

1 EXCERPT OF REPORTER'S RECORD

2 VOLUME 1 OF 1 VOLUMES

3 TRIAL COURT CAUSE NO. 352-248169-10

4 COURT OF APPEALS CAUSE NO. 02-12-00285-CV

5
6 BAT WORLD SANCTUARY, ET AL) IN THE 352ND JUDICIAL
7 vs.) DISTRICT COURT OF TEXAS
8 MARY CUMMINS) IN AND FOR TARRANT COUNTY
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EXCERPTS OF PROCEEDINGS12

August 17, 2012

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20 On the 12th day of August, 2012, the following
21 proceedings came on to be heard in the above-titled and
22 numbered cause before the Honorable Jeff Walker, Judge
23 Presiding, held in Fort Worth, Texas, reported by machine
24 shorthand utilizing computer-aided transcription.
25

COPY

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P R O C E E D I N G S

(Fifth Amendment Right Invoked)

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4 **THE COURT:** All right. Mr. Turner, do you have
5 evidence to present?

6 **MR. TURNER:** I do want to call Ms. Cummins,
7 briefly, Your Honor, to the witness stand.

8 **THE COURT:** This is an unusual situation,
9 Ms. Cummins. Hold on just a second. You don't have to go
10 back, stay where you are.

11 This sanction motion under Rule 13 has as
12 potential punishment those set forth in Rule 215 of the Rules
13 of Civil Procedure, which include contempt. That is a quasi
14 criminal matter. As such, you're entitled to your
15 Constitutional rights under the Fifth Amendment and otherwise.
16 Your right to remain silent. If you put on any evidence you
17 waive that right.

18 Do you understand what I'm saying?

19 **MS. CUMMINS:** Yes. But if this is a -- could
20 possibly be criminal contempt, wouldn't I then be allowed an
21 attorney?

22 **THE COURT:** That's -- you may have an attorney.
23 This is not a criminal case. I cannot assign you one, but you
24 have the right to have an attorney if you want to get one. We
25 can reschedule this hearing until you have a lawyer.

1 *MS. CUMMINS:* There's no way I'd be able to
2 afford a lawyer. But Judge Sudderth told me that if I were to
3 be in criminal contempt I would be able to have an attorney
4 appointed.

5 *THE COURT:* Then you need to deal with
6 Ms. Sudderth.

7 *MS. CUMMINS:* Okay. Didn't you just say this
8 was a quasi criminal situation?

9 *THE COURT:* It is. And because of it, I feel
10 like I'm obligated to tell you what your rights are. The
11 right to remain silent, the right to counsel, all those other
12 things you've seen a number of times, right?

13 *MS. CUMMINS:* Yes.

14 *THE COURT:* He's about to put you on the stand.
15 You're not required to testify unless you want to. If you do,
16 either through Mr. Turner putting you on the stand or you
17 voluntarily get on the stand, you waive that Fifth Amendment
18 right. That's where I'm going with all this.

19 *MS. CUMMINS:* Okay.

20 *THE COURT:* It's entirely up to you.

21 *MS. CUMMINS:* Then I won't take the stand.

22 *THE COURT:* I'm sorry?

23 *MS. CUMMINS:* Then I won't take the stand.

24 *THE COURT:* Okay.

25 * * *

1 *(Rulings by the Court)*

2 **THE COURT:** Mr. Turner, I'm reading Rule 13, and
3 the thing that I think you have a problem with here is -- the
4 opening sentence of that rule says: The signatures of
5 attorneys or parties constitute a certificate by them that
6 they have read the pleadings, motion or other paper that to
7 the best of their knowledge, information and belief formed,
8 after reasonable inquiry, the instrument is not groundless and
9 brought in bad faith or groundless and brought for purposes of
10 harassment. It's that word "belief" that is, I think, the
11 problem that you have.

12 From what I've heard from Ms. Cummins, she
13 stated it was her belief and she stated the basis for her
14 belief. Your motion for Rule 13 sanctions is denied.

15 *(Brief pause.)*

16 **THE COURT:** I'm now looking at the sanctions
17 rule contained in Rule 18a, which provides for monetary
18 sanctions in the form of reasonable attorney's fees and
19 expenses and do not include any of the other sanctions under
20 Rule 215.

21 Rule 18a -- and I'm cutting down to the part
22 that I want to touch on -- after notice of hearing the Judge
23 who hears the motion may order the party or attorney who filed
24 the motion or both to pay a reasonable attorney's fees and
25 expenses incurred by other parties if the Judge determines

1 that the motion was, one, groundless and filed in bad faith
2 or, for the purposes of harassment; or, two, clearly brought
3 for unnecessary -- clearly brought for unnecessary delay and
4 without sufficient cause.

5 Ms. Cummins, the grounds that you have stated
6 and you put on evidence of raises a question of how groundless
7 must it be. I have read all of your motions, your
8 responses -- both parties -- your attachments, your exhibits.
9 It seemed pretty clear to me that there was an awful lot of
10 ranker on your part about the process, about the good 'ol
11 boys, about your feeling of ill treatment at the hands of the
12 judiciary in the State of Texas that you put out there for the
13 whole world. And now I've heard the evidence, which, quite
14 frankly, don't substantiate any of those statements. Makes
15 one wonder if you did it for purposes of harassment.

16 You know, in one of your e-mails your -- I guess
17 it's a blog, I don't do that sort of thing -- that you sent
18 out under some kind of byline that you have, you talked about
19 this nice female judge, Bonnie Sudderth, and that her
20 supervisor swapped her out of the case for an old white guy.

21 *MS. CUMMINS:* I don't remember saying that
22 specifically.

23 *THE COURT:* Well, for Judge Brigham.

24 Where did you get the idea that I swap one for
25 Judge Sudderth without her knowledge or consent?

1 **MS. CUMMINS:** Um, when Judge William Brigham
2 came into the courtroom he says, I have been appointed to this
3 case by Supervising Judge Jeffrey Walker for jurisdictional
4 purposes.

5 **THE COURT:** He didn't say why he did that?

6 **MS. CUMMINS:** No.

7 **THE COURT:** Did you know that Judge Sudderth had
8 asked for him?

9 **MS. CUMMINS:** Did she?

10 **THE COURT:** Did you know that Judge Sudderth had
11 asked for Judge Brigham?

12 **MS. CUMMINS:** No. May I ask if she did?

13 **THE COURT:** I knew you were going to ask that
14 question. Here's her written request.

15 **MS. CUMMINS:** May I view it?

16 **THE COURT:** Sure. Come on up here and take a
17 look at it.

18 *(Brief pause.)*

19 **MS. CUMMINS:** If she made the request, why
20 didn't she give me notice that he would be the visiting judge?

21 **THE COURT:** She's under no obligation to do
22 that.

23 I'm in a situation, Ms. Cummins, where, under
24 Rule 13, the lawyer or the party is obligated to check their
25 facts before they put them in the pleadings. And they verify

1 that when they put their signature on that pleading; whether
2 it's a motion or a petition or whatever it happens to be. And
3 that signature then becomes their verification that they've
4 checked their facts before they set them down on paper, so
5 that they're nothing more than uninformed opinions.

6 Rule 18 has no requirement like that, requiring
7 you to set out those kind of facts that you have done your
8 research. But it does require you to swear to the contents.
9 You know, I told you I was going to overlook that because you
10 are a pro se litigant.

11 I cannot, however, overlook the fact that you
12 have done little in working on background before you put it
13 all down on paper.

14 *MS. CUMMINS:* Would -- may I ask a question?

15 *THE COURT:* Yes, ma'am.

16 *MS. CUMMINS:* Um, I had no idea I would have
17 been able to find out the exact reason why Judge Brigham was
18 on -- the visiting judge. I had no idea I could have been
19 able to find out what the reason was. I just took what he
20 said when he came to the courtroom as the truth.

21 *THE COURT:* So what's your point?

22 *MS. CUMMINS:* My question is, I did not know
23 that I would have been able to call up the Court and say, hey,
24 what -- in fact, I actually did e-mail Linda Blair and I said,
25 what happened to Judge Bonnie Sudderth? And she never got

1 back to me. So there's no way I would have been able to find
2 out because Ms. Blair did not tell me. I said what happened
3 to Judge Bonnie, where is she? And she never replied.

4 *THE COURT:* But you do remember your comments in
5 your blog? And I'm only referring to those because it tells
6 me something about who you are and how it affects the motion
7 that you filed.

8 Where you put in there about how you were being
9 treated in Texas courts. Do you remember those statements?
10 Do you want to look back at your paperwork?

11 *MS. CUMMINS:* Well, I don't have it in front of
12 me, and we haven't authenticated any of his exhibits. I don't
13 know if that's exactly what I said.

14 I have repeatedly said that Judge Bonnie
15 Sudderth has always been fair and polite and kind in all the
16 pretrial motions. I didn't have any problems with Judge
17 Sudderth.

18 *THE COURT:* But you made it sound like some kind
19 of conspiracy was going on among the good 'ol boys to remove
20 this judge you favored for one you knew nothing about.

21 *MS. CUMMINS:* Um, I -- I -- I knew about Judge
22 Brigham. And obviously if I had known he was going to be the
23 visiting judge I would have timely filed the motion to recuse.

24 All I know is that he showed up there and I was
25 given no notice or no option that I would even be able to

1 recuse right then and there at the beginning of the trial.

2 **THE COURT:** Well, Ms. Cummins, I'm going to
3 sanction you under Rule 18a, Subparagraph H. The sanction
4 is -- I'll make a finding that your motion to recuse was
5 groundless and filed in bad faith. It only provides for
6 attorney's fees and expenses, and I'm going to set that at
7 \$500. You'll have 30 days in which to pay that to Mr. Turner.

8 And I will have a prepared order in the mail to
9 you soon as I have it written up, signed and placed in the
10 file.

11 That concludes this hearing.

12 **MR. TURNER:** Thank you, Your Honor.

13 *(Proceedings adjourned)*

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1 STATE OF TEXAS

2 COUNTY OF TARRANT

3 I, Monica J. Willenburg, Official Court Reporter
4 in and for the 352nd District Court of Texas in and for
5 Tarrant County, do hereby certify that the above and foregoing
6 contains a true and correct transcription of an excerpt of
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in this
9 volume of the Reporter's Record in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

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

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$ 60.00
17 and was paid/will be paid by PLAINTIFF.

18 WITNESS MY OFFICIAL HAND, on this the 10th of
19 September, 2012.

20

21

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