

ROUGH DRAFT ONLY

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2 REPORTER'S RECORD

3 Cause Number 2902

4 IN THE INTEREST OF * IN THE DISTRICT COURT OF

5 * SCHLEICHER COUNTY, TEXAS
6 * T. J., A MINOR CHILD * 51ST JUDICIAL DISTRICT

7
8 Temporary Orders Hearing

9 APPEARANCES:

10 FOR THE PETITIONER:

11 Mr. Jeff Schmidt Ms. Kathleen Phillips
12 Texas DFPS Texas DFPS
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13 AD LITEM FOR CHILD-RESPONDENT: GUARDIAN AD LITEM:

14 Ms. Natalie Malonis Ms. Connie Gauwain
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17 FOR THE RESPONDENT-MOTHER

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21 On the 24th day of June, 2008, the following

22 proceedings came on to be heard in the above-entitled and
23 numbered cause before the Honorable Barbara Lane Walther, Judge
24 Presiding, held in San Angelo, Tom Green County, Texas:

25 Proceedings reported by machine shorthand.

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1 THE COURT: This is a portion of cause number
2 2902. It is in the interest of T. J., a child." Let me go
3 over exactly what this hearing is and what it is not.

4 It is a hearing on the first amended
5 joint-application for emergency ex parte restraining order and
6 the injunction. It is not a hearing on anything else in this
7 case.

8 With that, Ms. Malonis was the -- had filed the
9 application. Are you ready to proceed?

10 MS. MALONIS: Yes, Your Honor.

11 THE COURT: Mr. Edwards, you represent Mrs. Jeffs
12 who received the order. Are you ready to proceed?

13 MR. EDWARDS: Yes, I am, Your Honor. I would
14 like to restate on the record that I have this date filed a
15 motion to disqualify attorney ad litem for Teresa Jeffs, minor
16 child-respondent, Annette Jeffs. I believe that central to the
17 issue before the Court is the relationship between the child
18 and the attorney ad --

19 MS. MALONIS: Your Honor, I object to Mr. Edwards
20 continuing on this. The Court said that that was not before
21 the Court.

22 THE COURT: Well, he does have a right to put on
23 what he wants to say and then I get to make my ruling.

24 Mr. Edwards.

25 MR. EDWARDS: Thank you, Your Honor.

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1 Your Honor, we think that under Rule 308 of the
2 Texas Rules of Professional Responsibility counsel has placed
3 herself in a position where she purports or attempts to be both
4 counsel in this case and a witness.

5 The affidavit that she filed in connection with
6 the amended application for emergency relief states facts which
7 contradict the -- the contents of a letter from her own client,
8 which were attached to her affidavit. It seems to me that it
9 puts her in a position of -- of trying to wear two hats, which
10 the Code says she cannot do.

11 And that's essential. That goes to the very
12 heart of the -- the problem that -- that the Court is facing
13 today. It's our contention that there is a breakdown in the
14 relationship between the child and her attorney; that Ms.
15 Malonis has concluded that that breakdown is the result of
16 activities of certain adults. And in response to her
17 conclusion, she has sought this -- this emergency relief.

18 Now, I realize, Your Honor, I have addressed that
19 point. I would like to make an opening statement on the actual
20 motion before the Court at such time as the Court would be
21 receptive to that.

22 THE COURT: First of all, Mr. Edwards, as I told

23 you, I am taking up only the emergency order that is before
24 me.

25 There is possibly a procedure to request for an

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1 attorney ad litem to be removed. It is not at this time an
2 appropriate time to take that up. There's a requirement of
3 notice and a hearing for that. But I would ask you in your
4 position on that, Court has received several communications
5 from lawyers today purporting to be lawyers representing Ms.
6 Jeffs. It's a little bit confusing when you get several
7 lawyers saying they've been hired.

8 But I want you to also understand that under
9 Family Code Section 107.008 (a) (2), an attorney ad litem has a
10 duty, despite to provide -- or let me just read the whole
11 section. Attorney ad litem appointed to represent a child, or
12 an attorney appointed in a dual role may determine that the
13 child cannot meaningfully formulate the child's objectives of
14 representation in a case because the child -- and then the
15 pertinent one is (2), despite appropriate legal counseling
16 continues to express objectives of representation that would be
17 seriously injurious to the child.

18 So there is a provision in the Family Code for an
19 attorney ad litem to take the position contrary to the child's
20 wishes. But that matter is not before the Court today.

21 Are you ready to proceed with regards to

22 representing Mrs. Annette Jeffs, sir?

23 MR. EDWARDS: Yes, Your Honor.

24 MR. GROSS: Your Honor, I am -- I'm Michael

25 Gross.

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1 THE COURT: I'm sorry. I know who you are. We
2 have designated counsel. You are co-counsel. I haven't
3 recognized you. Have a seat.

4 MR. GROSS: We did have matter we needed to bring
5 to your attention, Your Honor, then if --

6 THE COURT: I'm sorry, Mr. Gross.

7 MR. GROSS: Ma'am?

8 THE COURT: I get to call the order of cases and
9 the order of matters that we take up.

10 MR. EDWARDS: May I address the Court?

11 THE COURT: Sure, Mr. Edwards.

12 MR. EDWARDS: At this time, Your Honor, we filed
13 a motion to recuse the trial judge for purposes of this hearing
14 and this hearing only. For the reason set out in the motion,
15 and I will give that to the Court and I will give copies to
16 opposing counsel.

17 THE COURT: This case will be in recess.

18 (Recess while recusal hearing was held.)

19 THE COURT: All right. Is there anything else
20 we need to take up before we take up what I thought we were

21 going to take up, from anyone that's a lawyer?

22 MR. GROSS: I know I'm co-counsel, Your Honor. I

23 want to clarify your ruling so I don't get crossways with you.

24 When you said co-counsel shouldn't be leading anything, is it

25 okay for me to take a witness during the proceeding as long as

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1 I'm the one that initiates it? I didn't see anything in your

2 local rules that say "no." I just wanted to make sure I -- I

3 understood your ruling correctly.

4 THE COURT: If you start the questioning of a

5 witness, that's fine.

6 MR. GROSS: Okay. I understand.

7 MR. EDWARDS: Thank you, Your Honor.

8 MR. GROSS: Yes, ma'am.

9 THE COURT: I just don't like double tags.

10 MR. GROSS: Understood. Yes, ma'am.

11 THE COURT: Yes, sir.

12 MR. SCHMIDT: Yes, ma'am. I'm Jeff Schmidt. I'm

13 here to represent the Department here today, Your Honor.

14 THE COURT: Yes, sir.

15 MR. SMITH: And I'm not sure, exactly, what role

16 you would like us to take. But we are here, we're a party. We

17 do have two employees that are going to be witnesses here

18 today.

19 THE COURT: All right.

20 MR. SCHMIDT: So I am available, Judge.

21 THE WITNESS: I'm Kathy Phillips. And I'm also
22 an attorney with the Department.

23 THE COURT: Same rules for you-all. Pick one
24 witness. Only one of you gets to do that and one of you gets
25 to make the objections.

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1 With that, we will begin on the second -- or the
2 first amended motion for emergency ex parte restraining order
3 that applies to Mrs. Jeffs.

4 Mr. Edwards, is Mrs. Annette Jeffs present?

5 MR. EDWARDS: Yes, Your Honor.

6 THE COURT: Okay. You don't want your client at
7 the table with you or is she comfortable back there?

8 MR. EDWARDS: We're okay as we are, Your Honor.

9 THE COURT: You won't need to be able to confer?
10 If you do, we'll stop. I want to make sure we have that all
11 clear.

12 All right. Ms. Malonis, this is your motion.

13 MS. MALONIS: Yes, Your Honor. Before we get
14 underway with evidence. I -- I am the ad litem for Teresa
15 Jeffs. And I would like the Court to know that her position
16 is, she would like for me to withdraw. She does not want --
17 she has stated she does not want me to be her attorney.

18 I believe that this is a case for substituted

19 judgment, so I have consulted her guardian ad litem to make a
20 best interest determination and recommendation. And on -- on
21 that basis, in consultation with her, I want to go forward with
22 our motion.

23 THE COURT: Is her guardian ad litem present?

24 MS. GAUWAIN: Yes, Your Honor.

25 THE COURT: Thank you. And you agree that we

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1 should go forward at this time?

2 MS. GAUWAIN: Yes, Your Honor.

3 THE COURT: Thank you. Very good.

4 Court should -- would like for the record to
5 reflect that attorney ad litem is by definition an appointment
6 by the Court. It is a procedure that is provided for by the
7 statute. And it is something that the reason for an attorney
8 ad litem is that the Legislature believes that in cases like
9 this the child needs and the child is not capable of having and
10 hiring her own attorney. So with that I'm not overruling any
11 motions to replace Ms. Malonis. But finding that they are
12 untimely, we will proceed with this temporary orders hearing.

13 MS. MALONIS: Judge, I've -- I've got a -- I've
14 got some documentary evidence that I would like a preliminary
15 ruling on, as far as privilege. And it's sensitive material
16 that I don't want in open court. And I would ask because of
17 the nature of the proceedings and the -- the child is -- is a

18 minor, and there are -- there are allegations of sexual abuse,
19 I would like for this evidence to be under seal.

20 THE COURT: Mr. Edwards?

21 MR. EDWARDS: We haven't seen it, Your Honor.

22 THE COURT: Well, I think part of her concern is,
23 and the -- obviously the Court hasn't seen it. But if this
24 goes to the attorney-client relationship, certainly it would be
25 detrimental to any relationship and it might create other

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1 problems if it would be -- becomes public information. So I
2 guess she's asking for some sort of in camera inspection of
3 this information?

4 MS. MALONIS: That's correct, Your Honor.

5 MR. EDWARDS: Your Honor, I don't have a problem
6 with the in camera inspection. The Court has already noted and
7 counsel has noted the impending problem with privilege. And so
8 we're going to let the Court know at this point in time that
9 whatever the Court reviews, that -- that constitutes privileged
10 material, is certainly going to be objected to.

11 THE COURT: Well, actually, Mr. Edwards, the
12 objection for privilege is one of the person -- the
13 attorney-client. And I'm not sure that -- I think it should be
14 clear that your clients's information is not part of this.

15 MR. EDWARDS: I understand.

16 THE COURT: This is -- and you do not have a

17 position to make on behalf of -- someone must have -- somebody
18 have a phone somewhere in here?

19 MS. GAUWAIN: It's that box.

20 THE COURT: That box?

21 MS. KEENUM: The speaker.

22 THE COURT: Oh, that speaker. Okay.

23 MR. EDWARDS: I understand, Your Honor. I think
24 it, and I will reserve further comment, because the Court has
25 already noted that -- that the Court has determined that my

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1 motion to disqualify the attorney ad litem is premature. And
2 so that my comments and concerns go to that. And I think those
3 comments -- concerns are going to continue to rise throughout
4 the hearing.

5 THE COURT: Well, how -- just theoretically, how
6 do you conduct a hearing of this nature if you can't have some
7 sort of discussion on it? And, you know, the -- the
8 Legislature has decided that matters like this are not closed
9 hearings, it's to be conducted in a public hearing. But there
10 are obviously many sensitive issues that are before the Court
11 with regards to protecting the child's rights. And how do you
12 propose that we could do that, Mr. Edwards, as an officer of
13 the court?

14 MR. EDWARDS: Judge, I guess I get back to your
15 original question: Do we have any problem with the Court

16 inspecting those in chambers? I think that's appropriate,
17 given counsel's statement that there may be some things in
18 there that would be of a nature that would be potentially
19 harmful to the best interest of the child if they were --

20 THE COURT: But, Mr. Edwards --

21 MR. EDWARDS: -- handled otherwise.

22 THE COURT: -- if the Court does it solely in
23 chambers, then you are left in the position of the Court having
24 information that you don't have. And I don't know how you
25 represent your client if I prohibit you from seeing that.

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1 Ms. Malonis, do you have any suggestions about
2 what you think should happen?

3 MS. MALONIS: First, I would like to give Teresa
4 an opportunity to claim privilege before the Judge makes a
5 ruling on it. My suggestion would be, I would like for the
6 Court -- after hearing Teresa Jeffs, I would like for the Court
7 to inspect them and make a ruling on whether there is a claim
8 of privilege. And if we go forward with the introduction of
9 this, I am asking that it be out of the presence of the media
10 and the public, because of the sensitive nature.

11 THE COURT: Are you -- in a criminal proceeding,
12 I think we refer to it as a sub rosa hearing. Mr. Edwards?

13 MR. EDWARDS: Yes, ma'am.

14 THE COURT: Is that -- if we do that, then

15 generally, in those types of hearings the Court clears the
16 courtroom. Is there any objection from Annette Jeffs, her
17 attorneys on that?

18 MR. EDWARDS: No, Your Honor.

19 THE COURT: Sorry?

20 MR. EDWARDS: No, Your Honor.

21 MS. MALONIS: I think that would be appropriate,
22 Your Honor.

23 THE COURT: All right. The guardian ad litem may
24 stay. The child may stay. The attorneys for Mrs. -- Mrs.
25 Annette Jeffs may stay. The Department's attorneys may stay

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1 and Ms. Malonis may stay.

2 Everyone else, will please step outside.

3 MR. EDWARDS: Your Honor, is Mrs. Jeffs allowed?

4 THE COURT: Mr. Jeffs?

5 MR. EDWARDS: Mrs., my client.

6 THE COURT: I -- let's take that up in just a
7 second.

8 UNIDENTIFIED CASA REPRESENTATIVE: Judge Walther,
9 does that mean just Connie, or is everyone out?

10 THE COURT: She is the only named guardian ad
11 litem, so at this point, please.

12 UNIDENTIFIED CASA REPRESENTATIVE: Yes, Judge.

13 THE COURT: I can't answer questions to the

14 press. I'm sorry.

15 MS. BROOKE ADAMS: Is it possible to ask if we
16 can have the opportunity to consult with the media attorney
17 about closing the proceeding?

18 THE COURT: If you would please step outside.

19 (Closed hearing conducted. Not included in this
20 volume of the Reporter's Record.)

21 THE COURT: All right. We're back in open
22 Court. For the record, the Court did not receive any testimony
23 or review any evidence while -- the Court did confer with the
24 attorneys with regards to the possibility of settlement.

25 The Court has been provided a Rule 11 temporary

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1 orders agreement from the attorneys. Would you like to read
2 your agreement into the record --

3 MS. MALONIS: Yes, Your Honor.

4 THE COURT: -- Ms. Malonis?

5 MS. MALONIS: And I don't have a copy of it.

6 THE COURT: Here.

7 MS. MALONIS: I believe you have the only copy.

8 THE COURT: All right. Thank you.

9 MS. MALONIS: Okay. This is a Rule 11
10 agreement, temporary orders. This agreement is made by the
11 undersigned parties pursuant to Rule 11, Texas Rules of Civil
12 Procedures. The parties have reached an agreement on the terms

13 and conditions set out below. This is a Rule 11 agreement and
14 is not a court order.

15 By the signatures below the parties acknowledge
16 that this agreement expresses the entire understanding and
17 confer of the parties and shall be enforceable pursuant to Rule
18 11. Duration: 90 days, semicolon, attorneys will set case for
19 a hearing no later than September 24, '08.

20 Temporary injunction: Respondent Annette Jeffs
21 is ordered to prohibit Willie Jessop from, one, communicating
22 with T. J. in a threatening or a harassing manner; two,
23 communicating a threat through any person to T. J.; three,
24 being within five hundred feet of T. J. or her residence,
25 school or place of employment or business.

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1 Respondent is ordered to immediately notify law
2 enforcement if she becomes aware that Willie Jessop has come
3 within five hundred feet of T. J. or her residence, school or
4 place of business.

5 Signed by the Child-Respondent; Annette Jeffs;
6 Natalie Malonis, attorney ad litem; Michael Gross, attorney for
7 respondent; Tim R. Edwards, attorney for respondent; Jeff
8 Schmidt, attorney for the Department; and Connie Gauwain,
9 guardian ad litem.

10 THE COURT: All right. Mr. Edwards, is that your
11 agreement?

12 MR. EDWARDS: It is, Your Honor.

13 THE COURT: Does the Court need to do anything
14 further?

15 MS. MALONIS: Would the Court take testimony from
16 the parties who have signed and get their agreement?

17 MR. SCHMIDT: Yes. Yes, Your Honor, there was
18 one other issue that was raised that is not in our Rule 11
19 agreement. But I'll go ahead and let this happen first and
20 we'll take the second matter up, if the Court please.

21 THE COURT: All right. Mrs. Annette Jeffs.

22 MRS. JEFFS: Yes.

23 THE COURT: Have you read the agreement?

24 MRS. JEFFS: Yes, ma'am.

25 THE COURT: Do you understand what you've agreed

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1 to do?

2 MRS. JEFFS: Yes.

3 THE COURT: Do you think you can do that?

4 MRS. JEFFS: Uh-huh.

5 THE COURT: Do you have any questions?

6 MRS. JEFFS: No, I don't.

7 THE COURT: I'll ask the guardian ad litem, have
8 you gone over the agreement with your child?

9 MS. GAUWAIN: Yes, Your Honor.

10 THE COURT: Do you think she understands what's

11 being asked of her?

12 MS. GAUWAIN: I do believe she does.

13 THE COURT: She understands there's no judgment
14 about her having done anything wrong or improper, this is just
15 an effort to try to make sure that this proceeds as it should?
16 She's clear about that?

17 MS. GAUWAIN: Yes, Your Honor.

18 THE COURT: Is there any need for the Court to
19 confer with your client?

20 MS. GAUWAIN: Not on this issue, Your Honor, no.

21 THE COURT: All right. Thank you very much.

22 All right. Yes, sir?

23 MR. SCHMIDT: Yes, Your Honor, there was an issue
24 that was raised by the parties here, Your Honor. Basically
25 that is that Teresa has to be before the Grand Jury in the

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1 morning, I believe, at 9:30.

2 THE COURT: Wow, whatever happened to about the
3 secrecy to subpoenas to Grand Juries? I guess you-all totally
4 didn't read that section of the law, anybody in this room.

5 Yes? Sorry.

6 MR. SCHMIDT: Yes, ma'am, basically they didn't
7 want to make her have to go back to San Antonio.

8 THE COURT: Right.

9 MR. SCHMIDT: Some of the parties wanted her to

10 go and spend the night at the ranch.

11 THE COURT: That's a really bad idea.

12 MR. SCHMIDT: I think so, too, Your Honor. I did
13 not agree to that. CPS does not think that's in the best
14 interest of Teresa and is totally, adamantly against that, for
15 the obvious reasons. It's counter-productive to what we just
16 tried to do to protect her, Your Honor. And not only that,
17 it's simply not in the best interest to very possibly subject
18 her to emotional --

19 THE COURT: This is probably something that we
20 could take up in chambers.

21 MR. SCHMIDT: Certainly, Your Honor.

22 THE COURT: All right.

23 MS. GAUWAIN: I agree.

24 MS. MALONIS: And, Your Honor, Teresa would like
25 to speak with the Court on that issue.

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1 THE COURT: In chambers?

2 MS. MALONIS: Uh-huh.

3 THE COURT: I will see the lawyers. Remember my
4 chambers are little.

5 (Hearing concluded.)

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1 THE STATE OF TEXAS)

2 COUNTY OF SCHLEICHER)

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4 I, Debbie Harris, Official Court Reporter in and for the

5 51st Judicial District Court of Schleicher County, State of

6 Texas, do hereby certify that the above and foregoing contains

7 a true and correct transcription of all portions of evidence,

6-24-08

8 except those proceedings that were closed, that were requested
9 to be included in this volume of the Reporter's Record, in the
10 above styled and numbered cause, all of which occurred in open
11 court or in chambers and were reported by me.

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

15 I further certify that the total cost for the preparation
16 of this Reporter's Record is \$_____ and was paid for by
17 _____.

18

19 WITNESS MY OFFICIAL HAND this the ___ day of _____,
20 2008.

21

Debbie Harris, Texas CSR #3879
Expires December 31, 2008
Official Court Reporter, 51st District
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