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IN THE FAMILY DIVISION OF  
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE CHUCK WELLER, DISTRICT JUDGE

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ELOISA BASADA FURER,

Plaintiff,

vs.

ANDREW EARL FURER,

Defendant.

Case No. DV04-01626

Dept. No. 11

January 19, 2007

10:30 A.M.

TELEPHONIC HEARING - TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the Plaintiff:  
(By telephone)

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APPEARANCES: (Continued)

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1 RENO, NEVADA, FRIDAY, JANUARY 19, 2007; 10:33 A.M.

2 --o0o--

3 THE COURT: We're on.

4 MR. MARKS: Dan Marks.

5 MR. MEADOR: Good morning, your Honor. Shawn  
6 Meador.

7 MS. PETRONI: Gloria Petroni.

8 MR. ROBISON: Kent Robison.

9 THE COURT: Hello, everybody.

10 We have a settlement conference next week.

11 Yesterday I had submitted to me a motion to  
12 strike and preclude Mrs. Furer from raising issues in the  
13 next phase of the proceeding that were not properly  
14 addressed in her issue brief and Motion to Require Proof of  
15 Compliance with Court Order. That's the title. Okay.

16 And I thought because we had this hearing coming  
17 up next week that I should orally rule on that.

18 But I just heard a dial tone. Is everybody still  
19 there?

20 MR. MARKS: I'm here. Dan Marks.

21 MR. MEADOR: Shawn Meador.

22 MS. PETRONI: Gloria.

23 MR. ROBISON: Kent.

24 THE COURT: Okay.

1 MR. MEADOR: Yeah, I think it was just -- Judge,  
2 I think it was just when Janna went off it takes a minute  
3 and then beeps that she went off.

4 MS. PETRONI: Okay.

5 THE COURT: Okay.

6 So I want to tell you what my proposed ruling is  
7 and then I'll give you a chance to comment on it, if you'd  
8 like to, before we make it official.

9 Mr. Meador, I'm going to ask you to prepare the  
10 order of the Court.

11 This litigation has generated a lot of paper and  
12 a lot more hearing than was originally considered necessary  
13 by the parties.

14 Each party has, at different times, asked the  
15 Court to control this litigation.

16 To that end, we had a status conference on  
17 November 22, 2006.

18 At that conference we agreed to have a settlement  
19 conference, which is scheduled for January 25th, and a two-  
20 day trial to resolve all issues on April 9th and 10th. I  
21 don't think we picked the dates at that conference, but  
22 they were picked as a result of that conference.

23 In order to define the issues the parties  
24 debated, and the Court entered a detailed order on the

1 information that needed to be filed with the court by  
2 December 22nd.

3 The purpose was to let the Court make some  
4 rulings on the documents and to make next week's meeting as  
5 efficient as possible.

6 Mrs. Furer's submission does not comply with that  
7 order. That fact has been pointed out in Mr. Furer's  
8 motion practice; and there has been no effort of which I am  
9 aware to bring her filing into compliance.

10 As a result of this noncompliance, we've had  
11 motion practice.

12 And the Court is unable to formulate any order at  
13 this time, and it's not clear to me at all what we are  
14 going to discuss at the settlement conference next week.  
15 And as a result, that settlement conference will be less  
16 productive than it otherwise would be.

17 Mr. Meador asks that I impose as a sanction that  
18 Mrs. Furer be precluded from pursuing the claims set forth  
19 in her statement of resolved issues.

20 That is more severe of a sanction than I am  
21 willing to impose at this time. I think it more  
22 appropriate to award reasonable attorney's fees for the  
23 motion practice and for the preparation of this order.

24 After we discuss this, I want to go on and talk

1 about the automobile insurance.

2 But that's my proposed ruling on the motion that  
3 was submitted yesterday.

4 MR. MARKS: Your Honor?

5 THE COURT: Yes.

6 MR. MARKS: You know, I apologize if we were not  
7 in compliance. I had -- the hearing on November 22nd, as  
8 you recall, I was in my office.

9 I was told through staff that I did not have to  
10 appear in Reno.

11 And as you know, I appeared at all other major  
12 events up there.

13 ↘ Once that hearing started, my client totally was  
14 out of control during that hearing. There were large  
15 portions of that hearing I could not hear.

16 And I can only tell you that if I am not in  
17 compliance it was not intentional. That was an extremely  
18 difficult day. What was discussed at that hearing was way  
19 beyond what I was prepared -- or told was going to happen.

20 ↘ And I, you know, believed that you said less  
21 paper is better. I want a list of issues. And it's very  
22 informal.

23 Because I think I talked about doing replies to  
24 Mr. Meador and you said well, we'll just deal with it when

1 we get up there.

2 THE COURT: Mr. Marks, I could accept that if CDs  
3 of that meeting weren't available for two dollars, if there  
4 wasn't a written order that specifically stated what the  
5 order was, and if there hadn't been a motion after that  
6 that again quoted exactly what the requirements were.

7 MR. MARKS: We believe that the order that was  
8 prepared was not in accordance with what was said.

9 And this went on, you know, with -- my client  
10 totally went out of control. There were large portions  
11 where she was screaming, grabbing the phone from me.

12 I think you know that when I've been in court  
13 I've followed your orders, and I've always acted in  
14 accordance with the rules.

15 And I would have been up there if I knew that I  
16 should have been up there. I was told effectively this was  
17 going to be very informal, I could do it by phone.

18 THE COURT: Mr. Marks, let me suggest to you that  
19 if a judge signs an order after a hearing, even if you  
20 don't think it's warranted, that your obligation is to  
21 comply with it. And that's in writing.

22 MR. MARKS: And that's why I filed a 59(e). I  
23 mean, I think Mr. Meador and the Court --

24 THE COURT: But it didn't suspend the operation

1 of the order is what I am trying to say.

2 MR. MARKS: I still asked for clarification of  
3 points. And I think, based on that, I would certainly be  
4 willing to supplement or modify. It's not my intent at all  
5 to derail, delay or do anything.

6 I cooperated with your staff in getting the April  
7 date. And again I have tried to cooperate to narrow the  
8 issues.

9 THE COURT: I don't want to hear --

10 MR. MARKS: I thought the Court wanted a list and  
11 that we would discuss it at the settlement, and you would  
12 make rulings that this is valid to go forward and this is  
13 the discovery you're going to allow, this is not valid.  
14 And I would be there in Reno, and it would go forward that  
15 way.

16 THE COURT: Mr. Marks, I'm sorry you're defending  
17 this because I think it's indefensible.

18 And your request that I modify the order doesn't  
19 have anything to do with the provisions of the order that  
20 we're talking about.

21 And I want to let it go with only sanctioning you  
22 the attorney's fees that you've occasioned.

23 And I would like you to read the order again and  
24 comply with it before next week so that we've got some

1 chance of making headway.

2 MR. MARKS: Okay. Very well, your Honor.

3 THE COURT: Does anybody else want to be heard on  
4 this?

5 MR. MEADOR: I have nothing more to add, your  
6 Honor.

7 MR. ROBISON: Nothing, your Honor.

8 MS. PETRONI: No.

9 THE COURT: Okay.

10 Then Mr. Meador, if you'll prepare that order,  
11 please and if you'll submit your attorney's fees on it.

12 MR. MEADOR: Okay.

13 THE COURT: Okay.

14 On the issue of the automobile insurance which is  
15 covered in the same motion practice. this is my  
16 understanding of what happened.

17 The issue is covered by the order after hearing  
18 and there is language in the order after hearing which was  
19 not stated in the oral ruling of the Court. Which is not  
20 unusual.

21 And I think that's within my province to issue,  
22 modify, change, delete, add to an order. I think that's  
23 why it's called an order after hearing.

24 But in any event, in this case Mr. Furer, as

1 directed by the Court, prepared and proposed language in  
2 relation to the automobile insurance.

3 Mrs. Furer's counsel specifically stated in a  
4 pleading that they accepted the language.

5 Mrs. Furer now argues that she shouldn't be held  
6 to that language because the Court didn't rule on it at the  
7 11/22/06 hearing.

8 And that arguemnt is nonsensical to me since she  
9 specifically approved the language.

10 The only question, it seems to me, is -- because  
11 the language says the following:

12 "The insurance coverage shall be equivalent (an  
13 amount including the excess liability umbrella  
14 coverage and with respect to named insureds) for  
15 the insurance historically carried jointly by the  
16 parties."

17 It seems to me the only question that exists then  
18 is what is the amount which has historically been carried  
19 by the parties, and who are the named insureds?

20 Mr. Furer's counsel tells me, and attaches to  
21 their pleading a letter which sets forth and information.

22 I expected to read from Mrs. Furer that she  
23 doesn't think that was the information that's been used  
24 historically.

1           But that argument doesn't exist in her pleading  
2 at all. Instead she asks the Court to enter a specific  
3 amount. And it seems to me a disingenuous argument.

4           But before I rule on it, I want to know a couple  
5 of things. I want to know if any existing umbrella  
6 coverage covers Mrs. Furer's insurance. I want to know who  
7 are the named insureds on Mrs. Furer's policy. And I want  
8 to know from Mrs. Furer's attorneys why it isn't -- that  
9 they aren't complying with language that they specifically  
10 approved.

11           (Brief pause in proceedings.)

12           MR. MARKS: Is that directed to me?

13           THE COURT: I'd be glad to let you have the first  
14 shot at it.

15           MR. MARKS: I don't -- a couple of things, your  
16 Honor.

17           I didn't think, after your ruling on the MSA  
18 issue, that Mrs. Furer has to have Mr. Furer as a named  
19 insured on her cars that apparently she's driving.

20           So she got -- her name I believe is the only  
21 insured on her cars. And I believe she has the same  
22 liability insurance as they always had.

23           She's claiming that the umbrella was now covered.  
24 And I never heard the umbrella ever mentioned. And I told

1 her I would file a motion to clarify the issue of the  
2 umbrella.

3 THE COURT: Sir, did --

4 MR. MARKS: If the Court --

5 THE COURT: Sir, you signed -- you gave me a  
6 pleading approving that very language.

7 MR. MARKS: I agreed that she was going to get  
8 her insurance, automobile insurance, which she has.

9 THE COURT: Sir, you approved specifically  
10 language that said that there would be the same insureds  
11 and there would be an umbrella policy. Do you deny that?

12 MR. MARKS: No, your Honor, I'm not denying it.

13 THE COURT: But you're telling me that you don't  
14 need to comply with it?

15 MR. MARKS: No, I'm not telling you that.

16 She asked me to clarify the issue of the  
17 umbrella.

18 THE COURT: Do you believe that since she asked  
19 you to clarify that there's no obligation to comply with  
20 the Court's order?

21 MR. MARKS: No, I don't, your Honor. And I  
22 told her --

23 THE COURT: Then why haven't you?

24 MR. MARKS: Why haven't I?

1 THE COURT: Why hasn't your -- I'm talking to you  
2 collectively.

3 MR. MARKS: Okay. I've asked --

4 THE COURT: Why hasn't --

5 MR. MARKS: Your Honor, I can only tell you that  
6 I have communicated with her the Court's direction  
7 regarding the umbrella.

8 THE COURT: And how about the persons to be  
9 covered?

10 MR. MARKS: I've communicated your order to her.

11 THE COURT: All right.

12 All right. Does anybody else want to be heard on  
13 this?

14 MR. MEADOR: Not unless you need to know  
15 something from me, your Honor.

16 MR. ROBISON: Judge, this is Kent Robison.

17 It's not right that Andy Furer is an uninsured  
18 motorist at this time. Let's say he killed somebody.  
19 Personal assets are at stake.

20 THE COURT: No, I agree with you absolutely. And  
21 there's no seeming excuse.

22 It doesn't seem to me appropriate to hold her in  
23 contempt when she's not present. So I'll ask Mr. Meador to  
24 prepare, with the other order that he is going to prepare,

1 an order to show cause.

2 I think it would probably be more appropriate to  
3 do it at our April hearing rather than our meeting next  
4 week, but I'm prepared to ask her why she should not be  
5 held in contempt for her failure to comply with the order.

6 And it is my strong suggestion—it would be  
7 redundant to say it's an order—it's my strong suggestion  
8 that she comply immediately with the existing order.

9 MR. MARKS: Yes, your Honor.

10 THE COURT: That's all I have.

11 That's the only motion that I'm aware of that's  
12 submitted to the court.

13 I know there are other motions in the file, but I  
14 don't believe they'e submitted.

15 MS. PETRONI: Your Honor, I have a clarification.

16 THE COURT: Yes.

17 MS. PETRONI: I heard that you were awarding Mr.  
18 Meador fees for the preparation of the order granting his  
19 motion to strike; is that correct?

20 THE COURT: And for his motion practice.

21 MS. PETRONI: And for the motion?

22 THE COURT: Yes.

23 MR. MARKS: Your Honor, there was our motion to  
24 alter and amend. I don't think we submitted it yet. In

1 light of your rulings I'll have to talk to my co-counsel  
2 and decide whether we're going to submit it, withdraw it,  
3 or where, because you've covered some of the issues  
4 already.

5 I don't want to burden you with other -- I  
6 have to review that—I don't have it sitting here—

7 THE COURT: All right.

8 MR. MARKS: —and talk to Ms. Petroni about it.  
9 And I shall let Mr. Meador know.

10 THE COURT: All right.

11 My hope is that what we're going to be able to do  
12 is define what issues we can get off the table next week.

13 And two days is what we've scheduled for the rest  
14 of this case. And I'm concerned. And I'm sure I'll hear  
15 from you next week.

16 When I looked at your list of items that you  
17 think are unaddressed right now, it looked like a lot more  
18 than two days to me.

19 But perhaps if we can get defined by you what  
20 issues you think we can resolve next week, maybe a lot of  
21 it will go away.

22 MR. MEADOR: And Judge, I believe that there are  
23 quite a few of those issues that at least in broad general  
24 terms can be decided without a hearing even though some of

1 the details may need a hearing and some rulings.

2 And we can talk about this next week obviously.  
3 But those rulings hopefully will narrow how much  
4 evidentiary hearing is really necessary.

5 THE COURT: No, I understand.

6 We didn't schedule a lot of time for next week  
7 and so I was hoping to be prepared far advance. But it's  
8 already right upon us.

9 MR. MEADOR: I agree.

10 MR. MARKS: Your Honor, what do you want me  
11 to -- do you want me to file some supplement of issues  
12 prior to next week or just orally --

13 THE COURT: Counsel, I want you to take a look at  
14 that order and comply with it.

15 MR. MARKS: All right, your Honor.

16 MR. ROBISON: Your Honor, Kent Robison.

17 On the order to show cause, is she ordered to  
18 show cause why she should not be held in contempt? And  
19 what happens in the interim with regard to her duty to have  
20 Mr. Furer insured with umbrella amounts?

21 THE COURT: She has that duty.

22 MR. ROBISON: And should she comply immediately?

23 THE COURT: And she should comply immediately.

24 She should have complied when she got the order.

1 MR. ROBISON: Thank you, your Honor.

2 THE COURT: And as far as what happens with the  
3 contempt, I don't know. If she doesn't do it, I don't  
4 know. I'll hear your argument on what you think the  
5 sanction should be.

6 MR. MARKS: Your Honor, obviously I'll talk to  
7 her about this.

8 MR. ROBISON: But you're the one that has no  
9 client control.

10 THE COURT: I assume that all lawyers are talking  
11 to their clients in this case. Okay.

12 MS. PETRONI: Is counsel okay with the personal  
13 property issues?

14 MR. MEADOR: You know, Gloria, Dan and -- you  
15 weren't on the phone. But Dan and I just spent a half hour  
16 on the phone before this call. And the good news is I  
17 think that we have worked out a stipulation on the terms.  
18 We've got to go back and look at our calendars and dates  
19 for specifics. But I think—Dan, and you'll correct me if  
20 I'm wrong—we have worked out the substantive details.

21 MR. MARKS: That's correct.

22 THE COURT: I'm very happy to hear that.  
23 Congratulations.

24 MR. MEADOR: We're actually patting ourselves on

1 the back a little bit, too, your Honor.  
2 THE COURT: Okay.  
3 MR. ROBISON: One out of two hundred is not bad,  
4 Judge.  
5 THE COURT: All right.  
6 Does anybody have anything else?  
7 MR. ROBISON: We're done. Thank you.  
8 THE COURT: See you next week.  
9 MR. MEADOR: Thank you.  
10 MS. PETRONI: Thank you, your Honor.  
11 (Proceedings concluded at 10:49 p.m.)  
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CERTIFICATE

I certify that the foregoing transcript, consisting of Pages 1 through 18, both inclusive, is a correct transcript from the digital sound recording of the Telephonic Hearing held in Department Number 11 of the Family Division of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, on Friday, January 19, 2007, at the hour of 10:30 a.m. of said day, in the matter of ELOISA BASADA FURER, Plaintiff, vs. ANDREW EARL FURER, Case No. DV04-01626.

  
Marjorie G. Davall

February 5, 2007