

Cause No. 71413-86

Hearing Before the Court

In the Interest of Micah Tomasella, A Child

February 22, 2011



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NO. 71413-86

IN THE INTEREST OF)
MICAH TOMASELLA) IN THE DISTRICT COURT
A CHILD) 86TH JUDICIAL DISTRICT
) KAUFMAN COUNTY, TEXAS
)

MOTION TO MODIFY

On the 22nd day of February, 2011, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Ruth Blake, Judge presiding, held in Kaufman, Kaufman County, Texas; Proceedings reported by machine shorthand.

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(MOTION TO MODIFY)

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RESPONDENT'S WITNESSES

	Direct	Cross	Voir Dire
BILL WAGNER	14,32	24	
AARON MORADI	35	39	
TODD TOMASELLA	43,85	49,83	

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P R O C E E D I N G S

THE COURT: All parties ready to proceed in the Tomasella matter?

MR. MOWLA: Ready to proceed, Your Honor.

THE COURT: All right. All parties who will be testifying today, please raise your right hand to be sworn. Are you testifying, sir?

MR. WAGNER: If we need to.

(Three witnesses sworn)

THE COURT: All right. And this is the continuation of a hearing that was commenced on the 26th of January having to do with Mr. Tomasella, the movant, and part of these matters having visitation with his child. And subsequent to that, before the Court made any further ruling, the Court did interview the child in chambers on the 2nd day of February, and we will continue now where we were today.

The Court has had a -- I think it was a good conversation with Micah. He's a very articulate, very intelligent boy, and he's very determined on what he wants in this matter, and I've ordered that the record be sealed subject, of course, to being unsealed by order of the Court; however, I will -- I think at the outset, I'm not going to play any surprises here; I want Mr. Tomasella to understand that I believe sincerely you

1 want to see your son, that you care for your son.

2 There's no doubt in my mind about that. What I am

3 concerned about is Micah's state of mind.

4 Micah does not want visitation. He was
5 adamant. He recited different instances that he
6 believed that you -- I took what he was saying as a kind
7 of threat, a great deal of discussion of hell, fire, and
8 damnation that frightened him, and I think he's more
9 frightened of you than anything else. Maybe it's not
10 justified. I don't have the facts to tell me whether it
11 is or not. I just want you to know that is his state of
12 mind.

13 MR. TOMASELLA: Yes, ma'am. May I speak to
14 that?

15 THE COURT: At the right time.

16 MR. TOMASELLA: Yes, ma'am.

17 THE COURT: I'm sure your attorney will
18 tell you when.

19 MR. TOMASELLA: Yes, ma'am.

20 THE COURT: And that has given me some real
21 concern about where we're going to go, but since you're
22 here now with counsel and we're continuing, let's see
23 exactly what's going to take place, and I'm going to let
24 you continue as movant in this matter. And sir, I know
25 that you weren't here previously, but I'll let you just

1 go right in.

2 MR. MCMENAMY: Okay.

3 MR. MOWLA: Before we -- I'd like to invoke
4 the rule, Your Honor.

5 THE COURT: All right.

6 MR. MOWLA: Two witnesses are saying
7 they're testifying.

8 THE COURT: The rule has been invoked.
9 This means all witnesses who will be testifying in this
10 matter other than parties themselves are to remain
11 outside the courtroom until time for their testimony.
12 During the time you're outside the courtroom and until
13 the conclusion of this hearing today, you're not to
14 discuss this case with anyone else. Of course, you may
15 with the attorneys, but not with anyone else. All
16 right. I'll excuse the witnesses at this time.

17 MR. MCMENAMY: Let's see --

18 MR. MOWLA: Your Honor, this is my client's
19 mother. She's not going to be testifying. I'm not
20 calling on her as a witness.

21 THE COURT: Under no circumstances, you
22 plan on calling her?

23 MR. MOWLA: Under no circumstances.

24 THE COURT: All right. Do you have an
25 extra sheet of paper I can have?

1 THE BAILIFF: Oh, Your Honor, I'll give you
2 a pad.

3 THE COURT: Oh, okay. Very good.

4 THE BAILIFF: Here you are.

5 THE COURT: Thank you.

6 THE BAILIFF: Yes, ma'am.

7 THE COURT: All right. Now, go right
8 ahead.

9 MR. MCMENAMY: All right. Well, Your
10 Honor, as you might imagine, I'm jumping in the middle
11 of this.

12 THE COURT: I understand.

13 MR. MCMENAMY: I had some involvement
14 several years ago. At that time, I felt like that it
15 was, you know, kind of an extreme instance of what's
16 called parental alienation of a child's relationship
17 with the other parent. I still have that same opinion
18 based on what's happened because Micah hasn't even seen
19 his dad at all for years and --

20 THE COURT: Well, at least one year.

21 MR. MCMENAMY: -- and I think that the one
22 time he saw him -- or one or two times, it was under
23 extremely awkward circumstance. Somebody watching, et
24 cetera, as though -- whereas the grandparents and mother
25 have had years to work on him to have him -- to alienate

1 him from his father.

2 MR. MOWLA: Your Honor, I apologize. Is
3 Mr. McMenemy making an opening statement here?

4 MR. MCMENAMY: Yes, I am.

5 MR. MOWLA: Okay. Okay.

6 MR. MCMENAMY: And so we're in a position
7 now to where the child's had two years of -- at least,
8 really three or four years during this whole process,
9 for the other parent to work on him, to have sole access
10 to him, you might as well say, because even when there
11 was visitation, there was someone there watching and
12 very awkward, unusual, strange situation.

13 At the time, there was never any proof of
14 any kind of actual abuse, just allegations of
15 Mr. Tomasella's Christianity and -- which might be the
16 same or different than somebody else's, but it still is
17 not, you know, not a wrong situation. So we think that
18 we can show that, at that time, there was no abuse that
19 was occurring, but the difficulty is how do we show what
20 currently is the situation of having been alienated from
21 his father for basically four years from the time he was
22 a child until the time now as a young teenager or middle
23 teenager for that -- age 15.

24 So we feel like that we can show -- we can
25 present a couple of witnesses that knew them at the time

1 that all this started before the -- before the awkward
2 visitations and so forth happened, that will show there
3 wasn't any abuse. We think further we've got to have a
4 study by someone who is, you know, a third party to see
5 what the situation is or currently as to Mr. -- as to
6 Micah's status which caused him to come up with
7 something about somebody that he hadn't seen basically
8 for four years, his father.

9 So what we'd like to do is to go ahead and
10 present the initial witnesses so the Court will see
11 that, at least before all this allegation started here
12 in the county, that Micah had a close relationship with
13 his father and then ask the Court to continue the
14 situation until we would have a chance to have a
15 counselor to meet with both Micah and his father and see
16 if something couldn't be put back together to allow for
17 real visitation.

18 Of course, the Court is aware that the law
19 in the state of Texas says that unless there's some real
20 abuse, then the Court is supposed to lean in the
21 direction of normal visitation.

22 THE COURT: I'm well aware of what the law
23 is.

24 MR. MCMENAMY: So -- and that's what we're
25 trying to -- we're trying to go for that, and we're also

1 trying to show that it's justified that there hasn't
2 been any real abuse, that it was all just put together
3 with the help of parents and grandparents who've
4 basically had the child for four years now with no other
5 input.

6 THE COURT: I think it's fair to tell you
7 that Micah asked that he not be ordered to visit his
8 dad. Now, I'm very sensitive to parental alienation,
9 believe me, I am. And if I were going just on Micah's
10 I'd say, forget it, you're out of luck. I'm not. I
11 want to hear what you have to say.

12 MR. MCMENAMY: Right.

13 THE COURT: But he is adamant and he wanted
14 the opportunity to tell his dad this personally, and so
15 I think -- you know, this hearing goes further, then
16 I'll ask that Micah be here if Mr. Williams has no
17 objection.

18 MR. WILLIAMS: I have no objection.

19 THE COURT: Because he did ask to have the
20 opportunity to tell his dad that he didn't want to and
21 why he didn't want to, okay?

22 MR. MCMENAMY: Okay.

23 THE COURT: I just -- because you're coming
24 in late, I wanted to give you the advantage of that.

25 MR. MCMENAMY: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 MR. MCMENAMY: It's never good to have
3 those kind of surprises.

4 THE COURT: No, it isn't.

5 MR. MCMENAMY: So with the Court's
6 permission, what I plan to do is to introduce the two
7 witnesses to show that -- what the original relationship
8 of the two were. And then this was before all of the
9 involvement of the Child Protective Services and various
10 people that were basically on the side against the
11 father, in my assessment. I haven't seen all these kind
12 of cases for years.

13 And then we'll have to -- if the Court will
14 allow it, we'll have to then adjourn at some point to
15 try to get a, you know, an outside opinion, if that's
16 what could be permitted to -- so that we know, you know,
17 from an expert's side what the situation is.

18 As the Court's aware, parental alienation
19 is among the bottom three things to prove. I mean,
20 they're just tough --

21 THE COURT: It's serious.

22 MR. MCMENAMY: Yeah.

23 THE COURT: And if I'm convinced that there
24 is, I will not tolerate it, I'll tell you that, but I
25 have to be convinced, of course.

1 MR. MCMENAMY: Thank you, Your Honor.

2 THE COURT: You want to make any kind of
3 opening statement?

4 MR. MOWLA: Very briefly, Your Honor. Your
5 Honor, these are the same arguments that the Court heard
6 in July of 2007, November of 2008, and the last summer
7 before, Your Honor. July of 2007, Mr. Tomasella entered
8 into an agreed order with Mr. McMenamy representing him
9 which provided that his access to the child will be
10 monitored by a court-appointed therapist. That was
11 Linda Duggan.

12 Four months later, he filed a petition to
13 modify. We had a hearing on this matter on November 3rd
14 of 2008. The judge found that there was no substantial
15 change of circumstance, that Mr. Tomasella did not meet
16 his burden per the family code to show us the changed
17 circumstance of the party of the children. An order was
18 entered by this Court on November 12th of 2008 on
19 temporary orders.

20 At the last hearing -- and Mr. Tomasella
21 was ordered to do certain things, including meet with
22 Carla Herren, a particular counselor. On the record, he
23 testified that he didn't even read the entire order, and
24 once again, we're before this Court with Mr. Tomasella
25 raising the same arguments. For instance, Mr. McMenamy

1 said that he was going to bring a witness that was going
2 to testify as to what happened before the July 2007
3 final order that was signed by the Court. No new
4 evidence has ever been presented in this case.

5 You're going to hear that Mr. Tomasella
6 hasn't seen his child in two years, but there is a
7 letter on file on the record from Ms. Duggan stating
8 that Mr. Tomasella walked out on the last visit with
9 Linda Duggan and refused to return and refused to
10 undergo any of the counselling that Linda Duggan
11 recommended for him. We're going to show that there
12 still hasn't been a change of circumstance since the
13 June 19th, 2007 order, and Mr. Tomasella has not met his
14 burden per the family code to make any changes to the
15 possession and access order.

16 That's all I have on the issue regarding
17 the SAPCR.

18 THE COURT: Thank you. You may call your
19 first witness.

20 MR. MCMENAMY: All right. I'll call up
21 Bill Wagner.

22 THE BAILIFF: Bill Wagner?

23 MR. MCMENAMY: Yes.

24 THE COURT: Mr. Wagner?

25 MR. WAGNER: Yeah.

1 THE COURT: All right. Mr. Wagner, you
2 were sworn in here a few moments ago.

3 MR. WAGNER: Uh-huh.

4 THE COURT: All right. You're still under
5 oath; you understand that?

6 MR. WAGNER: Okay.

7 THE COURT: All right. There's a few
8 questions here for you.

9 BILL WAGNER,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MCMENAMY:

13 Q. Mr. Wagner, these will be brief questions, but
14 if you could give your name and relationship to
15 Mr. Tomasella.

16 A. Bill Wagner, and I'm a friend of Todd's.

17 Q. And how long have you known him?

18 A. Five years, maybe.

19 Q. Okay. And so did you know him before 2007 when
20 they -- when this prior --

21 A. Yes.

22 Q. -- trial was happening?

23 A. Uh-huh.

24 Q. And how long before that did you --

25 A. Probably two to three years.

1 Q. Okay. So that -- four, five -- so that makes
2 seven -- six or seven years?

3 A. Okay.

4 Q. And did you have occasion to see Mr. Tomasella
5 with his son on various occasions?

6 A. Yes.

7 MR. MOWLA: Your Honor, I'm going to object
8 to any testimony prior to June 19th, 2007 as irrelevant
9 and under the terms of res judicata.

10 THE COURT: Okay. How many orders -- what
11 order?

12 MR. MOWLA: Your Honor, the last final
13 order in this case was entered on June 19th, 2007. I'm
14 going to object to any testimony from any witness
15 regarding anything that happened before June 19th, 2007.
16 That was the last order entered in this case.

17 THE COURT: You care to respond?

18 MR. MCMENAMY: Well, Your Honor, we think
19 that in order to establish that the child had a regular
20 relationship with his father before that time, that we
21 would need to be able to ask a few preliminary
22 questions, and then we plan to get into the changes in
23 circumstance of Mr. Tomasella.

24 THE COURT: I do need to know what it was
25 like in '07 to know whether anything has changed. I'm

1 going to allow brief questions on that.

2 MR. MCMENAMY: Thank you, Your Honor.

3 Q. (BY MR. MCMENAMY) So Mr. Wagner, did you have
4 occasion to see Mr. Tomasella with his son on numerous
5 occasions --

6 A. Yes.

7 Q. -- during your relationship?

8 A. Yes.

9 MR. MOWLA: Your Honor, I'm going to object
10 to the form of the question. I request that we get
11 specific dates, at least years, or maybe months and
12 years that he saw him.

13 THE COURT: Sustained.

14 Q. (BY MR. MCMENAMY) And so did -- and before
15 June of 2007, did you see Mr. Tomasella with his son?

16 MR. MOWLA: I'm going to object, Your
17 Honor. I'm looking for specific months.

18 THE COURT: I'm going to let him answer yes
19 or no, but then --

20 A. I don't know the dates necessarily.

21 THE COURT: Okay.

22 Q. (BY MR. MCMENAMY) Okay.

23 A. But I saw him quite a bit.

24 Q. And at the time that you saw him, did you find
25 that he had a good relationship with his son?

1 MR. MOWLA: Object, Your Honor. Again, I'm
2 going to object to the form of the question. I'm asking
3 -- I need months and years that he actually saw the
4 child with Mr. Tomasella.

5 THE COURT: Sustained.

6 Q. (BY MR. MCMENAMY) All right. Mr. Wagner, is
7 there some time that you can establish in your mind that
8 you saw Todd and his son, Micah, before June of 2007
9 when this trial occurred? Do you remember when the
10 trial was, because you were a witness then.

11 A. Yeah. I saw him because we came to pick him up
12 together a lot of times, but I don't -- I couldn't tell
13 you the months exactly, but we would come -- but we went
14 fishing one time on the way back from court.

15 MR. MOWLA: Again, I'm going to object,
16 Your Honor.

17 A. I just don't know the dates, to be honest.

18 THE COURT: See what -- mentally see -- try
19 to recall something that would associate it with that
20 point in time that you could remember specifically.

21 THE WITNESS: Wow.

22 A. Just haven't given it any thought.

23 Q. (BY MR. MCMENAMY) Did you take some pictures
24 of Micah at one time?

25 A. Uh-huh.

1 Q. Was that before or after the judgment that
2 we're talking about with the Court?

3 A. I would think it was before.

4 Q. Okay. And then since the court got involved,
5 have you seen Micah and his father together?

6 A. Not since he was taken away, I haven't seen
7 him.

8 Q. Okay. And have you been with Mr. Tomasella
9 since then on numerous occasions?

10 A. Yes.

11 Q. Okay. And have you noticed any kind of
12 indication on his part that he really likes to spend
13 some time with his son?

14 A. Oh, yes, all the time.

15 Q. And have you noticed any -- at the time that
16 you knew their relationship, did you notice anything
17 that -- about their relationship that would lead you to
18 think that Micah didn't like his father?

19 A. No.

20 MR. MOWLA: I'm going to object, Your
21 Honor. This calls for a conclusion that the witness is
22 not qualified to give. And again, we're -- I'm not
23 hearing months and years regarding --

24 THE COURT: Yes.

25 MR. MOWLA: -- these times that he claims

1 he saw the child with Mr. Tomasella.

2 THE COURT: Well, he'd gone on to how
3 Mr. Tomasella was feeling about his son since that time,
4 so I'm going to overrule your objection on that.

5 A. I think he was about eight, if that helps. I'm
6 not sure what year that was, but eight, nine. So that
7 might boil it down to a year.

8 Q. (BY MR. MCMENAMY) Okay. And so at that time,
9 did they seem to have a close relationship?

10 A. I thought so, yes.

11 MR. MOWLA: Objection, Your Honor,
12 regarding the relationship that he witnessed between
13 Todd and Micah, unless we have months and years. The
14 Court has sustained my objection over and over.
15 Mr. McMenamy, can you just try to listen to his
16 testimony?

17 Q. (BY MR. MCMENAMY) Well, how old is the child
18 now?

19 MR. MOWLA: Can the Court rule on my
20 objection, please, first?

21 THE COURT: I'm going to sustain your
22 objection.

23 A. I'd say it had to be around -- I would say most
24 of this was 2007 -- 2006, 2007.

25 Q. (BY MR. MCMENAMY) Okay.

1 A. So maybe that helps.

2 Q. All right. And at that time, did you see any
3 alienation between Micah and his father?

4 A. No.

5 MR. MOWLA: Objection, Your Honor, calls
6 for a legal conclusion. He's asking him if he's seen
7 alienation to --

8 THE COURT: Your objection -- I understand
9 -- sustained.

10 Q. (BY MR. MCMENAMY) Did they have a close
11 relationship?

12 A. Yes.

13 Q. Did you see any evidence that Micah hated his
14 father?

15 A. None.

16 Q. And was that before the -- but that was before
17 the judgment was entered preventing him from seeing his
18 son?

19 A. Right.

20 MR. MOWLA: Again, Your Honor, objection to
21 the form of the question. Again, same reason as I
22 stated.

23 THE COURT: I'll let him answer, if he
24 knows.

25 A. I never saw anything except a loving

1 relationship, in my experience.

2 THE COURT: That's not the question. Would
3 you repeat the question?

4 MR. MOWLA: Objection to the answer, Your
5 Honor.

6 MR. MCMENAMY: Yeah.

7 Q. (BY MR. MCMENAMY) The question is, did you --

8 MR. MCMENAMY: Could you read back the
9 question? I'm sorry.

10 (Requested portion was read.)

11 A. No.

12 Q. (BY MR. MCMENAMY) All right. So since that
13 date, have you seen evidence that Mr. Tomasella has been
14 missing his son a great deal?

15 A. Yes.

16 MR. MOWLA: Objection, hearsay, Your Honor.

17 MR. MCMENAMY: Your Honor, I don't think
18 it's hearsay.

19 MR. MOWLA: Your Honor, the only way he can
20 testify to that is what Mr. Tomasella told him, and
21 that's hearsay and bolstering the credibility of
22 Mr. Tomasella.

23 THE COURT: I'll sustain.

24 Q. (BY MR. MCMENAMY) All right. Mr. Tomasella --
25 well, strike that.

1 What made you think -- what makes you think
2 that Mr. Tomasella would like to see his son now?

3 A. He talks about him all the time.

4 MR. MOWLA: Objection, hearsay, Your Honor.

5 THE COURT: Sir, I don't have any doubt
6 that he wants to see his son.

7 MR. MCMENAMY: Right.

8 THE COURT: He's here, he's paying money.
9 I've heard him. He's very earnest. I do believe he
10 wants to. Whether it's in the child's best interest is
11 another thing, but I don't have any doubt about him
12 wanting to see his child.

13 MR. MCMENAMY: All right. We'll go on to
14 another series of questions, then.

15 Q. (BY MR. MCMENAMY) You've known Mr. Tomasella
16 for quite some time; is that correct?

17 A. Yes.

18 Q. And during this time, have you developed an
19 opinion as to whether he is a good person?

20 A. Sure.

21 Q. And have you developed an opinion as to whether
22 he would be a good influence on a young man?

23 A. Yes, I believe he would.

24 Q. Okay. And what is that opinion?

25 A. He's a good, honest person. I mean, he --

1 Q. And have you -- you've known him -- how often
2 do you see Mr. Tomasella in the last, say, four years?

3 A. Oh, quite a bit. We used to go to Starbucks
4 all the time and talk, and that's where I saw Micah,
5 actually, quite a bit. I see him maybe once every week
6 or so.

7 Q. Okay. And so during that time, have you found
8 him to be an honest person?

9 A. Yes.

10 Q. And have you found that he's had a huge amount
11 of trouble with employment kind of dissolving from under
12 him?

13 MR. MOWLA: Objection, relevance, Your
14 Honor.

15 THE COURT: Sustained.

16 MR. MCMENAMY: Your Honor, I think I can
17 show relevance. I think I can show that the relevance
18 of -- that he is not a wealthy man, he does not have
19 parents that are backing his play, so to speak,
20 financially, that -- in other words, he's having to put
21 out every penny that he has to -- in order to contest
22 this, and I think that's relevant because --

23 THE COURT: Well, I'd rather assume that
24 because he was here pro se before.

25 MR. MCMENAMY: Right.

1 THE COURT: And it takes a lot of guts to
2 come into the courtroom pro se.

3 MR. MCMENAMY: Right.

4 THE COURT: And I feel like that if you
5 have the funds to get an attorney, you usually do.

6 MR. MCMENAMY: Right. So that's why I
7 think it was relevant because had his --

8 THE COURT: I believe --

9 MR. MCMENAMY: -- finances been better, he
10 would have contested earlier.

11 THE COURT: I believe that was some of his
12 testimony in the last hearing, too. He did discuss some
13 financial drawbacks --

14 MR. MCMENAMY: Okay.

15 THE COURT: -- in there.

16 MR. MCMENAMY: So we have no further
17 questions.

18 MR. MOWLA: Yes, ma'am.

19 CROSS-EXAMINATION

20 BY MR. MOWLA:

21 Q. You said the last time that you saw,
22 Mr. Wagner, Micah with Todd was in 2006, 2007?

23 A. I believe so, yes.

24 Q. Okay. Sir, did you know that the petition to
25 remove Micah from Todd's possession and access was filed

1 in early 2006?

2 A. Okay.

3 Q. Did you know that; yes or no?

4 A. I guess so, yeah.

5 Q. Okay. So you -- it was actually before 2006
6 when -- the last time you saw Micah with Todd, isn't it?

7 A. I said he was about eight.

8 Q. Okay.

9 A. Whatever that was --

10 Q. How old is Micah now; do you know?

11 A. I have no idea. I guess 14, 15.

12 Q. Okay. So if he's 15 and you said he was about
13 eight, wouldn't that be seven years ago that you last
14 saw them together, based on your arithmetic?

15 A. I haven't seen him for a couple of years.

16 Q. Okay. But you said that he's 14 or 15, right?

17 A. I guess.

18 Q. Okay. And you said the last time --

19 A. He was a little kid. I got pictures of him
20 from a couple months --

21 MR. MOWLA: Objection, nonresponsive, Your
22 Honor.

23 THE COURT: Sustained.

24 Q. (BY MR. MOWLA) You said the last time you saw
25 them together, Micah was eight, right?

1 A. Eight or nine, something like that.

2 Q. Okay. So wouldn't that be at least five to six
3 years ago the last time you saw them together?

4 A. I suppose, yeah. Isn't that what I said?

5 Q. And -- well, you said 2007, right? You
6 remember your testimony you said between --

7 A. Well, I'm having to sit there and go, okay,
8 it's 2011, '10, '9, '8, you know. It's been --

9 Q. But do you recall saying between 2006 and 2007?

10 A. Okay. Sure.

11 Q. Okay. And this order was entered on June 19th,
12 2007, do you recall that, when the order was entered?

13 A. You're trying to pin me down to certain times
14 and I told you I didn't remember the exact --

15 MR. MOWLA: Objection, nonresponsive.

16 Q. (BY MR. MOWLA) It's a yes or no question, sir.
17 Just --

18 A. What's the question?

19 Q. Okay. Were you in court when the parties
20 agreed to the order in suit to modify parent-child
21 relationship on June 19th, 2007?

22 A. I guess so, yes.

23 Q. Because you accompanied Mr. Tomasella all the
24 time to court during those --

25 A. Right.

1 Q. -- proceedings, right?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

5 Q. And you haven't seen Micah since June of 2007,
6 have you?

7 A. I don't know because we -- at the beginning of
8 it, he was still -- had -- when we were coming to court,
9 he still had custody or whatever. It was somewhere
10 within like a year after that that he lost custody.

11 Q. Okay. So --

12 A. So I did see him for at least part of it. I'm
13 not sure when that exactly was.

14 MR. MOWLA: Your Honor, I ask the Court to
15 take judicial notice of the order in suit to modify
16 parent-child relationship dated June 19th of 2007.

17 THE COURT: I'll take judicial notice.

18 MR. MOWLA: Okay.

19 Q. (BY MR. MOWLA) Sir. If I told you that this
20 order was entered, wouldn't you say that Todd lost
21 visitation on June 19th of 2007, do you have any reason
22 to disbelieve me?

23 A. No.

24 Q. Okay. Have you seen Micah and Todd together
25 since this order was entered?

1 A. The order where they were separated -- they
2 couldn't see each other?

3 Q. The order that was entered June 19th of 2007,
4 the final order in this proceeding.

5 A. Where they couldn't see each other?

6 Q. That's correct.

7 A. No, I have not seen them since.

8 Q. And you haven't seen Micah since then yet, have
9 you?

10 A. No.

11 Q. Okay. So you don't have any idea, based on
12 personal knowledge, what Micah's state of mind is right
13 now, do you?

14 A. No.

15 Q. Okay. And you're saying that Todd's a good
16 person, he's an honest person?

17 A. Yes.

18 Q. Okay. Since it was brought up, do you know
19 whether he pays child support?

20 A. I know he has a very hard time paying his child
21 support.

22 Q. Okay. Are you aware that he's \$32,000 behind
23 on child support right now?

24 A. Okay.

25 Q. Is that a yes or no?

1 A. Sure.

2 Q. Okay. And do you believe that it's important
3 for a parent to support his child?

4 A. Yes.

5 Q. Okay. And do you -- in your personal opinion,
6 do you believe that being 32,000 behind on child support
7 constitutes supporting your child?

8 A. I think that if you don't have the money, you
9 can't pay it.

10 Q. Okay. So if you don't have the money, you just
11 don't pay it?

12 A. I mean, he drives -- have you seen the car he
13 drives?

14 MR. MOWLA: Objection, nonresponsive.

15 A. I'm just answer -- trying to answer.

16 THE COURT: Just answer as best you can,
17 but just the question.

18 A. What's the question?

19 Q. (BY MR. MOWLA) Do you believe in your personal
20 opinion that if you're \$32,000 behind on child support,
21 that constitutes supporting your child?

22 A. That constitutes supporting your child?

23 Q. In your personal opinion, sir.

24 A. It depends on the situation -- okay. You want
25 a yes or no answer?

1 Q. Yes, sir.

2 A. Does that constitute supporting the child, no.

3 Q. Okay. And how many jobs, sir, in the last
4 three years has Todd Tomasella had? How many different
5 jobs?

6 A. Four or five.

7 Q. Okay.

8 A. I'm not sure.

9 Q. Okay. And isn't he -- has he quit most of his
10 jobs?

11 A. I have no idea.

12 Q. Okay. So you don't know whether he's quit or
13 been fired, right?

14 A. Correct.

15 Q. Okay. And since you've known him, how many
16 jobs has he held?

17 A. Five, six.

18 Q. Okay. And you don't have any personal --

19 A. I don't really keep up -- I don't really ask
20 him.

21 Q. Let me ask the question because she's got to
22 take it down.

23 A. All right.

24 Q. Next question is, you don't have any personal
25 knowledge of whether he's quit those jobs or he's been

1 terminated, do you?

2 A. I think he's quit a couple of them.

3 Q. Okay.

4 A. He might have been terminated. I don't even
5 know.

6 Q. Okay. Are you aware that it was found that he
7 committed family violence against Becky Tomasella?

8 A. I've heard that.

9 Q. Okay.

10 MR. MOWLA: I think I'll pass the witness,
11 Your Honor.

12 THE COURT: Mr. Williams?

13 MR. WILLIAMS: No questions, Your Honor.

14 MR. MCMENAMY: Your Honor --

15 THE COURT: Let me ask one question. How
16 often did you see him at Starbucks?

17 THE WITNESS: Every week or so.

18 THE COURT: Okay. Was this --

19 THE WITNESS: But he was working out of
20 there, so -- I mean, he did a lot of work from there on
21 his computer.

22 THE COURT: Okay. So when you saw him
23 there, was it a great length of time or a short time, or
24 what -- I'm talking about -- are we talking about
25 minutes or hours?

1 THE WITNESS: It -- half hour, 45
2 minutes --

3 THE COURT: Okay.

4 THE WITNESS: -- I suppose, on average. It
5 just depended on what I was doing. You know, I don't
6 have time to go and just hang out, so -- but I'd say at
7 least 45 minutes would be an average.

8 THE COURT: Okay. All right.

9 REDIRECT EXAMINATION

10 BY MR. MCMENAMY:

11 Q. And did -- you saw him other times besides
12 Starbucks?

13 A. Uh-huh.

14 Q. And what were those times?

15 A. Well, I came with him to court a couple of
16 times.

17 Q. Uh-huh.

18 A. Again, you're -- just in general, he's come to
19 my house.

20 THE BAILIFF: Excuse me, Your Honor.

21 Excuse me. Mr. Tomasella, you cannot be giving the
22 answers to the witness.

23 THE WITNESS: I'm not even looking at him.

24 THE BAILIFF: Sorry, Your Honor.

25 THE COURT: Thank you. I was looking at

1 the witness. I wasn't even observing.

2 THE WITNESS: Yeah, I'm not even looking at
3 him, so --

4 THE COURT: Please, Mr. Tomasella.

5 A. He's come to my house every once in a while,
6 but mostly Starbucks, to be honest with you.

7 Q. (BY MR. MCMENAMY) And did y'all go fishing a
8 couple of times?

9 A. Just once, that I remember --

10 Q. Okay.

11 A. -- with Micah.

12 Q. And did you go to any other places like play in
13 the park?

14 MR. MOWLA: Again, Your Honor, I'm going to
15 object. We need some specific time frames, at least a
16 year that he claims he went fishing with him and went to
17 the park.

18 A. Gosh, that's -- since it was right before that,
19 2007, so it must have been 2006. And I mean, you're
20 trying to lock me into something, and I'm not -- I don't
21 really know, but for no other -- I'm not trying to get
22 out of something, I just don't know the answer, and I'm
23 trying to be honest here.

24 THE COURT: It's hard to remember
25 something --

1 THE WITNESS: It is.

2 THE COURT: -- that happened several years
3 ago --

4 A. We had --

5 THE COURT: -- and I understand that. But
6 if you testify to it, I think it's appropriate --

7 A. I think he was eight, so -- whatever year that
8 was, and I would say maybe in the fall when he was eight
9 years old. It was nice weather, so it was either spring
10 or -- I would say either spring or fall.

11 Q. (BY MR. MCMENAMY) Okay. And --

12 MR. MCMENAMY: I have no further questions,
13 Your Honor.

14 MR. MOWLA: Nothing further, Your Honor.

15 MR. WILLIAMS: Nothing further.

16 THE COURT: All right. You want this
17 witness to be finally excused?

18 MR. MCMENAMY: Yes.

19 MR. MOWLA: No objection.

20 THE COURT: All right. You're free to go.
21 Thank you, sir.

22 THE WITNESS: Uh-huh.

23 THE COURT: Your next witness.

24 MR. MCMENAMY: Your Honor, may I confer for
25 just a minute?

1 THE COURT: Certainly.

2 MR. MCMENAMY: Your Honor, we would call
3 Aaron Moradi, please.

4 THE BAILIFF: Aaron --

5 MR. MCMENAMY: Moradi.

6 THE BAILIFF: Aaron Moradi?

7 MR. MCMENAMY: Yes.

8 THE REPORTER: Mr. Moradi, can you spell
9 your last name for me, please?

10 MR. MORADI: M-O-R-A-D-I.

11 THE COURT: All right. And sir, you were
12 sworn here a few minutes ago, were you not?

13 THE WITNESS: Yes.

14 THE COURT: All right. And you understand
15 you're still under oath?

16 THE WITNESS: Yes.

17 THE COURT: All right. You may proceed.

18 AARON MORADI,
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MCMENAMY:

22 Q. Aaron, you've never met me before, right?

23 A. I have met you once.

24 Q. Okay. At the --

25 A. Bible study.

1 Q. Okay. All right. And the reason we're having
2 you come and testify is as to Mr. Tomasella's character
3 at present. And so how long have you known
4 Mr. Tomasella?

5 A. I'd say three years.

6 Q. Three years? And during that three years, have
7 you found him to be a credible and honest person?

8 A. Yes, Your Honor.

9 MR. MOWLA: Objection, Your Honor, improper
10 bolstering of this witness.

11 THE COURT: Sustained.

12 Q. (BY MR. MCMENAMY) During that time, have you
13 had occasion to be with Mr. Tomasella on numerous
14 occasions?

15 A. Yes, often. At least on Tuesday nights for
16 bible study and Sunday mornings, at the minimal.

17 Q. Tuesday nights and Sunday morning or --

18 A. Sunday morning to noon --

19 Q. Okay.

20 A. -- at least.

21 Q. All right. And during those time periods, have
22 you had occasion to be with him some other times?

23 A. Yes, out to dinner, lunch.

24 Q. Okay. And where have you been meeting him on
25 Tuesday night or Sunday morning?

1 A. On Tuesday night, it would be at his apartment
2 for the bible study, and then Sunday morning, sometimes
3 we would go to Cavalry Chapel, which is a church,
4 sometimes we would go to a restaurant and have bible
5 study there.

6 Q. Okay.

7 A. Go to Bread Winners more recently -- is the
8 name of the restaurant.

9 Q. Right. And when you had occasion to be with
10 Mr. Tomasella, did you develop any kind of opinion as to
11 his honesty and integrity?

12 MR. MOWLA: Objection, improper bolstering
13 and improper character testimony, Your Honor.

14 THE COURT: I'm going to allow it.

15 A. Could you repeat it again?

16 Q. (BY MR. MCMENAMY) Did you have -- yeah. Did
17 you have time to -- did you have occasion to develop
18 a --

19 A. Oh, yeah.

20 Q. -- an opinion as to whether Mr. Tomasella's an
21 honest, honorable person?

22 A. I believe he's a very honest person as -- he's
23 like an undershepherd to me, I would say, like a pastor.
24 So I mean, with the utmost --

25 Q. And so during this time, too, have you had

1 occasion to know how his employment situation's working?

2 A. I think he's in sales right now.

3 Q. Uh-huh. During this time, have y'all done any
4 kind of conversations about how things are going
5 business-wise and that sort of thing?

6 A. I think he's doing pretty well right now.

7 Q. And before now, have you -- before the last
8 year or so, have you -- did you know anything then, or
9 was that kind of something that didn't come up?

10 A. I knew he had been -- he had a different job.
11 I know he has -- got this new sales job recently. I
12 think prior to that, he had a -- selling like restaurant
13 advertisement and a Yellow Page advertisement.

14 Q. Uh-huh.

15 A. So I know he's been in that same line of work.
16 I don't know the -- what the company's name was for the
17 prior one, but -- and I forgot to mention, he also has
18 like a -- like a TV advertisement business he just
19 started, too, which is pretty cool. I'm putting my
20 business, actually, on there, so --

21 Q. And so as to all these times that you're
22 talking about, have you had occasion to talk with him
23 about his son, Micah?

24 A. Yeah. I've seen pictures of his son in his
25 home. He's talked about, you know, going fishing with

1 him, playing --

2 MR. MOWLA: Objection, hearsay, Your Honor,
3 to anything Mr. Tomasella said to this witness.

4 THE COURT: I'm going to allow it. Go
5 ahead.

6 Q. (BY MR. MCMENAMY) Have you noticed --

7 A. Okay. So he's told me about, you know, playing
8 -- I know he's told me about playing football with him,
9 I've heard about fishing occasions, teaching him the
10 bible, I've heard that. Other than that, I can't -- I
11 don't really remember anything else.

12 Q. Uh-huh. Has he ever said anything about
13 whether he'd like to see his son more?

14 A. Yeah, he definitely prayed for that a lot.

15 Q. All right.

16 MR. MCMENAMY: We have no further
17 questions, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MOWLA:

20 Q. Mr. Moradi --

21 A. Yes.

22 Q. -- is that correct?

23 A. Yes, Moradi.

24 Q. Have you ever met Micah Tomasella?

25 A. No.

1 Q. Okay. Have you ever seen Micah Tomasella with
2 Todd Tomasella?

3 A. In real life, no.

4 Q. Okay. Have you personally observed the two of
5 them interacting?

6 A. I've never seen them in real life. I've only
7 seen pictures of them together.

8 Q. Okay.

9 MR. MOWLA: Nothing further, Your Honor.

10 THE COURT: Mr. Williams?

11 MR. WILLIAMS: No questions, Your Honor.

12 THE COURT: Is there an organized church
13 that the two of you belong to?

14 THE WITNESS: I go to Hunters Glen Baptist
15 Church with my father.

16 THE COURT: Okay.

17 THE WITNESS: I mean, my father got saved
18 through him, but we used to go to Calvary Chapel. We go
19 -- Tuesday nights is a bible study, so that's more
20 organized, we have more people coming. But you know,
21 biblically, I believe that a church is the body of
22 Christ. When you become a new creature in Christ,
23 you're actually the people of the church, not the
24 building, but you should have the proper new testament
25 order when you have older shepherds, and you know, you

1 go by the bible like it says in Acts 2:42. They
2 continue prayer, fellowship, breaking of bread, and the
3 apostles' doctrine.

4 So if you have those four elements, you're
5 going to be a church. As long as you have the, you
6 know, supremacy of Christ, you're not, you know, head of
7 the ox or whatever. So --

8 THE COURT: Let me ask you, have you ever
9 heard Mr. Tomasella put extreme emphasis on hell, fire,
10 and damnation?

11 THE WITNESS: I wouldn't say extreme. If
12 you compare them to more of some popular teachings like
13 people on TV and stuff, he doesn't preach like a
14 prosperity gospel, so most people may be --

15 THE COURT: I'm not sure what you mean by
16 prosperity gospel.

17 THE WITNESS: Okay. Maybe when like people
18 kind of talk about getting rich off the gospel, I guess,
19 or -- I mean, I believe in healing and those kinds of
20 things, but as far as him talking about damnation and
21 hell, compared to those people, he would probably talk
22 about it more often than people on some popular TV
23 shows. But I mean, biblically, it seems like he doesn't
24 overemphasize, I don't think. I know Jesus talked about
25 hell a lot, so I don't think there's an overemphasis, by

1 any means.

2 He's talked about love, 1 Corinthians 13,
3 if you don't have love, there's no -- I mean, you're not
4 -- you don't have the fruit of the spirit. You're not
5 really a Christian if you don't have love, so I think --
6 I feel like he's been the most balanced, and that's why
7 I go to him on -- for bible studies. So taking the
8 whole counsel of scripture, I believe he's a balanced
9 teacher, not just focusing on hell, fire, and brimstone.

10 THE COURT: Okay. Any further questions?

11 MR. MCMENAMY: No further questions, Your
12 Honor.

13 MR. MOWLA: Nothing further, Your Honor.

14 MR. WILLIAMS: Nothing further.

15 THE COURT: All right. May this witness be
16 finally excused?

17 MR. MOWLA: No objection.

18 MR. MCMENAMY: No objection, Your Honor.

19 THE COURT: You're free to go. Thank you
20 very much.

21 THE WITNESS: You're welcome.

22 MR. MCMENAMY: Thank you, Aaron.

23 THE WITNESS: You're welcome.

24 MR. MCMENAMY: Your Honor, we'd like to
25 call Mr. Tomasella.

1 THE COURT: All right. Mr. Tomasella.

2 TODD TOMASELLA,

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCMENAMY:

6 Q. Well, Mr. Tomasella you've had the benefit of
7 hearing what Mr. Wagner and Mr. Moradi said, so I'll go
8 straight to the point of questions.

9 Have you had several different jobs in the
10 recent past?

11 A. Yes. There's a reason for that.

12 Q. Okay. And are those -- has -- your going from
13 one job to the other have to do with the current
14 economic times?

15 A. Yes. Well, not only that, the advent of the
16 Internet. A friend of mine invented the Superpages with
17 Verizon who I was originally employed with in 1997.
18 I've been in this industry for 14 years, but there's
19 been about half -- or it's three quarters of the
20 companies are going out of business because --

21 Q. And were several of those companies --

22 A. -- Yellow Pages --

23 Q. Let me --

24 A. Yeah.

25 Q. Were several of those companies companies that

1 you went with thinking they were going to be a good
2 place to work only to discover --

3 A. Absolutely.

4 Q. -- they weren't -- things weren't working out?

5 A. The whole industry is shifting from paper to
6 Internet.

7 MR. MOWLA: Your Honor, I'm going to object
8 as nonresponsive, his answer.

9 Q. And so --

10 THE COURT: We're kind of getting into
11 detail, but --

12 MR. MCMENAMY: Right.

13 A. That's the reason. There's been a lot of
14 shifting. A lot of companies --

15 Q. (BY MR. MCMENAMY) And during those times when
16 you had to change jobs to survive, did you have gaps
17 between your employment?

18 A. Yes.

19 Q. And did those gaps result in you being unable
20 to pay child support as ordered?

21 MR. MOWLA: I object to relevance, Your
22 Honor. We're into SAPCR.

23 MR. MCMENAMY: Well, you've already -- you
24 raised the question as to whether he loved his son if he
25 owed 35,000 in support.

1 MR. MOWLA: I'll withdraw the objection.

2 THE COURT: All right. Go ahead.

3 A. He's not going to mention that I've already
4 paid about 40,000 which she used to pay him instead --

5 MR. MOWLA: Objection, nonresponsive.

6 A. -- of putting the child's college fund --

7 THE COURT: I'll sustain that. Answer just
8 the question.

9 THE WITNESS: Yes, ma'am.

10 MR. MCMENAMY: You have to answer the
11 question.

12 THE COURT: Don't elaborate.

13 THE WITNESS: Yes, ma'am.

14 Q. (BY MR. MCMENAMY) So what we're trying to get
15 around to is, do you care about your son; yes or no?

16 A. Absolutely.

17 Q. Okay.

18 A. Yes.

19 Q. Do you spend a considerable time thinking about
20 that you're missing a relationship with him?

21 A. Every day.

22 Q. All right. And during these times, have you
23 been financially unable to hire consultants and so forth
24 to put forth your cause as to why you should get to see
25 your son?

1 A. Yes.

2 Q. Okay. Have you ever abused your son?

3 A. No.

4 Q. Have you, on one occasion, struck him on his
5 cheek?

6 A. A slight pop, yes.

7 Q. Okay. Have you ever abused him other than --
8 assuming that that were abuse --

9 A. No.

10 Q. -- is there any other occasions?

11 A. No.

12 Q. Did you have a close relationship with your son
13 prior to involvement with --

14 A. Yes.

15 Q. -- Kaufman courts?

16 A. I'd like to prove --

17 MR. MCMENAMY: Your Honor, we have several
18 pictures of him and his son that we'd like to put into
19 evidence; however, all of these, by definition, have to
20 be before June 19th of 2007 because he hasn't seen his
21 son since then due to the actions of the mother.

22 THE COURT: First let me see, is there any
23 objection?

24 MR. MOWLA: Your Honor, failure to lay
25 predicate.

1 MR. MCMENAMY: Well, I'm --

2 Q. So Mr. --

3 MR. MCMENAMY: May I approach the witness,
4 Your Honor?

5 THE COURT: You may.

6 Q. (BY MR. MCMENAMY) Mr. Tomasella, would you
7 identify this?

8 A. Yes. That is my son and I.

9 Q. Okay. And what age is he there?

10 A. He's about seven right there.

11 Q. Okay.

12 MR. MCMENAMY: You have any objection?

13 MR. MOWLA: The objection is relevance and
14 failure to predicate, Your Honor. If it happened before
15 June 2007, it's not relevant to the proceedings today.

16 THE WITNESS: It tells a different picture
17 than what they're painting. It tells the truth.

18 Q. (BY MR. MCMENAMY) And now, Mr. Tomasella, is
19 this any later time?

20 A. That's about seven, also.

21 Q. Okay.

22 A. Six or seven, eight, somewhere in there.

23 Q. Okay. Now --

24 THE COURT: I'm going to admit them, but
25 it's very limited. It's just what once was, and

1 pictures can be designed to say anything. It doesn't
2 say it's the truth or whether it's a lie. It's just a
3 picture, and I'm not sure if you're admitting them into
4 evidence. I'm sure you don't want to turn this in
5 today, so what would you like to --

6 MR. MCMENAMY: Yes, Your Honor, we would
7 like to have permission of the Court to substitute a
8 copy of this into the court's record, if that's
9 permissible.

10 THE COURT: All right. I'll let you do
11 that.

12 MR. MCMENAMY: Okay.

13 THE COURT: I will look at them. It's just
14 -- it's very limited. It's the way it once was, and it
15 really does not tell me anything about today.

16 MR. MCMENAMY: Right.

17 Q. (BY MR. MCMENAMY) And so Mr. Tomasella, are
18 you asking the Court to work with you until -- so that
19 you have a chance to prove the parental alienation that
20 has been mentioned in this courtroom?

21 A. There was never any proof that there was abuse
22 that should have separated us in the first place.

23 MR. MOWLA: Objection, nonresponsive.

24 Q. Answer the question.

25 THE COURT: Answer just the question.

1 Q. (BY MR. MCMENAMY) Are you asking for the
2 Court --

3 A. Yes.

4 Q. -- to look into parental alienation?

5 A. Absolutely.

6 Q. And so --

7 A. And much evidence of it.

8 Q. -- concerning that, are you asking that the
9 Court allow you to meet with a counselor -- Micah to
10 meet with a counselor and make a determination so the
11 counselor can give an opinion?

12 A. Yes.

13 MR. MCMENAMY: So Your Honor, I guess at
14 this point, we would like to move that this hearing be,
15 again, continued until such time as we've had the chance
16 to contact a qualified counselor which we've known --
17 he's known who the person is, eminently qualified, in
18 this area of practice, but he has not had the funds to
19 retain them.

20 THE COURT: Well, first, I'm going to get
21 -- allow Mr. Mowla an opportunity to cross-examine, and
22 then you can make your -- a point then. Any
23 cross-examination, sir?

24 MR. MOWLA: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. MOWLA:

2 Q. Mr. Tomasella, you testified a moment ago that
3 you haven't been able to afford consultants to set forth
4 your case; do you recall that testimony?

5 A. Yes.

6 Q. Okay. And by consultants, you mean attorneys,
7 right?

8 A. Yes.

9 Q. Okay. Through June 19th, 2007, when the Court
10 entered the last final order, weren't you represented by
11 Mr. McMenamy?

12 A. Yes, for a while.

13 Q. And when you filed the original petition to
14 modify in November of 2007, you had a lawyer then,
15 didn't you?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. What was their name?

20 A. Mr. McMenamy.

21 Q. Your lawyer in --

22 A. Craig Jackson.

23 Q. No. Who was your lawyer when you filed the
24 petition to modify in November of 2007? It was a woman.

25 A. Yeah, in Terrell. I can't remember her name.

1 It was a very short while.

2 Q. And you retained her, didn't you?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. Okay. And then after that, you retained
7 Mr. Craig Jackson, didn't you?

8 A. Yes.

9 Q. Okay. And Mr. Craig Jackson is board certified
10 in family law, isn't he?

11 A. Yes.

12 Q. And then now, today, again, you're represented
13 by Mr. McMenamy, aren't you?

14 A. Yes.

15 Q. And during the hearings on temporary orders on
16 November 3rd, 2008, Mr. Jackson -- Craig Jackson
17 represented you, correct?

18 A. Yes.

19 Q. So isn't it true the only time you've actually
20 been before the Court by yourself was during the hearing
21 when Judge Tygrett recused himself at the last hearing
22 we were before the judge back in January? Those are the
23 only two times you were before the Court by yourself,
24 isn't that true?

25 A. I guess so, yes.

1 Q. Okay. All right. Now, the June 19th, 2007
2 order, you recall -- or you do recall the access and
3 possession schedule that it ordered; yes or no?

4 A. I was forced into that, yes.

5 Q. Okay.

6 MR. MOWLA: Objection, nonresponsive other
7 than yes, Your Honor.

8 THE COURT: Sustained.

9 Q. (BY MR. MOWLA) Okay. We were before this
10 Court on June 19th, 2007, and Mr. McMenemy was your
11 attorney, wasn't he?

12 A. Yes.

13 Q. Okay. And we didn't actually have a trial on
14 the case, but we had an agreement that was entered into
15 the record, didn't we, the agreement that you claimed
16 that you were forced into; is that correct?

17 A. Yes.

18 Q. Okay. And we had a hearing before this Court
19 on November 3rd of 2008, correct, when Craig Jackson
20 represented you?

21 A. Yes.

22 Q. Okay. And Judge Tygrett denied your motion to
23 modify and ordered that the visitations continue with
24 Linda Duggan being the supervisor, correct; yes or no?

25 A. Yes.

1 Q. Okay. And you were ordered to go and meet with
2 Carla Herren, correct?

3 A. I sure did.

4 Q. Okay. I'm talking about after November the 3rd
5 of 2008. You were ordered to go meet with Carla Herren?

6 A. No, I met with her for a year. At the same
7 time, Micah and I were meeting with in-house Linda
8 Duggan.

9 MR. MOWLA: Objection, nonresponsive, Your
10 Honor.

11 THE COURT: Rephrase your -- restate your
12 question --

13 MR. MOWLA: Okay.

14 Q. Between --

15 THE COURT: -- and answer just that
16 question.

17 Q. (BY MR. MOWLA) Between what month and what
18 month of what year did you meet with Carla Herren?

19 A. Approximately September of '06 for a year.

20 Q. Okay. So you stopped meeting with Carla Herren
21 before June 19th of 2007, didn't you?

22 A. No. Actually, it ran the same year as did the
23 CPS debacle.

24 Q. Okay.

25 A. So it was alongside that time.

1 Q. Okay. So you haven't seen Ms. Herren since
2 November 3rd of 2008, have you?

3 A. No.

4 Q. Okay.

5 A. No need to. She said there was no abuse.

6 MR. MOWLA: Objection, nonresponsive, after
7 no, Your Honor.

8 THE COURT: Sustained. Just a simple
9 question, because if it needs follow-up, you've got a
10 good attorney here to tell you -- or ask the next
11 question of follow-up.

12 THE WITNESS: Yes, ma'am. Excuse me.

13 Q. (BY MR. MOWLA) Now, this order from November
14 3rd of 2008, this is the one -- you remember you said
15 you didn't read the entire order? Remember that during
16 the last hearing?

17 A. Yes.

18 Q. Okay. This order does order you to go meet
19 with Ms. Herren, doesn't it?

20 A. No.

21 Q. It doesn't order you to do that?

22 A. No. I've already met with her for a year.

23 That was --

24 MR. MOWLA: Objection, nonresponsive.

25 A. -- the only requirement.

1 THE COURT: Just don't argue. I know
2 you're anxious to get your side down --

3 THE WITNESS: It's nothing --

4 THE COURT: -- but you're hurting yourself.

5 THE WITNESS: -- but a smear campaign.
6 That's all this is.

7 THE COURT: Okay. This is a lawsuit. It's
8 a lawsuit, and I'm going to accept it just simply as
9 that. Please.

10 THE WITNESS: Yes, ma'am.

11 Q. (BY MR. MOWLA) We'll get to the smear campaign
12 in a moment, Mr. Tomasella. But it does say in this
13 order that you may, at your choosing, begin therapy with
14 Carla Herren, and it's ordered that Ms. Herren may
15 contact Linda Duggan to coordinate any joint therapy
16 session between you and Micah, correct?

17 A. I guess.

18 Q. Okay. Would you like to review this order to
19 refresh your memory?

20 A. I'm not interested.

21 Q. Okay. So --

22 A. There's no need to.

23 Q. So you do agree with me, then, that you were
24 ordered and given the option to meet with Carla Herren,
25 weren't you?

1 A. I did for a year, yes.

2 Q. Okay. After November 3rd, 2008, according
3 to --

4 A. I had no idea that I was invited to meet with
5 her.

6 Q. Would you like to review the temporary orders
7 in this case?

8 A. Whatever.

9 Q. Okay.

10 MR. MOWLA: Your Honor, could the Court
11 take judicial notice that the temporary orders were
12 entered on November 3rd, 2008 and signed by the Court
13 November 12th of 2008?

14 THE COURT: And you've got a copy of what's
15 in the file?

16 MR. MOWLA: I do, Your Honor. It's right
17 here.

18 THE COURT: Could I see that?

19 MR. MOWLA: You may.

20 THE COURT: Yes, without having to dig
21 through whichever file. Okay. Those were temporary
22 orders in 2008?

23 MR. MOWLA: Yes, Your Honor. And that was
24 the last orders entered in the Court's record since
25 June 19th, 2007.

1 THE COURT: I take it Carla Herren was a
2 therapist?

3 MR. MOWLA: She is a therapist, Your Honor.

4 THE WITNESS: She gave a handwritten note
5 saying there was no abuse --

6 MR. MOWLA: I'm going to object to any
7 testimony from Mr. Tomasella.

8 THE WITNESS: -- after a year.

9 THE COURT: Sustained. Just --

10 THE WITNESS: Yes, ma'am.

11 THE COURT: -- don't say anything unless --

12 MR. MOWLA: Actually, Your Honor, the
13 temporary orders are the top right here, Your Honor, in
14 the record. It's kind of falling apart --

15 THE COURT: Thank you.

16 MR. MOWLA: -- but those are the temporary
17 orders that were signed by the Court.

18 THE COURT: All right. Very good.

19 MR. MOWLA: If I may, Your Honor --

20 THE COURT: Of course, I will take judicial
21 notice, but I'm going to see exactly what they said.

22 MR. MOWLA: Your Honor, if I may, they're
23 kind of falling apart, but this is the rest of the
24 orders right here. You got pages 1 through 5. This is
25 page 6 through 8 plus the signature pages, Your Honor.

1 Q. (BY MR. MOWLA) Well, since you've refused to
2 answer, Mr. Tomasella, and the Court took judicial
3 notice of these temporary orders dated November 3rd,
4 2008, my question --

5 MR. MCMENAMY: I object to that
6 configuration. He was just -- he said he did not know
7 what the answer was, not to refuse to answer.

8 MR. MOWLA: Okay. Well, Your Honor, when I
9 asked him would we have to review it to refresh his
10 memory, he said there's no need to, so the Court can
11 take judicial notice --

12 THE COURT: I'm taking judicial notice, and
13 it says he may at his choosing --

14 THE WITNESS: Hello.

15 THE COURT: -- begin therapy.

16 THE WITNESS: That's correct.

17 THE COURT: It didn't say you're ordered --
18 hereby ordered.

19 THE WITNESS: Thank you.

20 MR. MOWLA: And Your Honor, I read that
21 into the record.

22 THE WITNESS: You're lying.

23 MR. MOWLA: Your Honor, could you ask --
24 instruct him not to accuse me of lying on the record?

25 THE COURT: Please don't --

1 THE WITNESS: This man is a scoundrel.

2 THE COURT: Extra --

3 MR. MOWLA: And he just called me a
4 scoundrel, Your Honor, on the record.

5 THE WITNESS: Absolutely, put it on the
6 record.

7 THE COURT: Mr. Tomasella --

8 THE WITNESS: Yes, ma'am.

9 THE COURT: -- I'm doing everything I can
10 to give you a fair hearing.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Please don't tempt me.

13 THE WITNESS: Yes, ma'am.

14 MR. MOWLA: May I proceed, Your Honor?

15 THE COURT: You may.

16 Q. (BY MR. MOWLA) Mr. Tomasella, doesn't this
17 order state that it is ordered that Todd Tomasella may,
18 at his choosing, begin therapy with Carla Herren and
19 gives Carla Herren's address?

20 A. In May, yes.

21 Q. Okay. Did you, at your choosing, begin
22 therapy?

23 A. No.

24 Q. Did you begin therapy with anybody?

25 A. I'm in ongoing fellowship with people that can

1 help me and be --

2 MR. MOWLA: Objection, nonresponsive.

3 A. Yes.

4 Q. (BY MR. MOWLA) Yes or no?

5 A. Yes, absolutely.

6 Q. Okay.

7 THE COURT: I identify what you mean by
8 counselling.

9 MR. MOWLA: Okay.

10 THE COURT: But in your question, you can
11 repeat the question.

12 MR. MOWLA: Okay.

13 THE COURT: Just that --

14 Q. (BY MR. MOWLA) Have you met with a
15 professional licensed counselor or a psychologist or a
16 psychiatrist after November 3rd, 2008, yes or no?

17 A. No.

18 Q. Okay. And this order, Mr. Tomasella, continues
19 the order dated June 19th, 2007, that says that Linda
20 Duggan can direct any access of the child, Micah
21 Tomasella, correct?

22 A. Correct.

23 Q. Okay. But you haven't followed that order,
24 have you?

25 A. I sure have. What do you mean?

1 Q. Okay. Have you attempted to mail things to
2 Micah?

3 A. Yes, for his birthday.

4 Q. Did you mail him some cards?

5 A. Cars?

6 Q. Yes, sir, cards.

7 A. Car?

8 Q. Yes, sir.

9 A. What's a car?

10 Q. Card, a greeting card.

11 A. Oh, yeah. God forbid I send my son a card,
12 yes.

13 MR. MOWLA: Objection, nonresponsive, Your
14 Honor, after yes.

15 THE COURT: Just a yes or no, that's all.
16 Your attorney knows how to represent you. Trust him.

17 MR. MCMENAMY: You have to --

18 (Petitioner's Exhibit No. 8 premarked.)

19 Q. (BY MR. MOWLA) I'm going to show you what's
20 been premarked as Petitioner's Exhibit 8, Mr. Tomasella.
21 You want to take a moment to look at that? Do you
22 recognize what I just handed you?

23 A. Yes.

24 Q. Tell the Court what it is I just handed you.

25 A. I mailed my son a card telling him I love him.

1 Q. Okay.

2 A. God forbid.

3 Q. So you agree with me that this is a card that
4 you mailed to your son?

5 A. Yes, indeed.

6 Q. Okay. And --

7 A. With -- probably with gifts.

8 MR. MOWLA: Your Honor, if you could
9 instruct the witness not to interrupt me.

10 THE COURT: Mr. Tomasella --

11 MR. MCMENAMY: You have to answer just the
12 question. I'll get a chance to cross you, okay?

13 THE WITNESS: All right.

14 Q. (BY MR. MOWLA) And you sent this to him for
15 his 14th birthday, didn't you?

16 A. Yes.

17 Q. Okay.

18 MR. MOWLA: Your Honor, I'd like to move to
19 admit Petitioner's Exhibit 8, a true and correct copy of
20 a card that Mr. Tomasella admitted that he sent to his
21 son for his 14th birthday.

22 THE COURT: Where is it ordered that he
23 shall not have any contact even by mail?

24 MR. MOWLA: Your Honor, on page -- the
25 Court's taken judicial notice on page 2 of 8 of the

1 temporary orders and, of course, on the final order,
2 June 19th of 2007. It states that at the bottom of page
3 2, Todd Tomasella shall have possession of and access to
4 the child only as directed by the child's therapist,
5 Linda Duggan.

6 And as a matter of law, Your Honor, access
7 to includes approaching a child, sending documents to a
8 child, or trying to make any other communication with
9 the child.

10 THE COURT: Was that explained to him --

11 MR. MOWLA: Your Honor, I --

12 THE COURT: -- or do you know?

13 MR. MOWLA: -- I don't know any contents of
14 attorney-client communications. I did send -- when
15 Mr. Jackson sent to me, an officer of the court -- I
16 don't have that document here with me, but as officer of
17 the court -- when Mr. Jackson sent to me a letter --
18 Craig Jackson, who was representing him -- saying that
19 Mr. Tomasella wants to go see his son at school, I sent
20 a letter to Mr. Jackson, and he can testify to that fact
21 as well, it's called upon by the Court, that I made it
22 clear to him that access to includes any attempt to
23 contact the child, which is prohibited by the Texas
24 Family Code as a matter of law.

25 So I don't know if that was explained to

1 Mr. Tomasella by Mr. Jackson, but I did send that to his
2 attorney.

3 THE COURT: Okay.

4 MR. MOWLA: I'd like to move, Your Honor,
5 to admit this Petitioner's Exhibit 8, the -- this right
6 here, Your Honor. Yeah, he's identified it --

7 THE COURT: Yes.

8 MR. MOWLA: -- as a true --

9 THE COURT: It'll be admitted.

10 MR. MOWLA: Okay.

11 Q. (BY MR. MOWLA) Now, Mr. Tomasella, isn't this
12 a sympathy card?

13 A. No. It was mistaken if it was, yeah.

14 Q. Okay. Well, I'm going to read this card to
15 you. May God, who watches over us and hears us when we
16 pray, be very near to give you strength and comfort you
17 today. May he bless and keep you within his loving
18 care, and may it help you just to know that he is always
19 there. In sympathy.

20 Is that a true reading of what's in the
21 card?

22 A. Absolutely, yes, huh.

23 Q. Okay. So you sent your son a sympathy card for
24 his 14th birthday?

25 A. We all need sympathy.

1 Q. Okay. Now, I'm going to ask your opinion on
2 this, Mr. Tomasella. For your personal opinion, if
3 someone sent you a card -- a sympathy card for your
4 birthday, how would that make you feel?

5 A. I'd appreciate it.

6 Q. You'd appreciate it?

7 A. Uh-huh.

8 Q. Okay. Now, you saw the exhibit that was
9 entered during the last hearing, Mr. Tomasella, where
10 you -- it was shown that you had made further derogatory
11 online comments about my client. Do you remember that
12 exhibit that was entered into evidence?

13 A. Yeah. Yes, sir.

14 Q. Okay. But you -- my client's not the only one
15 that you have made negative comments to online, is she;
16 yes or no?

17 A. No.

18 Q. Okay. You've gone online and tried or
19 attempted to defame Judge Tygrett, didn't you?

20 A. Absolutely.

21 Q. And you attempted to defame Eric Williams,
22 didn't you?

23 A. Absolutely.

24 Q. And you attempted to defame CPS and everyone
25 involved with CPS, didn't you?

1 MR. MCMENAMY: I would like --

2 A. It was a conspiracy.

3 MR. MCMENAMY: -- to have a running
4 objection here. The word "defame" is a legal term --

5 THE WITNESS: Expose.

6 MR. MCMENAMY: -- somebody's defined it, et
7 cetera. So my client may not understand that the
8 definition of defamation is a legal term, not a -- just
9 a casual conversation term.

10 THE COURT: I'll give you that running
11 objection.

12 MR. MCMENAMY: Okay.

13 Q. (BY MR. MOWLA) All the people I just
14 mentioned, Mr. Tomasella, you've gone online and made
15 negative comments about them online, didn't you?

16 A. Freedom of speech, yes.

17 MR. MOWLA: Objection, nonresponsive --

18 A. First Amendment.

19 MR. MOWLA: -- after yes, Your Honor.

20 THE COURT: I'm sorry.

21 MR. MOWLA: Your Honor, I -- if the
22 client's being nonresponsive, I have to object. It's
23 just a matter of procedure.

24 THE COURT: And I'm sorry, I was here
25 thinking Mr. Tomasella is his own worst enemy right now,

1 and I didn't hear what you said.

2 MR. MOWLA: Your Honor, when I said -- when
3 I objected to anything other than yes, I believe --
4 could the court reporter read what Mr. Tomasella just
5 said back?

6 (Requested portion was read.)

7 MR. MOWLA: I'm going to object to
8 everything other than yes.

9 THE COURT: Sustained.

10 Q. (BY MR. MOWLA) And Mr. Tomasella, you've made
11 negative comments about me, haven't you, online?

12 A. Yes.

13 Q. Okay. And what do you understand my role to be
14 in this case, sir?

15 A. Can I answer that?

16 Q. I'm asking you a question. What do you
17 understand my role to be?

18 A. A family destroyer.

19 Q. Okay. Do you have any knowledge whether
20 Mrs. Tomasella has retained me as her attorney?

21 A. Using child support money, yes.

22 MR. MOWLA: Objection, nonresponsive, other
23 than yes, Your Honor.

24 THE COURT: Just please limit it to a yes
25 or no.

1 Q. (BY MR. MOWLA) And do you and I -- or did you
2 and I know each other after I was retained by
3 Mrs. Tomasella?

4 A. Only in court, yes.

5 Q. Okay. Other than --

6 MR. MOWLA: Again, objection,
7 nonresponsive, Your Honor.

8 A. Yes. Yes, other than court, yes.

9 Q. (BY MR. MOWLA) So you and I have never seen
10 each other out and about in town, have we?

11 A. No.

12 Q. You and I have never spoken to each other out
13 and about in town other than when I've questioned you in
14 court, have we?

15 A. No.

16 Q. Okay. And you saw the need to attack me
17 personally online, didn't you?

18 A. To expose you, yes.

19 (Petitioner's Exhibit No. 5 premarked.)

20 Q. Okay. Would you take a look at Petitioner's
21 Exhibit 5, Mr. Tomasella. Do you recall, sir, sending
22 me in August of 2009 a message through lawyers.com --

23 A. No.

24 Q. -- where you stated -- let me finish the
25 question -- where you stated to me a comment through

1 lawyers.com?

2 A. No.

3 Q. I'm going to point on the exhibit for you, sir,
4 so that you see --

5 A. I didn't do that.

6 Q. You see right here, sir? You see that little
7 sentence right there?

8 A. Uh-huh.

9 Q. Would you read that sentence to the Court,
10 please?

11 A. I can't. I didn't bring my glasses.

12 Q. Okay.

13 A. I can't read that. It's very small.

14 Q. Is your phone number (972) 571-3459?

15 A. No.

16 Q. Okay. Has it ever been (972) 571-3459?

17 A. Yes.

18 Q. Okay. And was it, to your recollection, in
19 August of 2009 (972) 571-3459?

20 A. Yes.

21 Q. Was your e-mail address ever
22 todd.tomasella@gmail.com?

23 A. No.

24 Q. It was never todd.tomasella@ --

25 A. That was -- someone else fictitiously made that

1 e-mail up.

2 Q. Okay. So your --

3 A. I'll report it to the police.

4 Q. So your position is you did not send me a
5 message to lawyers.com stating, he has perverted his
6 talents and uses them for evil?

7 A. No.

8 Q. Okay. So you never sent this to me?

9 A. I did not send this to you.

10 Q. Okay. And you swear under oath that you hadn't
11 sent this message to me?

12 A. Absolutely.

13 Q. Okay. Thank you.

14 A. That was never my e-mail address. That was
15 fictitious.

16 Q. Have you ever made any negative comments about
17 me on any other boards, sir? Any other place online?

18 A. Complaintsboard.com, yes.

19 (Petitioner's Exhibit No. 6 premarked.)

20 Q. Okay. I'm going to show you what's been
21 premarked as Petitioner's Exhibit 6. You want to take a
22 look at that for a moment?

23 A. Uh-huh.

24 Q. Sir, isn't this a printout of a
25 complaintsboard.com message?

1 A. Yes.

2 Q. And --

3 MR. MCMENAMY: Your Honor, is opposing --
4 I'm going to object to any further questions on these
5 lines because opposing counsel has not laid any kind of
6 predicate as to what this has to do with child custody,
7 child visitation, that sort of thing.

8 THE COURT: Sustained.

9 MR. MOWLA: Your Honor, the rele -- the
10 predicate, Your Honor, I was trying to get predicate
11 from the witness, but the relevance, I think Mr.
12 McMenemy -- as an objection to relevance is that he had
13 people testify as to his good character and honesty, and
14 I present that attacking the opposing attorney online
15 and making negative comments about him goes against his
16 good character and honesty, and this is rebuttal
17 testimony -- rebuttal evidence to his allegation that he
18 has good character and he is an honest person.

19 THE COURT: And so you're saying that if he
20 expresses his opinion, even if it's erroneous, that that
21 is a denial of good character on his part?

22 MR. MOWLA: Well, he states that he is an
23 honest person and he has good character, and my position
24 is attacking people online and making negative comments
25 and false comments go against his character.

1 THE COURT: I say it may be -- come out of
2 the heading of obnoxious, but I don't see it as against
3 good character. Not in the way I think good character
4 is being honest and having integrity.

5 MR. MOWLA: Okay. So the objection is
6 sustained? I just -- you know, before I proceed.
7 Because he did admit he also posted something on
8 complaintsboard.com, so --

9 THE COURT: Well, I'm trying to figure out
10 the relevance, to see what relevance is, and I don't see
11 a matter of his opinion of what someone else is, even if
12 it's wrong.

13 MR. MOWLA: Your Honor, I'll lay the
14 predicate that he's actually made comments about this
15 case on complaintsboard.com. I believe that is relevant
16 to the case as a statement against interest.

17 MR. MCMENAMY: Your Honor, I don't see --

18 THE COURT: I'm going to let you, but I'm
19 not sure -- it depends. I'm not sure I'll buy it. I'll
20 let you ask.

21 MR. MOWLA: Well, Your Honor, I'm going to
22 ask the witness, again, to look at this statement on
23 complaintsboard.com.

24 Q. (BY MR. MOWLA) Sir, did you post that
25 statement?

1 A. Yes.

2 Q. Okay. And do you recall posting it sometime on
3 or about January 20th of 2010?

4 A. I guess so.

5 Q. Okay.

6 MR. MOWLA: Your Honor, I'm going to move
7 to admit Petitioner's Exhibit 6 as being identified for
8 the predicate by the opposing -- by the witness.

9 MR. MCMENAMY: Your Honor, we're
10 reiterating our objection that it has no relevance to
11 this case.

12 THE COURT: What is the relevance?

13 MR. MOWLA: Well, Your Honor, he's made
14 comments regarding the case itself. If I can ask him --
15 if I can present the exhibit into testimony or into
16 evidence, it'll show that he's made comments regarding
17 him being in a custody battle involving him and that
18 he -- there was no evidence of abuse in the case. I
19 believe that is relevant to the testimony and the
20 evidence that's been heard today. He's admitted to
21 making this statement online.

22 THE COURT: Exactly what is the statement?
23 I --

24 MR. MOWLA: Your Honor, this -- the
25 statement exactly reads, we were involved -- we were in

1 a battle involving attorney, Michael Mowla, and we were
2 appalled by his obnoxious and immoral behavior. Our
3 observation is this: This man is extremely immoral and
4 does not care who has to suffer for him to win his case,
5 even though he knows what he is doing is immoral. And
6 Mr. Tomasella is nodding his head yes --

7 THE WITNESS: Absolutely.

8 MR. MOWLA: -- that he obviously agrees
9 with this.

10 THE WITNESS: I stand on it.

11 MR. MOWLA: My husband and I were involved
12 in a custody battle involving Michael Mowla and he was
13 trying to take the children away knowing there was no
14 evidence of abuse. This man is no different than a
15 prostitute. In fact, he's far worse. He takes money
16 from people to destroy families. The fact that he would
17 attempt and fight to take away little children from
18 their parents while knowing there was no cause is
19 horrific.

20 In addition, Your Honor, Mr. Tomasella
21 purported to be speaking as a couple when, in fact,
22 there was no couple and he was the party by himself in
23 this case, and I believe posting a message like this
24 online about the case and purporting to be something
25 that you're not goes to his honesty, and he's testified

1 that he's an honest person.

2 THE COURT: If --

3 MR. MOWLA: And he's admitted to making
4 this statement online.

5 MR. MCMENAMY: And I think, Your Honor,
6 it's his opinion, which he says, his observation, so it
7 doesn't have anything to do with this case other than
8 that Mr. Mowla doesn't like it, but --

9 THE COURT: And what I'm trying to -- I
10 don't see where it has anything to do with his character
11 unless he's representing himself in that statement as a
12 couple that he was not --

13 MR. MOWLA: He is representing himself as a
14 couple, Your Honor, and he's admitted to making the
15 statement. And I believe posting as someone you're not
16 online goes to your honesty.

17 THE WITNESS: My --

18 MR. MOWLA: He's opened a door to his
19 character, Your Honor.

20 THE WITNESS: My moral desire here was to
21 expose this man for what he is and to warn other people,
22 to help them.

23 THE COURT: But what I'm trying to
24 understand, whether or not -- and how you represented
25 yourself as a couple in there, and I heard what you read

1 and I hesitate to read it because I feel like that's
2 literally admitting it into evidence, then, but I will
3 have to see it before I can rule on it. (Reading) And
4 you acknowledge that you made the statement here saying,
5 my husband and I were in a custody battle?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: All right. It'd be admitted.

8 MR. MOWLA: Thank you, Your Honor. This is
9 for the Court's publication, Your Honor, as the original
10 Petitioner's Exhibit 6.

11 Q. (BY MR. MOWLA) Sir, have you ever gone online
12 and -- you just admitted that you represented yourself
13 as a couple. Have you gone online and represented
14 yourself as an attorney while making negative comments
15 about me?

16 A. No.

17 (Petitioner's Exhibit No. 7 premarked.)

18 Q. Okay. Let me show you what's been premarked as
19 Petitioner's Exhibit 7 and tell me if you made this
20 comment on complaintsboard.com.

21 MR. MCMENAMY: May I see a copy of that?

22 MR. MOWLA: Oh, I'm sorry.

23 A. Yes.

24 Q. (BY MR. MOWLA) So you admit that you made this
25 comment --

1 A. Yes.

2 Q. -- Petitioner's Exhibit 7?

3 A. Yes.

4 Q. Now, Mr. Tomasella, just before I lay the
5 predicate, you preface this comment by saying, being in
6 the legal profession myself, I have observed Michael
7 Mowla on several cases over the last few years -- is
8 that your writing, sir?

9 A. Yeah.

10 Q. So here, you're purporting to be an attorney
11 online; is that correct?

12 A. My motive is to expose you for who you are.

13 MR. MOWLA: Your Honor, I'd like to move to
14 admit Petitioner's Exhibit 7 into evidence, as he's
15 admitted.

16 THE COURT: It'll be sustained.

17 MR. MOWLA: I'm sorry?

18 THE COURT: It'd be admitted.

19 MR. MOWLA: Okay.

20 THE COURT: I'm sorry, I said sustained,
21 but admitted is what I mean.

22 Q. (BY MR. MOWLA) So sir, you admit that on
23 October 7, 2010, you went online and you purported to be
24 on attorney?

25 A. No. I said I was in the legal profession.

1 Q. Okay. Are you in the legal profession?

2 A. No.

3 Q. Okay. So you weren't --

4 A. I've been around it, though.

5 Q. Okay. So you -- your statement that you're in
6 the legal profession was not correct, is it? It wasn't
7 true?

8 A. You're right.

9 Q. Okay. And you actually stated that you are in
10 Duncanville and you have initials EWB, correct? If you
11 look on the top of this statement, reported by EWB.

12 A. I guess so.

13 Q. Okay. Who is EWB, sir?

14 A. No idea.

15 Q. Okay. So you just made that up?

16 A. Yeah.

17 Q. Okay. And you state further here, my concern,
18 which is shared by others, is that there seems to be no
19 regard for the individuals he is opposing but rather an
20 increasing push to destroy that opponent without due
21 cause. You made that statement, didn't you?

22 A. That's the truth.

23 Q. Okay. And you're saying that, here's to hoping
24 Michael Mowla will settle down and do what is right,
25 even if it costs him immediate money?

1 A. Absolutely.

2 Q. Okay. And you admit --

3 A. That's good advice.

4 Q. I'm sorry, sir?

5 A. That's good advice.

6 Q. Okay. So you're reporting to advise me by
7 making -- by going online --

8 A. You needed some counsel, yes.

9 MR. MOWLA: Your Honor, could you instruct
10 the witness not to interrupt me?

11 THE COURT: Mr. Tomasella, a minute ago, I
12 said -- I was thinking hard about you're your worst
13 enemy.

14 THE WITNESS: This is a long battle, ma'am.
15 It's ugly.

16 THE COURT: Yeah, right now it is because
17 the system is here where, if you do your part, everybody
18 else can do their part.

19 THE WITNESS: I'm --

20 THE COURT: But you're working against
21 everybody. You're working against your attorney, you're
22 working against the Court. If you just -- answer just
23 the question. Don't ad-lib, don't give extraneous
24 information, because if it needs to be explained, you've
25 got an attorney here that can handle that. Take a deep

1 breath and think about it.

2 THE WITNESS: Yes, ma'am. Thank you.

3 THE COURT: Okay.

4 Q. (BY MR. MOWLA) So, sir, in your personal
5 opinion, do you believe it is honest to go online and
6 claim to be something you're not and make postings
7 claiming to be someone or something that you're not, in
8 your personal opinion?

9 A. Given the motive to protect other people, yes.

10 Q. Okay. Thank you, sir.

11 MR. MOWLA: Your Honor, I'd like to publish
12 Petitioner's Exhibit 7 to the Court.

13 THE COURT: I believe I already admitted
14 that.

15 MR. MOWLA: You admitted it, Your Honor. I
16 just wanted to publish it to the Court.

17 THE COURT: All right.

18 Q. (BY MR. MOWLA) Now, you moved, Mr. Tomasella,
19 the Court to appoint a different counselor for Micah.
20 Do you recall that hearing --

21 A. Yes.

22 Q. -- last month?

23 A. Yes.

24 Q. Okay. And if the Court is prepared to appoint
25 another counselor for Micah, are you prepared to work

1 with that counselor?

2 A. Yes.

3 Q. Okay. If the counselor gives an opinion to the
4 Court that you don't agree with, are you going to go
5 online and make negative comments about that counselor?

6 A. No.

7 Q. Okay. Are you going to continue going online
8 and making negative comments about me, or Eric Williams
9 or anyone else in this case?

10 A. No.

11 Q. Okay. So have you stopped making negative
12 comments online about people associated with the case?

13 A. Yes.

14 Q. Okay. How many jobs have you had, sir, in the
15 last two years?

16 A. Three.

17 Q. Okay. And have you quit those jobs, or were
18 you fired?

19 A. Never been terminated from a job.

20 Q. So you've always quit the jobs; is that
21 correct?

22 A. Well, can I answer that?

23 Q. Just yes or no, sir. Have you --

24 A. Yes.

25 Q. -- always quit your jobs?

1 A. Yes.

2 Q. Okay.

3 A. Yes, I was self-employed.

4 Q. And currently, you are -- you maintain your own
5 television advertising business?

6 A. That was something I started by myself before I
7 started employment recently with a new job, new
8 position.

9 Q. Are you currently involved in your own business
10 in the television advertising industry?

11 A. Yes.

12 Q. Okay. So you're operating under this right
13 now, correct?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes.

17 Q. Okay. And what is your monthly revenue from
18 operating that business?

19 A. My net revenue, about \$400 a month.

20 Q. Is that net before or after expenses?

21 A. That's net profit.

22 Q. Okay. What is your gross profit per month?

23 A. About 800.

24 Q. So you have \$800 in gross profit, \$400 in
25 expenses, and your net profit is \$400 a month?

1 A. Yes.

2 Q. How many accounts do you have?

3 A. Eight.

4 Q. Okay. So you average \$100 a month in revenue
5 from each account?

6 A. I mean, even -- if I continue to do that, it's
7 a renewal every three months --

8 Q. Do you have any other --

9 A. -- and a lot of them are free.

10 Q. What --

11 THE COURT: What does -- what relevance
12 does that have to -- visitation question?

13 MR. MOWLA: Well, Your Honor, we were --
14 Mr. McMenemy elicited testimony regarding his
15 employment. The Court allowed that testimony. I just
16 want to make sure that he has -- or he doesn't have
17 other sources of income. It's already been allowed by
18 the Court. But that's the last question I have, Your
19 Honor.

20 THE COURT: Okay.

21 MR. MOWLA: Yeah. I'll pass the witness at
22 this time.

23 THE COURT: Mr. Williams?

24 MR. WILLIAMS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. WILLIAMS:

2 Q. Mr. Tomasella, if Micah really doesn't want to
3 have visits at this time, do you care enough about him
4 to honor that request?

5 A. Yes. Can I qualify? "Really" is the key word.
6 The child's mind has been manipulated, that's clear.
7 The last time that I saw him in Linda Duggan's office,
8 he was absolutely crushed that I told him I could no
9 longer meet with him here. That's the last time I
10 talked to him. Since then, manipulation has been
11 perpetrated by the mother on the child. She teaches him
12 to lie, he told me that. He told me that mom told --

13 MR. MOWLA: I'm going to object to hearsay,
14 Your Honor.

15 THE COURT: Sustained. We'll just -- we'll
16 wait. I've heard from Micah, but we'll have further
17 hearings. Go ahead.

18 MR. WILLIAMS: I'll pass the witness, Your
19 Honor.

20 THE COURT: Anything further?

21 MR. MCMENAMY: I'm sorry, could we -- what
22 was your question again?

23 MR. WILLIAMS: My question was if Micah
24 really didn't want to see him if he cared about him to
25 honor that request.

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MR. MCMENAMY: Okay.

REDIRECT EXAMINATION

BY MR. MCMENAMY:

Q. So Mr. Tomasella, I just have a couple of questions. One is concerning the very last question that Mr. Williams asked you, and that is, do you feel that after you have time with Micah through a counselor and after he's had a chance to see what you're like now rather than some memory from when he was eight years old, do you feel like that his opinion will change about spending time with you?

A. If he sees me?

Q. Yes.

A. Absolutely. Can I speak to that, sir?

Q. Well, we have to go on with the questions and so forth.

A. I've got something that goes with that --

Q. Okay. So --

A. -- and it is proof of that.

Q. Okay.

A. When the child would get --

MR. MOWLA: Objection, nonresponsive, Your Honor, to the question that was answered.

THE COURT: Sustained.

Q. (BY MR. MCMENAMY) So what makes you think that

1 Micah may change his mind about meeting with you or
2 having a relationship with you in the future?

3 A. The child loves me --

4 Q. Okay.

5 A. -- very much.

6 Q. And did you -- at the time that you were
7 meeting with him before under the supervision of -- I
8 believe it was Linda Duggan -- at that time, did he say
9 he never wanted to see you again?

10 A. No --

11 MR. MOWLA: Objection, hearsay, Your Honor.

12 A. -- not at all.

13 THE COURT: Sustained.

14 Q. (BY MR. MCMENAMY) To go back to the job
15 situation, did you -- when you quit a job, do you
16 usually have another job ready to go?

17 A. Yes.

18 Q. Did you leave one job to go to another job?

19 A. For self-employment, yes.

20 Q. Okay. And each -- in each instance, did you
21 believe rightly or wrongly that you'd be better off with
22 a new job?

23 A. Yes.

24 Q. Did you have reason to believe that at least
25 one of the companies was going to fold shortly?

1 A. Yes --

2 Q. Okay.

3 A. -- definitely. And it did.

4 Q. The date of these postings on Complaints Board
5 was some time ago; is that correct?

6 A. Uh-huh, yes.

7 Q. And at that time, were you feeling that the
8 entire system was against you and --

9 A. I was accurate in feeling that way, yes.

10 Q. -- and you're --

11 A. It is a conspiracy.

12 Q. Okay. So since that day, have you come to
13 realize that you should work within the system and try
14 to get --

15 A. Yes.

16 Q. -- those -- get proof into the court?

17 A. Yes, sir. Well, and --

18 Q. And are you at this time wanting to go see a
19 more qualified counselor to start that process?

20 A. Yes, sir.

21 MR. MCMENAMY: We have no further
22 questions, Your Honor.

23 MR. MOWLA: Nothing further, Your Honor.

24 THE COURT: Mr. Williams, anything further?

25 MR. WILLIAMS: No, Your Honor.

1 THE COURT: All right. You can take your
2 seat back, Mr. Tomasella. Anything further?

3 MR. MCMENAMY: No, Your Honor. We go back
4 to the same --

5 THE COURT: Okay.

6 MR. MOWLA: And Your Honor, on the SAPCR
7 issue, I have no -- nothing further at this time.

8 THE COURT: Mr. Williams, anything to offer
9 the Court at this time?

10 MR. WILLIAMS: Nothing further outside the
11 interview that we had with Micah.

12 THE COURT: All right. I'll tell you what
13 I would like to do, I talked to Micah, he wanted to talk
14 to his father, he -- because he wanted to tell his
15 father that he didn't want to see him and why. I think,
16 emotionally, I believe he's strong enough -- do you
17 concur on that, Mr. Williams?

18 MR. WILLIAMS: Yes, Your Honor.

19 THE COURT: He's strong enough to discuss
20 the problems with his dad?

21 MR. WILLIAMS: Yes, Your Honor.

22 THE COURT: Then I would like for that to
23 happen in a controlled situation in the courtroom. And
24 before we go any further, hiring counselors, anything
25 else, let's see what happens at that time.

1 So when is spring break, if you have an
2 idea?

3 MS. TOMASELLA: The school that he's in --

4 THE COURT: Pardon?

5 MS. TOMASELLA: -- they have a winter break
6 and then they have a spring break. The winter break is
7 this week.

8 THE COURT: This week?

9 MS. TOMASELLA: That's the winter break,
10 and then he is going to get another break, but I don't
11 have the calendar with me right now. I want to say it's
12 sometime in April. Most spring breaks are in March, but
13 his will be in April.

14 THE COURT: I'd hate to take him out of
15 school again. He's out all this week?

16 MS. TOMASELLA: Well, it's for winter
17 break. Yeah, it's --

18 THE COURT: You have a winter break and
19 that's --

20 MS. TOMASELLA: Yeah, the winter break and
21 then spring break, so --

22 THE COURT: Okay. And they have a winter
23 break just before the spring break, okay. Got you. But
24 he'll be out all this week?

25 MS. TOMASELLA: Yes, ma'am.

1 THE COURT: I'm trying to think what I need
2 to do this week.

3 MS. TOMASELLA: Now, on Fridays --

4 THE COURT: Uh-huh.

5 MS. TOMASELLA: -- he gets out early, at
6 1:00 -- a little after 1:00. So if you would have any
7 Friday --

8 THE COURT: On all Fridays?

9 MS. TOMASELLA: Yes, ma'am, if that helps.

10 MR. MCMENAMY: Your Honor, could I make a
11 comment?

12 THE COURT: You may.

13 MR. MCMENAMY: My comment is that
14 Ms. Tomasella -- if there is parental alienation,
15 Ms. Tomasella has had four years, give or take, to get
16 this -- that ball rolling.

17 MR. MOWLA: Your Honor --

18 MR. MCMENAMY: So --

19 MR. MOWLA: -- I'm going to object.

20 Counsel's testifying --

21 MR. MCMENAMY: Well --

22 MR. MOWLA: -- and we haven't been asked
23 for closing arguments, Your Honor.

24 THE COURT: And I wasn't entertaining
25 closing arguments.

1 MR. MCMENAMY: But what I'm saying is that,
2 if that were the situation, then to have a meeting at
3 court with a child that's already been pretty prepared
4 kind of backs the question, and that's --

5 THE COURT: Don't you think you could
6 cross-examine effectively? Don't you believe you could
7 cross-examine Micah effectively?

8 MR. MCMENAMY: I could, yes.

9 THE COURT: I'm not talking about just a
10 sit-down, I'm talking about part of a hearing.
11 Mr. Williams, do you have any objection to what I'm
12 speaking of?

13 MR. WILLIAMS: No, Your Honor. That's what
14 has been requested.

15 THE COURT: Okay. He asked for it, and I
16 think that it might help clear the air where we're going
17 from this point.

18 MR. MCMENAMY: Well --

19 THE COURT: Mr. Tomasella agreed that he
20 might honor it if he thought he really meant that. I
21 don't know. This child is -- he's almost 15 the other
22 day. Is he 15 now?

23 MS. TOMASELLA: He's almost 15, yeah, in
24 May.

25 THE COURT: Okay. Teenagers, ratherly, get

1 a mind of their own no matter who's pulling the strings,
2 so -- yes, sir?

3 MR. TOMASELLA: Ma'am, it's totally,
4 completely different as soon as he gets in that car with
5 me, totally.

6 THE COURT: We will see. This is exactly
7 why I want to have -- he requested it.

8 MR. TOMASELLA: Yes, ma'am.

9 THE COURT: He specifically asked me if he
10 could face you and tell you exactly why --

11 MR. TOMASELLA: Yes, ma'am. The courtroom
12 situation is going to put it -- he's trying to please
13 his mother who he lives with. She's conditioned his
14 mind --

15 MR. MOWLA: Your Honor, I'm going to object
16 to this further testimony.

17 MR. TOMASELLA: A small room like this
18 would be much better, more casual to observe.

19 THE COURT: We could have it in here.

20 MR. TOMASELLA: That would be wonderful,
21 yes, ma'am. He's only 15. Even adults get nervous on
22 the stand.

23 THE COURT: That's one sharp kid, now.
24 Don't --

25 MR. TOMASELLA: Yeah.

1 THE COURT: -- try to diminish his ability.

2 MR. TOMASELLA: Absolutely. But we all
3 have emotions, and I think in a more natural
4 environment, the child would be -- but I'm concerned
5 that he's going to be conditioned to make a statement
6 and follow through with it. His mom promises him money
7 and everything else --

8 MR. MOWLA: Objection, Your Honor. Again,
9 I strike all this from the record.

10 THE COURT: It's simply a matter that, if
11 any of that has occurred, you've got an attorney that
12 knows how to ask questions, and I trust him in that.
13 And now, the -- my only consideration is what date that
14 would be. Is it possible that Thursday or Friday we
15 could come back?

16 MR. TOMASELLA: Yes.

17 MR. MOWLA: Of this week, Your Honor?

18 THE COURT: Yes.

19 MS. TOMASELLA: Friday would be better. He
20 has an orthodontist appointment on Thursday. I can
21 change it, but we've been waiting a little bit to get
22 him in.

23 THE COURT: No, don't change it.

24 MR. WILLIAMS: Your Honor, I can do Friday
25 morning.

1 THE COURT: You could do Friday morning?

2 MR. TOMASELLA: Your Honor, does the mother
3 have to be here?

4 MR. MOWLA: Your Honor --

5 THE COURT: Unless she decides not to, yes.

6 MR. TOMASELLA: The child's going to
7 want --

8 THE COURT: We will -- let's just -- we're
9 going to have to live with it that way. That's all
10 there is to it. I cannot deny her the right.

11 MR. TOMASELLA: I'm just saying, it's an
12 unfair advantage.

13 MR. MOWLA: Your Honor, I can do a Friday
14 morning, too.

15 THE COURT: Okay.

16 MR. MCMENAMY: Can we make it at 10:00,
17 Your Honor?

18 THE COURT: We can make it -- yes, please.
19 It takes me an hour and a half to get here.

20 MS. TOMASELLA: This Friday, right?

21 MR. MOWLA: Yeah.

22 THE COURT: We still have a matter of
23 Mr. Williams' motion.

24 MR. MCMENAMY: Your Honor, what -- I was
25 unaware of his motion.

1 THE COURT: It's for positive amicus fees.

2 MR. WILLIAMS: Your Honor, I sent that out
3 before Mr. McMenemy's appearance, so he doesn't have a
4 copy of it. If you'd rather hear that on Friday as
5 well, I can get a copy to him.

6 THE COURT: Okay. I think we'll do that
7 so --

8 MR. MCMENAMY: Okay.

9 THE COURT: -- you'll have an opportunity
10 then to consider that and -- all right. Anything else
11 that we need to consider today?

12 MR. MOWLA: Your Honor, the only other
13 thing before the Court today was my motion to revoke
14 community supervision on the child support matter. Now,
15 if -- because of the time, if -- I'm willing to agree to
16 reset that to Friday immediately following the hearing
17 we're going to have Friday at 10:00, provided
18 Mr. Tomasella's ordered to reappear Friday morning at
19 10:00, and we actually have a hearing on Friday.

20 THE COURT: And what I was concerned about
21 was the fact that you have a motion to modify pending
22 and we were going to hear that and the revocation, and I
23 was going to hear those both at the same time.

24 MR. MOWLA: Well, Your Honor, actually, the
25 motion to modify -- I don't have a motion to modify

1 pending, Your Honor. Mr. Tomasella does.

2 THE COURT: Mr. Tomasella.

3 MR. MOWLA: And I was under the impression
4 that was what we were hearing today, his motion to
5 modify.

6 THE COURT: It's not the final hearing?

7 MR. MOWLA: No, Your Honor. No, Your
8 Honor.

9 THE COURT: So this was a final hearing in
10 that?

11 MR. MOWLA: In what? In the motion to
12 modify, or my motion to revoke community supervision?

13 THE COURT: No, your motion to revoke is
14 for a final hearing. There isn't any question about
15 that.

16 MR. MOWLA: Yes, Your Honor.

17 THE COURT: And I was just going to do them
18 all together, but we can do them separately. Can you be
19 prepared on the motion to revoke community supervision?

20 MR. MCMENAMY: I have no idea what it says,
21 Your Honor.

22 MR. MOWLA: And Your Honor, if I may, Your
23 Honor, when we were before Judge Tygrett, Mr. Tomasella
24 requested that he be appointed counsel. When we came
25 back last month, you asked him, do you want me to

1 appoint you a counsel, he said, I'll hire my own lawyer,
2 and you told him that the next time we're in court, he's
3 going to be expected to proceed on the motion to revoke
4 community supervision. And I'm asking the Court, if Mr.
5 McMenamy's requesting a continuance on that, because he
6 made an appearance today again, I'm asking the Court to
7 deny the continuance and allow us to proceed on that
8 because this motion, Your Honor, has been pending since
9 September of 2010.

10 THE COURT: I realize it's been pending for
11 a while, but somewhere in there, I do know that I did
12 leave the impression that, at least in my own mind, that
13 we were going to do his final and your revocation at the
14 same time. Now, I can set the revocation before that,
15 but I think that I need to --

16 MR. MOWLA: Well, Your Honor, we were
17 supposed to move on my revocation today. What you
18 actually, I believe, said, that we were going to hear my
19 revocation and hear further testimony on Mr. Tomasella's
20 motion to modify at the same time.

21 THE COURT: That was not what I intended.
22 And I may have said that --

23 MR. MOWLA: Okay.

24 THE COURT: -- and I'm not arguing with
25 you. What I had intended, because I didn't intend to

1 hear it today, but I needed a time certain for him to
2 come back because it was a revocation.

3 MR. MOWLA: Yes.

4 THE COURT: But I need to set that time for
5 revocation, and I feel like I need to allow counsel at
6 least ten days on that.

7 MR. MCMENAMY: Thank you, Your Honor.

8 THE COURT: And so --

9 MR. MCMENAMY: Let's see, today is the
10 22nd.

11 THE COURT: The first two weeks in March, I
12 know I'm working almost every day. The third week in
13 March -- does someone have a calendar?

14 MR. MOWLA: I have a calendar, Your Honor.

15 MR. MCMENAMY: It starts the 14th.

16 THE COURT: The 14th?

17 MR. MCMENAMY: It's Monday the 14th, so if
18 we could have it not Monday but --

19 THE COURT: Not that week, because one of
20 my hearings is that week. What's the next week?

21 MR. MCMENAMY: The next week starts the
22 21st.

23 THE COURT: Okay. On the week of the 21st.
24 What day?

25 MR. MCMENAMY: I can have it Tuesday, the

1 22nd, or Thursday, the 24th.

2 MR. MOWLA: I can have it on Tuesday, the
3 22nd, if Mr. Williams is available.

4 MR. WILLIAMS: And I don't think I'd be
5 needed, if the issue's only the child support.

6 THE COURT: Revocation. I don't see where
7 you'd have anything to do with that.

8 THE BAILIFF: Your Honor, could we have
9 Kelly come in with a calendar, because if that's a jury
10 week, I don't know that there would be a place
11 available.

12 THE COURT: Good idea.

13 THE BAILIFF: Yes, ma'am.

14 THE COURT: But if we can use this office,
15 it'd be fine.

16 THE BAILIFF: Well, this is our jury room
17 where Judge Tygrett has a jury, so --

18 THE COURT: Oh.

19 THE BAILIFF: -- let me get Kelly for you.

20 THE COURT: All right.

21 THE BAILIFF: March the 22nd?

22 MR. MCMENAMY: That's correct.

23 THE CLERK: Let me just look on my
24 computer.

25 THE BAILIFF: Okay.

1 THE CLERK: March 22nd in the morning or
2 afternoon?

3 MR. MOWLA: In the morning, Kelly.

4 MR. MCMENAMY: And there again, I'd hope it
5 would be 10:00 or later because --

6 THE COURT: It won't be before 10:00.

7 MR. MCMENAMY: -- it's quite a tussle to
8 get here by 9:00.

9 THE COURT: I can relate.

10 THE CLERK: We could have this available
11 again. My judge is going to be in court like today.

12 MR. MCMENAMY: But not a jury week or
13 anything?

14 THE CLERK: It's not, no. It's a regular
15 civil docket.

16 MR. MOWLA: So March 22nd at 10:00 o'clock
17 on this case?

18 THE CLERK: That would work, put you back
19 in here.

20 MR. MOWLA: Okay.

21 THE BAILIFF: And also Friday -- this
22 Friday at 10:00 o'clock?

23 THE CLERK: Well, I have to -- let me look.
24 This Friday at 10:00?

25 THE BAILIFF: This Friday.

1 THE CLERK: The only problem with that,
2 we're impanelling a grand jury, and as soon as they get
3 impanelled, they like to go ahead and start meeting with
4 them, and I don't --

5 THE BAILIFF: Are they not going to do it
6 in the basement?

7 THE CLERK: I don't know. I mean, I -- I
8 don't know if they would normally --

9 THE BAILIFF: We impanel in the courtroom.

10 THE CLERK: Right.

11 THE BAILIFF: And then if -- unless they're
12 both having a grand jury, then they've been doing it
13 down in the basement.

14 THE CLERK: I never know when they're
15 getting -- when they're doing their grand jury. I just
16 know that they always want to meet as soon as they get
17 done.

18 THE BAILIFF: Okay.

19 THE CLERK: And if they're -- if they can't
20 do it down there, then they have to do it here.

21 THE BAILIFF: If you can give me just a
22 moment, I'll go talk to the prosecutor.

23 THE COURT: Okay. Super. Thank you.

24 THE CLERK: So they're wanting to come back
25 this Friday?

1 THE BAILIFF: This Friday at 10:00. So
2 I'll go check with Brandy and see.

3 THE CLERK: Okay. And then we said March
4 22nd at 10:00?

5 MR. MOWLA: Yes.

6 THE CLERK: Either day, are those expected
7 to take half day, all day?

8 MR. MOWLA: March 22nd, we will not be here
9 past noon.

10 THE CLERK: Okay.

11 MR. MOWLA: Because the only thing you're
12 going to hear, Your Honor, is the enforcement action on
13 March 22nd?

14 THE COURT: That's -- and on this Friday, I
15 don't think we'd be here past noon then either.

16 THE CLERK: Okay. All right. That's the
17 25th, yeah. I'll put both of those down, this Friday at
18 10:00 and then again on March 22nd at 10:00, and I guess
19 you'll need your reporter back on both of those days,
20 Judge?

21 THE COURT: We will.

22 THE CLERK: Okay.

23 MR. MOWLA: Do you want to wait for her to
24 come back and see if --

25 THE CLERK: Yeah. She'll confirm it.

1 I'm --

2 MR. MCMENAMY: March 22nd is not a -- it's
3 a Tuesday.

4 THE CLERK: Right, March 22nd at 10:00.

5 MR. MCMENAMY: But it's -- okay. But the
6 one for -- okay. This Friday. Okay. Friday, we'll --

7 THE COURT: Is the 25th.

8 MR. MCMENAMY: Yeah. All right. Got it.

9 MR. MOWLA: Your Honor, just so I
10 understand on the record, the only purpose of Friday's
11 hearing is to have Micah testify, and are there going to
12 be no other witnesses called on Friday other than the
13 parties, maybe?

14 THE COURT: Are you going to need any other
15 witnesses after Micah testifies?

16 MR. MCMENAMY: Your Honor, I don't see how
17 I could get any -- somebody here by then.

18 THE COURT: Okay. I really intended to
19 limit it to that unless someone felt like it was
20 absolutely necessary. If the parties want to testify,
21 then that's something else, but as far as Micah and any
22 other witnesses, it'll only be with --

23 MR. MCMENAMY: So we're set for Friday and
24 we're set for -- there's nothing we can do about that.

25 MR. MOWLA: So Friday -- just on the

1 record, again, on Friday, February 25th, at 10:00
2 o'clock, Micah's going to testify and we'll report on
3 the SAPCR issue, and on March 22nd, 2011, Tuesday, at
4 10:00, we're going to hear my motion to revoke community
5 supervision?

6 THE COURT: That's it.

7 MR. MOWLA: Okay. And Your Honor, one more
8 thing, it's statutory -- could the Court order
9 Mr. Tomasella back on March 22nd, 2011 at 10:00 o'clock?

10 THE COURT: You're ordered to be back on
11 March 22nd, you understand?

12 MR. TOMASELLA: Yes, ma'am.

13 THE COURT: You're not being in contempt of
14 Court, but basically -- let's see, capias for you --

15 MR. TOMASELLA: Your Honor, it's -- the
16 mother has all the time with the child.

17 MR. MOWLA: Your Honor, I'm going to object
18 to anything further.

19 THE COURT: There's not anything I'm -- I
20 know what you're saying.

21 MR. TOMASELLA: For her to be here puts him
22 in an awkward position where he can't be himself. It's
23 always --

24 THE COURT: Well, he was by himself when he
25 talked to me.

1 MR. TOMASELLA: He's been conditioned for
2 years.

3 THE COURT: There's not anything at this
4 point. He asked to speak to you, and I'm going to give
5 him that.

6 MR. TOMASELLA: Right. That'd be great. I
7 just don't think it's fair that the mother would have to
8 be here.

9 MR. MOWLA: Your Honor, Mr. Tomasella is
10 trying to exclude a party from the proceeding.

11 MR. TOMASELLA: This excluded me from his
12 life. I'm trying to exclude him for one hour -- her for
13 one hour.

14 THE COURT: Let's stop the argument.

15 MR. MOWLA: May I be excused, Your Honor?

16 THE COURT: You may. Thank you.

17 MR. MOWLA: Thank you.

18 (Proceedings recessed at 11:59 a.m.)

19 (Respondent's Exhibit No. 1 marked.)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF DALLAS)

I, Larissa L. McPhearson, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and -numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 18th day of March, 2011.



Larissa L. McPhearson

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