

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO: 07-0824**

MS. BARTH EXPLAINS THE ISSUE BEFORE THE COURT:

(1)

MS. BARTH: ... I want to be very clear about the petition we are front of Your Honor on. Florida has jurisdiction over the body of Vickie Lynn Marshall, otherwise know as Anna Nicole Smith. Florida does not have jurisdiction over Danneilynn Hope Marshall Stern.

Mr. Tunstall and I are here properly before Your Honor, as interested parties, regarding simply the issue of what happens to the remains of Ms. Marshall and I think we are in agreement on that, Mr. Tunstall and I. What we do not agree on is where Ms. Marshall will finally be laid and that's the petition that's before you.

If I could, I know it's hard to listen to me, but it is a very complicated thing, Your Honor. But his Court has no jurisdiction over Dannielynn Hope Marshall Stern. She was born in the Bahamas, she's never been to the United States, she does not have a United States passport. Her mother was domiciled in the Bahamas and was on vacation in Florida here merely for several days to pick up a boat.

MR. TUNSTALL: I agree with counsel.

(2)

MS. BARTH: I am, But however, you know I really feel that Mr. Birkhead's position here is, he is going to testify as a witness for Ms. Arthur in this case. There is some very problematic things going on in here, including the fact that Ms. Arthur filed an affidavit in Mr. Birkhead's attorney's case, which is a closed proceeding. So I don't want to disclose more than that. But they have stated to Your Honor that they don't have a dog in your fight.

(3)

MS BARTH: I understand, Your Honor, here what we are saying is that the determination of paternity may be relevant to this. I will represent to you that we have a less restrictive alternative to deal with it in a timely fashion, that is to let Mr. Milstein, as an independent person of the court who has, by all agreement, has been put into this position, is the only one that can truly represent Dannielynn. And the other thing I would like to say is, save this baby, save this, you know, we have to please understand that as we sit here today, my client just lost, a week ago. Someone that by all testimony is – a 12 year relationship and today he is here for the simple purpose of putting somebody he loved in a resting place and then to right now talk to – right now to put him through a paternity issue.

(4)

MS. BARTH: Petition for the recovery of bodily remains, that the petition that we bring before Your Honor. As one small housekeeping matter, you just did say to us that we were not going to personally attack each. I just can't sit here because Ms. Opri did make a statement to my client that he actually killed Ms. Smith.

MILSTEIN AS GUARDIAN AD LITEM:

(1)

THE COURT: I am going to do some housekeeping. I am appointing a lawyer who is – I met him in a case one time where you want him when the hurricane comes. He doesn't move. He is going to represent, as a Guardian Ad Litem for the child in the Bahamas. You can object if you want on the record, but give us your card and he's coming from Miami.

I took him because he fought us one time on something and he did not bend. And I called him earlier this morning and he was in his office. What, I called at 6:30 in the morning and I said, all I want you to do is a good job. That's all. I asked him to do this and his name is Richard Milstein.

My only relationship to him is he went to the University of Miami Law School, probably, maybe a little bit before I did, and I went there for the last year of law school. Otherwise, I don't know him from a hunk of coal.

(2)

THE COURT: Here is the issue I need you all to ponder for a moment. You look at the statute and the statute says next of kin, the child. So now we have a Guardian Ad Litem that is going to speak for the child. We have Mr. Milstein. We have him. Stay with me for a minute. Let me pose this.

Now, the child, if we knew who the father is of this child, then the father would be the natural guardian of this child, could then inform the Court what the child, as the natural guardian, would want to do with the body of Ms. Smith. Is that logical?

MS. BARTH: No.

(3)

THE COURT:

.... Richard Milstein, Esq. as Guardian Ad Litem, shall deliver of mail copies of any written report of finding of his investigation, evaluations and recommendations to this Court filed in the proceedings. Petition for compensation and discharge and notice of hearing on the petition to all known parties in all proceedings had in this matter.

This Court reserves jurisdiction to retain – to consider and award appropriate fees and costs to the Guardian Ad Litem upon proper notice and motion and notice.

Also, Mr. Milstein is aware that he may be pro bono on this case and we will just see how it works.

(4)

MR. MILSTEIN: Your Honor, the issue for the child is to have her mother rest in peace in a place that will give her dignity, that the child, as she ages, will have a place to be able to visit her mother and not the circus that goes around for her life, and we hope that this will be resolved soon. The child needs the have that comfort, even though she is less than five months in age, in the future, she will read enough of the tabloids.

HOWARD K. STERN IS THE FATHER OF DANNIELYNN:

(1)

MS BARTH: Your Honor, with all due respect, at this point, my client is the father of Danielynn Hope Marshall Stern. There is a proceeding to overturn a legal presumption. My client's name is on the birth certificate. My client is the named father under California law, under Bahamian law, under Florida law.

MS. HASS: No, not under Florida law. That is absolutely incorrect.

MS. BARTH: All right. Not under Florida law.

(2)

MS. BARTH: Here is the thing. We have right now, a dad. We have a dad. And we don't overturn who dad is to do this. Right now, we stand here, as nominated executor, the best friend this girl ever had and the father of this baby, and legal father. As we sit here today, no court has said he is not – and this paternity issue has not been going on for a month, Your Honor, it's been going on for months.

(3)

THE COURT: You are going to have these alleged fathers belly up and give their DNA?

MR. RALE: That's the order of the court.

THE COURT: Do these fathers submit it themselves?

MR. RALE: No. We are in the process.

THE COURT: How long is it going to take?

MR RALE: It was going to occur on January 23rd and everything got stayed because we had a problem with the enforcement.

THE COURT: And the fathers were going to do this?

MR. RALE: Mr. Birkhead and the DNA from Danielynn and –

THE COURT: Her client too?

MR. RALE: That's not part of it. It was Mr. Birkhead's request for paternity, so it was his DNA and the child, then they added in Anna Nicole.

THE COURT: Why do you want to take the DNA of the child without having to bring in the whole global group? See, I go back to my diagram, the child. I think this child should know who her father is in this whole proceeding, you know, let's cut to the chase.

MR RALE: I understand, Your Honor.

THE COURT: I am not going to deal with a vacuum. I need to know who the father is, Don't I?

MS. BARTH: No.

(4)

THE COURT: And they say when a child is a baby, when it's first born, it has to have the love.

MS BARTH: It has the love of my client. I don't know why we are getting the impression that this baby is out there on a raft. She is being loved and cared for and held and cuddled and kissed.

THE COURT: Well, she can have more than one love.

MS. BARTH: She is having the love of her father – of the person her mother loved. There is no greater love than the love of Mr. Stern and his parents.

(5)

THE COURT: It's premature, but I am going to throw it out there. This issue, do we know the father to help me understand where the body – Ms. Smith's body should be buried?

MS. BARTH: NO.

(6)

MS. BARTH: (referring to Howard K. Stern) He can't. They filed a restraining order saying they can't take his baby daughter out of the Bahamas. He can't leave her. He can't leave her there.

You want him to leave that baby alone? Are you kidding me? Look at what is around you. He can't leave her alone.

MR RALE: There was a break in in the Bahamas –

MS. BARTH: I didn't mean you personally. There was a break-in-

MS. HASS: They came here to buy a boat for five days without the baby.

(7)

Exchange between Howard K. Stern and Mr. O'Quinn

Q Have you ever owned any home in that country?

A No, I have stayed with Anna at her house there.

Q You have lived in Anna's house?

A That's correct.

Q Do you still live in Anna's house?

A Yes, with out baby.

(8)

MS. BARTH: In any fashion that it consents to the Florida jurisdiction over the minor child in any fashion, I object on behalf of the child's father on the birth certificate, Howard K. Stern.

(9)

MS BARTH: ...-- this thing seems to come into one giant snow ball and I want Your Honor to be completely confident that we are primarily concerned, especially my client, with the welfare of his daughter...

(10)

MS. BARTH: But if we are talking paternity in the state of Florida, there is damage, because we shouldn't be talking about it.

(11)

MR RALE: Let me make it clear. In California, let's just assume for argument sake, and I am trying to afford Mr. Birkhead's respect as a litigant. Just like Mr. Stern, they both believe they are the father but under California law, let's just assume that Mr. Birkhead

was the father. That is not the end of the story for a judgment of paternity. It may very well be.

TRASHING MRS. ARTHUR:

(1)

MS. BARTH: Please let me finish. Please let me finish. I have people that loved her, that stood by her, that were actually there, who actually knew her. The woman sitting across from me has not laid eyes on that young lady since 1995. She has never laid eyes on her granddaughter. And she sits here today, she wants to take her to Texas and put her in the ground, all alone. That is what this is about, That is really what this is about.

And it's sad and it's sick.

(2)

MR. TUNSTALL: Your Honor, if I may. See, counsel did just exactly what I said they are trying to do. They are trying to trash my client. They are trying – my friend said this and I saw this document and I will tell you what it really does say, but I cannot show it to you because there is a media circus. Judge, the law takes care of these things. It is set up to deal with the way that the next of kind disposes of the remains.

MS. BARTH: But estranged –

MR. TUNSTALL: Let me finish.

MS. BARTH: Estranged, estranged.

Talk to me.

(3)

MR. TUNSTALL: Judge, this is – they want to trash my client in an attempt at some kind of emotional appeal. My client is the woman's mother. They want – she wants to take her home to be buried with the rest of the family. That is what we are here on.

RON RALE ON THE FUNRAL ARRANGEMENTS:

RON RALE: Your Honor, on that issue, I am not sure at what stage of the embalming process is reported, but I know. I guess this is really on behalf of Howard Stern as a friend and on behalf of Anna Nicole, I am trying to not get into intent, but I will say that Howard Stern has a specific casket and there is a dress that Anna Nicole's dressmaker is preparing, which Howard had wanted to prepare, with intent for a casket and we would like to be considered.

WAYNE MUNROE:

(1)

MR. RALE: To add to the list of interesting people to talk to, you may to talk to Wayne Munroe, who is an attorney in the Bahamas, who has been advising on the probate issue. And as I understand it, they don't do it quite the same way where you could not, like, in

certain states, you can't walk into court and get them issued quickly. But I also believe in the Bahamas – but, I believe in the Bahamas, that the executor may act without the Will being formally admitted.

(2)

MR. RALE: Yes. But I am in communication with Wayne Munroe. He is Bahamian counsel and he is the President of the Bahamian Bar Association and he will be serving as counsel to the probate estate, which will be opened in the Bahamas.

Now, and to the extent that Your Honor is going to talk to anybody, I would also request that you talk to Wayne Munroe to inform this Court with regard to what Bahamian Law provides. I will represent that with conversations with Mr. Munroe, they were –

(continued after other comments)

Under – as I understand it, under Bahamian law, effective immediately, Mr. Stern as Executor or myself as successor, has not only the right, but the obligation to obtain the remains of Anna Nicole and there is no further order that would emanate out of the Bahamas.

In fact, the way the proceedings start there, you would have the equivalent – I don't know what they call it in Florida, but it's what we call in California, emergency letters of testamentary, something to give a license to the Executor to go ahead. You don't need that in the Bahamas.

In fact, you have a duty to go and obtain the body. And here we are in Florida and whether it's Mr. Stern or myself, we have the duty, this is in bear essence, this is a pending Bahamian proceeding, even though it's not officially filed, because we don't have a death certificate. And then acting – because that's the domiciliary area of Anna Nicole Smith, because we are acting in that capacity. So to produce that Will in California is basically –

MR. TUNSTALL: Florida

MR. RALE: Excuse me, Florida. To produce it in Florida would be in a way an affront to the privacy of Anna Nicole and to the jurisdiction of the Bahamas, which we want to give the respect to.

THE CUP INCIDENT:

MS. OPRI: Your Honor, before we do that, I just want a little housekeeping. An Event happened yesterday and it was all over the news and I'm just concerned about it. There was a video and recording that Ms. Barth removed my client's drinking cup from the stand and I just would like to know what that was about.

MS. BARTH: I can represent –

THE COURT: I'll tell you what, I'm not getting into this. I'm not getting into this. I'm just -- I've been impressed by the conduct of the attorneys in this case. I want to keep this dignified with decorum and respect. I'm not getting into it. We'll move on.

OPRI'S SUMMATION OF THE PATERNITY BATTLE:

MS. OPRI : (On the telephone)

Your Honor, I am from New York like you and I am going to be very specific. After many, many delays by Anna Nicole Smith, the Judge said the DNA testing will be complete no later than February 21st and I will have Ms. Smith come to my courtroom. The next day, Anna Nicole died. On February 8th, the day she died, I was in touch with many people, including Virgie, who indicated that the body was laying there and that there was no one there to claim the body.

Within an hour, I heard Dr. Perper testifying that he would not release the body unless he had a court order. Ms. Virgie Arthur indicated she was rushing to Florida to secure her daughter's body. Then I heard that Howard K. Stern wanted to release the body and the DNS, which cause us to immediately secure Florida counsel to run there to enforce the standing order we had.

On February 9th, after receiving telephonic ex parte notice with no paperwork being sent to us, with no declaration being notified to us, Mr. Ron Rale sought to go into court, and this was Friday morning, the 9th, to secure an order immediately overturning Judge Schnider's order (this is the California Judge), telling him, you have no jurisdiction and to allow the body to be released. Not explaining to anyone, Your Honor, that they wanted to take the DNA of Anna Nicole Smith with them.

After that we got on the phone and Mr. Ron Rale then announced, to us, that he had gotten Perper coming on telephonically to argument. We had no time to get Dr. Baird, the other DNA expert on the phone. We couldn't get Susan Brown on the phone. We are in a situation that this order is now withdrawn and we don't care. What we are fighting for is going to be the subject of many hearings, I think, because Judge Schnieder is subsequent – who is awaiting a telephone call, or we have requested to get involved in this, he has indicated he just didn't know if he can tell the Florida jurisdiction what to do and that Florida determine that they have control over the issue of DNA and the body that is for them to decide.

What we have now is Mr. Ron Rale and Ms. Krista Barth making representations to you that you do not have jurisdiction. They are making representations to Judge Schnider that he doesn't have jurisdiction. Because simply put Your Honor, they are trying to interfere in Florida the effort of the DNA testing. We do not have any interest in who gets the body. That is not for us to say at this point in time unless and until this Court in Florida determines that Dannielynn may, in fact, have any right as next of kin. I don't know that. I will leave that up to your Honorable Court. In terms of what we are arguing before you, we have a standing motion to paternity. That order has never been vacated. The judge has never ruled that he does not have jurisdiction to enforce it.

THE COURT: Is this in California?

MS. OPRI: This is in California, Your Honor.

And the Judge Schnider situation is simply because Ron Rale ran into court and did sandbag us. And I will tell the world about that.

(2)

MS. OPRI: Howard K. Stern has received a contempt proceeding for his presence in the California court, so he has to be there to avoid a bench warrant.

HOW HARD THEY TRIED TO KEEP HOWARD FROM HAVING TO COME TO FLORIDA:

(1)

MS. BARTH: Your Honor, I am concerned with the objection that has been raised at to my client not being able to be here in person. As I indicated to you yesterday, it's just not possible. He can't leave this baby right now.

THE COURT: It's up to him.

MS. BARTH: But I would like, as an incarcerated person, they are allowed –

THE COURT: We are getting into closing argument again.

MS. BARTH: I am making the argument for his telephonic appearance, because they have an objection and I want to have on record.

(2)

MS. BARTH: I just can't have my client leave there, and the prejudice to him is so great.

THE COURT: You've stated that already.

MR. TURNSTALL: Well, except there's one on that point.

THE COURT: Yes.

MR. TURNSTALL: The fact is that Mr. Stern and my client's daughter left that kid to come over here to buy a boat and that's when she passed away at the Hard Rock. They also left the kid to come over here for a boxing match.

(3)

RON RALE: You Honor, this was before there was a break-in the house. And I can tell you that there is great anxiety from different sources that somebody might take Dannielynn.

(4)

MS BROWN: He's in the Bahamas (referring to Howard K. Stern), he's not leaving. That is a serious concern. If I am going to question him, I think I have a right to look across the table –

MS BARTH: But you are not a party to the burial. They just said we have got no dog or horse or dog, horse, they are not in this race. This is our race. And they come with unclean hands. They tied my client's hands behind his back and said, you can't bring the baby out of the Bahamas. She went in, serious, serious, serious. Don't take the baby out BAhamas or something terrible is going to happen and I don't know anything, other than it happened and I heard there was order issued. I don't know anything.

MR. TUNSTALL: Mr. Stern filed this petition in this Court, he is the petitioner. He is a party, not just a witness. I want him here, so I can hand him documents or whatever I need to do. He has chosen to exercise the jurisdiction of this Court, I want him here. There is no reason why he can't be here. As far as caring for the child –

MS. BARTH: The conflict if he comes here is that he has to leave Dannielynn alone because they filed an ex parte or some sort injunction, I don't know what it was, but there is injunction. Please, you don't need to look at me like that.

MR. TURNSTALL: I didn't say anything. Is it okay if I look at you?

(5)

MR. RALE: I am anticipating – I don't want to give anybody any ideas, but I am weighing this, but because in my mind, I am thinking about what is wrong with the big video screen of Howard Stern.

(6)

THE COURT: I want him here. Because you know, this is a struggle for all of us. Let everyone perspire here.

MR. RALE: But what I am thinking about, Your Honor, is I am hopeful that because everyone knows Howard Stern is coming here, What we don't have a flurry of other things to – try to – as if he is submitting to the jurisdiction in some other capacity.

THE COURT: Let the record reflect that he is here on the limited purposes of testifying on the issue for Tuesday.

MR. RALE: Thank you.

MS. BARTH: With is the burial issue.

MR. RALE: Thank you.

EXPLANATION OF THE INVESTIGATION BY ATTORNEY FOR THE SHERIFF'S DEPARTMENT. (February 15th session – morning)

MR. LYNCH: Judge, if you would like me to explain the situation?

THE COURT: Yes. Please.

MR. LYNCH: Judge, the Seminole Tribe currently has an investigation ongoing into the matter. The Broward Sheriff's Office, which operates the crime lab, is ready to assist in that investigation in any way that is requested, including the examination of DNA and evidence.

THE COURT: Therefore, the body of Ms. Smith, you may need to continue to examine that body?

MR. LYNCH: It is possible.

MS. SCHWARTZREICH: If we are asked by the Seminole Tribe to assist in any investigation, the Broward Sheriff's Office will absolutely do that.

THE COURT: But for the folks in this room, as everyone knows, we have well over 25 cities in this county. I think we were up to 28 or 29. I have not been on the campaign trail in a long time, so I don't know how many, but we have got a lot of cities. The Sheriff's Department, where I was a legal advisor for the Sheriff way back in, I guess, 1977, the Sheriff's Department performs the tasks for a lot of these little police departments or smaller police departments and some of the tasks that they do, the Sheriff's Department does, is what we are here for right now.

The Seminole Police Department will not do some of the things that we are asking them to do. They turn it over to the Sheriff's Department. So the Sheriff's Department is now telling me they may be asked to do further death examination of this body.

MR. TUNSTALL: May I?

THE COURT: So everything I know, I will tell you. They came to me in an emergency manner and I'll tell you exactly what I know and when I know it.

MR. TUNSTALL: Your Honor, may I inquire of the Sheriff's counsel as to ask them a question about this position.

THE COURT: He is an attorney.

MR. TUNSTALL: I know. I am asking about their position.

THE COURT: You can ask the Court.

MR. TUNSTALL: Judge, what I want to know, number one, as far as the Sheriff's Office is concerned, is the Sheriff's Office satisfied that it has completed it's investigation, and number two, has there been, as we speak, any request by the Seminole Tribe, which was the location of the death of Anna Nicole Smith, whether or not they have, in fact, said, we want you to do something else?

THE COURT: See, see, there are chains here. There are chains on my legs at this point. I am not going to deal in a vacuum. I have been down this road a long time and I just know through my instincts being here a long time, I sort of know what the answer is going to be here. I am going to let him answer if he is comfortable with it. But I got a big hunch, they are going to want to do more examination on that body. But I am going to let you answer, my good attorney from the Sheriff's Department.

MR. LYNCH: As with any criminal investigation, we don't reveal what that investigation is.

THE COURT: Is it a criminal investigation?

MS. SCHWARTZREICH: It's a Seminole Tribe's investigation, it's not the Broward Sheriff's Office investigation. We will act in whatever manner we are asked to assist in. We will be happy to assist in any way we can. But again, let's be very clear, this is the Seminole Tribe's investigation, not the Broward Sheriff's Office.

THE COURT: You are back up. You are basically back up?

MR. LYNCH: Correct.

THE COURT: They are going to decide where they are going to go and you back it up, you provide the services. And that's how you don't step on one another's jurisdiction and toes.

MS. SCHWARTZREICH: That's true, and we provided the crime lab.

MR. LYNCH: We do not reveal an investigation prior to the conclusion.

THE COURT: So, something is pending over there. I would – it would be moot, at this point, for me to say, do this or do that with Ms. Smith's body, because they are examining that body. I think that may have changed the dimensions.

MS. BARTH: It certainly does.

THE COURT: That is why I let you know.

MS. BARTH: It certainly does.

THE COURT: I don't want to throw you a curve ball.

MS. BARTH: Our position on that would be, whatever Your Honor needs to do, everybody here, I am sure Ms. Marshall's mother and certainly our position is that quickly, you know, quickly.

THE COURT: We are going to bring in the medical examiner. We want to give dignity and respect to Ms. Smith's body. That's a given.

MS. BARTH: And I would request Your Honor issue something that says, if the Seminole Tribe decides that they want to proceed with this, that they do this within a very quick and finite period of time. Because, Your Honor, this is something that I know is very important to everyone here. That whatever the issue is, we are not saying, do not do

the investigation, do not collect DNA, we are not saying any of this. We are saying, quickly, please.

THE COURT: Let's talk about quickly. I am quick. I don't know about every other agency, how quick they are. My desk is clear. I'm quick. Very quick. We wrapped up something yesterday in about an hour that could have taken about a week. And I set a tone yesterday – I set a tone that brought us all together pretty good. But this is not going to be quick. You want it to be quick. You state in on the record to be quick, now let's see how quick it is.

MS. BARTH: But what I am asking of Your Honor is, Your Honor has the power to say to them, yes, we will keep this body for a certain – how long is too long? At what point –

THE COURT: Well, we go --

MS. BARTH: Enough is enough.

THE COURT: We have to speak to the medical examiner. We have a duty. I am going to perform my duty. With the help of the Lord, I am going to perform my duty.

DISCUSSIONS INVOLVING THE WILL

(1)

THE COURT: How about making a note and asking them about leaving out future children in the Will. I never saw that in all my years. I want him asked that question. I asked the Guardian Ad Litem. I got Dr. Perper on the phone. We are going to proceed and he is going to call in about the embalment.

MR. MILSTEIN: Okay.

THE COURT: You know, let's call him.

MS. BARTH: Your Honor, I want to introduce Mr. Ross. He is the probate counsel in California.

THE COURT: The clause. Is that a clause that is standing in those Wills, because I have probated some –

MR. ROSS: No, it is extraordinary.

THE COURT: Have you ever seen a clause like that?

MR. ROSS: I have not.

THE COURT: I appreciate your honesty and integrity, because I have never seen a clause like that.

Have you ever seen a woman write a clause like that?

MR. ROSS: No.

THE COURT: Would any woman?

MR. ROSS: I cannot imagine any woman writing a clause like that.

THE COURT: I said female.

MR. ROSS: I heard you. There is, in fact, an explanation.

THE COURT: I would like to hear it. Give me a minute.

(2)

THE COURT: My good lawyer from California. Tell me about that clause.

MR. ROSS: My name is Bruce S. Ross for Los Angeles, California. I think as a technicality, I may not have been admitted pro hoc vice.

THE COURT: You are admitted of this case only.

MR. TUNSTALL: For which part:

THE COURT: For –

MS. BARTH: He would be on behalf of Mr. Stern as co-counsel, State of California for the ancillary proceeding.

THE COURT: Thank you.

MR. ROSS: The clause is unique. It's legally ineffective.

THE COURT: It's against public policy. So who would write a clause like this.

MR. ROSS: There is a doctrine that Mr. Kelley is familiar with in Florida and in California and I am sure my colleague, called a (unintelligible)

THE COURT: A clause like this.

MS. BARTH: She says – she later says children.

THE COURT: Are you selling that to me now?

MR. ROSS: No. I am not selling it to you or trying to sell it to anyone. You spoke to the lawyer and she is telling you that, not Mr. Lund.

THE COURT: From California?

MR. ROSS: When I was in California.

THE COURT: He just wrote in a clause like that.

MR. ROSS: There is an explanation.

THE COURT: Tell me.

MR. ROSS: I asked him.

MR. TUNSTALL: What are we doing here, Your Honor. We have got a California –

THE COURT: He wants to be an expert witness. Don't you want to hear this? It might help.

MR. ROSS: Your Honor, let me say first in fairness to counsel, that the declaration is hearsay and I have some difficulty proffering it. It seems to me if this became an issue in these proceedings, it would be appropriate to bring him here. I would respectfully suggest that the matter of interpreting the Will –

THE COURT: As you know, it's just – it's not just that clause. When you have a clause like that, the Court says what kind of draftsman is there: Who read it? Did she really read it? Then did she read the whole Will? If she read that clause, she would say take it back. There is no woman in America that would sign a clause like that.

MR. ROSS: Those are definitely issues that when the Will has been proffered for probate and I believe the only two jurisdictions which have jurisdiction over it, namely California and the Bahamas, that issue will come up. The fact of the matter is –

THE COURT: Well it's coming up right here and right now.

MR. ROSS: If I can preference my comment, the real reason in these proceedings and the only reason the Will is irrelevant, one way or the other is, what it does not say there, as Mr. Kelley points out and counsel have agreed there is no language that pertains in anyway to the disposition.

THE COURT: You are aware that the clause is in there, so don't camouflage me.

MR. ROSS: I am not trying to do that.

THE COURT: Why is that clause in there:

MR. ROSS: I will tell you based on what Mr. Lund told me –

THE COURT: All right. He is the lawyer in California?

MR. ROSS: Who drafted the Will. In fact, subject to, I believe, their right to examine, I could give you an affidavit –

THE COURT: Tell me what he told you.

MR. ROSS: I told him that considerable attention, shock and dismay has been afforded this Will.

THE COURT: What is his answer? I have no time for this.

MR. ROSS: His answer was, it was a mistake.

THE COURT: Where does he get on a word processor – you stick names in, you get clauses and it comes out. I know how Wills are written. Where did they get a clause like this on a machine?

MR. ROSS: He said Ms. Smith, according to Ms. Smith, she wanted a blockbuster, that was not her term, it was a closed, very broad, to disinherit. If there was any issue, her mother and anyone else that might come out of the woodwork and claim some family relationship. The word rather extraordinarily child, future child, which does not do what it's intended to. Future husband which does not do what it intended to. So I asked Mr. Lund –

THE COURT: Let's back up. If you go to the next page of the Will it establishes a trust initially for Daniel.

MR. ROSS: No question about that. Mid-way down.

THE COURT: When you say there is no question about that, you want the judge to buy a Will, you want me to say this Will is valid?

MR. ROSS: Actually, I don't, Your Honor, because it's not valid. If the Will is in this courtroom today – respectfully, it is not at issue –

THE COURT: Why are you trying to present in to the Court?

MR. ROSS: My understanding of it is Your Honor wanted to see the Will and you had seen a copy of the Will. I agree it says nothing about disposition of the remains.

THE COURT: No. That is not the only reason. Your co-counsel will tell you that. Help him. Tell him fast.

MS. BARTH: The Will was presented to show that Mr. Stern is nominated personal representative under the document and I think that that particular portion of the document is clear and unambiguous ultimately how the disposition comes out for Dannielynn.

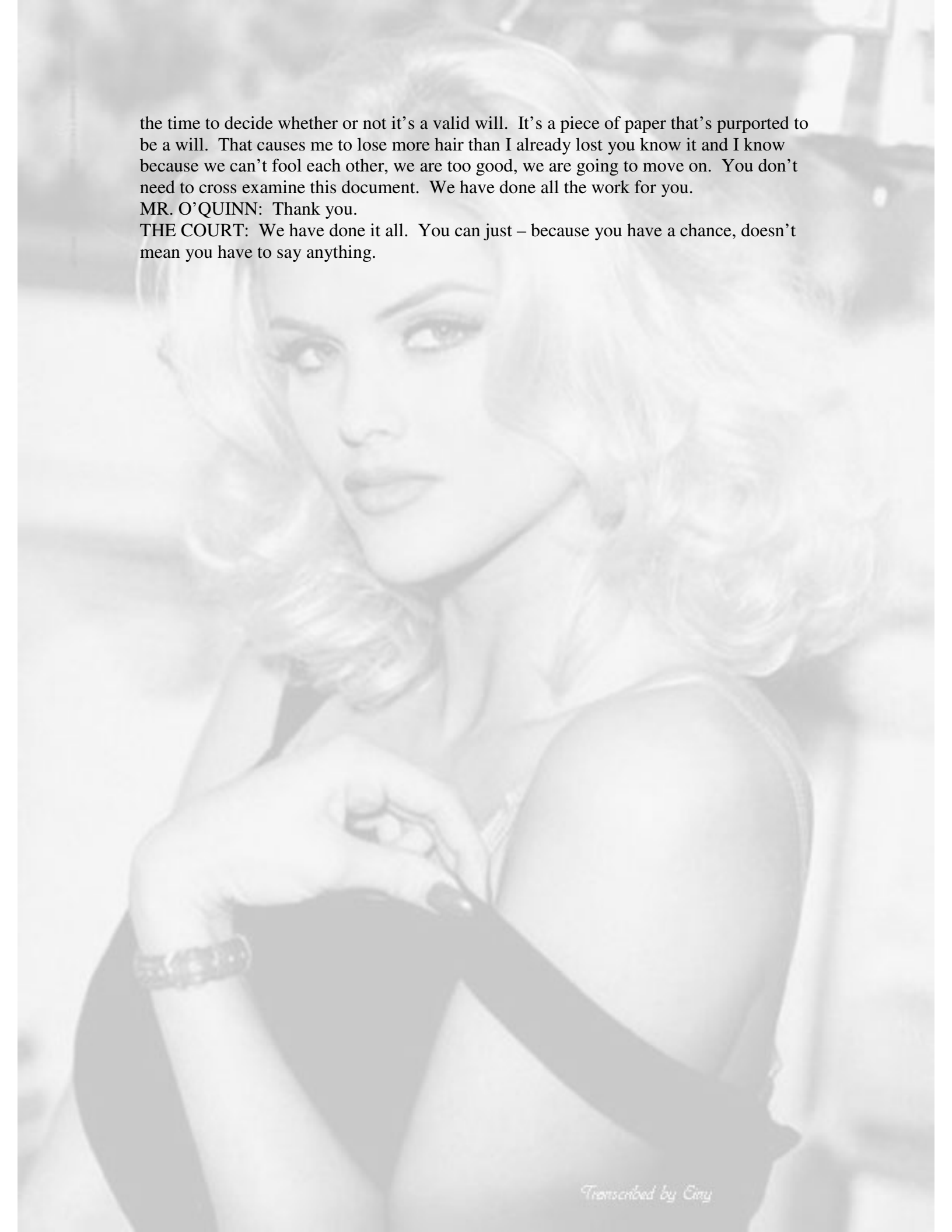
THE COURT: You always want me to look at things in an isolated way. I look at everything – you cannot tell me. You take me to a museum and you say, just look at this picture. Don't look at this wall. How can I do this?

MS. BARTH: Because the law –

THE COURT: We are – okay, California, we are done. We are going to allow her to take over now.

MS. BARTH: Because the law recognizes the illegality of certain contracts and most things say, if one provision fails –

THE COURT: You are not giving me contract law, but Rohan Kelley will tell you when a fish has a little smell, you get rid of the whole fish. It's not just to take away the clause. You got to say, did she read this Will? NO woman in America would sign this Will. What state of mind was she in? But I am telling you what I am going to do though. I will tell you it's a piece of evidence that will be submitted to the Court and it has holes like we talked about, it has plenty of holes and one day even the Bahamas or California you will try to admit it through and then you let the chips fall as they may. I don't have



the time to decide whether or not it's a valid will. It's a piece of paper that's purported to be a will. That causes me to lose more hair than I already lost you know it and I know because we can't fool each other, we are too good, we are going to move on. You don't need to cross examine this document. We have done all the work for you.

MR. O'QUINN: Thank you.

THE COURT: We have done it all. You can just – because you have a chance, doesn't mean you have to say anything.