

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

CASE NO: 07-0824

FEBRUARY 22, 2007

LARRY BIRKHEAD IS RECALLED TO THE STAND

QUESTIONS BY THE COURT OF MR. BIRKHEAD:

Q Larry, you were telling us, when did Anna Nicole tell you that she was pregnant, date and place.

A It's been twice. Once, the first time, January 2005. And that was – she told me that the pregnancy resulted in miscarriage in February of 2005. And the second pregnancy was, she informed me February – the week of February the 20th, right around that time of the appearance for the Supreme Court, February of '06/ February of '06.

MR. RALE: Objection, Your Honor. I'm sorry to start this way. Just in regards to the issue related to paternity, I'm not sure about Florida law but under California law, typically, sealed or confidential proceeding, this testimony is being viewed and it's public and something that I would believe to be improper under California law to talk about.

MS. OPRI: If I may, the address that –

THE COURT: Objection overruled.

MS. OPRI: Thank you.

MR. RALE: Thank you.

Q The second time when she let you know that she was pregnant, you mentioned to us you were concerned about her using medication?

A Yes, sir.

Q What did you tell her, if anything?

A I told her that she should stop. I told her even before she was pregnant and there was a time frame before she was, after the first miscarriage and between the second, that I felt she was making a little leeway because I was kind of keeping track of what her intake was. There was anight and day difference from when I was able to kind of monitor the situation versus not being able to and not being there or slipping away for a few minutes or whatever.

Q What date does she tell you she's pregnant, the second time?

A It was around Valentine's Day, February of 2006.

Q And when did you state your concern about her utilizing medicated drugs?

A I stated the concern from the – from the inception of the relationship.

Q And what took place after that conversation?

A Well, you know, the way it was presented to me – the way it was presented to me originally –

Q Forget how it was presented. I want to know what you heard or saw.

A I was told –

Q No. That would be hearsay. Did you get to see her again?

A I'm confused about what time frame you're talking about.

Q We're talking about the second pregnancy.

A Yes, sir. All the way up to May of 2006.

Q You told us yesterday at some point she went to the Bahamas?

A In May of 2006 she left first for South Florida and then she made her way to the Bahamas shortly after.

Q During that period of time, were you telling her not to utilize all these medications?

A I was telling her and also telling Mr. Stern that it was a problem.

(Speech by the Judge)

CROSS EXAMINATION OF MR. BIRKHEAD ON FEBRUARY 22, 2007

QUESTIONS BY MR. MILSTEIN OF MR. BIRKHEAD:

Q I will pick up where you left off with the questions of Mr. Birkhead, which was not the area of necessary inquiry. I object myself in the sense that Dannielynn will not really know about in any great magnitude as she grows up. But in the time, Mr. Birkhead, in the time that you spend with Anna Nicole, what efforts did you make personally to assist her in minimizing or rehabilitating herself from any use of substances?

A For one, I hid some of the medicines that I didn't feel was necessary for her, some things that she was getting prescribed by doctors: Dr. A, Dr. B and Dr. C all together. And I felt like the cumulative effects would have a bad reaction. I'm not a doctor but I know – I mean, your brain is a computer and all these different medicine are telling you to do and all these doctors aren't on the same page so they would have a bad effect.

Like I said, at times I took her medicine and I was told by Mr. Stern to give it back to her because she needed it to live. And in addition to that, I just told her over and over, I said don't – something is going to happen to you. Something is going to happen. And I –

Q Take a breath. It's okay.

QUESTIONS BY THE COURT OF MR. BIRKHEAD:

Q Did this dominate the conversations you had with her?

A No, sir, it didn't dominate but it resonated and I said over and over and over. You don't know how many times I had to help her and to carry her back and forth to make sure she's okay. Sometimes I didn't even know if she was going to live and they kept bringing more and more drugs in the house and the pharmacist. And at one point, the time I knew it was really bad is when one of the individuals in that house came home and they said, they had my picture up in the pharmacy as a VIP customer and they thought it was a funny thing to say. Another said –

Q Who said that?

A An assistant. And her picture was on the wall at the pharmacy and I said, this has got to stop. And I told Anna, I told everybody in the home and it didn't stop. I did everything that I could and while she was pregnant, like I said yesterday, I tried to massage her pains away. I tried to say, why don't you take something that's over the

counter. Please don't take what's not recommended. Don't take double doses if it's a single dose.

You might have a high tolerance but the baby is not high tolerance and, you know, it just went on and on and on. I think I did all I could. And when I was pushed away –

Q Who pushed you away?

A I got into an argument with Anna Nicole that was something that could have been brushed over. It was something that could have been brushed over. It was something, on a scale from one to ten, the argument was like a six and it could have been brushed back over like many in the past that everybody or every couple goes through. And Mr. Stern got in the middle of it with us and he said, like I said yesterday, he told me to come get my stuff, he threw the plasma television out on the front porch and clothes and he won't give be back some of my belongings in the house. And the next thing, like I said yesterday, he told me he was going to take off –

Q Let me ask you a question: What did you feel – what is your impression of Mr. Stern's feelings towards Ms. Anna Nicole Smith? Make it short and descriptive.

A I thing that he –

Q Did he love her?

A I think he did and does but I think as a result of that, I think he didn't do the things he could have done to help her.

Q But she took flight when you were saying to her not to do drugs anymore, right?

A Right. But Anna Nicole didn't have a driver's license. She didn't drive herself to the pharmacy and pick things up. She didn't call the doctors. Mr. Stern called the doctors and asked for the prescription.

Q But she could have replaced Mr. Stern with another individual; am I right?

A If he would have told her no on the drugs, she probably would. And I said no and that's why I'm here today. I don't have my daughter. I don't have anything.

Q Let me ask you a question: Is there a time in your heart that you feel you can develop relationship, if it comes out down the road, who the father is? Let's say you're the father. You think you can develop a relationship with Mr. Stern to work something where everybody gets to enjoy and improve the life of Dannielynn?

A I'm not selfish but there is a lot of hurt and heartache. I missed the delivery of my child.

Q I'm sorry.

A I missed the delivery of my child. I've had to pay \$4.99 for magazines to see what my child looks like. I've had to call and send gifts, Fed Ex Christmas gifts for my child and I've missed everything that you can't get back so maybe some day, maybe. I'm not going to say yes today but the more he fights me and the more it takes, the less likely he's to get anything.

Q Obviously, I can't fashion a remedy concerning that issue, who the father is. I've tried to push you guys against the wall on it.

(Speech by the Judge)

QUESTIONS BY MR. MILSTEIN OF MR. BIRKHEAD:

Q Along the same line, Mr. Birkhead, did you ever pick up any prescription medication?

A No, sir.

Q Did you ever ask her or give her any information – strike that. Did you ever ask her if she would go to a rehabilitation center?

A Yes, sir.

Q Did you ever do any homework as to locate rehabilitation centers?

A I knew of some so I didn't really have to do any homework.

Q The ones you knew of, were they residential facilities or out facilities.

A They were both in California. It's common.

Q Did you ask if she would attend any of those or live in any of those facilities?

A Yes, sir.

Q What was her response?

A She said, I'm not a drug addict and quit calling me one. She said, these are prescription. I said, you're not taking them properly.

She always said – it was her contention, because if there was a doctor's name on the bottle, that there was nothing wrong with whatever she could take.

Q Thank you. I'm going to switch hats or subject matter. Yesterday we asked you some questions about the remunerations and I don't remember exactly where we stopped. I actually left my notes from that portion in my office. I believe I asked you questions about your accepting any sums of money –

A Yes, sir.

Q -- for any photographs, interviews or media from the press since the death of Daniel?

A Yes, sir.

Q And if I'm characterizing you incorrectly, correct me if I'm wrong, you said the only thing that you had received were royalties from archived photos with regard to Daniel and his demise?

A Some individual since then have asked me for permission to use them in ways that I didn't originally give permission to allow so I neither agreed or disagreed.

Q I'm not familiar with your industry. I think everyone here has learned that. I don't know clearly about it and you said a couple of things I have to follow up on. One is they weren't just archives, they were file photos. What is a file photo?

A Anything on archive file.

Q Pardon?

A Anything on file with an agency.

Q Are those photos that would be out in the public domain that they would then have to pay you for because they're copyrighted and they've been used or are they file photos that you would then release to someone?

A It could be one or both. I could be that they were on file from years back. It could be that they were on file – it could be that – I think they asked me to release them as well but my whole entire archives of photos goes to an agency. I don't discuss that. They tell me what – every month I get an invoice and it's got, you know, who the picture is of, what subject, what location, what place, time.

Q So you give over your file photos to an agency. So what we would call a trust, a blind trust where you don't have control over it. You give it to someone else. You don't know what the results are so that you cannot have any bias?

A Until the end of the month.

Q Then you know it's been sold?

A The previous month.

Q Had you released or sold any photos or videos or interviews – like I said before, you said, I didn't have interviews or videos – as a result after the death of Daniel that were not contained in your file.

A Yes.

Q Where did those come from?

A Those came from my personal – it's my personal collection.

Q How many photos did you sell?

A I couldn't give you an exact number. I can tell you in the context they were used and why they were sent.

Q Would you do that please?

A Sure, like I stated yesterday, back in May of – when it was announced that Anna Nicole was pregnant, there was a behind the scenes war with me and Mr. Stern where he had called me and told me to deny that I was the father of the child on press time with a specific magazine and he called me like 200 times. I was working at an event and he was telling me the importance of me getting my name out of it because my name was being attached to the pregnancy. And he said that if this goes down and my name is out there, that this is going to be bad and just to deny, deny, deny.

I said – I did say no comment. He said, no, I want you to go back and say if she's pregnant, you have nothing to do with it. And he called me so many times at a job that I was at that I finally just agreed to get him off my back. And ever since then, the magazines that printed it previously that I was the father, they're saying, okay, now you're saying no comment. Now you're saying you have nothing to do with it. And then he was releasing information that Anna Nicole wanted me out of her life and that I wanted fifteen minutes of fame. And he posted something on her website that said something to the same effect.

And what happened was later after – during that time, before Daniel's death, I released photos because I told Howard and I told Anna Nicole that it wasn't fair for him to be saying that stuff about me and she said, you're not the star. I'm the star. And you shouldn't be telling people this. And they wanted me to remain quiet and behind the scenes. So I said, I'm tired of it. I'm tired of him telling me what I'm going to do and so I released photos to establish the relationship. And as a result of me releasing those photos, I have been compensated and would be compensated down the road for it.

Q Do you have any idea to this date what you have been compensated for those photos?

A NO, because, once again, I released them to my people. I can get you that information. I don't have it with me. Sometimes that comes two months, three months down the road and you trust it's going to be handled properly.

Q Have you received any financial gain paid to any third-party on your behalf as a result of those photos, not directly to you?

A My agency would be the third party.

Q Just the agency?

A Yes, sir.

Q Not for any of the other categories I listed yesterday such as lodging, flights, attorneys fees, anything like that?

A No, sir. Anything that I make for any of the photos is going to fight for my daughter. And if I have to sell more photographs, if I have to sell this shirt or this tie, I'm going to sell it. So I'm going to do whatever I have to do.

Q Since the death of Anna Nicole Smith, fast-forwarding a little bit. It's difficult. It's only been two weeks. It's hard to believe you've been in this courtroom for a week.

THE COURT: Of course you feel it.

MR. MILSTEIN: We all do.

Q Have you sold any photographs, likenesses, images, all the same categories for financial gain or remuneration?

A NO, the first time I came out of my house was to come here and I haven't talked to anybody. I have tons of people calling me. I have people calling me saying books, movies, million dollars, two million dollars. I have people telling me when, before Daniel died and the baby was born, I guess it's seemed almost simultaneous in the press that they would give me tons of money to go down there and knock on the door and all these things that I declined to do. That would honestly help me in my fight, my mission to get my daughter but I turned that down.

Q So as of today, you have not received any financial remuneration since the death of Anna Nicole Smith?

A No, sir.

Q As a result of your type of work or sales or photography, other than the file folders that are in archives?

A Correct. But just let me say, so it's clear, that the value of a photo six months ago of Anna Nicole might be different from the value today. And as a result of her son's death and her death, photos that I have in my collection and on file will accelerate in value and that's beyond my control

(Speech by the judge – cross continues of Mr. Birkhead by Mr. Milstein)

Mr. Birkhead, we also talked yesterday about the viewing of Anna Nicole Smith. Did you contact any press prior to the viewing of Anna Nicole Smith?

A No, sir.

Q I'm going to ask you a question that I actually know the answer to, Your Honor. How did you get to the viewing?

A I rode with you, sir.

THE COURT: You tried to save some gas here?

MR. MILSTEIN: I tried to foil the media. No one was paying attention to use and that was the good part.

Q Do you have any contracts, any contingencies or any benefit that you have proposed for the future with regard to the death of Anna Nicole Smith?

A No, sir.

Q You've not entered into any contract with any media, press or public relations firm as you sit her today?

A No, sir. I have people constantly contacting me, but I have not entered into any agreements nor have I even said that that's what I'm going to do.

Q Where are you from, Mr. Birkhead?

A Kentucky.

THE COURT: What college did you attend?

MR. BIRKHEAD: University of Louisville.

THE COURT: What did you major in?

MR. BIRKHEAD: Journalism and communication.

THE COURT: You graduated in four?

MR. BIRKHEAD: In four? It took me a little longer because I was paying my own way.

THE COURT: It took you about six?

MR. BIRKHEAD: A little less.

Q What is your occupation?

A I'm a freelance reporter and photographer.

Q How long have you been – since Kentucky, where have you lived?

A California.

Q How long have you been living in California?

A Since the relationship started with – actually, in 2001, I moved to California from Kentucky. I went back to Kentucky and then when I met Anna Nicole, she suggested we move in together. I went back to California.

Q In California – strike that. Where do you consider home?

A Well, I think you always consider home where you grew up, so I'd say Kentucky. It feels like home but California is where I live.

Q You live in California now? Are you planning on staying in California?

A I would like to. It depends on the outcome, when I can get my daughter.

Q And if you had a job, the type of job that you have as being a photographer, journalist, would you move to New York, for example, would you move to New York?

A Well, the good thing about my job is I can do a lot of it from – the flip side of it, I can do a lot from home. I can do it from anywhere. If it were in my daughter's best interest to go to New York with me, then I would consider that but if it weren't, then I'd stay and take less money to stay wherever was a better environment for her.

Q If you wanted to move home to Kentucky where you grew up, would that be a consideration for you?

A It would because I would have the support system and I'd have family and friends that would help me with my child.

THE COURT: You're in the big town now. You would leave the big town?

MR. BIRKHEAD? I'd have to do what's better for my daughter, so I would do whatever it took.

Q At this juncture you can't say that you would be stationary in one specific location. That you would seek the opportunities that would be best for yourself and your daughter?

A I would seek the opportunities that are best for my daughter and I would consider myself next.

MR. MILSTEIN: Your Honor, I have no further questions at this time. I'd like to reserve time for further Cross. I can't even say it's Cross. I've kind of done Direct in a different way.

THE COURT: Would you, if you were the father of little Dannielynn, would you let mom, grandma, visit that little girl?

MR. BIRKHEAD: Yes, I'd let anybody that had Anna's best interest and loved Anna and love the child see the child.

THE COURT: So you would give her visitation rights?

MR. BIRKHEAD: Yes, sir. I think it's only fair for family and I think that that's just the appropriate thing to do. And friends of Anna's that had good intentions that I felt were there for her and that were there for the baby. I would consider the same.

THE COURT: Counsel, you have been patient.

MR. BARTH: Thank you.

THE COURT: You set a good tone the first day in this courtroom. I want to let you know that. You set a very good tone.

MS. OPRI: Your Honor, at what point in time can I do my Direct?

THE COURT: He's pretty much been Direct through Mr. Milstein. You want to talk a little bit?

MS. OPRI: Just a little bit.

MS. BARTH: Maybe she can save it for Redirect.

THE COURT: Right. Very good.

CROSS EXAMINATION OF LARRY BIRKHEAD BY MS. BARTH:

Q Mr. Birkhead, you stated her today that Anna Nicole had a substance abuse problem from the time that you knew her; is that correct?

A Yes, most.

Q Most of the time that you were with her –

A Most of the time she had problems but sometimes she was clearer than others.

Q Did you and Miss Smith intend to get pregnant? Was that something you were trying to do?

A We talked about it early on, and then after the first miscarriage, I waited until I felt like she was cleared up on the medications. And the actual time that she got pregnant, the second time, it wasn't like we planned it, but I'm an adult and I know that could be a consequence. But she felt like because she was having trouble getting pregnant again, that possibly, because she had previous miscarriages before me and she called herself a high-risk pregnancy, that she didn't know if it was possible and she went to see a doctor.

THE COURT: Were you concerned having a baby with a woman that you thought was overmedicated, meaning that the child could have had problems during the birth?

A Yes, sir, I was.

MS. BARTH: Your Honor was following my point here. My question is, someone who is a substance abuser, whether prescription drugs or otherwise, why is it that you would enter into such a dangerous situation for this baby when you knew that she had not cleaned herself up in rehab at that point? Why would you take that chance? Why would you put this risk on this baby?

THE COURT: Terrific point.

MR. BIRKHEAD: You're saying that I knew that she was on drugs?

THE COURT: Wait. Wait. Easy. Easy. Answer the question.

MR. BIRKHEAD: Rephrase your question.

THE COURT: No, she's not going to rephrase it. Answer the question.

MR. BIRKHEAD: Repeat your question.

Q Did you understand my question?

A I don't understand your question.

Q Miss Smith had not been through rehab and you were aware that she had substance abuse issues; is that correct?

A Correct.

Q Why is it then that you, as an adult, as you just stated, took the chance on getting her pregnant and putting this baby in danger before it was even conceived?

A When she came back from South Carolina in November and December –

THE COURT: No long story. Answer the question.

MR. BIRKHEAD: Because when –

THE COURT: Why did you make her pregnant when you knew she was overmedicated?

MR. BIRKHEAD: Well, the answer to the question is when she came back from South Carolina she was not medicated as much and she cleaned herself up.

MS. BARTH CONTINUES CROSS EXAMINATION:

Q As much?

A I can understand why she was saying that. I can understand she was in a better state of mind. Her skin was clear. It was totally different.

Q Do you think she wasn't an addict at that point, sir?

A I don't know the actual term of that. I know that she used medication.

Q Let me go to the time when you got the call and you went to visit Anna in the hospital. Anna was pregnant at that time; is that correct?

A Yes, ma'am

Q About how pregnant was she?

A The doctors said she was about – I want to say almost four months pregnant.

Q She was pregnant enough for the sex of the baby to be determined; is that correct?

A It was borderline. The specialist told her that really – one said they couldn't determine, one said they could. And when they showed us the ultrasound, it was unclear. She said she had a few more weeks before they could do – what you call a 4-D scan.

THE COURT: What month is that?

MR. BIRKHEAD: It was April of –
THE COURT: What month of pregnancy?

MS. BARTH: I believe he testified the fourth month of pregnancy. I think that is consistent with what he is saying. At that time you said she was at the hospital and she was detoxing while pregnant; is that correct?

A I don't know if that was the purpose for her visit. She said she was rushed there in pain and then they detoxed her.

Q But when you went to visit her the reason that she was there was because they were detoxing her; is that correct?

A I didn't say the reason. I said she was there for pain.

Q Were they detoxing her?

A It was my understanding from the doctors that they were.

Q And you also testified yesterday – you didn't take her to the hospital, did you?

A I didn't take her.

Q Who took her to the hospital?

A Mr. Stern took her and then she called me to come.

Q Mr. Stern took her to the hospital and then you arrived. Now, when you got there, you said you stayed with her for several weeks; is that correct?

A Approximately two weeks.

Q Serious stuff, right?

A It became serious.

Q It was already serious. She's pregnant and she's in a hospital detoxing, correct?

A Her condition became serious as a result of the detox more so from when she was back at home because I think her body was rejecting some of the things that was –

Q Sir, what I'm asking you is, a pregnant woman in the hospital, four months pregnant –

THE COURT: And how old? How about her age?

MS. BARTH: Exactly.

THE COURT: What age: She was in her late –

MS. BARTH: Yes. She was also at risk just due to her age; is that correct?

MR. BIRKHEAD: I'm not a doctor.

THE COURT: But we know that.

MR. BIRKHEAD: I don't know.

THE COURT: We all know that the later, the more difficult the pregnancy is. I want you to be.

MR. BIRKHEAD: I'm not a doctor but I would agree that's a late stage and she was high risk in the past, according to her, and maybe she would be considered --

THE COURT: At what age was she when she became pregnant?

MR. BIRKHEAD: Thirty-eight.

THE COURT: That's what I wanted out of your mouth. 38 is a risky time.

MR. BIRKHEAD: She was closer to forty.

THE COURT: I don't want to tell my wife's age, but we were right around – I'm going to get in trouble for this – but it was a risky time and every man knows it, every man

knows that because everything is on in vitro, the articles on in vitro, every one know it, as much as you want to run away from it, it's a risky time.

MR. BIRKHEAD: She previously told me she was high risk.

MS. BARTH So you understand she was high risk. This was a serious situation. Now, you came in that hospital, you testified yesterday, and my client was sitting there, and you said at some point during this two-week period, and I'm not sure when, you saw a duffel bag full of drugs; is that correct?

A I never said full of drugs.

Q There were drugs in a duffel bag?

A There were drugs in a duffel bag.

Q What did you do?

A I didn't know they were there because what also was in there was her personal belongings.

Q You just said you knew the drugs were there?

A Could you let me finish?

THE COURT: He's been with us a long time. He's acquiring some of the skills of an attorney, and I say that in a positive way because without attorneys, who is going to do the talking for you. Because if you're so attached to something, you can't do your own talking. But I want you to be forthright like you were yesterday.

MR. BIRKHEAD: Sure. At one point during the stay in the hospital, she asked me to go get some personal belongings out of the closet in the hospital. And when I went into the closet, she asked me to bring the bag out and she kept pushing the button for the drugs to come out and she was getting frustrated and she kept telling me to press the nurse to tell her to get more. They said, they said you can't have any more. She said, I need more. When she told me to get her bag for something, totally related to the drugs, like a toothbrush or something like that, when I brought the bag back to her, she pulled the bottle out. Mr. Stern was in the room and they were waiting to see who came in and they opened the bottle.

MS. BARTH: They opened the bottle. Did Anna open the bottle or did Mr. Stern open the bottle? They didn't open the bottle.

A It happened multiple times, so I guess he did and she did both, and I witnessed both.

Q What did you do? Did you buzz –

THE COURT: Don't make it compound.

Q What did you do next, if anything?

A I told them not to and I repeatedly told her not to and I watched and I stayed up for almost 24 hours a day to make sure that she didn't. And then when I made at another point to say something when she ripped her I.V. cord out of her arm, they told me to leave and then later on, I came out and they told me she was on suicide watch, that's what I did.

Q Then what did you do?

A I was asked to leave. She asked me to leave the hospital and she was going to call the nurse button because I was trying to make her stop.

Q Why did you leave?

A Because she told me if I didn't, they were going to call security on me, the hospital. And I told Howard what was going on and he said, it's best if you go, she's not in her right mind. And they had a nurse sitting there 24 hours a day. The room was crowded up and they asked me to leave. They told me to leave.

THE COURT: Do you think Howard provided some – for Miss Anna Nicole Smith, do you think he provided some kind of support system for her?

MR. BIRKHEAD: Support system in enabling or support system --

THE COURT: I'm not talking about enabling. We don't want to make each other out here to be evil people. This is not – this is in a book it would be, but this is life. We all come with some broken suitcases and I'm saying this, was he providing some support system for her outside the medicated drugs? You told me the other day he would lie on the couch waiting on her and if she needed something, he would run out a get it.

MR. BIRKHEAD: Yes.

THE COURT: In your eyes, he's not pure bad, is he?

MR. BIRKHEAD: No.

THE COURT: There's some decent qualities n the man, too, isn't there?

MR. BIRKHEAD: Yes, sir.

THE COURT: Not everyone here is the devil, are they?

MR. BIRKHEAD: No, sir.

THE COURT: No. No. We have people that made mistakes. Some people didn't have the good sense to handle themselves in appropriate proper setting, did they?

MR. BIRKHEAD: No, sir.

THE COURT: What could you have done to pull her out of her pain? What could you have done to pull her out of her pain?

MR. BIRKHEAD: I guess just take all the drugs away, but I was told she needed them to live so I didn't know if I took them, would she die. What path to choose because Howard told me that she could die.

THE COURT: Forget Howard. There's other people at that house.

MR. BIRKHEAD: She told me and Howard also told me if she didn't take them.

THE COURT: Leave Howard alone. We're not going to keep attacking him.

MR. BIRKHEAD: Anna Nicole told me if she didn't take them, she could die.

MS. BARTH: Anna Nicole told you that: isn't that correct?

MR. BIRKHEAD: She told me that.

MS. BARTH: Anna Nicole told you to leave that hospital room?

MR. TUNSTALL: Objection; asked and answered.

MR. PRITILE: Hold on. You told him to leave Howard out of it.

THE COURT: Houston, I thought you were leaving?

MS. BARTH: Your Honor, only on is allowed to object.

MS. OPRI: I'm going to object on behalf of my client.

THE COURT: You stay here, but now you're to remain mute. I appreciated it. I knew he wasn't going to go. It was just a big bluff, but you stay here and you can stay seated. You can move on.

MS. OPRI: Just an objection. If you're directing him not to talk about Howard K. Stern.

THE COURT: What's that?

MS. OPRI: If you're directing Mr. Birkhead not to include Howard K. Stern in an answer and then she takes advantage of your direction, the bottom line is it's harassing and it's argumentative.

THE COURT: So noted.

MS. OPRI: It's all right.

THE COURT: I like you. You stay right there. I want you to feel comfortable.

MS. BARTH: You were aware of the fact that Miss Smith was taking a lot of different kinds of prescription medications; is that correct?

MS. OPRI: Asked and answered.

THE COURT: Objection sustained.

MS. BARTH: You've seen her inject herself with prescription medication; is that correct, while pregnant?

MS. OPRI: Asked and answered.

THE COURT: It's asked and answered.

(Speech by the judge)

MS. BARTH CONTINUES CROSS EXAMINATION:

Q Other than the times – that time that we talked about, that specific time in the hospital, you've stated on numerous occasions that there were times when you actually saw Miss Smith have seizures; is that correct?

A Yes, correct.

Q And at the times when she would have seizures, were you alone with her?

A Sometimes.

Q When she had these seizures, did you call 911? Did you call the hospital?

A They told me not to.

Q You just said sometimes you were alone, so who is "they"?

A Can I say the people's names?

THE COURT: I'll tell you, you're good. You brought out those points. You're good. You brought them out.

MS BARTH: Absolutely. Happy to move on, Your Honor.

THE COURT: This is not a jury trial.

MS. BARTH CONTINUES CROSS EXAMINATION:

Q When Miss Smith was still in the hospital going through this detox with the baby, pregnant, you left to go out of town; is that correct?

A I left. I was scheduled to go out of town for a work event but I was going to stay. But since she told me to leave and she was going to call security on me and Howard, or they told me or I was told not to come back. I wasn't – and also, information was starting to be shielded from me at the hospital, so it was kind of like I didn't know what to do. And I was also told that the doctor in the hospital, they had her on a plan that they felt it was a plan for recovery. And they also told her primary doctors to stop prescribing her and they were taking over the plan from there.

Q You were asked yesterday to describe Mr. Stern's relationship with Anna Nicole?

A Yes.

Q And you stated that he was her attorney?

A Yes.

Q Her publicist, her manager, he was her friend, he ran errands, he did personal things for her, he was kind of multitasking her; isn't that correct.

A yes, ma'am.

Q So Mr. Stern, although he wasn't – didn't have an outside job, did have a full-time job taking care of Anna Nicole Smith and all of her business arrangements?

A I would say from time to time, it could be considered full-time.

THE COURT: Don't try –

MR. BIRKHEAD: Overall, it was full-time.

THE COURT: Don't get slippery with me. Just stay frank and candid. We're searching, my friend. We're searching to get up that mountain. Search with me. Get me the truth. Don't get slippery. I've been sitting here. I'm 56 years old. I've seen it and I've heard it. Just be straight here. You got to help me. You all got to help me here. I got time. It's ten to twelve now. I got the Medical Examiner calling me up so don't get slippery with me. Don't get cute.

MS. BARTH: You knew that Anna wanted to bury Daniel in the Bahamas; is that correct?

A Incorrect.

Q Did you ever send her an e-mail telling her not to bury Daniel in the Bahamas?

A I spoke to her.

Q You didn't send her an e-mail saying that.

A I could have, but I've spoken to her. I probably said it over and over and over.

Q Is it fair to say that after Anna left for the Bahamas, your relationship had fairly broken down?

A For the most part, the communication.

Q You had some angry communication, didn't you?

A We had angry and we had good.

THE COURT: Let me ask you this. Take a second. I ask you this, where would you place Anna Nicole's body?

MR. BIRKHEAD: I'm still having a hard time with that, Your Honor.

THE COURT: Tell me. It's a new day today. Tell me today.

MR. BIRKHEAD: I know her son didn't want to go to the Bahamas. He didn't like the Bahamas. Let me rephrase. He considered California home and so did Anna. And I

know the reason that she went to the Bahamas was to avoid the paternity action. So for them to be laid to rest in a place that was unnecessary for them to be in is hard for me. And like I said yesterday, that once I'm proven to be the father of Dannielynn, then the distance for her to see her, to pay respect to her mother and brother will be difficult. But on the same token, splitting them up is hard for me. I probably didn't answer that.

THE COURT: You answered it. So you're telling me that Danny was essential, integral part of her life.

MR. BIRKHEAD: Yes, sir.

THE COURT: Where is he resting now?

MR. BIRKHEAD: In the Bahamas.

THE COURT: This Court has no jurisdiction over his body. Let that be clear to all the parties.

(Speech by the judge)

THE COURT: Danny's body, where is it buried?

MR. BIRKHEAD: In the Bahamas, sir.

THE COURT: And you're telling me, in front of the other two parties, that Anna Nicole Smith, her body should be next to her son?

MR. BIRKHEAD: I'm saying, I'm having trouble with the decision because of the whole situation. I'm still thinking about it because I'm having trouble with it.

THE COURT: Well, I have to decide.

MR. BIRKHEAD: Am I the final voice?

THE COURT: No, but you're an input. You're a party to this cause. Make a decision my friend. They want courts to make decisions. You come in here, you have a bunch of three, four – well you the tree, the three female attorneys. Twenty-one years ago we had our first chief judge who was a woman. The first time in the history of Broward County, we had a woman chief judge.

MS. BARTH: Could I ask just one –

THE COURT: No. This is essential. You're breaking the trend of this. Just stay with me. You've been so good.

MS BARTH: It might help your question. It is Your Honor's question.

THE COURT: Help me.

MS BARTH: Let's assume you are the baby's father.

THE COURT: You want to take it a step further?

MS. BARTH: Let's assume that. Now, why – your daughter comes to you when she's nine years old.

THE COURT: No, It's too theoretical. Assuming you're the father – here is where I thought you were going to go. Assuming you're the father, where do I place the body of Anna Nicole Smith?

MS. BARTH: The brother? The brother?

MR. BIRKHEAD: No. No. That will be stricken from the record. I've had you not sleeping. Let me, let him answer and you can say it's asked and answered.

MR. PIRTLE: Asked and answered.

THE COURT: So noted, Houston, but I'm still going to let him answer it again.

MS. OPRI: Your Honor, before he answers it –

THE COURT: No, don't coach him.

MS. OPRI: I'm not coaching, but coercion is not working for the Court either.

THE COURT: What's that?

MS. OPRI: Coercion to him is not fair. He gave you an honest answer yesterday. You want to force him to make you happy.

THE COURT: No, he gave me an answer yesterday.

MS. OPRI: He said he doesn't know because he said Danny.

THE COURT: We're going to read that transcript back. Milstein, down the road, when you get that proposed final judgment, it states it on the record. It states it right on the record cold. It states it cold right on the record. I haven't missed a word here.

MS. OPRI: I haven't either. I've got a photographic memory and he said, point blank, Danny didn't want to be in the Bahamas.

THE COURT: I'm not going to argue with you. You're a good lawyer. I'm not going to argue with you.

(Further discussion between the judge and Ms. Opri.)

MS. BARTH CONTINUES CROSS EXAMINATION:

Q You said there was only one other man, to your knowledge, that Anna Nicole Smith had sex with that you know, otherwise it was you, you guys were in some exclusive relationship; is that correct?

A Yes.

Q I'm going to show you something.

(Objection by lawyers)

Q I'd like you to read it for the record, actually?

(Further objection)

THE COURT: What is that document?

MS. BARTH: It's an e-mail from Mr. Birkhead to Anna where he says – stipulate that that's his e-mail address.

MR. BIRKHEAD: That's not the e-mail address you're asking me about.

THE COURT: What is she saying?

MS. BARTH: He is saying to her that all the times we were together cheating on me with that bar whore Tracy, Kameron –

THE COURT: Who is bar whore Tracy?

MS. BARTH: Kameron in Australia, you ex Ruggie Boy Charlie and Kim and all of the lousy, excuse my language, shit you have done to me. Think about it, Anna.

MS. OPRI: It is inflammatory. Let him answer whether that's even his e-mail address. Maybe it was somebody else.

THE COURT: What date is on that?

MS. BARTH: The date on that is Friday, September 22nd.

THE COURT: When she's in the Bahamas?

MS. BARTH: Right after her son died, Your Honor, he's sending her this e-mail. I think this is important.

MS. OPRI: This is inappropriate.

MR. BIRKHEAD: You don't know what she said to me.

THE COURT: Just answer the question, my friend.

MR. BIRKHEAD: What is your question?

MS. BARTH CONTINUES CROSS EXAMINATION:

Q Here is the question, you said that Anna was exclusive just with you and this other one person. Mr. Thompson, and that was it. Now you send her an e-mail that says she's sleeping with everybody. How do you know she wasn't sleeping with my client, too?

A Well, the answer to that question is because when I was in the hospital, when she was detoxed, the specialist came in and gave me the window of conception, and he said with technology, the margin of error was plus or minus three days.

THE COURT: You object to hearsay, don't you?

MS. BARTH: Absolutely, I object to hearsay; self-serving testimony.

THE COURT: Texas, this testimony doesn't help you.

MS. OPRI: Your Honor, we're talking about when she was pregnant and the exclusivity of the relationship during the conception period. He should be allowed to address that.

THE COURT: But we've heard that already anyway, haven't we? His answer, we've heard that answer before.

Q Yes. Mr. Birkhead, did you write that e-mail?

A I have to look at it.

THE COURT: We just heard it in the back.

A That's not the e-mail that you stated. This is an e-mail – that is one of my nephew's accounts.

Q Did it come from you, sir, or did it come from your nephew?

A No, I wrote it, but it was on my nephew's account.

Q So you wrote it. You also wrote in this e-mail, I have let you be in control by letting you walk all over me. Does it say anything in there about my client walking all over you or my client being in control or does it say Anna is in control?

MS. OPRI: Best evidence, doesn't speak for itself, irrelevant.

THE COURT: We're going to look at the testimony. He's almost an ally for what you're here for today.

MS. BARTH: I don't disagree, Your Honor. But remember what happened to my client yesterday based upon his testimony was that everyone is sitting here saying that he's some sort of ... Svengalli.

THE COURT: I see. So you want to clean that up.

(Further exchange between The Court and Ms. Barth)

MS. BARTH CONTINUES CROSS EXAMINATION:

Q Did you write a letter or an e-mail to Anna at some point – again, I think it was September 26, 2006 – where you said, I cannot believe you’re going to bury that kid there. Send him back to the land where he lived, not the place that took his life. Use some of the picture money. Did you say that to Anna Nicole in an e-mail?

(Objection by Ms. Opri)

Q Did you say that?

A Yes, I did.

THE COURT: Let him read it. He can do it now.

A Yes, I did say that.

Q I ask that be offered into evidence, Your Honor?

(Exchange between The Court and Mr. Milstein)

Q I would ask you to look at this e-mail dated September 22nd. I believe that was twelve days after the death of Daniel. Can you read it for me, sir, from the start?

MS. OPRI: Go ahead, please.

THE COURT: You’re going to read it to yourself?

Q Please read it out loud.

A Then your sick psycho ass puts my cross necklace on Daniel for the baby photos? How could you? Didn’t you see what that did to me to see those photos? I am not giving up. I am going to see in writing that I am not the father because I have to think that no real woman, no real mother, no one with a head could tell a man with no kids, especially after a heartbreaking and devastating miscarriage, that he was a daddy again and it not be true. No one could or should do that to anyone, not even you, the devil.

Q The devil?

A Because she previously told me.

(Exchange between lawyers and The Court)

Q Did there come a time where you received an e-mail from Anna Nicole – this is not the one I’m showing you, by the way. But did there come a time where you received an e-mail from Anna Nicole where she said, stop going around saying that it’s you baby? Did you receive an e-mail to that?

(Exchange between The Court and Lawyers)

QUESTIONS BY THE COURT OF MR. BIRKHEAD:

Q This woman, would you describe her as a woman who had a fragile nature?

A Not really, Your Honor. She was usually tough.

Q She was tough?

A And she was argumentative and in those in-betweens were back and forth were just as nasty on each side. And I had anger because my child was taken from me.

Q Did you feel by filing the paternity cause of action would affect her emotional state.

A No, sir.

MS. BARTH: Why didn't you do it before –

THE COURT: Let me take this a little while. When did you filed that cause of action for paternity?

A I want to say October.

Q When did Danny die?

A September 9th.

Q So a month after Danny died, you filed a cause of action?

A Because I was trying to wait.

Q I'm not asking for an explanation. It's yes or no.

A Yes, sir.

Q Do you think a cause of action filed against an individual puts tension into their body?

A Yes, sir, it could.

Q Do you think it causes a lot of pressure to an individual?

A Yes, sir.

Q Did you think that Anna Nicole Smith, at that time when you filed that cause of action, was going to have additional stress in her body?

A Yes, sir.

Q Did you think she could handle that additional stress?

A Yes, sit.

THE COURT: Do you want to proceed?

MS. BARTH: Yes, I do.

MS. BARTH CONTINUES CROSS EXAMINATION:

Q Mr. Birkhead, I would ask you to read the e-mail that was also sent on September 22nd, 2006. Could you read that, in your own words?

(Exchange between the lawyers and The Court)

Q Mr. Birkhead, can you please read that e-mail that you sent to Anna, again, twelve days after her son died? Please read that to me.

A To make me look bad, Anna, come on, what have I told what I know about everyone. You need to go to the nearest church and pray that you won't be in the fire pits of hell if something happens to you because you're already headed there anyway. Now, I don't remember writing that.

(Exchange between the lawyers and The Court)

MS. OPRI: Did you write this, Mr. Birkhead?

MR. BIRKHEAD: I'm saying the other ones I remember.

THE COURT: Don't explain.

MR. BIRKHEAD: I don't remember writing this particular e-mail.

THE COURT: You think you wrote it?

MR. BIRKHEAD: No.

THE COURT: You don't think you wrote that memo?

MR. BIRKHEAD: Not this particular one.

THE COURT: How about the other ones you wrote?

MR. BIRKHEAD: Yes, sir.

THE COURT: But his one, you don't know if you wrote?

MR. BIRKHEAD: No, sir.

MS. BARTH: Same e-mail address on there, Mr. Birkhead.

MR. BIRKHEAD: It's a printout. It says the same e-mail address.

(Exchange between the lawyers and The Court)

MS. BARTH: That she should burn in the fire pits of hell.

MS. OPRI: And she's headed for death just like Daniel, we'll stipulate to that, because she is dead today. We'll stipulate to that.

MS. BARTH: I would object to have that stricken from the record, Your Honor.

MS. BROWN: Your Honor, there's been commentary throughout by Ms. Barth.

THE COURT: The lunch hour is coming.

MS. OPRI: I need some juice.

THE COURT: We're moving to a new subject. How many more questions do you think you've got?

MS. BARTH: No many.

MS. BARTH CONTINUES CROSS EXAMINATION:

Q You knew that Anna was estranged from her mother; is that correct?

MS. OPRI: Asked and answered.

THE COURT: No. No. No. You have a continuing objection.

MS. OPRI: Thank you.

THE COURT: You can answer that.

A Yes, I did know that they had not the best relationship.

Q How would she describe her mother to you?

A Sometimes she would curse and say things and then sometimes she would say she wanted her mom, she wanted her mom, so it was all over the spectrum.

QUESTIONS BY THE COURT OF MR. BIRKHEAD:

Q She was all over the spectrum?

A About the way she felt about her mother. I think it depended on what she was doing in her life at the time.

Q Or was it also how much medication she had or both?

A Sometimes.

Q It was her life, it was the medication she was on, wasn't that having an input on her description of her mother?

A I'm sorry, One more time, Your Honor.

Q You're listening. Give me an answer.

A Sorry, I didn't hear you. I apologize.

Q That's all right. Was it her health and the pressures of the day that affected her description of her mother?

A Yes, sir.

Q When would she say she loved her mother, what type of day was that?

A When something really, really bad was going on in her life or if there was something that should be a joyous occasion, like I said, she had a pregnancy, or just when she'd see people with other families, she'd say, I wish I had my mommy.

Q So nature came into play, when there's crisis' in her life, she said mama?

A Yes, and she did tell me – she told me bad things about her mother and she told me about things the way her mother would act and I would tell her sometimes when she would act that way, I would say, you know, you're acting the same way you said your mother did.

THE COURT: We're getting into Freud. I don't know how far we're going to go. We all have these memories.

MS. BARTH: I just want to get into her mother with you.

MS. BARTH CONTINUES CROSS EXAMINATION:

Q You wrote that e-mail; is that correct?

A Is this the same one?

Q That's the same one you just read before.

A I didn't read it.

Q Could you read it to us now?

A I don't have any rights now but I will have plenty in a few months. You are acting worse than your mother. You are acting worse than your mother. You look desperate begging people to be your friends and asking people 4.99 to see my baby, how desperate, haven't you stole enough.

Q Your Honor, I ask that be moved into evidence.

THE COURT: We're going to give you another two minutes.

Q Mr. Birkhead, you are currently represented by a woman named Babette Perry, are you not?

A I have no representation.

Q Does she represent your counsel? Is she negotiating any deal on your behalf right now?

(Objection by Ms. Opri. Exchange between The Court and the lawyers)

Q Mr. Birkhead, Anna Nicole didn't want you publishing pictures, did she?

A No, that's incorrect.

Q Do you see the document in front of you, do you recognize what that is?

THE COURT: Date? Date?

A What is the date?

Q 1/3/06 looks like to me.

A I don't know what the last number is. It says 1/3 something.

Q Look on the second page. Maybe that's better.

A It does say 01/03/06.

Q Is that your handwriting on there, Mr. Birkhead?

A Yes, it is.

Q What is that document?

A It says it's an agreement not to communicate with the media.

THE COURT: I missed that.

MS. BARTH: An agreement not to communicate with the media.

THE COURT: But wasn't that prior to her pregnancy, the second pregnancy?

A When this contract – when I was asked to sign this contract, it was right at the time of conception and she also told me that she was also pregnant and if I didn't get over there and sign this, that she wouldn't ever let me see my child.

Q So you signed that document under duress; is that your statement?

A Yes, ma'am.

Q Could you tell me what the first paragraph of that document says?

(Objection by Ms. Opri)

Q Sir, you just testified that the reason that you signed this was because she told you she was pregnant and she said she wasn't going to let you see the baby unless you signed it?

A Her and the baby.

Q You didn't know she was pregnant, sir, until February of '06?

A Ma'am, you're incorrect. She told me she was pregnant.

THE COURT: You're on the mike too tight, my friend.

A She told me she was pregnant as a result of sexual relations that happened in November prior before she departed herself to Carolina and called me specifically and asked when is the last time we had sex because she thought she was pregnant when she came back from South Carolina and I have those texts and e-mails.

Q Sir, you testified yesterday that she told you in February – February 14th, Valentine's Day, that she was pregnant?

A You're correct.

Q But now you're saying you signed this document because she told you she was pregnant, this document is signed in January?

A I said she told me that she was pregnant in January. It was a false alarm and then she told me, again, in February that she was pregnant a second time and she's told me multiple times over the relationship that she was pregnant and it wasn't the case, so this was one of them.

Q So if she was pregnant January 3rd of '06, doesn't that change the date of conception from what you previously testified to?

A Like I just said to you once and I'll say it again, she told me she was pregnant when she came back from South Carolina. It wended up not being the case. We took a home pregnancy test. It wasn't the case and that's when I signed this document and I have e-mails to prove that.

Q Despite the fact that you signed this document, you have, in fact, done such things as communicate with media?

A Yes, but let me tell you this –

Q Sir, just answer my question, please. Have you communicated with the media; yes or no?

A Yes.

Q Have you sold pictures, including television, print, film and digital?

(Objection by Ms. Opri)

Q Did you, in fact, despite signing this agreement with Miss Marshall, did you then go and sell television, film, print and digital images of Anna Nicole Smith?

A Yes, I did. And the reason –

Q Yes or no, sir, did you do that?

A Yes.

Q And did you understand that the reason that you were entering into this document was specifically because Vickie Lynn Marshall, Anna Nicole Smith, didn't want anyone selling pictures of her without her receiving the monies; is that correct?

A No.

Q Isn't that what the document says?

A But that wasn't why I signed it.

Q Does the document say if you do this, that those monies belong to Anna Nicole Smith, now they belong to Dannielynn; is that correct?

A Which still belongs to me.

Q Did you give any of these monies or are they being held in trust for Dannielynn Marshall Stern?

MS. OPRI: Your Honor, this is beyond the scope.

THE COURT: I'm allowing it. Overruled.

A Repeat.

Q Any of the money that you have received from selling all of these things that you said you weren't going to sell in this contract, are they being held in trust, are these monies being held in trust for the minor child, Dannielynn Hope Stern?

A No, and there's reason because I've been selling photographs –

Q Yes or no, sir?

THE COURT: Yes or no, and then your lawyer will explain.

A No. The answer is no.

(Discussion between the lawyers and the judge)

MS. BARTH READS BACK A PORTION OF TESTIMONY FROM THE DAY BEFORE OF MR. BIRKHEAD THAT THE JUDGE ASKED FOR:

MS. BARTH: All right, Your Honor, I believe that it states here:

But you know, since Daniel is there – I mean, I guess the problem is that I'm having with it is that I'm a California resident. If and when I get the daughter that I know I believe is mine, she will not live in the – it says palm.

THE COURT: Fine.

MS. BARTH: So is that a place she is going to travel to see her brother and mother's graves? The Court: It's a long car ride. Or do you know – consider upon agreement Daniel back here and I – it says mate to do that.

THE COURT: You haven't gotten to the nitty gritty.

MS. BARTH: The Court says, but that is a serious matter, exhuming a body, it is a serious matter, something we'll talk about. The Witness: You know I don't want to separate the mother from child, however.

THE COURT: Who said that?

MS. BARTH: The witness.

MR. BIRKHEAD: However what?

THE COURT: Is there anything after that?

MR. BIRKHEAD: Was I cut off?

MS. BARTH: The Court: Danny from Anna Nicole Smith, but I don't want them in the Bahamas so I am having trouble with that.

THE COURT: Fine, that's what we talked about. That's fine. Your answer today was consistent. It gave us some insight. Any other questions?

MS. BARTH: I think we're finished, Your Honor. Thank you.

THE COURT: Houston?

MR. PIRTLE: Do I go now?

THE COURT: My friend, Houston, yes.