

1 CROSS EXAMINATION BY MR. GODWIN:

2 Q. Mr. Brown, you obviously know I'm Ray Godwin
3 representing the Adoptive Couple. And I want to get these
4 exhibits out of the way. I just want to show you exhibit,
5 Plaintiff's 16. This is your tax return for 2009. How
6 much did you make in that year, sir?

7 A. Right here?

8 Q. Yes.

9 A. \$20,227.

10 Q. Okay. This is Plaintiff's 17. That's your W2 form
11 for 2010. What was your yearly salary for 2010?

12 A. \$23,697.

13 Q. Thank you. And my understanding is that when you were
14 serving in Iraq this pay was tax free; is that correct?

15 A. That is correct.

16 Q. Okay. Is it also fair to say that you had your base
17 and food paid for, would not have been covered by those
18 figures?

19 A. That is correct.

20 Q. Okay. So you had no expenses as to really anything
21 other than what you wanted to spend extra and above
22 maintenance for yourself, food, housing, that type of
23 thing?

24 A. That's correct.

25 Q. And when you filled out for the Army, they ask you if

1 you have any dependents; isn't that correct?

2 A. That's correct.

3 Q. And you put Kelsey down on the paperwork?

4 A. I put her down.

5 Q. And they aut -- they automatically wage-withhold your
6 child support.

7 A. That is correct.

8 Q. You don't really have a choice after you disclose you
9 have a kid?

10 A. No.

11 Q. And is it accurate to say that recently the mother of
12 Kelsey asked you to pay through the Court because you were
13 not keeping up current with your child support?

14 A. No, we ended recently the custody -- or the child
15 support case. That way I could pay her directly.

16 Q. So there was a child support case?

17 A. Yes, there was.

18 Q. And she alleged that you were in arrears?

19 A. Say what?

20 Q. You were in arrears. You weren't paying on time.

21 A. I always paid.

22 Q. You were paying her on time?

23 A. My child support was taken out of my paycheck.

24 Q. Okay. Then why was there a child support case?

25 A. Because I had back child support. In the state of

1 Oklahoma when you get a divorce they go through a child --
2 child custody battle and then you have child support that
3 you have to pay. Therefore, part of that's what happened
4 with me.

5 Q. Okay. You had back child support you had to catch up
6 on?

7 A. Yes, sir.

8 Q. And how much was that?

9 A. I'm not correct as to the amount of money on that.

10 Q. Was it over a thousand dollars?

11 A. I want to say whenever I joined it was around 11,000,
12 around that period at that point.

13 Q. Okay. That you owed in back child support?

14 A. Yes, sir.

15 Q. Okay. And was there some discussion -- Is Tommy the
16 stepparent of Kelsey?

17 A. Tommy is her grandfather.

18 Q. Okay. Is your ex-wife married to somebody else?

19 A. No, sir, she's not.

20 Q. Okay. Was there ever -- Strike that.

21 I'm going to refer to Defendant's exhibit 11 and the
22 last paragraph here, would you read that for me, please?
23 That last sentence, the Defendant.

24 A. The Defendant, Dusten Brown, states that he is the
25 birth father of the minor child, Baby Girl Maldonado, and

1 that he is not contesting the adoption, that -- and that
2 further he waives the 30 days waiting period and notice of
3 the hearing in above-captioned case.

4 Q. Okay. And your counselor asked like five questions
5 about your signature. That is your signature, right?

6 A. Yes, sir, that is.

7 Q. And you know what an adoption is?

8 A. Yes, sir.

9 Q. Okay. And, in fact, in June you text messaged Ms.
10 Maldonado that you wanted to sign your rights away; is that
11 correct?

12 A. That is correct, sir.

13 Q. And that text message went to her phone, right? She
14 received ---

15 A. That is correct.

16 Q. --- your text.

17 I'm going to show you a document that purports to be a
18 copy of that. Can you identify that for the Court?

19 A. That is my phone number.

20 Q. Okay. And is that your text message?

21 A. That is my text message.

22 Q. Okay. And you want to read it -- read it into the
23 court record.

24 A. The first one states, I'm still trying to ge -- I
25 state that's probably get. The second one's, get some

1 papers. The third one is, well it sounds like -- I have no
2 idea after that.

3 Q. Okay. You want to turn the page. Can you read the
4 rest of that?

5 MS. JONES: I'm sorry. Are you asking to submit
6 -- or are you asking him to read that into evidence and
7 have something admitted?

8 MR. GODWIN: I'm asking him to read into evidence
9 his text message.

10 MS. JONES: No. I absolutely object to that,
11 Your Honor. And I already objected to that and it was
12 ruled it wasn't admissible.

13 MR. GODWIN: He has identified it as his text
14 message that went to the birth mother's phone.

15 THE HONORABLE MALPHRUS: He identified his phone
16 number I thought is what he identified.

17 MR. GODWIN: No, I asked him if that was his text
18 message and he said yes.

19 MS. JONES: And my problem continues to be what
20 it was yesterday. This was requested in discovery. I was
21 told that there was a phone that had it on there. I was
22 told yesterday by Mr. Godwin the phone exists and it was in
23 Mr. Lowndes' office. And it's an incomplete conversation.
24 It's my client's half and it doesn't have what the birth
25 mother was saying in return. And I -- I feel like I'm

1 entitled to that and my client's entitled to that in all
2 fairness because unless he can remember exactly what that
3 conversation was back in 2009 before this child was born I
4 think that ---

5 MR. GODWIN: I -- I'll withdraw it. I'll
6 withdraw asking him to read it.

7 I am incredibly frustrated by counsel's
8 misrepresentations of my actions. It is a constant thing
9 in this litigation. She just misrepresented to the Court
10 that I didn't turn it over in discovery. I indicated that
11 within the 20 days after the July hearing, I did. So I
12 hate to be nit-picky like I'm in seventh grade to point
13 this out, but I ask for the Court's indulgence on that.

14 BY MR. GODWIN:

15 Q. Mr. Brown, you remember this text message, right. I
16 asked you that.

17 A. I vaguely remember it.

18 Q. And you remember that you indicated that you were
19 going to sign your rights away?

20 A. Correct.

21 Q. And that was in June -- June 8th of 2009?

22 A. Correct.

23 Q. Okay. And you also indicated under oath that you had
24 several conversations with your NCOs ---

25 A. That's correct.

1 Q. --- about signing your rights away.

2 A. That's correct.

3 Q. And that you went, not just on one occasion I believe,
4 but at least on two or three other occasions around this
5 time period to talk to an NCO about signing your rights
6 away to this unborn child?

7 A. That's correct. It's there policy to keep up with
8 their soldiers to find out what's going on. If they hear
9 any some -- anything like this situation then it's a must
10 that they find out what's going on. And to this day my old
11 Commander still keeps in contact with me about what's going
12 on.

13 Q. Yes, sir.

14 Is it accurate to say that you did not pay any medical
15 bills connected with Baby Girl's birth?

16 A. No, sir, I didn't.

17 Q. And prior to the birth on September 15th of 2009 you
18 did not pay for any living expenses or pregnancy-related
19 expenses connected to Baby Girl's birth?

20 A. No, sir, I didn't.

21 Q. Is it also accurate to say that your first child
22 support payment was February of 2011, approximately 16
23 months after her birth?

24 A. That is correct.

25 Q. Is it also accurate to say that you were home on leave

1 on Thanksgiving or during Thanksgiving of 2009?

2 A. 2009, yes.

3 Q. Is it also accurate that during that time period you
4 did not reach out to confirm the status of Baby Girl who
5 was already born?

6 A. That is correct.

7 Q. Is it accurate to indicate that you never prior to
8 birth asked about any information or after birth about the
9 baby's health in terms of contacting Ms. Maldonado?

10 A. That is correct.

11 Q. Would it be accurate to say that since this child was
12 born you've not attempted to send any cards or any letters
13 seeking a progress report either to Ms. Maldonado or to the
14 Guardian or to the attorney for the Adoptive Couple?

15 A. No, I haven't, because I didn't know if I was going
16 against any legal rights or anything like that. I didn't
17 want to break the law.

18 Q. Is it accurate to say that you and your buddies on a
19 weekly basis would spend about 20 to \$25 on cigarettes and
20 you already testified you went out -- went out a great deal
21 with the buddies in your unit?

22 A. That is correct.

23 Q. Is it accurate to say you did not live with the birth
24 mother six continuous months prior to the birth of this
25 child?

1 A. That's correct.

2 Q. Is it accurate to say that you got your ring back from
3 Ms. Maldonado?

4 A. That is correct.

5 Q. And you did that in person?

6 A. No, sir.

7 Q. Who did that for you?

8 A. My father, Tommy Brown.

9 Q. When he picked up the ring he did not offer any
10 support or give her any support for pregnancy-related
11 expenses; is that correct?

12 A. To my knowledge, what I've been told, she was not
13 there whenever he went and picked up the stuff.

14 Q. But neither one of you mailed her any support or left
15 anything in the mailbox; is that correct?

16 A. No, sir.

17 Q. Do you remember when I took your deposition, Mr.
18 Brown, and I asked you what -- what do good family values
19 represent to you?

20 A. Vaguely I do at that time, yes.

21 Q. Okay. And do you remember what your answer was?

22 A. I'm not sure on what I stated, what my answer was.

23 Q. If I told you that you said, Just being raised by
24 parents represents your good family values, would that be
25 something accurate or refresh your recollection?

1 A. I'd have to see something stating that I said that.

2 Q. Okay.

3 MR. LOWNDES: Your Honor, we need to approach the
4 bench one minute.

5 (Whereupon, an off-the-record bench conference was
6 held between The Honorable Malphrus, The Honorable Vinson,
7 and counsel.)

8 MR. GODWIN: Court's indulgence, Your Honor,
9 while we get a copy of Mr. Brown's. I know counsel has a
10 copy and I believe I just saw the original in court.

11 Q. Mr. Brown, I'm going to refer you to page 56, line 9
12 on here. Can you read the answer and read -- read the
13 question and your answer if you don't mind.

14 A. Read the question?

15 Q. Yes, sir.

16 A. What do you think that good family values represent
17 for an infant child?

18 Q. And your answer.

19 A. Answer, Just being raised by her parent.

20 Q. Did you have discussions with the Guardian ad Litem
21 about your raising this child?

22 A. It was brought up, yes.

23 Q. Okay. And do you believe you communicated to her your
24 feelings on what type of parent you would be to this child?

25 A. I believe I did.

1 Q. And in the pictures that counsel has presented to the
2 Court, I want to make sure I give you a chance to look at
3 these, do you recall counsel introducing these as
4 Defendant's 8? Can you look through and tell me which
5 pictures there are of you involved in any tribal affairs,
6 any tribal events or any pictures of you and Kelsey at any
7 tribal events or at your language school?

8 Well let me rephrase the question. There aren't any
9 pictures in here of you involved in any tribal events or
10 festivals or activities; is that correct?

11 A. That's correct.

12 Q. Okay. And this is the second group of pictures. And
13 I'd ask you to also answer the same question. In that
14 second group of pictures is there any picture from your
15 childhood or any current picture showing you involved in
16 any tribal festivals or any tribal event?

17 A. No, sir.

18 Q. Okay. And the third group of pictures, they may all
19 be marked as exhibits 10 and 8. Are there any pictures
20 there showing you involved in any tribal events or affairs
21 or festivals?

22 A. No, sir.

23 Q. Okay. And in my question to you about good family
24 values, is it accurate to say, sir, that you never
25 indicated any discussion of the Cherokee Indian Tribe or

1 cultural events. The answer that you just read.

2 A. No, sir, I didn't say that.

3 Q. And in the conversations with the Guardian is it
4 accurate to say that you never emphasized how important the
5 Cherokee Indian Tribe is to your life?

6 A. Not that I can remember.

7 MR. GODWIN: Beg the Court's indulgence. I'm
8 going to mark a complaint from Oklahoma that's been
9 stipulated it to. I did not show Mr. Lowndes.

10 (Whereupon, Mr. Godwin showed the document to Mr.
11 Lowndes.)

12 THE HONORABLE MALPHRUS: Plaintiff's 20?

13 Q. Mr. Brown, I'm going to show you Plaintiffs' exhibit
14 19 and is that your signature, sir?

15 A. That is my signature.

16 Q. Okay. And can you read the title of this document to
17 the Court?

18 A. Complaint to establish paternity, child custody, and
19 support.

20 Q. Thank you. Are you familiar with this document being
21 filed by your attorney in Oklahoma?

22 A. Vaguely.

23 Q. Okay.

24 A. It depends on what the date -- the date on it is.

25 Q. Well you remember signing that, right?

1 A. If I signed it I was present.

2 Q. Read -- and when you signed this it's assumed you read
3 this document; is that correct?

4 A. That is correct.

5 Q. Okay. Would you read paragraph 12 into the record.

6 A. Paragraph 12. Neither parent, nor the children, have
7 Native American blood. Therefore, the Federal Indian Child
8 Welfare Act, 25 USC 1601 [sic] et. seq and the Oklahoma and
9 Indian Child Welfare Act 10 OS 40 et. seq, do not apply.

10 Q. Thank you. And this was filed -- the date on this I
11 believe -- the clocked in date is what?

12 A. January 14th.

13 Q. Which year?

14 A. 2010.

15 Q. Okay. Thank you, sir.

16 A. No problem.

17 Q. At the time you filed this the Indian Tribe really
18 wasn't that important in your life; is that correct?

19 A. No, the Indians always are in my -- important in my
20 life. But at that point in time I was trying to get things
21 taken care of as fast as possible. Like I said, I had --
22 on that date I had three days to deploy. So therefore, I
23 was trying to get things taken care of as fast as could
24 while I was stateside.

25 Q. Well that complaint was amended and here's Plaintiff's

1 20. And the date on this amendment is what?

2 A. April 19th 2010.

3 Q. And there is another paragraph 12 and can you read
4 that into the -- for the Court?

5 A. Paragraph 12. Both the father and the child have
6 Native American blood. Therefore, the Federal Indian Child
7 Welfare Act, 25 US CA 1601 [sic] ---

8 Q. I'm sorry. You don't have to read the rest.

9 A. Okay.

10 Q. That's fine.

11 The date of that was after the Indian Tribe was served
12 notice by the Adoptive Couple on the 18th of January -- or
13 April; isn't that correct?

14 A. That's correct.

15 MR. GODWIN: Beg the Court's indulgence.

16 Q. Is it accurate to say that you don't have a checking
17 or savings account in the name of Baby Girl, Mr. Brown?

18 A. No, sir.

19 Q. And there was never any doubt in January of 2009 that
20 you were the father of this child; isn't that correct?

21 A. No doubt in my mind. I knew I was the father.

22 Q. So you never notified the Tribe yourself in terms of
23 this Baby Girl's birth and between September and January
24 you never contacted the Tribe, did you?

25 A. No, sir, I didn't.

1 Q. And in fact between September and January you didn't
2 take any steps to assert your parental rights; is that
3 correct?

4 A. Right.

5 MR. GODWIN: Thank you, Mr. Brown. That's all
6 the questions I have. Please answer any of the Court or
7 other counsel.

8 CROSS EXAMINATION BY NIMMO:

9 Q. I know we've talked about a lot of dates today. But I
10 just need to ask you a couple more. When did you first
11 leave for Iraq?

12 A. The departure date was January 13th 2010.

13 Q. Okay. When -- you talked about coming home at some
14 point when you surprised your daughter at school. Was the
15 first time that you came back from Iraq?

16 A. That is correct.

17 Q. And what ---

18 A. That was my mid tour.

19 Q. What approximately was that date?

20 A. I want to say it was late July, early August.

21 Q. Okay. And then did you go back to Iraq?

22 A. Yes, ma'am, I did.

23 Q. And when -- you were home for how long?

24 A. I was home for approximately 13 -- 12 to 13 days.

25 Q. So -- but you went back in August of 2010.