

1 admitted into evidence as Plaintiffs' exhibit number 9.)

2 MR. GODWIN: Ms. Maldonado, those are the only
3 questions I have. Please answer any that the Court would
4 have or respective counsel.

5 THE HONORABLE MALPHRUS: Cross examination?

6 MS. JONES: I'll be happy to start, Your Honor.
7 This could take a while. I just wanted to advise the Court
8 that in case this was a good place to take a break.

9 THE HONORABLE MALPHRUS: How long do you think a
10 while is, Ms. Jones?

11 MR. GODWIN: She tends to overestimate her time.

12 MS. JONES: Well, thank you for that. I was
13 wondering.

14 I think I need 30 minutes, 45 minutes.

15 THE HONORABLE MALPHRUS: Let's just keep going
16 then.

17 MS. JONES: Okay.

18 THE HONORABLE MALPHRUS: Do you think you can be
19 through with your cross examination by one?

20 MS. JONES: Yes.

21 THE HONORABLE MALPHRUS: Okay. Let's keep going.
22 And I certainly don't want to limit your case. If you need
23 to go beyond that, we'll make arrangements.

24 MS. JONES: Okay.

25 CROSS EXAMINATION BY MS. JONES:

- 1 Q. You and my client dated since you were in high school
2 you testified earlier. Is that correct?
- 3 A. Off and on.
- 4 Q. You've known each other since you were in high school?
- 5 A. Yes.
- 6 Q. Known each other since you were approximately 16 years
7 old?
- 8 A. Uh-huh.
- 9 Q. And you are how old now?
- 10 A. I'm 29.
- 11 Q. My client is your age, a year older?
- 12 A. I think a year older.
- 13 Q. At the time you found out you were pregnant with this
14 child ---
- 15 A. Uh-huh.
- 16 Q. --- you were engaged to be married to my client?
- 17 A. Yes.
- 18 Q. He had asked you to marry him in December. Is that
19 correct?
- 20 A. I don't remember the date.
- 21 Q. And he gave you a ring?
- 22 A. Uh-huh.
- 23 Q. And you're the one who broke off this engagement.
24 Isn't that true?
- 25 A. Yes.

- 1 Q. And you testified in your deposition that you broke
2 off the engagement because he was pressuring you to get
3 married sooner?
- 4 A. Yes.
- 5 Q. And he was pressing you to get married sooner because
6 he found out that you were pregnant with his child. Isn't
7 that true?
- 8 A. I'm not for sure on why.
- 9 Q. Well, what was your understanding of why he wanted to
10 get married sooner?
- 11 A. It was just the money.
- 12 Q. Just the money?
- 13 A. Uh-huh.
- 14 Q. What are you talking about when you say just the
15 money.
- 16 A. Apparently, being in the Army if you get married, I
17 guess, you're -- I don't know what it's called -- your pay
18 goes up for family living or I don't know what it's called.
- 19 Q. And isn't it true my client wanted to get married so
20 that his pay would go up and he could help support the
21 child?
- 22 A. I don't know how to answer that question.
- 23 Q. Well, I need you to try.
- 24 A. Well ---
- 25 Q. Can you say yes or no first and then explain yourself?

- 1 A. I guess, yes, that the amount of money that he said
2 that he would be getting -- and I can't even remember how
3 much that was -- he let me know that it wasn't even going
4 to be half that, if a quarter of that amount.
- 5 Q. My client offered -- I'm sorry.
- 6 A. Go ahead.
- 7 Q. My client offered -- he was out of town, stationed
8 outside of the town that you all were living in ---
- 9 A. Yes.
- 10 Q. --- at the time he found out that y'all were pregnant?
- 11 A. Yes.
- 12 Q. And didn't he offer to come back and get married and
13 have a simple ceremony and y'all could have a bigger
14 wedding like y'all had planned on having later?
- 15 A. Unh.
- 16 Q. Okay. But he offered to get married right away?
- 17 A. Yes.
- 18 Q. And he kept pressuring you to do that?
- 19 A. Yes.
- 20 Q. And ultimately that's why you broke off the
21 engagement?
- 22 A. Well, that's not the only reason, no.
- 23 Q. I'm talking about your deposition testimony when you
24 were asked several times about the reason ---
- 25 MR. GODWIN: I object to the form of the

1 question. The foundation is improper in terms of her
2 deposition testimony.

3 THE HONORABLE MALPHRUS: Ask her the question,
4 Ms. Jones, and let's see what her answer is and then maybe
5 you can impeach her.

6 MS. JONES: Sure.

7 Q. You testified -- Well why did you break up -- why did
8 you break off the engagement with my client?

9 A. Okay. Because he was pressuring me.

10 Q. Because he was pressuring you to do what?

11 A. To get married.

12 Q. Okay. And you understood that if you married my
13 client, that you and the baby would be entitled to a lot of
14 benefits through his service in the military?

15 A. No, I don't know.

16 Q. Did you understand that by virtue of his membership in
17 the Cherokee Nation that you were entitled to a lot of
18 benefits during the pregnancy and for the birth of the
19 child?

20 A. No.

21 Q. You were interviewed back on July 28th of 2009 when
22 you were still pregnant by the Nightlight Christian
23 Adoption, and that was in preparation of their birth family
24 background report. I'm referring to what's been marked as
25 Plaintiff's 4. And in that you told the interviewer that

- 1 you expected the baby to be born on September 22nd, 2009.
- 2 That was your expected due date at that time. Is that
- 3 correct?
- 4 A. I don't remember.
- 5 Q. And you do remember when the child was born?
- 6 A. Yes.
- 7 Q. September 15th, 2009. Is that correct?
- 8 A. Yes.
- 9 Q. And according to you, and I can refresh your memory if
- 10 you don't recall, but you told this -- this individual with
- 11 Nightlight that you had not told my client about your plans
- 12 to adopt the child.
- 13 A. Right.
- 14 Q. And the truth is he had no idea you intended to adopt
- 15 this child, did he?
- 16 A. No.
- 17 Q. And the first time my client had learned that you had
- 18 put his child up for adoption was when he was served with
- 19 the action in January of 2010. Isn't that true?
- 20 A. I don't know when he found out.
- 21 Q. Do you have any knowledge of him knowing that prior to
- 22 that date?
- 23 A. No.
- 24 Q. And the Nightlight, in the Exhibit 4, you also state
- 25 that my client is a Cherokee, you know he's a registered

- 1 member of the Tribe. That's never been -- you always knew
2 that, didn't you?
- 3 A. Yes.
- 4 Q. You always made that clear to the birth mother and the
5 birth father, didn't you?
- 6 A. That I'm aware of, yeah.
- 7 Q. You told everybody, every agency involved, this
8 child's father is an Indian. He's a member of the Cherokee
9 Indian Nation?
- 10 A. Yes.
- 11 Q. And when you saw that letter come back from the
12 Nation, you knew that was wrong, didn't you?
- 13 A. Yes.
- 14 Q. It was wrong because they were given the wrong date of
15 birth for my client. Isn't that true?
- 16 A. Yes. And I let my lawyer know that I didn't know his
17 real date of birth.
- 18 Q. Even though you were engaged to him, you didn't know
19 his date of birth?
- 20 A. No.
- 21 Q. You didn't know what day of the month he was born?
- 22 A. I just knew it was October and he was older than me,
23 so it had to have been before '82.
- 24 Q. And you didn't know what year?
- 25 A. No.

- 1 Q. You also didn't know how to spell your fiance's name?
- 2 A. No, I know how to spell it.
- 3 Q. According to Nightlight's investigation and according
- 4 to the letter that was sent by your attorney, Ms.
- 5 Zimmerman, to the Nation, his name was spelled with an I,
- 6 when in fact he spells Dusten with an E. Isn't that true?
- 7 A. Right.
- 8 Q. You also say on page one of Nightlight Adoptions
- 9 Family Background Report that you wanted to keep this
- 10 adoption as low-key as possible. Is that right?
- 11 A. I don't recall.
- 12 Q. Did you want to keep this adoption low-key?
- 13 A. At that time I don't recall. I don't remember.
- 14 Q. The -- would you like me to show you what you told the
- 15 reporter?
- 16 A. Yeah. If you'd like.
- 17 Q. On page 1 at the bottom, the last paragraph, they have
- 18 you quoted.
- 19 A. Well, if that's what they said I said, then apparently
- 20 it's what I said.
- 21 Q. Well, after reading that does that make you remember
- 22 that that's what you told them?
- 23 A. No, it doesn't.
- 24 Q. You've already admitted that you didn't tell my client
- 25 about this adoption.

1 A. Correct.

2 Q. And your plan to adopt. You also didn't tell my
3 client you went to the hospital to give birth, did you?

4 A. Later on -- we pretty much weren't on speaking terms
5 by then. He told me that he wanted to give her up or give
6 his rights away. He had a few months to let me know
7 something.

8 Q. You were or were not on speaking terms?

9 A. That I'm aware of, we weren't.

10 Q. My question to you was, did you let him know you were
11 going to the hospital?

12 A. No.

13 Q. And, in fact, in the hospital when you went in to give
14 birth, you requested to be placed on a strictly no report
15 status, didn't you?

16 A. I've always requested that.

17 Q. I'm going to show you the medical records that were
18 produced to me in your discovery request or Mr. Godwin's
19 discovery request to me, your stay in the hospital.

20 MR. GODWIN: I'm sorry. What did you just hand
21 her?

22 MS. JONES: I handed the medical records.

23 MR. GODWIN: I didn't agree. I didn't stipulate
24 to that.

25 MS. JONES: I haven't moved to admitted them.

1 I'm showing them to her.

2 MR. GODWIN: Okay. You need to ask her to
3 identify them.

4 MS. JONES: That's what I'm doing.

5 MR. GODWIN: Okay.

6 Q. Do you recognise those as your medical records?

7 A. Yes.

8 MS. JONES: Your Honor, I would move to admit
9 these. I'm not sure what number we're on, as Plaintiff's
10 -- I mean Defendant's 6.

11 MR. GODWIN: I'm objecting to the admission,
12 Judge. I'm not sure what counsel -- where counsel's going
13 with this, in addition to Ms. Maldonado didn't create this
14 document. If I could maybe know where counsel's going I
15 could make a decision.

16 MS. JONES: Well, medical records are signed off
17 by her physician and she just testified that she recognized
18 them as her medical records.

19 THE HONORABLE MALPHRUS: Tell us why -- what you
20 are seeking to elicit from introducing those medical
21 records. I believe you asked her did she asked to be
22 placed on a do not call or do not ---

23 MS. JONES: Strictly no report status.

24 THE HONORABLE MALPHRUS: --- strictly no report
25 status and her testimony was that, yes, she -- she asked to

1 be placed on a strictly no report status, that she always
2 asked to be placed on a strictly no report status. Is
3 there some other reason that you're seeking to introduce
4 those medical records?

5 MS. JONES: Only that there are notes from her
6 care providers that she did not know at the time she gave
7 birth that she'd be required to have an attorney and that
8 that was the only thing that had been a glitch in the road
9 in the process. And that was described to her and she was
10 upset about that. And then, yet, we have a letter from
11 Phyllis Zimmerman to the Indian Nation prior to this
12 child's birth purporting to represent her. So I wanted to
13 ask her about when Ms. Zimmerman became her attorney.

14 THE HONORABLE MALPHRUS: Well, do you want to ask
15 her those questions, maybe first ---

16 MS. JONES: I can.

17 THE HONORABLE MALPHRUS: --- and then let -- see
18 if possibly they'll come in for some sort of -- why don't
19 you just ask her those questions first and let's see what
20 her response is.

21 MS. JONES: Thank you, Your Honor.

22 Q. And back to the strictly no report status, and I'll
23 show you this copy then. Strictly no report status -- and
24 that's your initial down there, CM?

25 A. Yes.

1 Q. And it says, I request that my current admission
2 registration be listed as strictly no report.

3 MR. GODWIN: Well, I would object if she's trying
4 to introduce the medical records or the contents. And I've
5 just objected to it. She asked for her recollection.

6 MS. JONES: Well, let me ask -- I'll rephrase it.
7 I'll try again. I'm not going to read it into the record.

8 Q. But by your initials ---

9 MR. GODWIN: I'm objecting. She's ---

10 THE HONORABLE MALPHRUS: By her own admission,
11 she has just testified that she requested to be placed on a
12 strictly no report status. So, Ms. Jones, is there
13 something beyond that that you wanted to ask her about?

14 MS. JONES: Yes. I wanted to ask her if she
15 understood, because her initials purport that she
16 understood ---

17 Q. --- that that meant that if a caller or a visitor
18 called the hospital and asked for you or asked to send you
19 flowers, they would be told that nobody by that name is
20 registered in this hospital.

21 A. No, that's not what that means.

22 Q. Okay. Well, can you read ---

23 MR. GODWIN: I'm objecting to the use of the
24 medical records. I don't know why counsel keeps referring
25 to them.

1 THE HONORABLE MALPHRUS: Well she can testify ---

2 MR. GODWIN: As to the best evidence rule she can
3 testify to her recollection as to what that means without
4 referring to the medical records.

5 THE HONORABLE MALPHRUS: Ms. Jones, would you ask
6 the question.

7 And, Mr. Godwin, can we let Ms. Jones finish asking
8 the question and then I'll be glad to hear your objection.

9 MR. GODWIN: Yes, ma'am.

10 Q. Is it your understanding that by signing or requesting
11 this no report status, that with your initials underneath
12 that section of your paperwork, that if somebody called the
13 hospital asking if you were there or asking if they could
14 send flowers, that they would be told that nobody by that
15 name is in the hospital?

16 A. No.

17 Q. Can you tell me why, then, you signed your initials
18 when it clearly says ---

19 MR. GODWIN: I'm going to object to the use of
20 the medical records.

21 MS. JONES: Well, Your Honor, I think she's
22 acknowledged it's her -- that it's her initials.

23 THE HONORABLE MALPHRUS: When it clearly says
24 what? Finish asking the question.

25 MS. JONES: When it clearly says,

1 callers/visitors asking for me by name will be told JPMC
2 does not show a patient by that name. Flowers without my
3 room number will be returned to the florist. Mail without
4 my room number is returned to sender. I am responsible for
5 informing family and others of admission, room, and phone
6 number. I can change my no report status by informing my
7 nurse, and my initial here indicates that I wish to be
8 strictly no report.

9 MR. GODWIN: She can refer to that to refresh the
10 witness' recollection. Once the witness says that's not
11 what it means or I disagree, she cannot then use that
12 because it's not into evidence. It wasn't created by Ms.
13 Maldonado. Ms. Maldonado has a right then to answer her
14 question, but not refer to the medical records.

15 THE HONORABLE MALPHRUS: I think that she has the
16 right to show Ms. Maldonado the document. I think she has
17 the right to ask Ms. Maldonado if those are her initials by
18 whatever it is on that document that she's referencing. I
19 think she has a right to ask Ms. Maldonado if she
20 understood what she was initialing and signing. I think
21 that she has the right to ask her those questions.

22 I'm not -- I'm not ruling that that document is
23 admissible into evidence, but I think that she has a right
24 to ask her about a document that she has -- if she tells us
25 those are her initials. She may tell us those aren't her

1 initials and then I'm going to have deal with that.

2 MR. GODWIN: Yes, ma'am. I think she's -- well,
3 I thought she said they were her initials.

4 MS. JONES: She testified they were her initials.

5 MR. GODWIN: And then she said that's not what it
6 means. And then we have to go off the witness'
7 recollection and not attempt to use the medical records
8 that are not in evidence to try to impeach her. And that's
9 what I think counsel's trying to do. They would have --
10 and I'm not trying to be picky. I've tried to be
11 cooperative with counsel. There's voluminous things we
12 have here to introduce and she's been cooperative, but I
13 think they were not created by her and she needs to
14 understand that she can only testify from her recollection.

15 Thank you.

16 THE HONORABLE MALPHRUS: I think you have the
17 right to ask her if she understood what she was initialing.
18 I think you have the right to read to her that section that
19 she initialed. If she tells us -- and then let's hear what
20 her answer is.

21 I tend to agree with Mr. Godwin that that document
22 does not get to come into evidence. But I believe that you
23 do have the right to cross examine her about her
24 understanding of what it was that she signed.

25 MS. JONES: Thank you, Your Honor.

1 Q. And I read the -- what it said, that I understand by
2 being strictly no report that callers/visitors asking for
3 me by name are told JPMC -- that's the name of the hospital
4 -- does not show a patient by that name. And that's the
5 first thing it says.

6 Flowers without my room number are returned to the
7 florist. Mail without my room number is returned to
8 sender. And I am responsible for informing family members
9 and others of my admission, room, and phone number.

10 Is that what you understood you were signing when you
11 asked to be no report and put your initials under that
12 section of your records?

13 A. No.

14 Q. Tell me what you understood?

15 A. The way I took it was if anybody came to the front
16 desk and said my name asking if I was there, then, yes,
17 they would know. They would let them know, you know, that
18 I was in there. But then a nurse would come to me, letting
19 me know that somebody was out at the nurses' station and
20 letting me know who it was before they come back there.
21 And then with the flowers, now, that is correct because I'm
22 not wanting to carry tons of flowers home.

23 Q. Okay. And if it was someone you didn't want to see or
24 didn't want to know in the hospital, would they have been
25 told you weren't there?

- 1 A. It would have been up to me.
- 2 Q. Okay. If my client had come to the hospital, would
- 3 you have let him come in?
- 4 A. Yes.
- 5 Q. Is there anybody that you wouldn't have let come in?
- 6 A. Just my kids' dad to check up on me maybe, but anybody
- 7 else I'm not for sure, no.
- 8 Q. Also at the hospital, you were the one in charge of
- 9 filling out the information for the birth certificate, I
- 10 take it?
- 11 A. I don't recall.
- 12 Q. You don't recall filling out the birth certificate at
- 13 all?
- 14 A. No.
- 15 Q. Let me show you a copy of the birth certificate that
- 16 was completed. Does that look familiar to you?
- 17 A. No.
- 18 Q. You don't remember that?
- 19 A. No.
- 20 Q. Okay.
- 21 MS. JONES: Your Honor, this has already been
- 22 stipulated to be admissible as Defendant's 5, the birth
- 23 certificate of the child.
- 24 (Whereupon, the child's birth certificate was marked
- 25 and admitted into evidence as Defendant's exhibit number

1 S.)

2 Q. On this Defendant's 5, the birth certificate of your
3 child, you didn't list my client as the father, did you?

4 A. From the past, with my own children, if the father is
5 not there they cannot be listed.

6 Q. My question was, you didn't list my client as the
7 father on the birth certificate?

8 A. I can't. I'm not him.

9 Q. Your understanding was that you couldn't do it?

10 A. No.

11 Q. But you didn't do it?

12 A. Well, I've never seen this. How did you want me to do
13 that?

14 Q. You would have been asked the information that was
15 required to fill out the birth certificate. That's what
16 you've typically done before with the other children,
17 right?

18 MR. GODWIN: Your Honor, I'm going to ask counsel
19 to move to the side so I can see the witness.

20 MS. JONES: I'm sorry. I'm sorry.

21 MR. GODWIN: Thank you.

22 A. No, because the father was always there.

23 Q. And you put the father of your other two children on
24 their birth certificates, didn't you?

25 A. I can't. It would have to be him.

1 Q. Okay. And he was there?

2 A. Yes.

3 Q. And you said he was the one who put his name on the
4 birth certificate of those children?

5 A. Yes. He has his own paperwork. I have my own
6 paperwork.

7 Q. You filled out the -- you filled out the interstate
8 compact placement request or you gave the information for
9 that. Isn't that right?

10 A. I don't remember this either.

11 Q. This has already been, I think, admitted in or do you
12 have. This is Defendant's 2. It's already into evidence.
13 May I ask, is this your signature right here at the bottom
14 of that page?

15 A. Yes.

16 Q. And do you recall, did you complete that form or did
17 somebody help you complete it?

18 A. I don't remember filling it out. I mean, the
19 handwriting isn't mine, except for the signature.

20 Q. So somebody else helped you fill this out or got the
21 information from you?

22 A. Apparently, yes.

23 Q. Did you tell -- do you know who decided the child was
24 Hispanic versus Caucasian, Native American, or Hispanic?

25 A. No. I don't remember filling this out.

1 Q. And you don't know how it came to be reflected that
2 the legal status was that both parents' rights, or the
3 parental rights had been terminated and that this child was
4 -- it says, right to place for adoption. Do you know that
5 information came about?

6 A. Based on the letter it had to come from me.

7 Q. Well that's what I think too.

8 A. But as to what I remember, no, I don't remember
9 filling that out and I don't remember that form.

10 Q. But it had to come from you? Don't you think? That's
11 what you testified to?

12 MR. GODWIN: I object to that. That's been asked
13 and answered and now she's trying to put words in her
14 mouth.

15 MS. JONES: I just was clarifying.

16 MR. GODWIN: Can I see the court's exhibit up
17 here?

18 THE HONORABLE MALPHRUS: Yes. All of the
19 exhibits are right here.

20 MR. GODWIN: Thank you.

21 Q. Your mother's side of the family has Cherokee Indian
22 heritage. Isn't that true?

23 A. Yes.

24 Q. And somebody who's a member of the Tribe?

25 A. Yes.

1 Q. Do you know who that was?

2 A. It was a great, great grandmother, I think.

3 Q. You've listed on -- or you gave the information in
4 your birth family background report, I'm referring to
5 Defendant's 4, you listed a maternal great grandfather -- a
6 maternal great grandmother. She was the one who was the
7 member of the Cherokee Nation?

8 A. I think so, yeah.

9 Q. Is there a reason why you would have left her out of
10 this report?

11 A. I don't think it should have been my grandfather.

12 Q. You don't think what should have been your
13 grandfather?

14 A. It should have been listed as my grandfather on that
15 piece of paper.

16 Q. You mean it should have been your grandmother?

17 A. The great, great grandmother, yes. Now, I knew that
18 it was on my grandfather's side.

19 Q. Diane Gilley Johnson?

20 A. Yes.

21 Q. She wasn't a member of the tribe?

22 A. No.

23 Q. Who was, her mother?

24 A. No, it had to have been -- it was, like I said, a
25 great, great grandmother.

- 1 Q. What about your maternal great grandfather, Jimmy
2 Gilley.
- 3 A. No.
- 4 Q. He wasn't a member of the Tribe?
- 5 A. No.
- 6 Q. Eligible for membership?
- 7 A. I think.
- 8 Q. You didn't put his date of birth in there. Any reason
9 why you left his date of birth off of that?
- 10 A. I don't know my grandfather's date of birth.
- 11 Q. My client -- my client came by your house some time
12 after September. He said he was coming in September and
13 knocked on your door a number of times and you wouldn't
14 come to your door. Isn't this true?
- 15 A. No.
- 16 Q. And the paternal grandparents they called you and told
17 you they had a lot of presents for that baby and that they
18 wanted to come and bring those presents and to see their
19 grandchild, and you wouldn't let them do that. Isn't that
20 true?
- 21 A. I -- repeat that.
- 22 Q. The paternal grandparents, my client's parents ---
- 23 A. Yes.
- 24 Q. --- they called you and they offered to give you some
25 gifts they had purchased for the child, and they expressed

1 their desire to come and visit the grandchild, didn't they?

2 A. No.

3 Q. There weren't any socks that were hand made made by
4 his mother?

5 A. No.

6 Q. You were engaged to my client before you broke off the
7 engagement and you told the folks at Nightlight in the
8 Birth Family Background Report that you didn't know my
9 client's father's name. You said that you didn't know your
10 own fiance's father's name.

11 A. At the time, I was probably nervous whenever I was
12 answering questions.

13 Q. But you spent Thanksgiving at their house, didn't you?

14 A. No.

15 Q. You never spent Thanksgiving ---

16 A. No.

17 MS. JONES: I didn't mean to ask the same
18 question again. I'm sorry, before you jump up.

19 Q. Did you ever spend Easter with them?

20 A. No.

21 Q. Did you go to my client's graduation with them?

22 A. With them? No.

23 MR. GODWIN: May I have a side-bar with counsel?

24 THE HONORABLE VINSON: Sure.

25 (Whereupon, an off-the-record bench conference with

1 had between The Honorable Malphrus, The Honorable Vinson,
2 and counsel.)

3 Q. You were told, according to the person who took down
4 that information from Nightlight that you'd be asked to
5 sign some paperwork for South Carolina relinquishing your
6 rights and consenting to the adoption. Isn't that true?

7 A. Yes.

8 Q. And that you were also, it says, counseled that South
9 Carolina offers no revocation under normal circumstances.
10 Was that your understanding that you wouldn't be able to
11 revoke your consent to this placement and this adoption?

12 A. No.

13 Q. That wasn't your understanding? You knew you could.

14 A. Yes.

15 Q. And then subsequent, in 2010, you -- you entered into
16 the consent for placement and adoption in Oklahoma. Is
17 that true?

18 A. Repeat that.

19 Q. Did you go to court in Oklahoma in 2010, I think the
20 spring of 2010?

21 A. I don't remember when but, yes.

22 Q. You definitely appeared in court. No question about
23 that?

24 A. Yes.

25 Q. Before the Judge?

- 1 A. Yes.
- 2 Q. Why did you not go -- why did you go when you did?
- 3 Why not sooner than -- let me see when this was dated. It
- 4 was attested to by the judge April 30th, 2010. Why did it
- 5 take so long for you after the birth of your child? I know
- 6 you have to wait 10 days, but why did you wait that many
- 7 months before you went?
- 8 A. I don't remember.
- 9 Q. And in that relinquishment you acknowledge before the
- 10 judge, that was required, right, under ICWA, that you
- 11 understood that this relinquishment and consent was final
- 12 and that under certain circumstances you could revoke this
- 13 consent to your adoption prior to the entry of a final pre-
- 14 adoption order terminating your rights. Was that your
- 15 understanding that it was only under certain circumstances?
- 16 A. I don't even remember that piece of paper.
- 17 Q. I know your attorney showed it to you earlier. This
- 18 is ---
- 19 A. I'm guessing that ---
- 20 Q. --- Plaintiff's 9. I'll show it to you again. But my
- 21 question really is what -- I'm asking what your
- 22 understanding was when you were in front of that judge in
- 23 Oklahoma. Did you understand that you could relinquish
- 24 your rights only under certain circumstances?
- 25 A. No. From the beginning I thought it was whenever.

- 1 Q. Okay. Let me ask you about this, the hospital
2 records, were you informed that you wouldn't need an
3 attorney as a part of this process originally?
- 4 A. I don't remember.
- 5 Q. Were you upset at the hospital, having learned that
6 you would need an attorney?
- 7 A. I don't recall. I'm not remembering. Was this --
8 this was right after I had her?
- 9 Q. Yes.
- 10 A. No, I don't remember.
- 11 Q. Well, do you remember when you had an attorney to
12 represent you in this matter?
- 13 A. Around about when, no, I don't.
- 14 Q. Do you remember if you ever met an attorney before you
15 went into the hospital?
- 16 A. No, I didn't.
- 17 Q. And how did you come to get an attorney?
- 18 A. Do you mean how did I ---
- 19 Q. I'm sorry. You're looking at Mr. Godwin and I need
20 you to answer the questions without ---
- 21 A. No, I'm asking you.
- 22 MR. GODWIN: I object to that on the record. I
23 don't think she's necessarily looking at me. She's looking
24 at this side of the courtroom. And that's on the record
25 and I object to that. I don't think that's true.

1 A. Yeah. I didn't even look at him.

2 THE HONORABLE MALPHRUS: Ask her the question.

3 Q. When did you -- how did you come to hire your
4 attorney?

5 A. That I'm aware of it came through the parents.

6 MR. GODWIN: I'm going to object unless we can
7 figure out where we're going with this, Judge.

8 THE HONORABLE MALPHRUS: Ms. Jones, I certainly
9 want to give you every latitude to ask this witness
10 questions, but I'm kind of curious as to where we're headed
11 with this as well. I mean ---

12 MS. JONES: I didn't know if I was going to ask
13 any more questions about it. He's objecting when I don't
14 even have a question pending. So she answered my question.
15 You know, there is -- I was a little confused with Ms.
16 Zimmerman purporting to represent her before. I think she
17 understood she was represented. What it means, I don't
18 know. I just kind of, you know, I was curious.

19 Q. Is it your understanding that if the correct
20 information on my client's date of birth and the spelling
21 of his name, any of those had been given correctly to the
22 Indian Nation, that this adoptive couple would never have
23 been given permission to leave the State of Oklahoma?

24 MR. GODWIN: I think that calls for a legal
25 conclusion. I object to that. There's no way this witness

1 would know that.

2 MS. JONES: I asked her ---

3 THE HONORABLE MALPHRUS: Well, she's asked her.

4 Let's see if she -- if she has any idea.

5 A. Can you repeat the question?

6 Q. Did you -- was it your understanding that if the
7 correct information had been given to the Indian Nation and
8 they had been properly noticed that this was an Indian
9 child, that the adoptive couple would have been delayed, at
10 least, in leaving the state of Oklahoma with the child?

11 A. No, I didn't know that.

12 Q. You didn't know that. Did you think it would cause
13 any problems?

14 A. Not to my awareness, no.

15 Q. What did you think would happen if the Indian Nation
16 was alerted to the fact that this was an Indian child that
17 you were trying to give up for adoption?

18 A. Well, I knew that some things were going to come into
19 effect, but I wasn't for sure on what.

20 Q. Did you think it would help the adoption process or
21 hurt it?

22 A. Well, I'm not for sure.

23 Q. Did you have any feeling on that either way?

24 A. Well, I was worried about it, but I wasn't meaning in
25 no way to misspell his name.

1 Q. Why were you worried about it?

2 A. Well, from what I knew from the Cherokee was that if
3 they were to interfere that she would have gone to either
4 back to me or to a Cherokee family. At that time, I didn't
5 know that him or his family would claim her.

6 Q. Did they tell you they didn't want her?

7 A. He let me know that, yes.

8 Q. Well, did -- you've already said he didn't know you
9 were giving him up for adoption -- giving her up for
10 adoption.

11 A. Right.

12 Q. So you were -- and I don't want to put words in your
13 mouth, but you thought that if the Indian Nation was
14 alerted that they might give him or his parents the
15 opportunity ---

16 A. No.

17 Q. --- to raise this child?

18 A. No. No. The way I took it was, they didn't want
19 anything to do with her. I mean, he literally let me know
20 he wanted to sign his rights away.

21 Q. So you just thought another Indian family might get
22 the child?

23 A. Well, yeah.

24 Q. Did you ever meet my client's daughter, Kelsey?

25 A. Yes.

1 Q. And you saw how he interacted with her?

2 A. Yes.

3 Q. Is he a loving, caring father to her in the
4 interactions you saw?

5 A. Yes, when he was around her.

6 Q. And you knew when you were pregnant or tell me when
7 you knew that my client was going to be deployed to Iraq.

8 A. Well, I had always known that sooner or later he was
9 going to be. Now, whenever he found the date out, I don't
10 remember.

11 Q. Did you avoid my clients attempts to call you or text
12 you?

13 A. No.

14 Q. Now, you testified earlier that you had considered at
15 least one Indian family for this child?

16 A. Uh-huh.

17 Q. Two?

18 A. There were several.

19 Q. And -- but at your deposition when you were asked did
20 you ever consider an Indian couple you said, no, didn't
21 you?

22 MR. GODWIN: I object to the form of the
23 question. You cannot impeach a witness in that manner.

24 MS. JONES: I'll read it further.

25 MR. GODWIN: Lay a proper foundation.

1 Q. Your deposition was taken on the 12th of May 2011. Is
2 that correct?

3 A. I don't know the date, but apparently, yes.

4 Q. And you sat for this deposition, it was a telephonic
5 deposition. You were in Oklahoma.

6 A. Yes.

7 Q. We were all in South Carolina?

8 A. Yes.

9 Q. And you were represented by counsel there?

10 A. Yes.

11 Q. That was Ms. Nichols? And you were sworn to tell the
12 truth and nothing but the truth ---

13 A. Yes.

14 Q. --- prior to your testimony being taken. And did you
15 tell the truth in your deposition?

16 A. Yes.

17 Q. You were also given the opportunity to read and sign
18 your deposition, which you declined, you waived. Do you
19 remember that?

20 A. Yes.

21 Q. Your -- Plaintiff's counsel took the deposition. Let
22 me show you a copy of it. You were given a copy. Weren't
23 you provided a copy?

24 A. Yes.

25 Q. Okay. Do you recognize that as your deposition

1 testimony that you gave in May?

2 A. Yes.

3 MS. JONES: And, Your Honor, I'll be happy to
4 provide a copy to the Court, but I would like permission to
5 question this witness and impeach her with regard to
6 testimony she gave in her deposition.

7 THE HONORABLE MALPHRUS: Why don't you ask her
8 the question that you asked her on that date and let's see
9 how she answers it today.

10 Q. Well, you testified earlier that you had considered
11 two Indian families. One -- I believe one was a single
12 mother right?

13 A. Uh-huh.

14 Q. And then another was a couple. And you had declined
15 those. But in your deposition testimony you testified that
16 you had not considered an Indian family for this child.

17 MR. GODWIN: I object to the lack of foundation.
18 I believe counsel has to direct the witness to the page and
19 line before she answers the next question.

20 MS. JONES: Thank you.

21 MR. GODWIN: So I am objecting.

22 Q. On page 13, lines 8 through 10.

23 MR. GODWIN: And if counsel would move to the
24 left just a little bit.

25 (Counsel complied.)

- 1 MR. GODWIN: Thank you.
- 2 A. Okay.
- 3 Q. Your testimony then was, no?
- 4 A. Right.
- 5 Q. Can you explain, you know, were you telling the truth
- 6 then, are you telling the truth now or what's the
- 7 difference?
- 8 A. If you go to page 38, it says -- there's a question
- 9 from Ms. Nichols asking did you consider any other Indian
- 10 person who is an Indian and able to -- potential adoptive
- 11 parents for your child, yes.
- 12 Q. Uh-huh. But you said, no. And now you testified
- 13 there was a couple.
- 14 A. Well, I was apparently not certain on if you were
- 15 talking about a Cherokee. Because here I'm talking about
- 16 an Osage.
- 17 Q. You're -- you weren't sure if by Indian they meant a
- 18 certain tribe?
- 19 A. Right.
- 20 Q. So you were just confused?
- 21 A. Right.
- 22 Q. Okay. You said that if my client had come to the
- 23 hospital you would have let him?
- 24 A. Yes.
- 25 Q. Earlier.

- 1 A. Yes.
- 2 Q. But did you want him there?
- 3 A. Well me wanting him there and him being there is two
- 4 different things.
- 5 Q. But my question to you is, did you want him there?
- 6 A. Well, no.
- 7 Q. You've seen the child since she was born?
- 8 A. Yes.
- 9 Q. How often?
- 10 A. Two times before they flew back to South Carolina.
- 11 Are you talking about in person or ---
- 12 Q. Both.
- 13 A. Pictures -- e-mails and pictures?
- 14 Q. How often have you seen her in person?
- 15 A. A few times. I got to see her before she came to
- 16 South Carolina and the last time I was here, and that's it,
- 17 yeah.
- 18 Q. The last time you were her?
- 19 A. Yes.
- 20 Q. So you were allowed to see the child when we were
- 21 called for trial in July?
- 22 A. Yes.
- 23 Q. And how much time did you spend with her?
- 24 A. In all, maybe -- I'm guessing, maybe three hours. I'm
- 25 not for sure. I didn't time it.

- 1 Q. Have you -- has the adoptive couple ever denied you
2 any request to visit this child?
- 3 A. No. It's an open adoption.
- 4 Q. You've always been able to see her, talk to her if you
5 wanted to, or communicate?
- 6 A. Yes.
- 7 Q. They've never rejected any of your gifts for her or
8 anything like that?
- 9 A. Not that I'm aware of, no.
- 10 Q. You have received some financial assistance from the
11 Adoptive Couple. Is that correct?
- 12 A. Say that again.
- 13 Q. Have you received some financial assistance from the
14 Adoptive Couple?
- 15 A. Yes.
- 16 Q. They paid for your lawyer?
- 17 A. Yes.
- 18 Q. And what else have you received from them?
- 19 A. After I had the baby, they paid some of the bills to
20 help me out, and I have received some money for food.
- 21 Q. Is that all?
- 22 A. Yeah.
- 23 Q. Did they pay your rent?
- 24 A. No.
- 25 Q. Did they pay ---

- 1 A. Actually, I don't remember what bills they have paid.
2 I can't remember. But I know that they did pay some bills,
3 yes.
4 Q. Okay. You just testified no rent. What about
5 groceries?
6 A. No, I don't remember on rent.
7 Q. I'm sorry. I heard you say, no. So you don't
8 remember whether they paid rent?
9 A. Right. I don't know which bills they had paid. I
10 know that they had paid some bills, yes.
11 Q. Do you remember if they paid your phone bill?
12 A. I don't remember which bills, no.
13 Q. Now, I'm going to ask specifically about some and see
14 if it triggers your memory, okay?
15 A. Okay.
16 Q. Groceries, do you remember that?
17 A. Yes, they did.
18 Q. And they paid some personal expenses for you?
19 A. Just food. But what do you mean by personal?
20 Q. I'm just reading off of the affidavit of accounting.
21 Personal expenses on September 24th, 2009. It might have
22 been related to -- it was shortly after birth. You don't
23 remember?
24 A. No.
25 Q. And they paid for you to come here to participate?

1 A. Yes.

2 Q. Do you know how much all of that has cost them?

3 A. No.

4 Q. How much contact did you have with my client during
5 the pregnancy?

6 A. Not much at all.

7 Q. Can you tell me why you would have testified in an
8 affidavit that you had frequent contact with him?

9 A. At the beginning.

10 Q. I'm going to show you what's previously been marked as
11 Defendant's exhibit 8. And it's not mine. This is in the
12 state of Oklahoma. An affidavit you executed in the case
13 that my client I think filed after he was served here in
14 South Carolina. Do you recognize that affidavit?

15 A. No.

16 Q. Is that your signature?

17 A. Yes.

18 Q. On the bottom?

19 A. Yes.

20 Q. Is that sworn to before a Notary Public?

21 A. Yes.

22 Q. And that was on March 11th, 2010?

23 A. Right.

24 Q. And I'll refer you to Paragraph 4. What does it say
25 in paragraph 4?

1 A. Yes.

2 Q. During the pregnancy I had frequent contact with
3 Dusten?

4 A. Yes.

5 Q. So were you being truthful with the Court in Oklahoma
6 or dishonest then and -- can you tell me ---

7 A. Well, in the beginning ---

8 MR. GODWIN: Hold on. I would ask that counsel
9 let her finish. Don't talk over her.

10 MS. JONES: I didn't mean to.

11 THE HONORABLE MALPHRUS: Ms. Jones, were you
12 finished with your question?

13 Q. Well, my question was, you testified, at least earlier
14 you have, that he wasn't in contact with you and yet in
15 your affidavit you say he was in frequent contact with you.
16 Are you telling the truth now or are were you telling the
17 truth then? Which time were you being dishonest, is what
18 I'm trying to say, with the Court?

19 MR. GODWIN: I object to the question, Judge.
20 There's an imputation of motive, there's no foundation.
21 There's no appearance of any dishonesty. She can asks many
22 questions about actions that may look to dishonesty, but
23 that accusatory tone, I object to it.

24 THE HONORABLE MALPHRUS: You know, it's cross
25 examination. I'm going to allow the question. I

1 appreciate your -- I understand your objection, but I'm
2 going to allow it. It's cross examination.
3 A. Okay. That -- I remember up until March or April we
4 had frequent contact and then it went down or it backed off
5 a lot to where by the time the date of June came, we had no
6 contact.
7 Q. My question to you is, because it says during the
8 pregnancy we had frequent contact, and you testified that
9 there wasn't. So were you telling the truth then or are
10 you telling the truth now? There's a discrepancy.
11 MR. GODWIN: Objection to the question. I think
12 the witness has explained her answer.
13 Q. Were you being honest in your testimony ---
14 MR. GODWIN: Well, wait a minute. Wait a minute.
15 The Court has to rule on my objection.
16 MS. JONES: I'm sorry. I didn't mean to ---
17 THE HONORABLE MALPHRUS: I think you've asked her
18 that same question and she answered it. Would you like to
19 ask her a different question, Ms. Jones?
20 Q. Have you been completely honest with the Oklahoma
21 court and with this Court here in South Carolina with your
22 representation with regard to your contact with my client
23 during the pregnancy?
24 A. Yes.
25 Q. And if you did this, I'm sorry, but can you just

1 explain the discrepancy in the description of frequent
2 contact versus no contact?

3 MR. GODWIN: I object again. It's been asked and
4 answered.

5 THE HONORABLE MALPHRUS: I'm going to allow that
6 question. I think that's a different question than what
7 she asked earlier.

8 MS. JONES: Thank you.

9 A. Well, where he said frequent or wherever it says
10 frequent contact, apparently I'm thinking of whenever I was
11 first pregnant and we were still on communication terms.
12 And whenever you guys say, no contact, I'm referring to
13 when we had no contact.

14 Q. Would that have been after you broke off the
15 engagement?

16 A. I was still texting him up until, like I said, March
17 or April, maybe even May, to let him know every single
18 month on what the doctor said. I know after June, when I
19 got the text messages and he let me know he wanted to sign
20 his rights away, that's when we had no contact.

21 Q. Okay. When did you find that ad in the yellow pages
22 where you decided you were going to seek an adoption
23 agency?

24 A. Oh, I don't remember.

25 MS. JONES: That's all I have.

1 THE HONORABLE MALPHRUS: I think we'll take our
2 lunch break now, Ms. Nimmo. I appreciate that you have
3 some questions.

4 MS. NIMMO: I think I can be done in about
5 fifteen minutes, Judge.

6 THE HONORABLE MALPHRUS: I just -- I do have
7 other people ---

8 MS. NIMMO: I understand.

9 THE HONORABLE MALPHRUS: --- in the courtroom
10 that we need to accommodate and I understand that you would
11 like to get through those now. If you can just save those
12 until after lunch.

13 MS. NIMMO: Not a problem, Your Honor. Thank
14 you.

15 MS. JONES: What time are we supposed to be back
16 from lunch?

17 THE HONORABLE MALPHRUS: Two o'clock, please.
18 (Whereupon, court adjourned for the luncheon recess.)

19 *****

20 *****

21 *****

22 *****

23 *****

24 *****

25 **

1 P R O C E E D I N G S

2 AFTERNOON SESSION

3 (Whereupon, court convened following the luncheon
4 recess with all parties present when the following matters
5 were had:)

6 THE HONORABLE MALPHRUS: Note, ma'am, that you're
7 still under oath. If you'd have a seat.

8 THE WITNESS: Okay.

9 THE HONORABLE MALPHRUS: Are there any matters
10 that we need to take up before Ms. Nimmo begins her cross
11 examination of the witness?

12 MR. GODWIN: Not at this point, Judge.

13 THE HONORABLE MALPHRUS: Thank you.

14 Ms. Nimmo, cross examination.

15 MS. JONES: Oh, I'm sorry, Your Honor. One quick
16 thing. Mr. -- Mr. Godwin and I have got this for you just
17 in case.

18 (Whereupon, a book was handed up to the Court.)

19 THE HONORABLE MALPHRUS: Thank y'all very much.
20 I appreciate that. Thank you.

21 MR. GODWIN: The fact that I'm cooperating and
22 offering up does not mean that I endorse the content or the
23 writing. It was very inartfully done. My brief is much
24 better written, much better than the guidelines. Just read
25 my brief.

1 THE HONORABLE MALPHRUS: I have read your brief
2 and I appreciate that very much.

3 MS. NIMMO: And I would add that I personally
4 know one of the authors and I can personally vouch for her.

5 CHRISTINNA MALDONADO,
6 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

7 CROSS EXAMINATION BY MS. NIMMO:

8 Q. Ma'am, you stated earlier that you thought that there
9 was some Cherokee ancestry in your family. Do you know if
10 someone was an actually an enrolled citizen of the Cherokee
11 Nation?

12 A. No.

13 Q. So would it be fair to say that it was a claim that
14 that they were Cherokee?

15 A. Yes.

16 Q. Was there any explanation as to why they were not
17 citizens.

18 A. No, ma'am.

19 Q. Just that you had some Cherokee history in your
20 family, but no one was ever enrolled?

21 A. Yes.

22 Q. Okay. You said that Mr. -- I'm sorry -- that the
23 birth father told you that he was Cherokee. Other than him
24 telling you, was there any, did you know of any
25 verification of that?

- 1 A. No.
- 2 Q. You'd never seen his card?
- 3 A. No.
- 4 Q. Do you know of any Cherokee services that he had ever
5 received?
- 6 A. No.
- 7 Q. You just took him at his word that he was an enrolled
8 member of Cherokee Nation?
- 9 A. Yes.
- 10 Q. You were specifically asked if you were told by the
11 birth father about the availability of medical services for
12 Cherokees. In general, in Oklahoma, did you know about
13 Indian Health Services? Had you ever heard of Hastings
14 Hospital?
- 15 A. No.
- 16 Q. Claremore Indian Hospital?
- 17 A. No, I know where that's at, yes.
- 18 Q. Did you know that it was a facility for Native
19 Americans?
- 20 A. Yes.
- 21 Q. Okay. What was your understanding, if any, about who
22 could receive health services there?
- 23 A. An Indian or someone that was married to an Indian.
- 24 Q. Okay. In fact -- one more question about your family.
25 Do you have any knowledge that anyone ever tried to enroll

1 in your family?

2 A. No.

3 Q. Okay. I -- I just want to make sure on this question,
4 was it your testimony earlier that you -- you never
5 personally told the biological father that you were placing
6 this child for adoption?

7 A. No.

8 Q. You did not tell him?

9 A. No.

10 Q. There was some discussion about what your
11 understanding of signing in, I don't remember the exact
12 language, no report status at the hospital ---

13 A. Uh-huh.

14 Q. --- that maybe you didn't exactly thought it meant
15 what the paper said. What was your understanding of what
16 that did mean?

17 A. The nurse at the nurses' station explained to me that
18 with the flowers, of course, you're not going to receive no
19 flowers if -- I mean, that's fine, because I just don't
20 ever want flowers. And that if someone was to just walk up
21 to the nurses' desk in the hospital, then the nurse will
22 let me know on who it is and then go from there.

23 Q. And you said the only person that you wouldn't want to
24 see you would be the father of your other children,
25 correct?

1 A. Yes.

2 Q. Did you have any reason to think that he might try to
3 come to the hospital?

4 A. Well, no.

5 Q. Well, why did you sign the no report status?

6 A. It's what I do with all of my births.

7 Q. Okay. You stated that you contacted the birth father,
8 I believe right before your first doctor's appointment and
9 asked him for financial assistance?

10 A. Yes, sir -- Yes.

11 Q. At any other time, did you ask him for financial
12 assistance?

13 A. Once or twice after, yes.

14 Q. Did you ever make any attempt, through either the
15 state of Oklahoma or Cherokee Nation to collect child
16 support from the birth father?

17 A. No.

18 Q. Did you ever ask or offer for him to visit the child?

19 A. When?

20 Q. At any time?

21 A. No. Whenever he let me know that he wanted to sign
22 his rights away, I took it as he needed to come to me the
23 next time if he wanted anything.

24 Q. You say that he said he wanted to sign his rights
25 away.

- 1 A. Uh-huh.
- 2 Q. But you never told him you were going to put the child
- 3 up for adoption. So what was your understanding of what he
- 4 would be doing if he had signed his rights away?
- 5 A. Well, the first text that I texted him was asking him
- 6 on what he was wanting to do or what kind of relationship
- 7 he was wanting with the daughter. And then I explained
- 8 that I was, you know, we hadn't spoken of it and we were --
- 9 I was needing to know because I had choices and decisions
- 10 of my own I would need to make as well. And he never
- 11 questioned that.
- 12 Q. Did you ever speak of abortion at all?
- 13 A. No.
- 14 Q. So do you think when he told you that he was signing
- 15 his rights away, that it was his understanding that you
- 16 would have full custody of the child?
- 17 A. Yes.
- 18 Q. Because he didn't know you were considering adoption,
- 19 so he was considering giving his parental rights to you?
- 20 A. Yes.
- 21 Q. Did you ever doubt that he was the biological father
- 22 of this child?
- 23 A. No.
- 24 Q. Is there any -- was there any possibility that any
- 25 other male could have been the biological father of this

1 child?

2 A. No.

3 Q. When did you first hear about the Indian Child Welfare
4 Act?

5 A. Oh, I don't remember.

6 Q. Was it before or after the child was born?

7 A. I think it was after.

8 Q. Okay. Did you have some reason to believe that it was
9 important to let people know in the adoption process that
10 this might be an Indian child?

11 A. I always let them know, yes.

12 Q. And did you think there was a legal reason for that or
13 did you just want them to know that the baby was part
14 Indian?

15 A. I don't -- I guess because they had always asked me,
16 so I just said, yes.

17 Q. Okay.

18 A. I mean, they always ask what -- what is the baby.

19 Q. And do you understand today that even though you're
20 not Indian, because the child is, that you have the same,
21 all the same protection that the father does in this case?

22 A. Yes.

23 Q. You've stated that you talked to a few people at Osage
24 Casino about possibly adopting these children [sic]. Was
25 this just on your own, just people you talked to, you just

1 decided that you were going to place the baby for adoption
2 and you kind of started a conversation with people?
3 A. Yes.
4 Q. Okay. Did you ever make any attempt to contact
5 Cherokee Nation to see if they had adoptive homes
6 available?
7 A. No.
8 Q. There was some question about a statement you made
9 about you wanted to keep the adoption low-key and you said
10 that you didn't really remember making that statement.
11 A. Uh-huh.
12 Q. I understand you don't remember making the statement,
13 but can you describe what you would think you meant when
14 you said low-key?
15 A. No, because I don't remember saying it.
16 Q. Do you refute that you said that?
17 A. Well, I don't know if I could.
18 Q. But we agree that someone wrote it down, and the
19 person who wrote it said that you told them that.
20 A. Right.
21 Q. Would you have any reason to think they were lying
22 that you had told them that?
23 A. I don't know. I mean, possibly, yes. But I honestly
24 don't remember.
25 Q. We know there was discrepancy on the date of birth and

1 the spelling of the biological father's name. When did you
2 let someone know that that information was incorrect or did
3 you?

4 A. Yeah. I know for his date of birth, I automatically
5 let my lawyer know and let her know that he was between the
6 age -- or the year he was born was between '80 and '82,
7 because I knew he was older than me. But '83, I don't know
8 where she got that. I don't know.

9 Q. Okay. That letter that had the '83 birth date on it.
10 You've seen that, correct?

11 A. No. But I know that there's a second one with the --
12 I think it's an '81 date.

13 Q. Have you never seen that letter?

14 THE HONORABLE MALPHRUS: Ms. Nimmo, would you
15 please identify for the record what letter it is? I
16 believe that exhibit ---

17 MS. NIMMO: I'm sorry. It is Defendant's exhibit
18 1, and it is a letter from Phyllis Zimmerman to Indian
19 Child Welfare.

20 THE HONORABLE MALPHRUS: Dated?

21 MS. NIMMO: August 21st, 2009.

22 THE HONORABLE MALPHRUS: Thank you.

23 A. Actually, this does look familiar. But I don't know
24 when I've seen it.

25 Q. Okay. But that was sent before the child was born,

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1 correct?

2 A. Yes.

3 Q. Okay. Did you then see the first letter that came

4 back from Cherokee Nation -- it's in the same packet,

5 Defendant's 1 -- dated September 3rd, 2009 from Cherokee

6 Nation to Phyllis Zimmerman?

7 A. Yes.

8 Q. When did you see that letter?

9 A. The last time I remember seeing -- actually seeing

10 both of these was in my deposition I think. I think.

11 Q. Okay. Did you at some point tell Ms. Zimmerman that

12 the original information that had been sent to Cherokee

13 Nation was incorrect?

14 A. From the beginning, yes. I let her know that the date

15 was wrong, yes.

16 Q. Okay.

17 A. I let her know that I specifically -- or I could not

18 remember the year.

19 Q. You stated that the paternal grandparents, the

20 biological father's parents, never contacted you to try to

21 give you gifts for the child. Is that correct?

22 A. Correct.

23 Q. Did you receive -- from the time the child was born,

24 did the grandparents ever contact you?

25 A. From what I remember, no.

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1 Q. Okay. And did the natural father every contact you?

2 A. No.

3 Q. Do you -- I know we've had a lot of discussion about

4 the Indian Child Welfare Act. As it stands today, do you

5 understand that you, even today, could still withdraw your

6 consent to this adoption?

7 A. Yes.

8 MS. NIMMO: I don't have any further questions.

9 THE HONORABLE MALPHRUS: Mr. Lowndes?

10 CROSS EXAMINATION BY MR. LOWNDES:

Judge Malphrus's Bench Ruling of September 29, 2011

"I do not find birth mother's testimony credible as to any type of assistance she may have sought - - she may have sought from birth father. To the contrary, I find that it was her desire, and she made active efforts, to have no contact whatsoever with birth father and herself and birth father and the minor child prior to or after the birth of the minor child. I find it credible to believe that birth mother so wanted to limit the contact between her and birth father that she sought out the adoption option so that birth father would have no reason to be in her life."

"As to evidence and testimony related to birth father agreeing to 'sign his rights away,' I find that birth father believed that in making this statement, all he was agreeing to was allowing birth mother to have sole custody of the child. I do not find birth mother's testimony credible that birth father did not want to pay child support for his child."