

Marietta v. Marietta, DR 94-5194  
Hearing Date: December 15, 1995

Judge Lang: This is the matter of William Marietta v. Lynette Marietta, DR 94-5194. Will you please state your appearance?

Ms Andre Wells: Linda Andre Wells for William Marietta who is present here in Court.

Ms. Carter: Kathleen Carter for Lynette Morris who is not present and for the record I object to this hearing due to the short notice I have not even had an opportunity to even mail, I mean I did mail her a notice but I don't think she had an opportunity to receive it yet and I have not been able to get in touch with her to warn her of this proceeding.

Judge Lang: Your objection is noted for the record and the Court was aware of the fact it was set on very short notice and for the record let me indicate to Counsel that in addition to the conversation with the Court and Counsel (unintelligible) a monologue with Dr. Reed in chambers on the telephone where he instructed us of his most recent contact with the parties in capacity pursuant to the Court's previous order. The Court has also spoken with Judge Fitch of the Seventh Judicial District Court regarding the ex parte Order of Protection that was secured by the Respondent on December 12<sup>th</sup> which effectively prompted the motion here. It is specifically the Court's concern and the primary reason for granting the hearing on such short notice was the statement in the, I believe it is in the affidavit of Ms. Marietta now known as Morris, in the pleading of the Seventh Judicial District that there were no other pending actions, clearly there is. I have advised Judge Fitch that I was probably going to grant some type of extraordinary relief and he could do whatever he wished with respect

to his December 28<sup>th</sup> hearing before the Special Master who is Judge Woodburn and his concern as was mine would be that whatever I do carries a copy of it in Mr. Marietta's hands so that he doesn't get arrested for violating the Seventh Judicial District Order. That presupposes that I am going to do something. Ms. Andre Wells?

Ms. Andre Wells: Your Honor, we have had some discussion with Dr. Reed as you are aware, if you would like me to proceed, you know we are here for two year old ••§. As you have heard already from Dr. Reed the concerns are outstanding in that the mother, Lynette Morris has failed to -refused to follow Dr. Reed's instructions on numerous occasions interfering with Dr. Marietta's custodial rights. Of most concern recently is her statement that she was moving out of State and then failed to appear this week with the child and she missed the visitation on Tuesday, the visits are - the exchange is to occur at Neutral Corner and again tonight we believe she won't be there, we haven't heard from her - our concern is that indeed she has already left the State with the child. However, I understand from Ms. Carter that she received a letter from Ms. Morris and Ms. Morris indicated that she was in Ruidoso, we don't know where she is or what she is doing, but it is certainly against Dr. Reed's specific instruction that she was not to leave with the child and to interfere with the visitation. Additional concern as the Court already noted is Ms. Morris circumventing this Court and going to the Seventh Judicial, falsifying an affidavit and alleging abuse, domestic violence, etc., resulting in a restraining order against my client when clearly what happened is a conversation that she is referring to in the context of an counseling session. Both parties were with Dr. Reed and there they had their discussion where Dr. Marietta raised objection to Ms. Morris leaving the State moving with the child.

Other than that there has no contact. So there is (unintelligible) abuse - the allegations have been falsified. We are asking that one- the Court assist us in vacating that restraining order that is out of the Seventh Judicial District and issue an Order for Ms. Morris to appear before this Court and to return the child immediately and to turn custody over to the father until Dr. Reed can become re-involved in the case next week or whenever. But dearly this Mom is not listening to anyone not the father of the child, not the Doctor who is the arbitrator in this case and not her own attorney who advised her she was not to leave with the child.

Judge Lang: Thank you. Ms. Carter.

Ms. Carter: Well Your Honor, I am somewhat hampered in responding in that I don't have benefit of my client's version of what had happened. I believe that her feeling is sincere, that she feels threatened by Dr. Murette, Marietta, excuse me. I don't think she is using artifice, I think her feelings are sincere whether there is sufficient basis for the Court upon hearing to give her that type of protection, I do know that she is sincere in her\* beliefs, this a two year old child and I didn't hear any recommendation to give custody although if the Court does lift the restraining order and grant some type of relief I think a hearing should be held so she can appear and state her case for the Court and that the remedy no further than the visitation as is currently recommended be put in place. The tender age of the child has to be considered even in these difficult circumstances and what is in the child's best interests. Other than that I don't know anything further she has not left the State, I told

her she could not leave the State without a Court Order or a consent from Dr. Reed which she does not have, I know she understands that and I think she is in the State.

Judge Lang: Okay. I have a real problem with somebody knowing full well there is a case pending in Bernalillo County and for some reason going to another County to get an ex parte Order when she is represented by Counsel and maybe there is a plausible explanation but absent that I am going to grant the relief requested from the Petitioner that is to say that the child is to be immediately wherever found by law enforcement turned over to the Petitioner until such time, and the Petitioner shall then immediately make arrangements with Dr. Reed and Dr. Reed pursuant to the terms of the Stipulated Order of August 95, Dr. Reed will make whatever recommendations and they are abiding of course as he may make. But until that time the child shall be with the Petitioner.

Ms. Andre Wells: Your Honor, for the Court's assistance may I ask, we don't know where the mother is though I understand her current husband, Cecil Morris does know where she is. We would also ask the Court's assistance in, perhaps, if he is aware where she is and is fostering her hiding with the child it is appropriate to bring him in to the Court or to (unintelligible).

Judge Lang: Whatever the rules allow for I will certainly enforce the rules of procedure as they are designed today and enforce them.

Ms. Andre Wells: And could the Court also reserve jurisdiction until we come back on the issue of attorney fees?

Judge Lang: Oh yeah. Always. Yes, also make sure in your Order Ms. Andre Wells that you note that the Court is aware of a restraining Order that does not bear the signature of a District Judge in Torrance County and that this Court communicated with Judge Fitch of the Seventh Judicial District and made him aware. Judge Fitch agrees with this Court that the Order that is effectuated is appropriate under the circumstances. Today I want to alert both parties too that unless you hear from the Torrance County District Court mat the December 28<sup>th</sup> hearing is still on out there.

Unknown: When, may I ask when Dr. Reed is expected to return?

Ms. Andre Wells(?): I think he is coming back this weekend. Judge

Lang: Yeah. I don't know but

Ms. Andre Wells(?): For the record I have asked the Court Clerk out there if at the very minimum, if we can not make it that hearing be rescheduled because I am out of town that weekend. They said no problem.

Judge Lang: That is up to you folks, but as far as my conversation with Judge Fitch that is certainly his call and not mine. Okay. Do you have any question?

Ms. Andre Wells: My client is questioning if there is a way to do that as least traumatically as possible and I think we need to work with Dr. Reed on that, as far as taking the child and changing custody.

Judge Lang: Hopefully, that won't happen if Ms. Carter gets in touch with her client.

Ms. Carter: I will do my best.

Judge Lang: I know you will and I think the question is more directed to you than me.

Ms. Andre Wells: So, my understanding, let me be clear when I write this Order Judge about how Judge Fitch agrees with you that whatever Order you make is appropriate however he is not vacating that hearing yet?

Judge Lang: Nor would I if I didn't have that Court file in front of me and know what was going on.

Ms. Andre Wells: But he can get a copy of this Order

Judge Lang: He may very well may, but he is not the one hearing (?) - he needs to have look into that - I pulled him off the bench. But, it is imperative that - based on the information that I related to him he said - we -go ahead and enter whatever order I would without prejudice to anything he may want to do down the road. But for the time being this

Order is clearly the last entered to his knowledge. The long and the short is that I want the child turned over Mr. Marietta.

Ms. Andre Wells: Thank you.

Judge Lang: Ms. Carter? Do you have any questions?

Ms. Carter: No.

Judge Lang: Hopefully you can get ahold of your client and we won't have to involve the police.

Ms. Carter: I have to write her..

Judge Lang: And it will get unmessy

Ms. Carter: I expect it to be difficult, truthfully.

Judge Lang: Hopefully, we won't have another Order from another County in New Mexico. Thank you.