

CAUSE NO. 15-10574-211

IN THE INTEREST OF

RYAN BENNETT PURCELL

A CHILD

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IN THE DISTRICT COURT

481st JUDICIAL DISTRICT

DENTON COUNTY, TEXAS

MOTION FOR ENFORCEMENT AND CONTEMPT AND REQUEST THE COURT TO ORDER PRODUCTION OF DOCUMENTS AND RECORDS FROM CHILD CUSTODY EVALUATOR AND REQUEST FOR ATTORNEY'S FEES

This Motion for Enforcement and Contempt and Request for the Court to Order Production of Documents and Records from Child Custody Evaluator and Request for Attorney's Fees is brought by THOMAS PURCELL, Respondent. THOMAS PURCELL, Respondent would show in support as follows:

1. On January 21, 2022, the Court signed a Second Amended Order for Child Custody Evaluation. A true and correct copy of said Order is attached hereto as **Exhibit A**, and is incorporated by reference herein as if fully set forth, which states in relevant part as follows:

“14. IT IS ORDERED that following the preparation of the report, the child custody evaluator, at the written request of any Court-ordered guardian ad-litem, Court-appointed attorney ad-litem, Court-appointed amicus attorney, or attorney of record in the case shall make available for inspection and copying all records collected, including but not limited to the following: Copies of the Evaluator's notes, any written communications, writings, records, memoranda, summaries, data, correspondence, test results, videos, photographs, tape recordings, and other tangible records or documents obtained by or created by the Evaluator in connection with or in any way related to the evaluation ordered herein. The costs of copying the records shall be borne by the requesting party, should that party desire copies of any portion of the records to be made.”

2. On March 18, 2022, Thomas Purcell's prior counsel, Chrysandra Bowen, sent Child Custody Evaluator, Jennifer Frendle a written request for all records created to date pertaining to the child custody evaluation in the above-referenced case. A true and correct copy

of said correspondence is attached hereto as **Exhibit B** and is incorporated by reference herein as if fully set forth.

3. On April 2, 2022, Jennifer Frenle responded that she was denying Thomas Purcell, Respondent's request in its entirety. A true and correct copy of said correspondence is attached hereto as **Exhibit C**, and is incorporated by reference herein as if fully set forth, which states in relevant part as follows:

"...All of the appropriate records used to formulate the child custody evaluation were either attached to the report filed with the Court and attorneys of record or reviewed and summarized in the case."

4. On April 15, 2022, attorney for THOMAS PURCELL, Respondent sent Jennifer Frenle a second written request for all records created to date – excluding records that had been attached to the January 21, 2022 report itself - pertaining in any way to the custody evaluation in the above-referenced case. A true and correct copy of said correspondence is attached hereto as **Exhibit D** and is incorporated by reference herein as if fully set forth.

5. On or about April 25, 2022, Ms. Jennifer Frenle retained counsel and soon thereafter her retained counsel repeatedly stated that the requested records would be turned over. Since said date no documents have been produced by the attorney for Jennifer Frenle. To date Ms. Frenle has not produced the records as requested and has not provided an explanation as to her failure to produce the records and documents. It has been over four (4) months since the first request for records was made by THOMAS PURCELL, Respondent to Jennifer Frenle. Jennifer Frenle has failed to comply with an Order of the Court and has ignored her obligation to the Court, the parties and the child the subject of this suit.

6. The Second Amended Order for Child Custody Evaluation does not allow Jennifer Frenle to deny and refuse to produce records upon receipt of THOMAS PURCELL, Respondent's records request.

7. The Second Amended Order for Child Custody Evaluation does not restrict the production of records to only the records Jennifer Frenle unilaterally decides are “appropriate” to release.

8. The Second Amended Order for Child Custody Evaluation does not provide Jennifer Frenle with the authority to withhold records simply because she alleges to have properly reviewed and accurately summarized them in her evaluation.

9. Jennifer Frenle also filed in the Court’s record the child custody evaluation which is not permitted. Jennifer Frenle should have only filed a notice with the court that the report was complete.

10. The Second Amended Order for Child Custody Evaluation, which a true and correct copy of said order is attached hereto as **Exhibit A**, and is incorporated by reference herein as if fully set forth, which states in relevant part as follows:

“13. IT IS ORDERED that the Evaluator shall file notice of the report’s completion with the Court no later than January 21, 2022, pursuant to TEX. FAM. CODE §107.113. The Evaluator shall provide a copy of the report to the attorneys for the parties no later than January 28, 2022.”

11. Jennifer Frenle failed to comply with the Second Amended Order for Child Custody Evaluation in her act of filing the report with the Court, instead of just the notice of completion. It was pointed out to Ms. Frenle prior to filing the report that the report should not be filed with the court. Despite the court order and reminder, she still violated the Court Order and the Texas Family Code.

12. Since Jennifer Frenle filed the custody evaluation with the clerk, there have been additional notes, emails and communications with the parties and/or their attorneys. These additional records have also not been provided even after multiple requests for records and multiple promises that the records would be provided. We are requesting her entire file

including emails and faxes between counsel created prior to the report being written and after the report was drafted and improperly filed with the court.

13. The Second Amended Order for Child Custody Evaluation makes clear no information created or obtained by Jennifer Frenle is confidential or protected by privilege -- regardless of whether created prior to or subsequent to issuance of her evaluation report.

14. Jennifer Frenle's continued refusal to produce the requested records is inexcusable, has created great delays in the case, and THOMAS PURCELL, Respondent has incurred a substantial increase in attorney's fees and expenses

15. The Court has specifically provided a Court Order with provisions and mechanisms for the request for documents and Jennifer Frenle's requirements to produce such documents and records. Over four (4) months is adequate and reasonable time for Jennifer Frenle to comply with the Court's order on records and documents.

16. Jennifer Frenle has violated an Order of the Court by refusing to make available for inspection and copying any and all records relating to the Child Custody Evaluation, despite receiving two requests to produce the records, on March 18, 2022 and April 15, 2022.

17. Jennifer Frenle is in contempt of court for refusing to make the records available upon receiving two written requests to do so; the first request is now over 130 days old and the second over 100 days old.

18. The Second Amended Order for Child Custody Evaluation (a true and correct copy of said order is attached hereto as **Exhibit A**), and is incorporated by reference herein as if fully set forth, which states in relevant part as follows:

“Information provided by the parties may be shared with other involved in the evaluation (including where necessary and appropriate, child and collateral sources) so that verification of information provided can be sought and so that others are afforded the opportunity to respond to allegations that may have been made.”

For at least 19 allegations stated in the evaluation report, Jennifer Frenkle did not provide THOMAS PURCELL, Respondent an opportunity to give a response or provide additional information or documents to support his response to these allegations. THOMAS PURCELL, Respondent did not know of these 19-plus allegations, all of which he adamantly states are patently false, until he read them in Jennifer Frenkle's final report subsequent to it being inappropriately filed with the court.

19. THOMAS PURCELL, Respondent believes based on Jennifer Frenkle's repeated violations of the Court's orders for well over six months and counting, Jennifer Frenkle will continue grossly violating this order in a glaring display of abject disrespect for the Court's authority, THOMAS PURCELL, Respondent's basic rights, and society's need for child custody evaluators to abide by all Court orders and all sections of Family Code regardless of what their personal opinion of such orders and statutes might be.

20. The Second Amended Order for Child Custody Evaluation (a true and correct copy of said order is attached hereto as Exhibit A), and is incorporated by reference herein as if fully set forth, which states in relevant part as follows:

“Any alleged impropriety or unethical conduct by the evaluator shall be brought to the attention of the Court in writing, and IT IS SO ORDERED.”

21. It was necessary for THOMAS PURCELL, Respondent to file this motion to bring the issues up to the Court's attention.

22. As of the date of this motion, the records have not been produced or made available for inspection or copying.

23. By the actions of Jennifer Frenkle as outlined herein, THOMAS PURCELL, Respondent has been denied the opportunity to review all of the records in connection with Jennifer Frenkle's evaluation in this case. THOMAS PURCELL, Respondent has incurred substantial legal costs and fees in his effort to acquire records that per the Court's orders were

supposed to have been provided within a reasonable amount of time for compliance and without any conduct by Jennifer Frendle that could constitute impropriety or unethical conduct by failing to turn over properly requested documents.

24. The numerous records being unjustly withheld by Jennifer Frendle contain information necessary for Respondent and his counsel to adequately prepare for and present his case at trial for this cause. The records are vital to review for pre-trial matters such as preparing for depositions, mediation, and pre-trial motions as well as quite possibly reveal collusion between Jennifer Frendle and the Petitioner's former attorney of record and/or other(s). THOMAS PURCELL, Respondent, respectfully requests this Court ORDER Jennifer Frendle to stop violating the original order by turning over all requested records on or before a near-future date certain – as well as Jennifer Frendle finally afford Respondent his right to review the original of any record related to the custody evaluation, he so requests.

25. The filing of this motion by THOMAS PURCELL, Respondent has become necessary to bring to the court's attention Jennifer Frendle's refusal to provide any of the requested records and possible impropriety related to the requested records of Jennifer Frendle.

Attorney's Fees and Sanctions

26. It was necessary for THOMAS PURCELL, Respondent to secure the services of The Wright Firm, LLP, licensed attorneys, to prepare and prosecute this suit. THOMAS PURCELL, Respondent has incurred substantial expenses and will incur additional substantial legal expenses, including but not limited to attorney's fees, court reporter fees and travel expenses. Under Rule 215.2(b)(8) of the Texas Rules of Civil Procedure, THOMAS PURCELL, Respondent is entitled to recover reasonable expenses, including reasonable attorney's fees, incurred in obtaining an order for sanctions. THOMAS PURCELL, Respondent requests that reasonable attorney's fees, expenses, and costs through trial and appeal be taxed as costs and be

ordered paid directly to THOMAS PURCELL, Respondent's attorney, who may enforce the order in the attorney's own name. THOMAS PURCELL, Respondent requests postjudgment interest as allowed by law.

27. THOMAS PURCELL, Respondent respectfully requests that this Court make a finding of culpability as to whether the expenses incurred by THOMAS PURCELL, Respondent as stated herein above are due to the actions of Jennifer Frenkle or MICHELLE EILAND, Petitioner. THOMAS PURCELL, Respondent requests that this court proportionately allocate an award of attorney fees and costs consistent with its findings of culpability.

28. THOMAS PURCELL, Respondent, further also reserves any claims regarding challenges to the report in accordance with the Texas Family Code, The Rules of Evidence, and the Texas Rules of Civil Procedure including but not limited to a Motion to Exclude.

Prayer

THOMAS PURCELL, Respondent prays this Court, after notice and hearing, make all appropriate ORDERS including but not limited to:

- a. that Jennifer Frenkle be ORDERED to produce records in response to THOMAS PURCELL, Respondent's requests for records by a date certain.
- b. that this Court make an order that if Jennifer Frenkle fails to produce the records and documents, that the Court strike the child custody evaluation in its entirety and exclude the child custody evaluation from this case.
- c. that this Court find Jennifer Frenkle choosing to for several months straight flagrantly and continuously violate multiple sections of Family Code and multiple clear-cut orders of this Court as referenced herein constitute conduct by Jennifer Frenkle so deplorable, so proving of bias, so glaringly polar opposite of acting in the child the subject of this suit's best interests that the Court strike the custody evaluation in its entirety.
- d. that this Court make a finding of culpability between Jennifer Frenkle and MICHELLE EILAND, Petitioner.
- e. that this Court ORDER that THOMAS PURCELL, Respondent's reasonable and necessary attorney fees and costs be paid by the person(s) this Court FINDS to be culpable.

THOMAS PURCELL, Respondent prays for general relief.

Respectfully submitted,

The Wright Firm, L.L.P.
1760 S. Stemmons, Ste. 100
Lewisville, TX 75067
Tel: (972) 353-4600
Fax: (972) 353-4602



By: _____
Patrick A. Wright
State Bar No. 00791959
Attorney for THOMAS PURCELL, Respondent

Certificate of Conference

I, the undersigned attorney or party pro se, hereby certify and represent to the Court that:

I have conferred with the attorney for Jennifer Frendle on multiple occasions in an effort to resolve the issues contained in this motion without the necessity of Court intervention. Based on the delay of production of the records from Jennifer Frendle, it is necessary to file this motion and request that the Court intervene in the resolution of the issues.”



Patrick Wright
Attorney for THOMAS PURCELL,
Respondent

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on August 5, 2022.



Patrick A. Wright
Attorney for THOMAS PURCELL, Respondent

PATRICK A. WRIGHT
ATTORNEY & MEDIATOR
BOARD CERTIFIED - FAMILY LAW
BOARD CERTIFIED - CHILD WELFARE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
INTERNATIONAL ACADEMY OF FAMILY LAWYERS
Patrick@TheWrightLawyers.com

April 15, 2022

Via Email: jennifer@frendle.com

Jennifer Frendle
P.O. Box 117507
Carrollton, Texas 75011

**Re: In the Interest of R.B.P.
Cause No. 15-10574-211
In the 211th Judicial District Court of Denton County**

Dear Ms. Frendle:

On March 18, 2022, Thomas Purcell's prior counsel, Chrysandra Bowen, sent you a written request for all records created to date pertaining to your court appointment in the above-referenced case.

In your correspondence responding to said request, you state that you are denying the request in its entirety because quote "*all of the appropriate records used to formulate the child custody evaluation were either attached to the report filed with the Court and attorneys of record, or reviewed and summarized in the case.*" You obviously do not have the right to withhold records just because you allege to have properly reviewed and accurately summarized them in your report and/or elsewhere.

I am going to refer you to the Second Amended Order for Child Custody Evaluation, which states in relevant part as follows (section highlighted is for emphasis):

"14. IT IS ORDERED that following the preparation of the report, the child custody evaluator, at the written request of any Court-ordered guardian ad-litem, Court-appointed attorney ad-litem, Court-appointed amicus attorney, or attorney of record in the case shall make available for inspection and copying all records collected, including but not limited to the following: Copies of the Evaluator's notes, any written communications, writings, records, memoranda, summaries, data, correspondence, test results, videos, photographs, tape recordings, and other tangible records or documents obtained by or created by the Evaluator in connection with or in any way related to the evaluation ordered herein. The costs of copying the records shall be borne by the requesting party, should that party desire copies of any portion of the records to be made."

The Court order does not allow you to deny my client's request for records. Nor is there any provision in the Court order that my client's request for records is restricted to only records you label "appropriate" and attached to the report. Your claim to have the authority to withhold records simply because you allege to have properly reviewed and accurately summarized them in your report and/or elsewhere would be laughable if the issue at hand, a young child's fate for the next eight to nine years, weren't so very serious.

Excluding only: A) records you provided with your report of January 21, 2022, and B) records provided to you by Thomas Purcell, Chrysendra Bowen, or myself, please provide all records that have a connection with or are in any way related to the evaluation you performed in this case (***regardless of whether created before, on, or after 1/21/2022***), including but not limited to the following: *Copies of the Evaluator's notes, any written communications, writings, records, memoranda, summaries, data, correspondence, test results, videos, photographs, tape recordings, and other tangible records or documents obtained by you or created by you, the Evaluator.*

To be clear, this request includes but is not limited to:

- 1) all written communications between you and opposing counsel, Amanda Coffey, or any member of her staff,
- 2) all written communications between you and the opposing party, Michelle Eiland, or any member of Mrs. Eiland's family,
- 3) all written communications between you and one or more officials of the Northwest Independent School District,
- 4) all written communications between you and one or more law enforcement officials,
- 5) all written communications created by you or received by you in which there is no recipient name stated.

A proper response to the first request sent on Mr. Purcell's behalf on March 18, 2022, is already overdue. If I do not receive the records described in this reiteration of the original Request for Records by Friday, April 22, then my client and I will have no choice but to address with the Court your continued flagrant violation of my client's rights and the clear-cut Court order stated on the previous page.

Sincerely,



Patrick A. Wright
Attorney and Counselor at Law

PAW/am
Enc. as stated

cc: Amanda Coffey
Attorney for Petitioner

cc: Client