

Christina Grillo

DOB: 01/09/1982

1. Transcript of “Prove Up”- see Page 10&12-Proceeds deposited into Court Registry
 - A. See page 13&14-use of Proceeds
2. Transcript of Hearing to Distribute Funds from Registry & Establish 142 Trust
3. “ Un-Published” Court of Appeals decision

9368/37

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NO. 352-82502-84

JOHN JUNIKER, et al

IN THE DISTRICT COURT

VS.

TARRANT COUNTY, TEXAS

HARRIS HOSPITAL-METHODIST
a/k/a HARRIS HOSPITAL, INC.
et al

352ND JUDICIAL DISTRICT

STATEMENT
OF
FACTS

DATE REPORTED: JANUARY 3, 1991

REPORTER: JUDY G. VANAMAN, CCR

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A P P E A R A N C E S

MR. TOM L. PETTIETTE
ATTORNEY AT LAW
3229 D'Amico #200
Houston, Texas 77019

MR. T. E. SWATE
ATTORNEY AT LAW

ATTORNEYS FOR PLAINTIFF

MR. JOHN P. CAMP
ATTORNEY AT LAW
1300 South University, #308
Fort Worth, Texas 76107

ATTORNEY FOR DEFENDANT

MR. MICHAEL J. HENRY
ATTORNEY AT LAW
309 West 7th Street, Suite 1600
Fort Worth, Texas 76102

ATTORNEY AD LITEM

1 BE IT REMEMBERED that on the 3rd day of January,
2 A.D., 1991, the above styled and numbered cause came on
3 to be heard before the Honorable Bruce Auld, Judge of the
4 352nd Judicial District Court, County of Tarrant, State
5 of Texas.

6 WHEREUPON, the following proceedings were held,
7 to-wit:

8 * * * * *

9
10 THE COURT: It is my understanding
11 that the parties are ready to conclude the
12 settlement of Juniker against Harris
13 Hospital case. Is that right, Mr.
14 Pettiette?

15 MR. PETTIETTE: That is correct, Your
16 Honor.

17 THE COURT: All right. Well, I'm
18 going to let you and the other counsel
19 decide what you need to put on the record.
20 So, I'm just going to turn it over to you to
21 begin with.

22 MR. PETTIETTE: All right, Your Honor.
23 Your Honor, I'm handing to you now the
24 original compromise settlement and release.

25 THE COURT: Okay.

1 MR. PETTIETTE: And also the agreed
2 judgment, if the court would also mark that
3 filed.

4 THE COURT: Okay.

5 MR. PETTIETTE: As the court would
6 note, we had previously appeared before Your
7 Honor concerning proving up of the amount of
8 the settlement in the amount of \$2.5 million
9 for approval by the court, and was agreed to
10 by all parties before the court, and
11 recommended by Mr. Henry.

12 In that regard, there was also a
13 discussion before the court as to the
14 attorneys' fees and expenses that were
15 incurred in the trial of this matter, and
16 that was also proved up before the court.
17 The court accepted that amount of
18 \$1 million, \$76,000 worth of expenses.

19 Now, there has been something else
20 that has come to light at this point, and
21 that is Mr. Camp has brought with him today
22 two documents, one entitled Plaintiff's
23 Supplemental Petition, and the second being
24 Defendant's Original Answer. I would ask
25 the Court to also mark those.

1 THE COURT: All right. I have now
2 signed Plaintiff's Supplemental Petition.

3 MR. PETTIETTE: I would like to have
4 it marked and then I'm going to ask my
5 client questions concerning whether or not
6 she wants me to execute this document.

7 THE COURT: You want it marked? For
8 what purpose do you want it marked?

9 MR. PETTIETTE: Identification. We
10 have to file it with the Court.

11 MR. CAMP: Well, you could just
12 identify it by referring to it. It is the
13 only supplemental petition in this whole
14 lawsuit.

15 MR. PETTIETTE: All right.

16 THE COURT: Let me go ahead and swear
17 the witness.

18 (Witness sworn)

19 JOSEPHINE GRILLO

20 the witness, after first being duly sworn to tell the
21 truth, the whole truth, and nothing but the truth, so help
22 her God, testified on her oath as follows:

23 EXAMINATION

24 BY MR. PETTIETTE:

25 Q. I'll show you what we have referred to as

1 Plaintiff's Supplemental Petition, and this is something
2 that we saw today wherein they added two different named
3 entities to be added as Plaintiffs and subsequently
4 released in the Compromise Settlement Agreement and
5 Agreed Judgment. Are you of that?

6 A. Yes.

7 Q. In that regard, I informed you that since
8 I did not know what these entities were that I would not
9 be able to execute or sign the Supplemental Petition. Do
10 you remember that conversation?

11 A. Yes, I do.

12 Q. Okay. And in that regard you had an
13 opportunity to discuss this document with Mr. Swate, have
14 you not?

15 A. Yes, I have.

16 Q. And he is going to be representing you in
17 any subsequent suit, if it so arises against Dr.
18 Costello; is that correct?

19 A. That's correct.

20 Q. And I have explained to you what fears I
21 might have, whether they are founded or not, but the fear
22 that I might have that by executing this document, not
23 knowing who these entities are, that there could be some
24 ramification upon your lawsuit. Do you recall that?

25 A. I do remember my fears also, but as to my

1 understanding Mr. Camp said that they had nothing to do
2 with Dr. Costello.

3 Q. And you are relying upon that and you are
4 relying upon Mr. Swate's recommendation as to these
5 things, are you not?

6 A. Mr. Swate and Mr. Camp. uh-huh.

7

8 MR. PETTIETTE: Mr. Camp was there
9 something you wanted to represent to the
10 court?

11 MR. CAMP: Yes, sir. Yes, sir.

12 Your Honor, they have advised us that
13 they now intend to sue Dr. Costello. And
14 there is a provision in the Compromise
15 Settlement and Release specifically
16 reserving that cause of action against Dr.
17 John J. Costello.

18 It is my understanding that their
19 concern is that there might be some
20 connection between some of the parties
21 released, these new parties that we have
22 added, and they don't want to release Dr.
23 Costello by agreeing that Harris Methodist
24 Fort Worth, Harris Methodist Health Services
25 and Harris Methodist Health Systems would be

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released.

I state into the record and for the Court that Harris Methodist Fort Worth, a corporation; Harris Methodist Health Services, Harris Methodist Health System and Harris Hospital-Methodist, also known as Harris Hospital, Inc. are not trade names or names of corporations with which Dr. Costello is associated, that their only connection is that Dr. Costello does practice at the hospital known as Harris Methodist-Fort Worth.

And it is not the intention by execution or by presenting these papers for execution that the cause of action against Dr. Costello be released, but it is instead -- instead it was our intention, in accordance with the instructions by the plaintiff's attorney, to reserve the cause of action against Dr. Costello.

Is that sufficient?

MR. PETTIETTE: That's sufficient.

Now, Mr. Swate, you have had an opportunity to review this Plaintiff's Supplemental Petition and advise Ms. Grillo

1 as to it's content, have you not?

2 MR. SWATE: My advice, which I have
3 advised her, I advised her in executing and
4 signing the supplemental petition. And that
5 is based on my advise, and as far as I know,
6 no one elses.

7 MR. PETTIETTE: All right. And in
8 that regard you have agreed to indemnify me
9 if in fact something does occur whereby this
10 may be some form of release as to Dr.
11 Costello; is that right?

12 MR. SWATE: Yes.

13 MR. PETTIETTE: In that regard, Your
14 Honor, I have now executed, and based upon
15 those representaitons, Plaintiff's
16 Supplemental Petition.

17 THE COURT: All right. I'll mark it
18 filed.

19 I note that the Compromise Settlement
20 Agreement and Release and Agreed Judgment
21 don't bear everybody's signature.

22 MR. CAMP: Well, they do, Your Honor.
23 You happen to be looking at the exhibit.
24 Some people went ahead and signed the
25 exhibit, but it is not necessary to sign it.

1 THE COURT: All right. That's fine.
2 That's fine. Okay, that bears everybody's
3 signature.

4 MR. CAMP: I would like to ask Ms.
5 Grillo a few questions, if I may.

6 THE COURT: Go ahead.

7 EXAMINATION

8 BY MR. CAMP:

9 Q. Ms. Grillo you have read and signed the
10 instrument entitled Compromise Settlement and Release,
11 have you not?

12 A. Yes, I have.

13 Q. And you have also approved a Final
14 Judgment which we have presented to the court?

15 A. Yes, sir.

16 Q. Do you ask the Court to sign it on the
17 basis as presented?

18 A. Yes.

19 Q. Do you understand that the \$2.5 million
20 will be deposited in the registry of the court to be
21 withdrawn in accordance with further order of the court?

22 A. I do.

23 MR. CAMP: I would like to ask Mr.
24 Juniker a couple of questions. I believe he
25 is in court.

1 THE COURT: Mr. Juniker would you
2 raise your right hand and be sworn?

3 (Witness sworn)

4 JOHN JUNIKER, JR.

5 the witness, after first being duly sworn to tell the
6 truth, the whole truth, and nothing but the truth, so help
7 him God, testified on his oath as follows:

8 EXAMINATION

9 BY MR. CAMP:

10 Q. You are John Juniker, Jr.?

11 A. Yes.

12 Q. The father of Christina Juniker?

13 A. Yes.

14 Q. And the former husband of Josephine
15 Grillo?

16 A. Yes.

17 Q. Have you signed the Compromise Settlement
18 Agreement and approved the judgment in this case?

19 A. Yes.

20 Q. All right, sir. Did you read those
21 instruments before signing same?

22 A. Yes.

23 Q. Do you ask the Court to sign the final
24 judgment or agreed judgment that we have presented to
25 him?

1 A. Yes.

2 Q. You understand that the \$2,500,000 will
3 be deposited in the registry of the court and then be
4 divided amongst you, your wife, Christina and Mr. Swate
5 and Mr. Pettiette in accordance with the order of the
6 court?

7 A. Yes.

8 Q. All right. I have no further questions.

9

10 THE COURT: Any other questions of Mr.
11 Juniker?

12 MR. CAMP: The court heard evidence
13 for two and-a-half weeks and then on the day
14 that we settled it, we put on full evidence
15 concerning it and I don't believe we need to
16 prove it up anymore fully.

17 THE COURT: All right. Any other
18 questions of Mr. Juniker or Mrs. Juniker --
19 or Mrs. Grillo? I'm sorry. Mr. Henry?

20 MR. HENRY: Yes.

21 EXAMINATION

22 BY MR. HENRY:

23 Q. For purposes of the record, I'm Mike
24 Henry. I've been Christina's ad litem through out the
25 proceedings in this case; do you understand that?

1 A. Yes.

2 Q. Now, you through the courts have been
3 appointed managing conservator of Christina; is that
4 correct?

5 A. That's correct.

6 Q. Since the date the actual trial ended in
7 the court, there has been a substantial amount of work
8 both on your part, on behalf of Mr. Swate and Mr.
9 Pettiette and on my part on reviewing particular modes of
10 investments and the use of the money that the court is
11 going to award Christina; is that correct?

12 A. That's correct.

13 Q. And generally to be more explained by
14 documents given to the court, drafted and signed by the
15 parties, there is going to be a portion of the money
16 awarded to Christina placed in a 142 Trust with a trust
17 company; is that correct?

18 A. Yes, sir.

19 Q. The reason you wanted to do that rather
20 than to place all the money into annuities was to allow
21 you with the approval of the trustee to have access to
22 the money to pay for medical or other type of emergency
23 arose; is that correct?

24 A. Yes.

25 Q. Your concern about placing all that money

1 into an annuity was that although you would be guaranteed
2 some benefits not allowed under the 142 trust, if some
3 astronomical medical bill arose or some other type of
4 bill that Christina needed, you wouldn't have access to
5 the Courts; is that correct?

6 A. Yes.

7 Q. So, based on that and based on the offset
8 the medical expenses could offer you, that you will be
9 spending from income from the trust, you asked me through
10 your attorney to please consider the 142 trust and the
11 other annuities; is that correct?

12 A. That's correct.

13 Q. Your attorney informed me that you wanted
14 access to the money in case of emergency; is that right?

15 A. Yes.

16 Q. Now, also in settling this case and in
17 executing these documents, it was not your intent as
18 managing conservator and as a party to this lawsuit to
19 release, discharge or otherwise quit claim Dr. John J.
20 Costello, was it?

21 A. Would you repeat, please.

22 Q. Yes, ma'am. It was not your intent in
23 executing these papers, nor is it your intent presently
24 to release Dr. John J. Costello; as a matter of fact, as
25 reflected by these documents, you specifically reserve

1 any cause of action that you may have individually or on
2 behalf of Dr. John J. Costello; isn't that correct?

3 A. Yes.

4 Q. And that is your intent here today?

5 A. Yes, sir.

6 Q. And that's your intent when you signed
7 these documents?

8 A. Yes, sir.

9

10 MR. HENRY: That's all I have of Ms.
11 Grillo, Your Honor. I would like to ask a
12 couple of Mr. Juniker.

13 THE COURT: Go right ahead.

14 JOHN JUNIKER, JR.

15 the witness, after first being duly sworn to tell the
16 truth, the whole truth, and nothing but the truth, so
17 help him God, testified on his oath as follows:

18 EXAMINATION

19 BY MR. HENRY:

20 Q. Mr. Juniker, the only thing I would like
21 to ask you about again is your intent in executing these
22 compromise settlement agreement in this case and cause
23 number, and in testifying here today. It is not your
24 intent to release any cause of action that you may have
25 on your behalf, on the behalf of Christina against

1 Dr. John J. Costello, is it? You have not released Dr.
2 John J. Costello --

3 THE COURT REPORTER: I'm sorry, I
4 can't -- I'm having difficulty hearing him.

5 .

6 Q. Would you state your name for the record?

7 A. John Juniker.

8 Q. Mr. Juniker, it is not your intent in
9 executing these documents in cause number 352-82502-84 to
10 release Dr. John J. Costello, is it?

11 A. It isn't.

12 Q. To the contrary, it is your intent, as
13 reflected by these documents and stated here today, to
14 specifically reserve any cause of action you may have on
15 your behalf individually, on behalf of Christina Juniker
16 individually against Dr. Costello; isn't that true?

17 A. Yes, sir.

18 Q. You are not releasing him today?

19 A. Correct.

20 Q. That isn't your intent?

21 A. No.

22

23 MR. HENRY: That's all I have.

24 MR. CAMP: One other question, if I
25 may.

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THE COURT: Go ahead.

MS. GRILLO'S EXAMINATION CONT.

BY MR. CAMP:

Q. You understand that if a minor has a guardian of her estate, that she cannot be represented by a next friend in a suit, and the guardian ad litem has no authority to act, and approval of the probate court in which the guardianship was taken will be an absolute necessity to the validity of the cause of action as to any settlement.

Has Christina Juniker had a guardian of her estate at any time since her birth?

A. No.

MR. CAMP: That's all.

THE COURT: Mr. Henry?

MR. HENRY: Yes.

THE COURT: Indulge me just a moment.

MR. HENRY: Yes, sir.

THE COURT: I was speaking to Mr. Camp at the bench, and I'm afraid I missed Mr. Juniker's testimony. Could you please relate to me what your point was?

MR. HENRY: Yes, Your Honor. I'm just trying to make it crystal clear for the record here today, these settlement

1 documents reflect that Plaintiffs in this
2 case are specifically reserving any cause of
3 action they may have against Dr. John
4 Costello. The documents reflect that. Mr.
5 Camp has stated already that it is not the
6 intent of the Defendants that Dr. Costello
7 be released, and I was just asking both Mr.
8 Juniker and Ms. Grillo both to state for the
9 record that it was their intent that Dr.
10 Costello be released, and to the corollary
11 that it be their intent that he not be
12 released, and that any cause of action they
13 have against him be reserved for the future,
14 that they have or that they have on behalf
15 of Christina.

16 THE COURT: All right. Thank you very
17 much. Does anyone have anything else in
18 connection the entry of the judgment and the
19 approval of the compromise settlement
20 agreement?

21 MR. HENRY: Your Honor, the only thing
22 that I would ask, and I'm guilty of a little
23 bit of the same thing the court was, just
24 ask Mr. Camp to state again for the record
25 that it is not the intent of the Defendants

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as enumerated in the settlement documents
and pleadings here that Dr. Costello be
released.

MR. CAMP: I have already stated that
fully and clearly. And I think once ought
to be enough, unless the court wants me to
do it again. I stated for about five
minutes, Your Honor.

THE COURT: Yes, I believe the point
stands.

MR. CAMP: Yes, sir.

THE COURT: Anything further.

(No response)

THE COURT: All right, then the
settlement is approved. The judgment is
signed. And the Compromise Settlement
Agreement, Plaintiff's Supplemental Petition
and Defendant's Original Answer are filed.

(Hearing concluded)

1 THE STATE OF TEXAS *

2 COUNTY OF TARRANT *

3

4 I, Judy G. Vanaman, Official Court Reporter for the
5 352nd Judicial District Court and Certified Shorthand
6 Reporter in the State of Texas, do hereby certify that
7 the foregoing pages constitute a true and correct
8 transcript of the proceedings heard on January 3, 1991,
9 in the aforementioned cause.

10 WITNESS MY OFFICIAL SIGNATURE on this the ____ day
11 of February, A.D., 1994.

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JUDY G. VANAMAN, CCR

Certification No. 114

Expiration Date: 12/31/94

