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A P P E A R A N C E S

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I N D E X

Page

CLOSING ARGUMENTS
By Mr. Drummond

4

JUDGE'S RULING

12

1 called Hawk v. Hawk. It is progeny because it is
2 constitutional, solid bedrock law that you cannot
3 abrogate a parent's rights with respect to her
4 children without a showing of harm, serious harm. I
5 don't have the case in front of me, but that's been
6 the law in Tennessee since that case was decided,
7 and it's progeny.

8 And there's been no harm shown here. So
9 irrespective of the traditional analysis of material
10 change of circumstances and then best interests, we
11 need to be looking at Hawk v. Hawk and the Tennessee
12 Constitution, which it's been held, as Your Honor
13 well knows, protects more robustly parental rights
14 than the United States Constitution does.

15 There has been absolutely no showing of
16 serious harm. The only thing that Dr. Hahn said,
17 when asked that question directly -- and I phrased
18 it pretty much as DCS would -- statutes deal with
19 taking the custody of the child away from the
20 parents, is, What imminent risk of serious harm is
21 there if these children are not vaccinated
22 immediately for COVID 19?

23 And his answer repeatedly was, The
24 primary risk of harm would be long COVID, and the
25 secondary risk is hospitalization.

1 And that, of course, he admitted would
2 be contingent on getting COVID and getting it
3 serious enough that you could have long COVID as a
4 consequence, which is symptomatic by definition.
5 It's not a disease. It is a set of symptoms that
6 linger after the initial infection.

7 So Dr. Hahn himself, who is their best
8 shot at showing harm -- and Mr. Rejba today admitted
9 that he can't -- he can't put his finger on any harm
10 that's been caused by the past two or three years of
11 my client not taking a vaccine that has been proven
12 to cause myocarditis and pericarditis in young men
13 and boys exactly his age group of his children, and
14 that evidence has come out repeatedly in this case.

15 Dr. Bascom cited autopsy studies that
16 showed repeatedly that myocarditis --
17 vaccine-induced myocarditis was the cause of death.
18 Not viral myocarditis but vaccine caused.

19 There's been no proof whatsoever. In
20 fact, Your Honor, as I recall, had to draw it out of
21 Dr. Hahn. He didn't -- he didn't come out of the
22 box with that. He didn't say, Okay. Well, the
23 first thing I need to tell Your Honor is that this
24 vaccine has been shown to be causally related to
25 myocarditis in young men and boys in this age group.

1 I need to tell Your Honor that just to be clear.

2 You had to ask the question. And you
3 even had to ask the question, What have been the
4 adverse effects of this? Well, has anyone died? I
5 remember distinctly you said, Has anyone died?
6 Well, yes. He admitted that too. He was not
7 volunteering that information.

8 But what you got from Dr. Bascom was
9 that there has been evidence of that in the autopsy
10 studies. And you got that from Dr. Sibley as well.
11 Subclinical myocarditis, she said, was particularly
12 a problem because the child does not know -- does
13 not have symptoms, shortness of breath, tightness in
14 the chest. They can -- they can start to wake up in
15 the morning, and their adrenaline starts to surge
16 and they can die of cardiac arrest -- cardiac
17 arrhythmia, or they can die in the ball field
18 without ever having any symptoms. That's what
19 Dr. Sibley testified to.

20 As of August 23, 2021, Pfizer was
21 ordered to do multiple studies, up to nine studies,
22 many of which are directly related to this
23 situation, young men and boys 12 to 15 years old.
24 The one that I cited for Mr. Rejba to consider is
25 going to be completed in 2027.

1 Now, there's no discernible -- there's
2 no discernible risk for COVID right now in this land
3 for young men and boys. There is -- we've moved on.
4 The world has moved on. And Tennessee, according to
5 what Dr. Sibley said, is not buying this vaccine,
6 the new one that's come out. And, for that matter,
7 the COVID -- the variant has left town. There is no
8 vaccine on the market that actually deals with
9 whatever is left of COVID right now.

10 The fact is, mother has complied with
11 her parenting plan. It's a contract. She has
12 complied with it. Father has shown no breach of his
13 agreement with her. And yet, suddenly, even though
14 he's dropping -- dropping the issue about
15 vaccinating them immediately, which is what the
16 whole petition is about, except for the fact that
17 mother is a kook and she's irrational because she
18 refused to have them vaccinated, he says, Well, they
19 should have been vaccinated back then.

20 Dr. Bascom's testimony, remember, was
21 that during the height of the vaccine crisis -- or
22 the Wuhan strain, mortality risk for 0 to 19 years,
23 .0003 percent. That is, by definition, a
24 statistical zero risk at the height of the pandemic.
25 And from that point on, they've got less and less of

1 a risk.

2 So there's no proof whatsoever for
3 Mr. Rejba's statement, without, you know, any expert
4 testimony to support it, that they should have been
5 vaccinated back then and the fact that mother didn't
6 let them be vaccinated means that she should not be
7 able to engage in the parenting plan that she and
8 Mr. Rejba agreed to, that somehow she's
9 disqualified.

10 And I would say, Your Honor, I agree
11 that, technically speaking, this is not a
12 termination of parental rights. I agree with that.
13 But it is an abridgment of parental rights, most
14 definitely, because what is there left of parental
15 rights if you take away a mother's right to protect
16 their children from harm?

17 And the harm is -- is in the risk that
18 taking these vaccines or letting them take these
19 vaccines -- letting these boys go on the information
20 they have, which was basically what they're being
21 told by their parents and then the TV and whatever
22 it is, letting them decide that would be
23 irresponsible. What they need to do is grow up and
24 make the decision for themselves.

25 And if Pfizer-BioNTech follows

1 through -- which to date, apparently, they haven't.
2 There's been no proof to show that they have. I'm
3 sure Dr. Hahn would have brought it in if it helped
4 Mr. Rejba. There's been no proof that they've
5 brought that forward. But if they do in these
6 children's lifetime, they'll benefit from that.

7 And I ask you also to apply, Your Honor,
8 the missing witness rule, or some version of it, to
9 acknowledge the fact that the treating physician has
10 not testified in this case, and if anyone would have
11 been concerned about the children's welfare because
12 of something the mother was withholding from them, I
13 believe that Dr. Long would have been glad to show
14 up and testify to that effect, but he has not. And
15 I believe the inference should be raised, and can be
16 raised at Your Honor's discretion, that if he were
17 to show up, he would not have been that much help.

18 I don't believe a material change of
19 circumstances applies, Your Honor. I believe it's
20 the Constitution of Tennessee and the Constitution
21 of the United States. I believe that Hawk v. Hawk
22 is the ruling law here. There has been, for that
23 matter, no proof of material change of
24 circumstances.

25 These boys got sick and they got well.

1 What other Tennessee child could they be compared
2 to? They got sick and they got well. They had to
3 go to school in their bedroom. Everybody in
4 Tennessee experienced the same thing. There's been
5 no material change due to COVID. They got sick and
6 they got well. No material change of circumstances
7 that affects their best interests.

8 Now, they got -- the only thing that
9 that could be, Your Honor, could be the COVID,
10 because, Your Honor, as you said a few minutes ago
11 that the issue is whether or not they should be
12 vaccinated for COVID 19, so that's the linchpin
13 issue.

14 If mother failed in that
15 decision-making, then he wants to bootstrap that
16 into taking her out of the picture completely, which
17 she hasn't failed. She protected her children. And
18 she made a nuisance of herself with her -- with her
19 former husband and his family and her children. But
20 she said, like mothers do sometimes, no, no.

21 And I submit that, in this case here,
22 the impasse speaks with authority. I'm speaking
23 with a little training in Rule 31 mediation, and
24 particularly in transformative mediation, and we
25 follow the -- we follow the conflict, and we let the

1 conflict speak for itself. And if these -- if these
2 parents have not arrived at unanimous decision, then
3 it's -- it's analogous to a hung jury, and that's
4 okay. They can -- they can make their decision --
5 they can keep on discussing; they can keep on
6 working through the issues; and if something changes
7 out there -- if we have another wave of the virus
8 that puts these children at risk, we'll know about
9 it. It will be more than .0003 percent mortality.
10 And I can assure you, my client will jump at looking
11 at whatever we can do to protect them.

12 But right now, the impasse has
13 effectively protected those children from whatever
14 that vaccine could have caused them. And it could
15 have caused them heart damage that could not be
16 repaired, but it hasn't because they didn't take it.
17 They got sick and they got well.

18 I have nothing further, Your Honor.

19 THE COURT: All right. Thank you.

20 MR. DRUMMOND: I do ask you to enforce
21 the parenting plan. That's our -- that's our prayer
22 for relief, is to apply the parenting plan as
23 written.

24 THE COURT: All right. First of all, I
25 want to get everybody clear on where we are. I

1 think Mr. Roach cited applicable law in this case,
2 36-6-101(a) (B) (i), gives the Court guidance: If the
3 issue before the Court is a modification of the
4 Court's prior decree pertaining to custody, the
5 petitioner must prove by a preponderance of the
6 evidence a material change in circumstance. A
7 material change of circumstance does not require a
8 showing of a substantial risk of harm to the child.

9 So contrary to what Mr. Drummond cited
10 that it's an issue of this child -- this child or
11 children be put at risk, it doesn't have to rise to
12 that great of circumstance for the Court for there
13 to be a material change in circumstance for the
14 Court to change something.

15 The real question in -- so the real
16 question that the Court has to deal with is has
17 there been a material change of circumstance.

18 Going back to that section, it goes on,
19 "A material change in circumstance do not require a
20 showing of substantial risk of harm to the child. A
21 material change of circumstance may include, but is
22 not limited to, failures to adhere to the parenting
23 plan or an order of custody or visitation or
24 circumstances that make a parenting plan no longer
25 in the best interests of the child."

1 And so it's that last portion that I
2 think is the real issue here. If the Court finds
3 material change of circumstance, then it goes to
4 36-6-106, looks at those 15 considerations, and then
5 adjusts the custody, which may adjust the parenting
6 arrangements and residential schedule and may adjust
7 things like decision-making authority.

8 The facts that this case has are that
9 this -- these parents and these children, like
10 everyone else, were confounded and confronted with
11 the onset of the COVID pandemic. The country
12 searched for a solution for this. Pfizer and
13 Moderna were some of the first to come out with
14 vaccines.

15 Those vaccines, however, were approved
16 under special circumstances because of the concern
17 that they may save lives and prevent people from
18 either catching the vaccine [sic], as the reason
19 they marketed it, to more accurately reducing the
20 impact of the vaccine [sic] on the citizens of this
21 country.

22 The time and the circumstances of what
23 occurred had a profound effect on us. When the --
24 when the virus was first recognized, we suddenly saw
25 a tremendous result in loss of life. There was no

1 vaccine, and people had variable options of
2 treatment of this. And many of the people that were
3 most at risk were the ones to be impacted by it, and
4 there was significant loss of life to older citizens
5 and citizens that their immune system was
6 compromised.

7 I think it would be very difficult to
8 question that the vaccines have helped us and have
9 perhaps saved many lives by minimizing the impact of
10 the vaccine on people. But Mr. Drummond is correct,
11 the impact of the virus on younger people, people
12 with very healthy immune systems and children of the
13 age of this, the vaccine had a relatively minor
14 impact on them.

15 But the truth of the matter is, we're
16 looking at this with the benefit of hindsight.
17 Nobody realized -- nobody knew at the time exactly
18 what we were going to be truly faced with. Some
19 people were fearful that if they let the outside air
20 into their homes they could catch the vaccine [sic].
21 We know now that that was highly, highly, highly
22 unlikely. So everybody was learning as we're going
23 through these perils.

24 I think Mr. Rejba makes a good point
25 when he says the time that we needed to do something

1 was back then because that's when the vaccine [sic]
2 was the most contagious and that's when we were
3 seeing the vaccine -- excuse me, that's when the
4 virus was most contagious, and that's when we were
5 seeing people desperately impacted and to the point
6 of losing their life.

7 But as I think Mr. Drummond points out
8 and these doctors that we've heard testimony from --
9 I heard from three experts on this -- the vaccine
10 never really prevented you from getting the virus.
11 It may have made it more difficult, but people still
12 got vaccinated and still got the virus. But it
13 appears that it did have some impact in keeping the
14 virus from being so deadly to people. It may have
15 reduced their symptoms. It may have allowed them to
16 survive. Some cases it may have had no impact at
17 all because the people were not -- were not
18 susceptible to it.

19 As times have changed and the virus has
20 mutated and changed, we've gotten different --
21 different types of the same virus. Some were more
22 contagious but caused less serious illness.

23 And in this case, both of these young
24 men, the Court finds, were -- actually caught the
25 COVID virus on two different occasions and fought it

1 off with apparently little impact on -- on their --
2 their life going forward.

3 Mr. Drummond is also correct that,
4 nowadays, no one really talks about the COVID virus
5 as the deadly killer, that everyone is susceptible
6 to it. The truth is, we no longer take the
7 precautions that we took, partly because the virus
8 has mutated to a less virulent form, but also
9 because we understand a little more about the
10 circumstances under which we can catch it.
11 Normally, people in enclosed space, breathing each
12 other's breath, making them more susceptible to
13 catching the virus.

14 The -- Mr. Roach has suggested that the
15 change in circumstance here, the material change in
16 circumstance that justified the review of custody
17 and the considerations under 36-6-106, is that the
18 mother, who in the past had accepted vaccines --
19 Mr. Rejba had no knowledge that she wouldn't accept
20 vaccines approved by the government -- suddenly had
21 a question about it. Suddenly she had was less
22 sure. She felt the vaccine was being rushed out.
23 She felt like it hadn't been tested properly.

24 We know that it had not gone through all
25 the testing that would normally be required and it

1 was rushed out and the government approved it and
2 allowed it to be used in hopes that it was going to
3 stem the tide even though they disregarded some of
4 the original protocols on testing the viruses [sic].

5 As the result, these young men were not
6 vaccinated. Some tests do show that there are some
7 issues with a certain illness for people who take
8 the vaccine, although it appears that that's
9 relatively, relatively small.

10 I frankly think that if these young men
11 took this vaccine now, they would probably suffer no
12 harm from it, but I don't know that, and I can't say
13 that because all I can do is look around and see
14 what I see.

15 What the mother did, because of her
16 questioning and because of her concern, was delaying
17 her children being exposed to any potential harm
18 from the virus [sic]. The virus at this time
19 represents very little concern, so much so that
20 vaccines are not being promoted like they previously
21 were.

22 I've had every one of the vaccinations,
23 as far as I know. But, frankly, even I would
24 probably not get re-vaccinated for it because I
25 don't think I'm at that great of risk of it anymore.

1 We're smart enough to know not to go into crowded
2 spaces with lots of people and don't get up in each
3 other's faces.

4 The mother has expressed some very
5 unusual considerations -- or very unusual ideas
6 that, frankly, are a little concerning to the Court.
7 But at the same time, Mr. Rejba, I'm not so certain
8 that the mother didn't do exactly what she should
9 have done, which was to be concerned, which was to
10 read, which was to learn a little bit about it.

11 And I must say, I saw a lot of
12 outrageous information out on the Internet, both
13 claims, but I think because she had concerns, she
14 wouldn't agree for these children to be vaccinated
15 with a vaccine that she was concerned about and
16 didn't trust.

17 And Dr. Shelby suggests that this new
18 method of creating these vaccines is something that
19 she thinks is a problem. I'm not smart enough to
20 know if it's a problem or not. I guess long-term
21 will tell.

22 But what is interesting is that
23 Mr. Rejba also kindly acknowledges, what I kind of
24 thought I understood after hearing the proof for a
25 while, that these children have already survived

1 COVID twice with apparently very little lasting
2 impact on them.

3 Dr. Hahn's biggest request was we want
4 to prevent people being exposed to long-term COVID.
5 We haven't seen either one of these children develop
6 any issue of long-term COVID. We saw them get sick
7 twice, and we saw them, two strong immune systems,
8 pass the virus off or push it off and move ahead.

9 I kind of agree with the father at this
10 point that King, the oldest child, is about 16 1/2
11 years old. In a year and a half, he can make the
12 decision if he thinks he's at risk of COVID for
13 himself. The younger child, I think, is about 15,
14 if I'm not mistaken. He's got three years.

15 The Court finds under these
16 circumstances that the mother's actions, her having
17 concern, is what moms are supposed to do. Mr. Rejba
18 didn't agree with that and, frankly, if I'd been in
19 his shoes, I probably would not have either. I
20 probably would have thought my kids needed to go in
21 and be vaccinated. I would have probably insisted
22 on it, and if my wife opposed that, we would have
23 probably had a big argument about it. Somebody
24 would have had to have given in. Half the time or
25 more it probably would have been me, but I don't

1 know.

2 But if it's not necessary to put
3 something in our body, then my thought is why do it.
4 I am informed, although I don't have any real
5 authority for this, that older children, even though
6 they're not yet minors, their treating physicians
7 can actually -- if they find them to be a mature
8 minor requesting treatment, can actually give them
9 treatment without parental consideration. It's very
10 possible that King could walk in to his
11 pediatrician's office and say, I'd like to have the
12 COVID virus and that doctor might inoculate him. I
13 don't think Orion is old enough. He will be shortly
14 if indeed that's a problem.

15 But under these circumstances, with the
16 benefit of two years of hindsight since this case
17 began, the Court finds that, despite some unusual
18 positions that the mother takes -- and, as I say, it
19 creates some concerns for the Court -- the Court
20 finds that there has not been a material change in
21 circumstance that would justify the Court to review
22 the issue of custody authority and decision-making
23 authority.

24 These children can make that decision,
25 and I think the dad is right about that. I think

1 they ought to be able to make that decision and will
2 let them as they get older. Three years and one a
3 year and a half, and maybe even a lot closer.

4 But the Court finds there has not
5 been -- even though there's been considerable
6 concern from both parents about this issue, the
7 Court finds that each one did what they thought they
8 should and their agreement in the parenting plan
9 prevented them from getting the children inoculated.
10 And that may or may not have been a wise decision.
11 Time will tell. And these young men can decide for
12 themselves what they want to do.

13 I suspect by the time they each reach
14 18, they're not going to feel any need to get any
15 special inoculation against the COVID virus, but
16 irrespective of whatever mistake they may make in
17 that, they will make it for themselves.

18 Therefore, the Court is dismissing the
19 father's petition, but the Court finds that both of
20 these parents acted in good faith and the Court,
21 therefore, is ordering each of the parties to pay
22 their own attorneys' fees and the Court orders them
23 to split the court costs.

24 Mr. Drummond, I'm going to ask if you'll
25 prepare the order. This Court has a

1 five-business-day rule. So I don't think this is
2 too complicated and the order doesn't require a
3 lengthy preparation, so try to get it in to us
4 within about a week, if you will.

5 MR. DRUMMOND: Thank you, Your Honor.
6 Did you say five pages?

7 THE COURT: No, five business days --

8 MR. DRUMMOND: Five business days.

9 THE COURT: -- you have to get your
10 order in. And, basically, what the Court has found
11 is that I think each parent was acting in what they
12 thought was best for their child, so I can't find
13 that the mother has acted inappropriately in being
14 concerned because there were a lot of people
15 concerned, but a lot more people were concerned
16 about the virus and they got the inoculation because
17 they thought it was good for them and also good for
18 their children when their children were able to get
19 the inoculation.

20 So Ms. Drummond has some unusual
21 thoughts about the vaccine, but I can't say that she
22 acted inappropriately in this. She was concerned.
23 She delayed. She did not want her children to have
24 to take the virus -- a vaccine that she thought was
25 untested and had not been developed and had not been

1 researched.

2 And I think each parent was acting in
3 what they thought was the best thing to do and,
4 frankly, I compliment both of them for taking care
5 of what they thought was best for their kids.

6 As a result, as this Court found, it may
7 be that it will never be necessary for these
8 children to take this vaccine. If we can avoid
9 putting foreign things in our bodies, it's probably
10 always a good thing.

11 If you'll be kind enough to prepare the
12 order. That will be the order of the Court.

13 This Court will be in recess until
14 9:00 o'clock tomorrow morning.

15 (Proceedings concluded at 12:10 p.m.)

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1 REPORTER'S CERTIFICATE

2
3 STATE OF TENNESSEE

4 COUNTY OF DAVIDSON

5
6 I, JULIE K. LYLE, Licensed Court
7 Reporter, with offices in Hermitage, Tennessee,
8 hereby certify that I reported the foregoing by
9 machine shorthand to the best of my skills and
10 abilities, and thereafter the same was reduced to
11 typewritten form by me. I am not related to any of
12 the parties named herein, nor their counsel, and
13 have no interest, financial or otherwise, in the
14 outcome of the proceedings.

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