

[THIS IS NOT AN OFFICIAL TRANSCRIPT -- IT HAS BEEN COPIED AND MODIFIED IN ORDER TO REDACT IDENTIFYING INFORMATION, AND TO HIGHLIGHT PERTINENT INFORMATION. KEY: LAURA C. HOHNECKER, JOEL KLASS, JULIETTE LIPPMAN, & MARTHA C. JACOBSON]

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO. 11-DP300411

IN THE INTEREST OF
[REDACTED] [REDACTED],
DOB [REDACTED]

* * * * *

EXCERPT
TRANSCRIPT OF PROCEEDINGS

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The above and foregoing cause having come on to be heard before JUDGE DONALD HAFELE, at the Palm Beach County Courthouse, 205 North Dixie Highway, Juvenile Building, in the City of West Palm Beach, County of Palm Beach, State of Florida, on Thursday, April 5, 2012, at 9:05 a.m. for the purpose of taking testimony in said cause.

Reporting,
Sophie M. (Bunny) Springer,
Notary Public.

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A P P E A R A N C E S

FOR THE FATHER:

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BY: GREG A. LEWEN, ESQUIRE

FOR THE MOTHER:

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FOR DCF:

DCF
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BY: DAMIA GORDON, ATTORNEY

GAL PROGRAM:

GUARDIAN AD LITEM PROGRAM
205 North Dixie Highway - Suite 5.1130
West Palm Beach, Florida 33401
BY: LISA LARMOND, ATTORNEY

P R O C E E D I N G S

BE IT REMEMBERED that the following proceedings were had in the above-entitled cause before the HONORABLE JUDGE DONALD HAFELE, Judge of the Circuit Court, in West Palm Beach, Florida, with appearances as hereinabove noted, to-wit:

* * * * *

THE COURT: Okay. I don't need to hear anything further as far as the Court is concerned, unless it is something that is absolutely imperative that I hear. I am ready to rule.

MS. MACCI: Just that DCF report, Your Honor. Can I get that back?

THE COURT: Sure. I don't know where it is but I'll give it back to you when I have time.

All right. The informality of a shelter hearing despite the fact that most of our shelter hearings go, last for about 45 minutes and this one has lasted for the better part of eight hours and took up the entire day today. I have tried my absolute level best to hear as much as I possibly could within the confines of the day despite the fact that I cancelled a significant hearing that the parties have been waiting for a long time in trying to come to grips with what has transpired here.

The appellate Court has mandated that this Court consider this case pursuant to 39.402 and there's no mention made in the opinion, and I appreciate Ms. Larmond gave me through the Deputy the Statute Number 39.501. There's no mention in the appellate opinion as to 39.501, which is what a parent or the Department, but the parent is spoken about specifically. 39.402 only speaks to the Department and the child taken into custody. But I will do what I am told to do. And that is under -- and I'll start with 39.402(7), which I believe is the appropriate place to start.

Well, actually it should start at 39.402(1) and (2), is what I've been directed to do, so let me start there.

First and foremost, based upon the evidence that I've heard and all of the documentation that I've reviewed and the exhaustive nature of this proceeding, I do not find that there is abuse, neglect or abandonment on the part of the mother or that the child is suffering from or was in imminent danger of abuse, danger or illness or injury as a result of abuse, neglect or abandonment, either at the time of the hearing in October or upon the review of the evidence that I've heard here over the last eight plus hours of time.

This is nothing less than a travesty. And it has been compounded in my opinion by the Court system itself and I am saddened by it. There is selfishness that goes and is shared by both sides, both Mr. and Mrs. [REDACTED]. A selfishness which has been harming this child to an extreme.

But the only expert that I found to be credible in this Court's view, and I have to do the same thing as I would instruct a jury, in accepting, rejecting, or accepting in whole or in part, the testimony of the experts based upon their qualifications, their intelligence, their familiarity with the case, their background, their experience, all of those things which I would otherwise instruct the jury.

But I found Dr. Klass to be particularly credible. And I tried my best to quote him by saying that he disagrees with counsel who hired me, quote, unquote, that there is alienation. And I agree.

But also quite telling is the fact that the Department, DCF, the entity that has the ultimate responsibility in this context in this Court's opinion, did not file a petition for dependency of [REDACTED].

And while I appreciate Mr. Wilcox's work, I caution him strongly, that before any medical diagnosis and particularly a psychological or psychiatric one is made, that it be done with great restraint.

I'm not talking about when you see bruising. I'm not talking about when you see a child with a gapping wound, when it is physical. I am talking about making some type of psychiatric or psychological conclusion that could affect the lives of a child and a family that should not in this Court's opinion be done.

And Mr. Wilcox is here, so I'm not speaking to him or I'm not speaking behind his back. But a gentleman with his short level of experience should not be making those types of assessments in this Court's opinion. And I trust and hope that this lengthy period of time that we have been here, has helped to educate you further as to how serious these types of allegations and accusations could be, and how they could run into what we are now dealing with.

And I commend DCF in this regard, and that is they did not seek to file a petition for dependency. DCF as an entity receives constant

scrutiny and criticism. I was heartened to see recently the fact that a positive article was written as to how hard the DCF workers do their job. And I try to commend them whenever possible because I know how hard they work and how underpaid they are.

So my criticism here of Mr. Wilcox is individual, but my commendation of DCF as an entity in the short period of time that I have had the privilege to be in this position is sincere and in this case the actions of DCF in not filing a petition was in this Court's view wholly and entirely appropriate.

And that decision is extremely significant to this Court based on my albeit short time experience, but as anyone could tell you, we are busy and that experience is condensed. And I have done many shelter hearings in the two plus months that I have been here already.

And I used to say as an aside when I first got here, well, why aren't they doing dependency and shelter hearings over at Gun Club? Well, you know what, I got a cold slap in the face bit of reality sitting through shelter hearings and particularly this one, and I will never say it again.

Our work here, and I can only speak for myself, I am in awe of what my colleagues on this bench do every day and have done for many, many years. I'm a newcomer to this division. But we have Judge Baker, Judge Alvarez and Judge Kroll, and they on a daily basis for years have done a remarkable job for the children of this county. And we are held in high regard and I count myself privileged to be amongst those three individuals. We are held in high regard throughout the State and it continues to be impressed upon me that that — throughout the State by judges, by social workers, people who were at a conference that I was at recently, how the juvenile justice system in Palm Beach County, not only through DCF, our Guardian Ad Litem Office, Legal Aid, and the outstanding work that all of these entities have done that I've seen, really are the ones who deserve the credit along with the judges that I just mentioned.

MR. LEWEN: Your Honor.

THE COURT: The testimony -

MR. LEWEN: I'm sorry.

THE COURT: I'm not even close to being done.

MR. LEWEN: I apologize.

THE COURT: So unless there is a medical emergency, please don't interrupt.

MR. LEWEN: I thought you were done.

THE COURT: The testimony of the witnesses called by the father, Dr. Hohnecker, Dr. Jacobson, Ms. Lippman, as far as this Court is concerned, I found them to be biased, I found them to have a lack of objectivity. I found that they have been paid experts primarily by the father, and Mr. [REDACTED], I want you to understand something. I'm not being critical of you, personally.

But the testimony I found to be in eyeballing the testimony and sitting through each and every word of the testimony, I believe was insincere and disingenuous and fueled by money.

I did not get the same belief from Dr. Klass. And I recognize that Dr. Klass did not actually see [REDACTED], but his opinions in my view were spot on. And he did not fail to indicate his disagreement with the attorney who retained him. But his statements reverberated with this Court. Statements such as, how could you punish this young girl by placing her into the very home where she is moaning, whimpering, hiding behind a stuffed animal, won't enable herself to wipe herself after going to the bathroom, won't bathe herself except on occasion, has to speak to her father through written communications.

Have we got to that point in this Court system, and I'm not speaking so much as here but elsewhere, that on the basis of such a thin

record, we would take this troubled child out of the comfort of her mother's home, and by no means am I exonerating Mrs. [REDACTED] because she has been lax at best when it comes to therapy.

And as I tried to make clear, it's not about her, that is Mrs. [REDACTED], and it's not about you, Mr. [REDACTED]. But I bring back the words selfishness.

How could we ever subject this child to that kind of environment over these last -- October, November, December, January, February, March and into April. Thanksgiving and Christmas Day, imagine.

But is it about us as parents or is it about the child? And as long as I'm going to be here, right or wrong, it's going to be about the child. And I will take every bit of criticism about my lack of legal acumen because I'm still learning when it comes to this area of the law. But I can tell you one thing, it's not because I'm not trying, it's not because I don't care, maybe I care a little bit too much, but it's not going to stop at any time soon.

But we don't in my view as the Court, punish a child by removing her, again, right, wrong or indifferent, if I had to hear every single case where DCF was compelled to file a case every single time when one parent may be bad mouthing the other parent, and I have no doubt that that's going on. I get it. I've been around for a while. This isn't blond hair, unfortunately. So I get it.

But if DCF had to file a case every time one parent bad mouths the other, we would be even busier than we are now which I couldn't imagine, and we'd have to hire 50 judges in this division instead of four, and my one colleague out in Belle Glade also handles juvenile work, Judge Bailey, I don't want to forget him, but four that do it full-time. We can't expect that to happen.

The way this case should have been handled in my view, clearly, at the time the father filed the petition was either to deny it or to do something that would have been productive so as

to enable mom to keep [REDACTED] in the safe, happy surroundings that she was and to allow dad liberal visitation and to have joint therapy, whether it be mom and [REDACTED], dad and [REDACTED], the three together if they could get along for the good of this child, and [REDACTED] certainly individually. So this outstanding parent from all accounts, this beautiful child could be getting the help that she needs.

But instead, this child at best and its licensed psychologist who is supposedly the head of this so-called team, appointed by a Court in Broward County, says well, she's improving because now she blinks at dad and will occasionally laugh for dad, and now is writing to dad. If that's what we're reduced to, I don't want to be a part of this. I'd rather do something else.

And I agree, that to remove a seven year old child from the primary bonded custodial parent, as Dr. Klass indicated, maybe not a life or death situation, perhaps that was a little bit over the top, but certainly it better be real and serious because now we see the results.

So I have not found, again, pursuant to 39.402(1) as required by the 4th District Court of Appeal, evidence presented that meets one or more of the criteria stated in Section 39.402(1), Florida Statutes, 2011. And have reviewed carefully the stated other statutory Section 39.402(2).

I find consistent with the mandate and dictates of the opinion, that the evidence presented does not meet one or more of the criteria stated in Section 39.402(1), and I am ordering in accordance with the dictates of the 4th District Court of Appeal, the father should return the child to the mother's custody.

My hope because this ends this process here in this dependency Court, is that the process is done in a deliberate, careful, productive and compassionate manner so that this child does not suffer any more than she has to.

I have not found in any way, shape or form,

any grandparent intervention that has been dilatorious or in any way inappropriate as far as the maternal grandparents are concerned.

And I'm not continuing the child in shelter care so the provisions of Florida Statute 39.402(8), a, d, et cetera, do not have to be addressed.

My hope is that this child receives immediate treatment. If she is still under the care of Dr. Hohnecker, I don't believe I can do anything about that if that is Judge Goldenberg's ruling.

MR. LEWEN: It was Judge Martin's ruling, Your Honor.

THE COURT: Judge Martin's ruling. Well?

MS. GORDON: Your Honor, I don't know if she knew who the people were.

MS. LARMOND: It was the mediated agreement.

THE COURT: The mediated agreement.

MS. GORDON: The Judge just accepted the mediated agreement.

MS. MACCI: Yes, the Court said it only was in effect --it was temporary according to the ruling of the 4th DCA until the Court made its ruling today. And then after that, my understanding is it's gone.

THE COURT: I agree.

MR. LEWEN: Your Honor, when I have a chance, I'd like to be able to put some things on the record.

THE COURT: You may certainly do so. I've completed my findings. Thank you.

Mr. Lewen?

MR. LEWEN: Thank you, Your Honor. First of all, I do want to just put on the record that I believe the Court either was lead to error or made error in that the wrong legal standard was applied. 39.402(1) requires only a finding of probable cause with respect to the shelter of the child. Rule –

THE COURT: I find no probable cause. If I misspoke, I want to make sure I did not -- I do not find probable cause to believe that the child has been abused, neglected or abandoned as it applies to the mother, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect or abandonment on the part of the mother as alleged in the Father's Verified Petition. The other portions do not apply.

MR. LEWEN: Can I continue to make my record, Your Honor?

THE COURT: Certainly. I'm glad you pointed that out so if I did misspeak, I do want to reflect on this record a finding of no probable cause based upon the totality of the evidence that this Court has heard in a lengthy process.

You may proceed.

MR. LEWEN: Thank you. Again, I believe the wrong standard was used to determine probable cause, 8.305(b)(3) of the Rules of Juvenile Procedures specifically set forth that a probable cause determination is no different or greater than that necessary to obtain an arrest warrant, probable cause for an arrest warrant.

I believe this Court has also made findings that go to the underlying, the private petition for dependency filed by the father and mistakenly ruled that this ends the entire process.

THE COURT: I'm not sure if it ends it or

not. As far as I'm concerned, under the mandate, and I use mandate in a more generic sense.

But under the ruling and dictates of the 4th District Court of Appeal's opinion and directions to this Court, I have listened exhaustively to the evidence and I found accordingly that the evidence presented does not meet one or more of the criteria stated in Section 39.402(1) and I'm directed then, by the Fourth District Court to therefore, "The Judge shall," meaning me, "order the father to return the child to the mother's custody," end quote.

Anything else, sir?

MR. LEWEN: Yes, Your Honor. Two more issues.

I'd like to seek a stay pending appeal. I believe that there is error that has occurred and that there's a high probability of success and it is not in this child's best interest to be pingponged back and forth yet again.

THE COURT: As far as the Court is concerned, the request for stay is denied. I find that this child is suffering greatly and continues to suffer greatly despite some improvement.

But I've already placed on the record the reasons why I believe that this child does need to be returned to the caregiver, that is buttressed by Dr. Klass's testimony that in his opinion and in his experience, that alienation can be remedied to a great extent by the immediate return of the child to the custodial parent and by mom encouraging contact with the dad.

MR. LEWEN: One last point I wanted to raise.

THE COURT: So your request for a stay is denied based upon the best interest of the child in terms of the child's ability to grow and to be in a happy environment which she enjoyed despite again, I'm not taking issue with the fact that

Mrs. [REDACTED] probably has not parented perfectly. That she has likely said things that were not appropriate as to her ex-husband to [REDACTED].

But again, that and that alone is not grounds for removing a child from the primary custodian who is bonded with that child at age seven.

Anything further?

MR. LEWEN: Yes, the second point I was going to address is the practicalities of how the child is returned.

I would encourage the Court, just so there's no misunderstanding, Dr. Hohnecker was appointed in this juvenile dependency case, ratified by Judge Martin, after having read the mediation settlement agreement and specifically ratifying and approving it as a Court Order in ordering the parties to comply with it. Dr. Hohnecker was appointed as the head of the treatment team. Not a Broward Judge, by Judge Martin.

My suggestion to the Court is that any reunification that occurs and any transfer or placement that occurs, occur in a therapy session with Dr. Hohnecker forthwith, as soon as could be done.

THE COURT: I don't have a problem with that. But again, I'm not certain I even have the ability to make that recommendation at this point in time.

I've found no probable cause exists pursuant to the dictates of the 4th District Court of Appeal's opinion.

MR. LEWEN: Does that --

MS. MACCI: Judge.

MR. LEWEN: I just need to be clear. Does that mean that the mother is to go to the school

and pick up the child?

MS. MACCI: That's what we would like.

THE COURT: I don't want it to be that abrupt. What I would like to happen is that Mr. [REDACTED] picks up the child today, today being Thursday, and advises [REDACTED] of the Court's decision. Simply says that [REDACTED] is going home, that she is going to mommy's home, at least for awhile. And that this exchange will take place on Saturday morning so that she could finish out the school week and that she be returned on Saturday morning.

MS. MACCI: There's no school tomorrow, Your Honor.

THE COURT: There's no school tomorrow, so it could be done tomorrow morning.

MS. GORDON: And Your Honor, the prior family Court Order that was in existence regarding visitation and custody remains in effect; correct?

THE COURT: The prior family Court, yes. And I want to make clear, that I have taken into account the history of this case, and that is that Judge Gerber, again, in a painstaking fashion, set forth the history, including, "In 2006, a Broward County family court Judge entered a Final Judgment dissolving the marriage between the mother and the father. The Final Judgment provided, in pertinent part, that the mother was to have primary custody of the parties' only child, with the husband having established rights of access to and visitation with the child on certain dates," end quote.

And I would also point out, that for whatever reason, despite the father filing emergency motions and the like, that apparently Judge Birken did not rule on the father's motions. In fact, it stated specifically that he did not.

And that in June, after the father filed a

motion -- a motion in January, 2011. And that after hearing evidence on the father's motion in both February and April of 2011, it was not until June of 2011 that he recused himself without ruling on the father's motion.

And then we get into what finally transpired on October 5th in a family Court setting, which turned into a shelter hearing. And here we are, unfortunately as it is.

MS. LARMOND: Your Honor, I have one point. I'm seeking directions from the Court as to how the Guardian Ad Litem Program continues to be involved. I know that --

THE COURT: Your only involvement, Ms. Larmond, is to do the following at my request. And that is to prepare an Order consistent with the Court's ruling.

The cost of the transcript will be split between mother and father and the only thing that needs to be ordered by you is this Court's ruling. Okay?

MS. LARMOND: Yes, Your Honor.

THE COURT: That's the only thing I'm asking to be ordered promptly. It is not -- I don't need it to be expedited. I don't want to put these folks through any more costs than they have to bear, but I do want that transcript to be provided to Ms. Larmond. It shouldn't be too long.

Madam court reporter, how long do you think it would take to provide that transcript without expediting?

(Whereupon, a discussion was had off the record.)

THE COURT: Let's say Wednesday by 5:00 p.m., please. Just the 15 minutes.

MR. LEWEN: Your Honor, can I have one last thing that I think the Court needs to address?

THE COURT: Sure.

MR. LEWEN: Notwithstanding your Order, which I respect, although I disagree with it, it's the Order of the Court and I respect the Court.

What I'm curious to know and an advocate of the best interest of the child, is that there be an Order that neither party disparage the other party or discuss these proceedings or the other parent with the child other than as this Court specifically addressed.

THE COURT: That's fine. Ms. Larmond, you can include that.

But again, I'm asking Mr. [REDACTED], and I don't have anything disparaging to say about either of you, except the fact that again, understandably, and I'm not any better and probably could have done the same thing with my son at stake, so I'm not trying to be overly critical or trying to be disrespectful to you.

I think you're both good people. I really do. I just think that you haven't really considered as much as you should have this young, beautiful child's interests. Both of you. And

I hope that what I said resonates with you. That it makes some sense. That I'm not trying to be disrespectful or critical or sitting here on some high horse trying to make it seem like you're bad people. I don't feel that way at all.

It's just that if you think about it and let it sink in for a moment, this child's behavioral pattern even though there's been some improvement, some minor improvement, I did make notes of that blinking, and that she's still seeing the child weekly, I had forgotten about that, communicates with the child in writing, points, nods, but the child still doesn't even speak to the therapist. That's Dr. Hohnecker, by

the way, I'm summarizing.

It's really about the child and really about whether or not she's happy and how her best interests are served. And at least on this Court's watch, respectfully, it's just -- it's beyond not only common sense but any bit of reason to allow this child to remain in that type of living environment at home when the alternative is so much better for the child.

And that's where my interests are as a juvenile Court Judge, and that's probably why statutes require juvenile Court Judges to do what we need to do.

And again, I don't place myself in any way, shape or form in the same category as my colleagues but I certainly get it and I certainly understand why the legislature is concerned that juvenile Court Judges do this because we do it every day. And I'll never recommend again that anybody but a juvenile Court Judges take care of these things.

My only hope is that at one time I'll be as proficient as those who have gone before me here and who continue to work so diligently in the county for the kids of this community.

MS. MACCI: Judge, can you clarify the pick up time? Is it possible we get a -- or a drop off?

THE COURT: The pick-up time will be at noon tomorrow.

MS. MACCI: And the father will drop the child off or the mother will pick her up? Either way is fine. Saturday is Passover, so I know the family really is excited.

THE COURT: Mr. [REDACTED], what is your preference in terms of dropping [REDACTED] or having her picked up?

MR. [REDACTED]: I can take her to her mom's

house.

THE COURT: Is that acceptable to you, Mrs.

[REDACTED]?

MRS. [REDACTED]: Of course.

MS. LARMOND: And that's tomorrow, Your Honor?

THE COURT: Tomorrow at noon, correct.

Now again, because I think so highly of you, I'm expecting no drama, just simply letting [REDACTED] know that the Judge decided at least for now, that [REDACTED] is going to go back to mom's house. And that you love her, that you'll always be there for her, that you'll always support her.

And that I'm hopeful that the initial Order of the Broward County family Court as dictated by Judge Gerber, will be followed. That there will be access and visitation on certain dates, and that should continue.

MR. LEWEN: Does that include Easter Sunday, which is supposed to be the father's holiday?

THE COURT: Yes. I think that's a good idea.

MR. [REDACTED]: Can I ask a question, Judge?

THE COURT: Sure.

MR. [REDACTED]: Is it okay if she drops her off to me on Sunday morning?

THE COURT: Yes, sir. That will be by 11:00 o'clock in the morning, and you'll drop her, bring [REDACTED] back home by 7:00 o'clock that evening.

MR. [REDACTED]: Okay. Thank you.

THE COURT: You're welcome. Thank you.
And as I said before, you're both good
people and you've got a remarkable daughter here
who just needs some really intensive help.

And nobody wins here, nobody loses here.
What happens is I'm looking out for [REDACTED]'s
best interest. That's what I want to get across
to both of you today.

MS. LARMOND: One last thing, Your Honor.
In the general course, when the Department is
involved and there's no finding of probable
cause, the Program is generally not involved
anymore.

Is the Court requiring me to discharge the
Program in that Order?

THE COURT: Yes.

MS. MACCI: We would prepare the Order, Your
Honor.

MS. KATES: We'll be happy to prepare it.

THE COURT: I'd rather a disinterested party
prepare the Order in conjunction with my
findings. And Ms. Larmond is more than capable
of doing that. Good luck.

MS. LARMOND: Thank you, Your Honor.

(Whereupon, the hearing was concluded at
5:25 p.m.)

* * * * *

C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Sophie M. Springer, Notary Public, State
of Florida at Large,

DO HEREBY CERTIFY that the above-entitled and
numbered cause was heard as hereinabove set out; that
I was authorized to and did report the proceedings and
evidence adduced and offered in said hearing; and that
the foregoing and annexed pages, numbered 1 through 28,
inclusive, comprise a true and correct transcription of
the excerpt of proceedings in said cause.

I FURTHER CERTIFY that I am not related to or
employed by any of the parties or their counsel, nor
have I any financial interest in the outcome of this
action.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed my seal this 6th day of
April, 2012.

Sophie M. Springer, Notary Public.

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