

1 DISTRICT COURT, FREMONT COUNTY, STATE OF COLORADO
2 Case No. 2003JV03, Division II

3
4 REPORTER'S TRANSCRIPT (Hearing) (Volume I)

5 THE PEOPLE OF THE STATE OF
6 COLORADO IN THE INTEREST OF:

7 AF, a Child,

8 And Concerning

9 ADF (Mother), Respondent.

10
11 The above-entitled matter came on for hearing
12 on Tuesday, April 29, 2003, at 3:10 p.m. before the
13 HONORABLE JULIE G. MARSHALL, District Judge.

14
15 A P P E A R A N C E S

16 FOR THE PEOPLE: Rocco F. Meconi, Esq.
17 Reg. No. 5164
18 FOR THE MOTHER: Daniel C. Kender. Esq.
19 Reg. No. 15523
20 GUARDIAN AD LITEM: Anna Hall-Cwcn, Esq.
(For the Child) Reg. No. 22002
21 GUARDIAN AD LITEM: Daniel Slater, Esq.
(For the Mother) Reg. No. 30174
22
23
24
25

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* * *

THE COURT: Then I have 03JV3, In the Interest of F. I've got Mr. Meconi from the Department of Human Services. Ms. Rivas is the caseworker. I've got Ms. Owen, guardian ad litem. Mr. Kender, you're here with the respondent mother, is that correct?

MR. KENDER: Yes, Your Honor.

THE COURT: And Mr. Slater, I appointed you as the guardian ad litem for the respondent mother based upon the parties' statements that the mother is developmentally delayed.

MR. SLATER: Yes, Your Honor.

THE COURT: I also do have a motion to add Suzanne Shell, I believe, as a special respondent. I see Ms. Shell is here. I'll reflect her appearance.

The bailiff did advise me, Ms. Shell, you were bringing in a tape recorder. Is that correct?

MS. SHELL: My understanding is I'm allowed to use the tools of my trade in the public areas of the courthouse, although I'm not supposed to use them in the courtroom.

THE COURT: Do you have a tape recorder on you at present?

MS. SHELL: No.

THE COURT: I also understood that whoever is with

1 you was carrying a camera. Is that correct?

2 UNIDENTIFIED MAN: Yes, it is correct. The
3 camera, I was using it in the public areas of the courthouse.
4 I'm a journalist, and I didn't bring it with me.

5 THE COURT: I did instruct the bailiff to advise
6 you to return those items to your vehicles. I'm relying on
7 Canon 3 which authorizes the Court to limit or authorize the
8 use of both electronic and photographic means.

9 Since no permission was requested, that solves
10 that at the front end. Had permission been sought, the Court
11 would have to resolve it based upon application of the Rule.
12 There is no right to bring a camera or tape recorder into the
13 courtroom in the absence of the Court's permission.

14 Mr. Meconi.

15 MR. MECONI: Judge, we have a variety of issues I
16 think that we need to address. Certainly we want to address
17 the motion that the Department has filed to name Ms. Shell as
18 a special respondent. We're prepared on that.

19 Additionally, there were a series of essentially
20 pro se motions that were filed by the respondent mother
21 without counsel. Although I think they indicate that
22 Mr. Kender is her attorney, on information and belief he did
23 not actually prepare or participate in their preparation.

24 I did file a response to that. I don't know if
25 that's made it to the Court's file or not.

1 THE COURT: I did receive that.

2 MR. MECONI: The Court had previously appointed
3 Mr. Slater basically on an emergency basis on the hearing that
4 we had. I don't know if the Court wishes to address that
5 further in any way. I understand from discussing with
6 Mr. Slater that he has advised the Court that he is not
7 available for the date that it is now set for trial.

8 I did file disclosures earlier this week or last
9 week -- I can't remember which -- in order to be in compliance
10 with the Court's prior order. I'm not sure if that's going to
11 be an issue at this point if we're going to end up changing
12 the trial date.

13 Of course, I would ask essentially at some point
14 we're going to need to have, I think we're going to need to
15 reaffirm the answer from the respondent mother through her
16 guardian ad litem whether she wishes to continue with her
17 denials to the petition which he previously entered on her
18 behalf.

19 I'm not sure if there is any other issues.

20 There is one. And that is last week Ms. Shell
21 actually filed a complaint in Federal District Court naming,
22 among others, Ms. Owen, myself, Mr. Kender, and the Court, not
23 you the Judge, but rather the District Court as well as
24 others, Ms. Rivas -- sorry -- as defendants. I don't know if
25 that has any impact on anything.

1 There was attached a motion for restraining order,
2 which I understand was not granted. So I don't think that
3 precludes the Court from proceeding, but I bring that to the
4 attention of the Court. I don't know if the Court has been
5 served or has seen a copy. I have a copy if the Court wants
6 to see it.

7 I don't know if that impacts this case in any way.
8 It's our position it does not. However, other parties may
9 have a different viewpoint.

10 I think those are the issues we're here to
11 address, Judge. I may have missed one or two.

12 THE COURT: Ms. Owen.

13 MS. OWEN: I believe Mr. Meconi is correct. Those
14 are the issues.

15 THE COURT: Mr. Kender.

16 MR. KENDER: Your Honor, I would like to bring up
17 one more issue. I haven't had a chance to chat with the
18 guardian ad litem. There was filed in the pleadings a
19 Declaration of Facts signed by the respondent mother.

20 THE COURT: Something called a Declaration of
21 Facts?

22 MR. KENDER: Yes, called Declaration of Facts. It
23 has my name on it, but I had nothing to do with the
24 preparation.

25 THE COURT: I do have such a document.

1 MR. KENDER: I'm concerned because if the trial is
2 going to be held, this could result -- this could be
3 considered a statement against interest. It could be
4 admissible in evidence against my client. I'm not sure that
5 with her developmentally disabled condition that the Court
6 would not want to make some ruling about whether or not this
7 is going to be usable at a future trial.

8 I need to consult with the guardian ad litem on
9 that subject. It seems to me, without knowing how the trial
10 is going to proceed, that it could be used as evidence against
11 her. That's an issue that I think needs to be raised in her
12 behalf that it not be used, not be allowed to be used.

13 THE COURT: Mr. Slater.

14 MR. SLATER: Your Honor, a couple of things. I
15 did not, Mr. Meconi somewhat misstated, I think, when he said
16 -- I have not filed anything in writing on the May 27th trial
17 date. I did mention at another hearing on another D & N
18 matter just as an aside to the Court that I will be out of
19 town the 27th. I think it would be appropriate, if I'm going
20 to be involved in the trial, that we move that date.

21 I would like to disclose what I think may be a
22 conflict. I'm not sure. It just came up with the guardian ad
23 litem's disclosure certificate. Our firm represents
24 Developmental Opportunities as the general counsel. The
25 guardian ad litem has disclosed three witnesses from

1 Developmental Opportunities as potential witnesses.

2 I don't necessarily see a conflict per se there.
3 I wanted to advise the Court. If there is an objection to my
4 proceeding, I would be willing to withdraw, with the Court's
5 permission.

6 I do think we need to specifically discuss today
7 whether it's appropriate for Mr. Kender to remain as
8 respondent's counsel in this case. I think that considering
9 where we are right now, I don't think it's appropriate for
10 Mr. Kender to remain as respondent parent's counsel and the
11 Court should appoint a new attorney for respondent mother.

12 THE COURT: Why is that?

13 MR. SLATER: First of all, I think the
14 relationship between the two is to the point where it's
15 irrevocably broken. The lawsuit filed in Federal District
16 Court, which I understand, although I haven't seen the suit, I
17 understand the respondent mother is a plaintiff in that suit.
18 It creates a direct conflict of interest between the two of
19 them when she's suing him.

20 If the allegations the respondent mother have set
21 out in her various pleadings regarding the actions of Mr.
22 Kender are accurate, I think certainly that shows, with all
23 due respect to Mr. Kender, a lack of effective counsel.
24 Again, I don't know if they are factually accurate. If they
25 are as the respondent mother says they were, they certainly

1 show failure to effectively represent her at the shelter
2 hearing.

3 THE COURT: Ms. F, I assume you have been able to
4 hear what everybody has been saying.

5 THE MOTHER: Yes, I have.

6 THE COURT: What do you see as the issues today?

7 THE MOTHER: What do I see as the issues?

8 THE COURT: Yes.

9 THE MOTHER: That I'm getting tired of people
10 lying to me.

11 THE COURT: Who is lying to you?

12 THE MOTHER: The DHS is lying. I'm getting tired
13 of people assuming that I'm not able to do things for myself.
14 I see the issues that I'm being, that -- I see the issues of
15 people thinking that I'm not doing things by myself. I am
16 doing things by myself, Your Honor.

17 THE COURT: Such as what?

18 THE MOTHER: Such as speaking up for myself. I'm
19 trying to and I have been filing the stuff myself without
20 anybody's help. I am more than able to do things like that,
21 Your Honor.

22 THE COURT: How far have you gone in school so
23 far, Ms. F?

24 THE MOTHER: I graduated from high school, Your
25 Honor.

1 THE COURT: I'm going to have Mr. Prater hand you
2 this document entitled Motion to Return Child to Mother. I
3 want you to read that to me.

4 THE MOTHER: The whole thing?

5 THE COURT: Yes.

6 THE MOTHER: It says, The People of the State of
7 Colorado In The Interest of AF, a child, and concerning AJT,
8 Mother, Respondent. Attorney or party without attorney,
9 Daniel C. Kender.

10 I, AJF, respondent mother in above -- I'm trying
11 here, Your Honor.

12 Just give me a second.

13 THE COURT: Did you write this?

14 THE MOTHER: Yes, I wrote this.

15 THE COURT: Then I assume you can read it.

16 THE MOTHER: I'm more than able to read.

17 THE COURT: If you wrote it, I just want you to
18 read it.

19 THE MOTHER: As I was saying, I as the respondent
20 mother in the above-captioned case move the Court for an order
21 to release the child, AMF, currently held in foster care to me
22 and to close the case -- this case -- based on the following
23 grounds.

24 1. The parent is presumed fit until there is a
25 legal finding of unfitness. Unless and until there is a

1 finding of unfitness, the State cannot substitute its own
2 decisions for the parent's.

3 THE COURT: Keep going.

4 THE MOTHER: There has been no finding of
5 unfitness until there is an objection, therefore to the delay
6 in reflection --

7 THE COURT: To the what?

8 THE MOTHER: I can't talk today.

9 The delay in the reflection violates the rights of
10 the parent as well as the child.

11 THE COURT: "The delay in the reflection." Is
12 that what you said?

13 THE MOTHER: Yeah.

14 2. The State of Colorado has filed a -- the State
15 of Colorado has filed -- failed to produce proof of ligament
16 emergency warning.

17 THE COURT: I'm sorry. Ligament what?

18 THE MOTHER: Yes.

19 THE COURT: Ligament what? What was the next
20 word?

21 THE MOTHER: Emergency warning.

22 THE COURT: Ligament emergency warning.

23 Go on.

24 THE MOTHER: The removal of the child from the
25 home. Even if the assumption were made that Fremont County --

1 that the Fremont County Department of Human Services' (DHS)
2 allegations were true, minor neglect or risk of future
3 neglect, (which respondent absolutely denies). These
4 allegations do not meet the statutory or assault (sic). --

5 THE COURT: What?

6 THE MOTHER: The statutory or the constitutional
7 required which satisfied -- which satisfy a departure of this
8 nature.

9 THE COURT: Departure?

10 THE MOTHER: Yes, Your Honor.

11 THE COURT: Go on.

12 THE MOTHER: There is no compelling State interest
13 which requires the removal of the child which in the home
14 services could have insured the safety and well-being of the
15 child. This issue should have been raised at the Preliminary
16 Placement Hearing, but the parent lacked significant
17 knowledge, valid consultant and was being co -- coerced (sic)
18 -- c-o-e-r-c-e-d.

19 THE COURT: Do you know what that is?

20 THE MOTHER: Coerced (sic).

21 THE COURT: Do you know what that means?

22 THE MOTHER: It means I was being forced.

23 THE COURT: I'm sorry. What was after that word?

24 THE MOTHER: Adversely (sic) by DHS.

25 THE COURT: I'm sorry. What was after that word?

1 THE MOTHER: Advividuously (sic).

2 THE COURT: Advividuously?

3 THE MOTHER: Yes. By DHS, to simply allow
4 placement to go unconstituted.

5 THE COURT: Unconstituted.

6 Okay.

7 THE MOTHER: 3. The child does not meet the
8 statutory defection of neglect.

9 THE COURT: The statutory what?

10 THE MOTHER: The child does not meet the statutory
11 defection of neglect. The child as detailed in the statute,
12 C.R.S. 19-1-103, 1 and 1, and AR. Any case in which a
13 child --

14 THE COURT: Ms. Fields, let me interrupt you. Are
15 you suggesting that these were your words that you wrote down?

16 THE MOTHER: These are my words, Your Honor.

17 THE COURT: How did you happen to use words you
18 don't know?

19 THE MOTHER: At the time I knew them.

20 THE COURT: When was that?

21 THE MOTHER: On the 10th.

22 THE COURT: Isn't it correct that Ms. Snell wrote
23 these documents?

24 THE MOTHER: No, Ms. Snell did not.

25 THE COURT: What participation, if any, did she

1 have?

2 THE MOTHER: None whatsoever.

3 THE COURT: None whatsoever?

4 THE MOTHER: No.

5 I'm more than able, Your Honor, to do this by
6 myself. I don't need anyone's help.

7 THE COURT: There is a citation there on the
8 pleading. Maybe you could point it out to her.

9 MR. KENDER: The statutory citations or the case?

10 THE COURT: No. The case. Read that to me and
11 tell me what it says.

12 THE MOTHER: Trox, T-r-o -- T-r-o-x-e-l, Troxel
13 versus Granville.

14 THE COURT: Then go on. What does it say next.

15 THE MOTHER: 5-5-5-530 US 57 (2000).

16 THE COURT: What does that mean?

17 THE MOTHER: That there has not --

18 THE COURT: What did you just read? What is that?

19 THE MOTHER: It's a statutory law.

20 THE COURT: It's a statutory law. Where would I
21 find it?

22 THE MOTHER: I guess in your law books.

23 THE COURT: Do the names mean anything?

24 THE MOTHER: Not right at this point, Your Honor.

25 THE COURT: If you wrote that for yourself without

1 any help from anybody else, how did you come up with that?

2 THE MOTHER: At the time I knew what I was
3 writing. What I'm trying to say, Your Honor, I know what I
4 wrote on here.

5 THE COURT: You're saying you wrote what you just
6 read?

7 THE MOTHER: Yes, I did.

8 THE COURT: That Troxal?

9 THE MOTHER: What I'm saying is that at that time
10 I knew what I was writing and I understood what I signed.

11 THE COURT: But you don't today?

12 THE MOTHER: Yes.

13 THE COURT: Yes, you don't? Or yes, you do?

14 THE MOTHER: Yes, I don't.

15 THE COURT: You don't know what Troxal versus --

16 THE MOTHER: Because I have a learning disability
17 does not mean I don't know anything.

18 THE COURT: I'm not suggesting that it does.

19 THE MOTHER: Other people are.

20 THE COURT: What I am suggesting is you don't know
21 what Troxal versus Granville means. Would that be correct?

22 THE MOTHER: You people seem to think I have a
23 learning disability, which I don't.

24 THE COURT: You don't have any learning
25 disability?

1 THE MOTHER: I have a learning disability. What
2 I'm saying I'm more than able to read. 15, for Christ Sakes,
3 if I didn't know how to read, I wouldn't have graduated from
4 high school.

5 MR. SLATER: I have been advised that the
6 respondent mother's mother drafted these documents.

7 THE COURT: You just told me you did it. Was it
8 your mother?

9 THE MOTHER: It was, Your Honor. Okay, my mother
10 and myself did this together. It came out of my mouth. It
11 did not come out of my mother's mouth.

12 THE COURT: Troxel versus Granville came out of
13 your mouth. Is that what you're telling me?

14 THE MOTHER: I am the one who suggested to do
15 this. I want my child home. These people over here are
16 playing games.

17 THE COURT: I'm just asking who came up with
18 Troxel versus Granville. Who came up with that? You, your
19 mother or somebody else?

20 THE MOTHER: My mother.

21 THE COURT: So your mother came up with Troxel
22 versus Granville?

23 THE MOTHER: Yes. But I did the rest myself. I
24 am more than able to do this by myself.

25 THE COURT: You looked it up in the statutes?

1 Your mother or you?

2 THE MOTHER: What?

3 THE COURT: You looked up in the statutes?

4 THE MOTHER: Yes. And my mother went over it with
5 me.

6 THE COURT: There is a statutory citation here.
7 Mr. Prater.

8 I want to give you this book of statutes. I want
9 you to find the statute that's cited in there in this book.

10 Ms. Fields, do you believe you're going to be able
11 to find it?

12 THE MOTHER: Just give me a minute, Your Honor.

13 THE COURT: Certainly.

14 (A few minutes passed).

15 THE COURT: You be quiet. Sit down.

16 THE MOTHER: Judge, at this time I'm not able to
17 find it. That doesn't mean I'm stupid.

18 THE COURT: I'm not suggesting that it means
19 anything of the kind.

20 Mr. Prater, if you would give me back the pleading
21 and my statute, please.

22 I am suggesting that it means to me you didn't
23 write this document.

24 THE MOTHER: I'm suggesting, Your Honor, that I
25 don't need -- I don't like being made into looking like a

1 monkey, either.

2 THE COURT: I'm sure that's true. I was only
3 trying to determine if you wrote this.

4 THE MOTHER: Well, Your Honor, in all due respect,
5 I don't believe that anyone here has the right to call me
6 incompetent either.

7 THE COURT: Okay. Why don't we proceed on the
8 motion to add the special respondent. Ms. Shell, you're here.
9 Do you want to speak to that motion?

10 MS. SHELL: Yes, Your Honor. I haven't had time
11 to do any discovery on this.

12 THE COURT: You don't want to speak to it today?

13 MS. SHELL: I would like to have some time to
14 conduct some discovery, if that would be okay.

15 THE COURT: Some discovery on what issue?

16 MS. SHELL: On facts that I need to know in order
17 to present my case.

18 THE COURT: What case do you have?

19 MS. SHELL: I am objecting to being placed on this
20 case as a special respondent.

21 THE COURT: You object to being added as a special
22 respondent?

23 MS. SHELL: That is correct, Your Honor.

24 THE COURT: Why is that?

25 MS. SHELL: I have written something up here. Can

1 I pass this out?

2 THE COURT: Mr. Prater, if you want to take
3 whatever she has and distribute the copies.

4 MS. SHELL: This is the original and these are
5 copies. These are being distributed by the bailiff to the
6 parties?

7 THE COURT: No. Just give me the original.
8 Motion for Change of Judge. This is not responsive to the
9 motion to add you as a special respondent.

10 MS. SHELL: Your Honor, I don't believe I'm going
11 to get a fair and impartial hearing in front of you.

12 THE COURT: A fair and impartial hearing. I'm
13 still at a loss as to what I would be hearing about you.

14 MS. SHELL: My understanding is that I have the
15 right to present my case as to why I should not be placed or
16 as a special respondent.

17 THE COURT: I'm asking you what your objection is.
18 I still haven't heard it.

19 MS. SHELL: My objection is I am not going to get
20 a fair and impartial hearing in front of you, Your Honor.
21 Have you read my motion?

22 THE COURT: No. I haven't read your motion.
23 You're citing Rule 97. You say you're AJP's agent under a
24 power of attorney. Is that correct?

25 MS. SHELL: I don't understand the question.

1 THE COURT: I'm reading from your pleading. It
2 says, "Because Shell is AJF's agent under a power of attorney
3 and because F's chooses" -- F's, that's apostrophe s --
4 "chooses to associate with Shell, Judge Julie Marshall is
5 unqualified to preside over this proceeding."

6 My question to you is: Are you saying that you
7 have a power of attorney from April F?

8 MS. SHELL: (No response).

9 THE COURT: That's what it says here.

10 MS. SHELL: That is correct.

11 THE COURT: Anything else?

12 MS. SHELL: I would like to have the Court
13 consider this motion to replace the Judge for the hearing for
14 the special respondent.

15 THE COURT: Thank you.

16 Mr. Meconi, did you want to present evidence?

17 MR. MECONI: Judge, at this point, I would like to
18 call the respondent mother, AJF.

19 THE COURT: Ms. F, you're being called as a
20 witness. If you would just come up here. If you would stand
21 at the approximate location of the arrow there on the floor
22 facing me and raise your right hand.

23 **AJF**

24 called as a witness by the People, having been first duly
25 sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MECONI:

Q. Ms. F, for the record, would you please state your name and your current residence address, please.

A. My name is AJF. My residence is 226 G Street.

Q. G Street in?

A. In Penrose.

Q. Colorado?

A. Yes.

Q. Ms. F, are you the mother of AF?

A. Yes, I am.

Q. She is the child who is the subject matter of this action, correct?

A. Yes, sir.

Q. Ms. F --

MS. SHELL: Your Honor, excuse me. Are we proceeding on the motion to place me on the record?

THE COURT: Yes, we are.

MS. SHELL: I am objecting to that. Until there is a ruling when I raised the issue of replacing the Judge, everything must stop until that issue is decided.

THE COURT: I only have to consider it if you're a party. You aren't yet. Sit down.

Q. (BY MR. MECONI) Ms. F, are you the mother of the child, AF?

1 up the document?

2 A. No. What I said was it came that pretty much my
3 mom had went over it with me. What I'm trying to say is that
4 to my knowledge, no other person has helped.

5 Q. Did your mom show you the document?

6 A. Yes, sir.

7 Q. What is your mom's name?

8 A. My mom's name is Chris.

9 Q. Korn?

10 A. Yes, K-o-r-n.

11 Q. Is your mom in the back of the courtroom here?

12 A. Yes.

13 Q. And has been since we started these proceedings?

14 A. Yes.

15 Q. Ms. F, as I understand it, your mom showed you
16 this document and you and she went over it?

17 A. Yes.

18 Q. And you were satisfied that it was accurate and so
19 you signed your name?

20 A. Yes, sir.

21 Q. You didn't really draft it in the sense of looking
22 up the statute for cites or coming up with this, did you?

23 A. No, sir.

24 Q. Did your mom do that?

25 A. Yes, sir.

1 Q. She did it herself?

2 A. She did it herself. No one helped her.

3 Q. No one helped her.

4 In addition to this document, there were several
5 other documents that were drafted, correct?

6 A. Correct.

7 Q. One was called a Declaration of Facts?

8 A. Yes, sir.

9 Q. Did you draft that?

10 A. No, sir. My mother did.

11 Q. Again, she showed it to you?

12 A. She showed it to me. I went over it with her and
13 I signed it.

14 Q. Why did you sign it?

15 A. Because I felt it was my right to sign it.

16 Q. Did you think signing that document would help you
17 in some way?

18 A. Yes.

19 Q. Did you believe that all the documents that you
20 executed would help you in some way?

21 A. Yes, sir.

22 Q. One of the documents that you executed was a
23 revocation, if you will, of the ability of the Department to
24 access your health providers. You withdrew all your consents?

25 A. Yes.

1 Q. Do you remember that?

2 A. Yes, sir, I do.

3 Q. You remember there is a Court order that requires
4 you to execute such documents?

5 A. Yes.

6 Q. You knew by signing that you would be in violation
7 of a Court order?

8 A. Uh-huh.

9 Q. Is that yes?

10 A. Yes.

11 Q. Can you tell me how you think that's going to help
12 you?

13 A. My thing is, sir, I don't think I have -- that I
14 shouldn't have to sign any releases at all.

15 Q. You don't think you should have to sign any
16 releases?

17 A. That's right, I don't.

18 Q. How does withdrawal of that in the face of the
19 Court order help your case any?

20 A. It probably doesn't help my case any. But what
21 I'm saying is, sir, I should not have to be, that I should not
22 have to sign those releases because they are ridiculous and
23 they're discriminating.

24 Q. Would it be fair to say, Ms. F, that you did not
25 discuss any of those documents that we've been discussing,

1 that is to say, the withdrawal of your releases, the
2 Declaration of Facts, the various motions that we've talked
3 about here, you discussed none of those with your attorney,
4 Mr. Kender?

5 A. No, I haven't.

6 Q. Did you discuss it with the guardian ad litem?

7 A. No.

8 Q. Who did you discuss it with?

9 A. I just discussed it with my mom.

10 Q. Anybody else?

11 A. No.

12 Q. How about your brother?

13 A. No.

14 Q. How about Ms. Shell?

15 A. No.

16 Q. You're aware that these pleadings essentially come
17 from Ms. Shell?

18 A. No.

19 Q. You don't know that?

20 A. (No response).

21 Q. Ma'am, don't look to her, please. You look at me.
22 Do you not know that these come from Ms. Shell?

23 A. No, I did not.

24 Q. Did you at some time discover that they came from
25 Ms. Shell?

1 A. No.

2 Q. Are you aware that Ms. Shell sent a letter to
3 Mr. Kender?

4 A. Yes, I am.

5 Q. Are you aware that she indicated that she was
6 acting as your agent?

7 A. Yes, I do.

8 Q. Did you execute an affidavit to make Ms. Shell
9 your agent?

10 A. Yes.

11 Q. Why?

12 A. To be -- she is a family advocate.

13 Q. What does a family advocate do?

14 A. She is a special -- can you like kind of repeat
15 what you're talking about here.

16 Q. Sure. Yes, ma'am.

17 You said that she was a family advocate?

18 A. Yes. She's an agent.

19 Q. Agent. And your family advocate?

20 A. Right.

21 Q. I'm trying to find out from you what a family
22 advocate does.

23 A. It's somebody that -- that responds in my behalf.

24 Q. Respond in what way?

25 A. Not making decisions for me.

1 Q. To help with you the legal process?

2 A. No.

3 Q. Then what is she supposed to be doing?

4 A. She is supposed to be, not by no means my lawyer,
5 but she is a special -- give me a chance here.

6 Q. I'm sorry?

7 A. Give me a chance here.

8 Q. By all means.

9 A. I guess what I'm trying to say is that to the best
10 of my knowledge, right at this point, she is a family advocate
11 and she's my agent.

12 Q. What does a family advocate and agent do?

13 A. She, to the best of my knowledge anyway, she talks
14 on my, talks about --

15 Q. She talks on your behalf?

16 A. As my agent.

17 Q. As your agent she talks on your behalf?

18 A. Yes.

19 Q. To whom?

20 A. To whoever. I really haven't ever had a chance to
21 meet her, sir.

22 Q. You signed a affidavit that would make her your
23 agent and your family advocate without ever having met her or
24 knowing what it is she's going to do for you. Is that your
25 statement, ma'am?

1 A. Yes, sir.

2 Q. Who suggested that you sign an affidavit naming
3 her your agent and family advocate?

4 A. Myself.

5 Q. How would you do that if you have never met her
6 and didn't know her?

7 A. Because at that time I was told -- I'm not going
8 to say any names. I'm not going to say any names.

9 Q. I'm sorry. I don't understand your answer.

10 A. Sir, I really don't understand your answer either.

11 Q. Fair enough. I'll try to rephrase it so that you
12 understand it.

13 You told me that you've signed a document that
14 names Ms. Shell your agent as a family advocate, correct?

15 A. Yes, sir.

16 Q. And you have also told me you didn't meet Ms.
17 Shell, you didn't know who she was?

18 A. Right.

19 Q. You just signed it, right?

20 A. Right.

21 Q. My question to you, ma'am, is how is it you would
22 sign such a document without having any idea what this person
23 is going to do?

24 A. To be honest, sir, I have just here recently,
25 about two or three weeks ago, have had a chance to talk to

1 her.

2 Q. So you have talked to her?

3 A. Once.

4 Q. You said a minute ago you haven't even spoken to
5 her?

6 A. This is where I'm getting mad. Okay. You guys
7 are making it hard to where I can't even say anything. You
8 guys are spitting words out at me I don't even understand.

9 Q. Tell me what words I have said that you don't
10 understand.

11 A. What I'm saying, you're making me look like I
12 don't know anything. You're making me look like I'm stupid.
13 Which I'm not.

14 Q. I'm sorry, ma'am, I have never suggested that
15 you're stupid. I am not suggesting that here now.

16 A. What I'm saying is that Ms. Shell has never talked
17 to me up until about two or three weeks ago. I have never
18 e-mailed her. I have never ever done anything like that.

19 Q. It's only two or three weeks ago that you signed
20 all those pleadings, right?

21 A. Yes.

22 Q. About three weeks ago, isn't that right?

23 A. Yes.

24 Q. How did your meeting with her coincide with
25 signing those documents?

1 A. I really couldn't say, sir.

2 Q. Did you sign the documents after you met Ms. Shell
3 or before you met Ms. Shell?

4 A. Before I met Ms. Shell.

5 Q. Those are documents that your mother prepared for
6 your consideration?

7 A. Yes.

8 Q. All of the documents that have been filed by you
9 pro se?

10 A. Pro se, yes.

11 Q. Specifically in addition to the Motion to Return
12 Child and the Declaration of Facts, which we've already
13 discussed, that would also include a document called Points of
14 Law?

15 A. Yes, sir.

16 Q. And Notice to the Court Regarding Court Appointed
17 Counsel?

18 A. Yes.

19 Q. And Motion for Clarification of Effective
20 Assistance of Counsel?

21 A. Yes, sir.

22 Q. None of those you drafted yourself, correct?

23 A. Correct.

24 Q. All of them your mom drafted?

25 A. Yes.

1 Q. And although they all reflect Mr. Kender's name,
2 he didn't participate in this in any way?

3 A. No.

4 Q. Of course, you reviewed them to make sure that
5 they were what you wanted to do?

6 A. Yes, sir.

7 Q. Let's talk about the Notice to the Court Regarding
8 Court Appointed Counsel. Will you tell me, please, why your
9 mom drafted that for you, if you know?

10 A. If I know.

11 Because any time that we -- I'm sorry, sir, can
12 you repeat that again, please.

13 Q. Sure. There is a couple documents I want to be
14 discussing here with you. One is called a Motion for
15 Clarification of Effective Assistance of Counsel and the other
16 is called Notice to the Court Regarding Court Appointed
17 Counsel. Do you recall those documents?

18 A. Yes, I do.

19 Q. I have them here if you want to read and review
20 them. Would you like to review them?

21 A. Yes.

22 MR. MECONI: May I approach, Judge?

23 THE COURT: Yes.

24 MR. MECONI: I would like the record to reflect
25 that I'm showing the witness the Notice to the Court Regarding

1 Court Appointed Counsel and a copy of the Motion for
2 Clarification of Effective Assistance of Counsel.

3 A. Thank you.

4 Okay. The one that you were asking me about?

5 Q. Please read them first or just look them over and
6 make sure you know which ones we're talking about.

7 A. Okay. Both of these?

8 Q. Both of those you've signed, correct?

9 A. Yes.

10 Q. Would you check the last page on each one of those
11 to make sure that that bears a copy of your signature?

12 A. This one does, sir.

13 Q. "This one" being the Notice to the Court Regarding
14 Court Appointed Counsel?

15 A. Yes, sir.

16 Q. And you're saying the Motion for Clarification of
17 Effective Assistance of Counsel is not signed?

18 A. Yes, sir.

19 Q. Did you sign one copy of it?

20 A. Yes, I signed one copy of it.

21 Q. The original goes to the Court?

22 A. Yes.

23 Q. As far as you know?

24 A. As far as I know.

25 Q. Again, these are documents that your mom drafted?

1 A. That my mom and I went over together and I signed.

2 Q. She drafted them?

3 A. Yes.

4 Q. And then showed them to you?

5 A. Yes.

6 Q. And you went over them together?

7 A. Then we went over them together and I signed my
8 name.

9 Q. Did you know in advance that she was going to be
10 drafting such documents?

11 A. Yes.

12 Q. You knew before she started drafting she was going
13 to draft a document called Notice Concerning Effective
14 Assistance of Counsel?

15 A. Yes.

16 Q. You discussed that with your mom?

17 A. I discussed that with my mom.

18 Q. Your mom, of course, has been discussing this with
19 Ms. Shell?

20 A. No, she hasn't.

21 Q. Really?

22 Are you telling me that your mom drafted these
23 documents on her own?

24 A. On her own, yes.

25 Q. Tell me what your mom's background in the law is?

1 A. I really couldn't answer that, sir.

2 Q. You mentioned earlier, ma'am, that you didn't do
3 e-mails to Ms. Shell?

4 A. Yes.

5 Q. Are you able to use a computer for that purpose?

6 A. I am able to use a computer if I wish to use a
7 computer.

8 Q. You are computer literate?

9 A. Yes.

10 Q. Which is probably more than I can say.

11 A. Probably.

12 Q. Does that mean you have access to the Internet?

13 A. I have access to the Internet, but I did not do
14 e-mails with Mrs. Shell.

15 Q. That wasn't the question I asked you. Do you have
16 access to the Internet?

17 A. Yes, I do.

18 Q. Are you aware that Ms. Shell has a website?

19 A. No, I was not aware.

20 Q. Are you aware that these documents in many
21 respects come from her website?

22 A. No.

23 Q. Do you know where your mom got these documents?

24 A. No, I don't.

25 Q. You don't?

1 A. Honest to God truth, I don't know.

2 Q. As I understand it, you and her sat down and
3 discussed all of these documents before they were actually
4 drafted?

5 A. Yes, sir.

6 Q. And it was your considered judgment that they
7 should be drafted and submitted to the Court?

8 A. Yes, sir.

9 Q. And I assure you did that because you thought it
10 was going to be helpful?

11 A. Yes, sir.

12 Q. What did you think was going to be accomplished by
13 filing the Motion for Clarification of Effective Assistance of
14 Counsel? Let's stop there. What did you think was going to
15 be accomplished by filing such a motion?

16 A. Effective of Counsel, you mean?

17 Q. Motion for Clarification of Effective Assistance
18 of Counsel. Would like to see it again?

19 A. To find a new lawyer. One that will, is willing
20 to help me out.

21 Q. Who was this motion addressed to?

22 A. Mr. Kender.

23 Q. It was?

24 A. Yes.

25 Q. Let me read you from the first line of the

1 document. It says, "Respondent respectfully requests the
2 Court to respond to the following questions."

3 A. Okay. It's the wrong one.

4 Q. This one was to go to the Court?

5 A. Yes.

6 Q. You understand this is essentially a direct copy
7 from what is Ms. Shell's website?

8 A. No, I do not.

9 Q. You don't know that at all?

10 A. No, I do not know that at all.

11 Q. You're learning this for the first time from me?

12 A. Yes.

13 Q. What was the purpose of addressing the Court in
14 this manner?

15 A. I'm sorry?

16 Q. Why did you file it?

17 A. Why did I file it?

18 Q. That was my question to you. Why did you file it?

19 A. So that something could be done about it.

20 Q. What could be done about what?

21 A. About finding someone else to help me out with
22 this case.

23 Q. Are you aware that one of Ms. Shell's standing
24 operating procedures is to essentially attack your own
25 attorney?

1 A. No, I did not know that, sir.

2 Q. Was that ever discussed with your mother?

3 A. No, sir, it was not.

4 Q. On the Declaration of Facts, which is a multi-page
5 document that sets forth certain facts, correct?

6 A. Correct.

7 Q. This is an interesting document because it's
8 essentially one that was all done --

9 THE COURT: Excuse me. You're going have to quit
10 your discussions in the back of the courtroom.

11 Q. (BY MR. MECONI) This document sets forth the
12 facts as you understand them, correct?

13 A. Yes, sir.

14 Q. And you believe them to be accurate?

15 MR. SLATER: I'm going to object at this point. I
16 think, as Mr. Kender indicated, there may be an issue with
17 respect to whether that -- about what you may want the Court
18 to hear. I haven't discussed this with Mr. Kender regarding
19 whether the admissions on that document would be admissible or
20 whether we should ask the Court not to take notice of those
21 things.

22 I've got concerns about what the legal impact on
23 respondent mother would be. I think that Mr. Meconi's
24 question is getting into trying to get that into the record.

25 MR. MECONI: First of all, Judge, stating there

1 are some questions doesn't make it so. I don't hear any legal
2 basis for suggesting this is not admissible. Secondly, it's a
3 jury trial. The Court is going to have to make a threshold
4 determination of admissibility of the document, in any event.
5 We're going through this process.

6 I agree it's a horrible document from the
7 respondent mother's standpoint. No attorney would allow it to
8 be drafted. Nonetheless, it's there and filed with the Court.
9 I don't know of a theory that would say I can't use this or
10 couldn't use it if the respondent mother testifies at the time
11 of the trial.

12 That's not the issue today. The issue today is
13 involvement of Ms. Shell in this particular case. I think I'm
14 entitled to do that. The Court will consider it or not on its
15 own merit as to its admissibility at the time of the trial.
16 If you want to address that now as a threshold issue, that's
17 fine. I know of no basis or that there is some basis for
18 keeping this out of evidence when the respondent mother has
19 admitted that she's executed, read, reviewed and it's
20 accurate.

21 THE COURT: I think there are plenty of pleadings
22 here which you are asserting were drafted by Ms. Shell. The
23 issue that's in front of me today is whether she should be
24 added as a special respondent. I don't know that you need to
25 inquire in this particular document. I think maybe we should

1 address that on a different day.

2 I also did have some other matters set.

3 MR. MECONI: Judge, I'll finish up. I won't ask
4 any more questions of this particular witness.

5 THE COURT: Ms. Owen, do you have any questions?

6 CROSS-EXAMINATION

7 BY MS. OWEN:

8 Q. Until recently, Ms. F, you were cooperating with
9 the Department and with myself, correct?

10 A. Uh-huh.

11 Q. Things were going pretty well?

12 A. Yes.

13 Q. You did your parenting classes?

14 A. Yes, I did. I completed those.

15 Q. You did your visitations?

16 A. Yes.

17 Q. We've come over to your house and things were
18 looking good the other day, correct?

19 A. Yes.

20 Q. We have had positive conversations, you and I?

21 A. Yes.

22 Q. Up until recently?

23 A. Up until recently.

24 Q. Why is it that you felt that all of a sudden
25 rescinding these releases in violation of a Court order, why

1 did you think that was going to help you?

2 A. Because it's my right. I have a right not to sign
3 those.

4 Q. Do you think --

5 A. And I think it's ridiculous.

6 Q. When we came and spoke to you to a couple weeks
7 ago, did you think things were looking up? You were having
8 AF, I think, every day of spring break, correct?

9 A. Uh-huh.

10 Q. We discussed you starting to have overnights,
11 correct?

12 A. Yes, which have been going on.

13 Q. Given all that's happening here going on now, are
14 you feeling as positive about things?

15 A. Yes.

16 Q. You're feeling confident that these things that
17 you're filing are in your best interest?

18 A. Yes, they are.

19 Q. I have one question. You do admit that you signed
20 a power of attorney to Ms. Shell?

21 A. Yes, I do.

22 Q. Did you sign that before or after you met her?

23 A. Before.

24 Q. Before you met her. Do you know how long before
25 you met her?

1 A. No, I don't.

2 Q. Do you realize what that power of attorney, the
3 kind of awesome power that power of attorney gives her?

4 A. (No response).

5 Q. What did you think the power of attorney did?

6 A. Gave her the right to get my files and stuff.

7 Q. You weren't done. Go ahead and finish.

8 A. I was just saying my files and whatever else that
9 was -- when I signed my authorization, my power of attorney,
10 that meant she could get my files or whatever she needed.

11 Q. She has a release and can get all information
12 regarding you?

13 A. I really don't know, ma'am.

14 Q. Is that all that you thought that the power of
15 attorney would do?

16 A. Yes.

17 Q. Do you realize that it actually gave her the
18 ability to enter into contracts on your behalf? Did you know
19 that?

20 A. No.

21 Q. Did you know it lets her get a credit card and
22 incur debt on your behalf?

23 A. No.

24 Q. Did you know that it lets her prosecute, defend,
25 submit to arbitration, settle and propose to accept a

1 compromise with respect to any claims?

2 A. No.

3 Q. Did you know it afforded her the opportunity to
4 file a lawsuit on your behalf?

5 A. Not at the time.

6 Q. Did anybody explain this power of attorney to you
7 before you signed it?

8 A. My mother.

9 Q. Obviously she didn't explain that to you very
10 well.

11 A. To the best of my knowledge, what I understood.

12 Q. Your mom loves you, correct?

13 A. Yes, she does, very much.

14 Q. She would do a lot to protect you?

15 A. Yes.

16 Q. Does that sound like she's protecting you just
17 giving a power of attorney to somebody she doesn't know,
18 letting you sign away all your rights to somebody you don't
19 know?

20 A. I would if it's my decision.

21 Q. Had your mom met Ms. Shell at that time?

22 A. No, she did not.

23 Q. So your mom advised you to and you did sign a
24 power of attorney giving away your rights to somebody you
25 didn't even know and your mom didn't know?

1 A. Yes.

2 Q. Would it surprise you to learn that the power of
3 attorney indicates that you signed it on February 3, 2003?

4 A. Yes. That's when I signed it.

5 MS. OWEN: Judge, I have another copy. But I
6 would like to enter a copy of that power of attorney in the
7 record unless the Court already has one.

8 THE COURT: I don't believe I do.

9 MS. OWEN: If you would give me a second. I'll do
10 that. That's all I have.

11 THE COURT: Mr. Kender, any questions?

12 MR. KENDER: On this issue, I don't have any
13 questions.

14 THE COURT: Mr. Slater?

15 MR. SLATER: No questions, Your Honor.

16 THE COURT: Mr. Meconi, redirect?

17 MR. MECONI: No redirect, Judge.

18 THE COURT: Thank you very much. You may step
19 down, Ms. F.

20 MR. MECONI: I call Christine Korn.

21 THE COURT: There is an arrow on the floor there,
22 Ms. Korn. If you would stand there and raise your right hand.

23 **CHRISTINE KORN**

24 called as a witness by the People, having been first duly
25 sworn, was examined and testified as follows:

1 THE COURT: You may be seated.

2 DIRECT EXAMINATION

3 BY MR. MECONI:

4 Q. For the record, ma'am, will you state your name
5 and your residence address, please.

6 A. Christine Korn, 226 G Street, Penrose, Colorado.

7 Q. Ms. Korn, are you the mother of the respondent
8 mother in this particular case, AJF?

9 A. Yes, I am.

10 Q. You are AJF's grandmother?

11 A. AF's grandmother.

12 Q. I mean AF's grandmother. I apologize.

13 A. Yes.

14 Q. Ms. Korn, you've heard your daughter's testimony
15 here today, correct?

16 A. Yes, I have.

17 Q. Is it completely accurate?

18 A. Not entirely.

19 Q. What part is not completely accurate?

20 A. I don't know if I can explain that. For instance,
21 with regard to the power of attorney, there was a limited
22 scope to that power of attorney. We discussed that at the
23 time. AJF realized that at the time. We talked about this is
24 a very powerful thing, and you may rescind it at any time that
25 you feel like it's not being used right.

1 We did have that conversation, but she would not
2 remember those things or find them in her memory to expound
3 here because she's nervous and upset.

4 Q. Was that the only place in her testimony that was
5 not accurate completely?

6 A. I can't remember right off everything that has
7 been said. But I don't remember finding anything other than
8 that.

9 Q. How did you happen -- did you give her the power
10 of attorney to execute?

11 A. Yes, I did.

12 MR. MECONI: May I approach, Judge?

13 Q. Is this the power of attorney that you provided to
14 your daughter for her execution?

15 A. Yes.

16 Q. Ma'am, how did you get that?

17 A. I got it from a website, which is how I discovered
18 Suzanne Shell through other people's recommendation.

19 Q. You discovered Suzanne Shell's website?

20 A. Yes, I did.

21 Q. You downloaded that document?

22 A. Yes, I did.

23 Q. Do you see the date that your daughter signed that
24 affidavit?

25 A. I didn't look. I believe it was somewhere in the

1 first of February.

2 Q. Why don't you look at it and confirm for your own
3 mind.

4 A. Yes.

5 Q. February what?

6 A. Third.

7 Q. Is that your daughter's signature?

8 A. Yes, it is.

9 Q. Is that approximately when she would have signed
10 the document?

11 A. Yes.

12 Q. What conversations, if any, or contacts, if any,
13 had you had with Ms. Shell at the time you executed the
14 document?

15 A. I wrote to her and asked her for help with this
16 case because for several weeks we've been attempting to have
17 conversations with Mr. Kender, and he was very unresponsive
18 and angry with us that we wanted not to just admit. AJF was
19 upset that he was asking her to admit things that she didn't
20 feel she was guilty of and he was not responsive.

21 Q. My question to you was --

22 A. I asked her for help. At they told me her website
23 contained information. I wrote to her and asked her to help.
24 She said, "I may offer your attorney help in building this and
25 maybe urge him or might nudge him to get more active in the

1 case. But I can't do that and he can't discuss it with me
2 without a power of attorney."

3 Q. You downloaded the power of attorney, had your
4 daughter execute it, sent it up to Ms. Shell. Would that be a
5 fair summary?

6 A. Yes, sir.

7 Q. At the time that you forwarded the power of
8 attorney to Ms. Shell, you not had, you had never met
9 Ms. Shell?

10 A. No, I didn't.

11 Q. You had one conversation with her on the phone?

12 A. Yes.

13 Q. As a result of Ms. Shell getting this power of
14 attorney, did she agree to assist you and your daughter?

15 A. Yes, sir. She agreed to assist by contacting
16 Mr. Kender and offering her services in researching and
17 investigative capacities to help with the case, which I
18 believe she wrote to him and did offer.

19 Q. Did you have occasion to receive a copy of her
20 communication to Mr. Kender?

21 A. Yes, I did.

22 Q. You would be familiar with it if you saw it?

23 A. Uh-huh.

24 MR. MECONI: Your Honor, I've marked the power of
25 attorney which we've been discussing as Petitioner's Exhibit

1 A, and I'm now marking a document as Exhibit B. I'm showing
2 this to the witness.

3 Q. Ms. Korn, is that a copy of the letter that
4 Ms. Shell wrote to Mr. Konder?

5 A. Yes, I have it. Looks like the same document I
6 have.

7 Q. So you were provided a courtesy copy?

8 A. Yes.

9 Q. Was it you or your daughter that was provided the
10 copy?

11 A. She mailed the copy to April. It's in April's
12 file.

13 Q. April showed it to you?

14 A. Yes. She asked me to put it in her file. I read
15 it.

16 Q. What's the date of that document?

17 A. February 25th.

18 Q. Would that coincide with your memory?

19 A. Yes.

20 Q. In that letter she identified a certain number of
21 documents that she thinks should be or strategies that should
22 be employed?

23 A. Yes, she did.

24 Q. Most of those strategies would require notions of
25 some kind or another, correct?

1 A. Uh-huh.

2 Q. You have to verbalize your answer.

3 A. Yes.

4 Q. Ms. Korn, most of those documents are obtainable
5 on her website?

6 A. As well as several other websites, yes.

7 Q. You downloaded those?

8 A. Yes. I have gone through hours of research.

9 Q. You downloaded those from Ms. Shell's website?

10 A. I couldn't tell you specifically whether I did at
11 her website or at others. I saw some on her website. I saw
12 more complete excerpts from some of those documents and cases
13 on other websites.

14 Q. Did you receive any kind of or did your daughter,
15 to your knowledge, receive any kind of response from
16 Mr. Kender?

17 A. None.

18 Q. What, if anything, did you do?

19 A. I drafted these ideas myself. I went through.
20 There were about three or four different websites that are
21 family advocacy groups. They all recommended and have on
22 their websites copies of forms and motions and declarations of
23 facts of their own that were used in their cases that were
24 drafted by their attorneys. I went through probably at least
25 four or five different websites reading those.

1 Then I amassed that information and stole some of
2 the information out of that letter to Mr. Kender and stole
3 some more off of Suzanne Shell's website as well as Leonard
4 Henderson's and several others and tried to draft from their
5 documents ones that were case specific to this case because I
6 felt helpless. Nobody was doing anything.

7 Q. Then you had your daughter sign them?

8 A. Yes. We sat down and discussed what they meant
9 and what the intent was for each one and went through them
10 point by point so that she understood.

11 Q. She didn't draft them?

12 A. No. She didn't write them.

13 Q. You heard her trying to read them. She couldn't
14 even read them.

15 A. Some of words are too big. We had to go through a
16 lot of, "Do you understand what the word 'coerce' means?"
17 "No." "It means if somebody is trying to force you or trying
18 to convince you." We went through a lot of those
19 conversations.

20 I honestly believe that I was as up front as I
21 could be.

22 Q. Once that decision had been made, did you have any
23 further communication with Ms. Shell?

24 A. No. As a matter of fact, I attempted a couple of
25 communications with her that I got no response from.

1 Q. When did you hook up with her again?

2 A. I finally was in touch with her and we met this
3 past Saturday. I was in touch with her by e-mail, I believe,
4 about three weeks ago.

5 Q. What did that e-mail say?

6 A. Just status. Brought her up to date on what was
7 going on. I asked her if she would like -- she's building a
8 documentary film and writing a book. Part of that power of
9 attorney was to allow her to incorporate this case in the
10 story, in the documentary.

11 I was bringing her up to date and telling her what
12 was going on and asking her, "Do you need me to send you these
13 or can you get them?" That was pretty much the extent of it.

14 Q. Based on what the guardian has said, there was an
15 almost abrupt change in your daughter's degree of cooperation
16 with the Department, which took place fairly recently. Would
17 you say that's correct?

18 A. It may be that her appearance -- I don't know how
19 to put that. I don't think her position has changed any. I
20 think that her countenance with those agents is changed
21 because she perceived that she was being attacked.

22 Q. How did her degree of cooperation change?

23 A. I'm not sure. I wasn't present at most of those
24 meetings. I think a major cornerstone of that change in
25 attitude came at the point where Ms. Rivas presented her with

1 a plan.

2 I have been telling her and I have been reading
3 that this family services treatment plan or whatever this plan
4 is that was supposed to be drafted was supposed to be drafted
5 with the input of the family. It was supposed to be specific
6 to the problem that DHS perceived existed. It was supposed to
7 address remedy of that problem.

8 We met with Ms. Rivas. She produced this plan
9 that nobody had discussed with anybody at that point. And
10 that was insulting and degrading. AJF looked through it and
11 was angry. At that point I think she, to a degree, Ms. Rivas
12 was playing good cop/bad cop between she and Jennifer Cox.

13 At this point AJF sat and looked at that and she
14 was furious. She said, "This isn't fair. Why should they
15 order me to do this?" She was angry. I said, "I have to
16 believe that everybody is trying to cover everybody's backs."

17 I'm probably the guilty party because I told her,
18 "These people can't be your friend. They can't want what's
19 best for you if they continue to lie about you."

20 Q. Who drafted the Declaration of Facts?

21 A. I did.

22 Q. What did you anticipate that would do?

23 A. It contains truth.

24 Q. What was the intent of the drafting of the
25 document other than to show --

1 A. It was a point by point answer to the shelter
2 report. If you compare the two documents, they coincide with
3 each other.

4 Q. What effect do you think that was going to have,
5 if any?

6 A. It was a defense. It was the statement that the
7 things that were contained in the shelter report were lies.
8 To a great degree, they were exaggerated, twisted lies.

9 Q. You drafted that document?

10 A. The Declaration, yes, I did.

11 Q. And you went over it with your daughter?

12 A. Yes.

13 Q. She was satisfied that it was accurate?

14 A. Yes.

15 Q. And she signed it?

16 A. That's right.

17 Q. You suggested that it be filed?

18 A. Yes.

19 Maybe that wasn't a good move. I don't know. I'm
20 not a lawyer. But her lawyer wasn't doing anything.

21 MR. MACONI: Your Honor, I'm going to offer
22 Exhibits A and B before I forget.

23 THE COURT: Ms. Owen, any objection?

24 MS. OWEN: No, Judge. I think A was mine.

25 THE COURT: Mr. Slater, any objection?

1 MR. SLATER: What are they? I apologize.

2 MR. KENDER: I have no objection.

3 MR. SLATER: No objection.

4 THE COURT: A and B will be admitted.

5 Q. (BY MR. MECONI) Ms. Korn, are you aware that the
6 affidavit was used to file a lawsuit in Federal District
7 Court?

8 A. Yes.

9 Q. Was that done with your daughter's consent and
10 permission?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 Q. Who is representing your daughter in that action?

15 A. Suzanne filed for she pro se and as AJF's agent
16 for the purpose of that action.

17 Q. Is Ms. Shell representing her in that action?

18 A. She and Ms. Shell entered into that action
19 together because it affects them both.

20 MR. MECONI: I have no further questions of this
21 witness.

22 THE COURT: Ms. Owen.

23 CROSS-EXAMINATION

24 BY MS. OWEN:

25 Q. You're saying it was you that encouraged your

1 daughter to sign this power of attorney?

2 A. Yes, it was.

3 Q. That's solely to let Ms. Shell get information
4 from the court?

5 A. And so that Ms. Shell would have -- so that
6 Mr. Kender would have the legal ability to share information
7 with Ms. Shell.

8 Q. Why not just a simple release? Why a two-page
9 power of attorney that gives formidable powers?

10 A. You would have to ask her that. I don't know.

11 Q. Ask who that?

12 A. Ms. Shell. She said that that was the document
13 that would be needed in order for her to be able to discuss
14 this case with Mr. Kender and to access the records and to
15 release her to use April's case in documents and the
16 information she gained in the documentary that she's putting
17 together and to the writing of a book, I believe.

18 Q. So you encouraged. You never met Ms. Shell at
19 that point?

20 A. I knew a lot about her. But I had never met her.

21 Q. Never talked to her?

22 A. Once before we signed the power of attorney.

23 Q. How long did you talk to her for?

24 A. Maybe an hour.

25 Q. Never met her face to face?

1 A. No.

2 Q. And you encouraged your daughter to sign a power
3 of attorney that let this woman that you only met one time
4 have your daughter's power to enter into contracts, yes?

5 A. (No response).

6 Q. Power to file suits?

7 A. Possibly. But without that scope. Without that
8 intent.

9 Q. Why?

10 A. There again --

11 Q. You read it yourself?

12 A. I read it to Mr. Kender and asked him about that
13 appointment before we did it and got no response from him. I
14 don't know. I'm not a lawyer.

15 Q. You've looked through all kinds of legal papers in
16 order to assist your daughter, according to your testimony?

17 A. Now. At that point I hadn't.

18 Q. You support your daughter in her revoking her
19 releases to the Department and myself and the information?

20 A. And I keep hearing you say something about there
21 being a Court order that she had to place those in place in
22 the first place. I hadn't realized that that existed. I did
23 not -- I didn't find that anywhere in the paperwork. I looked
24 in the shelter report and things. I didn't think there was
25 any Court order in there that ordered her to sign releases to

1 facilitate those things.

2 But those releases were gained. One of them that
3 was used was gained from me also at the same time way back in
4 November. She was lied to about their purpose. So the
5 intention was to rescind those and say, If you up front want
6 to be honest with me about what I'm signing, why I'm signing
7 this release, I'll be happy to replace them. But those
8 releases were used in ways that she was told they were not
9 going to be used.

10 Q. In what way were they used inappropriately?

11 A. For instance, the one that released the
12 Developmental Opportunities group to release information to
13 DHS about her staffing meeting. When that original that was
14 used by DHS to converse with them about her case and her case
15 and so on was discussed, it was discussed that we were
16 releasing information from DHS to Developmental Opportunities.
17 Not the other way around.

18 In a panic of everybody seemed to be turning
19 against her, I said, "Rescind it all. Then re-sign the ones
20 that you clearly understand and you make them fill it out
21 ahead before you sign it." They were asking her and she did
22 sign and I did, too, signed blank releases on the trust that
23 they were for the purpose we were being told. I'll never be
24 that stupid again.

25 Q. You first indicate that you must have begun

1 looking on the Internet sometime around February of this year?

2 A. Uh-huh.

3 Q. You found Ms. Shell and had your daughter sign the
4 power of attorney way back at that time?

5 A. Yes.

6 Q. As things have moved on, actually your daughter
7 has completed parenting classes, correct?

8 A. Uh-huh.

9 Q. She's been keeping the house clean, correct?

10 A. She always has.

11 Q. She's been having visits, substantial visits with
12 her daughter?

13 A. Correct.

14 Q. Making her meals?

15 A. Uh-huh.

16 Q. Things were going forward. AF is over at your
17 house more often, correct?

18 A. Absolutely.

19 Q. What all of a sudden happened that you thought,
20 instead of back in February, that you felt that right now
21 these motions needed to be filed? Is that because all of a
22 sudden you had more involvement with Ms. Shell?

23 A. No. As a matter of fact, it came about because I
24 was angry when I received a copy in the course of things from
25 the Developmental Opportunities of the staffing meeting. That

1 staffing report probably 95 percent of it is pretty accurate.
2 There were some things in there that were added as filler.

3 Developmental Opportunities hasn't had a whole lot
4 to do with AEF intentionally because they don't want -- that's
5 a different story -- because they don't want to recognize AEF's
6 importance. We have a disagreement with that. So they have
7 been very minimal in her life for probably three years.

8 They made blanket statements in that that were
9 very, very insulting and damaging to AEF. I was angry and I
10 talked to a man named Leonard Henderson, as a matter of fact,
11 from American Family Rights Association on the Internet in a
12 chat one night. I was furious about their blanket handling
13 that.

14 They have unmitigated gall to put on the form that
15 Ms. Cox was invited to the staffing. I wasn't. I was angry.
16 He said, "How did they release that to DHS?" I said she
17 signed releases and they used them. I have asked
18 Developmental Opportunities give me these copies. I want to
19 see them.

20 Q. We're getting off the question.

21 I asked why all of a sudden the motions were
22 filed. Essentially your answer is you got angry?

23 A. Yes. And I showed it to her.

24 Q. It was a yes or no answer.

25 A. Yes, I was angry.

1 Q. Are you aware that your daughter sat down with
2 myself and the caseworker and she has told us she didn't want
3 to sign any of that stuff but you made her do it?

4 A. No. That's not what she told me that conversation
5 was.

6 Q. Would you be surprised to realize that that's what
7 she told us?

8 A. I wouldn't be surprised to hear that she told you
9 anything she thought you wanted to hear if she thought you
10 could give her daughter back. She is so scared spitless of
11 you personally it's not funny. The first time you ever met
12 her you attacked her adversarial, and she has been scared to
13 death of you ever since. You fired questions at her like she
14 was on a witness stand and you were the opposing attorney.
15 You had her stuttering and stammering and scared to death.

16 Q. Then essentially you would be surprised that she
17 told both myself and the caseworker that you were making her
18 sign these forms and that she didn't want to sign them?

19 A. Yes, I would be surprised to hear that. But I
20 wouldn't be surprised that you could manipulate it out of her
21 because I have seen you in action.

22 MS. OWEN: I have nothing further.

23 THE COURT: Mr. Slater?

24 MR. SLATER: I don't have any questions, Your
25 Honor.

1 THE COURT: Mr. Kender?

2 MR. KENDER: I have a couple, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. KENDER:

5 Q. Do you remember the shelter hearing?

6 A. Yes, I do.

7 Q. At that time there was a shelter report. The
8 Judge advised you of your rights concerning getting an
9 attorney appointed, et cetera?

10 A. Yes, sir.

11 Q. Then we had the shelter report. We had a
12 conversation, meaning we, meaning AJF, you and I, is that
13 correct?

14 A. Yes, sir.

15 Q. We discussed whether or not you could have,
16 whether or not in this procedure on a shelter hearing that you
17 could have witnesses and a full hearing, didn't we?

18 A. Very briefly.

19 Q. I told you that at this point in time you would
20 not be afforded a full hearing because there would be a trial,
21 a trial called an adjudicatory trial, if that's what you
22 wanted, isn't that correct? If that's what AJF wanted,
23 correct?

24 A. What I believe you said was that was a possibility
25 that you would not advise to pursue.

1 Q. What we discussed was what the problem was the
2 Department was having some -- some had to do with cleanliness
3 issues, lice issues, and you had discussed how you were taking
4 out the carpeting and you were cleaning it several times.
5 Isn't that correct?

6 A. Yes.

7 Q. Then we had another conversation at the time when
8 there was going to be admissions and denials. At that point
9 we discussed you told me that you had went through that place
10 and cleaned it four or five -- I don't know how many times --
11 numerous times, correct?

12 A. Yes.

13 Q. And that you anticipated that it would be clean
14 and should not be any problem for anybody. Isn't that
15 correct?

16 A. We didn't believe it had ever been a problem.

17 Q. You also admitted at that point, much as did you
18 in those facts, that there was a lice problem, but you weren't
19 sure what the source of it was, is that correct?

20 A. Yes. We were sure what the source of it was. But
21 we were being told that we had to treat it anyway.

22 Q. What did you think the source of it was?

23 A. The school, friends.

24 Q. You said that you thought it was the school. But
25 there wasn't any proof of it by any health department finding

1 where the source of it was, was there?

2 A. No.

3 Q. When we discussed that, we talked about whether or
4 not you wanted to admit. Then the Treatment Plan would be
5 similar to what was called the Interim Treatment Plan. Do you
6 remember that?

7 A. I remember you telling me that it was taken right
8 out of the book.

9 Q. What's that?

10 A. The Interim Treatment Plan. You looked it and you
11 said, "This came right out of the manual."

12 Q. I don't know if I ever said anything like that.
13 It was a standard, fairly standard treatment plan. That's
14 what we said?

15 A. It might have been what you said. I thought it
16 was outrageous and we were upset about it. AJF was furious.

17 Q. We discussed whether or not you wanted to have a
18 trial with a jury or a Judge, and that you had a choice
19 between a jury or a Judge, is that correct?

20 A. That was her decision. I backed off.

21 Q. The three of us?

22 A. Yes, you did discuss that.

23 Q. At all times you did a lot of conversation with
24 that, entered your opinion a lot, isn't that correct?

25 A. Yes, it is.

1 Q. We discussed that the purpose of a jury or a Judge
2 trial was that they were supposed to determine whether or not
3 the children are dependent or neglected or the child in this
4 case was dependent and neglected, correct?

5 A. Yes.

6 Q. Until that point, officially, legally the child
7 was not declared dependent or neglected, correct?

8 A. Correct.

9 Q. And that technically speaking they had this other
10 hearing after that and I also told you that if you won that
11 trial, you went home, the child went home with you and it was
12 done, and the Department had nothing to do with your case any
13 more, is that correct?

14 A. I don't remember that part.

15 Q. Then I said if the Judge or jury came back, and we
16 talked about the paragraphs, the different allegations in the
17 petition, do you remember that?

18 A. No. We did not discuss the petition. That's the
19 problem. We discussed the shelter report.

20 Q. I'm talking about the second time.

21 MR. SLATER: Your Honor.

22 A. The second time you took three minutes to talk to
23 her and you didn't answer anything.

24 MR. SLATER: I'm curious what this has to do with
25 Ms. Shell.

1 MR. KENDER: it has to do with whether there was a
2 need for Ms. Shell.

3 THE COURT: I think what I'm going to have to do,
4 a couple things. Number one, you're talking over each other.
5 Ms. Korn, is it C or K?

6 THE WITNESS: K.

7 THE COURT: Is Christine with a C or a K?

8 THE WITNESS: C-h.

9 THE COURT: You can't speak over Mr. Kender.

10 I am only concerned right now on the motion to
11 name Ms. Shell as a special respondent. While I understand
12 that this testimony might be relevant for purposes of various
13 other motions that relate to you, I'm not seeing it as
14 directly relevant to Ms. Shell. I also have people waiting
15 since four o'clock.

16 MR. KENDER: Do you want to break now? I have a
17 few more questions that I think are relevant to the issue. I
18 can wait until after a break.

19 THE COURT: That's fine. I'll go ahead and take a
20 break from this case so that I can handle the other two cases.
21 I'm also going to take about a ten-minute break myself. Then
22 I'll call your case after we're done and we'll see where we
23 are.

24 THE WITNESS: Your Honor, if I'm going outside for
25 a cigarette, how long should I stay outside?

1 THE COURT: We'll know where you are. But I'm
2 sure you have time for a cigarette.

3 (The proceedings recessed from 4:35 p.m. to 5:05
4 p.m.).

5 THE COURT: Mr. Meconi, I was just suggesting to
6 Mr. Slater to try to clear next Monday with you. Is that what
7 you're checking?

8 MR. MECONI: It will be, Your Honor.

9 THE COURT: In the event that it works for
10 everybody, maybe you can just have the attorneys and Ms. F
11 come in and then I'll just set it for the time.

12 Mr. Meconi.

13 MR. MECONI: We think everybody's calendars will
14 accommodate. That's his Pueblo day, D & N day. He was hoping
15 to do it earlier than that.

16 MR. KENDER: I need to get out by noon so I can
17 make the afternoon sessions. I'll get somebody to cover the
18 morning sessions, which I have three or four reviews.

19 THE COURT: Do we have Ms. Owen? When you say
20 "everybody," you weren't including her?

21 MR. MECONI: I was not including her.

22 THE COURT: She's part of everybody, Mr. Meconi.

23 MR. MECONI: But she was not everybody in the
24 room, Judge.

25 THE COURT: Will you check with her?

1 MS. OWEN: I have a pretrial conference in a
2 criminal matter scheduled for 8:30. County Court matter.

3 THE COURT: What time, Mr. Kender?

4 MR. KENDER: Like 9:30 or ten. That's fine for me
5 as far as getting up here in the morning. But I still would
6 have the problem needing to get out of here for the afternoon
7 and be back in Pueblo.

8 MR. OWEN: Tuesday is good all day.

9 MR. MECONI: I think we can finish this.

10 THE COURT: Why don't we set it at ten o'clock.
11 Somebody needs to advise Ms. F of the new date and time.
12 We'll pick ten o'clock on Monday morning.

13 MS. OWEN: Is that both this and the cases that
14 were scheduled for three o'clock?

15 THE COURT: Mr. Kender, would you want me to set
16 over the other case?

17 MR. KENDER: Yes.

18 THE COURT: Ms. D. You can talk to her between
19 now and then.

20 MR. KENDER: I talked to her, but she is undecided
21 at this point.

22 THE COURT: Set them both over.

23 MR. KENDER: Can you set that at 9:30?

24 MS. OWEN: I can do ten.

25 THE COURT: It will be, apparently, ten to noon

1 because that's the only amount of time Mr. Kender has.

2 Ms. F, I have this other matter that was set.

3 They're not going to be done for a while. I was trying to
4 clear a date with the attorneys to continue and finish this
5 proceeding. I had a trial go off on Monday. I'm setting it
6 over until Monday at ten o'clock.

7 (The proceedings concluded at 5:10 p.m.)

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REPORTER'S CERTIFICATE

The above and foregoing is a true and complete transcript of my stenographic notes taken in my capacity as Official Court Reporter for the Eleventh Judicial District, State of Colorado, at the time and place above set forth.

Dated: May 22, 2003


Karen E. Cato, CSR

1 DISTRICT COURT, FREMONT COUNTY, STATE OF COLORADO

2 Case No. 2003JV03, Division II

3
4 REPORTER'S TRANSCRIPT (Hearing)

(Volume II)

5 THE PEOPLE OF THE STATE OF
6 COLORADO IN THE INTEREST OF:

7 AF, a Child,

8 And Concerning

9 AJF (Mother), Respondent.

10
11 The above-entitled matter came on for
12 hearing on Monday, May 5, 2003, 10:15 a.m. at before
13 the HONORABLE JULIE G. MARSHALL, District Judge.

14
15 A P P E A R A N C E S
16

17 FOR THE PEOPLE: Rocco F. Meconi, Esq.
18 Reg. No. 5164

19 FOR THE MOTHER: DANIEL C. KENDER, Esq.
20 Reg. No. 15523

21 GUARDIAN AD LITEM: Anna Hall-Owen, Esq.
22 (For Child) Reg. No. 22002

23 GUARDIAN AD LITEM: DANIEL SLATER, Esq.
24 (For Mother) Reg. No. 30174
25

PROCEEDINGS

* * *

THE COURT: Then we have F, 03JV3. I've got Mr. Meconi. Ms. Rivas is the caseworker. Ms. Owen is guardian ad litem for the child. Mr. Kender is attorney for Ms. F and he is with Ms. F, the respondent mother. And Mr. Slater, the guardian ad litem for the respondent mother.

I think we were in the process of taking testimony on the Motion to Add Special Respondent. I don't think we had finished that.

MR. MECONI: Judge, I had finished my examination of the last witness. I did have one additional witness I wanted to call. I don't know if I'm ready to do that. That's where we are in the proceedings.

THE COURT: Mr. Kender, weren't you in the process of examining Ms. F's mother?

MR. KENDER: Yes. I think I completed that. I completed that.

THE COURT: Mr. Slater.

MR. SLATER: I don't have any questions, Your Honor.

THE COURT: Would we be ready to move on to the next witness?

MR. SLATER: I believe so.

THE COURT: Ms. Owen?

1 MS. OWEN: Nothing.

2 THE COURT: You're ready to move on to the next
3 witness.

4 MR. MECONI: I call Suzanne Shell.

5 THE COURT: Is she here?

6 MR. MECONI: She was. I'll go out in the hallway
7 and see if she's there.

8 (Brief recess).

9 MR. MECONI: Judge, I don't see her out in the
10 hallway. I take her lack of participation to be acquiescence
11 of the request. I'll be prepared to ask for that. I would
12 ask the Court to take judicial notice of the contents of its
13 file, specifically the order from the last, not the April 29th
14 hearing, but the April 15th hearing, wherein certain
15 statements were made that were memorialized in the order. I
16 ask the Court to take judicial notice of that order.

17 THE COURT: Mr. Kender, did you have any testimony
18 you wanted to present on this issue?

19 MR. KENDER: Not on this issue, Your Honor.

20 THE COURT: Mr. Slater?

21 MR. SLATER: No, Your Honor.

22 THE COURT: Ms. Owen?

23 MS. OWEN: No, Judge.

24 THE COURT: Argument?

25 MR. MECONI: Judge, the Department has sought to

1 add Ms. Shell as a special respondent for the limited purpose
2 of asking the Court enter orders that precludes her
3 participation in the case. Upon information and belief, she
4 is currently under a Court order from the Supreme Court not to
5 practice law. Certainly what her actions are as set forth in
6 the exhibits which we have introduced at the last hearing
7 reflect that.

8 Mr. Kender's statements to the Court are on the
9 record and part of the Court order from the last hearing which
10 reflects the difficulties that he is having representing his
11 client as a result of Ms. Shell's interference. As I say, I
12 think her lack of participation today is acquiescence in the
13 request as well.

14 That is our only purpose for asking her to be
15 named as a special respondent so that she be subject to orders
16 of this Court and specifically that she be precluded from
17 assisting and participating with Ms. F in any way, given the
18 difficulty that is engendering for the respondent mother, the
19 child and the process. We view that as being clearly
20 detrimental to the best interests of the child in this
21 particular case.

22 That's the argument that I would make, Judge.
23 It's authorized by law as set forth in the motion which we
24 filed.

25 THE COURT: Mr. Kender, did you want to make an

1 argument?

2 MR. KENDER: All I would state is that my concern
3 with Ms. Shell was based on the letter. I think the Court has
4 an exhibit. I think it was February 25, 2003. At that time,
5 close thereafter, there was no interference in the case except
6 that AJF had never come to my office for an appointment that
7 we had set up. But we still had some time before the jury
8 trial.

9 Then when the pleadings were filed over my name,
10 or under my name, that the Court has a copy of, Statement of
11 Facts, Motion to Dismiss, I believe, and another document, a
12 brief with legal quotations or cites, I should say, then that
13 was indication to me, at least, without having direct evidence
14 or testimony, that Ms. Shell was trying to take some kind of
15 action to control this case, for want of anything else, to try
16 to get it dismissed before there was going to be a jury trial.
17 So that is what caused me concern to bring up the issue to the
18 Court concerning that interference and that hearing April
19 15th.

20 THE COURT: Mr. Slater.

21 MR. SLATER: Your Honor, I think adding Ms. Shell
22 as a special respondent here is probably appropriate. I think
23 one of the biggest problems that the respondent mother has is
24 improper influence over her decisions and in particular
25 Ms. Shell's involvement as well as the respondent mother's own

1 mother's involvement, have led to the filing of certain things
2 with this Court that while I think they may represent the
3 Respondent's mother's will, have not been legally prudent to
4 do so.

5 I think that had it not been for the involvement
6 of Ms. Shell or the respondent mother's mother in this case
7 under the influence of Ms. Shell, the respondent mother would
8 not have made those decisions which in the end might hurt her
9 interest legally. So I think that the addition of Ms. Shell
10 as a special respondent in this case would be appropriate for
11 the limited purposes that the Department is requesting.

12 THE COURT: Ms. Owen.

13 MS. OWEN: Judge, I am in support of the
14 Department's position and agree with Mr. Slater with respect
15 to involvement of Ms. Shell.

16 I would want to bring something up and maybe I
17 need to file an actual motion on it. I believe that Ms. Korn
18 should also be made a special respondent. I'm not sure she
19 would object to that. She is in court today. Given some of
20 the testimony that we've heard, I think that would be
21 appropriate, too. I think that getting everybody on board and
22 seeing as how they all live in Ms. Korn's home, that that
23 would be appropriate as well.

24 THE COURT: There is a motion to add Ms. Shell as
25 a special respondent. The motion recites that Ms. Shell has

1 involved herself in this case in inappropriate and
2 unauthorized ways. The Court has received a document which
3 was labeled Petitioner's Exhibit B, which is very strident in
4 tone directed to Mr. Kender and says in part, "I can provide
5 you with all the legal arguments and documentation you
6 require, but that will be useless if you fail to make the
7 necessary arguments in court." The letter then goes on to
8 provide exactly what Mr. Kender is supposed to do in his
9 representation of AJF.

10 The Court has received numerous documents that are
11 over the name of Mr. Kender, which Mr. Kender has disavowed.
12 One is called a Motion to Return Child to the Mother. Another
13 is called Declaration of facts. There is another document
14 entitled Notice to the Court regarding Court Appointed
15 Counsel. A document called Motion for Clarification of
16 Effective Assistance of Counsel. And a document called Points
17 of Law.

18 Even though all of these are over the name or
19 under the name of Daniel Kender, it's my understanding that
20 Mr. Kender did not author any of these. The testimony is to
21 the effect that they were in part downloaded from Suzanne
22 Shell's website, in part downloaded, perhaps, from other
23 websites, that they were the result of a collaboration between
24 Mrs. Korn, Ms. F's mother, and Ms. Shell.

25 The best testimony, the most supportive testimony

1 as far as Ms. F's involvement is concerned is to the effect
2 that they were read to her and explained to her before she
3 signed them. I do specifically find that Ms. F did not author
4 any of these documents and in fact has somewhat limited
5 understanding of what the documents are.

6 In furtherance of the effort of Ms. Shell to
7 control this litigation, she has apparently obtained a power
8 of attorney from Ms. F. That power of attorney was shown to
9 the Court. That power of attorney authorizes in Exhibit A
10 Ms. Shell, among other things, to contract, prosecute, defend,
11 engage, compensate, discharge an attorney, accountant, expert
12 witness or other assistant, prepare, execute and file a
13 record, report or other document the agent considers
14 desirable, reimburse the agent for expenditures. So Ms. F has
15 authorized Ms. Shell to take her money. To assert and
16 prosecute before a court or administrative agency a claim,
17 bring an action in her name, perform any lawful acts, submit
18 to arbitration, settle or propose a compromise. She's
19 indicated that Ms. Shell can settle any case that Ms. F may
20 have a right to. And can waive service of process.

21 The power of attorney is very broad, is unlimited
22 in time or scope. It does not appear to the Court that Ms. F
23 has any proper understandings of what that document is. The
24 mother, Ms. Korn's testimony is to the effect that the purpose
25 of the power of attorney was because Ms. Shell wants to defend

1 or prosecute on behalf of Ms. F and that this power of
2 attorney was necessary for that purpose.

3 It appears to me that Ms. F has become a puppet in
4 this case, a puppet for her mother, a puppet for Ms. Shell.
5 In the event that Ms. F signs a power of attorney granting
6 Ms. Shell certain rights with regards to Ms. F, it becomes
7 necessary for this Court to have some authority over
8 Ms. Shell. I don't wish to have any authority over Ms. Shell
9 except insofar as she may negatively impact this action.

10 The document that's been filed called Declaration
11 of Facts, is in fact contrary to Ms. F's best interests as far
12 as representation is concerned because, if admitted at the
13 jury trial, it contains facts from which a jury could conclude
14 that Ms. F's child is dependent or neglected. This document
15 was drafted at the request of Ms. F's mother, Ms. Korn, and
16 apparently the willing participation of Ms. Shell.

17 It's evidence of the fact that these individuals
18 are unfamiliar with what would help and what would hurt Ms. F.
19 In fact, that their actions have served to the extent that
20 what they desire is a determination that the child is not
21 dependent or neglected, have in fact acted contrary to that.

22 Therefore, it does appear appropriate because
23 Ms. Shell is offering legal advice, is drafting legal
24 documents, is attempting to direct Ms. F, who not capable of
25 assessing the nature of that direction, that I join her as a

1 special respondent. But, as I stated, I have no wish to have
2 any control over Ms. Shell. I have no wish to have her
3 involved in this case.

4 Since her involvement has shown itself to be
5 disruptive and contrary to the best interests of the
6 respondent mother in this case, it will be for the limited
7 purpose of precluding Ms. Shell from authoring any legal
8 documents or providing any legal advice to Ms. F or
9 consulting, if that's what she calls it, legal consulting,
10 which to me is a code word for Ms. Shell for legal advice.

11 I am also going to prohibit her from having any
12 relationship with Ms. F because the testimony I have is that
13 she had no relationship with Ms. F separate and apart from her
14 legal involvement in this case and drafting of documents. I'm
15 going to prohibit her from having any contact with Ms. F. No
16 legal advice, no contact, and I'm going to prohibit her from
17 exercising her power of attorney in Ms. F's behalf for any
18 purpose related to this case.

19 Whether you choose to continue with that power of
20 attorney or not, Ms. F, is up to you. But she's not going to
21 exercise it for any purpose in this case. She's not a lawyer.
22 Her involvement in this case has not shown itself to be in
23 your best interest.

24 Anything else, Mr. Meconi?

25 MR. MECONI: Yes, Judge. As far as the remaining

1 portion of the issues.

2 THE COURT: Mr. Kender, I'm inclined to consider
3 all of these documents as a nullity. Ms. F didn't know what
4 she was doing or at least doesn't appear to me she was fully
5 advised. I would be inclined to treat them as a nullity with
6 the possible exception of the motion where she said she knew
7 she wanted her child back. That's a given as far as I'm
8 concerned.

9 She also requested to disqualify you. She did
10 provide testimony to the effect that was in fact what her wish
11 was. I think, Mr. Slater, you indicated that you thought we
12 should proceed on that request.

13 MR. SLATER: Yes, Your Honor. I think that if the
14 respondent mother's allegations about her relationship with
15 Mr. Kender are true, I think that probably qualifies as
16 ineffective assistance of counsel. I think when combined with
17 the outstanding issues of the fact that there is an action
18 pending in Federal District Court, which may or may not be
19 affected by the Court's decision today with respect to the
20 power of attorney.

21 THE COURT: She filed an action on Ms. F's behalf
22 with the power of attorney?

23 MR. SLATER: Yes, I believe that's correct. It
24 had to do with this case. I don't know how that is affected
25 by the Court's action today.

1 THE COURT: I have no idea. I haven't seen the
2 lawsuit. I have no idea if the Federal District Court is
3 acting on it.

4 MR. SLATER: Since I'm not named, thank goodness,
5 I'm the only person in this room not named that that lawsuit.

6 MR. KENDER: It was a vague 1983 action with
7 request for an injunction to prevent this Court from joining
8 Ms. Shell as a respondent. But that was never at issue as far
9 as I know about the district court. The response time is not
10 lapsed yet.

11 THE COURT: I did want to indicate on the power of
12 attorney not only that Ms. Shell is prohibited from exercising
13 as it may relate to this case, that also relates to any
14 agencies providing services to the family. She's prohibited
15 from exercising it for that purpose.

16 MR. KENDER: If I may comment. While I find that
17 the side issues in this case I think distract from the main
18 issue, and I would be willing to proceed as Ms. F's attorney
19 except for the fact that I have been advised by the guardian
20 ad litem she does not wish me to proceed as her attorney.

21 THE COURT: By the guardian ad litem?

22 MR. KENDER: Her guardian ad litem.

23 I asked him if she had told him that she had
24 changed her mind or in some way would want to work with me,
25 then I would feel my withdrawal would maybe be inappropriate,

1 although there is a lot of reasons for me to be concerned.
2 But I'm more concerned about the client and her best interests
3 and that this matter get a just and proper resolution as
4 opposed to all these distractions.

5 I would ask to be withdrawn because she does not
6 prefer to work with me. Then possibly with a fresh start, I
7 don't know if the Court will appoint another attorney or
8 whether she will have to hire an attorney. I don't know. I
9 leave that up to the Court. I think that under these
10 circumstances, I would probably have to do most of my
11 communications with the guardian ad litem and I'm not sure
12 that would be an appropriate way to proceed.

13 THE COURT: Mr. Slater?

14 MR. SLATER: I would just, you know, I guess that
15 the respondent mother is definitely better off with counsel
16 than without counsel. If the Court's inclined to not appoint
17 replacement counsel, then that would be the only instance
18 where I think Mr. Kender would need to remain. I think she is
19 better off with Mr. Kender than without anybody representing
20 her. But I think it would be more appropriate to appoint a
21 replacement respondent parent counsel.

22 THE COURT: Do either of you want to speak to
23 this?

24 MR. MECONI: Judge, normally the Department
25 doesn't take a position vis-a-vis the respondent and counsel.

1 What I'm hearing, however, in this particular case and I'm
2 concerned because we have a currently scheduled trial date,
3 which probably is going to get bounced, but it is currently
4 scheduled for May 27th.

5 Although this is not an EPP case, this is a very
6 young child. It's already drug on. I think it had somewhat
7 protracted litigation already inappropriately and
8 unnecessarily so. So my concern is how this is going to
9 impact on the trial that we're going to have. The only thing
10 I'm hearing is that the respondent mother would prefer to have
11 somebody else. That's not sufficient grounds, as far as I'm
12 concerned to switch.

13 I know there are allegations. But there has been
14 no evidence presented on those allegations. I don't believe
15 that to be accurate and wouldn't support that at this
16 particular point. The Department would be saying if she has
17 some kind of personality conflict, which I think may have been
18 created by Ms. Shell and respondent mother's mother, if she
19 doesn't want Mr. Kender and he wants to withdraw, that would
20 be fine. But I don't think the Court should be appointing an
21 additional attorney at that point. We don't give respondents
22 the veto power whether they like or don't like their counsel
23 unless they're paying for them. I really don't care as long
24 as it doesn't impact on the trial.

25 THE COURT: I had understood we were going to have

1 to reset the trial date because it wasn't convenient for you,
2 Mr. Slater.

3 MR. SLATER: Yes, Your Honor. I'll be out of town
4 that week.

5 THE COURT: I think we're resetting the trial in
6 any event.

7 MR. MECONI: I'm not sure. I had some discussions
8 with Mr. Slater. He has advised me that he thought the
9 respondent mother can participate in her defense and can
10 assist and has sufficient understanding. It may be that we
11 won't need Mr. Slater and, therefore, his unavailability on
12 the May 27th hearing. If we don't, then that won't be an
13 issue and we can proceed on that date.

14 MR. KENDER: I might just comment on the Court's
15 finding, what the Court just found was that Ms. F, and I think
16 the Court has previously found by evidence given by the
17 guardian ad litem, that she has some developmental
18 disabilities. I think the Court found that from the evidence
19 the Court heard that what has happened in this case was as a
20 result of other people trying to control what she is going to
21 do. I think that her free will might have been overborne.
22 There might be an argument that that was the case. So,
23 therefore, any difficulties that have occurred between her and
24 her attorney were not necessarily caused by her.

25 Therefore, what I do believe that because of that,

1 everything that's happened, that she probably does not want to
2 cooperate or work with me. So I think in order for there to
3 be a just result, I think I should be allowed to withdraw and
4 she should be appointed another attorney because it wasn't her
5 voluntarily act to start all this.

6 THE COURT: Do you want to speak to this, Ms. F?

7 THE MOTHER: I would just like to say that I would
8 like to have a different attorney, like Mr. Kender said. I'll
9 need to find somebody else.

10 No, I'm not incapable of talking for myself. No
11 one has forced me to say or do anything. This has been me
12 doing this. I haven't been forced to say anything, Your
13 Honor. It's coming out of my own mouth.

14 THE COURT: I haven't said that your statements
15 were forced by anybody else, only that these documents were
16 not written by you.

17 THE MOTHER: No, ma'am, they weren't.

18 THE COURT: I'm satisfied they weren't.

19 THE MOTHER: No.

20 THE COURT: The only hesitancy that I have to
21 appoint another attorney is the letter that's marked as
22 Petitioner's Exhibit B because the letter appears to indicate
23 you either do what Ms. Shell wants or get off the case,
24 although it also says that AJF, incidentally, Ms. F, this is
25 what your agent says. It says, "If you feel the need to file

1 a motion to withdraw" -- this is addressed to Mr. Kender --
2 "it must be done immediately. Be advised that AUF will oppose
3 that motion." That means that you would not want it to
4 happen, that Mr. Kender would withdraw.

5 Apparently Ms. Shell is not voicing your feelings,
6 at least in this letter. Because she just said on your behalf
7 with your power of attorney the opposite of what you just
8 said. Were you aware of that?

9 THE MOTHER: Yes. Yes, I was, Your Honor.

10 THE COURT: So it's all right with you if your
11 power of attorney is exercised to say things that are the
12 exact opposite of what you want?

13 THE MOTHER: Yes.

14 THE COURT: It is?

15 THE MOTHER: I read. I know, you know, I'm not
16 stupid. I know what I want and what I want I get.

17 THE COURT: Do you want Mr. Kender?

18 THE MOTHER: If the Court -- I wish the Court
19 would appoint me someone else. If everyone is going to be
20 lazy and not appoint me one, that's my right, Your Honor. I
21 have the right to have a different attorney. Everyone has
22 rights in this world.

23 THE COURT: Do you want me to take what you say or
24 do you want me to take what Ms. Shell says as what you want?

25 THE MOTHER: You need to know what I want. What I

1 want is a lawyer who is willing to help me.

2 THE COURT: To the extent that Ms. Shell says the
3 opposite, I should ignore her? Is that right?

4 THE MOTHER: And listen to me. I have what I say
5 is right. What I'm trying to say what I'm saying is right.
6 I'm doing more myself, not nobody else. There is no one else
7 here in this courtroom telling me what to say or think. I'm
8 saying it.

9 THE COURT: I didn't suggest that.

10 THE MOTHER: Well, Your Honor, I am my own self.
11 I take care of myself. I take care of my child. I take care
12 of things that need to be taken care of. What I want is what
13 I get. I want somebody who is willing to help me, not be a
14 little puppet on a string.

15 THE COURT: I'm satisfied from the statements of
16 Mr. Kender and Mr. Slater that your relationship with
17 Mr. Kender is probably no longer productive. That's how it
18 sounds to me. I will authorize Mr. Kender to withdraw. Isn't
19 that your request?

20 MR. KENDER: Yes, Your Honor.

21 THE COURT: I'll see if I can find another
22 attorney. If I can, I'll appoint an attorney to represent
23 you. You'll have to stay in contact with Mr. Slater so that
24 when the person is selected, Mr. Slater will be advised of who
25 that is and then you can contact him and find out who it is

1 and then contact that person.

2 THE MOTHER: Okay, Your Honor.

3 THE COURT: I do have a motion to disqualify me,
4 which was filed by Ms. Shell, I think within five minutes of
5 the first time I saw her here in court. That's my
6 recollection. That was the document she filed. The rule
7 requires that such a motion be filed by a party. I don't
8 believe Ms. Shell is a party authorized to file a motion to
9 disqualify me. I'm going to deny the motion because it's
10 brought improperly by an improper person.

11 I don't find that Ms. Shell in this motion
12 properly can speak on behalf of Ms. F.

13 Then we need to address the trial date. How many
14 days we are going to need for trial? What I'll do is clear
15 one with -- I've appointed Mr. Slater. I would want to
16 proceed with Mr. Slater there. I will have to vacate the May
17 27th and 28th jury trial because Mr. Slater is not available.
18 Am I looking for two days?

19 MR. MECONI: Judge, I think we decided upon that
20 at the last hearing. But I suspect with a jury trial,
21 particularly if we are able to select a jury in the first half
22 day, that would be fairly quick. That gives us a day and a
23 half. I'm guessing we'll need three days.

24 THE COURT: Really?

25 MR. MECONI: From the Department's standpoint, I

1 think I can present the Department's case is probably half a
2 day, maybe a little bit more. But I don't know what the
3 respondent's position is going to be vis-a-vis that and how
4 many witnesses she may or may not have. I don't have a
5 disclosure of witnesses from her. Although the time has
6 expired for that. But I don't have that. I don't know how
7 many witnesses she anticipates calling.

8 THE COURT: I could give you a trailing date June
9 3rd, 4th and 5th.

10 MR. SLATER: That's fine, Your Honor.

11 MR. MECONI: That's fine, Your Honor.

12 MS. OWEN: What is that date?

13 THE COURT: June 3rd, 4th and 5th. That is
14 trailing a criminal trial.

15 MS. OWEN: Starting at 9:00?

16 THE COURT: 8:30.

17 MS. OWEN: I do have just one brief advisement in
18 Division I at 8:45 on June 3rd. If we could start at 9:00.

19 THE COURT: We could try that.

20 MS. OWEN: On the 3rd?

21 THE COURT: I'll set that as a trailing date. I
22 don't know whether that date will work for whoever is
23 appointed to represent Ms. F. Of course, I don't know if the
24 criminal trial is going to go or not. If it can't go on that
25 date because the criminal trial is going, I'll notify counsel

1 and your attorney will notify you, Ms. F. Then we'll pick a
2 new date.

3 Is there anything else I need to address on the
4 F's case?

5 MR. MECONI: Judge, we had originally set the case
6 for the 13th for notebooks setting. Is that still going to go
7 or are we going to vacate that hearing?

8 THE COURT: Let me look. The 13th.

9 MR. MECONI: Next week.

10 THE COURT: Why don't we reset that. Maybe we
11 could even -- you're going to be gone that week, though,
12 right?

13 MR. SLATER: I'll be gone the 21st. I'll be here
14 on the 19th and 20th.

15 THE COURT: I'm gone the week of the 19th. The
16 only hesitancy about doing it on May 13th at nine o'clock is
17 that I have another criminal case. Could we move it to 8:30
18 that morning, May 13th at 8:30? Will that work for everybody?

19 MR. SLATER: Yes, Your Honor.

20 THE COURT: The jury trial will be nine o'clock.
21 The notebook hearing will be May 13th at 8:30. Hopefully
22 we'll have an attorney in place and we can confirm the date.

23 Mr. Kender, just for purposes of the record, I
24 want to make sure which of these pleadings for sure you didn't
25 author. I believe they're Notice to the Court Regarding Court

1 Appointed Counsel, that you did not author that?

2 MR. KENDER: No.

3 THE COURT: Points of Law you did not author?

4 MR. KENDER: Points of Law I did not author.

5 THE COURT: Motion for Clarification of Effective
6 Assistance of Counsel?

7 MR. KENDER: That I did not author. Motion to
8 Return Child to Mother I did not author. That was dated
9 4-3-03.

10 THE COURT: I've got it.

11 Declaration of Facts you did not author?

12 MR. KENDER: No, Your Honor.

13 THE COURT: I think those are all of them. Is
14 that right? That were some that had your name on them that
15 were not authored by you.

16 MR. KENDER: Right. That's all, Your Honor.

17 THE COURT: I'll consider those as not requiring
18 any further action by the Court then.

19 MR. SLATER: Your Honor, if I may, Mr. Meconi may
20 run into a problem on the new counsel in that respondent
21 mother is not making disclosure pursuant to pretrial order.
22 Pretrial order speaks in terms of days prior to the trial. I
23 think the first disclosure deadline is 30 days prior to trial,
24 which has already passed.

25 THE COURT: When we have new counsel, which will

1 hopefully be before the 13th, that attorney can advise me of
2 how they want to proceed based on that.

3 Anything else on this matter?

4 MR. MECONI: No, Your Honor.

5 THE COURT: Anything else?

6 THE MOTHER: No.

7 THE COURT: Court will be in recess.

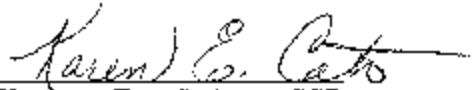
8 (The proceedings were concluded at 10:45 a.m.).
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REPORTER'S CERTIFICATE

The above and foregoing is a true and complete transcript of my stenographic notes taken in my capacity as Official Court Reporter for the Eleventh Judicial District, State of Colorado, at the time and place above set forth.

Dated: May 9, 2003


Karen E. Cato, CSR