

No. D-1-GN-14-004290

DON ZIMMERMAN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
AUSTIN INVESTIGATIVE REPORTING	§	
PROJECT d/b/a THE AUSTIN BULLDOG,	§	
and KEN MARTIN,	§	
	§	
Defendants.	§	53 RD JUDICIAL DISTRICT

**DEFENDANTS' MOTION TO DISMISS PURSUANT TO
CHAPTER 27, TEX. CIV. PRAC. & REM. CODE**

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants Austin Investigative Reporting Project, d/b/a *The Austin Bulldog* (“*The Austin Bulldog*”) and Ken Martin (collectively, “Defendants”) move to dismiss the Plaintiff’s Original Petition pursuant to Chapter 27, Tex. Civ. Prac. & Rem. Code, and would respectfully show:

I. Introduction and Summary.

This frivolous lawsuit was filed to intimidate an investigative reporter – exactly the type of abuse that the Texas Legislature sought to prevent and remedy when it enacted the Texas Citizens Participation Act (“TCPA”). Pursuant to that law, this case must be promptly dismissed.

Don Zimmerman, candidate for Austin City Council, touts in his campaign materials that he has “one remarkable teenage daughter, Marina Lorna Zimmerman.” What he does not say is that when this daughter accused him of repeated acts of mental and physical abuse, he agreed to relinquish custody without a fight. In fact, a final court order entered this year at Zimmerman’s own request requires that he have “no possession or access” whatsoever to his only child.

When *The Austin Bulldog*, a small independent non-profit online newspaper, discovered and reported these facts, Zimmerman had his lawyer/campaign treasurer threaten and then file this

lawsuit. Zimmerman's lawsuit is a transparent effort to bully the media into not reporting negative information about him prior to the December run-off election.

Under the TCPA, a plaintiff must present "clear and specific evidence" of each element of his case before proceeding with a lawsuit that attacks a defendant's exercise of the right to free speech. Zimmerman cannot meet this burden, because *The Austin Bulldog* article is a meticulously fair and accurate report of the judicial proceedings that resulted in him losing access to his daughter.

This lawsuit quibbles about the article's wording, but utterly fails on each point.

First, the article's report that Zimmerman "lost custody over abuse" is literally and substantially true. Zimmerman "lost custody" under both the common and technical legal meanings of the word. The direct cause of him losing custody was his daughter's outcry of abuse, which was corroborated by her step-father's testimony and her doctor's records. In fact, the court records reflect that Zimmerman agreed, and the Court found, that he had a history of mental and physical abuse of his daughter, and that it was in her best interest that she have no contact with him at all.

Second, the article accurately reported that court records document Zimmerman's abuse. Three petitions, an affidavit, and detailed medical records all describe the abuse. Zimmerman filed nothing in the proceedings denying the abuse. In fact, Zimmerman twice agreed to the entry of court orders that denied him any possession or access to his daughter, and he twice agreed that this was in his daughter's best interest.

Third, the article accurately reported that Zimmerman suffered a "permanent loss of parental rights." While Zimmerman retains the title "possessory conservator," a final order that Zimmerman himself asked to be entered denies him any right to possession of or access to his daughter. *The Austin Bulldog* did not report that Zimmerman lost *all* parental rights, as he claims, but it is undisputed that he lost the rights that matter – custody and access to his child.

Finally, *The Austin Bulldog* accurately described the allegations of abuse and accurately attributed them to the step-father's affidavit and the doctor's records. The article did not report that the doctor was an eyewitness to the abuse, as Zimmerman claims, but the doctor's records are clear that she feared for Marina's safety: she concluded that Marina had suffered child abuse; she reported the abuse to CPS; she believed Marina was in a life-threatening situation; and she recommended that her mother immediately seek full custody, for fear that the domestic violence Marina was suffering could lead to homicide.

Zimmerman cannot prove his case. This lawsuit should be promptly dismissed.

II. Chapter 27 Provides for Prompt Dismissal of Meritless Libel Lawsuits Attacking the Exercise of the Right to Free Speech.

The Legislature recently enacted the Texas Citizens Participation Act ("TCPA"), which protects the constitutional rights of speech, assembly and petition from baseless lawsuits. Tex. Civ. Prac. & Rem. Code §§ 27.001, *et seq.* The TCPA seeks to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time protect the rights of a person to file meritorious lawsuits for demonstrable injury." *Id.* § 27.002.

Under Chapter 27, a party may, within 60 days of service, file a motion to dismiss any lawsuit that "is based on, relates, to, or is in response to a party's exercise of the right of free speech, right to petition, or right of assembly" Tex. Civ. Prac. & Rem. Code § 27.003. Upon filing, "all discovery . . . is suspended until the court has ruled on the motion," unless the court, upon motion and a showing of good cause, allows "specified and limited discovery relevant to the motion." *Id.* § 27.003(c); § 27.006(b). The motion must be heard within 60 days, except under narrow circumstances. *Id.* § 27.004(a).

The movant's burden is minimal: to show "by a preponderance of the evidence that the

legal action is based on, relates to, or is in response to the party's exercise of (1) the right to free speech; (2) the right to petition; or (3) the right of association.” Tex. Civ. Prac. & Rem. Code § 27.005(b). The burden then shifts to the plaintiff to prove “by clear and specific evidence a prima facie case for each essential element of the claim in question.” *Id.* § 27.005(c). If the plaintiff fails to meet this burden, the claim must be dismissed. *Id.* § 27.005(b). Even then, the court must still dismiss “if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.” *Id.* § 27.005(d).

If the motion is granted, the court “shall award” “(1) court costs, reasonable attorney's fees and other expenses incurred as justice and equity require; and (2) sanctions ... as the court determines sufficient to deter the party who brought the action from bringing similar actions.” Tex. Civ. Prac. & Rem. Code § 27.009(a).

III. Grounds for Dismissal.

A. This lawsuit is based on the Defendants' exercise of their right of free speech and their right to petition.

The TCPA defines the “exercise of the right to free speech” as “a communication made in connection with a matter of public concern.” Tex. Civ. Prac. & Rem. Code § 27.001(3). A “matter of public concern” includes any issue related to “health or safety,” “the government,” or “a public official or public figure.” *Id.* § 27.001(7)(A), (C), (D). The “exercise of the right to petition” includes “a communication in or pertaining to a judicial proceeding.” *Id.* § 27.001(4)(A)(i). This lawsuit easily meets these criteria.

Plaintiff Don Zimmerman is a candidate for Austin City Council. Ex. 4; Ex. 18 ¶ 3. He has sued these Defendants for publishing an article about him. Ex. 1. A candidate for public office is a public figure. *E.g., Ross v. Labatt*, 894 S.W.2d 393, 395 (Tex. App. – San Antonio 1994, writ dismissed w.o.j.) (candidate for city council is a public figure); *Pitts & Collard, L.L.P. v. Schechter*,

369 S.W.3d 301, 326 (Tex. App. – Houston [1st Dist. 2011], no pet.) (nominee for METRO board is a public figure). Any matter related to a candidate’s fitness for public office is a matter of public concern. *E.g., Garrison v. Louisiana*, 379 U.S. 64, 77 (1964) (“a candidate must surrender to public scrutiny and discussion so much of his private character as affects his fitness for office”); *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 277 (1971) (“a charge of criminal conduct, no matter how remote in time or place, can never be irrelevant to an official's or a candidate's fitness for office”). Zimmerman implicitly admits that the child abuse accusations against him are relevant to his candidacy by claiming that *The Austin Bulldog* article hurt his reputation. Ex. 1 ¶¶ 23. Moreover, Zimmerman put his family relationships at issue by claiming on his campaign website that “I have one remarkable teenage daughter, Marina Lorna Zimmerman,” Ex. 4, without disclosing the true status of his relationship with her.

Therefore, publishing *The Austin Bulldog* article was clearly an exercise of the Defendants’ right of free speech. In addition, because the article is “a communication ... pertaining to a judicial proceeding,” its publication was also an exercise of the Defendants’ right to petition, as defined in the TCPA. Tex. Civ. Prac. & Rem. Code § 27.001(4)(A)(i).

The Defendants have met their burden under the TCPA. The burden now shifts to the Plaintiff to prove, by clear and specific evidence, a prima facie case for each essential element of his claim. Tex. Civ. Prac. & Rem. Code § 27.005(c).

To establish a claim of libel, a public official or public figure plaintiff must prove, by clear and convincing evidence, that the defendant published a substantially false and defamatory statement about the plaintiff with actual malice. *Neely v. Wilson*, 418 S.W.3d 52, 61 (Tex. 2013); *Casso v. Brand*, 776 S.W.2d 554, 555 (Tex. 1989). The Plaintiff cannot meet his burden because, among other reasons, he cannot prove that the article is substantially false. Even if Zimmerman

could meet his Chapter 27 burden, it would be unavailing because, as shown below, a preponderance of the evidence establishes an affirmative defense: the article is privileged from suit because it is a substantially true report of a judicial proceeding.

B. The *Austin Bulldog* article is privileged from suit because it is a substantially true account of a judicial proceeding.

A “trial is a public event. What transpires in the court room is public property.” *Craig v. Harney*, 331 U.S. 367, 374 (1947). The First Amendment and the common law provide a complete privilege from libel suits for accurate reports of judicial proceedings. *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975); *Neely v. Wilson*, 418 S.W.3d 52, 68 (Tex. 2013); Restatement of Torts (Second) § 611. In addition, the privilege is codified in Section 73.002(b)(1) of the Texas Civil Practice & Remedies Code, which provides that a publication’s fair, true and unbiased account of a judicial proceeding is privileged.

The judicial proceeding privilege “assesses whether the reporter’s account of the proceedings (not the underlying allegations made in those proceedings) was fair, true, and impartial.” *Neely*, 418 S.W.3d at 68 (citing *Denton Publ’g Co. v. Boyd*, 460 S.W.2d 881, 883 (Tex. 1971)). A report is “fair, true, and impartial” if it conveys a substantially true account of the judicial proceeding. *Texas Monthly, Inc. v. Transamerican Natural Gas Corp.*, 7 S.W.3d 801, 805 (Tex. App. – Houston [1st Dist.] 1999, no pet.); *Crites v. Mullins*, 697 S.W.2d 715, 717 (Tex. App. – Corpus Christi 1985, writ ref’d n.r.e.).

A statement is substantially false only if it is “more damaging to [the plaintiff’s] reputation, in the mind of the average listener, than a truthful statement would have been.” *McIlvain v. Jacobs*, 794 S.W.2d 14, 16 (Tex. 1990). If the “gist” of the statement is true, “any variance with respect to items of secondary importance” are disregarded. *Id.* The substantial truth doctrine requires “considerable latitude.” *Texas Monthly, Inc.*, 7 S.W.3d at 805 (citing *Hill v.*

Herald-Post Publishing Co., 891 S.W.2d 639 (Tex. 1994)). “Although it may greatly exaggerate the libel-plaintiff’s misconduct alleged in a judicial proceeding, an article is substantially true if an ordinary reader would not attach any more opprobrium to the plaintiff’s conduct merely because of the exaggeration.” *Id.* “Even when the scale of the misconduct has been exaggerated manyfold,” the statements are not actionable “if no more opprobrium would be attached to appellant’s actions merely because of such exaggeration.” *Finklea v. Jacksonville Daily Progress*, 742 S.W.2d 512, 515 (Tex. App. – Tyler 1987, writ dismissed w.o.j.) (quoting *Crites*, 697 S.W.2d at 717).¹

Zimmerman quibbles with language in *The Austin Bulldog* article, but he cannot show that it is false, let alone substantially false. In fact, the article is a scrupulously fair and accurate report of a judicial proceeding, and therefore privileged.

1. What the court records show happened in Zimmerman’s divorce and custody proceedings.

The divorce decree. Don Zimmerman and Kateryna Zimmerman (now Bochenkova) were divorced in 2005. Ex. 5. The decree appointed them joint managing conservators of their one child, Marina. *Id.* at 2. Bochenkova was awarded primary possession, with Zimmerman having possession on Thursdays, every other weekend, every other Spring Break, and for an extended period each summer. *Id.* at 4-6.

The mother’s petition to modify. Five years later, Bochenkova filed a Petition to Modify Parent-Child Relationship. Ex. 6. Her petition alleged that circumstances had “materially and substantially changed.” *Id.* at 2. The petition alleged that “Respondent [Don Zimmerman] has a history or pattern of physical and emotional abuse directed against Marina Zimmerman.” *Id.* The

¹ For example, a news report inaccurately reporting that an insurance swindle involved \$6.5 million, rather than \$875,000, was substantially true. *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 123 (Tex. 2000). Similarly, a report that the plaintiff was charged with stealing \$168,000 was substantially true, although the actual amount charged was less than \$7,000. *Dudley v. Farmers Branch Daily Times*, 550 S.W.2d 99, 100 (Tex. Civ. App. – Eastland 1977, writ refused n.r.e.).

petition asked the Court to “deny Respondent access to the child.” *Id.* The petition was supported by authenticated medical records from Dr. Deborah Neitsch and the affidavit of Eric Fox, Marina’s step-father. Exs. 7 & 8.

The medical records. Dr. Neitsch’s medical records document three office visits by Marina, then 12 years old, in January and February, 2011. Ex. 7. The record from the first visit, January 24, 2011, reflect that Marina was “brought in after getting a bruise on her arm. There are concerns that her father is being physically and emotionally abusive to her when she is visiting him. ... He has been physically forceful with her in the past but CPS won’t investigate the case until there is signs [sic] of force. ... Her dad at this visit with him was yelling at her that she had demons that needed to be expelled per Marina.” *Id.* at 2. The medical examination revealed “diffuse spasms in the left trapezius that was tender upon palpation,” and a “2cm round bruise on ulnar aspect of distal forearm.” *Id.* Dr. Neitsch noted that “[w]e will contact CPS caseworker that is in charge of her case. No serious injury seems to have occurred but I worry about the psychological toll on her.” *Id.*

The second doctor visit occurred Friday, January 28, 2011, after Zimmerman’s Thursday night possession. Ex. 7 at 4. The medical records state that Marina had suffered “another bruise.” *Id.* Marina reported that Zimmerman “grabbed her shoulder and spun her around and pushed her backwards. ... He pushed her from be[h]ind as well and now she has a bruise on the left scapula.” *Id.* Dr. Neitsch noted “continued concern of her dad becoming physically forceful with her. ... [W]ill keep document for CPS case worker.” *Id.*

Two weeks later, Marina was back at the doctor’s office after another visitation with her father. Ex. 7 at 5. Dr. Neitsch noted that Marina’s “dad was harsh with her yesterday and pushed her against the microwave and now she has right hip pain and right shoulder pain.” *Id.* Although there was no bruising this time, “[h]er dad has been yelling at her and threatened to hit her but

didn't. He has threatened to kill her and she has fears of [him] shooting her.” *Id.* The medical examination revealed “tender spasms in the traps, painful ROM, right-sided,” “pain to medial rotate,” and “difficulty bearing weight on the right hip.” *Id.* Dr. Neitsch’s assessment was “ABUSE.” *Id.* The medical records reflect the doctor’s

concerns of abuse with hip and shoulder strain. Recommended if CPS does not intervene this could lead to a life threatening situation. I recommend they pursue [sic] legal custody as soon as possible. We will contact CPS about the situation.

Id. Dr. Neitsch recommended counseling for “domestic violence” and “warned this was the most common cause of homicide in Texas and in our area and needs to be taken seriously. [T]he situation seems to be escalating quickly due to CPS investigation.” *Id.*

The Fox affidavit. The petition was also supported by the affidavit of Eric Fox, Marina’s step-father, describing the incident that led to the third doctor visit. Ex. 8. Fox testified that his wife received a phone call from Marina which he overheard when the call was put on speaker. *Id.* at 1. Fox heard Zimmerman shout at Marina, among other things, “You need to go [to your room] now or you’re going to get hit! Go, go, you brat!” *Id.* Fox heard scuffling noises and the phone went dead. *Id.* Fox then received an email from Marina saying that Zimmerman took her phone away “by force,” “pushed me around, told me to shut up, pulled my hair and called me a brat.” *Id.* at 2.

Fox testified that when Marina got home, he “saw that she had a red mark on her forehead,” and she said “she was sore in several spots on her chest and back because her father had ‘smashed me into a wall and the microwave,’” had “wrenched” the phone from her hands, and had “grabbed her by the front of her coat, shook her while screaming, slammed her into a wall and the couch.” Ex. 8 at 2. Fox testified that Marina told him Zimmerman “ripped her hat off pulling her hair and threw it at her,” and that “he then threatened to hit her by raising his fist.” *Id.* Fox testified that Marina told him Zimmerman “cornered me in the car and started screaming,” called her “arrogant

stupid crazy and useless,” and that “she felt like ‘he was going to break my arm or something’ because ‘his face changed and he was like a different person.’” *Id.* Fox testified that Marina “developed a serious limp within an hour and had problems putting weight on her right leg.” *Id.*

Fox took Marina to the doctor’s office, where Fox heard her tell Dr. Neitsch “that she felt threatened and ‘he said he would kill me.’” Ex. 8 at 3. Fox’s affidavit continued:

I heard the Doctor ask again if “you[r] father said that? He said “he’d kill you?” I heard Marina say “yes” and I saw that she was trembling. I saw and heard Doctor Neitsch recommending to my wife immediate legal action and I heard her say that “CPS might not act quickly enough,” that she believed this was significant abuse and that “this is how people get killed. Take care of this now.” I heard her ask Marina if she wanted to go back. Marina told her “no, not ever.” I heard her ask Marina if she wanted to “ever see your Dad again” and I heard Marina respond “like once a month but with my Mom watching so he doesn’t hit me.”

I saw and heard Doctor Neitsch remind my wife that this “is the third visit and it’s getting worse fast.” I heard her tell me and my wife, “take care of this now because CPS will not intervene in time and he is dangerous.” I also heard her say “I will call CPS.” I saw and heard her go over the previous visits where Marina had bruises on her arms, shins and shoulders. I heard her say “the whole demonic possession thing is really scary” and I saw she looked very concerned.

Id. at 4.

Zimmerman filed no answer to the petition to modify, no general denial, and no opposition to the request for an injunction. *See* Ex. 14. Nothing in the court file reflects that Zimmerman denied any of these allegations of abuse. *Id.*

Agreed Temporary Injunction. Five days after the petition was filed, the Court entered an agreed temporary injunction, effective immediately, “denying Zimmerman any right to possess, contact or communicate with Marina.” Ex. 9. The order enjoined Zimmerman from:

Contacting, or communicating with, the child the subject of this suit in person, by telephone or in writing.

Taking possession of the child.

Disturbing the peace of the child or of another party.

Making disparaging remarks regarding Petitioner or Petitioner's family in the presence or within the hearing of the child.

Id. at 1. Although Zimmerman's lawyer neglected to sign the agreed order, her initials appear next to each hand-written delineation, including next to the Court's finding that "the parties have agreed to a temporary injunction." Ex. 9 at 1-2.

Zimmerman's motion for a final order. The agreed temporary injunction denying Zimmerman any contact or communication with his daughter remained in effect for over three years. During that period, the docket sheet reflects no effort by Zimmerman to regain custody or the right to communicate with his daughter. *See* Ex. 14. Finally, on March 10, 2014, Zimmerman filed a one-page Motion to Enter Final Order. Ex. 10. Zimmerman admitted that his relationship with Marina had "become fairly non-existent," and that "there has been no contact for a significant period of time." *Id.* Zimmerman sought no custody or access to his daughter, but simply that a final order be entered and the injunction lifted. *Id.*

Bochenkova's amended petitions. Bochenkova then filed an amended petition to modify, restating the allegation that Zimmerman "has a history or pattern of physical and emotional abuse" of Marina and again requesting that the Court deny Zimmerman all access to her. Ex. 11 at 2. The petition alleged that this would be "in the best interest of the child." *Id.* The petition also asked for confirmation that Zimmerman owed \$14,738.55 in medical support. *Id.* at 4. Bochenkova subsequently filed a second amended petition, which repeated the allegations of physical and emotional abuse and that denying Zimmerman access to Marina was in her best interest. Ex. 12. Again, Zimmerman filed nothing denying the allegations. Ex. 14.

The agreed final order. On June 16, 2014, the court entered an Agreed Order in Suit to Modify Parent-Child Relationship. Ex. 13. All questions of fact were submitted to the Court for decision, and the Court made the specific findings that "the material allegations in the petition to

modify are true” and that “the requested modification is in the best interest of the child.” *Id.* at 2. The order removed Zimmerman as a managing conservator. *Id.* Zimmerman retains the title “possessory conservator,” but the order states that he “shall have no possession of or access to the child.” *Id.* at 6. The order confirmed that the “parties have agreed that it is in the best interest of the child that Respondent not have possession of or access to the child.” *Id.* at 6.

The order ends with a Mother Hubbard clause, “all relief requested in this case and not expressly granted is denied,” making it the final order Zimmerman requested. Ex. 13 at 9. Zimmerman signed the order “approved and consented to as to both form and substance.” *Id.* at 10. His attorney approved as to form. *Id.* The final order remains in effect, and the docket sheet reflects no further proceedings. Ex. 14.

2. *The Austin Bulldog* article.

The Austin Bulldog is a nonprofit independent online news site for investigative reporting in the public interest. Ex. 18 ¶ 1. Ken Martin is its founder, publisher and editor. *Id.*

On October 9, 2014, *The Austin Bulldog* published an article entitled “Candidate Lost Custody Over Abuse” that reported on Martin’s investigation into Zimmerman’s divorce and custody proceedings and his interview with Zimmerman. Ex. 2. *The Austin Bulldog* also published an email notice to subscribers with a link to the website article. Ex. 3.

The article recounts the allegations of abuse made in the custody proceedings. Ex. 2. The article references the medical records, the Fox affidavit, and it recounts the course of the child custody proceedings. *Id.* And, although the court records contain no denial of abuse, Martin interviewed Zimmerman and the article recants, at length, his position: No abuse occurred, and his “remarkable teenage daughter” is a liar willing to commit perjury.

“I got a call from CPS and consulted a couple of attorney friends and was told when lies are made you should demand proof of the allegations and if you don’t get proof you should not cooperate,” Zimmerman told *The Austin Bulldog* in a Tuesday telephone interview.

“Asked if he did those things to his daughter, Zimmerman replied, “Those are unequivocal lies. They are outright fabrications and absolute lies.”

When questioned in the Tuesday interview about the alleged threat to kill his daughter, Zimmerman replied, “That’s an outright lie. None of this has ever been shown to me.”

When reminded that the cited medical records are in the files for his divorce case, Zimmerman replied, “These allegations are news to me. I’ve never seen them before. These are offensive lies and I’ve never seen them before. I’m not afraid because these are lies.”

Ex. 2. The article quoted Zimmerman calling his ex-wife “a brilliant manipulator and liar” and his claim that “I’m 54 and never in my life have I been violent against anyone. I’ve never shown violence. I get angry. I’m angry now when someone lies and attacks my character.” *Id.*

Asked to comment on the injunction, Zimmerman said, “The crux of it is that with people willing to lie under oath I’m not going to see my daughter any more. If I persist what would have come next would be false allegations of sexual abuse,” Zimmerman said.

Id.

The Austin Bulldog article ended by including links to the final decree of divorce and to fifty-two pages of court records, including the Fox affidavit and the medical records, allowing readers to review the source materials for themselves. Ex. 2; Ex. 18 ¶ 4.

3. Zimmerman’s lawsuit.

After the article was published, Zimmerman’s attorney demanded a “retraction” from *The Austin Bulldog*. Ex. 15. Bill Aleshire, counsel for *The Austin Bulldog*, responded with a 7-page letter explaining why Zimmerman had no basis for a libel claim. Ex. 16. Zimmerman sued anyway. Litigation counsel for *The Austin Bulldog* then gave Zimmerman a chance to dismiss the lawsuit voluntarily before this motion was filed. Ex. 17. He did not.

Zimmerman's Petition, as it must, identifies the language in *The Austin Bulldog* article that allegedly defames him. See *Kahn v. Beicker Engineering, Inc.*, No. 04-94-00823-CV, 1995 WL 612402, at *2 (Tex. App. – San Antonio Oct. 18, 1995, writ denied) (dismissing libel suit for failing, after grant of special exceptions, to “set out the particular defamatory words or at least their substance and meaning”), *cert. denied*, 117 S. Ct. 720 (1997). The complaints about the article and the email are essentially identical. Ex. 1 ¶¶ 11-25.5. The Petition identifies four aspects of the publications that allegedly defame Zimmerman, each of which is addressed below. None comes close to showing that *The Austin Bulldog* article is not a substantially true report of a judicial proceeding.

i. “Candidate Lost Custody Over Abuse.”

Taken directly from the Petition, here are Zimmerman's complaints about the headline:

Mr. Zimmerman did not ‘lose custody.’ Texas is a state that utilizes conservatorship model, and not the custody model. No abuse was ever testified to in court. The article stated that Zimmerman lost custody. That is not a legal term used in Texas. Zimmerman still is a possessory conservator. Ex. 1 ¶¶ 11, 15, 25.2.

Zimmerman is wrong. He did, in fact, “lose custody,” and custody is, in fact, “a legal term used in Texas.”

First, Zimmerman cannot rely on technical legal meanings to prove that the article is defamatory or false. “[A]n allegedly defamatory publication should be construed as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it.” *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 154 (Tex. 2004) (quoting *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114 (Tex. 2000)). Whether a publication is substantially false “depends upon the meaning a reasonable person would attribute to a publication, and not to a technical analysis of each statement.” *Id.* In common usage, “custody” means “the act or right of guarding; especially such a right granted by a court,” and “care, supervision, and control exerted by

one in charge.” <http://www.thefreedictionary.com/custody>. Under any ordinary definition of the word, Zimmerman “lost custody,” were the Court ordered that he have “no possession of or access to” Marina. Ex. 13 at 6.

Moreover, “custody” is a legal term in Texas, and Zimmerman *did* “lose custody” as defined by Texas law. The Family Code defines “legal custody” as “the managing conservatorship of a child.” Tex. Family Code § 152.102(11). Texas law defines a “child custody proceeding” as “a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue,” including “a proceeding for ... neglect, abuse, ... and protection from domestic violence in which the issue may appear.” *Id.* § 152.102(4). It defines a “child custody determination” as “a judgment, decree, or other order of a court providing for legal custody, physical custody, or visitation with respect to a child.” *Id.* § 152.102(3).

The divorce decree named Zimmerman joint managing conservator, so he began with “legal custody,” as Texas law defines it. Under Texas law, the petition to modify initiated “a child custody proceeding;” the agreed order rendered a “child custody determination;” and Zimmerman’s removal as joint managing conservator resulted him losing “legal custody.” The article’s statement that Zimmerman “lost custody” is therefore absolutely correct.

The record also confirms that Zimmerman lost custody “over abuse.” All three iterations of the petition to modify alleged that he “has a history or pattern of mental and physical abuse” and sought to deny him access to his daughter for that reason. Exs. 6, 11, 12. Each alleged that it was in Marina’s best interest that Zimmerman be denied any contact with her. *Id.* Zimmerman filed nothing denying the allegations. Ex. 14. And, critically, Zimmerman signed and approved an order as to form *and substance* finding “that the material allegations in the petition to modify are true and that the requested modification is in the best interest of the child.” Ex. 13 at 2, 10. The “material

allegations” were, of course, his “history of physical and emotional abuse” of Marina. So, not only do the judicial records reflect a Court finding of abuse, they reflect Zimmerman’s express *approval* of that finding.

Zimmerman’s claim that “no abuse was testified to in court” is likewise false. The petition to modify was supported by Fox’s sworn affidavit recounting the abuse he witnessed, plus verified medical records documenting Marina’s outcry and Dr. Neitsch’s decision to report the abuse to Child Protective Services. If Zimmerman is claiming there was no *live* testimony of abuse, this is a distinction without a difference. Fox’s sworn affidavit was “testimony,” and Zimmerman’s agreement to the temporary order obviated the need for live testimony. In any case, *The Austin Bulldog* article nowhere states that “abuse was testified to in court.” The article clearly identifies Dr. Neitsch’s medical records and Fox’s affidavit as the sources for the descriptions of each incident of abuse. Ex. 2.

ii. “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.”

Zimmerman’s second complaint about the article is that

No court order of any kind ever states that Zimmerman injured or alienated his daughter. Mr. Zimmerman never alienated his daughter. Ex. 1 ¶¶ 12, 16, 25.3.

This complaint is based on a misrepresentation of *The Austin Bulldog* article. The article says “court *records* state,” not a “court *order* states.” Ex. 2. The article clearly identified what “court records” it was referring to: Fox’s affidavit and the medical records that recount Marina’s injuries at the hands of her father. *Id.*

Moreover, as noted above, the final court order *does* reflect a finding, approved by Zimmerman himself, that Zimmerman had “a history of mental and physical abuse” of his daughter, and that denying him access was in her best interest. Ex. 13. Therefore, even if the article *had*

reported that a “court order” states that Zimmerman injured or alienated his daughter,” it would have been accurate.

Likewise, Zimmerman’s own filings (and lack thereof) confirm that he was “alienated” from his daughter. He filed nothing disputing the evidence of abuse. Ex. 14. He agreed that a temporary injunction denying him any access to or communication with his daughter was in her best interest. Ex. 9. He left that injunction in place for over three years, making no effort to regain custody or even the right to talk to his daughter. Ex. 14. He filed a motion admitting that his relationship with his daughter is “fairly non-existent” and that he has “no interaction” with her. Ex. 10. His motion sought nothing but entry of a final order and removal of the injunction – no custody, access or other parental rights whatsoever. *Id.* To “alienate” means “to make indifferent or hostile,” or “to turn away.” <http://dictionary.reference.com/browse/alienate>. Under any reasonable meaning of the word, the court record – particularly the absence of any effort by Zimmerman to regain any legal access to his daughter – qualifies as “alienation.” Again, the article was accurate.

iii. Don Zimmerman had “permanent loss of parental rights through civil court action.”

Zimmerman next quibbles with *The Austin Bulldog* on legal terminology:

Mr. Zimmerman did not “permanent[ly] lose parental rights. Mr. Zimmerman is still a conservator of his daughter. Permanent loss of parental rights prevents any parenting whatsoever. No court record found that Zimmerman’s “aggression in disciplining his daughter” resulted in “permanent loss of parental rights.” Ex. 1 ¶¶ 13, 17, 25.4.

This complaint is not just inaccurate, it is disingenuous. The court records, in fact, show that *Zimmerman himself* asked that a *temporary* order denying him fundamental parental rights be made into a *final order* that, likewise, denied him custody and any access to his daughter.

As noted, after the allegations of abuse were made, Zimmerman agreed to a temporary order denying him any right to access or communicate with Marina. Ex. 9. Zimmerman left that

“temporary” order in place for over three years without challenge. Then – during the year he decided to run for City Council – Zimmerman’s new lawyer and campaign treasurer sought “a final order to resolve the current temporary orders.” Ex. 10; Ex. 4. Then, without a fight, Zimmerman signed a final order denying him “possession of or access to” his daughter. Ex. 13 at 6.

Zimmerman is apparently arguing that the article’s language, “permanent loss of parental rights,” implies formal “termination of the parent-child relationship” under Chapter 161 of the Texas Family Code. But the article did not use the word “termination,” nor did it say that Zimmerman lost “all” parental rights. It said he lost “parental rights.” Ex. 2. Zimmerman certainly lost the most fundamental parental rights – custody and access. It is unclear what meaningful “parental rights” Zimmerman claims he retains, but he admits his relationship with his daughter is “fairly non-existent,” Ex. 10, and not much parenting can be done without custody or access.

To the extent that Zimmerman is alleging that the article libeled him by reporting that his loss of custody was due to “aggression in disciplining his daughter,” the court records show that this phrase was generous to Zimmerman. The medical records and the Fox affidavit do not describe an effort to discipline; a more accurate description is parental bullying or, as Dr. Neitsch categorized it, child abuse. The court order found that Zimmerman had “a history of mental and physical abuse,” not “aggressive discipline.” And – again being generous to Zimmerman – the article did not even report arguably the most disturbing fact: Marina’s documented report that Zimmerman believed “she had demons that needed to be expelled,” and Dr. Neitsch’s observation that “the whole demonic possession thing is really scary.” Ex. 7 at 2; Ex. 8 at 4.

iv. Doctor reports state that Mr. Zimmerman “on separate occasions” “inflicted bruises, pulled Marina’s hair, pushed her, and ‘threatened to kill her.’”

Zimmerman’s final complaint is that *The Austin Bulldog* reported “hearsay:”

At no point does the email/article express that these statements are not the doctor's conclusions but are pure allegations, and they are hearsay transcribed by the doctor. Statements regarding the doctor's reports in the article never state that the statements of alleged abuse by the doctor are repeated hearsay. The article never makes the distinction that these are all reported by the daughter but never confirmed by any external investigation, and that the doctor's opinion is based solely on the child's allegations. Petition ¶¶ 14, 18, 19, 25.1.

At no point was there any finding that Zimmerman threatened to kill his daughter in the court order or opinion. ¶ 25.5.

News reporting is not governed by the Texas Rules of Evidence, but in any case this claim is baseless. *The Austin Bulldog* article made clear that Dr. Neitsch's conclusions was based on her examinations of Marina. The article discusses the medical records under three sections identified as "Doctor's first examination," "Doctor's second examination," and "Doctor's third examination." Ex. 2. Moreover, the article included by hyperlink the complete medical records themselves, allowing any reader to see the primary sources underlying the article. Ex. 18 ¶ 4. No reasonably intelligent reader could conclude from the article that Dr. Neitsch saw the actual abuse. *See New Times, Inc.*, 146 S.W.3d at 157 ("[T]he hypothetical reasonable person ... does not represent the lowest common denominator, but reasonable intelligence and learning.).

Zimmerman's claim that "the doctor's opinion is based solely on the child's allegations" is also false. Dr. Neitsch performed physical examinations of Marina, saw the bruises on her arm and back, and saw her limping. Ex. 7 at 2, 4, 5. Dr. Neitsch also had the benefit of Bochenkova and Fox having overheard Zimmerman's verbal abuse during a phone call from Marina. Ex. 8 at 2-4.

Dr. Neitsch's records confirm that she believed Marina was in danger. She recorded that Marina faced "a life-threatening situation." Ex. 7 at 5. She planned to contact CPS. *Id.*² She recommended that Marina's mother "pursue full legal custody as soon as possible." *Id.* She warned

² Texas law requires a doctor who believes that a child has been abused to report to government authorities within 48 hours her "belief that a child has been or may be abused or neglected" Tex. Family Code. §§ 261.101(a); 261.102.

that “this was the most common cause of homicide in Texas and in our area” and “needs to be taken seriously.” *Id.* And, perhaps most tellingly, she used ICD code E967.0, the diagnostic code for “perpetrator of child and adult abuse by a father, stepfather or boyfriend.”³ *Id.*

Zimmerman’s final complaint, that there was no “finding” “in the court order or opinion” that he threatened to kill his daughter, is a straw-man argument. Ex. 2. The article does not state that there was any such “finding.” It accurately attributes the source as Dr. Neitsch’s medical records: “*The reports state that ... Zimmerman ... ‘threatened to kill her.’*” *Id.* While there may not have been a court finding, a medical doctor clearly recorded her fear that Marina faced a “life threatening” physical threat from her father, including “homicide.” Ex. 7 at 5.

IV. Conclusion and Prayer.

This lawsuit is based on the Defendants’ exercise of their right to free speech and to petition, as defined in the Texas Citizen Participation Act. The Plaintiff cannot prove that *The Austin Bulldog* article is substantially false. The article is, in fact, a substantially true report of Zimmerman’s divorce and custody proceedings, and thus it is privileged from suit.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that this Court, after hearing, grant this Motion to Dismiss, enter a final judgment dismissing the Plaintiff’s claims with prejudice, and, pursuant to Tex. Civ. Prac. & Rem. Code § 27.009(a), award Defendants court costs, reasonable attorney’s fees and other expenses incurred in defending this lawsuit, additional sanctions sufficient to deter the Plaintiff from bringing similar actions in the future, and such other and further relief to which the Defendants may be justly entitled.

³ <http://www.findacode.com/icd-9/e967-0-child-adult-abuse-male-partner-childs-icd-9-code.html>.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5764
(512) 536-9910 (Fax)

By: /s/ Peter D. Kennedy
Peter D. Kennedy
State Bar No. 11296650
pkennedy@gdhm.com

**ATTORNEYS FOR DEFENDANTS
AUSTIN INVESTIGATIVE REPORTING PROJECT,
d/b/a THE AUSTIN BULLDOG, and
KEN MARTIN**

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2014, a true and correct copy of the foregoing was served as shown below:

Stephen Casey
CASEY LAW OFFICE, P.C.
595 Round Rock West Drive, Suite 102
Round Rock, Texas 78681
(via First Class Mail)
(via email: stephen.casey.law@gmail.com)

/s/ Peter D. Kennedy
Peter D. Kennedy

**EXHIBITS IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS PURSUANT TO
CHAPTER 27, TEX. CIV. PRAC. & REM. CODE**

1. Original Petition.
2. *The Austin Bulldog* article.
3. *The Austin Bulldog* email.
4. Excerpt from Austinites for Zimmerman website.
5. Final Decree of Divorce, *In the Matter of the Marriage of Kateryna Zimmerman and Donald Shelley Zimmerman and in the Interest of Marina Zimmerman, a Child*, No. FM5-00710, 201st Judicial District, Travis County, Texas.
6. Petition to Modify Parent-Child Relationship, *In the Interest of M.Z., a Child*, No. D-1-FM-05-000710, 201st Judicial District, Travis County, Texas.
7. Affidavit for Business Records (Dr. Deborah Neitsch, M.D.), *In the Interest of M.Z.*
8. Petitioner's Supporting Affidavit (Eric Fox), *In the Interest of M.Z.*
9. Agreed Temporary Injunction, *In the Interest of M.Z.*
10. Respondent's Motion to Enter Final Order re: Temporary Orders of Feb. 16, 2011, *In the Interest of M.Z.*
11. First Amended Petition to Modify Parent-Child Relationship and to Confirm Medical Support Arrearage, *In the Interest of M.Z.*
12. Second Amended Petition to Modify Parent-Child Relationship and to Confirm Medical Support Arrearage, *In the Interest of M.Z.*
13. Agreed Order in Suit to Modify Parent-Child Relationship, *In the Interest of M.Z.*
14. Docket Sheet, *In the Interest of M.Z.*
15. Letter from Zimmerman counsel/campaign treasurer demanding retraction.
16. Letter from counsel for *The Austin Bulldog* responding to retraction demand.
17. Letter from counsel for *The Austin Bulldog* prior to filing Chapter 27 motion.
18. Affidavit of Ken Martin.

10/15/2014 9:21:03 AM

Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-14-004290

No. D-1-GN-14-004290

Don Zimmerman,
Plaintiff,

vs.

**Austin Investigative Reporting Project
d/b/a The Austin Bulldog, and Ken
Martin;**
Defendants.

In the 53rd District Court
Travis County, Texas

Plaintiff's Original Petition

To the Honorable Judge of Said Court:

Now Comes Donald Zimmerman ("Zimmerman"), complaining of and about the Austin Investigative Reporting Project d/b/a The Austin Bulldog ("AIRP"), and Ken Martin ("Martin") (collectively, "Defendants"). Plaintiffs cause of action sounds in defamation, libel, and/or slander, and Plaintiff would show the following:

Discovery Control Plan Level

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery in this case under Level 3.

Parties and Service

2. Plaintiff Don Zimmerman is a resident of Travis County, Texas.
3. Defendant AIRP is a non-profit corporation whose registered agent is Ken Martin, a co-defendant, and has an address for service of process at 509 E. 8th Street, Austin, Texas 78705.
4. Defendant Ken Martin is a person residing in Travis County and can be served at 509 E. 8th Street, Austin, Texas 78705, the AIRP place of service.

Jurisdiction and Venue

5. The subject matter in controversy is within the jurisdictional limits of this Court. Venue is mandatory in Travis County under Texas Civil Practices and Remedies Code Section 15.017 because this suit involves libel and this is the county where Plaintiff resided when this claim accrued and Plaintiff so elects to prosecute this claim in Travis County.

Facts

6. Zimmerman is a resident of Travis County.
7. Zimmerman is a candidate for the Austin City Counsel, District 6, in the 2014 election cycle.
8. AIRP is a local weblog ("blog") using an assumed business name of "The Austin Bulldog." While the website "About" lists many "potential" authors, the primary author/editor contributing to the site is Ken Martin.
9. On October 9, 2014, at approximately 3:10 pm, Ken Martin published an article on his blog titled "Candidate Lost Custody Over Abuse." A true and correct copy of the article is attached as Exhibit 1. An email teaser of the article came out on October 9, 2014, at approximately 4:42 pm. It bore the same title. A true and correct copy of the email teaser is attached as Exhibit 2.
10. Within both the email and the article are several defamatory, false statements. In addition, the email and article themselves, as a whole, convey a defamatory message.

Email Defamatory Statements

11. The email title "Candidate Lost Custody Over Abuse" is a false statement. Mr. Zimmerman did not "lose custody." Texas is a state that utilizes the conservatorship model, and not the custody model. No abuse was ever testified to in court.
12. The email subtitle reads that that "District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state." This is a false statement. No court order or opinion of any kind ever states that Zimmerman alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman never alienated his daughter.
13. The email states that Mr. Zimmerman had "permanent loss of parental rights through civil court action." This is a false statement. Mr. Zimmerman did not "permanent[ly]" lose parental rights. This was repeated in the sidebar column to the email as well. Mr. Zimmerman is still a possessory conservator of his daughter. Permanent loss of parental rights prevents any parenting whatsoever.
14. The email states that the doctor reports literally state that Mr. Zimmerman "on separate occasions" "inflicted bruises, pulled Marina's hair, pushed her, and 'threatened to kill

her.” This is a false statement. At no point does the email express that these statements are not the doctor’s conclusions but are pure allegations, and that they are hearsay transcribed by the doctor.

Blog Defamatory Statements

15. The blog title “Candidate Lost Custody Over Abuse” is a false statement. Mr. Zimmerman did not “lose custody.” Texas is a state that utilizes the conservatorship model, and not the custody model. No abuse was ever testified to in court.
16. The blog subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. No court order or opinion of any kind ever states that Zimmerman alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman never alienated his daughter
17. The blog states that Mr. Zimmerman had “permanent loss of parental rights through civil court action.” This is a false statement. Mr. Zimmerman did not “permanent[ly]” lose parental rights. This is repeated in the sidebar column as well. Mr. Zimmerman is still a conservator of his daughter. Permanent loss of parental rights prevents any parenting whatsoever. .
18. The blog states that the doctor reports literally state that Mr. Zimmerman “on separate occasions” “inflicted bruises, pulled Marina’s hair, pushed her, and ‘threatened to kill her.” This is a false statement. At no point does the email express that these statements are not the doctor’s conclusions but are pure allegations, and that they are hearsay transcribed by the doctor.
19. The three statements regarding the doctor’s reports in the blog never state that the statements of alleged abuse by the doctor are repeated hearsay. It never makes the distinction that these are all reported by the daughter but never confirmed by any external investigation, and that the doctor’s opinion is based solely on the child’s allegations.
20. This has caused Plaintiff damages.

A. CLAIMS

Statutory and Common Law Defamation

21. Defendants published a statement on the email and blog asserting as fact that Plaintiff had permanently lost parental rights.
22. Defendant's statement referred to Plaintiffs by name.
23. Defendants' statements injured Plaintiff's reputations and thereby exposed him to public hatred, contempt or ridicule, or financial injury and impeached his honesty, integrity, virtue, and reputation and exposed Plaintiff to public hatred, ridicule, and financial injury.
24. Defendants' email and website statements were defamatory under the common law. Defendants' statements:
25. Defendants' statement was false because:
 - 25.1. It juxtaposed hearsay facts from a doctor's report with the phrase "states" that Zimmerman "inflicted bruises, pulled Marina's hair, pushed her, and 'threatened to kill her,'" all without making it clear that the allegations were hearsay and that the doctor was merely transcribing an allegation and not making a conclusion that Zimmerman made any abuse.
 - 25.2. It stated that Zimmerman lost custody. That is not a legal term used in Texas. Zimmerman still is a possessory conservator.
 - 25.3. It claimed that Zimmerman injured his daughter and alienated his daughter but no court record found that he injured or alienated his daughter.
 - 25.4. No court record found that Zimmerman's "aggression in disciplining his daughter" resulted in "permanent loss of parental rights."
 - 25.5. At no point was there any finding that Zimmerman threatened to kill his daughter in the court order or opinion. This is both defamation *per se* and *per quod*.

Exemplary Damages

26. Plaintiff's injury resulted from Defendants' malice, knowledge of the statement's falsity and/or reckless disregard for the truth, which entitled Plaintiffs to exemplary damages under Texas Civil Practices & Remedies Code Section 41.003(a)(2).

Conditions Precedent

27. In accordance with the Texas Civil Practices and Remedies Code Section 73.055, a defamation retraction letter was sent to the opposing party. Any conditions precedent have occurred.

Jury demand

28. A jury demand has been made and Plaintiffs has tendered the jury fee.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that the Court issue citation for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants for the following:

- 28.1. Actual damages.
- 28.2. Exemplary damages.
- 28.3. Prejudgment and postjudgment interest.
- 28.4. Court costs.
- 28.5. Any other relief to which Plaintiffs are entitled in law or equity.

Respectfully submitted,

CASEY LAW OFFICE, P.C.

/s/ Stephen Casey
Stephen Casey
Texas Bar No. 24065015

600 Round Rock West Drive, Suite 602
Round Rock, Texas 78681
Telephone: 512-257-1324
Fax: 512-853-4098

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' Original Petition was served upon Defendants by the manner and method indicated below on this day, June 11, 2014.

Via private process server

/s/ Stephen Casey
Stephen Casey; Counsel for Plaintiff

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Candidate Lost Custody Over Abuse

District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state

Investigative Report by Ken Martin

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Posted Thursday October 9, 2014 3:10pm



Don Zimmerman

District 6 candidate Donald Shelly "Don" Zimmerman, founder of the Travis County Taxpayers Union, is an aggressive leader who as president of a municipal utility district brought two lawsuits, one of which resulted in winning a case before the U.S. Supreme Court.

But aggression in disciplining his daughter, Marina Zimmerman, resulted in documented physical and emotional damage and permanent loss of parental rights through civil court action.

Files from a Travis County District Court case include three reports from Deborah Weitsch, MD, from early 2011. The reports state that on separate occasions

Zimmerman inflicted bruises, pulled Marina's hair, pushed her, and "threatened to kill her." The records indicate the doctor would contact Child Protective Services (CPS). Such reporting is required within 48 hours by Texas Family Code Section 261.101, which states, "A professional may not delegate to or rely on another person to make this report."

"I got a call from CPS and consulted a couple of attorney friends and was told when lies are made you should demand proof of the allegations and if don't get proof you should not cooperate," Zimmerman told *The Austin Bulldog* in a Tuesday telephone interview.

Three documented incidents

The first incident occurred just three days after Marina's twelfth birthday, then twice more, all within a three-week period in January and February 2011, according to the medical records. She weighed 84 pounds at the time. Each incident occurred during evening or weekend visits when Zimmerman had sole possession as authorized in the divorce decree.

Asked if he did those things to his daughter, Zimmerman replied, "Those are unequivocal lies. They are outright fabrications and absolute lies."

Doctor's first examination—January 24, 2011, the physician's record indicates a "very minor bruise" was found on Marina's right forearm. "There are concerns that her father is being physically and emotionally abusive to her when she is visiting him." The record further states, "We will contact the CPS caseworker that is in charge of her case. No serious injury seems to have occurred but I worry about the psychological toll on her."

Doctor's second examination—January 28, 2011, the doctor found that Marina had a bruise on her left shoulder blade and a stiff neck. "He wanted to take her phone away and she walked away and he grabbed her shoulder and spun her around and pushed her backwards...He pushed her from behind and now she has a bruise on her left scapula (shoulder blade). Her neck is stiff after he pushed her...."

"[C]ontinued concern of her dad being physically forceful with her," the record states. "[W]ill keep document for CPS case worker."

Doctor's third examination—February 11, 2011, the record states, "Her dad was harsh with her yesterday and pushed her against the microwave and now she has right hip pain and right shoulder pain. ... Her dad has been yelling at her and threatened to hit her but didn't. He has threatened to kill her and she has fears of (him) shooting her...Her parents are worried that she needs therapy but her dad refuses."

Zimmerman's threat to hit Marina was overheard by her mother and stepfather in a phone call that she made to her mother during that confrontation, according to a sworn affidavit filed by her stepfather, Eric "Ani" Fox.

The February 11, 2011, doctor's record also states, "Concerns of abuse with hip and shoulder strain. Recommended if CPS does not intervene this could lead to a life threatening situation. I recommend they pursue (sic) legal full custody as soon as possible. We will contact CPS about the situation."

For prevention the doctor stated, "Counseling: Domestic violence, warned this was the most common cause of homicide in Texas and in our area and needs to be taken seriously. [T]he situation seems to be escalating quickly due to CPS investigation."

Zimmerman's responses

When questioned in the Tuesday interview about the alleged threat to kill his daughter, Zimmerman replied, "That's an outright lie. None of this has ever been shown to me."

When reminded that the cited medical reports are in the files for his divorce case, Zimmerman replied, "These allegations are news to me. I've never seen them before. These are offensive lies and I've never seen them before. I'm not afraid because these are lies."

Zimmerman said he has a license to carry a concealed handgun and he has guns and ammunition in the house.

"(Bochenkova) demanded I move all guns and ammunition out of the house," Zimmerman said. "Why would that demand be made? I can agree to do it or refuse to do it. She's a brilliant manipulator and liar. If I agree to move the guns and ammunition out of the house, then I'm agreeing I'm a violent person who can't be trusted around guns and ammunition. If I do not agree, I'm in denial and won't acknowledge that I'm a violent and dangerous person. The demand is a lie."

"I'm 54 and never in my life have I been violent against anyone. I've never shown violence. I get angry. I'm angry now when someone lies and attacks my character."

Zimmerman met Kateryna "Katya" Bochenkova in Kiev, Ukraine, when he was there teaching English as a second language. She was one of his students. They met again when she was a student at Texas A&M University in College Station. They were married in Brazos County December 6, 1997, when he was 38 and she was 20.

Marina was born in January 1999.

A Final Decree of Divorce was approved May 27, 2005. The marriage was "dissolved on the ground of insupportability," which is defined in Family Code Section 6.001 as "without regard to fault."

Mother followed doctor's advice

The doctor recommended pursuing full legal custody and Bochenkova quickly did so. On February 16, 2011, she petitioned for a Temporary Restraining Order. Included in the petition was a request for the court to order Zimmerman to attend parenting classes and anger-management classes.



Katya
Bochenkova

Bochenkova told *The Austin Bulldog* she wanted Zimmerman to take those classes so that he "could modify the behavior that brought us into that conflict situation in the first place."

Asked if he took those classes, Zimmerman replied, "I did not."

In response to Bochenkova's petition, the court issued an Agreed Temporary Injunction to bar Zimmerman from contacting or communicating with his daughter or taking possession of her, rights that had been established by the divorce decree.

Asked to comment on the injunction, Zimmerman said, "The crux of it is that with people willing to lie under oath I'm not going to see my daughter any more. If I persist what would have come next would be false allegations of sexual abuse," Zimmerman said.

"I've seen this bad movie before," he added. "I won't see my daughter anymore. I won't let you play this game."

There has been no communication between Zimmerman and his daughter in more than three years, both he and Bochenkova said.

Dormant case revived, concluded

On March 10, 2014 Zimmerman's new attorney, Round Rock-based Stephen Casey of the Casey Law Office PC, filed a motion to enter a final order in the case, stating that Zimmerman's "relationship with the minor child has become fairly non-existent. ... Respondent remains willing and able to communicate but until it is initiated by the minor child there is no interaction."

Bochenkova told *The Austin Bulldog* that Marina has not seen her father in more than three years and does not want to.

The girl's mother responded to Casey's motion by filing petitions of her own in April and June of this year.

In a final agreed order filed June 16, the court ordered that Zimmerman "shall have no possession of or access to the child."

As part of that order, the court found that Zimmerman owed nearly \$15,000 in arrearage for the child's medical support expenses, and that "Bochenkova has agreed to waive all past medical support."

"We wanted Don out of our life and that was the easiest way to achieve that," Bochenkova told *The Austin Bulldog*. "It was the easiest way to close the deal, and we gave up that money in exchange for the freedom of our daughter."

The court action in June also removed the requirement for Marina to live in Austin. She recently moved to Bound Brook, New Jersey, with her mother and stepfather.

On the "About Don Zimmerman" page on his campaign website, Zimmerman states, "I have one remarkable daughter, Marina Lorna Zimmerman."

But the girl long ago quit using her father's name. In 2012 and 2013 she won medals in fencing competition and performed classical piano music as Marina Bochenkova, her mother's maiden name.

"She says she will take my name legally when she is 18," Bochenkova said.

Links:

Final Decree of Divorce In the Matter of the Marriage of Kateryna and Donald Shelly Zimmerman (24 pages, with redactions)

District Court 201st Judicial District, Travis County, Texas, No. D-1-05-000710 (52 pages, with redactions). The doctor's records are on pages 12-16)

Don Zimmerman campaign website

Travis County Taxpayers Union

From: "Ken Martin: The Austin Bulldog" <ken@theaustinbulldog.org>
Date: October 9, 2014, 4:42:09 PM CDT
To:
Subject: Candidate lost custody over abuse
Reply-To: ken@theaustinbulldog.org



Bulletproof Investigative Reporting

The Austin Bulldog News Alert

Due diligence reporting needed to inform voters

Don Zimmerman, District 6 candidate for city council, in response to our investigation of the abuse of his daughter, claims he has not seen the records of doctor examinations upon which the child abuse is based. But these records are readily available in the Travis County District Clerk's office as part of his divorce case. That's where we purchased them.

The divorce case that began in 2005 heated up in early 2011 with three

Candidate Lost Custody Over Abuse

District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state



Don Zimmerman

District 6 candidate Donald Shelly "Don" Zimmerman, founder of the Travis County Taxpayers Union, is an aggressive leader who as president of a municipal utility district brought two lawsuits, one of which resulted in winning a case before the U.S. Supreme Court.

But aggression in disciplining his daughter, Marina Zimmerman, resulted in documented physical and emotional damage and permanent loss of parental rights through civil court action.

Files from a Travis County District Court case include three reports from Deborah Neitsch, MD, from early 2011. The reports

incidents, and resulted in an Agreed Temporary Injunction that barred him from contacting, communicating with, or taking possession of the girl. The case was concluded just four months ago and resulted in making permanent Zimmerman's loss of rights.

The Austin Bulldog operates as a 501(c)(3) nonprofit, so your donation is tax-deductible. [Donate now.](#)

Thank you! -- Ken Martin

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state that on separate occasions Zimmerman inflicted bruises, pulled Marina's hair, pushed her, and "threatened to kill her." The doctor contacted Child Protective Services as required by state law.

"I got a call from CPS and consulted a couple of attorney friends and was told when lies are made you should demand proof of the allegations and if don't get proof you should not cooperate," Zimmerman told *The Austin Bulldog* in a Tuesday telephone interview.

When questioned about the alleged threat to kill his daughter, Zimmerman said, "That's an outright lie. None of this has ever been shown to me," despite the fact these records are part of the files for his divorce records.

To read the story and access a 24-page file about Zimmerman's divorce and a 52-page PDF containing court and doctor's records, [click here.](#)

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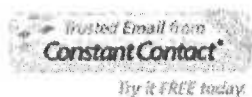
If you've got ideas, suggestions, feedback, constructive criticism, story ideas, or just want to tell us what you think, please e-mail me at ken@theaustinelldog.org or call me at 512-474-1022.

--Ken Martin, editor

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About Don Zimmerman

I am a 5th generation Texan, born and raised in San Antonio, the Alamo City and cradle of Texas liberty. My great-great-great maternal grandfather was land grant pioneer and Texas Ranger Capt. John Grumbles. He was killed in San Saba in the line of duty, and has a memorial at the Texas State Cemetery (top right). My mother was the daughter of two life-long high school teachers, and a graduate of the University of Texas with a degree in music education. My father was the youngest son of Presbyterian missionaries and rural mountain farmers, and graduated from North Carolina State. After college, Dad served his country as an air force pilot during the Korean War era. My wife Jennifer Winter Zimmerman holds B.S. and M.S. degrees in education and has worked over a decade as a high school Spanish teacher; she has also been working part time for Alaska Airlines. I have one remarkable teenage daughter, Marina Lorna Zimmerman.

I graduated from a southeast San Antonio urban high school and continued my education at Texas A&M, earning a B.S. and M.S. in mechanical engineering. At the tender age of four, my parents started me on a path to defending the Constitutional rule of law and grassroots electoral campaigning, with the Barry Goldwater campaign (1964). In the 1970s, I discovered the principled Congressman from Texas, Dr. Ron Paul, and have been inspired by him ever since to engage the political system with courage and integrity.



This campaign has not agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter

Exhibit 4 - Page 2 of 2

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Exhibit 4 - Page 2 of 2

MAY 27 2005

NO. FM5-00710

IN THE MATTER OF
THE MARRIAGE OF
KATERYNA ZIMMERMAN
AND
DONALD SHELLEY ZIMMERMAN
AND IN THE INTEREST OF
MARINA ZIMMERMAN, A CHILD

§ IN THE DISTRICT COURT
§
§
§ 201st JUDICIAL DISTRICT
§
§
§ TRAVIS COUNTY, TEXAS

FINAL DECREE OF DIVORCE

On the date noted below the Court heard this case.

Appearances

Petitioner, Kateryna Zimmerman, appeared in person and through attorney of record, Lisa DeLong, and announced ready for trial.

Respondent, Donald Shelly Zimmerman, appeared in person and through attorney of record, Brian Walters, and announced ready for trial.

Record

The making of a record of testimony was waived by the parties with the consent of the Court.

Jurisdiction and Domicile

The Court finds that the pleadings of Petitioner are in due form and contain all the allegations, information, and prerequisites required by law. The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed. The Court finds that, at the time this suit was filed, Petitioner had been a domiciliary of Texas for the preceding six-month period and a resident of the county in which this suit was filed for the preceding ninety-day period. All persons entitled to citation were properly cited.

Jury

A jury was waived, and questions of fact and of law were submitted to the Court.

Agreement of Parties

The Court finds that the parties have entered into a written agreement as contained in this decree by virtue of having approved this decree as to both form and substance. To the extent permitted by law, the parties stipulate the agreement is enforceable as a contract. The Court approves the agreement of the parties as contained in this Final Decree of Divorce.

Divorce

IT IS ORDERED AND DECREED that Kateryna Zimmerman, Petitioner, and Donald Shelly Zimmerman, Respondent, are divorced and that the marriage between them is dissolved on the ground of insupportability.

Child of the Marriage

The Court finds that Petitioner and Respondent are the parents of the following child:

Name: Marina Zimmerman

Sex: Female



Birth date: January 21, 1999

Home state: Texas

The Court finds no other children of the marriage are expected.

Conservatorship

The Court, having considered the circumstances of the parents and of the child, finds that the following orders are in the best interest of the child.

IT IS ORDERED that Kateryna Zimmerman and Donald Shelly Zimmerman are appointed Joint Managing Conservators of the following child: Marina Zimmerman.

IT IS ORDERED that, at all times, Kateryna Zimmerman and Donald Shelly Zimmerman, as parent joint managing conservators, shall each have the following rights:

1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
3. the right of access to medical, dental, psychological, and educational records of the child;
4. the right to consult with a physician, dentist, or psychologist of the child;
5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;
6. the right to attend school activities;
7. the right to be designated on the child's records as a person to be notified in case of an emergency;
8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
9. the right to manage the estate of the child to the extent the estate has been created by the parent or the parent's family.

IT IS ORDERED that, at all times, Kateryna Zimmerman and Donald Shelly Zimmerman, as parent joint managing conservators, shall each have the following duties:

1. the duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child; and
2. the duty to inform the other conservator of the child if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the conservator of the child begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE PERSON FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, during their respective periods of possession, Kateryna Zimmerman and Donald Zimmerman, as parent joint managing conservators, shall each have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the child;
2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;



3. the right to consent for the child to medical and dental care not involving an invasive procedure; and
4. the right to direct the moral and religious training of the child.

IT IS ORDERED that Kateryna Zimmerman, as a parent joint managing conservator, shall have the following rights and duty:

1. the exclusive right to designate the primary residence of the child within ten miles of Canyon Creek Elementary School, Austin, Travis County, Texas;
2. the right, subject to the agreement of the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the child;
3. the exclusive right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
4. the right, subject to the agreement of the other parent conservator, to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
5. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;
6. the right, subject to the agreement of the other parent conservator, to make decisions concerning the child's education (except that the child shall attend Canyon Creek Elementary School at least through May 2007);
7. except as provided by section 264.0111 of the Texas Family Code, the right, subject to the agreement of the other parent conservator, to the services and earnings of the child;
8. except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right, subject to the agreement of the other parent conservator, to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and
9. the duty, subject to the agreement of the other parent conservator, to manage the estate of the child to the extent the estate has been created by community property or the joint property of the parents.

IT IS ORDERED that Donald Shelly Zimmerman, as a parent joint managing conservator, shall have the following rights and duty:

1. the right, subject to the agreement of the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the child;
2. the right, subject to the agreement of the other parent conservator, to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
3. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;
4. the right, subject to the agreement of the other parent conservator, to make decisions concerning the child's education (except that the child shall attend Canyon Creek Elementary School at least through May 2007);
5. except as provided by section 264.0111 of the Texas Family Code, the right, subject to the agreement of the other parent conservator, to the services and earnings of the child;
6. except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right, subject to the agreement of the other parent conservator, to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and



7. the duty, subject to the agreement of the other parent conservator, to manage the estate of the child to the extent the estate has been created by community property or the joint property of the parents.

The Court finds that, in accordance with section 153.001 of the Texas Family Code, it is the public policy of Texas to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child, to provide a safe, stable, and nonviolent environment for the child, and to encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage. IT IS ORDERED that the primary residence of the child shall be within ten miles of Canyon Creek Elementary School, Austin, Travis County, Texas, and the parties shall not remove the child from within ten miles of Canyon Creek Elementary School, Austin, Travis County, Texas for the purpose of changing the primary residence of the child until modified by further order of the court of continuing jurisdiction or by written agreement signed by the parties and filed with the court. IT IS FURTHER ORDERED that Kateryna Zimmerman shall have the exclusive right to designate the child's primary residence within ten miles of Canyon Creek Elementary School, Austin, Travis County, Texas. IT IS ORDERED that this geographical restriction on the residence of the child shall be lifted if, at the time Kateryna Zimmerman wishes to remove the child from within ten miles of Canyon Creek Elementary School, Austin, Travis County, Texas for the purpose of changing the primary residence of the child, Donald Shelly Zimmerman does not reside within ten miles of Canyon Creek Elementary School, Austin, Travis County, Texas.

IT IS ORDERED that either party is authorized to apply for a passport for the child, Marina Zimmerman.

Possession and Access

1. Extended Standard Possession Order

The Court finds that the following provisions of this Extended Standard Possession Order are intended to and do comply with the requirements of Texas Family Code sections 153.311 through 153.317. IT IS ORDERED that each conservator shall comply with all terms and conditions of this Extended Standard Possession Order. IT IS ORDERED that this Extended Standard Possession Order is effective immediately and applies to all periods of possession occurring on and after the date the Court signs this Extended Standard Possession Order. IT IS, THEREFORE, ORDERED:

(a) Definitions

1. In this Extended Standard Possession Order "school" means the primary or secondary school in which the child is enrolled or, if the child is not enrolled in a primary or secondary school, the public school district in which the child primarily resides.

2. In this Extended Standard Possession Order "child" includes each child, whether one or more, who is a subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

(b) Mutual Agreement or Specified Terms for Possession

IT IS ORDERED that the conservators shall have possession of the child at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the child under the specified terms set out in this Extended Standard Possession Order.

(c) Parents Who Reside 100 Miles or Less Apart



Except as otherwise explicitly provided in this Extended Standard Possession Order, when Donald Shelly Zimmerman resides 100 miles or less from the primary residence of the child, Donald Shelly Zimmerman shall have the right to possession of the child as follows:

1. Weekends - On weekends, beginning at the time the child's school is regularly dismissed, on the first, third, and fifth Friday of each month and ending at the time the child's school resumes after the weekend.

2. Weekend Possession Extended by a Holiday - Except as otherwise explicitly provided in this Standard Possession Order, if a weekend period of possession by Donald Shelly Zimmerman begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend period of possession shall begin at the time the child's school is regularly dismissed on the Thursday immediately preceding the Friday holiday or school holiday or end at 6:00 p.m. on the Monday holiday or at the time school resumes after that school holiday, as applicable.

3. Thursdays - On Thursday of each week during the regular school term, beginning at the time the child's school is regularly dismissed and ending at the time the child's school resumes on Friday.

4. Spring Break in Even-Numbered Years - In even-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the school's spring vacation and ending at the time school resumes after that vacation.

5. Extended Summer Possession by Donald Shelly Zimmerman -

With Written Notice by April 1 - If Donald Shelly Zimmerman gives Kateryna Zimmerman written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Donald Shelly Zimmerman shall have possession of the child for thirty days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, as specified in the written notice. These periods of possession shall begin and end at 6:00 p.m.

Without Written Notice by April 1 - If Donald Shelly Zimmerman does not give Kateryna Zimmerman written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Donald Shelly Zimmerman shall have possession of the child for thirty consecutive days in that year beginning at 6:00 p.m. on July 1 and ending at 6:00 p.m. on July 31.

6. Extra Overnight Each Month - If Donald Zimmerman gives Kateryna Zimmerman at least fourteen days notice, Donald Zimmerman shall have one additional weekday possession period each month, beginning at the time the child's school is dismissed and continuing overnight until the next morning when school resumes.

Notwithstanding the weekend and Thursday periods of possession ORDERED for Donald Shelly Zimmerman, it is explicitly ORDERED that Kateryna Zimmerman shall have a superior right of possession of the child as follows:



1. Spring Break in Odd-Numbered Years - In odd-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the school's spring vacation and ending at the time school resumes after that vacation.

2. Summer Weekend Possession by Kateryna Zimmerman - If Kateryna Zimmerman gives Donald Shelly Zimmerman written notice by April 15 of a year, Kateryna Zimmerman shall have possession of the child on any one weekend beginning at 6:00 p.m. on Friday and ending at 6:00 p.m. on the following Sunday during any one period of the extended summer possession by Donald Shelly Zimmerman in that year, provided that Kateryna Zimmerman picks up the child from Donald Shelly Zimmerman and returns the child to that same place and that the weekend so designated does not interfere with Father's Day Weekend.

3. Extended Summer Possession by Kateryna Zimmerman - If Kateryna Zimmerman gives Donald Shelly Zimmerman written notice by April 15 of a year or gives Donald Shelly Zimmerman fourteen days' written notice on or after April 16 of a year, Kateryna Zimmerman may designate one weekend beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation, during which an otherwise scheduled weekend period of possession by Donald Shelly Zimmerman shall not take place in that year, provided that the weekend so designated does not interfere with Donald Shelly Zimmerman's period or periods of extended summer possession or with Father's Day Weekend.

(d) Parents Who Reside More Than 100 Miles Apart

Except as otherwise explicitly provided in this Standard Possession Order, when Donald Shelly Zimmerman resides more than 100 miles from the residence of the child, Donald Shelly Zimmerman shall have the right to possession of the child as follows:

1. Weekends - Unless Donald Shelly Zimmerman elects the alternative period of weekend possession described in the next paragraph, Donald Shelly Zimmerman shall have the right to possession of the child on weekends, beginning at the time the child's school is regularly dismissed, on the first, third, and fifth Friday of each month and ending at the time the child's school resumes after the weekend. Except as otherwise explicitly provided in this Standard Possession Order, if such a weekend period of possession by Donald Shelly Zimmerman begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend period of possession shall begin at the time the child's school is regularly dismissed on the Thursday immediately preceding the Friday holiday or school holiday or end at 6:00 p.m. on the Monday holiday or at the time school resumes after that school holiday, as applicable.

Alternate Weekend Possession - In lieu of the weekend possession described in the foregoing paragraph, Donald Shelly Zimmerman shall have the right to possession of the child not more than one weekend per month of Donald Shelly Zimmerman's choice beginning at the time the child's school is regularly dismissed on the day school recesses for the weekend and ending at the time the child's school resumes after the weekend. Except as otherwise explicitly provided in this Standard Possession Order, if such a weekend period of possession by Donald Shelly



Zimmerman begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend period of possession shall begin at the time the child's school is regularly dismissed on the Thursday immediately preceding the Friday holiday or school holiday or end at 6:00 p.m. on the Monday holiday or at the time school resumes after that school holiday, as applicable. Donald Shelly Zimmerman may elect an option for this alternative period of weekend possession by giving written notice to Kateryna Zimmerman within ninety days after the parties begin to reside more than 100 miles apart. If Donald Shelly Zimmerman makes this election, Donald Shelly Zimmerman shall give Kateryna Zimmerman fourteen days' written or telephonic notice preceding a designated weekend. The weekends chosen shall not conflict with the provisions regarding Christmas, Thanksgiving, the child's birthday, and Mother's Day Weekend below.

2. Spring Break in All Years - Every year, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the school's spring vacation and ending at the time school resumes after that vacation.

3. Extended Summer Possession by Donald Shelly Zimmerman -

With Written Notice by April 1 - If Donald Shelly Zimmerman gives Kateryna Zimmerman written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Donald Shelly Zimmerman shall have possession of the child for forty-two days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, as specified in the written notice. These periods of possession shall begin and end at 6:00 p.m.

Without Written Notice by April 1 - If Donald Shelly Zimmerman does not give Kateryna Zimmerman written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Donald Shelly Zimmerman shall have possession of the child for forty-two consecutive days beginning at 6:00 p.m. on June 15 and ending at 6:00 p.m. on July 27 of that year.

Notwithstanding the weekend periods of possession ORDERED for Donald Shelly Zimmerman, it is explicitly ORDERED that Kateryna Zimmerman shall have a superior right of possession of the child as follows:

1. Summer Weekend Possession by Kateryna Zimmerman - If Kateryna Zimmerman gives Donald Shelly Zimmerman written notice by April 15 of a year, Kateryna Zimmerman shall have possession of the child on any one weekend beginning at 6:00 p.m. on Friday and ending at 6:00 p.m. on the following Sunday during any one period of possession by Donald Shelly Zimmerman during Donald Shelly Zimmerman's extended summer possession in that year, provided that if a period of possession by Donald Shelly Zimmerman in that year exceeds thirty days, Kateryna Zimmerman may have possession of the child under the terms of this provision on any two nonconsecutive weekends during that period and provided that Kateryna Zimmerman picks up the child from Donald Shelly Zimmerman and returns the child to that same place and that the weekend so designated does not interfere with Father's Day Weekend.

2. Extended Summer Possession by Kateryna Zimmerman - If Kateryna Zimmerman gives Donald Shelly Zimmerman written notice by April 15 of a year,



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Kateryna Zimmerman may designate twenty-one days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, during which Donald Shelly Zimmerman shall not have possession of the child, provided that the period or periods so designated do not interfere with Donald Shelly Zimmerman's period or periods of extended summer possession or with Father's Day Weekend.

(e) Holidays Unaffected by Distance

Notwithstanding the weekend and Thursday periods of possession of Donald Shelly Zimmerman, Kateryna Zimmerman and Donald Shelly Zimmerman shall have the right to possession of the child as follows:

1. Christmas Holidays in Even-Numbered Years - In even-numbered years, Donald Shelly Zimmerman shall have the right to possession of the child beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26, and Kateryna Zimmerman shall have the right to possession of the child beginning at noon on December 26 and ending at the time school resumes after that Christmas school vacation.

2. Christmas Holidays in Odd-Numbered Years - In odd-numbered years, Kateryna Zimmerman shall have the right to possession of the child beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26, and Donald Shelly Zimmerman shall have the right to possession of the child beginning at noon on December 26 and ending at the time the child's school resumes after that Christmas school vacation.

3. Thanksgiving in Odd-Numbered Years - In odd-numbered years, Donald Shelly Zimmerman shall have the right to possession of the child beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Thanksgiving holiday and ending at the time the child's school resumes after that Thanksgiving holiday.

4. Thanksgiving in Even-Numbered Years - In even-numbered years, Kateryna Zimmerman shall have the right to possession of the child beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Thanksgiving holiday and ending at the time the child's school resumes after that Thanksgiving holiday.

5. Child's Birthday - If a parent is not otherwise entitled under this Standard Possession Order to present possession of the child on the child's birthday, that parent shall have possession of the child beginning at 6:00 p.m. and ending at 8:00 p.m. on that day, provided that that parent picks up the child from the other parent's residence and returns the child to that same place.

6. Father's Day Weekend - Donald Shelly Zimmerman shall have the right to possession of the child each year, beginning at 6:00 p.m. on the Friday preceding Father's Day and ending at 6:00 p.m. on Father's Day, provided that if Donald Shelly Zimmerman is not otherwise entitled under this Standard Possession Order to present possession of the child, he shall pick up the child from Kateryna Zimmerman's residence and return the child to that same place.

7. Mother's Day Weekend - Kateryna Zimmerman shall have the right to possession of the child each year, beginning at 6:00 p.m. on the Friday preceding



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Mother's Day and ending at 6:00 p.m. on Mother's Day, provided that if Kateryna Zimmerman is not otherwise entitled under this Standard Possession Order to present possession of the child, she shall pick up the child from Donald Shelly Zimmerman's residence and return the child to that same place.

(f) Undesignated Periods of Possession

Kateryna Zimmerman shall have the right of possession of the child at all other times not specifically designated in this Standard Possession Order for Donald Shelly Zimmerman.

(g) General Terms and Conditions

Except as otherwise explicitly provided in this Standard Possession Order, the terms and conditions of possession of the child that apply regardless of the distance between the residence of a parent and the child are as follows:

1. Surrender of Child by Kateryna Zimmerman - Kateryna Zimmerman is ORDERED to surrender the child to Donald Shelly Zimmerman at the beginning of each period of Donald Shelly Zimmerman's possession at the residence of Kateryna Zimmerman.

If a period of possession by Donald Shelly Zimmerman begins at the time the child's school is regularly dismissed, Kateryna Zimmerman is ORDERED to surrender the child to Donald Shelly Zimmerman at the beginning of each such period of possession at the school in which the child is enrolled. If the child is not in school, Donald Shelly Zimmerman shall pick up the child at the residence of Kateryna Zimmerman at 3:00 pm, and Kateryna Zimmerman is ORDERED to surrender the child to Donald Shelly Zimmerman at the residence of Kateryna Zimmerman under these circumstances.

2. Surrender of Child by Donald Shelly Zimmerman - Donald Shelly Zimmerman is ORDERED to surrender the child to Kateryna Zimmerman at the residence of Donald Shelly Zimmerman at the end of each period of possession.

If a period of possession by Donald Shelly Zimmerman ends at the time the child's school resumes, Donald Shelly Zimmerman is ORDERED to surrender the child to Kateryna Zimmerman at the end of each such period of possession at the school in which the child is enrolled or, if the child is not in school, at the residence of Kateryna Zimmerman at 7:30 am.

3. Surrender of Child by Donald Shelly Zimmerman - Donald Shelly Zimmerman is ORDERED to surrender the child to Kateryna Zimmerman, if the child is in Donald Shelly Zimmerman's possession or subject to Donald Shelly Zimmerman's control, at the beginning of each period of Kateryna Zimmerman's exclusive periods of possession, at the place designated in this Standard Possession Order.

4. Return of Child by Kateryna Zimmerman - Kateryna Zimmerman is ORDERED to return the child to Donald Shelly Zimmerman, if Donald Shelly Zimmerman is entitled to possession of the child, at the end of each of Kateryna Zimmerman's exclusive periods of possession, at the place designated in this Standard Possession Order.

5. Personal Effects - Each conservator is ORDERED to return with the child the personal effects that the child brought at the beginning of the period of possession.

6. Designation of Competent Adult - Each conservator may designate any competent adult to pick up and return the child, as applicable. IT IS ORDERED



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that a conservator or a designated competent adult be present when the child is picked up or returned.

7. Inability to Exercise Possession - Each conservator is ORDERED to give notice to the person in possession of the child on each occasion that the conservator will be unable to exercise that conservator's right of possession for any specified period.

8. Written Notice - Written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due.

9. Notice to School and Kateryna Zimmerman - If Donald Shelly Zimmerman's time of possession of the child ends at the time school resumes and for any reason the child is not or will not be returned to school, Donald Shelly Zimmerman shall immediately notify the school and Kateryna Zimmerman that the child will not be or has not been returned to school.

This concludes the Extended Standard Possession Order.

2. Duration

The periods of possession ordered above apply to the child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

3. Termination of Orders

The provisions of this decree relating to conservatorship, possession, or access terminate on the remarriage of Kateryna Zimmerman to Donald Shelly Zimmerman unless a nonparent or agency has been appointed conservator of the child under chapter 153 of the Texas Family Code.

4. Notice to Peace Officers

NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000.

Alternative Dispute Resolution

It is agreed that before setting any hearing or initiating discovery in a suit for modification of the terms and conditions of conservatorship, possession, or support of the child, except in an emergency, the parties shall mediate the controversy in good faith. This requirement does not apply to actions brought to enforce this decree or to enforce any subsequent modifications of this decree. It is agreed that the party wishing to modify the terms and conditions of conservatorship, possession, or support of the child shall give written notice to the other party of a desire to mediate the controversy.

If, within ten days after receipt of the written notice, the parties cannot agree on a mediator or the other party does not agree to attend mediation or fails to attend a scheduled mediation of the controversy, the party desiring modification shall be released from the obligation to mediate and shall be free to file suit for modification.



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Child Support

IT IS ORDERED that Donald Shelly Zimmerman is obligated to pay and shall pay to Kateryna Zimmerman child support of \$875.00 per month, with the first payment being due and payable on June 1, 2005 and a like payment being due and payable on the first day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

1. the child reaches the age of eighteen years, provided that the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates from high school if the child is:

a. enrolled:

- 1) under Chapter 25, Education Code, in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates from high school;
- 2) under Section 130.008, Education Code, in courses for joint high school and junior college credit; or
- 3) on a full-time basis in a private secondary school in a program leading toward a high school diploma; and

b. complying with:

- 1) the minimum attendance requirements of Subchapter C, Chapter 25, Education Code; or
- 2) the minimum attendance requirements imposed by the school in which the child is enrolled, if the child is enrolled in a private secondary school;

2. the child marries;

3. the child dies; or

4. the child's disabilities are otherwise removed for general purposes.

Statement on Guidelines

In accordance with Texas Family Code section 154.130, the Court makes the following findings and conclusions regarding the child support order made in open court in this case on the date noted below:

1. the amount of child support ordered by the Court is in accordance with the percentage guidelines;

2. the amount of net resources available to Donald Shelly Zimmerman per month is \$4,375.00;

3. the amount of net resources available to Kateryna Zimmerman per month is \$0;

4. the amount of child support payments per month that is computed if the percentage guidelines of section 154.125 of the Texas Family Code are applied to the first \$6,000 of Donald Shelly Zimmerman's net resources is \$875.00; and

5. the percentage applied to the first \$6,000 of Donald Shelly Zimmerman's net resources for child support by the actual order rendered by the Court is 20 percent.

Withholding from Earnings

IT IS ORDERED that any employer of Donald Shelly Zimmerman shall be ordered to withhold from earnings for child support from the disposable earnings of Donald Shelly Zimmerman for the support of Marina Zimmerman.

IT IS FURTHER ORDERED that all amounts withheld from the disposable earnings of Donald Shelly Zimmerman by the employer and paid in accordance with the order to that employer shall constitute a credit against the child support obligation. Payment of the full amount of child support ordered paid by this decree through the means of withholding from earnings shall discharge the child support obligation. If the amount withheld from earnings and credited against the child



support obligation is less than 100 percent of the amount ordered to be paid by this decree, the balance due remains an obligation of Donald Shelly Zimmerman, and it is hereby ORDERED that Donald Shelly Zimmerman pay the balance due directly to the state disbursement unit specified below.

On this date the Court authorized the issuance of an Order/Notice to Withhold Income for Child Support.

Payment

IT IS ORDERED that all payments shall be made through the Texas Child Support Disbursement Unit at P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to Kateryna Zimmerman for the support of the child. IT IS ORDERED that each party shall pay, when due, all fees charged to that party by the agency through which child support is paid.

Change of Employment

IT IS FURTHER ORDERED that Donald Shelly Zimmerman shall notify this Court and Kateryna Zimmerman by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than seven days after the change of address or the termination of employment. This notice or a subsequent notice shall also provide the current address of Donald Shelly Zimmerman and the name and address of his current employer, whenever that information becomes available.

Clerk's Duties

IT IS ORDERED that, on the request of a prosecuting attorney, the title IV-D agency, the friend of the Court, a domestic relations office, Kateryna Zimmerman, Donald Shelly Zimmerman, or an attorney representing Kateryna Zimmerman or Donald Shelly Zimmerman, the clerk of this Court shall cause a certified copy of the Order/Notice to Withhold Income for Child Support to be delivered to any employer.

Suspension of Withholding from Earnings

The Court finds that the parties have agreed that no order to withhold from earnings for child support should be delivered to any employer of Donald Shelly Zimmerman as long as no delinquency or other violation of this child support order occurs. For the purpose of this provision, a delinquency has occurred if Donald Shelly Zimmerman has been in arrears for an amount due for more than thirty days or the amount of the arrearages equals or is greater than the amount due for a one-month period.

If a delinquency or other violation occurs, the clerk shall deliver the order to withhold earnings as provided above.

ACCORDINGLY, IT IS ORDERED that, as long as no delinquency or other violation of this child support order occurs, all payments shall be made through the Texas Child Support Disbursement Unit at P.O. Box 659791, San Antonio, Texas 78265-9791 and thereafter promptly remitted to Kateryna Zimmerman for the support of the child. If a delinquency or other violation occurs, all payments shall be made in accordance with the order to withhold earnings as provided above.

Health Care

IT IS ORDERED that medical support shall be provided for the child as follows:

1. Donald Shelly Zimmerman's Responsibility - It is the intent and purpose of this decree that Donald Shelly Zimmerman shall, at all times, provide medical support for the child as additional child support. IT IS THEREFORE ORDERED that, as additional child support, Donald Shelly Zimmerman shall provide medical support for the parties' child, for as long as child support is payable under the terms of this decree, as set out herein.

2. Definitions - "Health insurance" means insurance coverage that provides basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, and may be provided in the form of an indemnity insurance contract or plan, a preferred provider organization or plan, a health maintenance organization, or any combination



thereof; not to exceed the quality and type of coverage in place on the child on February 2, 2005.

"Reasonable cost" means the cost of a health insurance premium that does not exceed 10 percent of the responsible parent's net income in a month.

3. Insurance through Donald Shelly Zimmerman's Employment, Union, Trade Association, or Other Organization - The Court finds that the child is currently enrolled as a beneficiary of a health insurance plan provided through Donald Shelly Zimmerman's employment or membership in a union, trade association, or other organization at a reasonable cost. IT IS ORDERED that Donald Shelly Zimmerman shall, at his sole cost and expense, keep and maintain at all times in full force and effect the same or equivalent health insurance coverage that insures the parties' child through Donald Shelly Zimmerman's employer, union, trade association, or other organization as issued by that organization, for as long as it is offered by his employer, union, trade association, or other organization. If his employer, union, trade association, or other organization subsequently changes health insurance benefits or carriers, Donald Shelly Zimmerman is ORDERED to obtain and maintain the same or equivalent health insurance coverage for the benefit of the child through the successor company or through such health insurance plan as is available through other employment, union, trade association, or other organization or other insurance provider.

Insurance through Kateryna Zimmerman's Employment, Union, Trade Association, or Other Organization - If health insurance for the child ceases to be available through Donald Shelly Zimmerman's employer, union, trade association, or other organization but is available at a reasonable cost through Kateryna Zimmerman's employer or other organization, Kateryna Zimmerman is ORDERED to have the child covered on her health insurance and Donald Shelly Zimmerman is ORDERED to pay Kateryna Zimmerman at her last known address the cost of insuring the child on Kateryna Zimmerman's health insurance plan, beginning on the first day of the month following the date Donald Shelly Zimmerman first receives written notice of the amount of the premium from Kateryna Zimmerman. Accompanying the first such written notification and any subsequent notifications informing of a change in the premium amount, Kateryna Zimmerman is ORDERED to provide Donald Shelly Zimmerman with documentation from her employer, union, trade association, or other organization of the cost to Kateryna Zimmerman of providing coverage for the child.

4. Conversion of Policy - IT IS ORDERED that if the party through whose employment or membership in a union, trade association, or other organization health insurance has been provided for the child is leaving that employment, union, trade association, or other organization or for any other reason health insurance will not be available for the child through the employment or membership in a union, trade association, or other organization of either party at a reasonable cost, the party leaving employment or losing coverage shall, within ten days of termination of his or her employment or coverage, convert the policy to individual coverage for the child in an amount equal to or exceeding the coverage at the time his or her employment or coverage is terminated. Further, if that health insurance was available through Kateryna Zimmerman's employment or membership in a union, trade association, or other organization, Donald Shelly Zimmerman shall reimburse Kateryna Zimmerman for the cost of the converted policy as follows: Donald Shelly Zimmerman is ORDERED to pay to Kateryna Zimmerman at Kateryna Zimmerman's last known address the cost of insuring the child under the converted policy, on the first day of each month after Donald Shelly Zimmerman first receives written notice of the premium from Kateryna Zimmerman for payment. Accompanying the first such written notification and any subsequent notifications informing of a change in the premium amount, Kateryna Zimmerman is ORDERED to provide Donald Shelly Zimmerman with documentation from the carrier of the cost to Kateryna Zimmerman of providing coverage for the child.

5. If Policy Not Convertible - If the health insurance policy covering the child is not convertible at a reasonable cost and if no health insurance is available for the child through the employment or membership in a union, trade association, or other organization of either party at a



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reasonable cost, IT IS ORDERED that Donald Shelly Zimmerman shall purchase and maintain, at his sole cost and expense, health insurance coverage for the child in an amount that is reasonably equivalent to the prior health coverage. Donald Shelly Zimmerman is ORDERED to provide verification of the purchase of the insurance to Kateryna Zimmerman at her last known address, including the insurance certificate number and the plan summary, no later than 10 days following the issuance of the policy.

6. Claim Forms - Except as provided in paragraph 8 below, the party who is not carrying the health insurance policy covering the child is ORDERED to submit to the party carrying the policy, within ten days of receiving them, any and all forms, receipts, bills, and statements reflecting the health-care expenses the party not carrying the policy incurs on behalf of the child.

The party who is carrying the health insurance policy covering the child is ORDERED to submit all forms required by the insurance company for payment or reimbursement of health-care expenses incurred by either party on behalf of the child to the insurance carrier within ten days of that party's receiving any form, receipt, bill, or statement reflecting the expenses.

7. Constructive Trust for Payments Received - IT IS ORDERED that any insurance payments received by a party from the health insurance carrier as reimbursement for health-care expenses incurred by or on behalf of the child shall belong to the party who incurred and paid those expenses. IT IS FURTHER ORDERED that the party receiving the insurance payments is designated a constructive trustee to receive any insurance checks or payments for health-care expenses incurred and paid by the other party, and the party carrying the policy shall endorse and forward the checks or payments, along with any explanation of benefits received, to the other party within three days of receiving them.

8. Filing by Party Not Carrying Insurance - In accordance with article 3.51-13 of the Texas Insurance Code, IT IS ORDERED that the party who is not carrying the health insurance policy covering the child may, at that party's option, file directly with the insurance carrier with whom coverage is provided for the benefit of the child any claims for health-care expenses, including, but not limited to, medical, hospitalization, and dental costs and receive payments directly from the insurance company.

9. Secondary Coverage - IT IS ORDERED that nothing in this decree shall prevent either party from providing secondary health insurance coverage for the child at that party's sole cost and expense. IT IS FURTHER ORDERED that if a party provides secondary health insurance coverage for the child, both parties shall cooperate fully with regard to the handling and filing of claims with the insurance carrier providing the coverage in order to maximize the benefits available to the child and to ensure that the party who pays for health-care expenses for the child is reimbursed for the payment from both carriers to the fullest extent possible.

10. Compliance with Insurance Company Requirements - Each party is ORDERED to conform to all requirements imposed by the terms and conditions of the policy of health insurance covering the child in order to assure maximum reimbursement or direct payment by the insurance company of the incurred health-care expense, including but not limited to requirements for advance notice to carrier, second opinions, and the like. Each party is ORDERED to attempt to use "preferred providers," or services within the health maintenance organization, if applicable; however, this provision shall not apply if emergency care is required. Disallowance of the bill by a health insurer shall not excuse the obligation of either party to make payment; however, if a bill is disallowed or the benefit reduced because of the failure of a party to follow procedures or requirements of the carrier, IT IS ORDERED that the party failing to follow the carrier's procedures or requirements shall be wholly responsible for the increased portion of that bill.

If health insurance coverage for the child is provided through a health maintenance organization (HMO) or preferred provider organization (PPO), the parties are ORDERED to use health-care providers who are employed by the HMO or approved by the PPO whenever feasible. If health-care expenses are incurred by using that HMO or PPO plan, Kateryna Zimmerman



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ORDERED to pay 50 percent and Donald Shelly Zimmerman is ORDERED to pay 50 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the child, including, without limitation, any copayments for office visits or prescription drugs, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges, for as long as child support is payable under the terms of this decree. If a party incurs health-care expenses for a child by using the services of health-care providers not employed by the HMO or approved by the PPO, except in an emergency, without the written agreement of the other party, the party incurring the services is ORDERED to pay 100 percent and the other party is ORDERED to pay 0 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the child, as set out above. If a party incurs health-care expenses for a child by using the services of health-care providers not employed by the HMO or approved by the PPO in an emergency or with the written agreement of the other party, the party incurring the services is ORDERED to pay 50 percent and the other party is ORDERED to pay 50 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the child, as set out above.

If the child is enrolled in a health-care plan that is not an HMO or a PPO, Kateryna Zimmerman is ORDERED to pay 50 percent and Donald Shelly Zimmerman is ORDERED to pay 50 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the child, including, without limitation, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges, for as long as child support is payable under the terms of this decree.

11. Payment of Uninsured Expenses - IT IS ORDERED that the party who pays for a health-care expense on behalf of the child shall submit to the other party, within ten days of receiving them, all forms, receipts, bills, and explanations of benefits paid reflecting the uninsured portion of the health-care expenses the paying party incurs on behalf of the child. IT IS FURTHER ORDERED that, within ten days after the nonpaying party receives the explanation of benefits stating benefits paid, that party shall pay his or her share of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the paying party for any advance payment exceeding the paying party's share of the expenses.

12. Exclusions - The provisions above concerning uninsured expenses shall not be interpreted to include expenses for travel to and from the health-care provider or for nonprescription medication.

13. Reasonableness of Charges - IT IS ORDERED that reasonableness of the charges for health-care expenses shall be presumed on presentation of the bill to a party and that disallowance of the bill by a health insurer shall not excuse that party's obligation to make payment or reimbursement as otherwise provided herein.

14. Information Required - IT IS ORDERED that a party providing health insurance shall furnish to the other party and the child support registry the following information no later than the thirtieth day after the date the notice of the rendition of this decree is received:

- (a) the Social Security number of the party providing insurance;
- (b) the name and address of the employer of the party providing insurance;
- (c) whether the employer is self-insured or has health insurance available;
- (d) proof that health insurance has been provided for the child; and
- (e) the name of the health insurance carrier, the number of the policy, a copy of the policy and schedule of benefits, a health insurance membership card, claim forms, and any other information necessary to submit a claim or, if the employer is self-insured, a copy of the schedule of benefits, a membership card, claim forms, and any other information necessary to submit a claim.

IT IS FURTHER ORDERED that any party carrying health insurance on the child shall furnish to the other party a copy of any renewals or changes to the policy no later than the fifteenth day after the renewal or change is received.



IT IS FURTHER ORDERED that a party providing health insurance shall provide to the other party and the child support registry any additional information regarding health insurance coverage that becomes available to the party providing insurance. IT IS FURTHER ORDERED that the information shall be provided no later than the fifteenth day after the date the information is received.

15. Termination or Lapse of Insurance - If the health insurance coverage for the child lapses or terminates, the party who is providing the insurance is ORDERED to notify the other party no later than the fifteenth day after the date of termination or lapse. If additional health insurance is available or becomes available at a reasonable cost to Donald Shelly Zimmerman for the child, Donald Shelly Zimmerman is ORDERED to notify Kateryna Zimmerman and the child support registry no later than the fifteenth day after the date the insurance becomes available and to enroll the child in a health insurance plan at the next available enrollment period.

16. Place of Transmittal - IT IS ORDERED that all bills, invoices, statements, claims, explanations of benefits, insurance policies, medical insurance identification cards, other documents, and written notices, as well as payments, required to be transmitted by one party to the other under the health-care coverage and health insurance provisions of this decree shall be transmitted by the sending party to the residence of the receiving party.

17. WARNING - A PARENT ORDERED TO PROVIDE HEALTH INSURANCE OR TO PAY THE OTHER PARENT ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILD, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILD.

Miscellaneous Child Support Provisions

No Credit for Informal Payments

IT IS ORDERED that the child support as prescribed in this decree shall be exclusively discharged in the manner ordered and that any direct payments made by Donald Shelly Zimmerman to Kateryna Zimmerman or any expenditures incurred by Donald Shelly Zimmerman during Donald Shelly Zimmerman's periods of possession of or access to the child, as prescribed in this decree, for food, clothing, gifts, travel, shelter, or entertainment are deemed in addition to and not in lieu of the support ordered in this decree.

Support as Obligation of Estate

IT IS ORDERED that the provisions for child support in this decree shall be an obligation of the estate of Donald Shelly Zimmerman and shall not terminate on the death of Donald Shelly Zimmerman. Payments received for the benefit of the child from the Social Security Administration, Department of Veterans Affairs, other governmental agency, or life insurance shall be a credit against this obligation.

Medical Notification

Each party is ORDERED to inform the other party within twenty-four hours of any medical condition of the child requiring surgical intervention, hospitalization, or both.

Information Regarding Parties

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: Kateryna Zimmerman
Social Security number: 632-58-4902



Driver's license number: 04361925 Issuing state: Texas
 Current residence address: 9807 N FM 620 #16301, Austin, TX 7872__
 Mailing address: same as residence
 Home telephone number: 512-577-7378
 Name of employer: unemployed
 Address of employment: n/a
 Work telephone number: n/a

Name: Donald Shelly Zimmerman
 Social Security number: 462-15-3756
 Driver's license number: 08781163 Issuing state: Texas
 Current residence address: 109011 Enchanted Rock, Austin, Texas
 Mailing address: same as residence
 Home telephone number: 512.250.8649
 Name of employer: self
 Address of employment: 13492 Research Blvd. #120-141, Austin, TX 78750
 Work telephone number: 512.838.6298

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at 1000 Guadalupe Street, Austin, TX 78701. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, P.O. Box 12017, Austin, Texas 78711-2017.

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING

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OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Division of Marital Estate

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party and the child of the marriage.

Property to Husband

IT IS ORDERED AND DECREED that the husband, Donald Shelly Zimmerman, is awarded the following as his sole and separate property, and the wife is divested of all right, title, interest, and claim in and to that property:

H-1. The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contracts, and title and closing documents:

10901 Enchanted Rock, Austin, Texas

H-2. The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contracts, and title and closing documents:

1112 Flying Scott, Austin, Texas

H-3. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the husband or subject to his sole control.

H-4. All clothing, jewelry, and other personal effects in the possession of the husband or subject to his sole control.

H-5. The sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of the husband's past, present, or future employment, including but not limited to:

a. Fidelity Surgient 401(k): **220

H-6. The individual retirement accounts, simplified employee pensions, annuities, and variable annuity life insurance benefits in the husband's name, including but not limited to:

a. Fidelity, ROTH IRA **97165

b. Fidelity, Annuity *5137

H-7. The following brokerage accounts, stocks, bonds, and securities, together with all dividends, splits, and other rights and privileges in connection with them:

a. Fidelity, Account *4404

b. Fidelity, Account **086

c. Fidelity, Account **7502

H-9. The 2005 Toyota Tundra motor vehicle, together with all prepaid insurance, keys, and title documents.

H-10. The business known as "TTIC, LP", including but not limited to all furniture, fixtures, machinery, equipment, inventory, cash, receivables, accounts, goods, and supplies; all personal



property used in connection with the operation of the business; and all rights and privileges, past, present, or future, arising out of or in connection with the operation of the business.

Property to Wife

IT IS ORDERED AND DECREED that the wife, Kateryna Zimmerman, is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:

W-1. The funds on deposit, together with accrued but unpaid interest, in the following banks, savings institutions, or other financial institutions:

a. Wells Fargo, Account number **0866

W-2. The 2002 Acura MDX motor vehicle, together with all prepaid insurance, keys, and title documents.

W-3. \$25,000.00 to be paid by Husband to Wife on the date this Decree is filed

W-4. \$30,000.00 to be paid by Husband to Wife at the rate of \$1,000.00 per month, starting on June 1, 2005 and continuing on the first day of each month thereafter, until paid in full.

Division of Debt

Debts to Husband

IT IS ORDERED AND DECREED that the husband, Donald Shelly Zimmerman, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the wife and her property harmless from any failure to so discharge, these items:

H-1. The balance due, including principal, interest, tax, and insurance escrow, on the promissory note executed by Kateryna Zimmerman and Donald Shelly Zimmerman, in the original principal sum of \$163,500.00, dated December 19th, 2001, payable to Washington Mutual Bank, FA, and secured by deed of trust on the real property awarded in this decree to the husband, which is recorded as Parcel ID Number 01702106410000, which has the address of 10901 Enchanted Rock Cv., Deed of Trust Records of Travis County, Texas.

H-2. Any and all debts, charges, liabilities, and other obligations incurred solely by the husband from and after February 2, 2005 unless express provision is made in this decree to the contrary.

H-3. All encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to the husband in this decree unless express provision is made in this decree to the contrary.

H-4. \$25,000.00 to be paid by Husband to Wife on the date this Decree is filed

H-5. \$30,000.00 to be paid by Husband to Wife at the rate of \$1,000.00 per month, starting on June 1, 2005 and continuing on the first day of each month thereafter, until paid in full.

Debts to Wife

IT IS ORDERED AND DECREED that the wife, Kateryna Zimmerman, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the husband and his property harmless from any failure to so discharge, these items:

W-1. The following debts, charges, liabilities, and obligations:

a. Any in her name only not already listed.

W-2. Any and all debts, charges, liabilities, and other obligations incurred solely by the wife from and after February 2, 2005 unless express provision is made in this decree to the contrary.

W-3. All encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to the wife in this decree unless express provision is made in this decree to the contrary.



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Notice

IT IS ORDERED AND DECREED that each party shall send to the other party, within three days of its receipt, a copy of any correspondence from a creditor or taxing authority concerning any potential liability of the other party.

Attorney's Fees

To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the child, each party shall be responsible for his or her own attorney's fees, expenses, and costs incurred as a result of legal representation in this case; except that Husband shall pay to Lisa DeLong \$2,500.00 on the date this Decree is filed as attorneys fees. This is not intended to assign fault or liability in this case, but is instead to equalize the award of property in this case.

Liability for Federal Income Taxes Thru 2003

IT IS ORDERED AND DECREED that Kateryna Zimmerman and Donald Shelly Zimmerman shall be equally responsible for all federal income tax liabilities of the parties from the date of marriage through December 31, 2003, and each party shall timely pay 50 percent of any deficiencies, assessments, penalties, or interest due thereon and shall indemnify and hold the other party and his or her property harmless from 50 percent of such liabilities unless such additional tax, penalty, and/or interest resulted from a party's omission of taxable income or claim of erroneous deductions. In such case, the portion of the tax, penalty, and/or interest relating to the omitted income or claims of erroneous deductions shall be paid by the party who earned the omitted income or proffered the claim for an erroneous deduction. The parties agree that nothing contained herein shall be construed as or is intended as a waiver of any rights that a party has under the "Innocent Spouse" provisions of the Internal Revenue Code.

Treatment/Allocation of Community Income for 2004 and 2005

The Court finds that the parties have lived apart at all times during the calendar years of 2004 & 2005, that Kateryna Zimmerman and Donald Shelly Zimmerman have earned income that is community income during that calendar year, and that there have been no transfers of earned income between them from January 1, 2004, through the date of divorce. IT IS ORDERED AND DECREED that each party file an individual income tax return in accordance with Internal Revenue Code sections 66(a) and 879(a) for the entire year ending December 31, 2005.

IT IS ORDERED AND DECREED that the parties' income shall be reported and allocated in accordance with the Internal Revenue Code. IT IS ORDERED AND DECREED that each party shall be solely liable for the tax liability shown on his or her return and shall timely pay and hold the other party and his or her property harmless from any liability of the reporting party for federal income taxes for calendar years 2004 & 2005.

IT IS ORDERED AND DECREED that each party shall use as a credit against his or her tax liability for 2004 & 2005 all estimated tax payments and wage/salary withholding made by him or her, 50 percent of the parties' prior year overpayments and credits, and 50 percent of the estimated payments made in the names of both parties.

IT IS ORDERED AND DECREED that, if the Internal Revenue Service disallows filing in accordance with sections 66(a) and 879(a), each party shall file an individual income tax return in accordance with the Internal Revenue Code and report as the party's income 50 percent of all predivorce community income or loss attributable to the parties, all postdivorce income attributable to the reporting party, and all the reporting party's separate income during any part of the year. Each party shall take credit for 50 percent of all prior year overpayments, estimated tax payments, and withholdings occurring before the date of divorce and for 100 percent of the reporting party's estimated tax payments and withholdings occurring after the date of divorce. Allocation of tax



liability will still be made in the same proportions as though the tax were calculated under section 66(a).

IT IS ORDERED AND DECREED that for calendar year 2004 & 2005, each party shall indemnify and hold the other party and his or her property harmless from any tax liability associated with the reporting party's individual tax return for that year unless the parties have agreed to allocate their tax liability in a manner different from that reflected on their returns.

IT IS ORDERED AND DECREED that each party shall furnish such information to the other party as is requested to prepare federal income tax returns for 2005 within thirty days of receipt of a written request for the information, and in no event shall the available information be exchanged later than March 1, 2006. As requested information becomes available after that date, it shall be provided within ten days of receipt.

IT IS ORDERED AND DECREED that each party shall preserve for a period of seven years from the date of divorce all financial records relating to the community estate. Each party is ORDERED to allow the other party access to these records to determine acquisition dates or tax basis or to respond to an IRS examination within five days of receipt of written notice from the other party. Access shall include the right to copy the records.

IT IS ORDERED AND DECREED that all payments made to the other party in accordance with the allocation provisions for payment of federal income taxes contained in this Final Decree of Divorce are not deemed income to the party receiving those payments but are part of the property division and necessary for a just and right division of the parties' estate.

IT IS ORDERED AND DECREED that any assets of the parties not awarded or divided by this Final Decree of Divorce are subject to future division as provided in the Texas Family Code.

IT IS FURTHER ORDERED AND DECREED, as a part of the division of the estate of the parties, that any community liability not expressly assumed by a party under this decree is to be paid by the party incurring the liability, and the party incurring the liability shall indemnify and hold the other party and his or her property harmless from any failure to so discharge the liability.

Confirmation of Separate Property

IT IS ORDERED AND DECREED that the following described property is confirmed as the separate property of Kateryna Zimmerman: her jewelry owned prior to the marriage.

IT IS ORDERED AND DECREED that the following described property is confirmed as the separate property of Donald Shelly Zimmerman:

- (1) 4427 Warm Springs Road, Houston, Texas;
- (2) 4519 Warm Springs Road, Houston, Texas;
- (3) Fidelity, IRA Rollover Y99692034
- (4) portions of other items of community property.

No Alimony

IT IS ORDERED AND DECREED that no provision of this decree shall be construed as alimony under the Internal Revenue Code, except as this decree expressly provides for payment of maintenance or alimony under the Internal Revenue Code.

Transfer and Delivery of Property

Donald Shelly Zimmerman is ORDERED to have acknowledged, and deliver to Lisa DeLong these instruments:

1. Deed of Trust in the form attached to this Decree of Divorce as Exhibit Husband - A; and
2. Deed of Trust to Secure Assumption in the form attached to this Decree of Divorce as Exhibit Husband - B.

Kateryna Zimmerman is ORDERED to execute, have acknowledged, and deliver to Brian



Walters these instruments:

1. Special Warranty Deed in the form attached to this Decree of Divorce as Exhibit Wife - A.

This decree shall serve as a muniment of title to transfer ownership of all property awarded to any party in this Final Decree of Divorce.

Permanent Injunctions as to Persons

The Court finds that a permanent injunction against her should be granted as appropriate relief because there is no adequate remedy at law.

The permanent injunction granted below shall be effective immediately and shall be binding on Kateryna Zimmerman; on her agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

IT IS ORDERED AND DECREED that Kateryna Zimmerman is permanently enjoined from:

1. Interfering in any way with the Managing Conservator's possession of the child or taking or retaining possession of the child, directly or in concert with other persons, except as permitted by order of the Court.

The Court finds that a permanent injunction against him should be granted as appropriate relief because there is no adequate remedy at law.

The permanent injunction granted below shall be effective immediately and shall be binding on Donald Shelly Zimmerman; on his agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

IT IS ORDERED AND DECREED that Donald Shelly Zimmerman is permanently enjoined from:

1. Interfering in any way with the Managing Conservator's possession of the child or taking or retaining possession of the child, directly or in concert with other persons, except as permitted by order of the Court.

Service of Writ

Petitioner and Respondent waive issuance and service of the writ of injunction, by stipulation or as evidenced by the signatures below. IT IS ORDERED that Petitioner and Respondent shall be deemed to be duly served with the writ of injunction.

Court Costs

IT IS ORDERED AND DECREED that costs of court are to be borne by the party who incurred them.

Cohabitation Information

IT IS ORDERED that within three days of a party cohabitating with another person, that the party shall inform the other party of the name and driver's license number of that person.

Yearly Tax Documents

IT IS ORDERED that each party will provide the other party, no later than April 15th, with copies of their prior year tax returns, W-2s and 1099s.

Resolution of Temporary Orders

IT IS ORDERED AND DECREED that Petitioner and Respondent are discharged from all further liabilities and obligations imposed by the temporary order of this Court rendered on March 23, 2005.



Discharge from Discovery Retention Requirement

IT IS ORDERED AND DECREED that the parties and their respective attorneys are discharged from the requirement of keeping and storing the documents produced in this case in accordance with rule 191.4(d) of the Texas Rules of Civil Procedure.

Decree Acknowledgment

Petitioner, Kateryna Zimmerman, and Respondent, Donald Shelly Zimmerman, each acknowledge that before signing this Final Decree of Divorce they have read this Final Decree of Divorce fully and completely, have had the opportunity to ask any questions regarding the same, and fully understand that the contents of this Final Decree of Divorce constitute a full and complete resolution of this case. Petitioner and Respondent acknowledge that they have voluntarily affixed their signatures to this Final Decree of Divorce, believing this agreement to be a just and right division of the marital debt and assets, and state that they have not signed by virtue of any coercion, any duress, or any agreement other than those specifically set forth in this Final Decree of Divorce.

Indemnification

Each party represents and warrants that he or she has not incurred any outstanding debt, obligation, or other liability on which the other party is or may be liable, other than those described in this decree. Each party agrees and it is ORDERED that if any claim, action, or proceeding is hereafter initiated seeking to hold the party not assuming a debt, an obligation, a liability, an act, or an omission of the other party liable for such debt, obligation, liability, act or omission of the other party, that other party will, at his or her sole expense, defend the party not assuming the debt, obligation, liability, act, or omission of the other party against any such claim or demand, whether or not well founded, and will indemnify the party not assuming the debt, obligation, liability, act, or omission of the other party and hold him or her harmless from all damages resulting from the claim or demand.

Damages, as used in this provision, includes any reasonable loss, cost, expense, penalty, and other damage, including without limitation attorney's fees and other costs and expenses reasonably and necessarily incurred in enforcing this indemnity.

It is ORDERED that the indemnifying party will reimburse the indemnified party, on demand, for any payment made by the indemnified party at any time after the entry of the divorce decree to satisfy a judgment of any court of competent jurisdiction or in accordance with a bona fide compromise or settlement of claims, demands, or actions for any damages to which this indemnity relates.

The parties agree and it is ORDERED that each party will give the other party prompt written notice of any litigation threatened or instituted against either party that might constitute the basis of a claim for indemnity under this decree.

Clarifying Orders

Without affecting the finality of this Final Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

Relief Not Granted

IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is denied. This is a final judgment, for which let execution and all writs and processes necessary to enforce this judgment issue. This judgment finally disposes of all claims and all parties and is appealable.

Date of Judgment

05/26/2005 11:12 5124729798

LISA DELONG ATTORNEY

PAGE 26/26

05/26/05 08:11 FAX 512 457 8399

WALTERS & TURQUAND

0025

RENDERED, ORDERED and SIGNED on the 27th day of May, 200

JUDGE PRESIDING

J. Andrew Hathcock
Associate Judge

APPROVED AS TO FORM ONLY:

Walters & Turquand, LLP
816 Congress. Ste. 1600
Austin, TX 78701
Phone (512) 457-8740
Fax (512) 457-8399

By: [Signature]
Brian Walters
Attorney for Respondent
State Bar No. 00797619

Law Office of Lisa DeLong
3009 North IH-35
Austin, TX 78722
512 472 9717
512 472 9798 fax

By: [Signature]
Lisa DeLong
Attorney for Petitioner
State Bar No. 05653050

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 11/10/2014



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy:

[Signature]

APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE:

[Signature]
Kateryna Zimmerman
Petitioner

[Signature]
Donald Shelly Zimmerman
Respondent

by permission

Page 22



Filed in The District Court
of Travis County, Texas

FEB 16 2011 JA

At 11:26 A.M.
Amalia Rodriguez-Mendoza, Clerk

NO. D-1-FM-05-000710

IN THE INTEREST OF

MARINA ZIMMERMAN

A CHILD

§ IN THE DISTRICT COURT

§ 201ST JUDICIAL DISTRICT

§ TRAVIS COUNTY, TEXAS

PETITION TO MODIFY PARENT-CHILD RELATIONSHIP

1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. *Parties and Order to Be Modified*

This suit to modify a prior order is brought by KATERYNA BOCHENKOVA, Petitioner. The last three numbers of KATERYNA BOCHENKOVA's driver's license number are 925. The last three numbers of KATERYNA BOCHENKOVA's Social Security number are 902. Petitioner is the mother of the child and has standing to bring this suit. The requested modification will be in the best interest of the child.

Respondent is DONALD SHELLY ZIMMERMAN.

The orders to be modified are entitled "Final Decree of Divorce", rendered on May 27, 2005, and "Order in Suit to Modify Parent-Child Relationship", announced in open court on August 3, 2010.

3. *Jurisdiction*

This Court has continuing, exclusive jurisdiction of this suit.

4. *Child*

The following child is the subject of this suit:

Name: MARINA ZIMMERMAN

Sex: Female

Birth date: 01/21/1999

County of residence: Travis

5. *Parties Affected*

The following parties may be affected by this suit:

Name: DONALD SHELLY ZIMMERMAN

Relationship: father



001906902



Process should be served on Respondent at 10901 Enchanted Rock Cove, Austin, Texas 78726 or wherever he may be found.

6. *Child's Property*

There has been no change of consequence in the status of the child's property since the prior orders were rendered.

7. *Modification of Conservatorship, Possession and Access*

The most recent order to be modified is not based on a mediated or collaborative law settlement agreement. The circumstances of the child, a conservator, or other party affected by the orders to be modified have materially and substantially changed since the date of rendition of the orders to be modified.

Petitioner requests that the rights and duties of the respective conservators of the child be modified to provide as follows: Petitioner should be granted the exclusive right to consent to medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the child and the exclusive right to make educational decisions concerning the child's education.

Petitioner requests that the terms and conditions for access to or possession of the child be modified to require that Respondent's periods of possession of the child be continuously supervised.

Respondent has a history or pattern of physical and emotional abuse directed against Marina Zimmerman. Petitioner requests the Court to deny Respondent access to the child. Alternatively, Petitioner requests that the Court render a possession order that provides that Respondent's periods of visitation be continuously supervised by an entity or person chosen by the Court.

The requested modification is in the best interest of the child.

8. *Request for Temporary Orders*

Petitioner requests the Court, after notice and hearing, to make temporary orders for the safety and welfare of the child, including but not limited to the following:

Denying Respondent access to the child or, alternatively, rendering a possession order providing that Respondent's periods of visitation be continuously supervised.



Ordering Respondent to attend parenting classes and anger management classes.

Ordering Respondent to pay reasonable interim attorney's fees and expenses.

9. *Request for Temporary Restraining Order*

Petitioner requests the Court to dispense with the necessity of a bond, and Petitioner requests that Respondent be temporarily restrained immediately, without hearing, and after notice and hearing be temporarily enjoined, pending the further order of this Court, from:

Disturbing the peace of the child or of another party.

Withdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled.

Hiding or secreting the child from Petitioner.

Making disparaging remarks regarding Petitioner or Petitioner's family in the presence or within the hearing of the child.

As the basis for the extraordinary relief requested below, Petitioner would show that before the filing of this petition Respondent has engaged in the conduct stated in the affidavit attached as Exhibit A. Based on that affidavit, Petitioner requests the Court to grant the following relief:

Issue an order excluding Respondent from possession of or access to the child, MARINA ZIMMERMAN.

10. *Request for Permanent Injunction*

Petitioner requests the Court, after trial on the merits, to grant the following permanent injunction:

a. Prohibiting Respondent from using any form of corporal punishment to discipline the child.

11. *Request for Attorney's Fees, Expenses, Costs, and Interest*

It was necessary for Petitioner to secure the services of Lisa DeLong, a licensed attorney, to preserve and protect the child's rights. Respondent should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Respondent and be ordered paid directly to Petitioner's attorney, who may enforce the



judgment in the attorney's own name. Petitioner requests postjudgment interest as allowed by law.

12. *Prayer*

Petitioner prays that citation and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition.

Petitioner prays that the Court immediately grant a temporary restraining order restraining Respondent, in conformity with the allegations of this petition, from the acts set forth above, and Petitioner prays that, after notice and hearing, this temporary restraining order be made a temporary injunction.


Petitioner prays that, on final hearing, the Court enter a permanent injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth above.

Petitioner prays for attorney's fees, expenses, costs, and interest as requested above.

Petitioner prays for general relief.

Respectfully submitted,

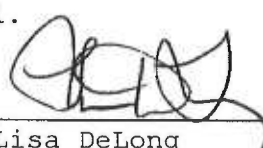
Lisa DeLong, Attorney at Law
3009 North IH-35
Austin, TX 78722
Tel: (512) 472-9717
Fax: (512) 472-9798

By: 

Lisa DeLong
State Bar No. 05653050
Attorney for Petitioner

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on February 14, 2011.



Lisa DeLong
Attorney for KATERYNA BOCHENKOVA



NO. D-1-FM-05-000710

IN THE INTEREST OF
MARINA ZIMMERMAN
A CHILD

§ IN THE DISTRICT COURT
§
§ 201ST JUDICIAL DISTRICT
§
§ TRAVIS COUNTY, TEXAS

AFFIDAVIT FOR BUSINESS RECORDS

Jennifer Prinz appeared before me today and stated under oath:

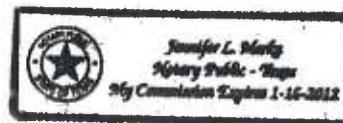
"My name is Jennifer Prinz. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am the custodian of the records of Dr. Deborah Neitsch, M.D. Attached to this affidavit are 5 pages of records from Dr. Deborah Neitsch, M.D. These pages of records are kept by Dr. Deborah Neitsch, M.D. in the regular course of business, and it was the regular course of business of Dr. Deborah Neitsch, M.D. for an employee or representative of Dr. Deborah Neitsch, M.D., with knowledge of the act, event, condition, opinion, or diagnosis recorded, to make the record or to transmit information thereof to be included in the record. The record was made at or near the time or reasonably soon thereafter. The records attached to this affidavit are the original or exact duplicates of the original."

Jennifer Prinz
Affiant

SIGNED under oath before me on February 14th, 2011.

Jennifer L. Morley
Notary Public, State of Texas



Summary View

Progress Note

Patient: Zimmerman, Marina
DOB: 01/21/1999 **Age:** 12 Y **Sex:** Female
Phone: 512-577-7378
Address: 10622 Claywood Dr, Austin, Tx-78753

Provider: Deborah Neitsch, MD
Date: 01/24/2011

Subjective:**CC:**

1. bruise on arm, parents already called CPS.

HPI:Dermatology:

Pt is brought in after getting a bruise on her arm. There are concerns that her father is being physically and emotionally abusive to her when she is visiting him. This weekend, he took away her cell phone and when she was asking why, he picked her up and put her in a loft bed. He has been physically forceful with her in the past but CPS won't investigate the case until there is signs of force. the arm doesn't hurt that bad but they needed this evaluated by a physician to have the case investigated. The patient wants to stay with her mom full time and states she does not feel comfortable visiting her dad. Her dad at this visit with him was yelling at her that she had demons that needed to be expelled per Marina.

ROS:General ROS:

Skin changes bruises.

Family History:**Social History:**

Medications: None

Allergies: PCN.

Objective:

Vitals: Wt 84, Temp 98.6, BP 102/60, HR 74.

Past Orders:**Examination:****Physical Examination:**GENERAL:

General Appearance: well-appearing, no acute distress. Hygiene: good. Mental Status: alert and oriented. Mood/Affect: sad, flat affect. Speech: clear.

NECK:

General: supple, normal ROM but with diffuse spasms in the left trapezius that was tender upon palpation. No bruises noted on back or neck..

MUSCULOSKELETAL:

Arm: 2cm round bruise on ulnar aspect of distal forearm. Nontender with full range of motion., no swelling, .

Assessment:**Assessment:**

1. Contusion of arm NOS - 923.9 (Primary)
very minor bruise of right forearm.

Plan:**1. Contusion of arm NOS**

We will contact the CPS caseworker that is in charge of her case. No serious injury seems to have occurred but I worry about the psychological toll on her.

Immunizations:

Summary View

Labs:**Preventive:****Follow Up:** 4 Weeks**Provider:** Deborah Neitsch, MD**Patient:** Zimmerman, Marina **DOB:** 01/21/1999 **Date:** 01/24/2011**Electronically signed by Deborah Neitsch on 01/25/2011 at 12:50 PM CST****Sign off status:** Completed

Progress Note

Patient: Zimmerman, Marina
DOB: 01/21/1999 **Age:** 12 Y **Sex:** Female
Phone: 512-577-7378
Address: 10622 Claywood Dr, Austin, Tx-78753

Provider: Deborah Neitsch, MD
Date: 01/28/2011

Subjective:**CC:**

1. Another bruise.

HPI:

*****:

Pt is here to follow up on a bruise she had after going to her dad's. He wanted to take her phone away and she walked away and he grabbed her shoulder and spun her around and pushed her backwards. She didn't fall backwards. He pushed her from behind as well and now she has a bruise on the left scapula.

her neck is stiff after he pushed her over the weekend.

Psychology:

Pt states she is scared of her dad and he tries to control her, not be her parent.

Family History:**Social History:**

Medications: None

Allergies: PCN.

Objective:

Vitals: Wt 84, Temp 98.4, BP 108/72, HR 71.

Past Orders:**Examination:****Physical Examination:****GENERAL:**

General Appearance: well-appearing, no acute distress.

BACK:

Spine: unremarkable. Tenderness: paraspinal muscles. Spasm: cervical muscle spasm, left, upper, mild. ROM: FROM without pain.

Small linear scar on her back near the left scapula.

Assessment:**Assessment:**

1. Contusion of arm NOS - 923.9 (Primary)
2. Strain of unspecified site - 848.9

Plan:**1. Contusion of arm NOS**

continued concerns of her dad being physically forceful with her. I recommended ibuprofen and heat to the neck. will keep document for CPS case worker.

Immunizations:**Labs:****Preventive:**

Follow Up: prn

Provider: Deborah Neitsch, MD

Patient: Zimmerman, Marina **DOB:** 01/21/1999 **Date:** 01/28/2011

Electronically signed by Deborah Neitsch on 01/31/2011 at 09:31 AM CST

Sign off status: Completed



Patient: Zimmerman, Marina
DOB: 01/21/1999 **Age:** 12 Y **Sex:** Female
Phone: 512-577-7378
Address: 10622 Claywood Dr, Austin, Tx-78753

Provider: Deborah Neitsch, MD
Date: 02/11/2011

Subjective:**CC:**

1. Suspected Abuse, pulled hair, splaped on her face .

HPI:

*.
-

Pt is here brought by her mom and step farther. Her dad was harsh with her yesterday and pushed her against the microwave and now she has right hip pain and right shoulder pain. She has not bruizing associated with the forceful even related to the argument. Her dad has been yelling at her and threatened to hit her but didn't. He has treated to kill her and she has fears of shooting her. She has a history of passive suicidal ideation but has not gone back to that yet. Her parents are worried she needs therapy but her dad refuses. She has been having nightmares. She has been having bed wetting after she is traumatized by a visit with him.

ROS:General ROS:

Musculoskeletal complaints yes. Psychiatric complaints yes.

Family History:**Social History:**

Medications: None

Allergies: PCN.

Objective:

Vitals: Temp 98.1, BP 108/65, HR 72.

Examination:**Physical Examination:**NECK:

Muscles: tender spasms in the traps, painful ROM, right-sided.

MUSCULOSKELETAL:

Hip: hip flexion intact, pain to medial rotate. Pt having difficulty bearing weight on the right hip. .

Assessment:**Assessment:**

1. Strain of unspecified site - 848.9 (Primary)
 2. ABUSE BY FATHER/STPFTH/BF - E967.0
- greater than 50% of 30 min exam visit was in counseling.

Plan:**1. Strain of unspecified site**

concerns of abuse with hip and shoulder strain. Recommended if CPS does not intervene that this could lead to a life threatening situation. I recommend they pursue legal full custody as soon as possible. We will contact CPS about the situation. She will be with her mom this weekend so we will contact them monday.

Immunizations:**Labs:**

Preventive: Counseling: Domestic violence , warned this was the most common cause of homicide in Texas and in our area and needs to be taken seriously. the situation seems to be escalating quickly due to CPS investigation.



NO. D-1-FM-05-000710

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
MARINA ZIMMERMAN	§	201ST JUDICIAL DISTRICT
	§	
A CHILD	§	TRAVIS COUNTY, TEXAS

PETITIONER'S SUPPORTING AFFIDAVIT

Eric "Ani" Fox appeared in person before me today and stated under oath:

"My name is Eric "Ani" Fox. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am the step-father of the child the subject of this suit.

"On 2/11/11 My wife received a phone call from Marina our 12 year old daughter and it sounded like she was in the middle of an argument with Don Zimmerman, her father - Katya put the phone on speaker after she heard screaming. Marina start asking "May I please have my phone back, may I please have my phone back, may I please have my phone back..." I heard Don respond with "I can't hear you, I can't hear, you need to shut up, shut up." Both of us heard Don shout, "Shut up! Go to your room! You're not getting your phone back! Go to your room! You need to go now or you're going to get hit! Go, go, you brat!" Then I heard some scuffling noises and the phone going dead. "Marina then sent an email to me, her mother and her father: (enclosed below)



from M B <dragoncat21@gmail.com>
Mama <katushinka@gmail.com>,
to Ani <grakfox@gmail.com>,
Don <don@donzimmerman.org>
date Fri, Feb 11, 2011 at 9:32 AM
subject hello don

hello don. You just took my phone away by force, and pushed me around, told me to shut up, pulled my hair and called me a brat. And i want my phone back

"When Marina returned home at 10am I saw that she was crying - I was the first person she saw and spoke to. I saw that she had a red mark on her forehead. I was told by Marina that her father had ripped off her hat, thrown it at her and in the process torn out some of her hair. I was told by Marina that she was sore in several spots on her chest and back because her father had "smashed me into a wall and the microwave." She told me that she was waiting to go, heating up food for the car ride when Don got angry she had not eaten breakfast and ordered her to sit on the couch. I was told by marina that Don said, "You always want everyone to wait on you, now you will wait for me. You want everything your way." She told me she then sat and started texting her mother when "Don exploded, started screaming and "wrenched the phone from my hands." She told me that she followed him to the kitchen asking for her phone back. Marina told me that her father grabbed her by the front of her coat, shook her while screaming, slammed her into a wall and the couch. I saw her shake with fear and cry when she described this. I saw that she appeared to be in shock - I saw unfocused



eyes, slurred speech, rapid breathing and confusion. I was told by Marina that her father ripped her hat off pulling her hair and threw it at her. She told me that he said "have no respect and you just want everyone to do what you want". She told me that he then threatened to hit her by raising his fist. I was told by Marina that he then pushed her onto the couch and yelled, "Go to your room you brat!" while raising his arm. I had previously heard him say this which included his threat to hit her.

"I was told by Marina that Don had "cornered me in the car and started screaming." I was told he called her "arrogant stupid crazy and useless." She told me that he also told her "she was worse than two year old." I saw that Marina started to dissociate while speaking - here eyes glazed over and she stopped midsentence, looking like she was going to faint. I heard her moan. After about a minute Marina told me that at some point while driving her home her father had yelled at her and she told me he said "that I just wanted to push a physical confrontation so I could take him to court." I saw that Marina started to shake and cry when she remembered. I was told by Marina that she felt like "he was going to break my arm or something" because "his face changed and he was like a different person."

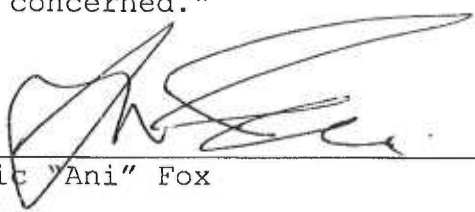
"I saw that within an hour she had developed a serious limp and had problems putting weight on her right leg. I heard her complain to her mother that she was in pain and I heard her say "Please don't send me back, he'll hurt me again."

As I had in the last two incidents where Don had become physically violent, I took her to the doctor who examined her and asked questions. At the doctor's office I heard her tell



Doctor Neitsch that she felt threatened and "he said he would kill me." I heard the Doctor ask again if "you father said that? He said "he'd kill you." I heard Marina say "yes" and I saw that she was trembling. I saw and heard Doctor Neitsch recommending to my wife immediate legal action and I heard her say that "CPS might not act quickly enough," that she believed this was significant abuse and that "this is how people get killed. Take care of this now." I heard her ask Marina if she wanted to go back. Marina told her "no, not ever." I heard her ask Marina if she wanted to "ever see your Dad again" and I heard Marina respond "like once a month but with my Mom watching so he doesn't hit me."

"I saw and heard Doctor Neitsch remind my wife that this "is the third visit and it's getting worse fast." I heard her tell me and my wife, "take care of this now because CPS will not intervene in time and he is dangerous." I also heard her say "I will call CPS." I saw and heard her go over the previous visits where Marina had bruises on her arms, shins and shoulders. I heard her say "the whole demonic possession thing is really scary" and I saw she looked very concerned."


Eric "Ani" Fox

SIGNED under oath before me on 2/14/11.




Notary Public, State of Texas



Sent: Notice PO None Waiver: Y/N

DC BK11049 PG1874

Disp Parties: _____

Disp code: FMD / CLS _____

Redact pgs: _____

Judge Reith Clerk MBNO. D-1-FM-05-000710

IN THE INTEREST OF

MARINA ZIMMERMAN

A CHILD

§ IN THE DISTRICT COURT

§ 201ST JUDICIAL DISTRICT

§ TRAVIS COUNTY, TEXAS

~~INJUNCTION~~
~~AGREED TEMPORARY RESTRAINING ORDER~~
~~AND ORDER SETTING HEARING FOR TEMPORARY ORDERS~~

Filed in The District Court
of Travis County, Texas

FEB 16 2011

At 10:49 A.M.
Amalia Rodriguez-Mendoza, Clerk

The application of Petitioner, KATERYNA BOCHENKOVA, for temporary restraining orders was presented to the Court today. The child the subject of this suit is MARINA ZIMMERMAN. Respondent is DONALD SHELLY ZIMMERMAN.

The Court examined the pleadings and supporting affidavits and finds that ~~Petitioner is entitled to a temporary restraining order.~~ *the parties have agreed injunction*

IT IS THEREFORE ORDERED that ~~the clerk of this Court issue a temporary restraining order restraining Respondent, and Respondent is immediately restrained, from:~~ *temporarily joined*

Contacting, or communicating with, the child the subject of this suit in person, by telephone or in writing.

Taking possession of the child.

Interfering with Petitioner's possession of the child.

Disturbing the peace of the child or of another party.

Making disparaging remarks regarding Petitioner or Petitioner's family in the presence or within the hearing of the child.

temporarily injunction
This ~~restraining order~~ is effective immediately and shall continue in force and effect until further order of this Court, ~~or until it expires by operation of law.~~ This order shall be binding on Respondent; on Respondent's agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

parties shall submit to Dr. Caryl Dalton
IT IS FURTHER ORDERED that the ~~clerk shall issue notice to Respondent, DONALD SHELLY ZIMMERMAN, to appear, and Respondent Dalton a list of therapists who are participants in the parties' health insurance plans, in the event that the parties are unable to agree upon a therapist for the child, and Dr. Caryl Dalton will then select a therapist. The parties will cooperate in the child's therapy.~~



~~is ORDERED to appear in person, before this Court in the courthouse at 10th and Guadalupe Streets, Austin, Texas, on March 2, 2011 at 8:30 a.m. The purpose of the hearing is to determine whether, while this case is pending:~~

~~The preceding temporary restraining order should be made a temporary injunction pending final hearing.~~

~~The additional temporary injunction prayed for should be granted. The parties in the case will be scheduled for a temporary orders hearing on May 2, 2011 at 8:30.~~


~~Respondent should be denied access to the child or, alternatively, the Court should render a possession order providing that Respondent's periods of visitation be continuously supervised.~~


~~The Court should order Respondent to pay reasonable interim attorney's fees and expenses.~~

~~The Court should make all other and further orders that are pleaded for or that are deemed necessary for the safety and welfare of the child.~~

IT IS FURTHER ORDERED that any authorized person eighteen years of age or older who is not a party to or interested in the outcome of this suit may serve any citation, notice, or process in this case.

SIGNED on February 16, 2011 at 10:46 a.m.


LISA DeLONG, SB# 05653050
Attorney for Petitioner


JUDGE PRESIDING

Cecilia M Wood
Attorney for Respondent
State Bar 21885100

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 1/21/2011



AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK

By Deputy:





3/10/2014 2:42:34 PM

Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-FM-05-000710

No. D-1-FM-05-000710

In the Interest of

Marina Zimmerman, a child

In the 201st District Court
Travis County, Texas

**Respondent's Motion
to Enter Final Order
re: Temporary Orders of Feb. 16, 2011**

To the Honorable Judge of Said Court:

Now Comes Respondent, Donald Zimmerman, and moves this Court to enter into a final order regarding its temporary orders of June 8, 2011. Respondent submits:

1. Respondent's relationship with the minor child has become fairly non-existent.
2. The injunctive nature of the current temporary orders, based on the nature of the relationship, is not necessary.
3. This Court resolved the issues regarding counseling based on the previous order of June 8, 2011. To this day, Respondent has not received any response to his extension and availability to pursue a relationship with his daughter.
4. Respondent remains willing and able to communicate, but until it is initiated by the minor child, there is no interaction and thus no need for any further injunctive relief beyond what was already resolved in the final decree. There has been no contact for a significant period of time.
5. Respondent requests this Court issue a final order to resolve the current temporary orders and remove the current injunction.

WHEREFORE, PREMISES CONSIDERED, Respondent requests that:

6. A final order be issued that resolves the temporary orders currently on file;
7. Such other further relief to which Respondent may be entitled at law or in equity.

Respectfully submitted,

CASEY LAW OFFICE, P.C.



MOTION FOR FINAL ORDER - ZIMMERMAN - PAGE 1 OF 2



Stephen Casey
Texas Bar No. 24065015

600 Round Rock West Drive, Suite 602
Round Rock, Texas 78681
Telephone: 512-257-1324
Fax: 512-853-4098
stephen@caseylawoffice.us

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Respondent's Motion for Final Order was served upon opposing parties by the manner and method indicated below on this day, March 10, 2014.

Via fax

Lisa De Long Law Offices
3009 N Interstate Highway 35,
Austin, TX 78722
Fax: 512-472-9798


Stephen Casey; Counsel for Don Zimmerman



4/9/2014 2:02:34 PM

Amalia Rodriguez-Mendoza

District Clerk

Travis County

D-1-FM-05-000710

NO. D-1-FM-05-000710

IN THE INTEREST OF

M.Z.,

A CHILD

§
§
§
§
§

IN THE DISTRICT COURT

201ST JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**FIRST AMENDED PETITION TO MODIFY PARENT-CHILD RELATIONSHIP
AND TO CONFIRM MEDICAL SUPPORT ARREARAGE**

1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. *Parties and Order to Be Modified*

This suit to modify a prior order is brought by KATERYNA BOCHENKOVA, Petitioner. The last three numbers of KATERYNA BOCHENKOVA's driver's license number are *REDACTED*. The last three numbers of KATERYNA BOCHENKOVA's Social Security number are *REDACTED*. Petitioner is the mother of the child and has standing to bring this suit. The requested modification will be in the best interest of the child.

Respondent is DONALD SHELLY ZIMMERMAN.

The orders to be modified are entitled "Final Decree of Divorce", rendered on May 27, 2005, and "Order in Suit to Modify Parent-Child Relationship", announced in open court on August 3, 2010.

3. *Jurisdiction*

This Court has continuing, exclusive jurisdiction of this suit.

4. *Child*

The following child is the subject of this suit:

Name: M.Z.

Sex: Female

Birth date: *REDACTED*

County of residence: Travis



5. *Parties Affected*

The following parties may be affected by this suit:

Name: DONALD SHELLY ZIMMERMAN

Relationship: father

Process may be served upon Respondent's attorney of record, Stephen Casey.

6. *Child's Property*

There has been no change of consequence in the status of the child's property since the prior orders were rendered.

7. *Modification of Conservatorship, Possession and Access*

The most recent order to be modified is not based on a mediated or collaborative law settlement agreement. The circumstances of the child, a conservator, or other party affected by the orders to be modified have materially and substantially changed since the date of rendition of the orders to be modified.

Petitioner requests that the rights and duties of the respective conservators of the child be modified to provide as follows: Petitioner should be granted the exclusive exercise of those rights contained within Section 153.132 of the Texas Family Code.

Petitioner requests that the terms and conditions for access to or possession of the child be modified to require that Respondent's periods of possession of the child be terminated.

Respondent has a history or pattern of physical and emotional abuse directed against M.Z. Petitioner requests the Court to deny Respondent access to the child. Alternatively, Petitioner requests that the Court render a possession order that provides that Respondent's periods of visitation be continuously supervised by an entity or person chosen by the Court.

The requested modification is in the best interest of the child.

8. *Request for Temporary Orders*

Petitioner requests the Court, after notice and hearing, to make temporary orders for the safety and welfare of the child, including but not limited to the following:



Denying Respondent access to the child or, alternatively, rendering a possession order providing that Respondent's periods of visitation be continuously supervised.

Ordering Respondent to attend parenting classes and anger management classes.

Ordering Respondent to pay reasonable interim attorney's fees and expenses.

9. *Request for Temporary Restraining Order*

Petitioner requests the Court to dispense with the necessity of a bond, and Petitioner requests that Respondent be temporarily restrained immediately, without hearing, and after notice and hearing be temporarily enjoined, pending the further order of this Court, from:

Disturbing the peace of the child or of another party.

Withdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled.

Hiding or secreting the child from Petitioner.

Making disparaging remarks regarding Petitioner or Petitioner's family in the presence or within the hearing of the child.

As the basis for the extraordinary relief requested below, Petitioner would show that before the filing of this petition Respondent has engaged in the conduct stated in the affidavit heretofore filed herein. Based on that affidavit, Petitioner requests the Court to grant the following relief:

Issue an order excluding Respondent from possession of or access to the child, M.Z.

10. *Request for Permanent Injunction*

Petitioner requests the Court, after trial on the merits, to grant the following permanent injunction:

- a. Prohibiting Respondent from using any form of corporal punishment to discipline the child.



11. *Request for Confirmation of Medical Support Arrearage*

Respondent has failed to provide medical support for the child as previously ordered. Petitioner requests the Court to confirm the existing medical support arrearage of \$14,738.55 and to order Respondent to make monthly payments on such arrearage until the entire sum of \$14,738.55, plus statutory interest has been paid in full.

12. *Request for Attorney's Fees, Expenses, Costs, and Interest*

It was necessary for Petitioner to secure the services of Lisa DeLong, a licensed attorney, to preserve and protect the child's rights. Respondent should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Respondent and be ordered paid directly to Petitioner's attorney, who may enforce the judgment in the attorney's own name. Petitioner requests postjudgment interest as allowed by law.

12. *Prayer*

Petitioner prays that citation and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition.

Petitioner prays that the Court immediately grant a temporary restraining order restraining Respondent, in conformity with the allegations of this petition, from the acts set forth above, and Petitioner prays that, after notice and hearing, this temporary restraining order be made a temporary injunction.

Petitioner prays that, on final hearing, the Court enter a permanent injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth above.

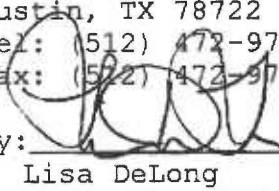
Petitioner prays for attorney's fees, expenses, costs, and interest as requested above.



Petitioner prays for general relief.

Respectfully submitted,

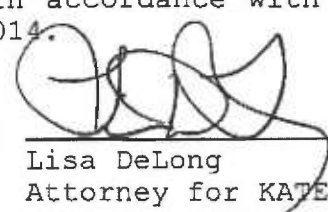
Lisa DeLong, Attorney at Law
3009 North IH-35
Austin, TX 78722
Tel: (512) 472-9717
Fax: (512) 472-9798

By: 

Lisa DeLong
State Bar No. 05653050
Attorney for Petitioner

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on April 9, 2014.



Lisa DeLong
Attorney for KATERYNA BOCHENKOVA



NO. D-1-FM-05-000710

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
M.Z.,	§	201ST JUDICIAL DISTRICT
	§	
A CHILD	§	TRAVIS COUNTY, TEXAS

SECOND AMENDED PETITION TO MODIFY PARENT-CHILD RELATIONSHIP
AND TO CONFIRM MEDICAL SUPPORT ARREARAGE

1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. *Parties and Order to Be Modified*

This suit to modify a prior order is brought by KATERYNA BOCHENKOVA, Petitioner. The last three numbers of KATERYNA BOCHENKOVA's driver's license number are REDACTED. The last three numbers of KATERYNA BOCHENKOVA's Social Security number are REDACTED. Petitioner is the mother of the child and has standing to bring this suit. The requested modification will be in the best interest of the child.

Respondent is DONALD SHELLY ZIMMERMAN.

The orders to be modified are entitled "Final Decree of Divorce", rendered on May 27, 2005, and "Order in Suit to Modify Parent-Child Relationship", announced in open court on August 3, 2010.

3. *Jurisdiction*

This Court has continuing, exclusive jurisdiction of this suit.

4. *Child*

The following child is the subject of this suit:

Name: M.Z.

Sex: Female

Birth date: REDACTED

County of residence: Travis



5. *Parties Affected*

The following parties may be affected by this suit:

Name: DONALD SHELLY ZIMMERMAN

Relationship: father

Process may be served upon Respondent's attorney of record, Stephen Casey.

6. *Child's Property*

There has been no change of consequence in the status of the child's property since the prior orders were rendered.

7. *Modification of Conservatorship, Possession and Access*

The most recent order to be modified is not based on a mediated or collaborative law settlement agreement. The circumstances of the child, a conservator, or other party affected by the orders to be modified have materially and substantially changed since the date of rendition of the orders to be modified.

Petitioner requests that the rights and duties of the respective conservators of the child be modified to provide as follows: Petitioner should be granted the exclusive exercise of those rights contained within Section 153.132 of the Texas Family Code. Any existing geographical restriction on the child's residence should be lifted.

Petitioner requests that the terms and conditions for access to or possession of the child be modified to require that Respondent's periods of possession of the child be terminated.

Respondent has a history or pattern of physical and emotional abuse directed against M.Z. Petitioner requests the Court to deny Respondent access to the child.

The requested modification is in the best interest of the child.

8. *Request for Temporary Orders*

Petitioner requests the Court, after notice and hearing, to make temporary orders for the safety and welfare of the child, including but not limited to the following:



Denying Respondent access to the child or, alternatively, rendering a possession order providing that Respondent's periods of visitation be continuously supervised.

Ordering Respondent to attend parenting classes and anger management classes.

Ordering Respondent to pay reasonable interim attorney's fees and expenses.

9. *Request for Temporary Restraining Order*

Petitioner requests the Court to dispense with the necessity of a bond, and Petitioner requests that Respondent be temporarily restrained immediately, without hearing, and after notice and hearing be temporarily enjoined, pending the further order of this Court, from:

Disturbing the peace of the child or of another party.

Withdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled.

Hiding or secreting the child from Petitioner.

Making disparaging remarks regarding Petitioner or Petitioner's family in the presence or within the hearing of the child.

As the basis for the extraordinary relief requested below, Petitioner would show that before the filing of this petition Respondent has engaged in the conduct stated in the affidavits heretofore filed herein. Based on those affidavits, Petitioner requests the Court to grant the following relief:

Issue an order excluding Respondent from possession of or access to the child, M.Z.

10. *Request for Permanent Injunction*

Petitioner requests the Court, after trial on the merits, to grant the following permanent injunction:

- a. Taking possession of the child.
- b. Prohibiting Respondent from using any form of corporal punishment to discipline the child.



11. *Request for Confirmation of Medical Support Arrearage*

Respondent has failed to provide medical support for the child as previously ordered. Petitioner requests the Court to confirm the existing medical support arrearage of \$14,738.55 and to order Respondent to make monthly payments on such arrearage until the entire sum of \$14,738.55, plus statutory interest has been paid in full.

12. *Request for Attorney's Fees, Expenses, Costs, and Interest*

It was necessary for Petitioner to secure the services of Lisa DeLong, a licensed attorney, to preserve and protect the child's rights. Respondent should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Respondent and be ordered paid directly to Petitioner's attorney, who may enforce the judgment in the attorney's own name. Petitioner requests postjudgment interest as allowed by law.

12. *Prayer*

Petitioner prays that citation and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition.

Petitioner prays that the Court immediately grant a temporary restraining order restraining Respondent, in conformity with the allegations of this petition, from the acts set forth above, and Petitioner prays that, after notice and hearing, this temporary restraining order be made a temporary injunction.

Petitioner prays that, on final hearing, the Court enter a permanent injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth above.


Petitioner prays for attorney's fees, expenses, costs, and interest as requested above.



Petitioner prays for general relief.

Respectfully submitted,

Lisa DeLong, Attorney at Law
3009 North IH-35
Austin, TX 78722
Tel: (512) 472-9717
Fax: (512) 472-9798

By: 

Lisa DeLong
State Bar No. 05653050
Attorney for Petitioner

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on June 9, 2014.



Lisa DeLong
Attorney for KATELYNA BOCHENKOVA



NO. D-1-FM-05-000710

IN THE INTEREST OF

M.Z.

A CHILD

§
§
§
§
§

IN THE DISTRICT COURT

201ST JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, TexasJUN 16 2014
At
Amalia Rodriguez-Mendoza, Clerk**AGREED ORDER IN SUIT TO MODIFY PARENT-CHILD RELATIONSHIP**On June 16, 2014 the Court heard this case.*Appearances*

Petitioner, KATERYNA BOCHENKOVA, did not appear in person but has agreed to the terms of this order as evidenced by Petitioner's signature below.

Respondent, DONALD SHELLY ZIMMERMAN, has made a general appearance and has agreed to the terms of this order, to the extent permitted by law, as evidenced by Respondent's signature, and that of his attorney, below.

Consent by Person with Right to Designate Primary Residence

KATERYNA BOCHENKOVA, who has the exclusive right to designate the primary residence of the child, has consented to the terms of this order as evidenced by KATERYNA BOCHENKOVA's signature below.

Jurisdiction

The Court, after examining the record and the evidence and argument of counsel, finds that it has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case. All persons entitled to citation were properly cited.

Jury

A jury was waived, and all questions of fact and of law were submitted to the Court.

Record

The making of a record of testimony was waived by the parties with the consent of the Court.

Child

The Court finds that the following child is the subject of this suit:

Name: M.Z.



Sex: Female

Birth date: REDACTED

Home state: Texas

Social Security number: REDACTED

Findings

The Court finds that the material allegations in the petition to modify are true and that the requested modification is in the best interest of the child. IT IS ORDERED that the requested modification is GRANTED.

Parenting Plan

The Court finds that the provisions in these orders relating to the rights and duties of the parties with relation to the child, possession of and access to the child, and optimizing the development of a close and continuing relationship between each party and the child constitute the parties' agreed parenting plan.

Conservatorship

The Court finds that the following orders are in the best interest of the child.

IT IS ORDERED that KATERYNA BOCHENKOVA and DONALD SHELLY ZIMMERMAN are removed as managing conservators and that KATERYNA BOCHENKOVA is appointed Sole Managing Conservator and DONALD SHELLY ZIMMERMAN is appointed Possessory Conservator of the following child: M.Z.

IT IS ORDERED that, at all times, KATERYNA BOCHENKOVA, as a parent sole managing conservator, shall have the following rights:

1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
3. the right of access to medical, dental, psychological, and educational records of the child;
4. the right to consult with a physician, dentist, or psychologist of the child;
5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;



6. the right to attend school activities;
7. the right to be designated on the child's records as a person to be notified in case of an emergency;
8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
9. the right to manage the estate of the child to the extent the estate has been created by the parent or the parent's family.

IT IS ORDERED that, at all times, DONALD SHELLY ZIMMERMAN, as a parent possessory conservator, shall have the following rights:

1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
3. the right of access to medical, dental, psychological, and educational records of the child;
4. the right to consult with a physician, dentist, or psychologist of the child;
5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;
6. the right to attend school activities;
7. the right to be designated on the child's records as a person to be notified in case of an emergency;
8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
9. the right to manage the estate of the child to the extent the estate has been created by the parent or the parent's family.

IT IS ORDERED that, at all times, KATERYNA BOCHENKOVA, as a parent sole managing conservator shall have the following duties:



1. the duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child; and

2. the duty to inform the other conservator of the child if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the conservator of the child begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, at all times, DONALD SHELLY ZIMMERMAN, as a parent possessory conservator, shall have the following duties:

1. the duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child; and

2. the duty to inform the other conservator of the child if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the conservator of the child begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, during her periods of possession, KATERYNA BOCHENKOVA, as a parent sole managing conservator, shall have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the child;

2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;



3. the right to consent for the child to medical and dental care not involving an invasive procedure; and

4. the right to direct the moral and religious training of the child.

IT IS ORDERED that, during his periods of possession, DONALD SHELLY ZIMMERMAN, as a parent possessory conservator, shall have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the child;

2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

3. the right to consent for the child to medical and dental care not involving an invasive procedure; and

4. the right to direct the moral and religious training of the child.

IT IS ORDERED that KATERYNA BOCHENKOVA, as parent sole managing conservator, shall have the following exclusive rights and duty:

1. the right to designate the primary residence of the child without geographic restriction;

2. the right to consent to medical, dental, and surgical treatment involving invasive procedures;

3. the right to consent to psychiatric and psychological treatment of the child;

4. the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;

5. the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

6. the right to consent to marriage and to enlistment in the armed forces of the United States;

7. the right to make decisions concerning the child's education;

8. except as provided by section 264.0111 of the Texas Family Code, the right to the services and earnings of the child;



9. except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and

10. the duty to manage the estate of the child to the extent the estate has been created by community property or the joint property of the parents.

IT IS ORDERED that KATERYNA BOCHENKOVA shall have the exclusive right to apply for a passport for the child, M.Z.. If KATERYNA BOCHENKOVA applies for a passport for the child, M.Z., KATERYNA BOCHENKOVA is ORDERED to notify the other conservator of that fact no later than fourteen days after the application.

IT IS ORDERED that KATERYNA BOCHENKOVA shall have the right to maintain possession of any passports of the child, M.Z..

Possession and Access

1. *Possession Order*

The parties have agreed that it is in the best interest of the child that Respondent not have possession of or access to the child.

IT IS THEREFORE ORDERED that DONALD SHELLY ZIMMERMAN shall have no possession of or access to the child, M.Z.

2. *Termination of Orders*

The provisions of this order relating to conservatorship, possession, or access terminate on the marriage of KATERYNA BOCHENKOVA to DONALD SHELLY ZIMMERMAN unless a nonparent or agency has been appointed conservator of the child under chapter 153 of the Texas Family Code.

Child Medical Support Arrearage

The Court finds that the medical child support arrearage as of 4/2/2014 is \$14,738.55. The Court further finds that KATERYNA BOCHENKOVA has agreed to waive all past medical support.

IT IS THEREFORE ORDERED that, as of 4/2/2014, the medical child support arrearage owed by DONALD SHELLY ZIMMERMAN is \$0.



Required Information

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: KATERYNA BOCHENKOVA

Social Security number: last 3 digits *REDACTED*
 Driver's license number: last 3 digits *REDACTED* Issuing state: Texas
 Current residence address: *REDACTED*
 Mailing address: *REDACTED*
 Home telephone number: (512) 577-7378
 Name of employer: None.
 Address of employment: n/a
 Work telephone number: n/a

Name: DONALD SHELLY ZIMMERMAN

Social Security number: last 3 digits *REDACTED*
 Driver's license number: last 3 digits *REDACTED* Issuing state: Texas
 Current residence address: *REDACTED*
 Mailing address: *REDACTED*
 Home telephone number: (512) 577-7378
 Name of employer: _____
 Address of employment: _____
 Work telephone number: _____

Required Notices

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF



THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at P.O. Box 679003, Austin, Texas 78767-9003. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MC046S, P.O. Box 12017, Austin, Texas 78711-2017.

Warnings

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.



FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Attorney's Fees

IT IS ORDERED that attorney's fees are to be borne by the party who incurred them.

Costs

IT IS ORDERED that costs of court are to be borne by the party who incurred them.

Relief Not Granted

IT IS ORDERED that all relief requested in this case and not expressly granted is denied. All other terms of the prior orders regarding support not specifically modified in this order shall remain in full force and effect.

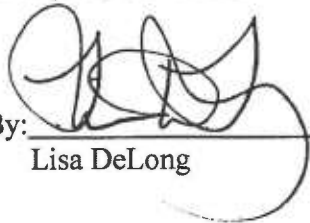
Date of Order

SIGNED on June 16, 2014.


JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

Lisa DeLong, Attorney at Law
3009 North IH-35
Austin, TX 78722
Tel: (512) 472-9717
Fax: (512) 472-9798

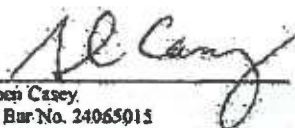
By: 
Lisa DeLong



State Bar No. 05653050
E-Mail: delonglaw@aol.com
Attorney for Petitioner

Casey Law Office, P.C.
600 Round Rock West Drive, Suite 602
Round Rock, Texas 78681
Tel: (512) 257-1324
Fax: (512) 853-4028

By:


Stephen Casey
State Bar No. 24065015
E-Mail: stephen@caseylawoffice.us
Attorney for Respondent

APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE:


KATERYNA BOCHENKOVA, Petitioner


DONALD SHELLEY ZIMMERMAN, Respondent



Filed Date	Category	Description	Additional Info
		Judges Notes/Comments	
2/3/2005	DOCK_C...	ORIGINAL PETITION/APPLICATION	ORIGINAL PETITION FOR DIVORCE
2/4/2005	PET-PL	Counterclaim	ORIGINAL COUNTERPETITION FOR DIVORCE
2/4/2005	PET-PL	ORIGINAL ANSWER	RESPONDENT'S ORIGINAL ANSWER
3/17/2005	ANS-RES...	MTN:SUB & OR WITHDRAW COUNSEL	DONALD SHELLY ZIMMERMAN'S MOTION TO SUBSTITUTE COUNSEL
3/17/2005	MOTION	ORD:SUB & OR WITHDRAW COUNSEL	ORDER ON RESPONDENT'S MOTION TO SUBSTITUTE COUNSEL
3/18/2005	ORD	MTN:TEMPORARY ORDERS	MOTION FOR TEMPORARY ORDERS
3/28/2005	PET-PL	Jury Demand	REQUEST FOR JURY TRIAL
3/28/2005	NOTICE	NTC:ATTORNEY/COUNSEL	DESIGNATION OF ATTORNEY IN CHARGE
3/28/2005	NOTICE	NTC:NOTICE OF APPEAL	NOTICE OF APPEAL FROM ASSOCIATE JUDGES HEARING
3/28/2005	OTHER	Exhibits Receipt	RECEIPT OF EXHIBITS (NO EXHIBITS ATTACHED)
3/29/2005	OTHER	MTN:SUB & OR WITHDRAW COUNSEL	MOTION FOR SUBSTITUTE OF COUNSEL
3/29/2005	MOTION	AMENDED PETITION	FIRST AMENDED COUNTER-PETITION FOR DIVORCE
3/29/2005	PET-PL	NTC:HEARING/SETTING	NOTICE OF FINAL TRIAL
4/1/2005	NOTICE	ORD:SUB & OR WITHDRAW COUNSEL	ORDER ON MOTION FOR SUBSTITUTION OF COUNSEL
4/12/2005	ORD	OTHER FILING	BINDING SETTLEMENT AGREEMENT
5/6/2005	OTHER	MTN:ENTER JUDGMENT/SIGN ORDER	MOTION TO SIGN DECREE OF DIVORCE
5/23/2005	MOTION	ORD:DECREE DIVORCE	FINAL DECREE OF DIVORCE
5/27/2005	ORD	MTN:MODIFY, REDUCE	PETITION TO MODIFY PARENT-CHILD RELATIONSHIP
1/20/2010	MOTION	ORD:SHOW CAUSE	NOTICE OF HEARING FOR TEMPORARY ORDERS
1/21/2010	ORD	AFFIDAVIT	PETITIONER'S SUPPORTING AFFIDAVIT
1/21/2010	OTHER	ORD:SHOW CAUSE	NOTICE OF HEARING FOR TEMPORARY ORDERS
1/21/2010	ORD	EXE SERVICE OF CITATION	DONALD SHELLY ZIMMERMAN
1/26/2010	SRVPRO...	EXE SERVICE OF WRIT/ORD	WRIT - DONALD SHELLY ZIMMERMAN
1/26/2010	SRVPRO...	COUNTERCLAIM	COUNTER-PETITION TO MODIFY IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP AND FOR ENFORCEMENT
2/1/2010	PET-PL	ORIGINAL ANSWER	RESPONDENT'S FIRST ORIGINAL ANSWER
2/1/2010	ANS-RES...	AMENDED/SUPPLEMENTED ANSWER	RESPONDENT'S FIRST AMENDED ORIGINAL ANSWER
2/2/2010	ANS-RES...	EXE SERVICE OF SUBPOENA	JULIE HSIAO
2/18/2010	SRVPRO...	EXE SERVICE OF SUBPOENA	JOAN (JONI) BIGGERS
2/18/2010	SRVPRO...	MTN:SUB & OR WITHDRAW COUNSEL	MOTION FOR SUBSTITUTION OF COUNSEL
3/11/2010	MOTION	EXHIBITS RECEIPT	EXHIBITS RECEIPT
4/5/2010	OTHER	ORD:SUB & OR WITHDRAW COUNSEL	ORDER ON MOTION FOR SUBSTITUTION OF COUNSEL
4/20/2010	ORD	LETTER	VACATION LETTER
5/4/2010	OTHER	AGREEMENT	MEDIATED SETTLEMENT AGREEMENT
5/10/2010	OTHER	MTN:DISMISS/NONSUIT	MOTION TO DISMISS
7/14/2010	MOTION	PROPOSED DISPOSITION OF ISSUES	PROPOSED DISPOSITION OF ISSUES
7/19/2010	OTHER	PROPOSED DISPOSITION OF ISSUES	DONALD ZIMMERMAN'S PROPOSED DISPOSITION OF ISSUES
7/19/2010	OTHER	ORIGINAL ANSWER	COUNTER-RESPONDENT'S ORIGINAL ANSWER
7/19/2010	ANS-RES...	AMENDED PETITION	FIRST AMENDED COUNTER-PETITION TO MODIFY IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP
7/19/2010	PET-PL	FORM	VISITING COURT REPORTER'S CERTIFICATE
8/17/2010	OTHER	EXHIBITS RECEIPT	EXHIBITS RECEIPT
8/17/2010	OTHER	LETTER	VACATION LETTER
10/8/2010	OTHER	ORD:MODIFY, CONTEMPT, ENFORCE	ORDER IN SUIT TO MODIFY PARENT-CHILD RELATIONSHIP
2/16/2011	ORD-DR...	ORD:TEMPORARY INJUNCTION	AGREED TEMPORARY INJUNCTION
2/16/2011	ORD	MTN:MODIFY, REDUCE	PETITION TO MODIFY PARENT CHILD RELATIONSHIP
2/16/2011	MOTION	NTC:OTHER NOTICE	NOTICE OF FILING OF BUSINESS RECORDS AFFIDAVIT
4/14/2011	NOTICE		



Filed Date	Category	Description	Additional Info
4/14/2011	MOTION ...	MTN:OTHER MOTION	MOTION FOR JUDGE TO CONFER WITH CHILD
5/12/2011	MOTION ...	MTN:TEMPORARY ORDERS	SUPPLEMENTAL MOTION FOR TEMPORARY ORDERS
5/23/2011	OTHER ...	LETTER	VACATION LETTER
6/2/2011	OTHER ...	FORM	VISTING COURT REPORTERS CERTIFICATE
6/9/2011	ORD-DR...	ORD:TEMPORARY ORDERS	ORDER ON SUPPLEMENTAL MOTION FOR TEMPORARY ORDERS
8/19/2011	OTHER ...	LETTER	VACATION LETTER
11/8/2011	OTHER ...	LETTER	VACATION LETTER
1/13/2012	MOTION ...	MTN:SUB & OR WITHDRAW COUNSEL	MOTION FOR WITHDRAWAL OF COUNSEL
1/26/2012	ORD ...	ORD:SUB & OR WITHDRAW COUNSEL	ORDER ON MOTION FOR WITHDRAWAL OF COUNSEL
3/10/2014	MOTION ...	MTN:ENTER JUDGMENT/SIGN ORDER	RESPONDENT'S MOTION TO ENTER FINAL ORDER RE TEMPORARY ORDERS OF FEB 16, 2011
4/9/2014	PET-PL ...	AMENDED PETITION	FIRST AMENDED PETITION TO MODIFY PARENT-CHILD RELATIONSHIP AND TO CONFIRM MEDICAL SUPPORT ARREARS...
6/9/2014	OTHER ...	PROPOSED DISPOSITION OF ISSUES	PROPOSED DISPOSITION OF ISSUES
6/9/2014	MOTION ...	MTN:MODIFY,REDUCE	SECOND AMENDED PETITION TO MODIFY PARENT-CHILD RELATIONSHIP AND TO CONFIRM MEDICAL SUPPORT ARREARS...
6/16/2014	ORD-DR...	ORD:MODIFY, CONTEMPT, ENFORCE	AGREED ORDER IN SUIT TO MODIFY PARENT-CHILD RELATIONSHIP
7/22/2014	NOTICE ...	JUDGMENT NOTICE MAILED	Form Number L60-40991 Issued by LAURA LANCASTER (5601) JUDGMENT NOTICE MAILED
7/22/2014	NOTICE ...	JUDGMENT NOTICE MAILED	Form Number L60-40992 Issued by LAURA LANCASTER (5601) JUDGMENT NOTICE MAILED

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on



11/10/2014
AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy:

Adrian J. Carter



Micah 6:8

10 October 2014

**RETRACTION DEMAND PURSUANT TO
TEXAS CIVIL PRACTICES AND REMEDIES CODE § 73.055**

Ken Martin
THE AUSTIN BULLDOG
P.O. Box 4400
Austin, Texas 78765

Re: Teaser email and article regarding Don Zimmerman, titled "Candidate Lost Custody Over Abuse," published in weblog dated October 9 2014 at 3:10 pm.

Dear Mr. Martin,

My office represents Don Zimmerman, both individually and on behalf of Austinites for Zimmerman. This letter serves as notice of defamation and a demand, under Texas Civil Practices and Remedies Code § 73.055.

You serve as "editor," and likely are the author, of the aforementioned commentary/article that appeared both as a teaser email (hereinafter "email" or "the email") on your weblog (hereinafter "blog" or "the blog"). As such, you are responsible for the content of that blog. You spoke with me directly and with Don Zimmerman directly, as well as reviewing the court files you found at the courthouse.

Preliminary Statement

As a journalist, you have exposed Mr. Zimmerman's daughter's name and personal medical information recklessly and without any redaction of her name. This is highly unprofessional and completely inappropriate as she is a minor. One would assume that your experience should have informed you to redact the name of a minor on anything before you publish it on the Internet.

False Statements in the Email and Blog

Your blog makes multiple defamatory statements. The legal standard, explained below, makes you liable for these false statements. The defamatory statements are:

Email

- The email title "Candidate Lost Custody Over Abuse" is a false statement. Mr. Zimmerman did not "lose custody." Texas is a state that utilizes the conservatorship model, and not the custody model. You are referencing legal pleadings, which are specific. No abuse was ever testified to in court. This title is defamatory because it fails the "juxtaposition" test for defamation identified below. You are demanded to retract that statement. Mr. Zimmerman did not lose custody over abuse.

CASEY LAW OFFICE, P.C. • 595 Round Rock West Drive, Suite 102 • Round Rock, Texas 78681
512-257-1324 (phone) • (512) 853-4098 (fax)
Transforming Lives Through Justice

Page 1 of 5

- The email subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. Documents maintained by a district clerk are of various kinds. Yet simply because a court case involved a medical record does not make something a court record. No court opinion or order of any kind positively states that Zimmerman injured or alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman was never found by a court or a doctor to have injured his daughter.
- The email subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. No court order or opinion of any kind ever states that Zimmerman alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman never alienated his daughter.
- The email states that “aggression in disciplining his daughter” “resulted in documented physical and emotion damage and permanent loss of parental rights through civil court action.” This is a false statement. First, there was never any finding that Mr. Zimmerman was too aggressive in disciplining his daughter. Second, there was never a cause/effect connection between discipline and physical or emotional damage in any court finding. Third, Mr. Zimmerman did not “permanent[ly]” lose parental rights. This is repeated in the sidebar column as well. Mr. Zimmerman is still a conservator of his daughter. Permanent loss of parental rights prevents any parenting whatsoever. You are demanded to retract this statement. Mr. Zimmerman did not permanently lose parental rights and there was never an occasion where a court found that any discipline resulted in any physical or emotional damage.
- The email states that the doctor reports literally state that Mr. Zimmerman “on separate occasions” “inflicted bruises, pulled Marina’s hair, pushed her, and ‘threatened to kill her.’” This is a false statement. At no point does your email express that these statements are not the doctor’s conclusions but are pure allegations, that they are hearsay transcribed by the doctor, and you fail to identify or follow up on the outcome of a CPS investigation, if any. This could lead the ordinary, reasonable person to believe that the doctor actually confirmed the abuse when it was truly only hearsay.¹ You are demanded to retract that statement. There was no confirmed abuse.

Blog

- The blog title “Candidate Lost Custody Over Abuse” is a false statement. Mr. Zimmerman did not “lose custody.” Texas is a state that utilizes the conservatorship model, and not the custody model. You are referencing legal pleadings, which are specific. No abuse was ever testified to in court. In fact, as Mr. Zimmerman identified in your discussion with him, the abuse allegations are lies. Please see the enclosed full transcript documenting the mother’s alienation of the minor child. Further, the doctor’s statements are reprinted hearsay as the doctor did not observe any abuse.

¹ See legal standard for “could” regarding the ordinary, reasonable person, *infra*.

- The blog subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. Documents maintained by a district clerk are of various kinds. Yet simply because a court case involved a medical record does not make something a court record. No court opinion or order of any kind positively states that Zimmerman injured or alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman was never found by a court or a doctor to have injured his daughter.
- The blog subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. No court order or opinion of any kind ever states that Zimmerman alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman never alienated his daughter.
- The blog states that “aggression in disciplining his daughter” “resulted in documented physical and emotion damage and permanent loss of parental rights through civil court action.” This is a false statement. First, there was never any finding that Mr. Zimmerman was too aggressive in disciplining his daughter. Second, there was never a cause/effect connection between discipline and physical or emotional damage in any court finding. Third, Mr. Zimmerman did not “permanent[ly]” lose parental rights. Mr. Zimmerman is still a conservator of his daughter. Permanent loss of parental rights prevents any parenting whatsoever. You are demanded to retract this statement. Mr. Zimmerman did not permanently lose parental rights and there was never an occasion where a court found that any discipline resulted in any physical or emotional damage.
- The blog states that the doctor reports literally state that Mr. Zimmerman “on separate occasions” “inflicted bruises, pulled Marina’s hair, pushed her, and ‘threatened to kill her.’” This is a false statement. At no point does your email express that these are allegations, that they are hearsay by the doctor, and you fail to identify or follow up on the outcome of a CPS investigation, if any. This leads the ordinary, reasonable person to believe that the doctor actually confirmed the abuse when it was only hearsay. You are demanded to retract that statement. There was no confirmed abuse or threats.
- The three statements regarding the doctor’s reports never state that the statements of alleged abuse by the doctor are repeated hearsay. It never makes the distinction that these are all reported by the daughter but never confirmed by any external investigation, and that the doctor’s opinion is based solely on the child’s allegations.

Legal Standard for Defamation

To prove the offense of defamation, a party must demonstrate five (5) elements.²

1. Defendants published a statement of fact.
2. The statement referred to the Plaintiff.

² See *Neely v. Wilson*, 418 S.W.3d 52 (Tex. 2013).

3. The statement was defamatory (false).
4. With regard to the truth of the statement, the defendant was (a) acting with malice, (b) negligent, or (c) strictly liable—per se defamation.
5. The plaintiff suffered injury.

Even if the publication of the statements was correct in the details (which yours was not) but got the gist of the story wrong by **juxtaposing facts in a misleading way, the publication is still false.**³

Here, the email and blog both (1) make utterly false statements, and (2) juxtapose statements in a misleading way. And the instruction from the Court in *Neely* is instructive. The plaintiff in *Neely* was found to prevail because “a person of ordinary intelligence **could** conclude” that the plaintiff had been disciplined in his practice for operating on patients while under illegal drug influence.⁴ The reasonable person viewing the broadcast by the defendant could have believed the Plaintiff to be a drug user.⁵ There just needed to be the potential for that to happen, not that it was going to happen.

Here, your actions are defamatory *per se* (including, *inter alia*, accusations of a criminal offense) and accuse Mr. Zimmerman of abuse and threats to kill his daughter. Those are actionable without any proof of damages or malice, even for limited purpose public figures.⁶ The law regarding malice, which is required for this type of case, is clear, too. You have omitted many facts and cherry-picked many documents of the hundreds of pages in this case to defame Mr. Zimmerman. Your awareness of this constitutes malice.⁷

Damages for defamation *per se* actions are presumed. Even still, damages for harm to his reputation can be proven and will be proven if you do not retract your statements.

You have twenty-four (24) hours to retract your defamation. The retraction must be published in the same email forum and the same blog forum on your website and the earlier blog must be taken down. If it is not done within twenty-four (24) hours, my office will advise my client to take further legal action. Failure to retract will entitle my client to punitive damages.

If you have any further questions, please do not hesitate to contact my office.

Have a blessed day,


Stephen Casey

³ See *Neely v. Wilson*, 418 S.W.3d at 64.

⁴ See *Neely v. Wilson*, 418 S.W.3d at 65.

⁵ See *Neely v. Wilson*, 418 S.W.3d at 66.

⁶ See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347-48 (1974); *Klentzman v. Brady*, 312 S.W.3d 886, 898 (Tex. App.—Houston [1st Dist.] 2009, no pet.).

⁷ See *Turner v. KTRK TV, Inc.*, 38 S.W.3d 103, 120 (Tex. 2000).

Copy to:

Client

File

Jennifer S. Riggs

*Board Certified in Administrative Law
Texas Board of Legal Specialization
jriggs@r-alaw.com*

Jason Ray

*Board Certified in Administrative Law
Texas Board of Legal Specialization
512 457-9812 – direct line
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ldiamond@r-alaw.com*

October 13, 2014

VIA CERTIFIED MAIL, RECEIPT

And EMAIL: info@caseylawoffice.us

Stephen Casey
Casey Law Office, P.C.
595 Round Rock West Drive, Suite 102
Round Rock, Texas 78681

RE: Don Zimmerman lawsuit threat to The Austin Bulldog

Dear Mr. Casey,

This law firm has been retained to represent The Austin Bulldog regarding the matters in your letter (attached) of October 10, 2014 threatening a defamation lawsuit by your client Don Zimmerman and “Austinites for Zimmerman,” unless The Austin Bulldog “retracts” its story published on October 9, 2014, “Candidate Lost Custody Over Abuse.” I note that you are representing Mr. Zimmerman in this retraction demand regarding The Austin Bulldog story about the divorce proceedings, proceedings in which were also Mr. Zimmerman’s attorney of record (as least as of March 10, 2014), and that you serve as Mr. Zimmerman’s campaign treasurer in his race for Austin City Council.

Summary of Response

This letter will address each issue you raised in your letter, but The Austin Bulldog declines to retract its story. The story is a fair, true, and impartial account of the recent court proceedings and public court records involving Don Zimmerman, and as such is, by law, privileged and not a ground for a libel action. Tex. Civ. Prac. & Rem. Code § 73.002. Mr. Zimmerman threatens to sue this journalist for reporting and disclosing public court records. Such a lawsuit would be groundless on its face.

Aside from this “fair report privilege” of the Zimmerman judicial proceedings, The Austin Bulldog’s story does not assert the truthfulness of the allegation of abuse or grounds for the loss of usual parental rights. The Austin Bulldog reported the evidence in the court record, gave you and Mr. Zimmerman a full opportunity to comment and published his comments in the story. Importantly, on the central complaint in your letter (that “Mr. Zimmerman did not lose custody over abuse.”), there is a court finding to that effect. The Second Amended Petition to Modify Parent-Child Relationship, filed June 9, 2014, contains this core material allegation:

Respondent [Zimmerman] has a history or pattern of physical and emotional abuse directed against M.Z. Petitioner [the mother] requests the Court to deny Respondent access to the child.

The requested modification is in the best interest of the child.

Second Amended Petition at 2, paragraph 7.

Then, on June 16, 2014, the Court made a “Finding” in the Agreed Order in Suit to Modify Parent-Child Relationship:

Findings

The Court finds that the material allegations in the petition to modify are true and that the requested modification is in the best interest of the child....

Agreed Order at 2 (emphasis added).

Possession and Access

1. *Possession Order*

The parties have agreed that it is in the best interest of the child that Respondent not have possession of or access to the child, M.Z.

IT IS THEREFORE ORDERED that DONALD SHELLY ZIMMERMAN shall have no possession of or access to the child, M.Z.

Agreed Order at 6 (emphasis added). I would also point out that you signed the Order approving its form and Mr. Zimmerman signed this Order, “APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE.” Agreed Order at 10 (emphasis added). Only now that the Order is disclosed publicly is Mr. Zimmerman, or you, seem to be questioning the content of the Order.

Mr. Zimmerman is quoted in The Austin Bulldog story as saying he had never been shown the court records that included allegations of abuse by him of his daughter. As his attorney of record at the time these affidavits and medical records were filed on June 9, 2014, you are in a better position to know what court filings Mr. Zimmerman was shown prior to agreeing to the June 16, 2014 Agreed Order Mr. Zimmerman signed.

Not only is the story of the Court’s proceedings and findings privileged from a claim for libel, the story is also a communication exercising The Austin Bulldog’s right of free speech and free press, rendering any litigation action that Mr. Zimmerman may take subject to the Texas Anti-SLAPP statute, including an award for The Austin Bulldog against Mr. Zimmerman for damages, attorney fees, costs, and sanctions in an amount the Court finds sufficient and necessary to deter Plaintiff from bringing similar actions. Tex. Civ. Prac. & Rem. Code, ch. 27.

It does appear from Mr. Zimmerman's demand letter and threats to others who have reported on The Austin Bulldog's story, that what Mr. Zimmerman really wants is to deny The Austin Bulldog and the press at large their right to report on the judicial proceedings in which he was recently involved, even if, as The Austin Bulldog did, the report is a "fair, true, impartial account" of the court proceeding; the court records are provided to the readers to evaluate for themselves; Mr. Zimmerman's rebuttal comments are included in the story; and the reporter takes no position about the accuracy of the court evidence or appropriateness of the Court's findings and orders. No self-respecting journalist will succumb to such a threat, and Texas law is written to protect journalists from such threats.

The Austin Bulldog

The Austin Bulldog is the assumed name for the Austin Investigative Reporting Project, a Texas nonprofit corporation. The Austin Bulldog is an online periodical news site for investigative reporting. The Austin Bulldog is a member of the Investigative News Network, LION Publishers (Local Independent Online News Publishers), and its manager Ken Martin is a member of the Society of Professional Journalists and Investigative Reporters and Editors.

Applicable Law

The Austin Bulldog wrote this story, without malice, and merely to inform the public of this issue of public concern about a candidate for the Austin City Council. Writing about this court proceeding is privileged under Texas law.

Sec. 73.002. PRIVILEGED MATTERS. (a) The publication by a newspaper or other periodical of a matter covered by this section is privileged and is not a ground for a libel action. This privilege does not extend to the republication of a matter if it is proved that the matter was republished with actual malice after it had ceased to be of public concern.

(b) This section applies to:

(1) a fair, true, and impartial account of:

(A) a judicial proceeding, unless the court has prohibited publication of a matter because in its judgment the interests of justice demand that the matter not be published

Tex. Civ. Prac. & Rem. Code § 73.002.¹

¹ We note that the docket record of this case contains no order or any motion to seal any part of the record.

Case law supports The Austin Bulldog's privilege from the threat of libel contained in your letter. The Austin Bulldog accurately reported about and provided copies of the court records on which the report was based.

"The defendant asserting the statutory privilege is not required to prove the truth of the allegations that it repeats to its readers. Rather, it need only prove that the statements in the article are a "fair, true, and impartial" account of the trial record." *Texas Monthly, Inc. v. Transamerican Natural Gas Corp.*, 7 S.W.3d 801, 806 (Tex. App.—Houston [1st Dist] 1999).

The gist of The Austin Bulldog's report is substantially true and, contrary to your semantic disagreements with the report, the report passes the substantial trust test. "The substantial truth test involves consideration of whether the alleged defamatory statement was more damaging to the plaintiff's reputation in the mind of the average listener than a truthful statement would have been." *Klentzman v. Brady*, No. 01-11-00765-CV, 2013 WL 5655845 at *11 (Tex.App.—Houston [1 Dist.] Oct. 17, 2013). In determining whether a publication is defamatory, the reviewing court must look at the entire publication rather than at individual sentences or portions of the communication. See *Schauer v. Memorial Care Systems*, 856 S.W.2d 437, 446 (Tex.App.—Houston [1st Dist.] 1993, no writ).

Also, pursuant to section 73.005 of the Act, "The truth of the statement in the publication on which an action for libel is based is a defense to the action." Tex. Civ. Prac. & Rem. Code § 73.005.

The Texas Anti-SLAPP statute applies in this case as well. That statute says in part:

Sec. 27.002. PURPOSE. The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

Sec. 27.003. MOTION TO DISMISS. (a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.

Tex. Civ. Prac. & Rem. Code §§ 27.002 – 27.003. Section 27.009(a) provides:

Sec. 27.009. DAMAGES AND COSTS. (a) If the court orders dismissal of a legal action under this chapter, the court shall award to the moving party:

(1) court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

The Austin Bulldog's Report on the Zimmerman Court Records

You complain that Mr. Zimmerman did not “lose custody over abuse.” You make this complaint despite the Court’s “Finding,” as true, the material allegations made by the mother’s petition (which included the allegation of physical and emotional abuse of the child and medical records from the daughter’s physician) and the Court’s Order that Mr. Zimmerman “shall have no possession of or access to the child.”

The Court’s Order is also relevant to your complaint that Mr. Zimmerman did not, as The Austin Bulldog reported, “lose parental rights.” Most reasonable people would consider the loss of possession of or access to one’s child as a loss of parental rights.

Despite the understandable embarrassment this Court Order may cause Mr. Zimmerman he has no right to threaten a journalist who reports about this judicial proceeding in the fair, true, and impartial matter that The Austin Bulldog reported. The embarrassment would not have been diminished had The Austin Bulldog reported that Mr. Zimmerman “lost ‘possession and access’ to his daughter after a court found allegations of abuse as true.”

You complain, “No court order or opinion of any kind ever states that Zimmerman alienated his daughter.” In your own filing on March 10, 2014 for Mr. Zimmerman ² you said, “Respondent’s relationship with the minor child has become fairly non-existent.” The affidavit attached in support of the Second Amended Petition for Modification also includes evidence that Mr. Zimmerman alienated his daughter. The court records about the alienated relationship between Mr. Zimmerman and his daughter, including your filing, were fairly reported by The Austin Bulldog’s story.

You complain that, in reporting on the court filings, The Austin Bulldog reported “hearsay.” First of all, The Austin Bulldog explained in the story what the source was for every statement made in the story and even went so far as to attach the Court records on which the story was based. You complain that The Austin Bulldog “omitted many facts and cherry-picked many documents of the hundreds of pages in this case to defame Mr. Zimmerman.” I have reviewed the court records attached to the story. In addition to the Divorce Decree and the Agreed Temporary Injunction, the records disclosed by The Austin Bulldog are complete for substantive filings made this year, starting with your filing of the Respondent’s Motion to Enter Final Order on March 10, 2014. All of the remaining court records and orders that were the basis of the story were included.

² Respondent’s Motion to Enter Final Order.

Response to Complaint of Using Child's Name

Under the heading "Preliminary Statement" in the retraction demand letter, you complain about The Austin Bulldog using Marina Zimmerman's name. First of all, prior to publication, The Austin Bulldog obtained written permission from the daughter's mother and Sole Managing Conservator, Kateryna "Katya" Bochenkova, to use Marina's name in the story. Second, Marina's name also appears in the public court documents, including, for example, the Agreed Temporary Injunction (2/16/2011) and the Petition to Modify Parent-Child Relationship of the same date. You also complain about the release of "personal medical information" about Marina, apparently referring to the public court record, dated 2/14/2011, of the business records affidavit and attached physician progress notes recording Marina's complaints of physical abuse by Don Zimmerman. Other identifying information about Marina was redacted and not included in the story.

I also note that Mr. Zimmerman uses his daughter's full name on his campaign website, saying, "I have one remarkable teenage daughter, Marina Lorna Zimmerman." See <http://www.austinities-for-zimmerman.com/pages/about-don-zimmerman-for-austin-city-council-district-6.html>

Don Zimmerman lacks any standing to make any complaint about The Austin Bulldog's use of Marina's name or disclosure of court documents alleging abuse of his daughter.

Request for Clarification of Complaint by "Austinities for Zimmerman"

In your retraction demand letter, you indicate your office represents "Austinities for Zimmerman," that I assume is some sort of political action committee. However, after a careful search of the Austin City Clerk's election records and the Texas Ethics Commission records, I could not locate any campaign treasurer filing or campaign finance report for such a committee. The only campaign filing I could locate was Don Zimmerman's appointment, as an individual candidate, of you, Stephen Casey, as his campaign treasurer for his individual campaign. As you are aware, it is unlawful for a person or entity such as "Austinities for Zimmerman" to solicit or spend campaign funds without first filing a campaign treasurer designation.

A Google search of the committee name did turn up a website at which the public is invited to "Donate to Austinities For Zimmerman City Council District 6" and "Contribute today to "Austinities For Zimmerman"; let's send the only candidate ever to fight and abolish a City of Austin tax to represent us at the Council!" at:

<https://secure.pirya.com/donate/r0JrRLyN/Austinities-For-Zimmerman/>

Other than claiming that you represent this organization/committee "Austinities for Zimmerman," your retraction demand letter does not indicate how The Austin Bulldog story implicates any rights this organization may have and fails to meet the standards of notice, as to that entity, required by Tex. Civ. Prac. & Rem. Code § 73.055. If "Austinities for Zimmerman"

has standing for a complaint about The Austin Bulldog story, please provide proper notice of their concerns or complaints.

Without additional information, we are unable to fathom what this organization, “Austinites for Zimmerman” has to do with a personal claim of libel by Mr. Zimmerman, unless it is merely cover to pay for attorney fees using campaign funds.

Request for Information Pursuant to Tex. Civ. Prac. & Rem. Code § 73.056

To further evaluate your claim and also to add to The Austin Bulldog report any official material you believe should have been included in the report (and links to court records), The Austin Bulldog requests that, within the statutory deadline of 30 days, provide the following information. Appropriate (fair, true, and impartial) material you provide will be added to The Austin Bulldog story in the same manner as the original story. Your retraction demand letter and this response will also be added to the story.

1. Your letter, last paragraph on Page 2, says that a “full transcript” was attached to the letter, but that transcript was omitted from the copy The Austin Bulldog received on October 10th attached to your email. Please provide the full transcript of the court proceeding referenced in the retraction demand letter.
2. Please provide any court records from Cause No. D-1-FM-05-00710 that you claim were omitted from inclusion in The Austin Bulldog story that you allege demonstrates the falsity any defamatory statement included in the story.
3. Please identify any allegedly false statement that The Austin Bulldog story made affecting the rights of “Austinites for Zimmerman” and provide documentation of the falsity of any such alleged statement.

Despite there being no legal requirement that it do so, The Austin Bulldog will consider iterations in the story to deal with the semantic issues you raise in the retraction demand letter. We expect to accomplish those changes within the next day or so.

In the meantime, you are welcome to call me at 512 457-9838 to discuss this matter or email me or Aleshire@R-ALaw.com.

RIGGS ALESHIRE & RAY, P.C.



Bill Aleshire

Cc: Client



GRAVES DOUGHERTY HEARON & MOODY
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Texas Board of Legal Specialization

512.480.5764
512.536.9908 (fax)
pkennedy@gdhm.com

401 Congress Avenue, Suite 2200
Austin, TX 78701-3790

November 7, 2014

Mr. Stephen Casey
Casey Law Office, P.C.
595 Round Rock West Drive, Suite 102
Round Rock, Texas 78681

via Fax: (512) 853-4098

Re: *Zimmerman v. Austin Investigative Reporting Project d/b/a The Austin Bulldog and Ken Martin*, No. D-1-GN-14-004290, 53rd District Court, Travis County, Texas.

Dear Mr. Casey:

This law firm represents Ken Martin and the Austin Investigative Reporting Project, d/b/a *The Austin Bulldog*, with regard to the above-captioned lawsuit filed by Don Zimmerman, on October 15, 2014. Mr. Zimmerman's lawsuit alleges that a news article published by *The Austin Bulldog* on October 9, 2014, libeled him.

As explained in detail in Bill Aleshire's October 13, 2014 letter to you, the article is not libelous. It is a substantially true report of a judicial proceeding and is privileged under Section 73.002 of the Texas Civil Practice and Remedies Code, as well as under the Texas and the United States constitutions' free speech and press clauses.

I am writing this letter to give notice to Mr. Zimmerman that if he does not non-suit and dismiss his lawsuit by Friday, November 14, 2014, we will file a motion to dismiss under Chapter 27, Tex. Civ. Prac. & Rem. Code, and will seek attorney's fees, sanctions and costs from Mr. Zimmerman for having filed a groundless lawsuit.

If you have any questions, please feel free to give me or my partner, Jim Hemphill, a call.

Sincerely,

GRAVES, DOUGHERTY, HEARON & MOODY
A Professional Corporation

By: _____

Peter D. Kennedy

cc: James A. Hemphill (Firm)

2211323.1

No. D-1-GN-14-004290

DON ZIMMERMAN,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
AUSTIN INVESTIGATIVE REPORTING	§	
PROJECT, d/b/a <i>The Austin Bulldog</i> , and	§	
KEN MARTIN,	§	
Defendants.	§	53 rd JUDICIAL DISTRICT

AFFIDAVIT OF KEN MARTIN

1. My name is Ken Martin. I am over the age of eighteen years, have never been convicted of a felony, and I am in all ways competent to give this affidavit.
2. I am the Founder, Publisher and Editor of the Austin Investigative Reporting Project, which publishes and does business as *The Austin Bulldog*. *The Austin Bulldog* is a nonprofit online newspaper which is published on a website located at <http://www.theaustinbulldog.org>. *The Austin Bulldog* publishes investigative news stories on its website on a regular and periodic basis. It also regularly publishes via email to a list of subscribers news alerts that summarize and link to articles on the website. *The Austin Bulldog* has been in operation and publishing news articles since April 2010.
3. Plaintiff Don Zimmerman is currently a candidate for Austin City Council and was a candidate on October 9, 2014.
4. Exhibit 2 in support of the Defendants' Motion to Dismiss Pursuant to Chapter 27, Tex. Civ. Prac. & Rem. Code ("Motion to Dismiss") is a true and correct copy of the original article published by *The Austin Bulldog* on October 9, 2014. Exhibit 3 is a true and correct copy of the news alert published by *The Austin Bulldog* on October 9, 2014, in connection with that article. When the article was published, and continuously to this day, at the end of the article appeared a hyperlink that leads to a complete electronic copy of the Final Decree of Divorce in Don Zimmerman's divorce proceeding. There is and has been to this day also a hyperlink that leads to electronic copies of 52 pages of documents from Zimmerman's child custody proceedings, which I obtained from the Travis County District Clerk. The 52 pages from the child custody proceedings include the same documents as are contained in Exhibits 6-13 filed with the Motion to Dismiss.
5. Exhibit 4 contains true and correct excerpts from the Austinites for Zimmerman website located at <http://www.austinites-for-zimmerman.com> as of October 9, 2014 and as of this date.
6. Exhibit 15 is a true and correct copy of a letter received by *The Austin Bulldog* dated October 10, 2014, from Don Zimmerman's attorney and campaign treasurer, Stephen Casey.

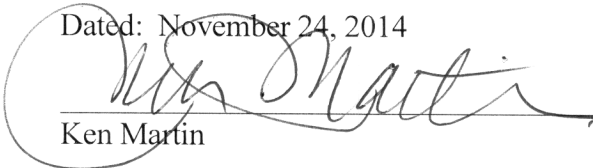
Exhibit 16 is a true and correct copy of a letter sent by Bill Aleshire, counsel for me and *The Austin Bulldog*, to Mr. Casey on October 13, 2014, in response. Exhibit 17 is a true and correct copy of a letter sent by litigation counsel for me and *The Austin Bulldog* on November 7, 2014 to Mr. Casey. No response to either letter was received.

END OF AFFIANT'S STATEMENT.


Ken Martin

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

My name is Ken Martin, my date of birth is December 23, 1939, and my address is 509 E. 38th St., Austin, Texas. I declare under penalty of perjury pursuant to Texas Civil Practice & Remedies Code § 132.001 that the facts contained within this affidavit are within my personal knowledge and are true and correct.

Dated: November 24, 2014

Ken Martin