

P R O C E E D I N G S

SEPTEMBER 13, 2011

(Whereupon, Plaintiff's exhibits number 6, 7, 8, and 9, and Defendant's exhibits number 1, 2, 3, and 4, were premarked for identification; after which, all parties were present and the following matters were had:)

THE HONORABLE MALPHRUS: Thank y'all so much. You can be seated. Are y'all still marking exhibits or ---

MR. GODWIN: We're a good break, Judge. We're still talking but we have a lot that we've marked in today.

THE HONORABLE MALPHRUS: Okay. So are you telling me that you're ready to proceed?

MR. GODWIN: I -- I believe so. I believe Ms. Jones is ready to move forward on her cross examination.

THE HONORABLE MALPHRUS: Okay.

MR. GODWIN: And with your permission, I'll ask that the adoptive mom could proceed back to the witness stand?

THE HONORABLE MALPHRUS: Yes, ma'am. Yes, ma'am. And since we had a break, I'm going to place you under oath again.

ADOPTIVE MOTHER,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CROSS EXAMINATION BY MS. JONES:

Q. Ms. -- it's Capobianco, correct?

1 MS. JONES: I'm sorry. Am I not supposed to use
2 names?

3 MR. GODWIN: Well, I was referring to them as
4 Adoptive Couple because of confidentiality.

5 MS. JONES: I apologize. I wasn't sure how to
6 address her.

7 Q. Good morning.

8 A. Hi.

9 Q. Did you and your attorney speak about your testimony
10 at all after we recessed our trial yesterday?

11 A. No.

12 Q. Can you tell me, do you have any criminal background?

13 A. I, when I was younger, was caught under-age drinking.
14 And then I got arrested once for a DUI when I was in my
15 twenties also. But both of those were expunged. One was
16 expunged and the other was reduced.

17 Q. Okay. How did you come in contact originally with Mr.
18 Godwin?

19 A. Well, he was given to us as an example of an attorney
20 that we might need for an adoption by June Bond. Actually,
21 she gave me a number of attorneys and we chose him.

22 Q. So you were in contact with June Bond prior to
23 contacting Mr. Godwin?

24 A. Yeah. She didn't remember this yesterday, but we met
25 at an adoption fair that was held here in Charleston.

1 Q. And do you recall about when you were introduced to
2 Mr. Godwin?

3 A. Maybe April of 2009 or maybe sooner. It seems like we
4 had our home study around April or May so it would have
5 been right about that time.

6 Q. Were -- when were you introduced to Ms. Prowell?

7 A. I looked that up because I couldn't remember and I
8 think that was April of 2010.

9 Q. You -- had you ever met Ms. Prowell or had any
10 interaction with her at all before this case was initiated?

11 A. No.

12 Q. In your birth family background report, that was
13 performed by Nightlight Christian Adoptions; is that
14 correct?

15 A. I saw that paper that was given to June yesterday, and
16 I do have a copy of that, but, you know, I haven't looked
17 at it in a really long time.

18 Q. It was provided to you? May I show you a copy of it?

19 A. Sure.

20 Q. It's already been marked.

21 A. That would be good because I haven't seen it. I
22 remember this, that's all I remember. So -- okay.

23 Q. I'll give you an extra copy. Let me give you this
24 extra copy and ---

25 A. Okay.

1 Q. --- I'll hand this up to the Court.

2 MS. JONES: And, Your Honor, this has already
3 been marked as Defendant's exhibit 4. And it's my
4 understanding without objection.

5 (Whereupon, the birth family background report was
6 marked and admitted into evidence as Defendant's exhibit
7 number 4.)

8 Q. That was performed, that was based on an interview
9 with the birth mother. Is that correct?

10 A. That's what it says here so I believe it to be the
11 case.

12 Q. And it was provided to you?

13 A. It was given to me.

14 Q. And did you -- do you recall reviewing the contents?

15 A. I do. Uh-huh.

16 Q. Yesterday you testified that you had originally
17 thought that this child was not an Indian child?

18 A. No. I don't know if that's what I said, but what I
19 know to be true is that we originally thought that she was
20 partly Cherokee. That was told to us at the beginning.
21 And then we were told before she was born that -- well, I
22 was told that the attorney in Oklahoma went and checked
23 that out with the Cherokee Nation and he was not
24 registered.

25 Q. Okay. And I think...

1 MS. JONES: I need to collect the exhibit.

2 A. Here's the one that's marked.

3 Q. Were you provided a copy of -- there were a number of
4 letters that went back and forth and originally there was
5 some word from -- I believe it was from the birth mother --
6 that this child was an Indian child, that her father was a
7 member of the Cherokee Nation. Is that correct?

8 A. That's what they told us at the beginning, yes.

9 Q. Okay. And did they explain to you the risk, did they
10 ever explain to you the risk involved with adopting a child
11 ---

12 MR. GODWIN: I'm going to object. If I may
13 interrupt counsel, so I apologize. But when you say, they,
14 I have to be careful about attorney/client privilege. If
15 you're asking if they, me, then I have to object to
16 attorney/client privilege.

17 Number two, I did stipulate to the letters, but I want
18 to make sure that counsel understands that I'm not implying
19 that my client had personal knowledge of the contents of
20 those letters, which, of course, you can ask her. But I
21 need to be careful about the they.

22 THE HONORABLE MALPHRUS: Ms. Jones, if you would,
23 I would appreciate if you would clarify when you say they,
24 specifically reference who it is you are referring to
25 because certainly I believe there is that attorney/client

1 privilege that could be asserted if one was so inclined to
2 assert.

3 MS. JONES: Absolutely.

4 Q. And I'm not asking you to tell me anything that you
5 have discussed with your attorney. When I say they, I'm
6 referring to any of these agencies that have been involved
7 because you originally contacted, you said June Bond. Is
8 that correct?

9 A. Uh-huh. Well, I contacted her.

10 Q. You contacted her?

11 A. Yes. About this home study.

12 Q. Did you contact -- just to be clear, did you contact
13 her because you were seeking to adopt a child?

14 A. Yes.

15 Q. Okay. And so did she assist in locating a child for
16 you ---

17 A. No.

18 Q. --- or did she refer you to a different agency?

19 A. She -- we wanted to work with a private attorney and
20 she listed about seven or eight private attorneys in South
21 Carolina, and we picked from that list.

22 Q. And that's when you got in touch with Mr. Godwin?

23 A. Uh-huh.

24 Q. And then was there an agency, either here in South
25 Carolina or in Oklahoma that assisted you in any way to

1 connect you with the birth mother?

2 A. Yes. There was an agency that connected us with
3 Christy.

4 Q. Which agency was that?

5 A. I think their name is Adoption Advertising or
6 something like that. I did not know them very, you know,
7 have a lot of contact with them. I had more contact with
8 Christy.

9 Q. Did Mr. Godwin put you in contact with that agency?

10 A. Yes.

11 Q. And did that agency or Ms. Bond or any of the other
12 agencies that facilitated this adoption, did anybody ever
13 explain to you the risk involved with adopting an Indian
14 child?

15 A. There was some discussion that it might be a
16 complication, but then when we found or were told that she
17 was not Cherokee, that he was not registered, then we
18 didn't talk about it anymore.

19 Q. Okay. I'm going to show you what's been marked
20 Defendant's 1 and ask you if you were ever, if you ever
21 received or if you were copied on any of these
22 correspondence between the birth mother's attorney and the
23 Cherokee Nation with regards to the child's status as an
24 Indian child?

25 A. I've never seen these first pages.

1 Q. The first?

2 A. Two. I've never seen -- I don't think I've seen any
3 of these documents before.

4 Q. You never have seen any of them?

5 A. The one letter that I got a copy of was the one saying
6 that he was not registered.

7 Q. And that would have been the one August 21st, 2009?

8 A. You can show it -- I don't have the date of it, but it
9 was done before she was born.

10 Q. Is that the one that you ---

11 A. No, it wasn't this one. It looked like -- it looked
12 -- it was from the Cherokee Nation. It looked like this,
13 similar, but it said Dustin Dale Brown, and his birth date,
14 is not registered.

15 Q. I'm sorry, which one are you referring to?

16 A. It looked like this, but it said -- it didn't say
17 anything about the different dates, it said Dustin Dale
18 Brown was not registered Cherokee. That's the gist of the
19 letter that I got.

20 Q. You just pointed -- this is collectively marked as
21 Defendant's 1, but the letter dated 9/3/2009 to ---

22 A. I've never seen that letter before.

23 Q. --- that shows that this child is not -- that's not
24 the one you're referring to?

25 A. No. That's not the letter I'm -- this one said he is

1 not a registered member of the Tribe. It didn't say
2 anything about the child. It just had that he wasn't a
3 registered member of the Tribe. And it was signed by, I
4 think, I remember the name, Myra Reed, I think.

5 Q. And this one is signed by Myra Reed.

6 A. Right.

7 Q. You're thinking there's another letter out there?

8 A. There might be.

9 Q. Okay.

10 A. I just remember seeing one that said he was not
11 registered.

12 MS. JONES: I'm going to hand this up to the
13 Court.

14 (Whereupon, a letter dated 8/21/09, having been
15 previously marked, was admitted into evidence as
16 Defendant's exhibit number 1.)

17 Q. I just wanted to -- I want to get through these. The
18 first letter is dated August 21st and that is from a Myra
19 Reed -- no, I'm sorry. It's from a Phyllis Zimmerman. Who
20 is Phyllis Zimmerman?

21 A. She's Christy's attorney.

22 Q. She's the birth mother's attorney?

23 A. Uh-huh.

24 Q. And who paid for her services?

25 A. We did.

1 Q. And you paid for those services for her to represent
2 the birth mother in this case?

3 A. Uh-huh.

4 Q. When was -- when did her representation of the birth
5 mother begin in this case?

6 A. I have no idea. I mean, Ray took care of that.

7 Q. Okay. This letter was written on August 21st, 2009,
8 to the Indian Nation with certain information that was
9 provided to them to see if this child was -- if it would
10 trigger ICWA essentially. Is that your understanding?

11 A. I -- I don't see the letter you're talking about, but
12 I am assuming that's what it was, the purpose of it.

13 Q. I'm referring to the August 2009 letter. And this
14 would have been before the child was born, correct?

15 A. Right. If it's August 21st, it was before she was
16 born.

17 Q. And on that notification it says that the biological
18 father's date of birth is what?

19 A. October 8, 1983.

20 Q. And have you since learned that that was an incorrect
21 date of birth?

22 A. I have since learned that, yes.

23 Q. Okay.

24 A. I think -- I know -- I think the year was different.

25 Q. And on this letter also, this was a letter from the

1 birth mother's attorney to the Indian Nation.

2 A. Uh-huh.

3 Q. And then following along in this same exhibit, the
4 next letter is a written response to this letter on
5 September 3rd, 2009. Did that advise Ms. Zimmerman that
6 this child was not an Indian child according to the Indian
7 Nation?

8 A. It does seem to do that.

9 Q. And it made -- it made that determination based upon
10 the information that was given to them ---

11 A. Sure.

12 Q. --- by Ms. Zimmerman? And it also says that this
13 determination is based on the above listed information
14 exactly as provided by you. Any incorrect or omitted
15 family documentation could invalidate this determination.

16 A. Okay.

17 Q. And then the next letter would have been January 12th.
18 Do you recall when this action was filed in South Carolina,
19 when my client was served?

20 A. Around that time.

21 Q. And shortly after he was notified of the action, it
22 looks like the Cherokee Nation -- and this is January 12th,
23 2010, the Cherokee Nation wrote back and said this is an
24 Indian child.

25 A. Okay.

1 Q. Now that we have the correct date of birth and correct
2 information.

3 A. I did not get that letter then at that time.

4 Q. Okay.

5 A. I never got that letter actually.

6 Q. Were you -- did you become aware that my client was
7 contesting this adoption at about this time in January of
8 2010 or prior to that?

9 A. No. It was probably later in January I found out.

10 Q. Later in January of?

11 A. 2010.

12 Q. So shortly after this?

13 A. I guess so.

14 Q. This is January 12th, 2010?

15 A. Probably a week or two after that time.

16 Q. No knowledge that he might object to this adoption
17 before then?

18 A. No.

19 Q. In fact, the birth mother gave you every reason to
20 believe that he would not object to this adoption at all,
21 didn't she?

22 A. Yes, she did.

23 Q. She told you that she expected that he would terminate
24 his rights?

25 A. That's what she thought.

1 Q. And that he had -- that he had not supported this
2 child at all during the pregnancy?

3 A. That's what she told us.

4 Q. She told you that he had two children. Is that
5 correct?

6 A. She did say -- she said he had one child and she
7 thought he had another child.

8 Q. And did she tell you that he didn't support that
9 second child?

10 A. She did say that.

11 Q. And have you since learned that he doesn't have a
12 second child that he doesn't support?

13 A. I have not learned that to be the case.

14 Q. You have not learned that to be the case?

15 A. I know that he's denying that that's his child.

16 Q. Denying that who's his child?

17 A. The second child you're speaking of, that Christy
18 believed he didn't support.

19 Q. Okay. And were you aware that the birth mother and my
20 client were engaged before they became pregnant?

21 A. Yes.

22 Q. Were you aware of that at the time?

23 A. Yes.

24 Q. You were aware from the very beginning?

25 A. Yes. We were told that they were engaged and then

1 when she got pregnant that that was cut off. She said that
2 he cut it off.

3 Q. In the Nightlight Christian Adoption, which let's look
4 at that. It's already been handed up to the Court as
5 Defendant's 4. This is the family background report.

6 A. Is this the same one that you have?

7 Q. Yeah. And this says, that's the kind of report that
8 would have been supplied to you to give you background
9 information on this child ---

10 A. Uh-huh.

11 Q. --- family history, medical issues, that kind of
12 thing. Is that correct?

13 A. Uh-huh.

14 Q. And it says that ---

15 A. What page are you on?

16 Q. At the bottom -- on the page, the first page at the
17 bottom of the third paragraph, it says initially the birth
18 mother did not wish to identify the father, said she wanted
19 to keep things as low-key as possible for the Adoptive
20 Couple, because he's registered in the Cherokee tribe. It
21 was determined that naming him would be detrimental to the
22 adoption.

23 Were you aware that she wanted to keep this as low-key
24 as possible in order to make the adoption go smoother?

25 A. I'm not sure what she meant by that. I don't think

1 she meant that -- I mean, are you insinuating that I should
2 have known that she was saying he might make a fuss about
3 it?

4 Q. No, not at all. And I'm not trying to say that you
5 ---

6 A. Okay. Because I didn't -- honestly, that probably
7 would be something that I read and didn't think twice
8 about.

9 Q. Okay. And then it says that the baby is due on
10 September 22nd. But, of course, she was not -- she was
11 actually born on September 15th. Is that right?

12 A. Uh-huh.

13 Q. Now, all the information contained in this would have
14 been, as it says, this would have been reported verbally
15 from the birth mother without verification.

16 A. It seemed to me like it was a report straight from
17 Christy's mouth.

18 Q. She stated that she believes that she also has some
19 Native American heritage. Were you aware of that?

20 A. Yes.

21 Q. And can you tell me did anybody ever question why -- I
22 notice that they have a maternal great grandfather, who I
23 believe is the Cherokee heritage line, but there's no date
24 of birth that was ever given in this report or any other.

25 A. Christy always told me she wasn't registered, that she

1 had Cherokee in her background, but that she's not
2 registered.

3 Q. Going on to page 5 of this report, you were also aware
4 that the birth mother and my client had known each other
5 since they were in high school. Is that correct?

6 A. Yes.

7 Q. And that they'd dated on and off -- on and off since
8 that time until there were engaged?

9 A. Yes. Well, I think she was with -- I mean, she had
10 two other children within that time so I'm not exactly
11 sure, but I know they knew each other in high school and
12 dated off and on.

13 Q. And you were aware that she broke off the engagement
14 with my client?

15 A. I found that out later.

16 Q. When?

17 A. I think it was a month ago or something like that.

18 Q. And according to the birth mother, my client was aware
19 of the pregnancy but had no knowledge of her adoption
20 plans?

21 A. Where do you read this?

22 Q. Looking on page 5. Circumstances surrounding
23 adoption, the third sentence.

24 A. Yes.

25 Q. Are you aware that the birth mother, under the Indian

1 Child Welfare Act can revoke her consent to this adoption
2 at any time prior to her rights finally being terminated
3 and the adoption decree being issued?

4 A. I don't think I understand what -- what you're saying.

5 Q. Are you aware that if the birth mother wanted to take
6 her child back that she would have that right to do so,
7 since she voluntarily placed the child with you, even as we
8 stand here today, that right exists for her?

9 A. I was not aware of that.

10 Q. And, obviously, you know, that creates a situation
11 where there's a lot of things that aren't finalized until
12 the very final order is issued in the case.

13 A. It would seem so.

14 Q. Adds a lot of risk to an adoption that you needed to
15 understand.

16 A. I think every adoption has a risk. I mean, that, you
17 know, from the beginning before the whole Cherokee thing
18 ever came up, before we ever met Christy.

19 Q. Were you aware that the delay in providing the Nation
20 with my client's correct date of birth caused delay in his
21 notification of this adoption?

22 A. No, I wasn't aware of that.

23 Q. Did the birth mother tell you that she had kept her
24 plans to adopt this child a secret from my client?

25 A. No, she never said that.

1 Q. When -- you kept some notes, Mr. Godwin has stipulated
2 to, that ---

3 MR. GODWIN: I -- I'm not agreeing to that.

4 Q. And I'm just going to show you. This was provided to
5 me in discovery. These are your notes with regard to your
6 contact to the birth mother.

7 A. When did I send these or do these?

8 Q. Well, I'm asking you if you recognize those as your
9 notes? If you don't recognize them as your notes then ---

10 A. I think I might have written this down but it's been a
11 long time since I've looked at it. I don't know why I
12 wrote it down, but maybe probably just trying to remember
13 all -- everything.

14 Q. Okay.

15 A. But I'd have to look at it to see what I said. I
16 couldn't tell you what's written there.

17 Q. When this child was born, you were there in the
18 hospital, you and your husband both?

19 A. Uh-huh.

20 Q. And you were able to take the child from the hospital
21 and you went and stayed in a hotel room. Is that what you
22 did?

23 A. We stayed in a hotel.

24 Q. You stayed in Oklahoma awaiting interstate compact
25 approval to leave with the child?

1 A. Right.

2 Q. And were you aware that if the Indian Nation had been
3 notified that this was an Indian child that was being
4 adopted and request to be moved, that approval wouldn't
5 have been given to you for some time, if at all?

6 A. No, I wasn't aware of that. I was, at one point if we
7 thought it was a Cherokee child, which at that point we
8 were told it wasn't, that there would be a 10-day waiting
9 period, where the birth father would have to sign some
10 papers saying he agreed to the adoption.

11 Q. Okay.

12 A. I don't know if that's correct, but that's what I
13 remember.

14 Q. And if he had consented after 10 days I believe that
15 would have been correct. But, you left after about seven
16 days; is that correct? Or do you recall how long you were
17 in Oklahoma before you were given interstate compact
18 approval?

19 A. I think it was about seven days. We were expecting to
20 stay there up to 10. It may have been eight.

21 Q. Did you -- were you aware that if the child's Indian
22 heritage and the fact that she -- her father was a member
23 of the Cherokee Nation, if that had been alerted to the
24 Nation that there would have been a preference placement
25 requirement, that you would have to go through to see where

1 the child should be placed, whether it should be placed
2 with my client or with his parents and there is certain
3 preference placement requirements under ICWA?

4 A. I've read those laws. I didn't know that at the time.

5 Q. Nobody ever explained that to you as a possibility
6 that might interfere with your plans to leave?

7 A. I mean, we didn't think she was Cherokee so there was
8 no point in talking about any of that.

9 Q. Okay. I'm going to show you what's already been
10 marked and we've agreed on as Defendant's 2. This is the
11 interstate compact placement request. You didn't fill that
12 out. Have you ever seen it before?

13 A. I don't know if I have or not. It's possible. I
14 definitely didn't fill it out, but I may have seen it. I
15 may not have.

16 Q. This was the document that would have allowed you to
17 the leave the State of Oklahoma and come back to South
18 Carolina.

19 A. Okay. But I didn't -- there was a lot of paperwork
20 shown to me so. I knew that I needed the interstate
21 compact to leave.

22 Q. On this document, I'm just going to show it to you for
23 a minute, it says, that this child -- it has ethnic group.
24 You can choose Caucasian, Native American, Indian, or
25 Hispanic.

1 A. Uh-huh.

2 Q. It's marked Hispanic.

3 A. Uh-huh.

4 Q. This was completed, it looks like, by the birth mother
5 on 9/16/09, the day after the child was born.

6 A. I see Christy's signature on it. I don't know if she
7 completed it or not.

8 Q. Signature of sending state. Okay.

9 A. No.

10 Q. I'm sorry. Signature of the person. And it's an
11 adoption to be finalized in South Carolina. And in legal
12 status, parental rights terminated, right to place for
13 adoption.

14 A. Uh-huh.

15 Q. Had any -- nobody's parental rights had been
16 terminated at that point in time. Isn't that true?

17 A. I thought Christy's had.

18 Q. Okay. Well, she had signed a relinquishment of rights
19 under South Carolina law at that time. Is that your
20 understanding?

21 A. I think so, yeah.

22 Q. Okay. But the ten days -- obviously ten days hadn't
23 passed the day after the child was born.

24 A. Ten days for what?

25 Q. The ten days for her to do it under Oklahoma law and

1 the ICWA Federal Law, which you said that they explained to
2 you that you'd have to wait for it if the father was
3 identified.

4 A. If he was identified as a Cherokee, he was not
5 identified as a Cherokee as far as I know.

6 Q. Okay. Okay. And I know -- I don't mean to try to ---

7 A. No.

8 MS. JONES: Your Honor, this is -- I move to
9 admit this as Defendant's 2.

10 THE HONORABLE MALPHRUS: As I understand it, this
11 has already been stipulated to and entered into evidence
12 without objection?

13 MR. GODWIN: Yes, ma'am.

14 THE HONORABLE MALPHRUS: Correct?

15 MR. GODWIN: Yes.

16 (Whereupon, the ICPC request, having been previously
17 marked, was admitted into evidence as Defendant's exhibit
18 number 2.)

19 Q. I know you testified about this a little bit
20 yesterday. You said you had considered what impact this
21 situation might have on this child in the future if you are
22 awarded custody.

23 A. Of course.

24 Q. And tell me what your feelings are with regard to what
25 her reaction will be when and if she discovers that my

1 client fought for his child and he was ultimately defeated
2 by you and your husband, the very parents that will have
3 been raising her?

4 A. Well, I have no idea how she'll react, but we'll try
5 to prepare her as well as we can for that. Like I said,
6 telling her the truth gradually. I think, you know, we're
7 going to -- we've read a lot of books about adoption before
8 and after she was placed with us. And most of them, from
9 what I understand, say that as long as you're honest and
10 provide a loving home and she feels secure in the love that
11 we have for her and her family, that she'll grow to, you
12 know, that different kids can react differently, but most
13 take it within stride.

14 Q. Have you ever read any books that dealt with the
15 situation where the parents fought for the child in a
16 situation like this? I'm sure, it's probably not as
17 common.

18 A. They talk about -- I remember reading something
19 specifically about when the worst thing possible happens.
20 And I think for me that -- that this is an example of that
21 and, you know, how that the adoptive parent can deal with
22 that. But I don't think it has happened so often that
23 there's enough research about what, you know, how that
24 would be explained to -- to children. There's guidelines,
25 I'm sure, but -- I haven't read anything about how to

1 explain about a contested adoption.

2 Q. So are you concerned about this child's reaction?

3 A. Yeah. I mean, you know, I'm concerned about a lot of
4 things in terms of this whole situation.

5 Q. How much do you know about my client and his family?

6 A. You've got a lot, a little, somewhat. I've learned
7 some things, you know, that I've been told.

8 Q. Would you admit that he and his parents are good,
9 decent people?

10 A. I haven't met them. I have no reason to believe that
11 they're not.

12 Q. You don't have any reason to believe that they love
13 this child and long to have her in their care and to raise
14 her as much as you do?

15 A. Well, they obviously want to raise her. I couldn't
16 qualify that compared to the way I feel. I know how I
17 feel. So -- and it feels to me like we really want her
18 more than anybody.

19 Q. Can you go over with me the fees that you have
20 expended as a part of this action?

21 A. Well, I need a copy.

22 Q. I'm going to show you what's already been marked and
23 agreed on, as Defendant's 3. And I don't know if this is
24 inclusive, but if it will help you. It looks like \$3500 in
25 fees to Mr. Godwin, but this was back on September 15th of

1 2009. I suppose that's when you were under the impression
2 this was going to be an uncontested adoption.

3 A. Uh-huh.

4 Q. And your fees would probably be higher than that with
5 Mr. Godwin?

6 A. Uh-huh.

7 Q. Do you have any idea how much his total ---

8 A. I have no idea.

9 Q. Can you give me ---

10 A. I mean I'm guessing -- you mean from beginning to end
11 how much this has cost us?

12 Q. Yes, ma'am.

13 A. I would say we're at about 30 or 40,000 now.

14 Q. You paid the birth mother's attorney fees, that was
15 Phyllis Zimmerman. It looks like it says 2500. Did you
16 ever have to pay her any more than that?

17 A. I don't know. I don't even know if she's still
18 involved. I mean I know that Christy's had to have contact
19 with her since then, and this was done back, you know, when
20 she was born. So, you know, I'm sure there are probably
21 more fees. I wouldn't expect that they're a lot. That
22 would be the smallest amount probably.

23 Q. Did you get a bill for that?

24 A. We have had an updated bill, but not recently.

25 Q. So to the best of your recollection you've paid at

1 least 2500 and then some more.

2 A. Uh-huh.

3 Q. But you don't know exactly how much the total was?

4 A. I'm guessing. Like I said, I mean, we've had to pay
5 Ray since then, kind of a down payment, not down payment
6 but like just bits and pieces here, but I think the whole
7 shebang is coming later.

8 Q. Okay. And the birth family background report,
9 obviously that was 375. Is that right?

10 A. That's what it says.

11 Q. Is that what you recall?

12 A. I actually don't remember seeing that before, but
13 they, you know, they'd hand me the bill and we'd pay.

14 Q. And did you -- did you pay for the home study?

15 A. That, that was the -- yes, we did pay for that.

16 Q. And that's \$1,075. You heard Ms. Bond's testimony
17 yesterday. Did she testify accurately to what you paid her
18 for her services in this case?

19 A. Yes. We paid her 1500 for the home study and then
20 another, I think, 500 for the post-study and then another
21 hundred for the post post-study.

22 Q. Right. That post post-study, that was performed after
23 we -- the case was called for trial before Judge Garfinkel
24 in July. Is that correct?

25 A. Uh-huh, uh-huh.

1 Q. Who asked for that study to be performed?

2 A. I don't know. June just contacted me and said that,
3 you know, she knew that we had moved and that there were
4 some other transitions in the home, and that she wanted to
5 do a, you know, an updated study.

6 Q. And as a part of that post post-placement she included
7 a lot of things about the Cherokee culture, which wasn't
8 included in any of her previous reports?

9 A. Again, at that time, we didn't know that Veronica was
10 Cherokee, although, I mean you haven't asked me this, but
11 we were planning on incorporating that anyway.

12 Q. You didn't know she was Cherokee at the time of ---

13 A. In the first post-placement study, which took place in
14 November 2009. I think the baby was only a couple of
15 months old then.

16 Q. Adoption Advertising fee, it says \$8,700. Can you
17 tell me what that was for?

18 A. That was the agency fee that contacted Christy or that
19 Christy contacted. They were a go-between for us, doing
20 some background information and kind of connecting us to
21 each other.

22 Q. Would that have included that Nightlight?

23 A. I don't think so. I don't know. It may have. I
24 don't know because that was after Christy was identified.

25 Q. And of course Nightlight, that's a Greenville agency;

1 is that right?

2 A. Yes.

3 Q. And so that \$8,700 would have been what you paid to
4 get coordinated with the advertisement that the birth
5 mother answered looking for an adoptive couple?

6 A. It would -- they also contacted -- they connected us
7 and were facilitating our correspondence throughout.

8 Q. And they connected you with Mr. Godwin?

9 A. No, no. They connected Christy and I to each other.
10 I was already working with Ray at that point.

11 Q. Oh. Okay. Who paid for the attorney who represented
12 the birth mother during her deposition, a Ms. Carol
13 Nichols.

14 A. I have not received that bill yet. I expect we're
15 going to get it.

16 MS. JONES: Your Honor, I'm looking for -- it's
17 got a letter from Ray Godwin on the front of it. I thought
18 that it had already been pre-marked.

19 Didn't we agree to it?

20 THE WITNESS: There's something with a mark on
21 it. Is that what you're looking for?

22 MS. JONES: Oh, it's right in front of you. Yes.
23 Thank you. I'm sorry.

24 MR. GODWIN: I didn't get a copy of it. Do you
25 have an extra copy?

1 MS. JONES: I don't. It's -- I think you have
2 it. It's ---

3 MR. GODWIN: Right, but it's buried in two boxes.

4 MS. JONES: Okay. Okay.

5 MR. LOWNDES: I've got one.

6 MR. GODWIN: Thank you.

7 Q. I'm referring to Defendant's 3. And we were looking
8 at that because it included the costs that you'd incurred
9 as of that time. And that was what you'd submitted with
10 the package from your attorney to the interstate compact
11 commission in South Carolina. Is that correct? Is that
12 your understanding?

13 A. I didn't submit it. I'm sure Ray did that for us.

14 Q. Okay.

15 MS. JONES: I want to hand this up to the Court,
16 if I haven't already, as Defendant's 3. And ---

17 THE HONORABLE MALPHRUS: So that I'm clear,
18 Defendant's number 3 has been admitted without objection.
19 Is that correct?

20 MR. GODWIN: Correct.

21 THE HONORABLE MALPHRUS: Thank you.

22 (Whereupon, the packet of information submitted to
23 ICPC, having been previously marked, was admitted into
24 evidence as Defendant's exhibit number 3).

25 Q. And do you know whether or not this package, because

1 this is a lot of information, would that -- do you have any
2 knowledge whether that would have been submitted to the
3 Oklahoma Interstate Compact Commission?

4 A. I mean, I hate to tell you but I don't know the rules
5 that well.

6 Q. Sure.

7 A. I mean, I expected Ray to do everything that was legal
8 and right.

9 Q. Sure.

10 A. So I...

11 Q. You heard Dr. Saylor testify yesterday and you did
12 some -- that he -- he performed some testing on at least
13 you during your bonding assessment. Do you recall which
14 test that you underwent?

15 A. I recall what he said and I recall some of the
16 questions. One was the Parental Stress Inventory, another
17 one was a child -- the Minnesota, I think, Child
18 Development Inventory. I don't know if those are the exact
19 terms.

20 Q. That was only on the child.

21 A. One was on me, one was on her.

22 Q. Right.

23 A. But I answered both of them. I mean, obviously, she
24 couldn't fill out a questionnaire. You know, it was about
25 her developmental milestones.

1 Q. Okay. And any other tests performed?

2 A. No.

3 Q. You have a PhD in psychology?

4 A. Uh-huh.

5 Q. Do you know Dr. Saylor professionally at all?

6 A. Never met him until this happened -- until we had our
7 assessment.

8 MS. JONES: I think that's all I have, Your
9 Honor.

10 THE HONORABLE MALPHRUS: Do you have any
11 questions, Ms. Nimmo?

12 MS. NIMMO: I do have a few.

13 CROSS EXAMINATION BY MS. NIMMO:

14 Q. I wanted, with the same caution that was given while
15 ago, if I ask you about things about you were told or
16 heard, I'm not asking about anything that your attorney
17 told you. And I'll try to be specific as to who we're
18 talking about, but I want to let you know that I'm not
19 trying to get any privileged information out of you.

20 A. Okay.

21 Q. What is your understanding, and again I'm not asking
22 what -- what Mr. Godwin told you, but what is your
23 understanding of your legal status in relation the child at
24 this time?

25 A. That I have temporary custody of her.

1 Q. That's your understanding, that you have temporary
2 custody. You would admit that you're not the legal parent
3 at this point.

4 A. No, I guess I'm not the legal parent.

5 Q. And you stated that when you had learned before the
6 child was born that she may be Indian, that you were you
7 told there might be some complication. If any of that
8 information came from someone other than your attorney,
9 could you tell me what your understanding of the possible
10 complications may be?

11 A. Well, honestly I can't tell you where that information
12 came from. I would expect it probably would have been from
13 my attorney.

14 Q. Do you know if either of the placing agency or Ms.
15 Bond or the pre-adoptive ---

16 MR. GODWIN: I just want to be careful -- I'm not
17 so much objecting. I'm just saying that I have an on-going
18 objection to anything that may slip out from my client ---

19 MS. NIMMO: And I'll strike that.

20 MR. GODWIN: No, no, no. I'm not asking you to.
21 --- that it could be construed to open the door. That's
22 all. I don't want to miss something that could be
23 construed that way. I'm just trying to be careful.

24 MS. NIMMO: And I'm going to be very careful, and
25 I'll rephrase that.

1 THE HONORABLE MALPHRUS: Mr. Godwin, I have a
2 little bit of a problem with an on-going objection. I
3 mean, I need to know if you have an objection to the
4 question that she's asking so that I can rule on that
5 objection. I think that from my perspective, I'm going to
6 have a hard time dealing with that on-going objection.

7 MR. GODWIN: That's fine, Judge. And I'll hop up
8 and down. I'll withdraw my objection at this point.

9 THE HONORABLE MALPHRUS: Thank you.

10 Q. Do you know if any of the agencies that you ever
11 worked with talked to you about possible complications with
12 an Indian child?

13 A. They didn't.

14 Q. Okay.

15 A. If matters, I think that the information came from
16 Phyllis Zimmerman to Ray to me.

17 Q. Okay. And can you tell me the first time that you
18 heard the term Indian Child Welfare Act? And I'm not
19 asking who told you or -- if you remember at all the first
20 time you heard that term or phrase?

21 A. I couldn't tell you. I mean, it would have been after
22 we found out that she is -- was -- is a Cherokee child.

23 Q. So in the beginning when there was a possibility,
24 before the child was born and there was a possibility ---

25 A. They didn't say Indian Child Welfare Act then. I had

1 no knowledge of the Indian Child Welfare Act. It was just
2 that the birth father would have to surrender his rights.
3 That was the only thing I remember.

4 Q. Okay. You've seen this baby's birth certificate?

5 A. No, I have not.

6 Q. So you wouldn't know whether or not the father was
7 listed on it?

8 A. I wouldn't know. I don't know.

9 Q. You stated in your previous testimony, I believe, that
10 you thought the day of the father's date of birth was
11 wrong. Is that what you ---

12 A. No, the year, I think is what was wrong.

13 Q. The year?

14 A. If I said day, I meant year.

15 Q. Would you be surprised to learn that the year, day,
16 and the spelling of his name were all incorrect?

17 A. I think I remember hearing about the spelling of his
18 name.

19 Q. To your knowledge, has anyone tried to enroll this
20 child as a member of Cherokee Nation?

21 A. No, I don't know that they have.

22 Q. You stated an approximate figure of 30 to \$40,000
23 dollars. Would that be a total of all the fees that Ms.
24 Jones asked you about or were you specifically speaking
25 attorney fees there?

- 1 A. I mean, I -- I don't even want to speculate. It's
2 going to be more than that, and I'm thinking everything.
3 So I wasn't thinking just attorney fees or all fees, it's
4 just -- I know, you know, I know that's a low figure.
- 5 Q. When was your first contact with the -- or if there's
6 been any contact with the biological father in this case?
- 7 A. I haven't had any contact with him.
- 8 Q. Is this proceeding the first time you've ---
- 9 A. Well, we met I guess actually in July at the -- the
10 deposition.
- 11 Q. Have you ever attempted any contact in any way with
12 the biological father?
- 13 A. No.
- 14 Q. No e-mails, phone calls?
- 15 A. No.
- 16 Q. Have you ever, through any party, tried to have
17 information related to the biological father in any way?
- 18 A. No. I thought about it.
- 19 Q. Have -- have you, or to your knowledge, any other
20 person or entity made any attempt to collect any type of
21 monetary support from the biological father?
- 22 A. Well, would Christy count?
- 23 Q. Sure.
- 24 A. I think that she tried to get some support from him.
- 25 Q. And what was your -- what is your understanding of the

1 support that she attempted to obtain from the biological
2 father?

3 A. From what I understand, she asked him to help with her
4 bills and her medical expenses.

5 Q. Did you provide, you and your husband provide funds
6 for the birth mother's medical expenses?

7 A. I'm not exactly sure. I know -- probably, yeah. We
8 probably did.

9 Q. Do you have any knowledge of Indian Health Services in
10 the state of Oklahoma?

11 A. I know that they exist. I know that they're available
12 to Indian people or Cherokee. Well, I think both.

13 Q. Would -- would you be surprised to learn that had the
14 biological father been acknowledged in this case that the
15 birth mother could have received completely free, both pre-
16 natal and delivery health care through Indian Health Care?

17 A. What do you mean acknowledged?

18 Q. If at the time she was pregnant and he was recognized
19 as the father by admission ---

20 A. Uh-huh.

21 Q. --- and they knew that he was Cherokee, even though
22 she wasn't, that she could have received health services
23 because she was having a Cherokee child?

24 A. I wouldn't be surprised by that, no.

25 Q. Just a few questions. You talked yesterday about

1 taking the child to Cherokee, North Carolina.

2 A. Uh-huh.

3 Q. And the various things that you've done to educate
4 yourself and your husband as to her culture as well as her
5 -- do you understand that Cherokees in this area and
6 Cherokees in Oklahoma are different tribes?

7 A. I know that there's three Cherokee tribes.

8 Q. Okay.

9 A. And I know two of them are in Oklahoma.

10 Q. Okay.

11 MS. NIMMO: I don't have any further questions
12 for this witness.

13 Thank you.

14 THE WITNESS: You're welcome.

15 THE HONORABLE MALPHRUS: Thank you. Mr. Lowndes.

16 MR. LOWNDES: I have no questions, Your Honor.

17 THE HONORABLE MALPHRUS: Anything on redirect,
18 Mr. Godwin?

19 MR. GODWIN: Thank you, Judge.

20 REDIRECT EXAMINATION BY MR. GODWIN:

21 Q. Counsel just asked you whether you were aware that if
22 the birth father was acknowledged, Ms. Maldonado could have
23 had free medical care. Do you remember that question
24 moments ago?

25 A. Yes.

1 Q. Were you made aware of any attempt by the birth father
2 to communicate that to Ms. Maldonado?

3 A. No, I was not aware of that.

4 Q. And is it your impression that she did ask for support
5 and he refused?

6 A. Yes, that's my impression of it.

7 Q. And is it your further understanding that he indicated
8 to her verbally and in writing that he would sign his
9 rights away?

10 A. I've seen those texts, yes.

11 Q. And there was discussion, I believe, that -- about
12 when you learned about the Indian tribe issue, whether
13 we're going to refer that as ICWA, or the fact that this
14 child is -- is defined as an Indian child. There was
15 various questions about that. Is it accurate to say that
16 at some point prior to birth, and again don't let slip out
17 anything I told you, but prior to birth you and your
18 husband were concerned about the Indian child issue?

19 A. Yes.

20 Q. Okay. And is it also accurate to say that as the --
21 strike that. You began working with Christy -- Christy --
22 Christy -- Ms. Maldonado at what point in her pregnancy?
23 Do you remember what month? The baby was born September
24 15th.

25 A. It was late June.

1 Q. Okay.

2 A. And I guess that's near the beginning of her third
3 trimester.

4 Q. Okay. So in June/July or July/August during the
5 pregnancy, 2009, would you have expected the birth father
6 or the Indian tribe to file any claim or make known their
7 interest in this Indian child?

8 A. If she were an Indian child, I would have expected
9 that.

10 Q. Okay. But you weren't contacted by me telling you
11 that the birth father came forward with that information?

12 A. No.

13 Q. And in September, at the time of birth ---

14 A. No.

15 Q. Did I tell you that the birth father came forward,
16 knocking my door down, writing, calling, texting, faxing,
17 e-mailing, this is my Indian child, let me have her. Did I
18 tell you that?

19 A. No.

20 Q. Okay. And so we got September, October, November,
21 December, three months after birth. Did the grandparents,
22 birth father, or Cherokee Indian Nation make known to me
23 that this was an Indian Child?

24 MS. JONES: Your Honor, I'm going to have to
25 object. I don't think it's a proper question. It sounds

1 like you're opening the door to waive the attorney/client
2 privilege and also, how does your client know what was in
3 your mind? I object to this question.

4 MR. GODWIN: Well, I'll rephrase it.

5 Q. Were you made aware of any attempt by the birth father
6 to make any claim to this child at the time of birth?

7 A. No.

8 Q. Were you made aware of any claim by the birth father
9 in terms of his making claim that this child was an Indian
10 child at the time of birth?

11 A. No.

12 Q. Okay. And your first knowledge, as you answered the
13 question of other counsel, the first time you heard about
14 the birth father making any claim was in January 2010?

15 A. Exactly.

16 Q. And the first time you heard of the Indian tribe was
17 in April of 2010?

18 A. The first time that I heard she was actually a
19 Cherokee child, right, was April 2010.

20 Q. There was reference to Defendant's exhibit 4, which
21 you have. In the first sentence or two, what is your
22 understanding about this information being verified?

23 A. What do you mean?

24 Q. In the first sentence of the report?

25 A. Oh, it says it was taken in an interview with Christy

1 on two different days.

2 Q. And then the next sentence is?

3 A. Based on her word and cannot be verified.

4 Q. Okay. Let's go to the second page. There is a
5 paragraph right here.

6 A. Okay.

7 Q. If you'd read the sentence that I was pointing to.

8 A. Cherokee tribes will be contacted to confirm
9 eligibility of the child for adoption and Tribal
10 enrollment.

11 Q. So your intention was not to skirt around any Indian
12 tribe. Is that correct?

13 A. No. I mean, that was not our intention.

14 Q. Ms. Nimmo asked you about, you understand you're not
15 the legal father -- legal parent, legal mother. Is that
16 correct?

17 A. I don't know if that's the word she said, but ---

18 Q. She asked about your rights in terms of this child.

19 A. I think we're the legal guardian.

20 Q. Okay. Do you believe -- what is your understanding as
21 to whether you and your husband are the psychological
22 parents of this child?

23 A. We feel that we're completely her parents,
24 psychologically, in heart and soul, everything.

25 Q. Well, what is your background in terms of attachment

1 issues?

2 A. I wrote my dissertation on adolescent attachment over
3 10 years ago, and I don't think the research has changed
4 much.

5 Q. And then Ms. Jones asked you the question about what's
6 going to happen in 18 years when Baby Girl finds out. Do
7 you believe that -- what do you feel as to your
8 professional training and how that may help you with that
9 issue?

10 A. I think it'll be very helpful. I know where to get
11 that kind of information. I know, you know, I can -- I
12 know where to find studies and -- I mean, I'm not a
13 background specialist on adoption or I don't have the
14 specialty on that, but I know where to get -- I'm a
15 research psychologist, so I know how to find studies and
16 information like that.

17 MR. GODWIN: The Court's indulgence.

18 Q. Are you willing to enroll this child in terms of the
19 Cherokee Indian tribe?

20 A. If I'm allowed, I think that would be awesome,
21 actually.

22 MS. JONES: I'm sorry. What was the question?

23 MR. GODWIN: Would the Adoptive Couple be willing
24 to enroll this child in the Cherokee Indian Nation.

25 Thank you. Those are the only questions I have.

1 THE HONORABLE MALPHRUS: Anything further, Ms.
2 Jones?

3 MS. JONES: Just briefly, Your Honor.

4 RECROSS EXAMINATION BY MS. JONES:

5 Q. You testified what your impressions of my client was
6 and his intentions with regard to the child. Have you ever
7 spoken to my client?

8 A. No. Well, I mean, we introduced ourselves to each
9 other in July. That's the extent of it.

10 Q. Here in the courtroom, in the hallway?

11 A. No, when we were at Tom Lowndes' office for the
12 deposition.

13 Q. Other than that, have you spoken to my client?

14 A. No.

15 Q. And everything you've learned about my client, and his
16 intentions you've gained completely from the birth mother's
17 self-report to you?

18 A. Pretty much, yeah.

19 Q. You testified that my client and his family didn't do
20 anything as far as trying to contact you. Did they know
21 how to contact you?

22 A. They know how to contact my attorney.

23 Q. They know how to contact your attorney -- but they
24 don't know where you live, obviously. They haven't been
25 privy to that information?

1 A. I don't know if they know how to contact me or not,
2 but I know they know how to reach my attorney.

3 Q. They had -- and speaking of that deposition, they had
4 brought some presents to that deposition and offered to the
5 child. You declined those presents, didn't you?

6 A. I think Ray declined them on our behalf.

7 Q. And he'd also requested -- the parents requested that
8 while they were here, they'd made that journey from
9 Oklahoma, that they could see the child and that was
10 declined?

11 A. That was declined. We actually didn't know that
12 request was going to be made of us. I was kind of taken by
13 surprise.

14 Q. And as you've said that everything that you've learned
15 about my client, you've learned from the birth mother, and
16 she told you that my client didn't know about this
17 adoption. She told that to Nightlight when they did their
18 original report?

19 A. She did not specifically tell him she was going to
20 adopt the child. I think she told him she didn't know what
21 she was going to do. That's what she told me.

22 Q. You said that my clients could have contacted you
23 through your attorney, Mr. Godwin. But my client wouldn't
24 have know about Mr. Godwin or this action until January of
25 2010, when this action was served on him; is that correct?

1 A. That's what I meant. I mean, obviously, he couldn't
2 have contacted us before he knew of Ray or us, but he could
3 have contacted Christy then. And then he could have
4 contacted us after that.

5 Q. And she self-reported that he didn't contact her.
6 That's information from her again, correct?

7 A. Yes.

8 Q. And were you aware that my client left for Iraq, just
9 days after he was served with this action?

10 A. I was aware that he left for Iraq.

11 MS. JONES: That's all I have, Your Honor.

12 MS. NIMMO: Very briefly.

13 THE HONORABLE MALPHRUS: Very briefly, Ms. Nimmo.

14 MS. NIMMO: Very briefly.

15 RECROSS EXAMINATION BY MS. NIMMO:

16 Q. I just want to clarify. You said that the first that
17 you learned that the biological father was actually a
18 member of Cherokee Nation was April of 2010, correct?

19 A. Yes. Oh, I don't -- no. April sometime. I don't
20 know when the actual date was.

21 MS. NIMMO: I'll be very brief as soon as I find
22 this.

23 THE HONORABLE MALPHRUS: I didn't mean to imply
24 that you were too lengthy.

25 MS. NIMMO: No, this is all I have.

1 Q. Can you tell me when that letter is dated?

2 A. This letter is dated January 12th.

3 Q. And can you read the very first sentence in that
4 letter?

5 A. Please be advised the Indian Child Welfare Program has
6 examined the Tribal records and the above-named child will
7 be determined as an Indian Child in relation to the
8 Cherokee Nation. And it's signed by -- do you want me to
9 read the rest of it?

10 Q. No, that's fine. And that was in January of 2010?

11 A. It's dated January 12th.

12 Q. And you didn't find out until April 2010 that the
13 child would be considered an Indian Child?

14 A. We actually got some paperwork -- not paperwork. But
15 we were given a copy of the motion in Oklahoma that he
16 gave. And in that motion he said he was not Indian and the
17 Indian Child Welfare Act did not apply.

18 So that was the only thing I got until -- then I found
19 -- I think they amended it or something. I'm sorry. I'm
20 talking -- I don't want to speak out of line. But then
21 that's when we found out that there was a different, there
22 was a different letter that was somewhere.

23 Q. Okay. Thank you.

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

25 THE HONORABLE MALPHRUS: Are you through? I

1 didn't know if -- Mr. Lowndes, do you have any questions of
2 this witness?

3 MR. LOWNDES: No questions, Your Honor.

4 THE HONORABLE MALPHRUS: Okay. Could we briefly

5 ---

6 MR. GODWIN: Your Honor, I just had one follow-up

7 ---

8 THE HONORABLE MALPHRUS: Okay.

9 MR. GODWIN: -- from -- just real fast.

10 THE HONORABLE MALPHRUS: Sure. Sure.

11 RE-REDIRECT EXAMINATION BY MR. GODWIN:

12 Q. Is it possible -- in April the Cherokee Tribe filed a
13 notice of intent to get involved in this case. Is it
14 possible you're confusing the dates?

15 A. It's very possible.

16 Q. Okay.

17 A. That might have been when I think I heard about it in
18 April.

19 Q. Okay. But you -- is it possible that in January you
20 were aware of that letter from the Indian tribe? Is it
21 possible you were made aware of that?

22 A. It's possible. I don't remember being told that soon
23 after the contesting that he was Indian.

24 Q. Okay.

25 A. I was still thinking he wasn't Indian for a long time.

1 Q. Okay. Thank you.

2 MR. GODWIN: No further questions.

3 And again, I would ask for a break, Judge.

4 THE HONORABLE MALPHRUS: Okay. If we could just
5 see the lawyers briefly behind the bench and then we'll
6 take a break.

7 (Whereupon, an off-the-record bench conference was
8 held outside the courtroom, then a short recess was had;
9 after which, all parties were present when the following
10 matters were had:)

11 THE HONORABLE MALPHRUS: Thank you all. Please
12 be seated.

13 All right, ma'am, you're still under oath and as we
14 took our break, Mr. Godwin was in his redirect examination
15 as I recall.

16 MR. GODWIN: Yes, ma'am.

17 THE HONORABLE MALPHRUS: Mr. Godwin:

18 RESUME RE-REDIRECT EXAMINATION BY MR. GODWIN:

19 Q. Melanie, the Court wants an accurate picture from you
20 in terms of your knowledge of the risk involved in not just
21 this adoption plan, but the adoption plan as it relates to
22 the Indian child issue.

23 A. My knowledge now or earlier?

24 Q. Your knowledge back in June of 2009 going forward. So
25 I am going to ask you some questions.

1 A. Okay.

2 Q. I don't want you to be confused in terms of
3 attorney/client privilege that I was mentioning before, so
4 I'm going to ask you -- you can think back to our
5 conversations on the phone, you can think back to our in-
6 person conferences, you can think back to any letters that
7 I sent you from my office, all that can be the basis for
8 your answering my questions or other counsel's questions,
9 but I will not ask it in a way that I will ask you to tell
10 me what I told you. I will be asking you that as a result
11 of our conversations, letters, in-person conferences, what
12 was your understanding of that particular risk. Do you
13 understand what I'm saying?

14 A. Would you say that again?

15 Q. Okay. I am going to ask you questions about the risk
16 involved as it relates to this child in the Indian tribe.
17 And I want you to know that you can base your responses on
18 your conversations with me, the advice I gave you, okay,
19 you can use all of that to tell us what your understanding
20 was.

21 A. What if I don't remember a lot of that?

22 Q. You can say you don't remember. Okay.

23 A. Okay.

24 Q. You don't have to remember my exact words. The issue
25 here is what did you, what do you remember that you

1 understood as to the risk.

2 A. Okay.

3 Q. Okay. Do you understand that?

4 A. Yes.

5 Q. Now, for instance, one of the questions would be that
6 when in 2009, June, July, August, whatever, what was your
7 understanding that you could lose the child that wasn't
8 even born yet, that you could lose the child because the
9 birth father could step forward and assert his rights?

10 A. Just any child or an Indian child?

11 Q. This child in this particular -- let's not even talk
12 about the Indian Child aspect. Let's talk about the fact
13 that there's a birth father and his rights we didn't know
14 how were going to be addressed. You knew Ms. Maldonado was
15 going to sign away her rights, although she could change
16 her mind at the time of birth. You understood that?

17 A. Right.

18 Q. So you had an -- did you have an understanding that
19 the birth father could come forward after birth or anytime
20 and assert his rights?

21 A. I did.

22 Q. Okay. And did you understand that under certain -- if
23 he met certain requirements he could get custody of the
24 child?

25 A. If he met some requirements, yes.

1 Q. Okay. And did you understand prior to birth that
2 there was the possibility this child could possibly be an
3 Indian Child? I believe the background report indicated
4 some of that as you've already testified that you
5 understood.

6 A. Uh-huh.

7 Q. Okay. Did you understand that if the birth father and
8 Tribe came forward, that again, you would not be able to
9 adopt this child?

10 A. If they -- you mean if she were Cherokee?

11 Q. Right?

12 A. Yes.

13 Q. Okay.

14 A. I think. I know that's vague, but I knew that they --
15 that there could be an intervention.

16 Q. Okay. Did you understand that there was something
17 called ICWA or there were federal laws surrounding a child
18 who may be called an Indian child or defined as an Indian
19 child?

20 A. I don't know if I knew details about that. I knew
21 that there were -- I think I thought that it was an
22 Oklahoma rule, in particular. I don't know if I knew that
23 it was a federal rule.

24 Q. Okay. At the time of birth, what was your concern or
25 understanding as to the risk involved about the birth

1 father and the Indian tribe?

2 A. We signed a document stating that there's always risk
3 in any adoption, you know. I can't remember exactly what
4 it said.

5 Q. Okay.

6 A. I didn't know how long the birth father would have to
7 change his mind. I think I was under the impression that
8 it was like 30 days, but I mean, I can't remember where
9 that came from.

10 Q. Okay.

11 A. I knew that there were different rules in South
12 Carolina and Oklahoma and that was what I was kind of aware
13 of. Not aware of, but -- that I didn't remember, that I
14 couldn't tell you what the differences are.

15 Q. Okay. And then in January of 2010 you were sent a
16 letter that the Tribe wrote Phyllis Zimmerman, I believe,
17 indicating that this was an Indian child. Do you remember
18 being shown that letter in January?

19 A. No, I don't remember being shown that letter.

20 Q. Okay. Was there an occasion in January, whether the
21 beginning or end, that you became aware that the issue of
22 the Indian Tribe was now reactivated and that they were now
23 taking -- that this child was defined as an Indian child?

24 A. I heard about the contes -- his contesting it in
25 January, but I don't think I learned that the Indian Nation

1 or the Cherokee Nation was going to be involved. I
2 remember thinking about that later.

3 Q. Okay.

4 A. As I said, the Oklahoma -- there's an Oklahoma case
5 and I remember reading that that wasn't going to be
6 involved.

7 Q. Okay.

8 A. And I don't remember when that paperwork came about.

9 Q. Okay.

10 A. So I was surprised when I found out that there was a
11 second letter. I don't -- I can't remember when I heard
12 about that letter. I don't even know if I got a copy of
13 it, but I don't think it was sent to us. So I was -- I was
14 surprised about that. But I can't remember when.

15 Q. Okay.

16 A. I thought it was April, but I think I might be getting
17 confused about that.

18 Q. Okay. During the beginning of 2010, did you have an
19 understanding that if the Tribe got involved and took
20 certain actions like going to Court or filing something to
21 assert their rights, that -- what was your understanding
22 about their having an ability to interrupt this adoption or
23 disrupt it by taking Baby Girl away from you?

24 A. In January?

25 Q. Well, let's say the beginning of 2009. And, again, if

1 your understanding was that they could do this with the
2 help of the birth father, then you can answer it, you know,
3 that was your understanding.

4 A. I never thought that they could do it -- well, back
5 then, I didn't think it could have been done without the
6 birth father wanting it done.

7 Q. Okay.

8 A. And I've since learned about cases and I've been
9 reading about, you know, other cases. But at that point I
10 thought that he had to be involved.

11 Q. Okay. Were you made aware of the fact that the Tribe
12 could place Baby Girl with Mr. Brown's parents, because
13 they're considered -- or at least Mr. Brown's father is
14 considered enrolled as a Cherokee Indian member.

15 A. Was I made aware of that?

16 Q. Right.

17 A. Eventually. I mean, I know that -- I know that list
18 of preferences. I've seen that.

19 Q. Okay. Do you remember when you were made aware of
20 that?

21 A. I've been trying to read -- half of the time I try to
22 read it for myself and try to understand it from you and
23 other people and I can't remember, you know, if I'm reading
24 it correctly or if someone else is telling me how to read
25 it. So I feel like you're asking me if I know the laws and

1 I don't.

2 Q. Okay. What -- what I'm trying to elicit is when you
3 and Matt understood the risk that you could lose Baby Girl
4 and I had asked you questions -- and you understand that's
5 what I'm trying elicit from you. I asked you certain
6 questions about the actions of the birth father in the
7 beginning of the year or the end of 2009 and how that may
8 have effected your understanding of the Indian Tribe
9 involvement. I asked those questions of you before. Can
10 you give me an answer as to 2010 when you and Matt may have
11 understood that the adoption could disrupt and the Indian
12 Tribe could take -- I think I just asked you that -- could
13 take Baby Girl? Was there a time in 2010?

14 A. Yes. I mean, I'm feeling that right now. I'm feeling
15 -- I felt that probably around April, I guess, when all of
16 this kind of came up.

17 Q. Okay. Did your sense of risk or feeling of risk, was
18 there a sense that it increased or decreased because of the
19 lack of the action on the part of the Indian Tribe or the
20 birth father after April?

21 MS. JONES: Just for clarification, you're
22 talking about April of 2010?

23 MR. GODWIN: Are we talking about April 2010?

24 A. No. I think we're talking about April 2009.

25 Q. Well, now, the baby wasn't born yet.

1 A. Yeah. You're right. So it had to be 2010.

2 Q. Okay. Okay.

3 A. Yeah. Thank you. So it was April of 2010.

4 Q. Okay. Well, did you have an understanding, other than
5 the Tribe filing a notice of intent to intervene in April,
6 did you have an understanding that if they had done
7 anything else in terms of this case?

8 A. No, I didn't -- the only thing I heard about was the
9 notice of intent. That was the only thing I heard about
10 and so I thought, well, -- well, you didn't ask me that.

11 Q. No, go ahead.

12 A. I -- I didn't know how serious it was because I knew
13 that that's all that they had filed.

14 Q. Okay. Was your sense of the risk involved here in
15 2010 affected by the birth father's lack of paying child
16 support or asking for visitation?

17 A. Was it?

18 Q. Was your sense of risk, your sense of danger of losing
19 Baby Girl, was it increased or decreased because the birth
20 father had not paid child support or asked for visitation?

21 A. Decreased.

22 MR. GODWIN: I'm going to stop there and let the
23 Court and other counsel ask you questions.

24 Thank you.

25 THE HONORABLE MALPHRUS: Thank you, Mr. Godwin.

1 MR. GODWIN: I appreciate the Court's indulgence
2 and counsel's. Obviously I had leading questions, but I
3 appreciate everyone's cooperation.

4 THE HONORABLE MALPHRUS: Thank you.

5 Ms. Nimmo, any cross?

6 MS. NIMMO: I just want to clarify. There were a
7 lot of questions about timing and risk.

8 RE-RECROSS EXAMINATION BY MS. NIMMO:

9 Q. Would you tell us the first time that you realized
10 because this child was an Indian child, not just because it
11 was a regular adoption and there are always issues, the
12 first time that you realized because this child was an
13 Indian child that there was a possibility that she could be
14 taken away from you?

15 A. It's been such a gradual thing, you know. I think
16 it's been a gradual thing. Ever since we found out that
17 she was Cherokee, I mean, and still in my mind that feels
18 like April, because we were in Court and we had to get
19 paternity tests. I mean, at that point it wasn't even
20 established that he was her father. So, I mean, we figured
21 he probably was, but we didn't know for sure so we couldn't
22 say she was an Indian if he -- so there was all of that
23 that was happening. And so I still feel like I found out
24 -- I guess we really found out, though, when -- see, I'm
25 getting confused myself -- when that paternity test came

1 back.

2 Q. And when was that?

3 A. That was -- I can't even remember. I'm sorry. It was
4 after the April court hearing. I think we had a court
5 hearing in Charleston in April. So -- so it was after that
6 because we had to get paternity and so, you know, I think
7 around that time, at that point I knew that, you know, the
8 Cherokee Nation was involved but still, the paternity
9 hadn't been absolutely established. So then I still didn't
10 know.

11 Q. Would you agree that in April of 2010 you knew that if
12 he was indeed the biological father that there was
13 substantial risk that he had a claim to custody of this
14 child?

15 A. I don't know if I -- if I believed he had a
16 substantial claim.

17 Q. When the biological father filed in South Carolina in
18 January of 2010 asking for a stay because he was being
19 deployed to Iraq, what was your understanding of why he was
20 asking for a stay?

21 A. Well, I don't know because I know that he went forward
22 with doing other things in Oklahoma and moving forward on
23 the case there. So I think that he claimed that it was to
24 -- that he could not do anything from Iraq. But he was
25 also, at the same time, trying to start a case in Oklahoma.

1 Q. What is your understanding of what he was trying to do
2 in the Oklahoma case?

3 A. That's a good question. There's -- it's been
4 complicated. I think he was trying to get custody for his
5 parents.

6 Q. Okay. So it's your understanding that in January of
7 2010, that the biological father was making a claim to
8 change custody?

9 A. It's -- I'm sorry. It's complicated because I think
10 it may have been that. It may have been to change
11 jurisdiction. There's a lot of that all in there together.

12 Q. And I'm not trying to confuse you. I want to know
13 what you understood at that time and what you thought the
14 risk to be?

15 A. I probably would -- if you had asked me then, would
16 have had a clear answer.

17 Q. Okay.

18 A. I'm kind of, you know, it's been a while and that
19 particular case was settled. So I haven't really thought
20 about that one. It was dismissed, that's what I remember.

21 Q. Did you -- this is a difficult question and if I'm not
22 asking it right, and you don't have the answer, tell me and
23 I'll try to rephrase it. Was there a point that you and
24 your husband decided that there was substantial risk in
25 this adoption and basically that you were going to fight it

1 no matter what?

2 A. Yes.

3 Q. And when would that have been?

4 A. I feel like there's some date out there that you guys
5 are trying to get me to say ---

6 Q. No, I'm ---

7 A. --- that I shouldn't have thought it or should have,
8 and I know that -- I know we felt that way and I know we
9 talked about it.

10 Q. Just generally. I am not looking for a specific date
11 and I'm not trying to ---

12 A. Somewhere between January and April of 2010.

13 Q. When this child was approximately four to ---

14 A. Six months old.

15 Q. --- six months old.

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

17 THE HONORABLE MALPHRUS: Any further questions?

18 MS. JONES: I don't have any, Your Honor.

19 THE HONORABLE MALPHRUS: Mr. Lowndes?

20 MR. LOWNDES: I don't have any.

21 THE HONORABLE MALPHRUS: Thank you, ma'am. You
22 can step down from the witness stand. I appreciate your...

23 MR. GODWIN: May I address something at this
24 point that's pertinent to our discussion on -- under ICWA,
25 and counsel can confirm, that this child technically was

1 not declared an Indian child or cannot until the paternity
2 was acknowledged by a paternity test. So that would have
3 been in September of 2010. I have the paternity test in
4 front of me. I'd like to offer it up.

5 THE HONORABLE MALPHRUS: We, have that. I have
6 that, and I have the order from May 3rd of 2010 ordering
7 the paternity test.

8 MR. GODWIN: Okay.

9 MS. JONES: Since you pointed that out, I heard
10 her testimony as -- I wanted to point out her testimony was
11 nobody ever doubted the paternity, the birth mother ---

12 THE HONORABLE MALPHRUS: I've heard the
13 testimony, Ms. Jones.

14 MS. JONES: Okay. Okay. Thank you.

15 THE HONORABLE MALPHRUS: You can call your next
16 witness.

17 MR. GODWIN: I'd call the adoptive father to the
18 stand, Judge.

19 THE HONORABLE MALPHRUS: Come around, sir.

20 ADOPTIVE FATHER,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE HONORABLE MALPHRUS: Thank you. Please have
23 a seat.

24 MR. GODWIN: With your permission.

25 DIRECT EXAMINATION BY MR. GODWIN: