

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 15-000072

BRADLEY J. EDWARDS and PAUL G.
CASSELL,

Plaintiff/Counterclaim Defendants,

-vs-

ALAN M. DERSHOWITZ,
Defendant/Counterclaim Plaintiff.

TRANSCRIPT OF PROCEEDINGS
BEFORE
THE HONORABLE THOMAS LYNCH

Broward County Courthouse
201 Southeast 6th Street
Fort Lauderdale, Florida 33301

May 4th, 2016
9:30 a.m. - 10:00 a.m.

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APPEARANCES:

For the Defendant:

CHARLES LICHTMAN, ESQUIRE
Berger Singerman, LLP
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301

For the Nonparty:

SIGRID MCCAWLEY, ESQUIRE
Boies Schiller & Flexner, LLP
401 East Last Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301

1 THEREUPON:

2 MR. LICHTMAN: Good morning, Judge. Charles
3 Lichtman of Berger Singerman. I'm here on behalf
4 of Alan Dershowitz, defendant in this case.

5 This is our motion to continue hearing and
6 motion to strike the motion of nonparty [REDACTED]
7 [REDACTED] motion for sanctions, and to be sure, all
8 that we're really hearing today is our motion to
9 strike, because the motion to continue hearing was
10 moot from some time ago.

11 There are some cases that are about money, and
12 there are some cases, Your Honor, that are about
13 much more, and this is one of those cases. This is
14 a case about reputation, about two people's names,
15 two lawyer's names, where their reputations are at
16 stake. And reputations, not like money, are
17 irreplaceable.

18 And in this case, we have Mr. Dershowitz, my
19 client, who is a world-renowned lawyer and legal
20 scholar who was accused of some despicable crimes.
21 On the other hand, we have Mr. Edwards and Mr.
22 Cassell.

23 I don't know Mr. Cassell. I know Mr. Edwards
24 well. He's a great lawyer. He's also admittedly,
25 and everybody knows it, a good friend. He has been

1 accused of libel, and you can say, tangentially,
2 malpractice. To this day, you have two good men,
3 both who are convinced to this moment that they
4 were right about their respective positions and two
5 men who are fighting hard to do -- make sure that
6 there was no damage to their reputation.

7 This Court knows this was a very hard fought
8 case, and I started with the premise of this case
9 is different, because we were fighting for
10 reputation. It's not like fighting for \$100,000 or
11 whatever.

12 Well, now the case is over. There was a
13 confidential settlement agreement that was reached.
14 It was an extraordinarily difficult process. I
15 think you know a little bit about that process.
16 But the most important thing is it is over.
17 Everybody wanted it over.

18 Mr. Edwards wanted it over, Mr. Cassell wanted
19 it over, and Mr. Dershowitz wanted it over.
20 Everyone wanted their lives back, and I think that
21 if you were to talk to the parties, they would even
22 use that expression to some extent.

23 So the settlement which resolved on April 8th,
24 2016, the parties jointly filed --

25 THE COURT: I read about it in the Boston

1 Globe.

2 MR. LICHTMAN: Okay. Well --

3 THE COURT: For real. I read something else
4 in the New York Times one weekend. I learn things
5 about my cases by reading it in the newspapers.

6 MR. LICHTMAN: Well, actually, then the
7 newspaper counts turned out to be a very, very
8 complicating part of why we're here today.

9 So on April 8th, 2016, a stipulation of
10 dismissal with prejudice was filed by the parties.
11 There was no reservation of jurisdiction in that
12 stipulation, and that was an agreed upon
13 stipulation, the language of which was stipulated
14 to carefully.

15 No reservation of jurisdiction by the parties
16 for the present pending motion for sanctions. The
17 case was dismissed with prejudice the moment of its
18 filing. That divested the Court of subject matter
19 jurisdiction.

20 There is clear law under Rule 1.420 that the
21 effectible plaintiff's voluntary dismissal is
22 jurisdictional. There's a Florida Supreme Court
23 case, Pino, P-I-N-O, versus Bank of New York.

24 And in that case, the Court said that once a
25 case is voluntarily dismissed, the trial court is

1 divested of jurisdiction to continue the case.
2 Now, the Court's exact quote was the voluntary
3 dismissal serves to terminate the litigation to
4 instantaneously divest the Court of its
5 jurisdiction to enter or entertain further orders
6 that would otherwise dispose of the case on the
7 merits and preclude revival of the action.

8 And then there are cites in my motion that
9 cite to another Florida Supreme Court case and two
10 Fourth DCA cases, all of which say the exact same
11 thing.

12 In our motion, we address the Whiteside case,
13 which I think is extremely probative. That case
14 involved a petition for writ of certiorari involving
15 discovery disputes and sanctions by a third party
16 that was not in the lawsuit, a nonparty to the
17 circuit court case.

18 And in that case, the trial court entertained
19 several motions and ultimately granted a motion for
20 sanctions against the petitioner. It went up on
21 appeal to the First DCA, and the First DCA held
22 that, quote, one not a party to a case has no
23 standing to request relief from the Court, and
24 therefore, quote, the trial Court departed from the
25 essential requirements of law.

1 Our case is even better, because in this
2 instance, the case was dismissed. To be sure Ms.
3 ██████, Ms. Guiffie never had standing to
4 participate in this case. This was a two-party
5 action based on defamation claims by Mr. Edwards
6 and Mr. Cassell against Mr. Dershowitz and then the
7 counterclaim for libel back against them.

8 And this is guided now by Rule 1.210, which
9 describes who can be a party in the lawsuit. It
10 says all parties having an interest in the subject
11 matter of the action and obtaining the relief
12 demanded they join as plaintiffs.

13 ██████ was not a nominal party, ██████ was
14 not a proper party, ██████ was not a necessary
15 party, or an indispensable party. And in each of
16 those distinctions which I discuss in my brief, the
17 concept focuses on their rights as they would be
18 effected by a judgment, meaning where do they stand
19 with respect to the merits.

20 Similarly, Rule 1.230 deals with intervention,
21 and anyone claiming an interest in litigation may
22 be permitted to assert a right by intervention
23 which shall be in subordination to and in
24 recognition of the propriety of the main
25 proceeding.

1 Ms. Guiffie never sought leave of court to
2 intervene, never sought to become a proper party,
3 whether it was as a plaintiff, as a defendant, as a
4 third party. All she did was file a motion. No
5 leave of court anywhere. And that motion has to
6 identify, if it was to have been filed, the
7 interest at stake that the would be intervener
8 would assert.

9 And then there's a whole body of case law that
10 we also provided, including Florida Supreme Court
11 case -- the Morshaw case, that under the general
12 rule, one not a party does not have standing to
13 request relief.

14 So we get to the point of settlement, and
15 post-settlement, there's a hearing that occurred on
16 April 21st, 2016. I'm going to hand up to you an
17 abstract of what occurred in this hearing. This is
18 another one of these companion cases, [REDACTED]
19 Guiffie versus Gizlay Maxwell, United States
20 District Court for the Southern District of New
21 York, held in Federal court before the Judge
22 Honorable Robert Sweet.

23 Present at that hearing happened to be Ms.
24 McCawley and Brad Edwards and Mr. Cassell. I will
25 tell the Court I think you know I have a very

1 limited engagement, and that deals with this case.
2 I don't know much about the Guiffie versus Maxwell
3 case in Federal court there or any of the other
4 pending litigation, but I do know what was said in
5 plain language.

6 And if you take a look at -- first off, the
7 motion -- the matter that was before the Court was
8 a motion for mission pro hac vice by Mr. Edward and
9 Mr. Cassell.

10 And the District Court spent the first 20
11 something pages talking about how he was troubled
12 by the issue of just allowing their right to appear
13 pro hac vice right then and there because of issues
14 going on in this case. That's what you can get
15 from the transcript. And I'm happy to leave with
16 you the full copy of the transcript, if you would
17 like to read that.

18 But to be sure, when you get to Page 25 after
19 the judge has expressed all sorts of concerns, Ms.
20 McCawley says Your Honor, one more thing. I didn't
21 realize that my counsel can submit a stipulation to
22 you because that case has been settled. That's our
23 case. All right?

24 Now, as you go through this, you'll see that
25 the judge was very concerned about getting and

1 understanding what happened in this case. And at
2 one point on Page 26, there's a statement by Mr.
3 Cassell that Mr. Edwards can briefly explain
4 Florida procedure, and he says -- this is what
5 Cassell says. The case has been dismissed but does
6 not require a court signature.

7 Then Mr. Edwards steps up, and Mr. Edwards
8 recites the law that we all know, which is that the
9 case is dismissed by stipulation by both parties
10 and the defendants and counsel, and that was done,
11 and the case was dismissed.

12 And the Federal judge says that's filed in
13 this case? Yes, it's filed in this case and in the
14 court, and he says he's going to get a copy over
15 immediately. Then it goes over to the next page.
16 And this is really important.

17 Mr. Edwards says just with respect to the
18 affidavit -- because they were talking about an
19 affidavit to clear up everything -- there needs to
20 be an affirmation that we have no other claims that
21 relate to the statements in this case. Is that
22 what we're saying?

23 And then the judge says he wants something to
24 seem a little broader. At the bottom, he says --
25 Line 13 -- if I can get an affidavit saying that

1 you're unaware of any claims against you or any
2 intention to make a claim arising out of the
3 circumstances surrounding this lawsuit that should
4 be brought.

5 Well, Ms. McCawley was in the courtroom. Ms.
6 McCawley did not say to the district judge, by the
7 way, Your Honor, there is something you should
8 know, you should know that we have a pending motion
9 for sanctions.

10 So from our perspective -- and Mr. Edwards and
11 her were co-counsel, from our perspective, the
12 matter is not resolved. But it doesn't matter,
13 because the matter was resolved. She could have
14 said it or not said it. The Florida law that we
15 recited to makes it crystal clear that the case was
16 settled.

17 Now, when you look around, and, you know the
18 old expression the empty chair, Mr. Edwards and Mr.
19 Scarolla are not here for a reason. And I
20 represent to you as an officer of the Court that I
21 had numerous conversations with them about this,
22 including extremely recently.

23 They are not here today for a reason. They
24 want this case done and over with. Mr. Edwards has
25 other things to do with his life. He wants to get

1 on with it. Mr. Scarolla has stated very clearly,
2 not taking a position. He doesn't want any part of
3 this, either.

4 And here's the reason why. You said that you
5 read those newspaper articles. Well, the time
6 period immediately after the execution of
7 settlement papers was probably more intense than
8 the time period leading up to the execution of
9 settlement papers.

10 A lot of stuff happened which I'm not going to
11 get into. It's not that germane for right now
12 except for the Court to know -- and this has been
13 no secret, that if the Court was to decide for some
14 reason that it wanted to hear this motion for
15 sanctions, and I don't think you can and I don't
16 think you should, that it will absolutely blow the
17 lid off this settlement, and the following will
18 happen.

19 And I make this as a representation to the
20 Court. There will be two arbitrations. There will
21 be an arbitration by Edwards against Dershowitz,
22 there will be an arbitration by Dershowitz against
23 Edwards. There will be a sanctions motion filed
24 against the Boies firm.

25 If the motion disappears, that motion -- our

1 motion, our counter-motion, because then the Court
2 well have subject jurisdiction, our counter-motion
3 will not be filed. There will be potential
4 sanctions against the lawyers on the other side
5 that have been in this case. There will be bar
6 grievances.

7 Here's the point of where we're at, and it's
8 why I started with the argument and the somewhat
9 impassioned discussion that this is about
10 reputation. People want to be done with this. Ms.
11 McCawley has no role in this case.

12 Mr. Edwards, the person that would be most
13 impacted by this, is not here today, and it's for a
14 reason. He wants to get on with the good work that
15 he's otherwise doing against Mr. Epstein, and he
16 should.

17 Mr. Dershowitz wants this done, as well.
18 That's why there has been radio silence for the
19 last two weeks now. I urge you to please follow
20 the Florida law, consider this matter closed and
21 dismissed. Thank you.

22 THE COURT: Thank you. Yes, ma'am?

23 MS. MCCAWLEY: Very quickly, because I know we
24 don't have much time. Your Honor, Sigrid McCawley
25 on behalf of Ms. Guiffie.

1 Mr. Lichtman has done a nice job at trying to
2 muddy the waters, but what's very clear here, Your
3 Honor, is that you always have jurisdiction to
4 enforce any of your orders. That never goes away,
5 whether it be by a voluntary stipulation of
6 dismissal or otherwise. That's the Erickson case,
7 which is a First DCA case.

8 And more importantly, the Whippey case, which
9 is 961 So. 2d 349. If I could bring Your Honor a
10 bench book to follow along with my argument?

11 THE COURT: Sure.

12 MS. MCCAWLEY: Thank you.

13 THE COURT: Is it different than the one I
14 have?

15 MS. MCCAWLEY: It is, Your Honor.

16 THE COURT: Okay.

17 MS. MCCAWLEY: Because the voluntary dismissal
18 came up after our briefing. So the one thing I
19 want to clear up is this representation, which I
20 believe is a misrepresentation of what happened
21 before Judge Sweet. What was being addressed there
22 is --

23 THE COURT: Is that the judge in New York?

24 MS. MCCAWLEY: Yes, right. So the
25 representation that was made there is exactly what

1 is the fact here, and that's that the party did
2 file a stipulation of dismissal in this case. I'm
3 not disputing that, and I don't dispute that -- I
4 didn't dispute that at that hearing. That is what
5 has occurred.

6 What I dispute is that that stipulation of
7 dismissal does anything to take away my client's
8 ability to be able to move forward with what Your
9 Honor issued, the seal order, which was then
10 violated, and we have a motion for sanctions and a
11 motion to strike that seal order pending.

12 Just to go back and give you the history
13 quickly, as you'll remember, you mentioned reading
14 the article.

15 On Friday, December 11th, Mr. Dershowitz --
16 and before I get into that, I just want to address
17 the threats and the bar agreements as it was, you
18 know, mentioned here by Mr. Lichtman.

19 MR. LICHTMAN: They are not threats.

20 MS. MCCAWLEY: Well, that's fine. The point
21 is to say that in open court as if that's supposed
22 to dissuade the Judge from making a ruling on the
23 law and the merits is inappropriate, in my view.

24 But the threats have been ongoing. I mean,
25 Mr. Dershowitz filed a motion, as you'll remember,

1 over objections attaching an affidavit purporting
2 to spew misrepresentations about settlement
3 discussions, and then served it to the New York
4 Times.

5 We got here as quickly as we could filing an
6 emergency motion to try to stop that, and the New
7 York Times had published the article by the next
8 day.

9 Your Honor, you will remember that we had a
10 hearing before you pretty quickly on December 18th,
11 and you found that those were -- you made a finding
12 that those were confidential settlement
13 discussions, and he should not have been revealing
14 those in any manner.

15 And so you sealed it. They asked for more
16 time. The only reason you didn't rule on my motion
17 for sanctions that day is because they asked for
18 more time to be able to brief the motion for
19 sanctions which included the motion to strike that
20 affidavit, because we were seeking the relief of
21 having it stricken. So you temporarily sealed that
22 pending hearing the motion.

23 Now, you'll remember, Your Honor, as well,
24 that at that hearing, I was concerned about Mr.
25 Dershowitz continuing to say these things, and

1 whether his counsel could control him. And Mr.
2 Saffer, you said, Your Honor, in that transcript,
3 and that's in your -- the PowerPoint I have for
4 you. You said I think he understands that he needs
5 to stop doing this.

6 And Mr. Saffer said yes, I'll advise him that
7 he needs to stop doing this. Just a few weeks
8 later during his deposition -- and I'm not going to
9 say it in open court because it's sealed -- but
10 you'll see it in highlight, it was in the redacted
11 motion that we filed, he revealed again and
12 attempted to put into the public statements that
13 occurred during those settlement discussions.

14 So that's after Your Honor told him not to do
15 it and you sealed the motion.

16 THE COURT: I know, but is that truly the
17 issue that we're dealing with today?

18 MS. MCCAWLEY: It is, Your Honor, because what
19 they are saying is that this -- your jurisdiction
20 has evaporated. And what I'm saying is that's not
21 the case. You always have jurisdiction to enforce
22 one of your orders. You always have jurisdiction
23 over that.

24 So they cannot -- there's standing for a
25 nonparty to be able to invoke that jurisdiction,

1 particularly here where Mr. Dershowitz is the one
2 who subpoenaed her into this case. So she's not a
3 party, but he subpoenaed her, then engaged in these
4 discussions with her and her counsel, and then
5 violated those discussions and is now saying Your
6 Honor, you can't touch this issue, you can't
7 control your own courtroom or discovery or any of
8 those issues that go on because she doesn't have
9 standing. That's not correct, Your Honor.

10 And we pointed to cases in our brief. You'll
11 see a number of cases in the 11th Circuit, for
12 example, where when you're dealing with a Rule 11
13 issue, you have jurisdiction. You'll see the
14 Sweetwater case which discusses jurisdiction in our
15 briefing. You'll see that the Florida rules of
16 judicial administration allow you to have a
17 nonparty label something confidential.

18 So to say that you can't then control that
19 confidentiality is simply wrong. In fact, the case
20 that my colleague here cites, which is the
21 Whiteside case actually has a provision in it where
22 it says if it's a protective order, there's an
23 exception to the rule, confidentiality, and you can
24 then enforce your orders, Your Honor.

25 So there's two things here. You did the right

1 thing. You sealed the order correctly, and now you
2 have the power to continue to enforce that order
3 and violations of that order and hear those things
4 regardless of whether the case has been dismissed.
5 My colleague did a nice job trying to say well, the
6 parties are over. This is done and over with.

7 But you'll remember, Your Honor, Mr.
8 Dershowitz called my client in the press a
9 prostitute, a bad mother, and a liar. Then, he
10 spewed again confidential settlement discussions
11 with that same goal of getting that information
12 into the press.

13 It's simply wrong to say that you cannot
14 control your courtroom, that you cannot control the
15 parties that were actionable in this manner when
16 they are abusing a nonparty. It's simply wrong,
17 Your Honor.

18 So I submit to you that we have given you the
19 cases -- the Erickson case particularly, and the
20 Whippey case. Those are in your binder. You did
21 hear from my colleague here about the issue of
22 intervention.

23 We don't believe that's necessary, but to the
24 extent that the Court found that there needed to be
25 some intervention in this action, the Lewis case,

1 which is 499 So. 2d 905. That's a First DCA case.
2 That allows for intervention. That's in the pocket
3 of your binder. It allows for intervention even
4 after a case has been resolved if a nonparty is
5 being effected by that case.

6 She's clearly effected here, Your Honor.
7 She -- but you don't even need to go there, because
8 you're able to control your courtroom at any time
9 and you have jurisdiction at any time over any of
10 your prior orders.

11 So Your Honor, I submit to you that you have
12 the authority to hear this issue, that you should
13 hear this issue because it's a violation of justice
14 to allow a party to engage in this kind of behavior
15 and not have to face the Court when it comes time
16 to hear that. They have done a great job at
17 delaying this.

18 You'll see that, you know, we had this set a
19 number of times. There have been numerous counsel
20 that Dershowitz had, strategically, in my view now,
21 in hindsight, pushed this off. And even when we
22 had it a couple weeks ago, before the dismissal was
23 on file, again pushed this by filing a continuance
24 with new counsel.

25 So, you know, Mr. Dershowitz is a lawyer,

1 himself. He's very savvy. He knew exactly what he
2 was doing here. He did it for the reason to try to
3 harm my client publicly, to try to create an
4 impression of the public that would help him in
5 this matter and other matters, and Your Honor, he
6 should be sanctioned for his conduct.

7 That affidavit that contains those falsities
8 should be stricken from the record, and that's the
9 relief we're requesting.

10 MR. LICHTMAN: Very brief rebuttal, Judge.

11 THE COURT: Sure.

12 MR. LICHTMAN: Justice? Whose justice is
13 counsel seeking today? Not justice for the Court,
14 justice for her, justice for her client. Not
15 justice for Mr. Edwards and not Mr. Dershowitz, who
16 agreed to this settlement.

17 Your Honor has been on the bench a long time.
18 You have had many outstanding orders on discovery
19 issues that get resolved by settlement of the case.
20 How many times have you seen an issue where there
21 has been a third party, not someone who has been
22 properly brought into the case that goes to the
23 point of getting an order from you.

24 That probably should have been raised before I
25 was in the case. It wasn't, but it's being timely

1 raised now. That order should have never been
2 entered without her following procedural niceties.
3 The case was dismissed with prejudice. The case
4 should be over. Let everybody go in peace, Your
5 Honor.

6 This is within your discretion, for sure.
7 Give the parties what they bargained for and let
8 them move on.

9 THE COURT: All right. I'm going to reserve
10 ruling. I should be able to get word to you pretty
11 quickly.

12 MS. MCCAWLEY: Thank you, Your Honor. We're
13 on your special set for next Thursday, the 12th --
14 I'm sorry, the --

15 THE COURT: A week from tomorrow.

16 MS. MCCAWLEY: Yes.

17 THE COURT: I'll definitely get word to you
18 before then. I will likely get word to you by the
19 end of the week.

20 MS. MCCAWLEY: Thank you very much.

21 MR. LICHTMAN: Two things, Your Honor. First,
22 may I hand up a proposed order?

23 THE COURT: Sure. I'll take a look at what
24 you have.

25 MR. LICHTMAN: And second, I'll alert you now,

1 virtually, no one is available on the 12th. We
2 would have to take Mr. Moyas's deposition, we have
3 to take Mr. Edowitz's deposition --

4 MS. MCCAWLEY: Your Honor, we've cleared that
5 date. I mean, we've had that special set for
6 months.

7 MR. LICHTMAN: We cleared that date subject to
8 this.

9 THE COURT: Well, I'll tell you what. The
10 good thing is I've got the time to read everything,
11 and I'll let you all know.

12 MS. MCCAWLEY: Great. Thank you, Your Honor.

13 MR. LICHTMAN: Thank you very much.

14 THE COURT: Take care.

15 (Thereupon, the proceeding was concluded.)

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CERTIFICATE OF COURT REPORTER

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STATE OF FLORIDA :
:
COUNTY OF BROWARD :

I, JANIS TIERNEY, a Court Reporter in and for the State of Florida at Large, do hereby certify that I was authorized to and did report the proceedings in the above-styled cause before the Honorable THOMAS LYNCH, at the time and place set forth; that the foregoing pages, numbered from 1 through 23, inclusive, constitute a true and complete record of my notes.

I further certify that I am not an attorney or counsel of any of the parties, not related to any of the parties, nor financially interested in the actions.

Dated this 4th day of May, 2016.



JANIS TIERNEY
COURT REPORTER

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