for Continuance was filed in bad faith and for the purpose of delay so that Gawlikowski could circumvent the TEXAS RULES OF CIVIL PROCEDURE in order to file the August 28 Counter-Petition.

32. The Court finds that Gawlikowski and his counsel made knowing material misrepresentations of fact to the Court in the filing and arguing of the Motion for Continuance.

33. The Court finds that Gawlikowski's testimony at the evidentiary hearing on the Motion to Strike Pleadings and for Sanctions was not credible.

34. The Court finds that Gawlikowski's evidence presented at the evidentiary hearing was not credible.

35. The Court SUSTAINS Mrs. Sikes' objections to Gawlikowski's evidence filed with his Response to Motion to Strike and for Sanctions, as set forth at Pages Two and Three of Sikes' Reply to Response to Motion to Strike and for Sanctions, and specifically SUSTAINS Sikes' Objections to Exhibits 1, 2, and 3-33 on the grounds stated in Sikes' Reply.

36. The Court finds that both Gawlikowski and his counsel were responsible for the sanctionable conduct outlined in this Order. The Court further finds that this sanctionable conduct was egregious because it involved (1) making blatant misrepresentations of fact to the Court (2) for the purpose of delay (3) in order to file a pleading for dishonest, harassing, and

malicious purposes.

37. The Court finds that sanctions are appropriate against both Gawlikowski and his counsel, pursuant to TEXAS RULE OF CIVIL PROCEDURE 13 and TEXAS CIVIL PRACTICE & REMEDIES CODE Section 10.001.

38. The Court finds that the monetary sanctions ordered in this case are appropriate because (1) they properly address a portion of the attorneys' fees incurred by Sikes due to the misconduct and misrepresentations of Gawlikowski and his counsel; and (2) they have no preclusive effect on Gawlikowski's ability to litigate, as payment of such fees is not a prerequisite to Gawlikowski's filing of future causes of action.

BASED ON THE ABOVE FINDINGS, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

(1) Dan Gawlikowski is **ORDERED** to pay Brandi McDonald Sikes the total sum of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) on or before November 29, 2009 at 5:00 p.m. directly to Brandi McDonald Sikes at 7719 Betty Jane Lane, Houston, Texas 77055, for attorneys' fees, representative of a fraction of the costs incurred by Ms. Sikes during the litigation from December, 2008 to August, 2009, and for the preparation and prosecution of the Motion to Strike Pleadings and for Sanctions. It is the **ORDER** of this court that such amount, if not paid on or before November 29, 2009 at 5:00 p.m., shall be reduced to a money judgment payable to Brandi McDonald Sikes.

IT IS THEREFORE ORDERED that good cause exists to award BRANDI MCDONALD SIKES judgment in the amount of \$45,000.00 for attorney's fees, expenses, and costs incurred by BRANDI MCDONALD SIKES, with interest at the legal rate per year compounded annually from the date the judgment is signed until paid. The judgment, for which let execution issue, is

awarded against DANIEL EDWARD GAWLIKOWSKI, JR. and BRANDI MCDONALD SIKES may enforce this judgment for fees, expenses, and costs in her own name by any means available for the enforcement of a judgment.

(2) Walter P. Mahoney, counsel for Dan Gawlikowski, is **ORDERED** to pay Brandi McDonald Sikes the amount of FIVE THOUSAND DOLLARS (\$5,000.00) on or before November 29, 2009 at 5:00 p.m. directly to Brandi McDonald Sikes at 7719 Betty Jane Lane, Houston, Texas 77055 in attorneys' fees. It is the **ORDER** of this court that such amount, if not paid on or before November 29, 2009 at 5:00 p.m., shall be reduced to a money judgment payable to Brandi McDonald Sikes.

IT IS THEREFORE ORDERED that good cause exists to award BRANDI MCDONALD SIKES judgment in the amount of \$5,000.00 for attorney's fees, expenses, and costs incurred by BRANDI MCDONALD SIKES, with interest at the legal rate per year compounded annually from the date the judgment is signed until paid. The judgment, for which let execution issue, is awarded against WALTER P. MAHONEY, JR. and BRANDI MCDONALD SIKES may enforce this judgment for fees, expenses, and costs in her own name by any means available for the enforcement of a judgment.

(3) In compliance with the order of the Fourteenth Court of Appeals, the prior order is hereby amended to read: The Court hereby assigns the parties and counsel to trial as of September 29, 2009, to be commenced to begin on June 7, 2010 at 9:30 a.m.

(4) The Order of this court regarding school and after-care visits entered in conjunction with the August 28, 2009 Order on Motion for Continuance shall remain in full force and effect until the conclusion of the trial of this cause and the entry of further extending or countermanding orders.

ENTERED on this _____ day of January, 2010.

JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

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