

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

CASE NO: 07-0824

FEBRUARY 22, 2007

DIRECT EXAMINATION OF FORD SHELLY BY MR. PIRTLE:

THE COURT: (directed to Ms. Pirtle) We're going to let – you know you had a strong advocate, the mother. Did you want someone else to testify?

MR. PIRTLE: Your Honor, yes.

THE COURT: I'm not going to allow phone testimony. Do you have any live witnesses?

MR. PIRTLE: Yes.

THE COURT: Bring them. Who?

MR. PIRTLE: Ford Shelley. I'll go out and get him.

THE COURT: How many do you have?

MR. PIRTLE: We have two. One is going to be excluded. I was a proffer. This happens to be Daniel's father from La Bahia, Texas.

THE COURT: Let's call this witness. What is the name?

MR. PIRTLE: Ford Shelly. He's over in the waiting room, I think the last time I saw him.

THE COURT: I went around the room. Did you all complete your proposed final judgment, too?

MR. MILSTEIN: I'm working on it.

MR. PIRTLE: I have an argument because we don't believe intent is an issue. And without waiving that, we're going to rebut some of this intense testimony by Mr. Stern's people.

THE COURT: Is this your witness?

MR. PIRTLE: It is my witness.

(Mr. Shelly is sworn in)

MR. PIRTLE: Your honor, you had mentioned earlier – we have a 51-second video clip that we want to play with this witness.

THE COURT: It's of Anna Nicole?

MR. PIRTLE: It's of Anna Nicole.

THE COURT: How old?

MR. PIRTLE: When she was nine months pregnant with Dannielynn in the Bahamas showing her state of mind.

THE COURT: How many seconds?

MR. PIRTLE: Fifty-one seconds.

THE COURT: Put it on.

MS. BARTH: I'm going to object, for the record. I think, again, the testimony here is clear that she was utilizing drugs during this pregnancy. What is it going to show?

THE COURT: You used the video.

MR. RALE: I'd further object. Let him lay a foundation for this video and I will proffer that this was stolen.

MS. BARTH: This was stolen evidence out of her house. It's a film that this man stole.

THE COURT: Let's look at it, 51 seconds.

MR. PIRTLE: Could we lower the lights.

THE COURT: We didn't have the lights off for them. Everything is equal.

MR. MILSTEIN: Your Honor, did we swear in this witness? Did we get the spelling?

THE COURT: Would you give us your name and your spelling, please, first and last name?

MR. SHELLY: My first name is F-O-R-D, my last name is Shelly, S-H-E-L-L-Y.

MR. MILSTEIN: Thank you.

THE COURT: Thank you. Play. As he's playing the tape, who made this tape?

MR. PIRTLE: It was made by Mr. Stern. It also has the voice and pictures of his daughter.

MS. BARTH: I don't know how you can proffer the person to authenticate –

MR. SHELLY: I can tell you how.

MR. PIRTLE: Stop. Stop. Mr. Shelly, wait until we ask questions.

THE COURT: You make a good traffic stop.

MR. PIRTLE: Sorry for doing your job.

THE COURT: I appreciated your help.

MR. PIRTLE: Turn up the sound.

THE COURT: How you feeling, Texas. All right?

MR. O'QUINN: Much better, Your Honor. Thank you.

THE COURT: Thank God.

MR. O'QUINN: Thank God.

THE COURT: Is that why you were getting up. To go get juice?

MR. O'QUINN: That's where I was going to go.

THE COURT: Because I knew you weren't going to object.

MR. O'QUINN: Actually, I was going to go with Mr. Miller to start –

THE COURT: I see.

MR. O'QUINN: He was the gentleman sitting right there.

THE COURT: Let the record reflect there were 18 attorneys present and three parties.

We've worked with a lot of people. Let's pretend we watched it for a moment. What do you want to do with this witness? Houston, we'll assume it's going to work. Whenever you get it, my good friend, start it.

QUESTIONS BY MR. PIRTLE OF MR. SHELLY

Q Mr. Shelly, will you please introduce yourself to The Court?

A My name is Ford Shelly. I reside in South Carolina.

Q Do you have various residences around the United States and in the Bahamas?

A Yes, sir.

Q Quickly, will you tell His Honor your relationship and how you know both Anna Nicole Smith as well as Mr. Stern?

A Anna came to Myrtle Beach with Larry Birkhead on vacation a year – in the year 2005, in the summer, and she a Larry got into an argument. And my father-in-law, which she became friends and then subsequently after that became more than friends.

Q did you have occasion to spend time with Anna Nicole and Mr. Stern both, at least Anna Nicole in the United States and both of them in the Bahamas?

A Yes, sir.

Q Do you have a place in the Bahamas also?

A Yes, sir.

Q Would you tell the Court about your place in the Bahamas?

A Yes, sir. Anna had came to Myrtle Beach. She called me in May of '06, sent us an e-mail, told us she was pregnant and told us that she needed to leave the Bahamas -- I mean, leave California. That the press was getting really stressful. And she sent an e-mail to us and asked us, would we come pick her up and take her home. So we agreed and we went – I went and took her and picked her up and brought her to Myrtle Beach and she stayed in one of the houses that we own along the oceanfront.

And she was there, she stressed to us the urgency of wanting to move. And asked us – asked me to talk with my attorney in Myrtle Beach, what the laws were to unwed mothers and what the father's rights were. She told us that she was pregnant with Larry Birkhead's child and that she did not want him to have any rights to the child.

Anna was our friend, still is, and we love and we, of course, called the attorney but we found out she had no protection. So Howard was not there yet but Howard cam and Howard had talked to my attorney, Tracy Fischer, Wilcox Law Firm, and found out that South Carolina would not be beneficial. I suggest the Bahamas because I had heard about the laws to unwed mothers. So we talked to creditors because I was in the process of, myself, trying to buy a house over there and I had legal counsel. So, therefore, we called there and found out what the laws were to unwed mothers.

Upon doing so, they asked us, because at the time Anna needed a little help and we were willing to help her. So we helped facilitate her going to the Bahamas up until the point of when we picked the house out. We agreed to, of course, loan the money to Anna once the note and mortgage were signed, but that note and mortgage was never signed.

As of yesterday, I received a letter from the liquidator for the Americas International Bank out of the Commonwealth of the Bahamas that – because we were accused of, of course, as I think his attorney said, delightfully said, that I broke into my own home.

The liquidator who was appointed by the Supreme Court has issued a statement that he canceled the unstamped conveyance at his direction and ordered it to be conveyed to –

MS. BARTH: I'm going to object as to hearsay. Do you have a document to show it?

MR. SHELLY: I have a letter.

THE COURT: Just say hearsay.

MR. SHELLY: I have a letter.

THE COURT: Objection overruled but we're going to allow you to cross examine this.

MR. PIRTLE: Let me break this down for the Court, so the Court understand. There has been testimony to this Court that Anna Nicole Smith was a resident in the Bahamas.

THE COURT: You're explaining it to the Court?

MR. PIRTLE: I'm prefixing –

THE COURT: He's proffering this to the parties.

QUESTIONS BY MR. PIRTLE OF MR. SHELLY:

Q In order to be buried down there, you need residency?

A No, sir.

Q In order to be a resident, you need to have property? I'm trying to follow this.

A In order to be –

MS. BARTH: Sir, are you a lawyer? I'm going to object –

MR. SHELY: I can just say I filled out the applications.

MS. BARTH: -- as to who can be buried in the Bahamas.

THE COURT: That is a good objection. I'm going to allow you to argue about why I would allow him to testify about the laws of the Bahamas.

MR. PIRTLE: I will and he's familiar with them.

THE COURT: Why should I let him? He's not a lawyer.

MR. PIRTLE: He's familiar with going through the process. And it's something that an ordinary citizen, not a lawyer, can fill out and obtain residence. You don't have to be a lawyer to fill out these forms that we're talking about. And simply, all I'm trying to show is that Mr. Stern does not own that house. Mr. Ford owns the house or his family does. And without the house and without the stamped tax, the residency is invalid.

MS. BARTH: This lovely, Your Honor, but I don't know if he's admitted to the Commonwealth of the Bahamas either.

THE COURT: What the law is on houses?

MS. BARTH: Really, I mean, that is – and he also asked him, he went even further; Do you know if you have to be a resident to be buried in the Bahamas? Does he have personal knowledge?

THE COURT: It's an interesting theory, Houston.

MR. PIRTLE: It's not a theory. I've got a document –

THE COURT: No. No. I mean, it's an interesting theory to go on.

MS. BARTH: And his own witness said, no, you don't.

THE COURT: What else do you have, the video?

MR. PIRTLE: The video and this document.

THE COURT: You have the video working?

MR. PIRTLE: Is it working?

THE COURT: Right now we're going to see it.

(The video is played)

THE COURT: Who is asking him the questions? Who's asking her the questions?

MR. PIRTLE: Mr. Stern.

THE COURT: What date and time?

MR. PIRTLE: Let me inquire to the witness.

THE COURT: Fine.

Q Sir, will you identify approximately for The Court what date and time that was and tell him why you know it?

THE COURT: Good, then you can object.

MR. SHELLY: It was in the last part of August.

THE COURT: August of '06?

MR. SHELLY: Yes, sir.

QUESTIONS BY MR. PIRTLE OF MR. SHELLY

Q Why do you know that, sir?

A Because my child was on that video and asked to call me and she wasn't allowed by you to call me to come home. It's on the full tape and they can get a copy of it, Howard. I'll never forgive you for it.

Q Le me get this straight for the Court.

THE COURT: You don't need a repeat. You can ask a new question.

Q You're familiar, by the way, with Anna Nicole Smith's state of mind when she was sober?

A She's an awesome person. Whether she was sober or not, she was awesome.

Q Quite frankly, and I'm just going to lead with this, she was impaired on that tape?

A She seemed to be.

Q And Mr. Stern asked, is this a mushroom trip?

MR. RALE: Objection; accumulative.

MR. PIRTLE: It's difficult to hear.

THE COURT: I understand. Cross Examination.

MR. PIRTLE: I have one other thing, though.

QUESTIONS BY MR. PIRTLE OF MR. SHELLY

Q By the way, she was pregnant when this tape was made, correct?

A Yes, sir.

Q With Dannielynn?

A Yes, sir.

Q In the Bahamas?

A But the time I dropped her off there, she was fine.

MR. PIRTLE: I have a couple of other areas –

THE COURT: No, I got Texas sick. I got to keep moving. Other people are not feeling so well. I have to keep going, plus I have a candle burning.

MR. PIRTLE: I'm going to tender this canceled deed to their house in the Bahamas as evidence.

MS. BARTH: Objection.

THE COURT: I will mark it as an exhibit and I will mark it as evidence. The Court will look at it as part of the facts.

MS. BARTH: Mr. Ford –

THE COURT: Be short, please.

CROSS EXAMINATION OF MR. SHELLY BY MS. BARTH:

Q Mr. Shelly, you are currently or you were in litigation with Anna Nicole Smith before she passed away/ is that correct?

A No, ma'am, I was not.

Q You were not?

A No.

Q You were not in any litigation that subjected you to a restraining order out of the Commonwealth in the Bahamas?

A No, ma'am. And what you're referring to is in the name of G. Ben Thompson.

Q Which is your father-in-law?

A Who was the president of our association, had it filed an ex-parte –

Q Sir –

THE COURT: Let him finish.

A We were never put on notice.

Q So your father-in-law was in litigation with Anna Nicole over this house?

A Yes.

Q In fact, that house isn't yours. You said it's your house.

A Actually, it was my money.

Q Is your name on the deed, sir?

A It can be.

Q Whose name is on the deed, sir?

A G. Ben Thompson.

Q It's not your home, is it, sir?

THE COURT: Wait. There is a question.

Q It's not your home?

A It's not in my name, no, ma'am.

Q So your father-in-law was in litigation with Miss Smith prior to her death; is that correct?

A Anna Nicole Smith filed a lawsuit against us. We didn't file it against her.

Q But both parties claiming that they owned the home, sir?

A No, we owned it. She just made the claim.

Q Both parties claiming they owned the home, sir?

A No, her claim didn't say that. The claim that she put down was actually invalid because it you read it –

Q Sir, I'm not trying a real estate case here.

MR. PIRTLE: She's cutting the witness here.

THE COURT: So you're done. There's a lawsuit. There's a lawsuit.

QUESTIONS BY MS. BARTH OF MR. SHELLY:

Q How did you come into possession of the tape that you just showed this Court, sir?

A Because on the day after Anna Nicole Smith passed away, which Howard and I had a two-hour conversation last Saturday on the phone, whereas Howard called me and asked me, would I get all parties together and call Virgie for him and ask him could we –

Q I am going to object to any statements –

THE COURT: I got to let him finish.

A He asked me to get in touch with Virgie, that they would not allow him to, so that we could settle this. And I said, Howard, I said, I will do everything I can because I'm with you. I'd love to settle it, settle this thing so that we can bury her and we can all get this thing resolved. I also said to you, Howard –

Q Sir, do you have any knowledge of Anna's –

THE COURT: You can't – he's giving a narrative. Now ask a new question.

Q Did you have any chance to observe, through your friendship with Anna, her relationship with Daniel?

A I did.

Q What did you think it was?

A She's a great mother. She loved him.

Q Did she love him?

A Yes, ma'am.

Q Tell me the kind of love. Tell me the way she loved him.

A She loved him more than life and so did Howard.

Q Tell me, tell me where it is that you think that Anna wanted to be laid to rest, next to her son or all alone in Texas?

A I'm going to answer that but will you give me the –

Q Just my question. Two options. Nothing else.

MR. PIRTLE: No, there's not two options. She asked a question: Where does he think she wanted to be buried?

THE COURT: Let him answer.

A Anna, at the time that she made the decision where he was to be buried, she told us, too. She wanted to be buried, first of all, in California, but she told us that she could not go back to California at that time to bury Daniel because she was afraid that she would be served with a paternity suit against Larry Birkhead. And that she made the decision to bury him there because of that and that's where she was going to make her domicile and she made that decision. And she told us that she, if something ever happened to her, she

looked at me and she said, Ford, if something ever happens to me and Howard is not around, I want you to take my stuff –

Q I'm not talking about the stuff, sir.

A But she said it.

THE COURT: Let him finish.

A She asked me to take her computer –

Q Self-serving.

A -- in my possession. She even gave us password protected. Howard, you know she'd gave me the code.

Q Your Honor, I asked the question as to where –

A She gave me the code and she said she didn't want anybody –

Q He just had a criminal proceeding. Taking this stuff out of –

THE COURT: We're done. Thank you for coming.

MS. BROWN: May we ask questions of this witness? I have about seven questions.

THE COURT: Seven?

MS. BROWN: Yes.

THE COURT: Make it five because I still have to get the administrator ad litem on. I'm going to give him about seven minutes.

CROSS EXAMINATION BY MS. BROWN OF MR. SHELLY:

Q Mr. Shelly, are you aware of whether or not Anna Nicole Smith ever had an intimate relationship with Howard Stern?

A Howard told me he did.

Q Did Anna Nicole ever discuss the issue with you?

A No.

THE COURT: This, you can do at a later date.

Q I have financial now. Do you have any information regarding Anna Nicole's finances before her death?

A Yes, ma'am.

Q What was that information? Was she supporting herself?

A At the time of Anna's death, we had helped facilitate several things for her because the only income that she had was from TrimSpa. And there was a discussion that we had at my house about needing some assistance, even part of the money that was used to take care of some of the mortgage bills we paid.

Q Did Anna have enough money to support herself?

A Yes, ma'am.

Q Did you ever observe Anna Nicole Smith in the intoxicated state she appeared to be in that video?

A Yes, ma'am.

Q Did you ever see Howard Stern with her when she was intoxicated?

A Well, when you say intoxicated, I think of being drunk. And did I ever see Anna drunk, no.

Q Did you ever see her using drugs, legal or illegal?

A I never saw her take medication except one time in my house at Christmas where Howard did come out and he did give her medicine, but that's the only time. I didn't know what it was.

THE COURT: You're on seven.

MS. BROWN: Your Honor, I guess you're stopping me.

THE COURT: Thank you. Next witness.

MR. PIRTLE: I do have some follow-up.

MS. BARTH: You Honor, Mr. Milstein.

CROSS EXAMINATION OF MR. SHELLY BY MR. MILSTEIN:

Q Not disparaging in any way, no one has really asked this, and you talked about taking things or possessions of Anna Nicole Smith. Do you have any writings of Anna Nicole Smith, diaries, journals or e-mails or her within the last year of her life?

A Yes, sir.

Q Do you have any of those documents with you today?

A Yes, sir.

Q Is there a way that we can have those proffered to The Court to see if within any of those documents she has made a contemporaneous writing as to her last wishes?

A No, sir. But if Your Honor would allow me, on October 10th and the 11th, she wrote e-mails to us at that time and threatened to sue my father-in-law for DNA and child support because he was the father of the child and we knew he couldn't because he had a vasectomy.

THE COURT: That's the third man, then?

MR. MILSTEIN: That's one of the third men. I have several other phone calls.

Q Mr. Shelly, do you have any of those journals or documents with you today?

A Yes, sir. And also the Broward County Sheriff's Office has the documentation that I turned in.

Q Your Honor, I would respectfully request that Mr. Shelly turn over those documents and that you examine them in camera for the period of time at least since the birth of Anna Nicole Smith to see if there's any contemporaneous writings as to the testimony of disposition.

THE COURT: You would have looked for that already.

MR. PIRTLE: Why don't you ask him the question?

THE COURT: Ask it.

MR. PIRTLE: Is there a document or e-mail you've had, and I've read a bunch of them, is there an e-mail you have where it talks about, when he say testimony disposition, where she wants to be buried?

MR. SHELLY: No, sir.

THE COURT: I'm glad you stayed another day.

MR. MILSTEIN: He asked about e-mails. And I'm asking diaries and journals.

MR. PIRTLE: Do you have any writing that shows her testamentary disposition? You have to say yes or no.

THE COURT: I don't want to do anything in camera. I stated that earlier. I appreciate you asking. I think the issue is moot and, therefore, we're done with this witness.

You're free to go. Next witness. You want to ask this witness another questions?

MR. PIRTLE: I do.

MR. PIRTLE: After the death of Daniel, do you believe that Anna Nicole, based on your experience in dealing with her, had – was in such distress and was having issues with drugs so as to cloud her judgment as to where she wanted to be?

MR. RALE: Objection; calls for speculation.

MR. PIRTLE: No, he's got experience.

THE COURT: I'll allow you to answer it. I'll allow you to answer it.

MR. SHELLY: Your Honor, Anna was a person who made her own decisions. And I think that Anna was emotional at the time, but Anna said where she wanted to be buried and that was beside her son.

THE COURT: Beside her son?

MR. PIRTLE: And that would be wherever her son is?

MR. SHELLY: Yes.

THE COURT: The son, Danny.

MR. SHELLY: Even though I don't agree with a lot of things, and I know – I'm not going to regret this – I know from her own testimony that – who the father is, but what she told me. And I know that Howard, with that, is representing what she wanted.

THE COURT: This is your witness you called.

MR. PIRTLE: I understand.

THE COURT: You're free to go. I know you can't hear that well. I can't see so well. He said that she wants to be buried right next to her son.

MR. O'QUINN: I heard that part.

THE COURT: It's your witness.

MR. PIRTLE: I understand.