



**2018 Tournament Problem**

	§	In the 12th District Court
	§	
In re: Twin Babies	§	in and for
	§	
	§	Capitol County, South Texas

### **PRETRIAL CONFERENCE REPORT**

After a hearing before the Court with counsel for both parties present, the Court determines:

1. This is a proceeding filed by Cameron Tucker and Mitchell Pritchett seeking full custody of twin babies born on December 11, 2017. Though the parties have chosen alternative names, the Court will refer to the children as “twin babies.”
2. Plaintiffs Cameron Tucker and Mitchell Pritchett ask for (1) a declaration that the twins’ best interests require awarding them full custody, (2) an order granting them full parental rights and custody of the twins, and (3) an order limiting the visitation rights of Carson Alastor.
3. Respondents Claire Alastor Dunphy answered and asked for full parental rights and custody of the twins.
4. The parties have identified Exhibits A – Z to this Pretrial Conference Report as documents pertaining to this proceeding. The parties have also identified Exhibits Q – V as the depositions

taken in this case. The method of identification was used by the parties throughout the discovery phase of this case, including throughout the depositions of each of the witnesses.

5. Exhibits C – Z are original and authentic.
6. Plaintiffs will call Cameron Tucker and Dr. Charlie Bingham as witnesses. They are available to appear at trial. In addition, Plaintiffs may offer the testimony of Mitchell Pritchett, Tammy LaFontaine, Carson Alastor, and Donna Duncan. All witnesses were properly listed by Plaintiffs.
7. Defendant will call Claire Alastor Dunphy and Dr. Leslie Collins as witnesses. Both are available to appear at trial. In addition, Plaintiffs may offer the testimony of Mitchell Pritchett, Tammy LaFontaine, Carson Alastor, and Donna Duncan by deposition. All witnesses were properly listed by Defendants.
8. The matter is set for a jury trial beginning March 22, 2018.
9. All depositions and transcripts of testimony were signed under oath.
10. The parties have stipulated that Mitchell Pritchett, Tammy LaFontaine, Carson Alastor, and Donna Duncan are unavailable for purposes of Federal Rule of Evidence 804 and may be called by deposition.
11. Each expert's qualifications and methodology meet the standards under the Federal Rules of Civil Procedure. Attorneys need not tender the expert. The experts' reports and resumes are admissible, in

whole or part, under Local Rule 5.003.

12. Neither party has challenged the qualifications or methodology of the other side's expert witness. No further objections to their qualifications or methodology will be entertained.
13. Other than what is contained in Exhibits C - Z, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
14. The Court has already denied a motion to dismiss. No further motions to dismiss will be entertained before trial.
15. The parties have timely and properly requested a jury trial on the custody issue. After a jury determines who should have sole custody of the twins, the court will resolve the remaining questions of what rights, if any, the non-custodial parent will retain. Because the parties reside over two thousand miles from one another, the parties and the court agree that any form of joint custody is not feasible.
16. This Court drafts its own verdict forms. The Court will not accept amendments or additions to Exhibit A.

SIGNED this 20th day of February, 2018.

/s/ Gloria Delgado

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JUDGE PRESIDING

## ATTACHMENTS

- A. Verdict Form
- B. Relevant South Texas statutory provisions
- C. Motion for Permanent Placement and for Restrictions on Visitation
- D. Answer
- E. Surrogacy Contract
- F. Opinion in *Shine v. Patel*, 343 So. Tex. Rptr. 78 (So. Tex. Ct. App. 2009)
- G. Opinion in *Coben v. Radcliffe*, 352 So. Tex. Rptr. 216 (So. Tex. Ct. App. 2011)
- H. Letter from Claire Alastor Dunphy's Lawyer to Cameron Tucker and Mitchell Pritchett
- I. Posting from Claire Alastor Dunphy's Facebook page (liked by her and not deleted)
- J. Posting from Claire Alastor Dunphy's Facebook page (shared to her page, liked by her and not deleted)
- K. Posting from Claire Alastor Dunphy's Facebook page (shared to her page but not liked or deleted by her)
- L. Multiple Postings from Claire Alastor Dunphy's Facebook page (shared to her page, not liked by her and deleted by her)
- M. Excerpts of the Catechism of the Catholic Church
- N. Medical records for Baby Boy Dunphy

- O. Medical records for Claire Alastor Dunphy
- P. Website Print-out
- Q. Deposition of Cameron Tucker
- R. Deposition of Mitchell Pritchett
- S. Deposition of Claire Alastor Dunphy
- T. Deposition of Carson Alastor
- U. Deposition of Tammy LaFontaine
- V. Deposition of Donna Duncan
- W. Report of Dr. Charlie Bingham
- X. CV of Dr. Charlie Bingham
- Y. Report of Dr. Leslie Collins
- Z. CV of Dr. Leslie Collins

## QUESTION 1

Considering their best interests, who do you find by a preponderance of the evidence should be awarded permanent custody of the twin babies?

In evaluating the children's best interests, you should consider:

1. The children's age and physical and mental vulnerabilities;
2. The impact placement will have on the children's filial relationships and on other family members;
3. The willingness and ability of the children's family to effect positive environmental and personal changes within a reasonable period of time;
4. The ability to provide adequate health and nutritional care;
5. The ability to provide care, nurturance and appropriate discipline consistent with the children's physical and psychological development;
6. The ability to understand the children's needs and vulnerabilities; and
7. Such other factors as are necessary and proper to the determination.

"Preponderance of the evidence" means that greater weight of the credible evidence which would create a reasonable belief as to the truth of the allegations sought to be established.

Answer by circling the appropriate name or names:

Plaintiffs

Cameron Tucker and Mitchell Pritchett

Defendant

Claire Alastor Dunphy

## **South Texas Code § 62.301**

### **Determining a Child's Best Interests**

- A. A child's best interests shall be the prevailing factor a court considers in all proceedings involving a child. In considering the child's best interests, the fact-finder shall consider, but not be limited to, the following:
1. The child's age and physical and mental vulnerabilities;
  2. The impact placement will have on the child's filial relationships and on other family members;
  3. The willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
  4. If the movant is capable of providing adequate health and nutritional care;
  5. If the movant is capable of providing care, nurturance and appropriate discipline consistent with the child's physical and psychological development;
  6. If the movant is capable of understanding the child's needs and vulnerabilities; and
  7. Such other factors as are necessary and proper to the determination.
- B. When seeking custody of a child, the movant must show by a preponderance of the evidence that such a placement is in the child's best interests.
- C. "Preponderance of the evidence" means that greater weight of the



credible evidence which would create a reasonable belief as to the truth of the allegations sought to be established.

- D. Disputed fact issues related to a child's best interests may be submitted to the court or to a jury. Anyone demanding a jury must provide timely notice and pay the applicable fee.

### **South Texas Code § 374.001**

#### **Admission of Medical Records through a Records Custodian**

- A. Medical records may be admitted at trial upon the affidavit of the person who would otherwise provide the prerequisites of admission of a business record. The affidavit under this section must be on file with the court for at least thirty days prior to the day upon which trial of the cause commences. Copies of the record to be introduced must be attached to the affidavit and served on all parties to the proceeding.
- B. Any objections to the introduction of the medical records as a business record must be made by counter-affidavit at least seven days prior to the day upon which trial of the cause commences.
- C. This rule does not limit a party's ability to make procedural or substantive objections that would be applicable to authentic and original business records.

18-00006-CV

No. \_\_\_\_\_

12th

In the \_\_\_\_\_ District Court

In re: Lily and Luke Tucker-Pritchett

in and for

§  
§  
§  
§  
§

Capitol County, South Texas

**MOTION FOR CHILD’S PERMANENT PLACEMENT**  
**AND FOR RESTRICTIONS ON VISITATION**

Every decision about child custody in South Texas is subject to a best-interest-of-the-child analysis. *Seaborn v. Griffith*, 352 So. Tex. Rptr. 216, 218 (So. Tex. Ct. App. 2011); *see also* So. Tex. Code § 62.301 (“A child’s best interests shall be the prevailing factor a court considers in all proceedings involving a child.”). Relying on the factors provided in section 62.301, Cameron Tucker and Mitchell Pritchett, the intended parents of Lily and Luke, generally deny the Plaintiff’s allegations and demand strict proof thereof. In addition, they ask the Court to deny the relief requested by the Plaintiff and to honor the terms of the parties’ surrogacy agreement, which would result in permanent custody of Lily and Luke being awarded to Cameron Tucker and Mitchell Pritchett. That is what is in

their best interests.

Moreover, Cameron Tucker and Mitchell Pritchett ask that any visitation provided to Plaintiff be only done with the specific condition that Carson Alastor have no contact whatsoever with the children. Carson Alastor is insistent on creating and maintaining a toxic environment that will have a significant detrimental impact on the childrens' emotional development. This is not in their best interests.

Cameron Tucker and Mitchell Pritchett request that the issue be resolved by a jury. The appropriate jury fee has been paid.

### **Prayer**

Plaintiffs Cameron Tucker and Mitchell Pritchett ask for an order:

- that the childrens' best interests require they be in the permanent custody of Cameron Tucker and Mitchell Pritchett;
- that grants full custody of the twins to Cameron and Mitchell; and
- for all other relief, in law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

THE DURKAS LAW FIRM, P.C.

/s/ Ted Durkas

By: \_\_\_\_\_

THEODORE T. DURKAS

State Bar No. 41674345

133 North Main Street

Alastor City, South Texas 76665

254.433.5044 (Phone)

254.433.5055 (Fax)

ATTORNEY FOR PLAINTIFFS

CAMERON TUCKER AND MITCHELL

PRITCHETT

DATE: January 3, 2017

	§	In the 12th District Court
	§	
In re: Alexandra Alastor Dunphy	§	in and for
and Andrew Alastor Dunphy	§	
	§	Capitol County, South Texas

**ANSWER**

Claire Alastor Dunphy generally denies the allegations in the petition and demand strict proof by a preponderance of the evidence. She also demands that the issue regarding the best interests of the children be heard by a jury. The appropriate fee has been paid. Claire Alastor Dunphy asks for an order denying the Plaintiffs' requests and for an order granting her permanent custody of Alexandra and Andrew.

Respectfully submitted,

REUBEN & BAILEY, L.L.P.

/s/ Walter S. Kleezak

By: \_\_\_\_\_

WALTER S. KLEEZAK

State Bar No. 96363522

1600 Pennsylvania

Capitol City, South Texas 76665

254.435.2000 (Phone)

254.435.2026 (Fax)

ATTORNEY FOR DEFENDANT  
CLAIRE ALASTOR DUNPHY

DATE: January 23, 2018

CERTIFICATE OF SERVICE

I have served this pleading on all counsel of record.

/s/ Walter Kleezak

By: \_\_\_\_\_

DATE: January 23, 2018

## **SURROGACY CONTRACT**

This agreement is entered into on March 1, 2017 by Cameron Tucker, Mitchell Pritchett, Claire Dunphy and Phillip Dunphy.

- 1.01 This Agreement provides a means for Cameron Tucker and Mitchell Pritchett to become the parents of the child, who Claire Dunphy will carry and birth, after she is artificially inseminated with Cameron Tucker's sperm. The parties agree to execute all documents necessary (1) to legally recognize Cameron Tucker and Mitchell Pritchett as the child's parents and (2) to legally relinquish the parental rights of Claire Dunphy and Phillip Dunphy.
- 1.02 Claire Dunphy will undergo an artificial insemination procedure, using Cameron Tucker's sperm, so that a child may be produced. A licensed and qualified physician selected by Claire Dunphy and approved by Cameron Tucker and Mitchell Pritchett shall perform the procedure.
- 1.03 During the pregnancy, Claire Dunphy agrees:
- to comply with all medical instructions given to her by the treating physician, including following a prenatal medical examination schedule, taking of prescribed medicine and vitamins, and submitting to any medical test or procedure deemed necessary or advisable by her treating physician;
  - not to smoke cigarettes, marijuana or other substances, or drink alcoholic beverages from the time of the commencement of cycle medications through the end of the pregnancy or negative pregnancy test results, or such further time as instructed by the treating physician;
  - to limit her consumption of caffeinated beverages and products;
  - not to receive body piercing, acupuncture or tattooing, or use or consume any illegal drugs, continuing through the end of her

pregnancy;

- not to engage in any activity or procedure which requires the breaking of skin or drawing of blood, including elective and/or cosmetic surgery, without the express consent of the treating physician and/or unless by a medical professional in the event of a medical emergency;
- not to use any prescription, nonprescription, homeopathic or herbal medication, undergo any medical procedure, during and through the end of her pregnancy, without the treating physician's express consent;
- not to use hair sprays, hair dyes, and permanent solutions through the end of her pregnancy;
- not to remain in close proximity to cat litter, cleansers, oven cleaners, pesticides, second-hand smoke, or other aerosol sprays during and through the end of her pregnancy;
- not to participate in dangerous sports or hazardous activities, strenuous physical activity, nor to knowingly allow herself to be exposed to radiation, toxic chemicals or communicable diseases;
- to select her obstetrician for her prenatal care and delivery, and the hospital where the delivery shall take place, provided that the obstetrician and hospital are approved by Cameron Tucker and Mitchell Pritchett; and
- to execute all consents necessary to allow Cameron Tucker and Mitchell Pritchett full access to all medical information related to the pregnancy.

1.04 Cameron Tucker and Mitchell Pritchett will directly pay all expenses incurred as a result of the artificial-insemination procedure and the resulting pregnancy. In addition, Cameron Tucker and Mitchell Pritchett will pay Claire Dunphy and Phillip Dunphy the sum of \$150,000 as support, which



shall be paid on the following schedule:

- \$10,000 due within five days of full execution of this Agreement;
- \$10,000 within five days of the start of the artificial insemination procedures;
- \$7,500 for each month in which Claire Dunphy is pregnant, beginning one month after confirmation of pregnancy by blood test until delivery of the child; and
- the remaining balance disbursed one month after delivery of the child and execution of the documents necessary to establish parental rights for Cameron Tucker and Mitchell Pritchett and to relinquish parental rights for Claire Dunphy and Phillip Dunphy.

- 1.05 If Claire Dunphy and Phillip Dunphy exercise any rights in section 1.09 of this Agreement, Cameron Tucker and Mitchell Pritchett will be no longer obligated to make payments under this Agreement. In this circumstance, Cameron Tucker and Mitchell Pritchett will have no right to recover the prior payments made under this Agreement.
- 1.06 Cameron Tucker and Mitchell Pritchett will obtain appropriate medical and life insurance to cover any associated risk and will pay all necessary premiums. That insurance coverage will include a \$2,000,000 life insurance policy on each of the lives of Cameron Tucker and Mitchell Pritchett to ensure the child will be financially supported. The death of either Cameron Tucker or Mitchell Pritchett before the child birth will have no effect on this agreement. Should both Cameron Tucker or Mitchell Pritchett die before the child's birth, Jay Pritchett—Mitchell's father—will assume custody of the child.
- 1.07 The parties understand and agree that this process is risky and not guaranteed to result in the birth of a child or a child physically and mentally healthy and free of congenital defects. The parties also understand and agree that, as with any artificial insemination procedure, this process could result

in more than one child being born as a result of this Agreement. The parties expressly agree that the term “child” shall refer to all children born as a result of this Agreement. If more than one child is born, all of the provisions may be exercised on behalf of all children born as a result of this Agreement or individually on behalf of each child born as a result of this Agreement.

- 1.08 The parties understand and acknowledge that the object of this Agreement is to produce a child for Cameron Tucker and Mitchell Pritchett, given that Cameron Tucker and Mitchell Pritchett reside in Seattle, Washington and that Claire Dunphy and Phillip Dunphy reside in Capitol City, South Texas, the child will have little or no contact with Claire Dunphy and Phillip Dunphy. Cameron Tucker and Mitchell Pritchett will have the absolute right to determine the extent of contact, if any, the child has with Claire Dunphy and Phillip Dunphy.
- 1.09 Notwithstanding any other provision in this Agreement, the parties understand that South Texas law requires that Claire Dunphy has the absolute right—for any or no reason at all—to terminate this Agreement in whole or in part. Notification of the decision to exercise this right must be made in writing and delivered to Cameron Tucker and Mitchell Pritchett within 30 days of the child’s birth.
- 1.10 The parties have been represented by separate counsel and have been advised regarding the terms, conditions, rights, duties and liabilities arising under the conduct contemplated by this Agreement.
- 1.11 This Agreement was negotiated, signed and entered into in the State of South Texas. South Texas law governs this dispute. Likewise, jurisdiction and venue for any dispute shall vest exclusively in a court of competent jurisdiction in the State of South Texas, regardless of the state of citizenship of the parties or child at the relevant time period.

SIGNED on this 1<sup>st</sup> day of March, 2017 in Capitol City, South Texas.

Cameron Tucker  
CAMERON TUCKER

Mitchell Pritchett  
MITCHELL PRITCHETT

Claire A Dunphy  
CLAIRE DUNPHY

Phillip Dunphy  
PHILLIP DUNPHY

Jay Pritchett  
JAY PRITCHETT

Larry Paulson, Paulson & Paulson,  
Capitol City, for Appellant.

Glen Whipple, Dugan & Whipple,  
L.L.P., Alastor City, for Appellee.

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Before Chief Justice MITZI ROTH and  
Justices JASON DARLING and  
DONALD FLUM.

Chief Justice ROTH delivered the opinion  
for the court.

April Shine entered a traditional  
surrogacy contract<sup>1</sup> with Vish and  
Batania Patel, became pregnant, gave  
birth to twins, and surrendered the  
children to them but later tried to assert  
rights as a parent. The trial court ruled  
that the Patels are the children's  
biological and legal parents and that Shine  
has no rights to the twins. We affirm.

### Facts

In July 2008, Shine posted online an  
offer of her services as a surrogate. The  
Patels, a married couple living together in  
Alastor City, South Texas, responded to  
the offer. The parties subsequently  
entered a traditional surrogacy contract,  
resulting in the artificial insemination of  
Shine with Vish Patel's sperm. Shine gave  
birth to twins on June 13, 2009. Two days  
later, Shine and the Patels signed a  
recognition-of-parentage form identifying  
Vish Patel as the children's father and

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**April SHINE, Petitioner**

**v.**

**Vish PATEL and  
Batania PATEL, Respondents**

No. A09-0251.

Court of Appeals of South Texas.

Argued October 1, 2009.

Decided November 2, 2009.

Rehearing Denied November 29, 2009.

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<sup>1</sup> In "traditional surrogacy," a woman agrees that  
her own egg will be fertilized by artificial  
insemination, after which she carries the fetus and  
gives birth to the child. By contrast, in "gestational  
surrogacy," a woman is implanted with an embryo  
created from the egg of one of the parties or a donor  
and the sperm of the other party or a donor.

Batania Patel as the children's mother, respectively.<sup>2</sup> With Shine's consent, the twins left the hospital and went home with the Patels.

A month later, Shine changed her mind. After receiving the documents necessary to recognize the Patels as the twins' parents,<sup>3</sup> Shine refused to sign. She drove to their home, returned the documents, and tried to take the children. After a physical altercation, she left when the police were called.

Shine sued the Patels, claiming that the surrogacy agreement was unenforceable as void against public policy. She sought sole custody of the twins as well as child support from Vish Patel, whom she acknowledged was their biological father. The Patels counterclaimed to enforce the provisions of the surrogacy agreement and for sole custody of the twins.

The trial court concluded that the surrogacy agreement was enforceable and declared that the Patels were the children's legal parents. The trial court denied all relief Shine requested.

Shine filed an expedited appeal to this Court under South Texas Rule of Appellate Procedure 19.12.

### Analysis

<sup>2</sup> The Patels named the baby girl Jamelia and the baby boy Jamal. The South Texas Department of Family Services issued a provisional birth certificate for the children, pending the outcome of this litigation.

<sup>3</sup> In the surrogacy contract, Shine agreed to join a Petition to Establish a Parental Relationship with the Child in a South Texas court. The petition would request that the South Texas court deem the Patels as the children's legal parents, award the couple legal and physical custody, direct that they would assume financial responsibility for the child, and order their names placed on the child's birth certificate under the parent headings.

In her sole issue, Shine asks this Court to rule that the traditional surrogacy agreement between her and the Patels is void as against public policy. In her view, without an agreement, she is entitled to custody as the twins' mother and is entitled to child support. We are reluctant to agree, as no legislation or caselaw in South Texas addresses the legal effect of traditional or gestational surrogacy agreements.<sup>4</sup>

Today, it is relatively common for a couple unable to conceive a child to turn to assisted-reproductive technology, including the use of surrogates. The promise of this new technology, to be sure, comes with the potential for abuse. And this fact has led many states to pass laws regarding surrogacy arrangements.<sup>5</sup> But

<sup>4</sup> We are aware of no precedent applying South Texas law to a surrogacy agreement. One unpublished opinion concluded that a gestational surrogacy agreement was enforceable under a foreign statute because of a choice-of-law clause in that agreement. *In re Baby Boy X.*, No. A07-452, slip op. at 5 (So. Tex. Ct. App. Jan. 23, 2007).

<sup>5</sup> Nine jurisdictions—Arizona, the District of Columbia, Indiana, Kentucky, Louisiana, Michigan, Nebraska, New York and North Dakota—have passed legislation banning all surrogacy contracts. *See* Ariz. Rev. Stat. § 25-218; D.C. Code § 16-402; Ind. Code § 31-20-1-1; Ken. Rev. Stat. § 199.590; La. Rev. Stat. 9:2713; Mich. Comp. Laws § 722.855; Neb. Rev. Stat. § 25-21.200; N.D. Cent. Code § 14-18-05. Nine jurisdictions—Arkansas, Florida, Illinois, Nevada, New Hampshire, Texas, Utah, Virginia and Washington—have passed legislation permitting and regulating some forms of surrogacy contracts. *See* Ark. Code Ann. § 970-201 (allowing surrogacy contracts but defining who will be recognized as parents); Fla. Stat. Ann. §§ 742.11-742.17 (requiring the intended parents to be married, limited to gestational surrogacy contracts where one of the intended parents is genetically related to the child, and compensation limited to expenses); 750 I.L.C.S. 47/1-47.15 (permitting only gestational surrogacy contracts where one of the intended parents is genetically related to the child); Nev. Rev. Stat. § 126.045 (requiring the intended parents to be married, limited to gestational surrogacy contracts where both of the intended parents is genetically related to the child, and

not South Texas. While the State unquestionably has the power to regulate in this area, its failure to do so to date does not justify this Court's intervention.

This dispute represents a social policy choice that requires careful consideration of the rights not only of those who have appeared in this case and those who have the resources to be able to access this advance in medical technology, but of the women—like Shine—who may be selected to help them at the expense of sacrificing the constitutional rights that go along with being the biological parent of the child being born, and of all others who equally wish to have a child in this manner. It requires a careful consideration of all these important rights and it demands delicate balancing not by this Court but, rather, by other branches of government after being informed by a thorough and public debate on these profound questions.

Public policy can be a vague and uncertain term, and the lawmaking body must define it. Courts encroach upon the domain of that branch of government if they characterize a transaction as invalid because it is contrary to public policy, unless the transaction contravenes some positive statute or some well-established rule of law. Without clear legislative intent to prohibit a particular agreement, and absent any claim of fraud, duress,

accident, mistake, or failure or inadequacy of consideration with respect to the agreement, this Court generally declines to declare contractual agreements void on public policy grounds.

We decline to declare this arms-length contractual agreement void on public policy grounds. Shine identified no clear legislative intent, or even any common law, expressing a South Texas public policy that would bar a traditional surrogacy agreement, which resolves the underlying issues.

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ASHLAND, Justice, concurring.

I believe that in certain circumstances a surrogacy contract could be void as against public policy. The State of South Texas has an established public policy that a parent must provide for a child's financial and emotional needs. If a surrogacy contract failed to provide a child with reasonable support, it would be unenforceable. The State of South Texas also has an established public policy that a biological mother may not relinquish all parental rights involuntarily and providing consent to do so is not possible until after the child's birth. Because these circumstances are not present here, I agree this surrogacy contract is enforceable.

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compensation limited to expenses); N.H. Rev. Stat. Ann. § 168-B:1 (permitting only gestational surrogacy contracts where one of the intended parents is genetically related to the child); Tex. Fam. Code §§ 160.751–160.763 (requiring the intended parents to be married, limited to gestational surrogacy contracts); Utah Code Ann. § 78B–15–801 (requiring the intended parents to be married and limited to gestational surrogacy contracts where one of the intended parents is genetically related to the child); Va. Code Ann. §§ 20–156 (requiring the intended parents to be married, limited to surrogacy contracts where one of the intended parents is genetically related to the child); Wash. Rev. Code § 26.26.210–26.26.260 (limiting compensation to expenses).

Chief Judge DECKER delivered the opinion for the court.

I.

Appellants Jeff Johnson and Ann Coben are a married couple who have been unable to have a child together because Coben is not able to carry a pregnancy to term. Wanting to have a child, the couple decided Johnson would contribute sperm to fertilize the ovum of Appellee Debra Radcliffe, a paid surrogate. After entering into a surrogacy agreement, the parties underwent the procedure and, nine months later, a baby boy was born.

Radcliffe invoked a provision of the surrogacy agreement, which allowed her to keep the child so long as she gave notice within 14 days of birth. After receiving the notice from Radcliffe, Johnson and Coben filed a suit affecting the parent-child relationship, asking the trial court to invalidate the provision of the surrogacy contract because it was not in the child's best interests to remain with Radcliffe.

The trial court held a five-day jury trial on the issue of what was in the child's best interests.<sup>1</sup> The evidence showed that Radcliffe regularly used illegal drugs, including marijuana; that she frequently left her other young children home alone; that she had no family support to help with her children; and that she suffered from epilepsy. After the jury determined that it was in the child's best interests for Johnson and Coben to have custody, the trial court entered judgment for Johnson and Coben and against Radcliffe.

Radcliffe immediately filed this appeal.

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**Jeff JOHNSON and Ann COBEN,**  
**Appellants**

v.

**Debra RADCLIFFE, Appellee**

No. A11-114.

Court of Appeals of South Texas.

Argued March 17, 2011.

Decided May 25, 2011.

Rehearing Denied June 3, 2011.

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Anthony Lombardo, Lombardo &  
 Lombardo, P.C., Capitol City, for  
 Appellant.

Alan Ferguson, Thorpe & Ferguson,  
 P.C., Capitol City, for Appellee.

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Before Chief Judge NANCY DECKER  
 and Judges EARL CHAMBERS and  
 DEAN HINDEN.

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<sup>1</sup> All parties demanded a jury trial on the best-interests-of-the-child inquiry.

## II.

Radcliffe's first point considers whether the contract entered into by the parties forecloses any further inquiry into what may be in the child's best interests. She asks this Court to enforce the surrogacy agreement as written, which provides: "The parties agree that it is in the child's best interests to remain in the custody of the person or persons determined to be the child's legal guardian under this agreement." In her estimation, the agreement's language prevents Johnson Coben from challenging her decision to keep the child. We disagree.

South Texas courts have had little occasion to discuss surrogacy contracts. Two years ago, this Court declined to invalidate a traditional surrogacy contract as void against public policy. *See Shine v. Patel*, 343 So. Tex. Rptr. 78, 79 (So. Tex. Ct. App. 2009). A couple years earlier, this Court determined a gestational surrogacy agreement was enforceable under California law because of a choice-of-law clause in that agreement. *See In re Baby Boy X.*, No. A07-452, slip op. at 5 (So. Tex. Ct. App. Jan. 23, 2007). Additionally, the South Texas Legislature has not passed any laws specifically addressing surrogacy agreements.

A written contract defining the rights and obligations of the parties seems an appropriate way to enter into a surrogacy agreement. If the parties understand their contractual rights, then requiring them to honor the contract they entered into is manifestly right and just. Even so, the liberty of contract is not an absolute and unlimited right.

This case represents a circumstance where the right to contract is subservient to the public welfare in ensuring that a child's best interests are the primary concern in all trial court decisions. Parents may not avoid a trial court's

consideration of the best interests of a child through a surrogacy contract. The agreement's basic premise—that parents can decide in advance of birth which one is to have custody of the child—bears no relationship to the settled law that the child's best interests shall determine custody. Thus, in the State of South Texas—without regard to any agreements to the contrary—a trial court has an obligation to independently consider a child's best interests in all suits affecting the parent-child relationship. Far too much is at stake to do otherwise.

This case affords some insight into a new reproductive arrangement—the artificial insemination of a surrogate mother. But the surrogacy contract is based on principles that are directly contrary to the objectives of our laws. Parties may not bypass a best-interests-of-the-child inquiry with a contractual arrangement. It does not matter if it includes a provision stating what they believe the child's best interests are. It does not matter if they bind themselves to take certain positions in court on the issue. South Texas courts will not enforce that type of provision because to do so would necessarily encourage those with money to buy custody of children. We will not allow our courts to be used in that manner. A court has the non-delegable duty to ensure that a child's best interests are protected.

Moreover, the unfortunate events that have unfolded in this case illustrate that use of surrogacy arrangements can still bring suffering to all involved. Potential victims include the surrogate mother and her family, the natural father and his wife, and, most importantly, the children. Although surrogacy has apparently provided positive results for some infertile couples, it can also—as this case demonstrates—cause suffering to participants.

## III.



Radcliffe's second point considers if factually sufficient evidence supported the jury's verdict. When conducting a factual sufficiency review, a reviewing court cannot merely substitute its judgment for that of the trier of fact. The trier of fact is the sole judge of the credibility of the witnesses and the weight to be given their testimony. A reviewing court should only set aside the findings if they are so contrary to the overwhelming weight of the evidence so as to be clearly wrong and unjust. *Kennally v. Schwartz*, 499 So. Tex. Rptr. 42, 44 (So. Tex. 2001). Under the appropriate standard, we cannot say that the jury's verdict was clearly wrong and unjust.

#### IV.

For these reasons, we affirm the trial court's judgment.

---

# Reuben & Bailey

Walter S. Kleezak, Senior Partner  
Tel 254.435.2010  
Fax 254.435.2026

January 2, 2018

By Hand Delivery

Mr. Cameron Tucker  
Mr. Mitchell Pritchett  
2302 Pike Place  
Seattle, Washington 98101

Re: Surrogacy Contract with Claire Alastor Dunphy and Phillip Dunphy

Dear Mr. Tucker and Mr. Pritchett:

I represent Claire Alastor Dunphy. This letter is to inform you that Ms. Dunphy invokes Section 1.09 of the above-referenced agreement and will retain custody of Alexandra and Andrew.

Should you have any questions or need additional information, please contact me.

Sincerely,

Walter S. Kleezak

WSK:vsa

cc: Carson Alastor

ALASTOR CITY  
CAPITOL CITY  
WESTLAKE

BOSTON  
CHICAGO  
DALLAS  
DOVER  
DENVER  
EDINBURGH  
LAS VEGAS  
LONDON  
LOS ANGELES  
MONTERREY  
MILAN  
NEW YORK  
PHILADELPHIA  
PHOENIX  
ROME  
SAN FRANCISCO  
SEOU  
SILICON VALLEY  
TEL AVIV  
TOKYO  
WASHINGTON, D.C.



**Donald Trump**

January 25th · 🌐



The U.S. Government will not accept or allow transgender individuals to serve in any capacity in the United States military. Like if you agree!

Like · Comment · Share



Claire Dunphy and 312,432 like this.



5462 shares



Write a comment ...





**Carson Alastor** shared a post to Claire Dunphy's timeline.



October 10th, 2017 · 11



**Gloria Copeland**

October 10th, 2017 · 6

Don't inoculate with Big Pharma's latest poison. Inoculate yourself with the word of God.



Like



Comment



Share



**Claire Dunphy**



Carson Alastor ▸ Claire Dunphy



February 7th · 🧑

Let's take the babies to Church to pray away the gay.



Like



Comment



Share



Johnny Swift ▸ Claire Dunphy



February 1st · 🌐

Our savior died so we could be free from sin,  
not so we are free to sin. #overturnobergefell



Like



Comment



Share



Louise Keating ▸ Claire Dunphy



February 1st · 11

A stem cell is worth \$5 million.



Like



Comment



Share



Reese Lansing ▸ Claire Dunphy

February 2nd · 11



Moms are crazy. Don't listen to them. A couple years ago, mine made \$2 mil because I gave my gf a kidney.

#whycantmomletmemakemyowndecisions

#loveshouldmeanyoucangiveofyourself

#shesayssheoweshertimetome



Like



Comment



Share





Denny Doucette ▸ Claire Dunphy



February 5th · 11

Don't wait around. Do what Izzy Stevens did.  
You may get it trouble but you'll get the job  
done.



Like



Comment

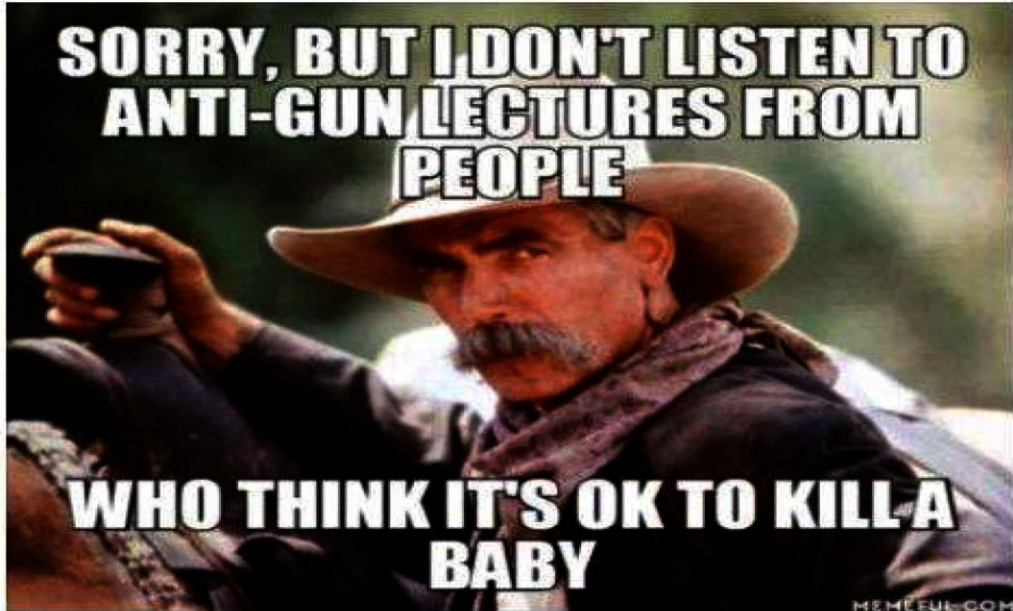


Share



**Helen Niemeyer** added a new photo to Claire Dunphy's timeline:

February 6th · 11



Like



Comment



Share



Robbie Westbrook ▸ Claire Dunphy



February 9th · 11

Oh so gay marriage is a sin in the Bible.  
Great! Now show me where it says that in the  
Constitution.



Like



Comment



Share



**Carson Alastor** shared a post to Claire Dunphy's timeline:



February 11th ·



**Jack Phillips**

February 11th ·

Thanks for the Alastor Foundation's support of our efforts. We have a constitutional right to remain true to our sincerely held religious beliefs!  
#supremecourtwearecountingonyou



Like



Comment



Share

# CATECHISM OF THE CATHOLIC CHURCH

## ART THREE LIFE IN CHRIST

### SECTION TWO THE TEN COMMANDMENTS

#### CHAPTER TWO "YOU SHALL LOVE YOUR NEIGHBOR AS YOURSELF"

##### ARTICLE 6 THE SIXTH COMMANDMENT

You shall not commit adultery.<sup>113</sup>

You have heard that it was said, "You shall not commit adultery." But I say to you that every one who looks at a woman lustfully has already committed adultery with her in his heart.<sup>114</sup>

##### **Chastity and homosexuality**

**2357** Homosexuality refers to relations between men or between women who experience an exclusive or predominant sexual attraction toward persons of the same sex. It has taken a great variety of forms through the centuries and in different cultures. Its psychological genesis remains largely unexplained. Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity,<sup>141</sup> tradition has always declared that "homosexual acts are intrinsically disordered."<sup>142</sup> They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.

**2358** The number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination, which is objectively disordered, constitutes for most of them a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. These persons are called to fulfill God's will in their lives and, if they are Christians, to unite to the sacrifice of the Lord's Cross the difficulties they may encounter from their condition.

**2359** Homosexual persons are called to chastity. By the virtues of self-mastery that teach them inner freedom, at times by the support of disinterested friendship, by prayer and sacramental grace, they can and should gradually and resolutely approach Christian perfection.

Source: [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p3s2c2a6.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a6.htm)

STATE OF SOUTH TEXAS           §

COUNTY OF CAPITOL           §

### AFFIDAVIT OF CUSTODIAN OF MEDICAL RECORDS

Before me, the undersigned authority, personally appeared ROBERT RITCHIE, who, being duly sworn deposed as follows:

My name is MARILYN KELLY. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of records for ALASTOR CITY MEMORIAL HOSPITAL. Attached hereto are 4 pages of medical records. These said pages are kept in the regular course of business, and it was in the regular course for an employee or representative of ALASTOR CITY MEMORIAL HOSPITAL, with knowledge of the act, event, condition, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record, and the record was made at or near the time or reasonable soon thereafter.

The records attached hereto are originals or exact duplicates of originals and nothing has been removed from the original files before making copies.

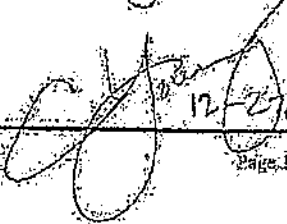
Marilyn Kelly  
CUSTODIAN OF RECORDS

SWORN TO AND SUBSCRIBED before me on this 19TH day of FEBRUARY, 2018.

Wendy Smith  
NOTARY PUBLIC

<u>Inpatient History &amp; Physical Form</u> Internal Medicine		<u>Patient Stamp</u> Dunphy, Baby B DOB: 11DEC2017 NKDA 02/XXX-XX-4258 MRN: 6547-325	
( ) Initial Visit ( ) Consult requested by:	Date: 12/21/17 P. MD:	Service: <u>Cardiac Surge</u> Attending: <u>C. Young</u>	MRN:

<u>Chief Complaint/Reason for Consult:</u> Hypoplastic Left Heart Syndrome	<u>Allergies:</u> NKDA
<u>History of Present Illness:</u> 27y/o mother G1 P2 @ 37 wks EGA Late term U/S indicated HLHS in Baby B	<u>Medications and Dosages:</u> - Aprotinin protocol
<u>Past Medical/Surgical History:</u> Ø	<u>Social History:</u> G1 P2 @ 37 wks Ø tob; Ø EOH; Ø Rx for Ø; Ø surrogate; Ø custody battle
	<u>Family History:</u> Non-contributory

  
 12-21-17  
 Page 1 of 1

Patient Status

Dunphy, Baby B  
DOB: 11DEC2017  
NKDA  
02/XXX-XX-4258  
MRN: 6547-325

Comprehensive Review of Systems

☐ ROS NOT OBTAINABLE BECAUSE

<b>Constitutional:</b> YES NO DESCRIBE <input type="checkbox"/> Fever, sweats or chills <input type="checkbox"/> Fatigue, anorexia, weight loss or gain <input type="checkbox"/> Weakness		<b>Genitourinary:</b> YES NO DESCRIBE <input type="checkbox"/> Dysuria, frequency or urgency <input type="checkbox"/> Menstrual irregularities <input type="checkbox"/> LMP <input type="checkbox"/> Frequent UTIs <input type="checkbox"/> Pain/Hematuria	
<b>Skin:</b> <input type="checkbox"/> Rash(es), no skin breakdown <i>① diaper rash</i>		<b>Musculoskeletal:</b> <input type="checkbox"/> Muscle aches, arthralgias or arthritis	
<b>Head:</b> <input type="checkbox"/> Headache <input type="checkbox"/> Visual changes <input type="checkbox"/> Earache, sinus problems, sore throat <input type="checkbox"/> Cough, snoring or mouth ulcers		<b>Neurologic:</b> <input type="checkbox"/> Mental status changes <input type="checkbox"/> Headaches <input type="checkbox"/> Dizziness <input type="checkbox"/> Weakness or numbness <input type="checkbox"/> Seizures <input type="checkbox"/> Ataxia	
<b>Cardiovascular:</b> <input type="checkbox"/> Chest pain or palpitations <input type="checkbox"/> Syncope <input type="checkbox"/> Edema		<b>Hematologic:</b> <input type="checkbox"/> Lymphadenopathy <input type="checkbox"/> Bleeding tendencies	
<b>Respiratory:</b> <input type="checkbox"/> Shortness of breath <input type="checkbox"/> Cough or sputum production <input type="checkbox"/> Dyspnea on exertion or hypoxia <input type="checkbox"/> Pleuritic chest pain		<b>Psychiatric:</b> <input type="checkbox"/> History of anxiety or depression <input type="checkbox"/> Hallucinations/delusions	
<b>Gastrointestinal:</b> <input type="checkbox"/> Heartburn, dysphagia <input type="checkbox"/> Nausea or vomiting <input type="checkbox"/> Diarrhea or constipation <input type="checkbox"/> Melena or B&P <input type="checkbox"/> Hematemesis <input type="checkbox"/> Abdominal pain		<b>Endocrine:</b> <input type="checkbox"/> History of diabetes <input type="checkbox"/> History of thyroid problems	
<b>Other Symptoms:</b> <i>① tachypnea</i> <i>① lethargy</i> <i>① ↓ pulses - brachial</i> <i>DP</i> <i>↓ sucking</i> <i>↓ feeding</i> <i>12-27-17</i>			



Patient's Name:

Dunphy, Baby B  
 DOB: 11DEC2017  
 NKDA  
 02/XXX-XX-4258  
 MRN: 6547-326

Physical Exam

Labs

<b>Vitals:</b> <i>See Flow Sheet</i> Wt: <i>9.9</i> Temp: <i>100.2</i> BE: <i>87</i> HT: <i>59</i> Resp: <i>23</i> Sat: <i>100</i>		<b>CBC:</b> <i>9.9 / 16.9 / 16.9</i>
<b>Constitutional:</b> <i>Normal general appearance</i>		
<b>Head:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Normal cephalic/traumatic</li> <li><input checked="" type="checkbox"/> PERCLO</li> <li><input checked="" type="checkbox"/> EOM</li> <li><input checked="" type="checkbox"/> nl sclera</li> <li><input checked="" type="checkbox"/> Vision</li> </ul>	<b>BMP:</b> <i>105 / 102 / 87</i> <i>5.9 / 23 / 0.6</i>	
<b>Ears, Nose, Mouth &amp; Throat:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> nl inspection of nasal mucosa, septum, turbinates, teeth, gums &amp; oropharynx</li> <li><input checked="" type="checkbox"/> nl ear canal and T</li> </ul>	<b>CXR:</b> <i>PA / LAT (P)</i>	
<b>Neck:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> nl neck appearance &amp; jugular veins</li> <li><input checked="" type="checkbox"/> Thyroid not palpable; non-tender</li> </ul>	<b>EKG:</b> <i>ECG (P)</i> <i>ECHO (P)</i>	
<b>Lymph Nodes:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> nl neck, supraclavicular or axillary adenopathy</li> </ul>		
<b>Skin/Extremities:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Rashes, lesions or ulcers</li> <li><input checked="" type="checkbox"/> Digits &amp; nails <i>hyperostosis</i></li> <li><input checked="" type="checkbox"/> Edema</li> </ul>		
<b>Breast Evaluation:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> No skin changes</li> <li><input checked="" type="checkbox"/> No nipple discharge</li> <li><input checked="" type="checkbox"/> No lumps/masses</li> <li><input checked="" type="checkbox"/> No fibrocystic changes</li> </ul>		
<b>Respiratory:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chest symmetric; nl chest expansion &amp; respiratory effort</li> <li><input checked="" type="checkbox"/> nl auscultation</li> <li><input checked="" type="checkbox"/> nl chest percussion &amp; palpation</li> </ul>		
<b>Cardiovascular:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Reg rhythm</li> <li><input checked="" type="checkbox"/> No murmurs, gallops or rub</li> <li><input checked="" type="checkbox"/> Rmp not palpable by exam &amp; palpation</li> </ul>		
<b>Gastrointestinal:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> No tenderness or masses</li> <li><input checked="" type="checkbox"/> Liver &amp; spleen not felt</li> <li><input checked="" type="checkbox"/> nl bowel sounds</li> <li><input checked="" type="checkbox"/> Heme negative stool</li> </ul>		
<b>Musculoskeletal:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> nl muscle strength, movement &amp; tone; no focal atrophy</li> <li><input checked="" type="checkbox"/> nl gait &amp; station</li> </ul>	<b>Neurologic:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Alert and oriented</li> <li><input checked="" type="checkbox"/> nl reflexes upper and lower extremities</li> <li><input checked="" type="checkbox"/> Cranial nerves intact</li> </ul>	
<b>Genito-urinary:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> no pelvic exam</li> <li><input checked="" type="checkbox"/> nl testes</li> </ul>	<b>Psychiatric:</b> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> nl mood/affect</li> </ul>	

Page 3 of 4

Dunphy, Baby B  
DOB: 11DEC2017  
NKDA  
02/XXX-XX-4258  
MRN: 6547-325

Assessment:

16 day old ♂ (Term B) @ 35 weeks EGA - late stage a/s revealed Hypoplastic Left Heart Syndrome → NICU → monitor closely

Plan:

- (1) Intubate if  $spO_2 \downarrow$  BSL
- (2) Stage I - Norwood → today/tomorrow
- (3) Stage II - Glenn shunt / partial Fontana (age 4 mos)
- (4) Stage III - Fontana (age 18 mos - 3 y/o)

Attending HPI:

Prognosis:  $\left\{ \begin{array}{l} \text{Treated} \rightarrow \text{Fair! } 75\% \\ \text{Untreated} \rightarrow \text{Fatal!} \end{array} \right.$

Attending PP:

- (1) Alprostadil protocol
- (2) NICU protocol

Attending Assessment and Plan:

- (1) Atrial Septal defect
- (2) Page me if I have concerns! Thanks!

Resident signature:

MD

PGY1 PGY2 PGY3 Date:

Pager:

Resident name printed:

Dictated by:

Intern Pager:

Attending signature:

*[Signature]* 12/27/2017

STATE OF SOUTH TEXAS           §

COUNTY OF CAPITOL           §

### AFFIDAVIT OF CUSTODIAN OF MEDICAL RECORDS

Before me, the undersigned authority, personally appeared ROBERT RITCHIE, who, being duly sworn deposed as follows:

My name is GRIFFIN JOHNSON. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of records for THE CENTER FOR PAIN MANAGEMENT. Attached hereto are 11 pages of medical records. These said pages are kept in the regular course of business, and it was in the regular course for an employee or representative of THE CENTER FOR PAIN MANAGEMENT, with knowledge of the act, event, condition, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record, and the record was made at or near the time or reasonable soon thereafter.

The records attached hereto are originals or exact duplicates of originals and nothing has been removed from the original files before making copies.

  
CUSTODIAN OF RECORDS

SWORN TO AND SUBSCRIBED before me on this 19TH day of FEBRUARY, 2018.

  
NOTARY PUBLIC



Non-Opioid Pain Medicine

# TREATMENT PLAN & PATIENT INSTRUCTIONS

PATIENT: Durphy, Claire A

DOS: NKDA  
SS: XXX-XX-4258

2/14/18

## MEDICATIONS - Current (New)

Cymbalta 30mg po BID	Y/N	Y/N
	Y/N	Y/N
	Y/N	Y/N
	Y/N	Y/N

☐ Methadone / Fentanyl (new Rx) - patient education given & risks explained

☐ Medications Returned / Destroyed

☒ Samples Given / Amount:

- Take medications ONLY as prescribed; do NOT self-increase.
- If you are experiencing inadequate pain relief, call for an appointment to review medications.
- If you are experiencing ANY unusual side effects, call for an appointment to adjust medications.
- Bring ALL medications in original containers to ALL appointments (except procedures).

## NARRATIVE INSTRUCTION(S)

- Spoke to Patient & Followed about referral
- Concerned about impact stress may have on FMS
- We discussed prior cases of FMS where patients were bedridden & treatment; aggressive treatment is needed including Cymbalta / Lyrica / Sarcosine, PT, Aqua-Dx.
- Coping skills training, stress mgmt, CBT are needed
- Challenging case!

## PATIENT TO SCHEDULE @ CPM:

- ☐ Trigger Point Injection(s)
- ☐ Greater Occipital Nerve Block
- ☐ Botox
- ☐ Interventional Procedure(s)

☐ Pre-procedure information given to patient.

☒ Pain Psychology

☐ EMG / NCS

## OTHER ORDERS / REFERRALS:

☐ Diagnostic Imaging

☐ Labs

☐ Weight Loss / Nutrition

☒ Physical / Aqua Therapy

☒ Surgery Consult

☐ Other Specialist / Service

PROVIDER SIGNATURE: *M. Silver*

Patient acknowledges understanding and agreement with treatment plan:

(patient signature / initials)

This is an ADULT facility. Please do not bring children to appointments. Thank You!

The Center For  
Pain Management

VISIT SURVEY  
INITIAL FOLLOW-UP

DATE COMPLETED

1/4/2018

PATIENT'S

Dunphy, Claire A

SOCIAL SECURITY NO.

XXX-XX-4258

Describe location of pain *all over - central*

since giving birth  
*neck, shoulders, back, legs*

Do you have any  
other medical  
conditions that  
may affect your  
pain?  
☐ Yes ☒ No

Please rate your pain by circling the number that best describes  
your pain below

0 1 2 3 4 5 6 7 8 9 10

NO  
PAIN

HARDEST  
PAIN AS  
YOU CAN  
IMAGINE

0 1 2 3 4 5 6 7 8 9 10

NO  
PAIN

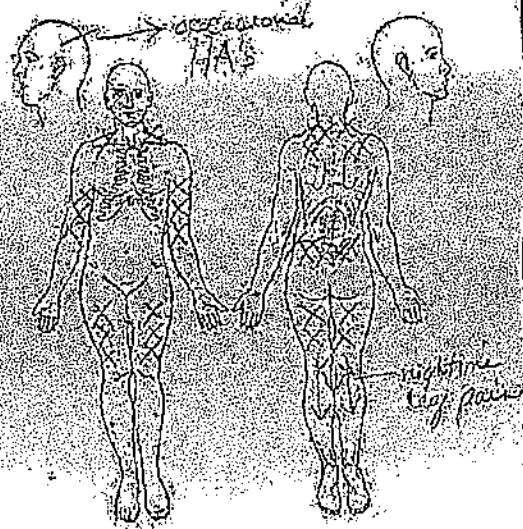
HARDEST  
PAIN AS  
YOU CAN  
IMAGINE

0 1 2 3 4 5 6 7 8 9 10

NO  
PAIN

HARDEST  
PAIN AS  
YOU CAN  
IMAGINE

Please shade the areas affected by your pain



Circle the number that best describes the  
number of times you have been  
affected by the following

	0	1	2	3	4	5	6	7	8	9	10
General activity	0	1	2	3	4	5	6	7	8	9	10
Work	0	1	2	3	4	5	6	7	8	9	10
Walking activity	0	1	2	3	4	5	6	7	8	9	10
Normal work	0	1	2	3	4	5	6	7	8	9	10
Relationship with other people	0	1	2	3	4	5	6	7	8	9	10
Sleep	0	1	2	3	4	5	6	7	8	9	10
Enjoyment of life	0	1	2	3	4	5	6	7	8	9	10

Circle the percentage of time you have been  
affected by the following

0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

<input checked="" type="checkbox"/> Paracetamol											
<input checked="" type="checkbox"/> Spinal drugs											
<input checked="" type="checkbox"/> Morphine											
<input checked="" type="checkbox"/> Codeine											
<input checked="" type="checkbox"/> Aspirin											

DRUG NAME	DOSE	FREQUENCY	ROUTE	START DATE	STOP DATE	REASON FOR STOPPING
<i>Hydromorphone</i>	<i>not taking</i>					
<i>artificial progesterone</i>						
<i>Tylenol</i>						
<i>The Natural Vitamin</i>						

Dunphy, Claire A

NKDA

SS: XXX-XX-4258

SOAPP®-R

The following are some questions given to patients who are on or being considered for medication for their pain. Please answer each question as honestly as possible. There are no right or wrong answers.

1-4-18

	Never	Seldom	Sometimes	Often	Very Often
	0	1	2	3	4
1. How often do you have mood swings?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. How often have you felt a need for higher doses of medication to treat your pain?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. How often have you felt impatient with your doctors?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. How often have you felt that things are just too overwhelming that you can't handle them?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. How often is there tension in the home? <i>because of just me!</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. How often have you counted pain pills to see how many are remaining?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. How often have you been concerned that people will judge you for taking pain medication?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. How often do you feel bored?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. How often have you taken more pain medication than you were supposed to?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. How often have you worried about being left alone?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. How often have you felt a craving for medication?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. How often have others expressed concern over your use of medication?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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PainEQ

Dunphy, Claire A.

NKDA

SS: XXX-XX-4258

1-4-18

	Never 0	Seldom 1	Sometimes 2	Often 3	Very Often 4
13. How often have any of your close friends had a problem with alcohol or drugs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. How often have others told you that you had a bad temper?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. How often have you felt consumed by the need to get pain medication?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16. How often have you run out of pain medication early?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17. How often have others kept you from getting what you deserve?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18. How often, in your lifetime, have you had legal problems or been arrested?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19. How often have you attended an AA or NA meeting?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
20. How often have you been in an argument that was so out of control that someone got hurt?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21. How often have you been sexually abused?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
22. How often have others suggested that you have a drug or alcohol problem?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
23. How often have you had to borrow pain medications from your family or friends?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
24. How often have you been treated for an alcohol or drug problem?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please include any additional information you wish about the above answers.  
Thank you.

12

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Pain-EDU

28

[illegible]





## Informed Consent for Procedure

You have a pain problem which has not been relieved by routine treatment. A procedure, specifically an injection or operation, is now indicated for further evaluation or treatment of your pain. There is no guarantee that a procedure will cure your pain, and in some cases it could become worse, even when the procedure is performed in a technically perfect manner. The degree and duration of pain relief varies from person to person, so after your procedure, we will reevaluate your progress, then determine if further treatment is necessary.

Your physician will explain the details of this procedure listed below. Tell the physician if you are taking any blood thinners such as Coumadin, Lomox or heparin, as these can cause excessive bleeding and a procedure should not be performed.

Alternatives to the procedure include medications, physical therapy, acupuncture, surgery, etc. Benefits include the increased likelihood of correct diagnosis and/or identification or elimination of your pain. Risks, in general, include infection, bleeding, allergic reaction, increased pain, nerve damage, (including temporary or permanent pain, numbness, weakness, paralysis or death), air in lung requiring chest tube, tissue, bone, or eye damage from steroids. Nerve destruction with phenol, alcohol, or radiofrequency energy have risks of nerve and tissue damage.

Specific risks relating to each specified procedure are as follows (ranked in initial line of procedure):  
 Epidural, Facet Joint, Medical Branch Nerve, Sacrospinous Joint, Selective Nerve Root or Lumbar Sympathetic  
 Injection/Block/Ablation: low blood pressure, temporary weakness, numbness or tingling, headache, requiring epidural blood patch  
 Epidural or Spinal Epidural Injection, Nuchal Trauma, urinary difficulty, slowed breathing  
 Discogram or Intradiscal Electrothermal Therapy (IDET) Injection or Disks  
 Steroid Epidural Block/Ablation: dizziness, difficulty swallowing, seizure, nausea, weak and/or numb arm, air in lung, chest tube in hospital  
 Trigger Point Injection, Peripheral Nerve-Neuraxial Block, Occipital Nerve Block, Intraosseous Nerve Block/Ablation  
 Air in lung, requiring chest tube in hospital, local pain from tissue and/or nerve irritation, lumping or depression in skin  
 Collar or Subcutaneous Injections, Block/Ablation: low blood pressure, internal vessel or organ puncture  
 requiring emergency surgical treatment to repair it, temporary or permanent bowel bladder or sexual dysfunction  
 Spinal Cord Stimulation, Spinal Nerve Root Intraosseous Pump, Epidural or Spinal Catheter Injection requiring hospitalization and removal of catheter or pump in hospital, nerve damage  
 Epiduroscopy or Caudal Epidural Catheter Placement: Nerve Damage, fluid puncture causing headache

The incidence of serious complications listed above for this treatment is very low, less than 1% in our experience. Your physician believes the benefits of the procedure outweigh its risks or it would not have been offered to you, and it is your decision and right to accept or decline to have the procedure done.

I authorize Dr. SILVER and such assistants as may be selected by him/her to perform the following:

Procedure: TRIGGER POINT INJECTIONS

I have read or had read to me the above information, I understand there are risks involved with this procedure, to include rare complications, even death, which may not have been specifically mentioned above. The risks have been explained to my satisfaction and I accept them and consent to this procedure.

Claire A. Murphy

Date:

Witness:

Patient or Patient's legal guardian

Physician Declaration: I and/or my assistant have explained the procedure and the pertinent contents of this document to the patient and have answered the patient's questions. To the best of my knowledge, the patient has been adequately informed and the patient has consented to the above described procedure.

Dr. C. SILVER  
Physician

1/14/15  
Date

Dunphy, Claire A.

NKDA  
SS: XXX-XX-4258

# INJECTIONS

<p>CHIEF COMPLAINT/REVIEW: <u>Chronic Pain</u> <u>muscle spasm</u></p>		<p>INTERVAL HISTORY: <u>See H&amp;P</u></p>	
<p>Change in function of: <input type="checkbox"/> Pain <input type="checkbox"/> Sens <input type="checkbox"/> Motor <input type="checkbox"/> Reflex <input type="checkbox"/> Coordination</p> <p>Progressive symptoms: <input type="checkbox"/> Pain <input type="checkbox"/> Sens <input type="checkbox"/> Motor <input type="checkbox"/> Reflex <input type="checkbox"/> Coordination</p> <p>Map of: <input type="checkbox"/> Decreased pain <input type="checkbox"/> Increased pain <input type="checkbox"/> Decreased motor <input type="checkbox"/> Increased motor</p> <p>Describe intensity of headache: <input type="checkbox"/> Decreased <input type="checkbox"/> Increased <input type="checkbox"/> No change</p>		<p><input type="checkbox"/> 20526 <input type="checkbox"/> 20527 <input type="checkbox"/> 20528 <input type="checkbox"/> 20529 <input type="checkbox"/> 20530 <input type="checkbox"/> 20531 <input type="checkbox"/> 20532 <input type="checkbox"/> 20533 <input type="checkbox"/> 20534 <input 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## VISIT SURVEY

☐ INITIAL ☒ FOLLOW-UP

DATE COMPLETED

2/4/18

SOCIAL SECURITY NO.

XXX-XX-4258

Dunphy, Claire A

Body/Description: Neck, Shoulders

back, legs - worse  
since giving birth

Do you have any new medical history since your last visit?	1749 Please Describe	Both of twins on 12/11
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Please rate your pain by circling one number that best describes your pain below:

0 1 2 3 4 5 6 7 8 9 10

NO  
TWIN

100-443887-100

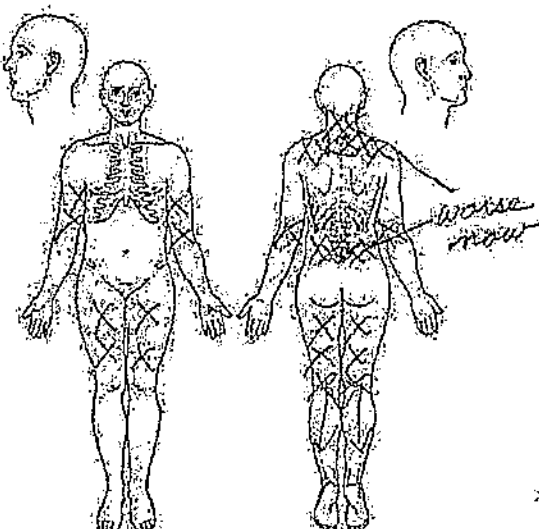
0 1 2 3 4 5 6 7 8 9 10  
No. PAGES

RAIN BAD AS YOU CAN IMAGINE

0 1 2 3 4 5 6 7 8 9 10

NO PAIN.  
PAIN AS  
BAD AS  
YOU CAN

Please shade the areas affected by your pain:



Using scale provided, please circle the one number which best describes how your pain affects the following:

0 1 2 3 4 5 6 7 8 9 10  
DO NOT COMPLETE

PK	DOSE	DRUG NAME	DOSE	NO. OF
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IF YOU ARE ACTIVE	IF YOU ARE NOT ACTIVE	IF YOU ARE NOT ACTIVE

General activity	0	1	2	3	4	5	6	7	8	9	10	0	1	2	3	4	5	6	7	8	9	10
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Wood	0	1	2	3	4	5	6	7	8	9	10	0	1	2	3	4	5	6	7	8	9	10
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Walking slowly	0	1	2	3	4	5	6	7	8	9	10	0	1	2	3	4	5	6	7	8	9	10
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Normal work	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
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Relations with other people:	0 1 2 3 4 5 6 7 8 9 10	0 1 2 3 4 5 6 7 8 9 10
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On the past 30 days, how much relief have you  
experienced on medication provided? Please  
circle the one percentage that most closely  
describes the relief you have received.

0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

NO  
RELIEF

COMPLETE  
RELIEF

[illegible]

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Morphine			
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✓	Code no.		
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Asst. Dir.

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## Frequently Asked Questions

### ***What is surrogacy?***

Surrogacy is the process by which a woman carries a baby for a parent or couple who is unable to carry a child on their own.

### ***What are the differences between Gestational and Traditional Surrogacy?***

The defining factor is whether or not a Surrogate has a genetic link to the child that she is carrying. Gestational Surrogacy is the process by which a Surrogate becomes pregnant through In-Vitro Fertilization. The eggs come from either the Intended Mother or an egg donor. Either the Intended Father or a sperm donor provide the sperm. The Surrogate receives the fertilized egg through an Embryo Transfer. The Gestational Surrogate has no genetic link to the baby. A Traditional Surrogacy occurs when the Surrogate becomes pregnant, through Artificial Insemination, using her own eggs. Therefore, the Traditional Surrogate has a biological and genetic link to the resulting child.

### ***Why South Texas?***

South Texas is a wonderful place. Our Surrogates enjoy a family-oriented, healthy, and active lifestyle.

### ***Why Surrogacy Solutions?***

Surrogacy Solutions has had more than 20 Surrogate births over just the past two years. Our monthly support groups have an average of 10 Surrogates in attendance so your Surrogate has the most valuable resource—other Surrogates who have gone through the journey themselves.

### ***How often will the Intended Parents need to travel to South Texas?***

The truth is that we would love to have you visit as much as possible, but it is likely that it would only be necessary for you to travel to Alastor City a total of two times. If it applies to you, you will need to be in Alastor City to provide a sperm sample and/or for an egg retrieval approximately 5 days prior to the transfer. And then you will need to be in Alastor City again at the time of the birth. After the birth it usually takes 7-10 days to finalize all of the legal paperwork.

### ***What does Surrogacy cost Intended Parents?***

A Surrogate pregnancy can cost the Intended Parents in the range of \$50,000 to \$150,000—and sometimes more. Common variables are: the Surrogate fee, a singleton or multiples pregnancy,

the clinic package, out-of-pocket medical expenses, use of an egg or sperm donor, bed rest fees, etc. The number of cycles required to achieve a viable pregnancy can also increase the cost significantly. If you already have frozen embryos, the total can be closer to \$50,000.

***What advantages does Surrogacy have over Adoption?***

Many couples want a child that is “theirs.” Surrogacy is often the only way for a couple to have a child that has a genetic link to one or both of the Intended Parents. Surrogacy also allows the Intended Parents to become emotionally invested in the pregnancy. In the case of adoption, the numbers may be against the Intended Parents. There can be as many as seventy (70) couples vying to adopt a single newborn. Adoption, in general, can be a very emotionally risky process; Surrogacy gives the Intended Parents increased peace of mind as well as increased legal standing.

***Will the Intended Parents have to adopt their own child?***

When a Surrogate delivers in South Texas, a court proceeding will take place for the names of the Intended Parents to be placed on the birth certificate. The judge will be given the proper documentation confirming the Surrogacy Arrangement. The Surrogate will terminate her legal rights, and then the Intended Parents will be able to assume theirs. Our attorney is very familiar with the process, and will be able to prepare you for it.

***How do Surrogates answer the question: “Will you be able to give up the baby?”***

A Surrogate has not begun to enter the world of Surrogacy if she has not been asked this question. We will help you find your voice. You will find that many people have strong feelings about Surrogacy and Surrogates, in particular, no matter how uneducated on the subject they might be. It is so hard for an outsider to understand. Thankfully, our Surrogates have friends on the inside. First of all, it’s not the Surrogate’s baby. Second, it’s not just about the Surrogate, it’s about her helping someone else to have their baby. Third, our Surrogates have done their research. Our Surrogates are educated extensively and confident in their decision to carry a baby for someone else. And, finally, a Surrogate knows the lengths she would be willing to go to if she had been unable to have children. Now, she is giving back by allowing another mother/couple to have what the Surrogate already holds so dear: a family. If the person asking the question had ever experienced fertility problems, they would surely find the question less poignant. And, how lucky the questioner is to know such a kind, empathetic, unselfish person should they ever need a Surrogate.

***Has Surrogacy Solutions ever had a Surrogate want to keep the baby?***

No. Our agency exists to ensure that this does not happen. In reality, a Surrogate changing her mind happens less than one-percent of the time. In fact, it is three times more likely that the Intended Parents would change their minds, than would the Surrogate. Still, we take no chances. Our screening process is extensive, and is designed to ensure that our Surrogates are both

well-educated and emotionally prepared for this process. The contract also addresses this issue in detail, and our primary focus is that our Surrogates are counseled extensively to prepare them, throughout the entire pregnancy, for the birth day--and what to expect.

***Will the Surrogate feel the same bond for the baby as she felt for her own child?***

Being a Surrogate is a very different experience from carrying your own child. Your feelings are determined largely by your expectations. When you are carrying your own child, you are preparing to welcome your baby into your family and into your home. You prepare the nursery, purchase baby clothes, pick out a name, and anticipate bringing your baby home and raising him/her. When you are a Surrogate, your expectations are that at the birth the Intended Parents will take their child home, and that your part of the process will be complete. As a Surrogate, you are aware that you are not the mother, but a person who allows another to be a mother. And, should a Surrogate find that, after the birth, there is a moment where she feels a sense of loss—she has the agency and 10 other Surrogates to help her see the beauty of it all and keep it in perspective.



**DEPOSITION OF CAMERON TUCKER**

January 26, 2018

**EXAMINATION BY MR. SALTZMAN:**

Q: What is your name?

A: Cam Tucker.

Q: Is that your full name?

A: No.

Q: What is your full name?

A: Cameron Ray Tucker.

Q: How old are you?

A: 33.

Q: Are you married?

A: Yes. Mitch and I got married in Boston nine years ago.

Q: Did you live there?

A: We did. Both before and after we got married. We met while we were students at Williams College.

Q: Did you earn a degree from there?

A: I did.

Q: What was your major?

**DEPOSITION OF CAMERON TUCKER**

January 26, 2018

A: Math.

Q: When did you graduate?

A: May of 2006.

Q: What did you do after graduation?

A: I moved to Boston.

Q: What did you do there?

A: I got a job as an assistant at DeLoitte. I started as an assistant. In time, I got more and more responsibility. By the time we moved out west, I was in charge of reserve analysis for a number of big insurance clients.

Q: You had to take a bunch of exams, right?

A: I did. Being an actuary requires passing a series of exams to earn an actuarial designation through the Casualty Actuarial Society or the Society of Actuaries, which are the two organizations that administer the tests.

Q: Which one administered the tests you took?

A: The Society of Actuaries.

Q: How long did it take for you to pass the tests?

## **DEPOSITION OF CAMERON TUCKER**

January 26, 2018

A: Seven years. I took one test before I started at DeLoitte. Then, I took one every year until I got my associate certification.

Q: What does an actuary do?

A: Manage risk. By understanding the very nature of risk, I help organizations plan for the future and protect themselves from loss. Actuaries evaluate the likelihood of future events—using numbers, not crystal balls. We design creative ways to reduce the likelihood of undesirable events. And we decrease the impact of undesirable events that do occur.

Q: Give us a couple examples.

A: In one project, I helped with the analysis to determine how much an insurance company should charge for auto insurance, taking into account many factors such as the car that is being insured and details about the driver. I also helped determine how much another insurance company should charge businesses for the many different types of insurance that businesses need, such as liability insurance and business interruption insurance.

**DEPOSITION OF CAMERON TUCKER**

January 26, 2018

Q: Is it all insurance related?

A: My experience is in that industry. But actuaries work in a variety of settings.

Q: Where did you grow up?

A: In Missouri. My family lives outside St. Louis. Warson Woods.

Q: Are your parents still there?

A: Yes.

Q: What are their names?

A: Luke and Lily Tucker.

Q: What do they do?

A: They're retired. Dad worked for an insurance company. Mom was a realtor. They now travel and take care of their grandkids.

Q: How many grandkids do they have?

A: 12.

Q: Wow. How many siblings do you have?

A: There were seven of us, but we've lost one of my brothers and one of my sisters. So five.

**DEPOSITION OF CAMERON TUCKER**

January 26, 2018

Q: What number are you?

A: Three of seven.

Q: Do they all live near your parents?

A: Two sisters do. Another sister lives in Madison, Wisconsin. A brother lives in Phoenix.

Q: So are your parents on the road a lot?

A: Quite a bit.

Q: Where do you live now?

A: Seattle.

Q: What do you do there?

A: I am a consultant for DeLoitte.

Q: How long have you been working there?

A: I have only worked for DeLoitte. I worked for the company in Boston while I lived there. And then in 2011, we moved out west. Since then, I've worked in the Seattle office.

Q: What clients do you represent?

A: I can't tell you. I sign confidentiality agreements with clients. We are not

## **DEPOSITION OF CAMERON TUCKER**

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permitted to disclose their identities unless a court specifically orders us to. And I have to give their lawyers notice and the opportunity to challenge such a disclosure. I do not—and cannot—divulge what clients I work for. I am contractually bound to honor that secrecy—before or after the job is completed.

Q: Where is your office?

A: Downtown Seattle.

Q: How much do you work on a weekly basis?

A: It depends. I telecommute most of the time. I typically go into the office to work because the set-up is better there. But as a Christmas present, Mitch set up an office at home with everything I have at the office. He did this so I could stay home with the babies and have a more flexible schedule. In the last few months, that has really been a good thing because this custody battle has occupied our time.

Q: Has your work suffered?

A: Not really. I use technology for most of what I do. That's the nature of my client's work. Many days, I don't leave the house. My clients want to

## **DEPOSITION OF CAMERON TUCKER**

January 26, 2018

communicate through e-mail or some form of video-conferencing. Since I have been here in South Texas, I have used videoconferencing. It has allowed me to do my work without adversely affecting my clients at all. And on top of that, I have great partners and colleagues that are ready, willing, and able to help me whenever they're needed.

Q: How many hours a week do you work?

A: It depends on the project. Some weeks I work about 20 hours a week. On rare occasions, I may work 80 hours a week. I have a great deal of flexibility to take whatever time I need.

Q: Are you religious?

A: No, not really.

Q: Do you attend church?

A: No.

Q: Did you grow up in a church?

A: No.

Q: Did Mitchell?

A: I think his grandmother took him sometimes to the Unitarian Church

**DEPOSITION OF CAMERON TUCKER**

January 26, 2018

when he was really young. But nothing since.

Q: When did you decide to start a family?

A: Well, we've talked about it ever since we moved to Seattle. Watching my brother and sisters with their children at holidays really made me think about it more.

Q: Did you think about adoption?

A: We did.

Q: Did you register with adoption agencies?

A: We did with many. It was almost impossible to get a newborn—and we really wanted a baby. We filled out so many applications at so many places. It didn't seem to get us anywhere.

Q: How long did you do this?

A: For a while. Nothing happened in 2012 or 2013. We just filled out more applications and were told no babies were available. We got so discouraged.

Q: How long did you wait?

A: A couple years.



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Q: What did you do next?

A: Actually, it took a toll on our relationship and we separated.

Q: You did?

A: Yes.

Q: For how long?

A: Sixteen months.

Q: And when was that?

A: The end of 2014 through the beginning of 2016.

Q: Did you talk during that time?

A: Not for six months or so. Then, we talked periodically.

Q: Were you worried about starting a family under these circumstances?

A: Actually, I think it made us closer. Mitch always wanted a family. I was the skeptical one. I didn't know what we would encounter in the process.

Q: After you reconciled, did you look at other options for starting a family?

A: We did.

Q: Like what?

A: Anything. And everything.

**DEPOSITION OF CAMERON TUCKER**

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Q: Did you discuss adopting an older child?

A: We did. But our hearts were set on having a newborn.

Q: Did you consider international adoptions?

A: Yes. We talked to agencies in China, Russia and Guatemala. We hired adoption consultants to work on our behalf, but we never really felt like it would work for us.

Q: How did you decide to hire a surrogate?

A: One of the consultants suggested it to us. But we learned that surrogacy is banned in Washington. So, initially, we didn't think it was an option for us.

Q: What changed your mind?

A: The consultant told us that we could travel to a state that permitted surrogacy arrangements. So we looked into it.

Q: Did you look into in-vitro fertilization?

A: We talked about it.

Q: With whom?

A: Some of our friends that tried in-vitro fertilization.

**DEPOSITION OF CAMERON TUCKER**

January 26, 2018

Q: What were their names?

A: Nicole Rosemary Page and Tom Mickelson.

Q: What did you learn?

A: That our friends had bad experiences. They went through agencies, hired anonymous egg donors and hired gestational surrogates. They described the process as grueling and ridiculously expensive. And to make matters worse, the surrogates had adverse reactions to the fertility drugs and lost the embryos.

Q: So did your friends' experience lead you to go the route of a traditional surrogate?

A: I guess it did, in part. We had also been looking into it for a while. We wanted to know the egg donor. We didn't want to go the anonymous route. It just made more sense to us at the time.

Q: How did you end up in South Texas?

A: We looked on the Internet. We found an agency in Alastor City that advertised for women willing to serve as surrogates.

Q: What was the name of the agency?

**DEPOSITION OF CAMERON TUCKER**

January 26, 2018

A: South Texas Family Solutions.

Q: So what did you do next?

A: We went to the agency's website and read all about the process.

Q: I'm showing you what has been marked as Exhibit P. Is this the information you reviewed?

A: It is.

Q: Okay, what did you do next?

A: We asked our consultants to check out the agency with others in the business. We hired lawyers in South Texas to make sure we could have a child in South Texas and bring the child back to Seattle. And, once we found out it was legally permissible, we once again became hopeful about the possibility of being parents.

Q: When did you meet Claire Dunphy?

A: She was one of three potential surrogates the agency arranged for us to interview. We weren't comfortable with the other two. One was a 22-year-old bartender, who did a whole lot of partying. We were sure she would fail a drug test. We wanted a healthy baby. The other was a

## **DEPOSITION OF CAMERON TUCKER**

January 26, 2018

20-year-old orphan, who was nice but didn't know anything about her family health history. That really concerned us.

Q: Why?

A: Because we were looking into having a traditional surrogacy arrangement so the child would be my biological child. We wanted to make sure our child would be as healthy as possible. Knowing the surrogate's family health history was very important to us.

Q: And Claire was the third candidate?

A: Yes, she was. She seemed perfect. She told us all about her family and their medical history. No real problems. Her maternal grandparents had been killed in a plane crash. Her paternal grandparents were still living and in their late eighties. None had heart or other known congenital problems. Her mother lived in the area but was estranged from her. But, by all accounts, she had been healthy. We didn't know much about her dad.

Q: Did you immediately move forward?

A: No. We went home and talked about it. We wanted to make sure this was

**DEPOSITION OF CAMERON TUCKER**

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the right move for us.

Q: How did you decide that it was?

A: We took our time. We asked for our parents' opinions. We talked to our friends. After a couple months, we decided to move forward.

Q: What happened next?

A: We had our South Texas lawyers work with the agency. Then the agency's lawyers talked to Claire and her husband. They all worked on a surrogacy contract.

Q: Was the agency a part of the Agreement?

A: No, it wasn't. The agency collected a fee for arranging everything but wasn't a party to the Agreement.

Q: How much did you pay the agency?

A: \$30,000.

Q: How much did you pay the lawyers?

A: For the contract?

Q: Yes.

A: Around \$20,000.

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Q: Did you travel to South Texas to sign the contract?

A: We did.

Q: When was that?

A: [looking at Exhibit E] March 1, 2017.

Q: Is Exhibit E a true and correct copy of the document you signed?

A: It is.

Q: Who accompanied you to South Texas to sign the surrogacy agreement?

A: Mitch and his father.

Q: Did you go home once you signed the surrogacy agreement?

A: No, we stayed in Alastor City to make some arrangements.

Q: Like what?

A: Well, a number of things. We rented a home in Alastor City so we could have a place to stay when we came to South Texas. We planned on taking an active role in the prenatal care. We deposited all the money due under the contract in our local lawyers' trust account so they could send Claire and Phillip the money each month. We then purchased the insurance policies required under the agreement and prepaid all of them for the

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entire year. Afterwards, we returned home.

Q: When did you return to South Texas?

A: When it was time for the artificial-insemination process.

Q: When did that occur?

A: A couple weeks later.

Q: When did you learn that the procedure had been successful?

A: A month later, when Claire went in for a check-up. Mitch had flown to Alastor City to accompany her to the specialist. Mitch texted me from the appointment. He was so excited. It seemed everything would work out for us—finally.

Q: Did you see much of Claire while she was pregnant?

A: Not much, but a couple times. Mitch went with her to every check-up. I traveled to South Texas a couple of those times, and we would have dinner with Claire and Phillip.

Q: I understand that a tragic event occurred in December. Could you tell us about that?

A: Phillip was killed in the line of duty. It was a Friday. He was a fireman



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with the Alastor City Fire Department. There was a three-alarm fire in an old warehouse on the outskirts of town. The floor collapsed and he didn't make it out alive.

Q: How did you find out about it?

A: Our lawyer read about it online. He forwarded it to Mitch.

Q: What did you do?

A: We tried to reach Claire. But we couldn't get her on the phone. Mitch had been in daily contact with Claire or Phillip so we called our lawyer to see if he could track her down.

Q: What did he do?

A: I'm not sure. He made some calls, I think.

Q: What did he find out?

A: He called us hours later. It seemed like an eternity. He told us that Claire was in the hospital.

Q: So what did you do?

A: We flew to Alastor City.

Q: When did you arrive?

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A: We couldn't get out until Sunday morning. I think it was the 10th.

Q: Did you go straight to the hospital?

A: We did.

Q: Describe Claire's condition when you arrived.

A: She was sedated. The doctors told us she had been inconsolable. She was in shock.

Q: Were you concerned?

A: Of course, we were. She was at 30-something weeks and was carrying twins. The doctors were not certain of what could happen.

Q: What do you mean?

A: They said they thought she was starting to go into labor, even though she wasn't due for a few weeks. The beginning of labor is a complex process that is not fully understood. Hormones are involved. And stress causes labor.

Q: So she did go into labor?

A: Yes.

Q: When were the babies born?

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A: Lily was born Monday, the 11th at 3:14 p.m. And Luke was born nine minutes later, at 3:23 p.m.

Q: Were you there when the babies were born?

A: I was.

Q: Who else was there?

A: Mitch, of course. My mother and my father were there too. Mitch's parents came down a few days later.

Q: Were any members of Claire's family there?

A: I heard Phillip's parents had been there but I didn't see them.

Q: Anyone else?

A: Not to my knowledge.

Q: Did you get to see the babies immediately?

A: No. They were so small and so early. The doctors took them to the pediatric intensive care unit. They stayed in that unit for a week but we were able to see them through a window on Tuesday.

Q: After they left the pediatric intensive care unit, did they stay in the hospital?

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A: Yes. Lily was there until the second week of January. And Luke is still in the hospital.

Q: Tell us about Luke.

A: His medical condition?

Q: Yes.

A: He was born with his heart not properly formed. It was a condition called hypoplastic left heart syndrome. Dr. Mary Schechter discovered it a week after the twins were born. Luke had to have surgery the next day.

Q: Was the surgery successful?

A: We think so. Luke has been progressing well. Dr. Schechter is optimistic about his progress.

Q: Did Lily have any problems?

A: None whatsoever.

Q: Could you please review a portion of Exhibit E? Specifically, turn to page 3 where paragraph 1.09 appears?

A: Yes, I see that paragraph.

Q: You assess risk for a living. So what has occurred here is really what you

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contemplated at the outset?

A: Not really. No one can write or sign a contract to answer the question of what is in a child's best interests. That is up to a court or a jury, as in this case.

Q: Don't you think it's in the twins' best interests to be with their biological mother?

A: No. It's in their best interests to be with their biological father and the family who has always wanted them.

Nothing further.

**EXAMINATION BY MS. PASTERNAK:**

Q: When did Claire change her mind about the twins?

A: I got a letter on January 3rd from some lawyer.

Q: Is Exhibit H the letter you received?

A: It is.

Q: Where are the twins now?

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A: Luke is still in the hospital under Dr. Schechter's care. We get to spend an hour in the morning and an hour in the evening with him.

Q: How long will he stay in the hospital?

A: We're not certain. Hopefully, no longer than a few weeks. Once this custody battle is over, we will have the opportunity to transfer him to a facility in Seattle, if he still needs hospital care. We will get him the best care available, and I will move mountains to give him the best life possible. This little boy will want for nothing.

Q: What about Lily?

A: She is with Claire in her mother's home.

Q: Have you had the opportunity to see Lily?

A: Yes, we get an hour every other day with her. I cannot wait until this whole mess is behind us and take both of them home.

Q: Where does your visit with Lily occur?

A: At the hospital in a conference room. Claire has one of her nannies transport Lily there for the visits with us.

Q: Does the nanny stay in the room with you?

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A: At first she did. But after Mitch threw a fit and our lawyers had to get involved, she now just drops her off for our visits.

Q: Why do you think it is better to have Lily live with you?

A: Because we will provide a stable and loving family. And Claire's health is a big unanswered question. It could really affect her ability to care for and support the child. We will not have any of those issues. Claire's only option is to rely on her mother, who is crazy. She hates us. She has vowed to go to the ends of the Earth to protect our children from us.

Q: Doesn't she have the right to see her grandchildren?

A: Not if her presence harms them. That woman spits venom. And her hate is camouflaged as religious doctrine. I feel sorry for Claire. But I have to protect my children. They cannot grow up to be the bigots their grandmother is.

Q: But her grandmother will not have custody, right?

A: No, she won't. And, if I have anything to say about it, Claire will not either.

Q: Why not?

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A: Because Claire is beholden to her mother. Claire has no other means of support. So money talks. Her mother knows nothing about unconditional love. Everything comes with strings attached. If Claire doesn't do what her mother wants, the money will be cut off. So I have no comfort level that the twins will be protected from her homophobic rants or bigoted beliefs. I don't want my children raised in that environment. I have a right to make those decisions.

We will reserve our remaining questions for trial.

END OF DEPOSITION



**DEPOSITION OF MITCHELL PRITCHETT**

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**EXAMINATION BY MR. SALTZMAN:**

Q: Tell us your name.

A: Mitchell Pritchett.

Q: How old are you?

A: I am 32.

Q: Where do you live?

A: In Seattle.

Q: What kind of home is it?

A: A big one. 14,000 square feet. It is a two-story home near downtown. We have seven bedrooms and a big yard.

Q: How long have you lived there?

A: Since we moved to Seattle.

Q: What is your educational background?

A: I graduated from Williams College with a degree in English. I then went to law school and graduated from Boston University.

Q: Where did you go to high school?

A: In Chagrin Falls, Ohio. It is a suburb of Cleveland.

**DEPOSITION OF MITCHELL PRITCHETT**

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Q: Where did you meet Cameron?

A: At Williams. We were both active in student government. We became friends there and started dating once we both moved to Boston.

Q: Are you currently employed?

A: I am. I run my own law office.

Q: What kind of practice do you have?

A: I represent plaintiffs in employment disputes. A lot of ADA claims.

Q: For the benefit of the jury, what are ADA claims?

A: Claims brought under the Americans with Disabilities Act. It is a law that seeks to eliminate barriers for those with disabilities. Congress wanted for people with disabilities to be able to participate in all aspects of society.

Q: So you have interaction on a regular basis with people with special needs?

A: I do.

Q: And you understand what is involved in accommodating their needs?

A: That's my job.

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Q: Isn't that rather demanding?

A: It can be.

Q: But you feel like the two of you are ready to take this on?

A: Absolutely. Whatever challenges we face are a blessing. Luke is our son.

We love him and want to provide for him. Cam is sitting beside me right now and he will be throughout whatever life brings us.

Q: To be clear, you reviewed the language of the surrogacy contract before it was signed right?

A: I did.

Q: And did you have any questions about the language?

A: I did.

Q: What were those questions?

A: I really don't think my questions to my lawyer are your business or subject to discussion with you.

Q: Were you aware of Section 1.09 of the agreement?

A: I was.

Q: Did this language concern you?

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A: Not particularly at the time. I understood that it was required by South Texas law because a biological mother had to be given a period of time after the child was born to relinquish parental rights.

Q: Did you discuss paragraph 1.09 with Claire?

A: No. I discussed it with Cam.

Q: Did you help Cam make all the arrangements in South Texas after you signed the surrogacy contract?

A: We did it all together.

Q: During the pregnancy, how often did you talk to Claire?

A: Every couple of days. And I would come to Alastor City once a month for her doctor visits. I would accompany her each time we went. I picked her up at her townhouse, and then I drove her to the clinic. Afterwards, we would go to lunch or shopping. We spent a lot of time together. Sometimes Phillip would join us but he was typically working.

Q: Did they seem to have a circle of friends?

A: Yes and no. She and Phillip had a couple people who they regularly spoke of, but I didn't meet them. When I was around her, no one ever

**DEPOSITION OF MITCHELL PRITCHETT**

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dropped by her townhouse.

Q: Did you feel like your presence was necessary at the doctor visits?

A: Not necessarily. I guess Phillip could have gone with her but he worked a lot. And, quite frankly, I wanted to be there. She was carrying my babies. I had a vested interest in making sure everything was perfect. And it was.

Q: When did you learn that you were getting twins?

A: Four months into the pregnancy. We were told at the monthly check-up that she was carrying twins.

Q: What did you think of that?

A: I was thrilled. And so was Cam. Claire and Phillip took the news in stride but were worried that it might cause complications.

Q: Were there any complications?

A: Not related to her pregnancy really. She was restricted to bed rest in the last month but with twins that is not unheard of.

Q: But all that changed in early December, didn't it?

A: Yes. That was tragic, and I felt so badly for Claire.

Q: How did you find out?

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A: Cam told me.

Q: What did you do?

A: We decided to fly in to help her but we couldn't reach her or get a flight out until the following morning.

Q: But you flew in?

A: We did.

Q: What did you do when you arrived in Alastor City?

A: We went straight to the hospital.

Q: Did you see Claire?

A: Not at first. She was not doing well.

Q: Emotionally or physically?

A: Yes.

Q: Which one?

A: Both.

Q: What did the doctors tell you?

A: That she was being sedated. They were monitoring the babies to make certain they were all okay. But the stress could cause her to go into labor

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early.

Q: And that's what happened?

A: It did.

Q: When were the babies born?

A: On the 11th. Lily came first and then Luke followed.

Q: Were you there for the birth?

A: I was. It was incredible.

Q: Tell us about it.

A: Lily came first. Nine minutes later, Luke came along. Claire was okay.

The babies were so beautiful. I was so relieved.

Q: How was Cameron?

A: He was as emotional as I was. After all those years, we finally had a family.

Q: Had you discussed names before you knew that you had a boy and a girl?

A: Not really. We talked about the kinds of names we liked, but we never settled on any specific ones.

Q: How did you decide?

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A: It was my idea. Cam's parents have always been so supportive of us. They are the greatest people with the biggest hearts. I told Cam I couldn't imagine anyone I would rather our children grow up to be like. So I suggested we name them after Luke and Lily. He asked if I was certain, and I told him I was.

Q: Where were you when you had this conversation?

A: In the chapel. We went there to be alone.

Q: What did you do next?

A: We went to tell Cam's parents. They were so excited and honored. It marked the end to such a long journey for all of us. And it marked the beginning of a new journey. His parents knew of our struggles and had been so incredibly supportive. Cam stayed with his parents and I told them I wanted to tell Claire.

Q: Did you?

A: I tried, but she was sedated. Every time I tried, she wasn't in a position to have a conversation. And then we got the letter.

Q: By the letter, you're referring to Exhibit H, aren't you?



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A: I am.

Q: After receiving that letter, what did you do?

A: Talked to our lawyer.

Q: Did you have further interaction with Claire?

A: Not directly. The lawyers talk to each other. We talk to the lawyers.

Q: But you see the babies, don't you?

A: Yes, we do.

Q: Tell us how that works.

A: We see them in the hospital. We spend an hour in the morning and an hour in the evening with Luke in his intensive care room. We spend two hours in the afternoon with Lily in her room in the pediatric wing.

Q: Are you alone for these visits?

A: For the most part, we are.

Q: Were any members of her family there for her?

A: I don't think so. I had heard that Phillip's parents were in town but I never saw them.

Q: So you have never met Carson Alastor, have you?

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A: I have not.

Q: But you think she will be a bad influence on the children?

A: I do.

Q: What do you know about her?

A: That she is crazy. She makes Ann Coulter look like a liberal.

Q: What makes you say that?

A: Have you seen the stuff she's written or heard the things she's said? I don't know how she can honestly believe the nonsense that comes out of her mouth.

Q: But she does believe what she says, doesn't she?

A: I suppose so.

Q: And she has the right to hold those beliefs, doesn't she?

A: I guess. But that doesn't mean that my children should be around her.

Q: She is their grandmother, isn't she?

A: Maybe biologically. But she hadn't had a relationship with her daughter because of her marriage to Phillip. Apparently, he wasn't good enough for her. And he was a Democrat who voted for Obama. That was the

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straw that broke the camel's back. She cut Claire off completely. Cut her out of the will. No contact whatsoever. And then all of a sudden, she wants to call the shots again. This time, she wants to dictate what happens with my children. She is entitled to do what she wants with Claire, as long as Claire decides to put up with it. But when my children are involved, I don't want her in their lives. She is poison. I don't want them to grow up to be like her.

Q: Can't the two of you just agree to disagree? She has the right to her opinion and you have the right to yours.

A: That works in a lot of settings, but it doesn't when you're talking about raising children. Children are the product of what they are exposed to. I plan to raise my children with my values.

Q: What are your values?

A: Be a good person. Be happy. Be supportive. Be kind to others. Do your part to make the world a better place. Look for the best in people. Don't judge the way others choose to live their lives. Be tolerant.

Q: What makes you think Carson Alastor doesn't believe in the same things?

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A: She has said as much. She has specifically criticized me for the way I live my life. My life is none of her business.

Q: Isn't it now her business because you're trying to raise her grandchildren?

A: It is not her business. She is not the parent. She was not a party to the surrogacy contract. She needs to butt out and go away.

Q: Isn't her involvement with the children an issue for Claire, not you or Cameron?

A: It is my business. These are my children. I have the right to control what filth they are exposed to.

Q: Okay, apart from Carson, did any others check in on Claire after she lost her husband?

A: There were a couple from her church. Someone sent flowers. I think a pastor came to see her. But she spent most of the time sedated. And when she wasn't, she was crying. I arranged for the hospital chaplin to see her every morning.

Q: But she did have a support system, right?

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A: A small one.

Q: Have you been in South Texas since all of this happened?

A: I have.

Q: At a certain point, you'll have to return to Seattle, won't you?

A: Probably so. But I haven't had to yet.

Q: What has happened to your law practice?

A: I have an associate who has been handling things while I'm here. I have videoconference meetings and work from our townhome here.

Q: Have you been able to focus much on work?

A: Sometimes yes and sometimes no. It depends on where we are with regard to this rollercoaster we're on.

Q: Both you and Cameron work, isn't that correct?

A: We do.

Q: So how are you planning to deal with child care, especially because one of the children has special needs?

A: We will adapt. We will do whatever is necessary. We have hired registered nurses to work with us around the clock. And if we need more

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help we'll get it.

Q: So your plan is to have someone else take care of your children?

A: No. That is not what I'm saying. We plan to do all we can. But we recognize we will need help. And with respect to Luke, we have a lot to learn. We'll count on an expert to guide us through the process.

Q: What happens if work gets in the way?

A: Work will go away. We'll take a leave of absence or do something else. We have enough money to do whatever we want.

Q: Did Claire ever say that she was planning to keep the babies?

A: Not to me. She said that caring for two babies would be impossible. At the time, I thought that was not an issue because she had signed the surrogacy contract so she would not have that burden. But our conversation never went beyond that. I didn't push the issue.

Q: Did you ever discuss these comments with Cameron?

A: Yes. He told me to let it go. So I did.

Q: When was that conversation?

A: In October.

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Q: How did you discover there were concerns about Luke?

A: One afternoon we went to see the babies. I noticed Lily was in the nursery, but Luke was not. I asked what was going on. The nurse told me about the tests being run on him.

Q: When was Luke's condition confirmed?

A: The following morning. The doctors called us into a conference room and told us that Luke had a serious heart condition. Apparently, he had poor skin color, a poor pulse and shortness of breath.

Q: Was Claire there when you met with the doctors?

A: No. They met with her separately.

Q: How did you decide what to do?

A: There really wasn't a choice. That's what the doctors told us. So we let the lawyers work out the consent forms. Cameron and I signed something to let them proceed. I understand Claire did too.

Q: Was the surgery successful?

A: The doctors say it was. I pray they are right.

Q: So what are your plans for the twins?

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A: To love them. To give them everything we can. To make them the happiest little children they can possibly be. To be there for them always.

Q: Are you concerned about Luke's birth defect?

A: Of course I am. And so is Cam. But that doesn't change anything about our love for him or our commitment to do all we can for him. It is just a part of who he is. The longer I live, the more convinced I become that life is about 5 percent what happens to us and about 95 percent how we respond to it.

Q: Do we necessarily know how his birth defect will impact him?

A: Not entirely. He will have to have a series of surgeries to repair his heart. We realize the recuperation period will be long and difficult.

Q: Why do you think the twins will be better off living with your family in Seattle?

A: We can provide them with a loving and stable home. They will have parents who have always wanted them. They will have each other. They will have grandparents, cousins and other family members. We will all watch out for them. Claire's support system seems much more limited.



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And that does not even consider Carson Alastor's negative influence.

Q: I understand that you grew up with a sister with special needs.

A: Yes, my younger sister, Gabby, was born with Down Syndrome.

Q: Where does she live?

A: In Seattle. I see her at least three times a week. We spend holidays together and attend church together on Sundays. Cam and I have been so enriched by having her as a part of our lives.

Q: Tell us about the challenges she faces.

A: Gabby has an intellectual disability. It is what doctors described years ago as moderate mental retardation. She had heart problems soon after she was born. She underwent four heart surgeries by age seven. She has some mild eye problems. She has ear infections. But her challenges don't define her. She is a loving, caring person.

Q: How do you deal with her challenges?

A: The same way anyone deals with challenges. My parents decided that, as with any other child, she needed to be taught to love herself and to appreciate that we love her dearly. Yes, she is different, but the

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differences are what make her unique. Differences are what make us all unique. You cannot focus on physical differences. Rather, you have to teach children with special needs about how every child has a different personality. I learned from my parents this will make them feel more like everyone else. We celebrated these differences and taught Gabby to love herself for who she is. And she does. And we love her for who she is. With this self-awareness, Gabby gained confidence, which helps her communicate with others. Having a sister with a disability can at times be rewarding, confusing, and stressful. But I love her, and I cannot imagine my life without her. I know that is how Cam feels. I know that is how my parents feel. Gabby is just a part of who we are. And that will always be the case. And now Lily and Luke are just a part of who we are. We don't know all the challenges they will face, but we are ready to be right there with them.

Q: How do you envision Luke interacting with Lily?

A: Just as any two siblings would. They'll play together. They'll fight.

They'll love each other. The more I read and the more I talked to other

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parents of children with disabilities, the more I found that feelings and emotions about children are very much the same in all families. The accident of illness or disability serves only to intensify feelings and emotions, not to change them. Quality of life is not about ability. It's about having happy times, feeling well, safe and comfortable, feeling pride in the things he can do, and that she is a loving person. At times, we will have to be careful but we can manage.

Q: You and Cameron have had marital issues in the past, haven't you?

A: Yes. We're like many couples. We have ups and downs. But we're stronger than ever now.

Q: Why?

A: This entire process has made us stronger. We realized that we both really wanted a family. And now we have one.

Q: So we shouldn't be worried that if you are awarded permanent custody of the children, the same thing might happen again?

A: No.

Q: But it could happen?

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A: Anything could happen. But we are committed to each other and our family.

Q: What caused the separation?

A: A lot of things. We both were working too much and talking too little. We went to counseling and addressed our problems.

Q: I understand you recently ran into Claire and Carson at a local restaurant. Is that right?

A: Yes, it is. And they were saying a prayer at the table. Seriously? I don't get people who do stuff like that. I don't want Luke and Lily to have to do that with Carson.

That's all.

EXAMINATION BY MS. PASTERNAK:

I'll reserve my questions for trial.

END OF DEPOSITION

**DEPOSITION OF CLAIRE ALASTOR DUNPHY**

February 14, 2018

**EXAMINATION BY MS. PASTERNAK:**

Q: What is your name?

A: Claire Dunphy.

Q: How old are you?

A: I am 27.

Q: What is your educational background?

A: I graduated from Memorial High School in Alastor City. I went to the University of South Texas.

Q: What was your major?

A: Art History.

Q: What have you done since you graduated?

A: Various things.

Q: Like what?

A: I worked in the development department for the Alastor City Fine Arts Museum for a couple years. Then I worked for a breakfast restaurant in Alastor City called Brew'd Awakenings for about couple years. Then I started working at a bar in Alastor City called Prohibition.

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Q: What do you do there?

A: I've been a server and a bartender.

Q: Are you still working there?

A: I haven't worked there since the second month of the pregnancy. I made more than enough money under the surrogacy contract.

Q: So how much have you made?

A: 20,000 dollars and 7500 a month. Not sure what the grand total is. Phillip handled the finances.

Q: Do you have plans to repay that money to Cam and Mitch?

A: I'm not certain. I know I have no obligation to do so. But I really don't know what I'm doing through all of this.

Q: Okay. So you haven't been working since last spring?

A: Not for money.

Q: What have you been doing?

A: Volunteering so I'd have something to do.

Q: Where?

A: At a rehabilitation facility my uncle started after he got clean. It is called

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Second Chances.

Q: Tell us about that place.

A: Second Chances is a rehabilitation facility that offers various forms of treatment, including in-patient and out-patient services. Doctors, counselors and other professionals teach what they know to patients and their families in an attempt to empower patients to manage their dependency and illness over time. Charlie created the facility to let those without financial resources get the rehabilitative help they need to turn their lives around.

Q: Where is it located?

A: On the west side of town—on a wooded 100-acre campus near Lazy River.

Q: What do you do there?

A: I help with group activities. We take trips to local museums. We'll take them to the zoo. We'll have Sunday picnics. My job is to come up with fun things that will take their minds off their problems. I work with the counselors to come up with events that challenge the patients mentally

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and physically but keep in mind that their first priority is getting clean.

Charlie used his money to do good. We lost him in a motorcycle accident and working there makes me feel like I'm honoring him. I watched him interact with people at the lowest moments in their lives, and he made them feel good about themselves. I knew that I wanted to work with him.

Q: When did he die?

A: Soon after Second Chances opened in 2012. He was hit by a drunk driver and then lingered in some kind of coma for a long time. The decision to pull the plug really tore us apart. But he is now in a better place.

Q: Didn't your mother and uncle go to court over that?

A: They did. They both loved him. Mom wanted to hold out hope he would get better. My uncle Campbell wanted to let him go.

Q: And ultimately the court decided to let him go?

A: It did.

Q: Have your mother and uncle reconciled?

A: No, they haven't. They are very different people with different ideas of how to live life. I try to stay out of their battles.



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Q: Do you interact with both of them?

A: I do now.

Q: Okay. Let's take this one at a time. Your uncle. Do you interact with him?

A: Yes. Uncle Campbell lives in Colorado, and I see him a couple times a year. I've always been able to talk to him. He was down here for a while when Uncle Charlie was lingering in his coma but then moved back to Colorado after we lost him. So I wish he was closer but we try to stay in touch.

Q: Now, tell us about the relationship with your mother.

A: It's complicated.

Q: What do you mean by that?

A: Just that. We take things one day at a time.

Q: Okay. Let's get more specific.

A: Okay.

Q: Before this year, when was the last time you spoke to your mother?

A: 2011.

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Q: What caused the two of you to stop talking?

A: A lot of things, I guess. But we had a big fight.

Q: What did the fight involve?

A: My school. My major. My relationship with Phillip. We said things to each other that you really can't take back.

Q: Like what?

A: I don't remember everything.

Q: What do you remember?

A: She hated everything about Phillip. And I was in love with him. She told me that if I crossed her and married him, we were done.

Q: And how did you handle that?

A: We eloped.

Q: Did you speak to her after that?

A: No. She heard about it from Uncle Charlie. I didn't talk to her again until recently.

Q: Did she cut you off financially?

A: She did.

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Q: How did you support yourself?

A: I worked. Phillip worked. We lived on less. We made it work.

Q: Did other members of your family try to support you?

A: I got generous gifts from my uncles but not anything else.

Q: Who did you spend holidays with?

A: Phillip's family.

Q: Where do they live?

A: His parents live in Santa Fe. Holidays there were so much fun. We would do the farolito walk on Christmas eve. We would have big feasts with his extended family. We always had such a great time.

Q: You didn't spend time with your family?

A: Not really. Sometimes we'd go to Colorado for Fourth of July or some other random holiday but Phillip generally had to work on holidays.

Q: Tell us about Phillip.

A: I met him in college. He was in my biology class. We studied together and started dating soon after that.

Q: What was his major?

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A: He started as a business major. But then he decided to become a firefighter.

Q: What made him want to do that?

A: He hated school. He loved helping people. And he thought that being a firefighter was the way to do it.

Q: How long was he at the university?

A: Five semesters. He later told me that he stayed in school longer because he wanted to be around me.

Q: But he eventually decided to quit school and join the fire department?

A: He did.

Q: Did he like the work?

A: Absolutely.

Q: Were you worried about it being so dangerous?

A: At first, I didn't think about it. But he would come home to tell me what he had done. I told him to be careful. I didn't know what I would do without him.

Q: I know it is painful but I need to ask you about what happened on

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December 7th.

A: All right.

Q: Tell me about that day.

A: We got up and he fixed me breakfast in bed. He did that because I was confined to bed but he did it before I was. He told me he loved me and left for work.

Q: What did he fix you?

A: Blueberry pancakes. They were his favorite. And I like them too.

Q: When did you hear about what happened?

A: About 7:00 p.m.

Q: How did you hear?

A: I got the knock on the door. My neighbor was visiting me at the time and let the fire chief and the chaplain in. They came into the bedroom and told me.

Q: What happened next?

A: I lost it. I couldn't stop crying. They got worried about me and called the hospital. An ambulance took me in. I had the babies a couple days later.

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Q: What did they tell you about the accident?

A: A fire broke out in an old warehouse on the northeastern side of downtown. It is a run down part of the city. Phillip was fighting the fire and went in the building just before the floor collapsed. It took them an hour to get him out. By then, he was gone.

Q: Were you able to have a funeral?

A: Not for a while. My situation was touch and go. They wanted to honor him but they didn't want to hurt me or the babies. His parents came in to see me. We eventually had the funeral on January 6th.

Q: When did your mother show up?

A: She came to the hospital as soon as she heard what happened. I think she was out of town for the holidays.

Q: It took her almost a month to find out, right?

A: I guess so.

Q: And the two of you immediately reconciled?

A: We did. When you hurt, you want your mother. I let it go. She's been so kind to me. It is what I need now. I cannot do it all on my own.

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Q: Hasn't she controlled everything since her return?

A: She has helped me.

Q: She hired your lawyer, right?

A: Yes.

Q: She convinced you to keep the twins?

A: We discussed it. But I decided that I wanted them living with me.

Q: She had her lawyer send the letter to Cam and Mitch, right?

A: They told me that needed to occur for me to keep the twins.

Q: She's paying your bills, right?

A: She has paid some of them.

Q: Where are you living now?

A: In the carriage house on the family estate.

Q: The family estate, meaning your mother's property, right?

A: Yes.

Q: You're going to church with her again?

A: I am.

Q: She even arranged for the children to be baptized?

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A: She did.

Q: Did you check with Cam or Mitch on that one?

A: No.

Q: So she calls the shots?

A: No. I do.

Q: Doesn't seem like it.

A: Well, I do.

Q: Are you religious?

A: I haven't really been since I was young.

Q: Are you a member of the Roman Catholic Church?

A: I was baptised and confirmed.

Q: But you didn't attend church until recently, isn't that correct?

A: It is.

Q: And your mother prompted that?

A: She asked me to join her. I went. And it made me feel better so I have continued going.

Q: How and why did the baptisms occur?



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A: Mom arranged it with Father Jay.

Q: Did she ask your permission beforehand?

A: No. She just did it.

Q: Did you object?

A: No. I hadn't really thought about it. It was important to her. It made her happy so we did it.

Q: Do you understand that Cam and Mitch had a problem with the Roman Catholic baptism when they found out about it?

A: Yes, I do. We heard about it from our lawyers.

Q: You don't think it is appropriate to get their input on major decisions like that?

A: No. I will make decisions about their upbringing.

Q: Can you afford to cross her again?

A: I can afford to do whatever I want. Phillip had a life insurance policy that will pay out soon.

Q: How much?

A: 750,000 dollars.

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Q: So are you seeking support for the children?

A: I am not.

Q: And it is your understanding that Cam and Mitch are not seeking support either?

A: That's correct.

Q: So whoever gets custody will pay the bills?

A: I guess so. But really that is up to the judge, I imagine.

Q: By the way, where did you live before the accident?

A: Phillip and I rented a small house in Knightbridge. It had one bedroom. It is not big enough for the twins. Mom had the carriage house available, which has four bedrooms. So I moved in there and am getting ready for the twins to come home.

Q: How will you handle their care?

A: I will do it. And if I need help, I'll get help.

Q: Are you planning to work?

A: No. My job is taking care of my babies.

Q: Do you think you can handle it on your own?

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A: Most of it, yes. But as I said, I'll hire help. And then Mom said she'd pitch in.

Q: You understand that Cam and Mitch have a problem with your mother, right?

A: I do, but they need to get over it. This is about the twins and what is best for them. It is not about me. It is not about Mom. It is not about Cam or even Mitch. It is about the twins.

Q: Isn't it all about each of you?

A: No, it isn't.

Q: How will you make decisions about the children's upbringing?

A: I will make those decisions.

Q: Will you consult with Cam and Mitch on those decisions?

A: Not unless the court tells me I have to. They have really been mean in this process. Mom didn't ask to be treated in the way she has been. She is just trying to help. But they are attacking her for her sincerely held beliefs. She is Roman Catholic. I'm sorry but some things don't sit well with her. That doesn't make her a bad person. She wants the twins to be

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good people too. And she has hopes and dreams for them, just like I do.

That's natural for any grandmother.

Q: Do you appreciate that Cam and Mitch have hopes and dreams for the twins as well?

A: I do.

Q: Then, what would be so wrong with them having custody of the twins?

A: These children are going to need constant care. And I, as their mother, am prepared to give it to them. Cam and Mitch are workaholics. They are really busy. I have a stable environment for them. We will go to church. They don't. We will spend time with family. The twins will have a great life.

Q: Are you opposed to allowing Cam and Mitch see the children?

A: I'm not. But the twins are going to live with me, and I'll make decisions about their care.

Q: The issue before the jury is an all or nothing sort of thing. Why is that?

A: Because that's the way some things in life are. This is a situation where there is no middle ground. We all recognize that. They live in Seattle. I

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live in Alastor City. They're not moving here. I'm not moving there. It is sad, but true.

Q: So you decided you were not going to honor the terms of the surrogacy agreement, didn't you?

A: No, I decided that I was going to exercise a right in a provision of the surrogacy agreement. That's all I did. And I had the right to do it. But I had not completely made up my mind until I actually did it.

Q: Why did you change your mind?

A: Because I changed. Pregnancy is profound. Losing a husband is profound. Both things happened to me in the last few months. I was asked to make a promise to do something before the children were even conceived. The bond and love for the twins that developed was far more powerful than anything I expected. The growing sense of moral obligation to my children increased as I realized that they needed their mother. I'm told that is why the law doesn't consider consent as being voluntary until after the baby is born.

Q: But under the law you are a surrogate?

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A: I'm told the law has not embraced the concept of separating motherhood from giving birth. I gave birth.

Q: You don't see any irony in your position?

A: Not at all. It is a child, not a contract.

Q: Why did you choose the names you did?

A: I named them after my father's aunt and uncle. They were wonderful people. As a child, I would visit them each summer in Maine. They made each day an adventure for me. Even though they passed away when I was ten, I will never forget how nice Aunt Alexandra and Uncle Andrew were to me.

Q: Is your father still living?

A: No.

Q: How long was he married to your mother?

A: They weren't married. I was born while she was in college. He didn't know about me until I was three. That's why my last name was Alastor. Mom kept her family name, and she made certain that I had that name too.

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Q: Where is your father now?

A: He died when I was in high school.

Q: I noticed that you gave both twins the middle name Alastor.

A: Yes. That made Mom happy. She is very proud of the family name.

Q: Let's talk about your medical condition.

A: Okay.

Q: What are your symptoms?

A: I have pain and fatigue. I sometimes have headaches and trouble sleeping. But it is stress-related. As soon as this is resolved, I'll be fine.

Q: When did it start?

A: I had some incidents of pain in the past. My doctor ran tests and just diagnosed me as having fibromyalgia. With the stress of this situation and the birth, I recently had an episode.

Q: What treatment are you receiving?

A: I now take Cymbalta for pain management. I also take Flexeril as a muscle relaxant. I have also started exercising more regularly. But all of this is new.

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Q: I thought Cymbalta was not supposed to be used if you were pregnant or breastfeeding.

A: My doctor prescribed it. I haven't heard it is dangerous at all.

Q: So you haven't seen any of the published studies showing a significant risk to the unborn and nursing babies from Cymbalta?

A: I have not.

Q: When did you start taking it?

A: After the last visit.

Q: Have the doctors told you about your prognosis?

A: They have said it could continue indefinitely but it appears to be stress-related.

Q: Is this a concern that could affect your ability to care for the twins?

A: No. If I need help to care for my children, I'll get it. I am their mother, and I will continue to be their mother whether I suffer from a disease or not.

Q: How are you going to pay for their care?

A: I have insurance.



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Q: I didn't realize you had a job.

A: I am a director for the Alastor Foundation. I have excellent insurance through the Foundation.

Q: Oh, really. When did that start?

A: Yesterday.

Q: Will that cover the twins?

A: It will.

Q: What is your salary?

A: I'm not sure yet.

Q: When will you find out?

A: I guess when I get my first check.

Q: When do you expect to receive a check?

A: I think in April or May.

Q: What do you have to do as a director?

A: Attend a quarterly foundation meeting.

Q: Let's talk about Phillip's views on the surrogacy. How did he feel about this arrangement?

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A: He was willing to do whatever I wanted. We talked about all aspects of it. He was so incredibly supportive. He said it was my decision and he would stand by me whatever I chose to do.

Q: Why was he so supportive?

A: One of his friends had been a surrogate, so he knew how it all worked. Initially, he had been skeptical of her decision to be a surrogate but, as soon as he saw the adoptive family's reaction, Phillip was supportive.

Q: Did Phillip's friend have a positive experience?

A: She did and was able to pay for college that way.

Q: Why did you choose to be a surrogate?

A: It was a lot of money. And having that money would open doors for Phillip and me that we could not have opened otherwise. I thought I could do it. Phillip and I planned to have babies after we got on our feet. We just never got that opportunity.

Q: So you went into the surrogacy arrangement planning to give up your child?

A: Absolutely.

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Q: Okay, let's talk about your relationship with Cameron and Mitchell.

Were they comforting to you?

A: Yes and no.

Q: What do you mean?

A: There were times that their acts of kindness got me through tough moments. But there were other times that I couldn't wait to get away. I tried not to be rude to them and, quite frankly, I'm not sure if they realized how smothering they were. I had to get away at times. The agency had told me to let them be as hands on as they wanted. At times, it wore on me. I endured it. They meant well but I needed space.

Q: Were you having problems with the Cameron and Mitchell?

A: Problems is too strong of a word. I mean, I know that they were interested in having a baby. I got that. They were nice to me but I was only a means to an end. Nothing more. I wasn't their friend. I was the one they needed to have a baby.

Q: But they were supportive of you, weren't they?

A: No question.

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Q: And they bought lots of things for you, right?

A: They did. But there are some things in life you cannot buy. And I am one.  
And my children are another.

Q: You allowed Mitchell to be at your side in the delivery room, didn't you?

A: I did. It was something that the agency suggested I do. And it was  
arranged months before the delivery.

Q: I'm showing you has been marked as Exhibit I. What is that?

A: A print out from my Facebook page.

Q: Did you like this post?

A: Yes.

Q: Why?

A: I don't know.

Q: Did you leave it on your Facebook page?

A: Yes.

Q: I'm showing you has been marked as Exhibit J. What is that?

A: A print out from my Facebook page. Mom shared a post to my Facebook  
page.

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Q: Did you like this post?

A: Yes.

Q: Why?

A: Sometimes I think drugs are too pervasive and too expensive. I think big pharmaceutical companies are more powerful than people really think they are.

Q: Did you leave it on your Facebook page?

A: Yes.

Q: I'm showing you has been marked as Exhibit K. What is that?

A: A print out from my Facebook page. Mom sent me a post.

Q: Did you like this post?

A: No.

Q: Did you leave it on your Facebook page?

A: Yes.

Q: Why?

A: I don't know. I didn't want to upset her.

Q: I'm showing you has been marked as Exhibit L. What is that?

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A: Print outs from my Facebook page.

Q: Did you like these posts?

A: No.

Q: Did you leave these posts on your Facebook page?

A: No.

Pass the witness

**EXAMINATION BY MR. SALTZMAN:**

Q: You have an extensive support system, don't you?

A: I think so.

Q: Tell me about your mother.

A: She is a force of nature. She has strong beliefs and will do anything for you. Sometimes we get cross ways. But we're working on that. You only get one mother. And having children myself makes me appreciate all she sacrificed for me.

Q: Is there any question that she will be there for you?

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A: None whatsoever.

Q: I think you said your father passed away. Is that correct?

A: Yes.

Q: Is your mother married?

A: She is.

Q: You have siblings?

A: Yes. A brother and a sister.

Q: Do they live in the area?

A: No, they don't. Cameron lives in Melbourne, Australia. Cassidy lives in Barcelona, Spain.

Q: Tell me about your step-father.

A: His name is Jimmy Scrivano. He is an investment banker. He works downtown. I don't know him well. They married five years ago.

Q: Do you think he will be available to support you?

A: Of course, he has said he would help in any way he can. He and Mom have been by my side the entire way.

Q: Do you have any living grandparents?

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A: Unfortunately, no.

Q: Any other relatives?

A: I have an uncle in Colorado. And I have five cousins in and around Alastor City. I see them occasionally.

Q: Are you concerned that your mother's religious beliefs will have a detrimental impact on the twins?

A: Not at all. She loves them. She wants the best for them. I don't understand how it is okay to attack someone for following her Roman Catholic faith and wanting the best for her grandchildren. She wants them to go to heaven. She has the right to have hopes and dreams for them. I don't necessarily agree with everything she says and does, but I know it comes from love and caring. I'm not going to shun her because others have a problem. That is taking political correctness too far.

Q: Even if it includes condemning Cameron and Mitchell's lifestyle?

A: Even if it does.

Q: Why is that fair?

A: Cameron and Mitchell think that the price of access to a child is believing



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what they believe and agreeing with every decision they want to make. It doesn't work that way. We're all different. We all have different beliefs. We all make mistakes. We all forgive. We all seek redemption. Mom has the right to believe what she wants to believe. The price of being a grandparent cannot be to sacrifice sincerely held religious beliefs.

I'm finished.

END OF DEPOSITION

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**EXAMINATION BY MS. PASTERNAK:**

Q: Tell us your name.

A: Carson Alastor.

Q: What is your relationship to Claire Dunphy?

A: I am her mother.

Q: How many siblings do you have and where do you fit in?

A: I had two. I am the oldest. I am 56. Charles would have been 53. And then Campbell is 50.

Q: Are you married?

A: Yes, for 6 years to Jimmy Scrivano.

Q: Do you have any children other than Claire?

A: Yes. A son and a daughter.

Q: How old are they?

A: Cameron is 32 and Cassidy is 24.

Q: What is your educational background?

A: I graduated from Vance Academy. Then I got a degree in Business Administration from Harvard University. Then a law degree from Yale

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University.

Q: Where do you currently live?

A: Alastor City.

Q: Where in Alastor City?

A: Our family's ancestral home. After we lost my parents, I moved my family into my parents' home on Park Lane.

Q: Do you work?

A: Yes.

Q: What do you do?

A: I am the President of the Alastor Foundation, which my parents started.

Q: When did you become President?

A: A couple months after I graduated from Yale.

Q: What does the Alastor Foundation do?

A: It is a charitable foundation that supports the local arts and provides health care for the underprivileged. We build and support hospitals all around the world. We also support causes we deem worthy of financial assistance.

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Q: What causes have you deemed worthy of your assistance?

A: One example is that we have provided financial support for Jack Phillips, who was forced to defend his faith against the State of Colorado.

Q: Isn't he the owner of Masterpiece Cakeshop?

A: He is.

Q: Any there any others?

A: Oh, yes. There are many.

Q: Let me cut this short. Do most of them reflect a conservative viewpoint?

A: Yes.

Q: And I understand you have a weekly podcast.

A: I do.

Q: What is it called?

A: Alastor Family Values.

Q: And what do you cover?

A: Many topics. I try to show how taking a religious path in life will make you feel better.

Q: Safe to say that your podcasts are also very conservative, aren't they?

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A: Yes, they are.

Q: And have you interviewed a number of conservatives on your podcast?

A: I have.

Q: Like whom?

A: Gloria Copeland. Ann Coulter. Rush Limbaugh.

Q: They are controversial. Do you agree with them?

A: Sometimes. Like anyone, I agree on some things but disagree on others. I make up my own mind.

Q: You have shared a lot about this case on your podcast, haven't you?

A: Some.

Q: You've shared your views on Claire's decision to be a surrogate and her selection of Cameron and Mitchell as potential parents, haven't you?

A: Yes, I have.

Q: Isn't that inappropriate?

A: What? Are only Kardashians allowed to share their thoughts?

Q: Needless to say, you have vowed to raise the twins with your values?

A: Most certainly.

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Q: Even if they disagree with you?

A: Even if they disagree.

Q: You think that is your role?

A: I am the grandmother.

Q: But you're not the mother.

A: I'm not. But I'm the mother's mother.

Q: You have indicated that you believe the lifestyle lived by Cameron and Mitchell is a sin and a bad environment for children.

A: I have.

Q: And you believe that?

A: I truly do.

Q: Why?

A: Because it against the way I was raised. It is against the way I was taught. I want the best for my grandchildren. I want them to grow up in the church. That will not happen if they move to Seattle.

Q: How do you know they won't?

A: Cameron and Mitchell are not religious. They haven't been to church in

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years.

Q: How do you know that?

A: Claire told me.

Q: I'm showing you what has been marked as Exhibit M. What is that?

A: The Roman Catholic Church's policy on homosexuality.

Q: And you believe in it?

A: I am a practicing Roman Catholic. I follow what the Pope tells me to follow.

Q: Do you believe Cam and Mitch are going to hell?

A: I pray for them.

Q: Do you believe they are living in sin?

A: I pray for them.

Q: Are you a religious person?

A: I am. I believe that God is watching how we live our lives. I try to set an example.

Q: What church do you attend?

A: St. Katherine's.

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Q: Is it a Roman Catholic Church?

A: It is.

Q: What do you do at the church?

A: As much as I can. I work on various projects to support the church's activities. I help Father Jay in any way I can.

Q: How often do you attend church?

A: At least twice a week. Sometimes more often. I cannot always make it to morning mass, but I try to go when I can. It makes me feel better.

Q: When did you become involved in the church?

A: My family has always attended this particular church. We grew up in this church.

Q: Have you always supported the church?

A: Yes. My parents gave significant amounts of money and, when they died, I took on that role. It is my duty. The church does great things. I want to be a part of that.

Q: You cut your daughter off completely when she crossed you?

A: I wouldn't phrase it that way.



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Q: Then how would you?

A: Claire and I went through a difficult period. I didn't agree with her choices. She ran off and got married. I was waiting for her to reach out. When I heard about what had happened, I did.

Q: You're talking about Phillip's death?

A: I am.

Q: You didn't care for Phillip, did you?

A: I didn't know him.

Q: But you didn't approve of him?

A: I didn't approve of the choices Claire was making at the time, and I told her so.

Q: So you went years without speaking to her because she didn't do what you said?

A: Like I said, we went through a difficult time.

Q: Did you know about her decision to become a surrogate?

A: No.

Q: Would you have approved?

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A: No.

Q: Why not?

A: She didn't need to put herself through all of that.

Q: Did you know the intended parents were a same-sex couple?

A: No. I didn't.

Q: Would you have had a problem with that as well?

A: I would have and do. But it is not these babies' fault.

Q: So you plan to pray away the gay?

A: I plan to take them to church.

Q: That's what you're doing right now with Claire, isn't it?

A: Yes, it is. I want her to have the spiritual fulfillment I do.

Q: You arranged for the babies to be baptised in the hospital?

A: I did.

Q: Why?

A: In the Catholic Church, infants are baptized to welcome them into the Catholic faith and to free them from the original sin they were born with.

Q: Did you ask Claire before you made the arrangements?

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A: No. I wanted to surprise her.

Q: Did she have a problem with it?

A: I don't think so.

Q: Did you involve Cam and Mitch?

A: No.

Q: Why not?

A: They're not Catholic.

Q: Did you even ask them?

A: No.

Q: I'm showing you what has been marked as Exhibit K. Did you send that to Claire's Facebook page?

A: I don't pay much attention when I'm on Facebook.

Q: But you have an account?

A: I do.

Q: Did you arrange for Claire to be named to the board of the Alastor Foundation?

A: I did.

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Q: Why?

A: So she would have a means of support.

Q: And she's living on your property?

A: She is.

Q: I understand you wrote Claire out of your will when she eloped. Is that correct?

A: I changed my will.

Q: Is she a beneficiary in it?

A: Yes.

Q: Does she get what your other children get?

A: No.

Q: What's the difference?

A: Claire gets \$100,000. Her children get \$100,000 each. My other children split the remainder.

Q: And the remainder is many, many times larger than \$100,000, isn't it?

A: It is.

Q: Do you plan to change the will back to be an equal division between your

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three children?

A: I think so.

Q: You mentioned your parents' death. Tell us about that.

A: As part of our church's world outreach program, Father Jay worked with my parents to help people in Africa who did not have the most basic access to health care. That is why they founded the Alastor Foundation. I am so thankful that my parents were able to attend the opening of the Sundanese hospital. It really meant a lot to them. On the way home, their plane malfunctioned and we lost them.

Q: How have you dealt with the loss?

A: Not well. I've spoken to a counselor from time to time when I feel overwhelmed. I have tried to accept that this is just a part of life. But you know I have responsibilities, and it is not just about me.

Q: What do you mean?

A: I had to take care of my family. They lost their grandparents. So I had to try to maintain composure for their sake.

Q: What about your siblings?

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A: Charles and Campbell went off the deep end.

Q: What do you mean?

A: I know Charles was hurting but he began carousing with the wrong crowd. They drank all night and slept all day. Every day. I learned later that they also used illegal drugs. It was humiliating for our family and our church. We don't live our lives that way.

Q: And what about Campbell?

A: Campbell just left. Campbell avoided everything by moving to Colorado.

Q: What did you do?

A: I tried to keep everything and everyone together. I went to see Charles and told him that Mom and Dad would not approve of the way he was acting.

Q: What was his response?

A: That he would make decisions for himself. I knew something was wrong but I had no idea how bad it was. He didn't seem to be himself. I couldn't figure it out at the time.

Q: Why didn't you figure it out?

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A: Charles was so good at covering. He had great social skills and, as a result, so many friends. I simply did not notice.

Q: Did you ever figure out what was wrong with Charles?

A: Eventually. He was using drugs.

Q: When did you figure that out?

A: After he was arrested. It finally made sense.

Q: Did you help him at that time?

A: I tried. But he wouldn't let me. Charles reached out to Campbell, not me. And Campbell kept me away also.

Q: Did you want to help?

A: Of course, I did. He was my brother.

Q: What did you do?

A: I prayed for him every day. I talked to Father Jay. I sent Charles cards and letters to encourage him. I tried to go see him at the treatment center but I couldn't get in. It was a closed facility. And I wasn't on the list.

Q: Do you know if Charles got your cards and letters?

A: I assume he got most of them. A couple were returned unopened.

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Q: Where did you send them?

A: To Charles' home on Mountain Road.

Q: In Alastor City?

A: Yes.

Q: Did you have a problem with his drug use?

A: Of course, I did. It is destructive behavior. And totally at odds with who he was and how we were raised.

Q: Did it violate the teachings of your church?

A: Yes. And I told Charles that.

Q: How did he respond?

A: He shrugged it off. He was dismissive. But he was under the influence of drugs when we spoke.

Q: After being released from jail, did he turn his life around?

A: Not really. He switched from one intoxicant to another. He went from heroin to alcohol. And, on top of all of that, he started dating a stripper. She was a terrible influence on him. Charles started staying out all night and sleeping all day—the same thing all over again. Apparently, he spent



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most of his time at some low-rent club I am told it is called Jiggles, where the wretched stripper worked. I never saw him when he wasn't intoxicated.

Q: What did you tell him?

A: That I really cared about him but I could not be around him until he cleaned up his act and started living the way Mom and Dad had raised him to act.

Q: Why did you do that?

A: It was how I felt. I owed it to my children to say something. I owed it to my parents. I owed it to myself.

Q: I understand your brother was in an accident. How did you hear about it?

A: A reporter called my house. I was shocked. I couldn't believe it. And, to make matters worse, Campbell didn't take the time to let me know.

Q: What happened to him?

A: He was in a motorcycle accident. A drunk driver hit him, and he was in bad shape. He was in a coma for a long time.

Q: What did you do?

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A: I rushed to the hospital. But Campbell and I got into an argument — we fought about why I had to find out from a reporter. Campbell said something to the effect that I should be more forgiving. I told Campbell that I would not become an enabler.

Q: You and Campbell got into an argument about Charles. What was the fight about?

A: I didn't want to let Charles go. Campbell did. And he was permitted to pull the plug.

Q: By the way, I heard that Claire was so sick she couldn't answer the door. Have you heard that?

A: Yes. One of her neighbors said she was knocking on the door for 30 minutes. No one came to the door. She later learned that Claire was having trouble getting up.

Q: What was the neighbor's name?

A: Olive Howell.

Q: Was this before Claire moved to the Carriage House?

A: It was. It was one of the reasons I wanted her to move to the Carriage

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House so I could help when I was needed. But by being in the Carriage

House, she could have her own space. I don't want to smother her.

Pass the witness.

**EXAMINATION BY MR. SALTZMAN:**

Q: Do you believe in forgiveness?

A: I certainly do. I'm counting on it.

Q: They are claiming you are being judgmental. Are you being that way?

A: I'm not judging them. They have a right to live their lives as they wish.

But I have the right to have an opinion as it relates to my family. I live my life in a certain way and I want my grandchildren to as well.

Q: Why are you so concerned? Because it is against church doctrine?

A: In large part, yes. I have also spoken to a woman on my podcast who grew up in a same-sex household.

Q: Who was that?

A: She called herself Rivka Edelman, but I don't think that was her real

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name.

Q: What did she say?

A: That she was raised in an atmosphere where friendships and opinions were based primarily on how accepting people were of the homosexual lifestyle. All religious people were shunned because they were not tolerant. She did not talk about her family at school because she was embarrassed. While I acknowledge I don't know Cameron or Mitchell and have no idea of their home environment, I don't want my grandchildren to grow up in an environment like Ms. Edelman did.

Q: You were out of town when Phillip died and when Claire had the babies?

A: I was.

Q: Where were you?

A: I spent the holidays at our property in Gstaad, Switzerland. I did not know about any of it until I checked in with one of my neighbors. She had heard about Phillip's death on the news.

Q: But you hadn't spoken to Claire in years?

A: When you hear your baby is hurting, a mother's instinct takes over.

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I'm finished.

END OF DEPOSITION

**DEPOSITION OF TAMMY LAFONTAINE**

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**EXAMINATION BY MS. PASTERNAK:**

Q: Please tell us your name.

A: My name Dr. Tammy LaFontaine.

Q: And how old are you?

A: I am 57 years old.

Q: Let's talk a little while about your job and educational background. What do you do, ma'am?

A: I am a physician on Active Duty in the United States Navy.

Q: And what type of medicine do you practice?

A: I am an Interventional Pain Specialist.

Q: Could you please explain to the jury what an Interventional Pain Specialist does?

A: Well, I specialize in the diagnosis and management of chronic pain both through interventional or surgical means and medication management.

Q: Let's talk about your medical training? Can you take us through your time in medical school through any post-graduate training you have had.

A: Well, I graduated with my M.D. from the University of South Texas in

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1980. Then I completed a one year general surgery internship—that is a year of clinical rotations specific to surgery and its subspecialties. Then I went on to complete a 3-year residency in Anesthesia. I completed both my internship and residency at the Naval Medical Center in Portsmouth, Virginia. While a resident, I completed a mini-fellowship in Pediatric Anesthesia and Peri-operative Medicine at Children's Hospital of the King's Daughters in Norfolk, Virginia. I further specialized in Cardiac and Trauma Anesthesia as well. After practicing Pediatric and Cardiac Anesthesia at the Naval Hospital in Bethesda, Maryland for several years, I was accepted into the Cleveland Clinic's Interventional Pain Medicine Fellowship. I completed that fellowship in 1990. It was then that I began my Interventional Pain Practice. I am double Board Certified in Anesthesiology and Interventional Pain Medicine.

Q: Where do you currently practice?

A: I am in practice at the Walter Reed National Military Medical Center in Bethesda, Maryland.

Q: Are you in private practice in Bethesda?

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A: No. I am on active duty with the United States Navy. I practice at the biggest military medical center in the United States.

Q: What is your current job at Bethesda and what rank are you?

A: I am currently the Pain Specialty Leader for the entire Navy. That means I choose where Pain Specialists are placed around the globe—the ones in the Navy. I also am head of the Interventional Pain Department at National Medical Center. Further, I am in charge of our Wounded Warrior Program at the Medical Center.

Q: And your rank?

A: I am a Rear Admiral—that is an O-7 in the Navy—a One Star Admiral.

Q: Do you know the percentage of Medical Officers who make it to the rank of Admiral in the Navy?

A: I would say probably less than one percent rise to that level.

Q: I would like to talk to you about your time doing Trauma Anesthesia. Have you been deployed in a battlefield setting?

A: Yes. I did one tour in Fallujah, Iraq and one tour in Afghanistan. While in Iraq, I was the OIC for Fallujah Surgical, Forward Resuscitative



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Surgical System and Shock Trauma Platoon. While in Afghanistan, I was the Commanding Officer of the hospital at Kandahar.

Q: How would you describe your deployments?

A: It was one of the most rewarding experiences of my life, both professionally and personally. It was difficult and exhilarating. On the one hand, I helped save many lives. On the other, I held the hands of our young men as I watched them die. I made promises to young men that they would be okay—knowing I couldn't keep those promises. I saw the best of the best and the worst of the worst.

Q: Is that when you decided to pursue Interventional Pain Medicine?

A: Yes. After returning from deployment, I wanted to focus on taking care of our wounded warriors coming home from the conflict in the Middle East. These soldiers were returning with significant physical and emotional scars. We can save them on the battlefield, we can sew them up, even reconstruct their limbs. What we were failing at was helping them cope with the pain they will likely suffer for the remainder of their lives. Pain that is exacerbated by mental and emotional scars. You know,

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for several years after coming home from my first deployment in Iraq, I felt scared and nervous every time I heard the rotor sound from a helicopter. And I was never injured—I felt no physical pain. Imagine the pain and emotional trauma of someone who lost both legs or had a shattered pelvis from a sniper round. Their pain is something that deserves attention.

Q: How long have you been practicing Interventional Pain now?

A: I have been Board Certified in Interventional Pain since 1990.

Q: Do you know why you are here testifying today?

A: Yes. I was asked by Cameron Tucker and Mitchell Pritchett to testify regarding medical issues in this case.

Q: Do you know why they contacted you to consult in this case?

A: I was asked to lend my expertise regarding Ms. Dunphy's medical condition, something called Fibromyalgia Syndrome, and, given her diagnosis, prognosis and treatment schedule, if it is in the best interest of her children to remain in her custody.

Q: Have you formed an opinion as to whether it is in the best interest of

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babies to remain in the sole custody of Ms. Dunphy?

A: Yes, I have formed an opinion. I believe it is not in the best interest of the babies to remain in the custody of Ms. Dunphy.

Q: What medical records have you reviewed in this case?

A: I have reviewed all of Ms. Dunphy's records from the Center for Pain Management and also the records of the baby boy. I have also been made aware of Ms. Dunphy's history and the tragic loss of her husband, a true hero.

Q: Do you agree with the Diagnosis of FMS by Dr. Silver at CPM?

A: Yes. I do. Her symptoms, associated pain locations, and onset are classic of FMS or Fibromyalgia.

Q: In your expertise Doctor, is Fibromyalgia curable?

A: Curable—as in completely cured—forever? I would say no. I have never had a case where treatment has completely resolved the symptoms, the pain, or the spiraling effects resulting from the chronic pain.

Q: What do you mean by spiraling effects?

A: In my experience with treating Fibromyalgia, the pain, which is

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sometimes brought on by stress or an injury, is difficult to treat. Any unsuccessful treatment regimens, both medical and interventional, can result in more stress. That, in turn, can make the pain worse—which makes the stress worse. And so on. It is much like the chicken or the egg argument.

Q: Do you agree with the treatment regimen set out by Dr. Silver?

A: I do agree with it. I especially agree with the need for a Pain Psychology consult. Pain syndromes like Fibromyalgia can significantly alter one's lifestyle and ability to cope with the obligations of everyday life.

Q: What do you mean by "cope with the obligations of everyday life?"

A: Well, I can only answer through the use of examples. I have had many patients injured in the war come home with chronic pain syndromes. I have seen them be unable to get out of bed to even eat for days at a time. One of my patients had to be hospitalized from malnourishment because his pain was so hard to deal with. I have also had to call the MPs to a patient's home to remove a pistol from his hand because he was so distraught over his inability to sleep at night due to his pain. This was a

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man with a wife and kids—a support network to help him.

Q: And how does that experience relate to this case?

A: Ms. Dunphy has shown a history of a Fibromyalgia, which is worsened or precipitated by stressful situations. The death of her husband, the birth of the twins and having one with a severe medical condition. She has reported symptoms of restless sleep, pain in her extremities and multiple areas of her back. She has reported pain as being severe across all levels of activity and work. Finally, she reports fatigue, anxiety and depression. She may not be a soldier home from the war, but on paper, she is identical.

Q: And do you have an opinion, Dr. LaFontaine, as to whether Ms. Dunphy should be allowed to have full custody of the twin babies?

A: Yes, I do.

Q: What is that opinion, Dr. LaFontaine?

A: In my expert opinion, Ms. Dunphy will be unable to properly care for or provide a proper home for a child at this point in her life. Her medical condition seems to be made worse by being put in stressful situations and

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her lack of support system for the child could be dangerous.

Q: No further questions. Thank you Dr. LaFontaine.

**EXAMINATION BY MR. SALTZMAN:**

Q: Hi Dr. LaFontaine. My name is Pepper Saltzman and I am one of the lawyers for Ms. Dunphy. I will only take a few more minutes of your time today, ok?

A: Okay.

Q: Have you ever met Ms. Dunphy in person?

A: No, I have not.

Q: Have you had the opportunity to examine her or discuss any of her symptoms with Ms. Dunphy, herself?

A: No.

Q: Do you have any idea how she is feeling today or what her activity level is today, as of the time of this deposition?

A: No, I have not.

Q: You specialize in pain medicine—one of the best in the field—I'd say by

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your qualifications, correct?

A: Well, I don't know about that. I have a long line of credentials and a lot of happy patients.

Q: Certainly, someone with your background has had some success with treating patients with Fibromyalgia.

A: I have. I didn't say it was impossible to treat. I said it is impossible to cure.

Q: Do you have any current Fibromyalgia patients?

A: Yes, probably around 80 or so?

Q: Do any of them have children?

A: Yes. I believe so.

Q: Have any of your patients had their children taken away from them because of their medical condition?

A: Not that I know of. But, their circumstances are different.

Q: Let's move on. Do you know a Doctor by the name of Dr. Duncan?

A: Yes. We went to medical school together. I understand she is offering her expertise in this case as well. I believe in cardiology.

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Q: Are you familiar with her PhD work?

A: Yes. She did some great research early on with regard to neuropathic pain and treatment with anti-epileptic drugs.

Q: Doctor, would you consider Fibromyalgia to be a form of neuropathic pain?

A: Yes. It is.

Q: Thank you Dr. LaFontaine. I appreciate your time today.

That's all.

**EXAMINATION BY MS. PASTERNAK:**

Q: Dr. LaFontaine, do you know when the diagnosis of Fibromyalgia was first recognized within the medical field?

A: I believe that was back around 1987—officially recognized around 1990.

Q: To your knowledge, when did Dr. Duncan do her PhD work?

A: Oh, that was in medical school, so I'd say the late seventies.

Q: Finally, have all of your opinions expressed today been based upon the



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medical evidence supplied to you in this case, your training, your education and your 33 years of experience in the medical field?

A: Yes.

Q: And have all of your medical opinions today been based on a reasonable degree of medical certainty?

A: Yes.

Q: Thank you Dr. LaFontaine for being here today.

I'm finished.

END OF DEPOSITION

**DEPOSITION OF DONNA DUNCAN**

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**EXAMINATION BY MR. SALTZMAN:**

Q: Tell us your name.

A: My name is Donna Duncan. Dr. Donna Duncan.

Q: And how old are you?

A: I am 59 years young.

Q: Let's talk a little while about your job and educational background. You said you were a doctor. What type of Doctor are you?

A: I have an M.D. and a Ph.D.

Q: And what type of medicine do you practice?

A: I am a pediatric cardiac surgeon at South Texas Children's Institute of Health.

Q: What is your position at South Texas Children's?

A: I am currently head of Pediatric Cardiothoracic Surgery and am acting Chief of Staff of the Hospital. I have been at Children's since doing my fellowship here many years ago.

Q: Let's talk about your medical training. When did you complete your internship and residency, and in what fields?

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A: Well, after I graduated with my M.D. from South Texas, I completed a one year general surgery internship—that is a year of clinical rotations specific to surgery. Then I went on to complete my 6 year residency in general surgery in 1988. I then was accepted into the Pediatric Cardiothoracic Surgery Fellowship at Children’s Hospital—I finished my fellowship in 1990. I was asked to stay on at Children’s Hospital upon completion of my training. So this is where I have stayed.

Q: You also said you have a Ph.D. When did you graduate from Medical School - and when did you receive your Ph.D?

A: I attended the University of South Texas from 1976 until 1981. I was enrolled in a dual M.D./Ph.D. program. In 1981, I received both my M.D. and Ph.D.

Q: Is your Ph.D. also related to Cardiology?

A: Oh no. I didn’t realize I wanted to pursue cardiology or surgery until after I graduated and received my M.D./Ph.D. In a dual enrollment program, you must identify your areas of interest for your Ph.D long before even getting into your clinical rotations for your M.D. I decided to write my

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thesis and dissertation on the use of neurological anti-seizure medication for chronic pain patients. It was ground-breaking research at the time.

Q: Why do you say it was ground-breaking?

A: Well, for many years, the only type of medications used for patients with chronic pain were opiates—and long-term use and abuse of those drugs can be more harmful than good for patients suffering from chronic pain. While researching issues for my Ph.D., I noticed a correlation between medicated seizure patients and a reported decrease in their chronic pain. This correlation had never been studied or documented before. I was the first to establish this link and thus the first to study the effects of anti-seizure medication on chronic pain. For most of the advertisements you see today for chronic pain medicines, I had a significant role in the FDA approving their use in this application. I even testified before the FDA for the broader use of these neurological medications for neuropathic pain.

Q: Now, Doctor, how did you go from a Ph.D. in the neurosciences to becoming a Pediatric Cardiac Surgeon?

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A: Like I said, I finished my Ph.D. before realizing what I wanted to do as a practicing physician. Honestly, I always knew I wanted to do surgery. While I was in my 3rd Year clinicals in medical school, I was also working on my Ph.D. I thought I would want to pursue Neurosurgery. As I got into my internship and residency, I realized I wanted to make a difference in people's lives. Once a surgeon is called in to do brain surgery, my ability to really help went down exponentially. At the same time, I was in a cardiothoracic surgery rotation involving a new born baby. I was amazed to see a child go into surgery and arise healthier and able to live a better life. That's what made me turn the corner. I have been hooked ever since. I just love kids. More importantly, I love helping to give children a better life through medicine.

Q: Do you know why you are here testifying today?

A: Yes. I was asked by Ms. Dunphy to testify regarding medical issues in this case.

Q: How did you come to know Ms. Dunphy?

A: I was approached by a pediatric surgeon for advice on one of his newborn

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patients; a baby boy. I know him now as Andrew Dunphy. Dr. Young, who was once a student of mine, brilliant physician, good man, brought the file to me to confirm a case of Hypoplastic Left Heart Syndrome.

Q: Did you help in the diagnosis and treatment of the baby boy?

A: Absolutely. It was a classic case of this rare disorder. I assisted Dr. Young in the diagnosis and was able to recommend a top-notch surgeon for the job. Unfortunately, I was in Germany presenting a paper at a medical conference, and couldn't make it back in time to do the surgery myself.

Q: Let the record reflect I am handing the witness Exhibit N, the medical records of the baby boy, already admitted into evidence, for these proceedings.

Q: Have you seen these medical records before?

A: Yes, these are Dr. Young's notes from his initial visit with the baby boy and his treatment plan. All of these were made before the first surgery. I don't believe we have the surgical notes back from the transcriptionist yet.

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Q: What is Hypoplastic Left Heart Syndrome?

A: Hypoplastic Left Heart Syndrome is a rare type of congenital heart disease, more common in males, that has no known cause. The problem develops before birth when the left ventricle and other structures do not grow properly, including the aorta and the valves of the heart. The left side of the heart which pumps blood to the body is unable to do so and the right side of the heart must maintain the circulation for both the lungs and the body. If untreated or uncorrected, eventually the right heart will fail.

Q: How is it diagnosed?

A: Hypoplastic Left Heart Syndrome may be detected on routine ultrasound during pregnancy. But here it was not diagnosed until after he was born. A newborn may at first appear normal and after a few hours of life may develop symptoms of cyanosis or blue skin color, cold hands and feet, lethargy, poor pulses, poor sucking and feeding, pounding heart beat and difficulty breathing.

Q: How is it treated?

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A: Once the diagnosis of hypoplastic left heart is made, a baby is admitted to the NICU and monitored closely. A ventilator or breathing machine may be needed to help the baby breathe. A medicine called prostaglandin E1 or Alprostadil is given to keep the ductus arteriosus open. This only gives the baby time; the condition always requires surgery. The surgery is staged and the first surgery is called the Norwood operation and occurs within the first few days of life. Afterwards, the baby usually goes home, but will need daily medications and be closely followed by a pediatric cardiologist. Stage II is the Glenn shunt or the hemi-Fontan procedure. This is typically done when the child is 4-6 months of age. During Stages I and II, the baby may still appear blue or cyanotic. The final step, Stage III, is called the Fontan procedure and is usually performed when the child is 18 months to 3 years of age. After this final step, the baby is no longer blue. Some patients may need more surgery in their 20's or 30's to deal with arrhythmias or complications of the Fontan procedure.

Q: Is it expensive to treat and care for a child this syndrome?

A: Hypoplastic left heart is an expensive and complicated disease. The first



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stage of surgery typically requires a 25 day hospital stay and could cost upwards of \$225,000. The second two stages usually require an 8-10 day hospital stay with cost roughly \$80,000 per treatment. If the child requires heart transplant, the cost could then escalate to \$500,000 to \$1 million. Hopefully, the family has a reasonable insurance policy to cover these expenses. But, the copay itself can be difficult to manage. The child will also require multiple visits to the cardiologist and pediatrician for routine healthcare between the surgeries.

Q: How long does this treatment last and what is the prognosis for the child?

A: As I stated before, it is typically corrected with a staged surgical procedure over the course of day 1 of life to age 3 years. If left untreated, hypoplastic left heart is fatal. Survival rates for the staged repair continue to rise as surgical technique and post-surgical care improve. Survival rates after the first surgery are more than 75%.

Q: Have you met with Ms. Dunphy about this diagnosis?

A: I didn't have a chance to meet with Ms. Dunphy before the surgery. Like I said I was out of the country.

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Q: Has the baby boy had the first surgery yet?

A: Yes, he had the surgery on January 28th. He did extremely well. He is not out of the woods yet. But, with the care of the specialists at this hospital and his loving home, I expect a positive outcome for him. It may take a number of years to complete a full surgical plan, but I believe he will do well.

Q: Are you aware that some are proposing that Ms. Dunphy will be unable to take care of her children because she suffers from something called Fibromyalgia Syndrome?

A: I am aware of their claims, and I find them to be wholly unsupported by the medicine or the science. I actually think it is absurd to claim that because someone has pain, they cannot care for a child. They should ask a mother who has just endured childbirth to answer whether it is possible to care of a child while suffering a significant level of pain. It has been going on since the beginning of time.

Q: Dr. Duncan, please remind the ladies and gentlemen of the jury what you hold your Ph.D. in.

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A: I hold a Ph.D. in Neuro-pharmacology—specifically—how the treatment of neuropathic pain is promoted by the use of anti-seizure medication.

Q: Are you familiar with something called Fybromyalgia?

A: Yes, Fibromyalgia, or FMS, is a syndrome in which a person has long-term, body-wide pain and tenderness in the joints, muscles, tendons and soft tissues. It has been linked to fatigue, sleep problems, headaches, depression and anxiety.

Q: Let the record reflect I am handing the witness what has been previously marked as Exhibit O.

Q: Do you recognize these documents Doctor?

A: Yes. These are the medical records of Ms. Dunphy from her visits to the Pain Institute.

Q: Have you had a chance to make yourself familiar with Ms. Dunphy's records?

A: Yes, I have looked them over.

Q: Do you have an opinion as to whether anything contained in these records would render Ms. Dunphy unable to care for her young children?

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A: Yes, I do.

Q: What is that opinion?

A: There is no evidence whatsoever that would indicate that Ms. Dunphy cannot care for her children. She has suffered many losses in her life. These losses seem to be followed by brief episodes of a chronic pain syndrome—likely related to stress. It appears as though she has been able to work through these losses in the past and go on living a productive and happy life. There is no medical reason why she shouldn't be able to do the same now. The loss of a husband is enough to rattle anyone. In time, with the proper therapy and medical intervention, it is my medical opinion, she will be back to normal and fully able to care for her child.

Q: Just a few more questions, Dr. Duncan.

Q: Have you reviewed all of the medical records tendered to you in this case?

A: Yes.

Q: What, other than the medical records made an exhibit to this deposition, have you relied upon in forming your opinions here today?

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A: I have relied upon my 32 years in the medical field, my specialized training in Pediatric Cardiothoracic Surgery, my vast knowledge of peer reviewed research on the subject of Hypoplastic Left Heart Syndrome. Further, I have used my background in the neurosciences, particularly as it relates to the treatment of Chronic Pain Syndromes.

Q: Have all of the medical opinions given today been held within a reasonable degree of medical certainty?

A: Yes.

Q: No further questions Doctor. Thank you for your time. Pass the witness.

**EXAMINATION BY MS. PASTERNAK:**

Q: Hello Dr. Duncan. I represent Cameron Tucker and Mitchell Pritchett. I will only take a few more minutes of your time today, okay?

A: Okay. A few more minutes should be okay.

Q: I want to talk about your clinical experience with patients with Fibromyalgia Syndrome. Have you ever treated a patient with Fybromyalgia?

**DEPOSITION OF DONNA DUNCAN**

January 30, 2018

A: No, I have not. Like I said, that was related to my dissertation.

Q: Now, you completed your dissertation in 1981, right?

A: Yes.

Q: Is it safe to say you haven't been involved in the neurosciences since finishing your Ph.D. back in 1981?

A: Well, I do keep up by reading peer reviewed journals.

Q: But, you haven't personally treated or recommended a treatment protocol for a patient in chronic pain for over 30 years. Is that a fair statement?

A: I guess so, yes. I have focused more on my Cardiothoracic practice. But, that doesn't mean—

Q: Ok Doctor, let's talk specifically about Ms. Dunphy for a moment. Have you seen any documents or witness reports that state Ms. Dunphy has been bedridden for days at a time?

A: No, I haven't seen anything like that.

Q: Have you been told that Ms. Dunphy has been in such pain that she was unable to care for her children or even wake up enough to answer the door or pick up a crying child?

**DEPOSITION OF DONNA DUNCAN**

January 30, 2018

A: No. I am unaware of such claims.

Q: Would that make a difference in your opinion in this case, if you had evidence that Ms. Dunphy hasn't been able to care for the babies because her pain was so significant?

A: Well, if there was good evidence of this, I would certainly want to see it. Is there any evidence like that?

Q: Let's move on. Do you know a Doctor by the name of Dr. Tammy LaFontaine?

A: Of course I know Dr. LaFontaine. We went to medical school together. She graduated a year before I did, because she wasn't a dual Ph.D./M.D. student.

Q: Are you familiar with her work since medical school?

A: Yes. I understand she did a residency and fellowship and is working for the Navy up in Washington DC. I believe I've seen her name several times in some of the Pain Journals. Good doctor. Does a lot with the Wounded Warriors—soldiers returning back from the war.

**DEPOSITION OF DONNA DUNCAN**

January 30, 2018

Thank you, Dr. Duncan. I appreciate your time today.

END OF DEPOSITION



## REPORT OF CHARLIE BINGHAM, PhD

1. I have been asked to testify on behalf of Cameron Tucker and Mitchell Pritchett to help the jury determine that they should have permanent custody of the twin children.
2. Tucker and Pritchett, a same-sex couple living in the Seattle, Washington, entered into a surrogacy contract with Claire Dunphy. Under the parties' agreement, Dunphy and Tucker would be the biological parents and Dunphy was to relinquish all parental rights to the resulting offspring to Tucker and Pritchett. Dunphy gave birth to twins (a boy and a girl) on December 11, 2017. She elected to keep the babies by invoking a provision of the agreement. Tucker and Pritchett filed this proceeding to seek permanent custody of the twins, based on their best interests.
3. In assessing the best interests of a child, South Texas law considers: the child's age and physical and mental vulnerabilities; the impact placement will have on the child's filial relationships and on other family members; the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; if the movant is capable of providing adequate health and nutritional care; if the movant is capable of providing care, nurturance and appropriate discipline consistent with the child's physical and psychological development; if the movant is capable of understanding the child's needs and vulnerabilities; and such other factors as are necessary and proper to the determination. In my opinion, consideration of these factors compels the conclusion that permanent custody should be awarded to Tucker and Pritchett.
4. Because we are being asked to assess which family to place these children with, we have to evaluate which relationship is more significant. And we are making these determinations when neither family has any other children. We have to guess at family dynamics. In both situations, the families are fit. We have to choose the best situation for these children. I evaluated the reciprocal attachment between each parent and child, the child's needs and the parenting capacities of each family, and relevant family dynamics. Reciprocal attachment involves the assessment of the strength and quality of the ties between each parent and the child, and the child and each parent. Included in this category are such things as trust, love, and realistic relationship expectations. Children require affection, protection, and

guidance; however, the nature and intensity of each of these requirements varies from child to child and from year to year. Similarly, the ability of each parent to provide affection, protection, and guidance varies. I evaluated the childrens' current needs for affection, protection, and guidance, and the ability of each parent to satisfy their needs.

5. Even though the children involved are newborns, this court should not follow the tender years doctrine. This outdated theory is based on social stereotypes, not the welfare of the children involved. The “tender years” doctrine held that while all other factors remained equal, custody was awarded to the mother. This was largely based on the belief that the mother was “the softest and safest nurse of infancy” and that “to grant custody of a child to a father was to hold nature in contempt, and snatch a helpless, pulling infant from the bosom of an affectionate mother, and place it in the coarse hands of the father,” as the Alabama Supreme Court notes in the 1830 case of *Helms v. Franciscus*. Needless to say, customs and traditions have changed a bit since 1830. Shifting social mores have cast the tender years doctrine aside in favor of more gender-neutral considerations. Not only have contemporary notions of gender equality been the basis for removing the antiquated “tender years” doctrine, but so has a better understanding of the rights and freedoms granted to us by our Constitution. The tender years doctrine violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
6. Parents are no longer defined by cookie-cutter roles, so the opportunity to parent has widened to those who want the opportunity. These stereotypes often deprive a child of a better parenting situation. We have to examine each parent’s unique dynamics. Of course, in a perfect world, every child would live in a home with a biological mother and biological father. As this case illustrates, that is not always possible. Both families have made that point. But a biological mother is not critical to a child’s development, loving parents are. Fathers can feed a bottle to a baby, and fathers can change a diaper. The terms, mother, father, brother and sister, are not based on biology. They’re based on kinship. It is a bond that is formed and that is independent of who gives birth to a child. A parent chooses to parent. And it can be someone who decides to have children with somebody else. It can be someone who acts as a parent throughout a child’s life. It can be someone a legal parent invites to be a parent.

7. In my opinion, Carson Alastor is a significant issue. She is a controlling personality. And her presence will have a negative impact on the children. Carson Alastor has made it clear that she does not approve of Tucker and Pritchett's lifestyle. She uses every opportunity to publicly and privately criticize their sexual orientation. While she claims they are based on her religious beliefs, that fact alone does not excuse them. Thus, her religious beliefs are indeed a cause for concern — especially if Dunphy gains full custody of the children. Carson Alastor's judgmental viewpoint creates an unhealthy environment that endangers the psychological and emotional health of the children and jeopardizes the ability for Tucker and Pritchett to have a meaningful relationship with them.
8. In my opinion, Dunphy's health is a significant issue. She may not be able to care for herself, much less her children. As Dr. LaFontaine stated in his deposition testimony, her condition can be debilitating. This weighs heavily in my analysis, as it is likely that the care of these two newborns will be beyond her capabilities, particularly when one of the children has special needs. She is also financial dependent upon her mother. Dunphy is living on her mother's property. She is being financially supported by her mother. Because Dunphy is incapable of addressing the twins' needs on her own, Carson Alastor's role is likely to be increased—to their detriment. Because physical and mental capabilities may affect a parent's ability to care for the child, the rights of a parent take a back seat to reaching an arrangement best calculated to keep the children happy, healthy and safe.
9. Another issue is Dunphy's attitudes toward healthcare treatment. Specifically, she apparently has religious objections to the most basic vaccinations. She has indicated an intent to ignore vaccination requirements not only for herself but also for her children. Were she to have permanent custody of the twins and the ability to unilaterally make decisions about their healthcare, she would put their welfare in jeopardy.
10. After considering all relevant factors, I conclude that the twins' best interests would be most appropriately served by granting permanent custody of them to Tucker and Pritchett.
11. My opinions are based on my education and experience as a child psychologist. I have reviewed all of the depositions taken and the exhibits offered in this case. All

of the opinions expressed in this report are held within a reasonable degree of medical certainty.

13. I am being paid \$250 an hour for my work. I anticipate I will expend roughly 35 hours on this project, inclusive of the time needed to testify to the jury.

Respectfully submitted

/s/ Charlie Bingham

Charlie Bingham, PhD

February 17, 2018

## **Curriculum Vitae - Charlie Bingham, PhD**

Licensure: Psychologist, State of Louisiana, License #8675309

Work Address: Minden Family Counselors, L.P.  
4236 First Street  
Minden, Louisiana 71055

Tel: 318-123-7654

Fax: 318-123-7655

Date of Birth: XX/XX/1981

Place of Birth: Alastor City, South Texas

### **EDUCATION:**

2003	B.S. (Major in Psychology) Oregon State University, Corvallis, Oregon
2005	M.S. (Major in Family Studies and Child Development) Oregon State University, Corvallis, Oregon
2008	PhD (Major - Clinical Psychology) Dissertation - Adapting Custody Decisions to the Modern Family University of Delaware, Newark, Delaware

### **EMPLOYMENT:**

2011-present	Private Practice. Minden, Louisiana. Provide evaluation and treatment services to a wide range of children, adolescents, and adults. Provide all psychological services to patients of a comprehensive pain management clinic. Provide psychological testing and treatment services to the patients of a rehabilitation hospital (Louisiana Rehabilitation Clinic).
2008-11	New York City Family Court, New York, New York Child Custody Assessment Coordinator Conducted more than 5000 assessments and testified in court more than 600 times.

2006-08

University Hospital, Newark, Delaware.  
Program Assistant in Child Assessment

PERSONAL:

Married

2 children - Daniel (9) and Sarah (3)

Member, Minden Unitarian Church

Member, Minden Rotary Club

*List of Presentations available upon request*

**LESLIE COLLINS, PhD**

*Introduction*

I have been hired by Claire Alastor Dunphy. As the jury must determine primary custody of the twins, I have been asked to help explain what is in their best interests.

*Qualifications / Methodology*

Opinions presented in this report are based upon my background, experience and expertise in the field of psychology, family studies, and custody assessment. All of the opinions addressed are held within a reasonable degree of medical certainty.

*Basis of Opinion*

The basis for my expert opinion consists of a review of the following information:

Pleadings in the case:

- Motion for Permanent Placement and for Restrictions on Visitation
- Answer

Depositions of:

- Cameron Tucker
- Mitchell Pritchett
- Claire Alastor Dunphy
- Carson Alastor
- Tammy LaFontaine
- Donna Duncan

Personal Interviews with:

- Cameron Tucker
- Mitchell Pritchett

- Claire Alastor Dunphy

I also relied upon:

- Surrogacy contract
- Letter from Kleezak to Tucker and Pritchett
- various Facebook posts
- Medical records for Andrew Alastor
- Medical records for Claire Alastor

I also relied on my experience as a clinical psychologist.

Fees: \$300.00 per hour. To date, I have worked 18 hours. I anticipate an additional 7 hours of work through trial.

### *Opinions*

This case requires deciding where two newborn twins should live. In my opinion, they should be permanently placed in the custody of their biological mother for a number of reasons.

First, a mother's and a father's biological differences affect much more than just who gives birth. Other things equal, the mother is the better caregiver for a newborn baby. She gives the child something a father cannot. Mothers possess a natural instinct and ability to nurture. Because of breast-feeding, the female is more of the nurturer. That's an undeniable fact. Though there are many fathers who are good fathers and can take care of the child—generally speaking—the more nurturing parent is who the young, very young child should be with and usually that's the mother. The experience of being securely attached to one's mother in the first three years of life yields enormous dividends for human development. The first months of life are critically important, and a child is best served by safe, secure and consistent caretaking. The less disruption there is to the child, the better for the child. When these relationships are stable, they serve as a secure base from which the young child ventures forth into the world of other people, things and events. Children who enjoy relationships of intimacy and security with their mothers in the first three years are more likely to be curious and to explore their environments. They are more likely to be friendly and successful relating to other children and other adults, better able to communicate, more able to play and learn independently, and more likely to grow up to have successful relationships in marriage and at work. For children of such tender years, nothing can be an adequate substitute for a mother's love. She has the patience and sympathy required to mold and soothe the infants' minds in their adjustment to their environment. She has already carried them for nine months and that bond was forged in the womb. A relationship—like the one Claire has formed with the twins—is the context in which they will discover who they are, learn how others feel about life's important issues, and find out how to bridge differences. The emotional security and warmth derived from an initial close relationship with a loving mother provides the child with a home base from which he will be able to venture out to take the risks that are inevitably parts of a life of joy and accomplishment. In short, close, psychologically intimate relationships between babies and their mothers are central to



human life. The theory of attachment is about these relationships; how they are formed, what happens during the relationship and what the consequences are for later development.

Second, Claire's health condition provides no basis for disqualifying her from having permanent custody of the twin babies. She manages. If her disease progresses, she will get treatment. It is not a legitimate reason to deprive her of a relationship with her children, particularly when the symptoms have been relatively minor to this point.

Third, nor does Carson Alastor's presence provide any basis for disqualifying Claire from having permanent custody. The Roman Catholic Church teaches that homosexual sexual activity is a "moral disorder" and maintains that same-sex unions are an unfavorable environment for children. Carson Alastor has the absolute right to believe what she wants. She has the absolute right to voice her opinions to her daughter and in time to her grandchildren. She is a loving person, who happens to be deeply religious. Her association with the children does not rise to any level that could be considered harmful.

Fourth, the relationship between Cameron Tucker and Mitch Pritchett has been rocky. They were separated for more than sixteen months. In light of this, it is difficult to imagine how their status as a married couple can be regarded as a positive in the calculus of who should be awarded custody of the children.

After considering all relevant factors under South Texas law, I conclude that the twins' best interests would be most appropriately served by granting permanent custody of them to Claire Alastor Dunphy.

Respectfully submitted,

/s/ Leslie Collins

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LESLIE COLLINS, PhD

February 20, 2018

**LESLIE COLLINS, PhD**

1619 South High Street  
Murray, Kentucky 42071  
270.384.4442

*PERSONAL DATA*

Birth date: XX/XX/1980  
Birthplace: Missoula, Montana  
Married  
Twin children - Seth (2) and Savannah (2)

*EDUCATION*

BS, Psychology, The Ohio State University, 2002

MA, Psychology, The Ohio State University, 2004

PhD, Clinical Psychology, University of Notre Dame, 2007

Dissertation - Early Child Development and How the Family Dynamic Effects Personality

Residency and Fellowship Training:

- Internship: Cleveland Clinic, Cleveland, Ohio. (Child Psychology)  
September, 2005 - January, 2005.
- Residency: Chicago Episcopal Hospital. (Social and Vocational Services)  
June 2007 - June 2009.
- Fellowship: Columbia University Medical Center, New York, New York (Child Psychology)  
January 2009 - June 2010.

*PROFESSIONAL EXPERIENCE*

- Associate Professor, Murray State University, Murray, Kentucky  
2010 - present
- Private Practice, Murray, Kentucky  
2010 - present  
Provide evaluation and treatment services to a wide range of children, adolescents, and adults. Provide child-custody assessments as a court-appointed expert.
- McDonald Foundation, Visiting Professor, La Blanca University School of Medicine, Guatemala City,  
Guatemala, June - August, 2015.

#### *HONORS AND CERTIFICATIONS*

- Excellence in Teaching Award, Murray State University, Department of Psychology, 2013.
- Board Certified, Psychology, 2013.

#### *PROFESSIONAL SOCIETIES*

- American Academy of Child and Adolescent Psychiatry
- American Psychological Association

**Numerous articles and presentations**