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Case Number 500,2013

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTINA OZDEMIR,	)	
	)	
	)	
Appellant	)	
	)	
v.	)	**No. 500, 2013**
	)	
	)	
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below, Appellee.	)	

APPELLANT'S OPENING BRIEF

ON APPEAL FROM THE SUPERIOR COURT IN AND OF NEW CASTLE COUNTY

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DATE: JANUARY 17, 2014

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Constitutional Provisions

Statutes

Rules

Other sources

NATURE AND STAGE OF PROCEEDINGS

On May 28, 2013, Christina Ozdemir, ("Ozdemir"), was indicted on two counts of felony interference with custody pursuant to 11 *Del.C.* § 785. A-1, 3-4. By that time, she and Douglas Riley, ("Riley"), had been in a long fought and bitter custody battle over their two children. This battle included filings in both New York and Delaware courts. In support of the indicted charges, the State claimed that during the custody battle, Ozdemir unlawfully withheld the children from Riley even though he had custodial rights to them. A two-day jury trial began on September 5, 2013. Over Ozdemir's objection, the trial court allowed the State to introduce 5 unredacted Family Court orders that not only contained inadmissible hearsay it contained irrelevant and highly inflammatory comments made by a Family Court judge.[1] At the conclusion of the State's case, the trial court, based on Ozdemir's motion, sent only misdemeanor interference with custody charges to the jury rather than the felonies that were charged.

Ozdemir was convicted of both counts and immediately sentenced to probation.[2] This is her opening brief in support of her timely-filed appeal.

[1] *See* Oral Ruling attached as Ex.A.
[2] *See* Sentencing Order attached as Ex. B.

SUMMARY OF ARGUMENT

1. The trial judge erroneously permitted the State to provide the jury with a Family Court judge's opinion that Ozdemir has a propensity to defy court orders. The State was also permitted to introduce to the jury several out of court inflammatory statements made by an advocate for another party in prior custody proceedings. The State convinced the trial judge that the 5 unredacted Family Court orders containing this inadmissible hearsay and irrelevant and highly inflammatory comments were all necessary to establish that Riley was entitled to custody of the children. The State also claimed that this evidence was necessary to establish Ozdemir's intent to withhold the children from Riley. However, this evidence was not only inadmissible under the rules of evidence, its presentation to a jury violated Ozdemir's rights to due process and confrontation. Thus, her convictions must be reversed.

STATEMENT OF FACTS

Christina Ozdemir, ("Ozdemir"), and Douglas Riley, ("Riley"), began a relationship sometime in 2005 or 2006. A-52. Initially, Ozdemir lived in New York while Riley lived in Delaware. However, Ozdemir moved in with Riley about five months into their relationship. A-52. In 2007, the couple had a son and about 6 months later, the trio moved to New York. After a short period of time, they moved back to Delaware. A-53. The relationship between Ozdemir and Riley continued and, in 2009, they had a daughter. A-52.

In May, 2009, about a month after the couple's daughter was born, Ozdemir and her two children went to New York to visit her parents. According to Riley, they never returned so he filed for custody in the Delaware Family Court. A-53, 58. Meanwhile, Ozdemir filed in New York for a Protection From Abuse Order, ("PFA"). She informed the court that she had fled to New York to escape Riley's abuse. The order was issued. Thus began a flurry of filings in both Delaware and New York on the custody issue.

In November, 2009, a joint hearing, via telephone, was conducted with both the Delaware Family Court judge, ("Delaware judge"), and the New York Family Court judge, ("New York judge"). After discussion, the

two judges agreed that Delaware had jurisdiction over the custody battle. A-48-49. The Delaware judge then issued an interim order granting Ozdemir "sole legal custody and primary residency of the children." The order also allowed Riley limited visitation rights. A-6.

Over the next few months, Riley filed separate petitions in Delaware for a Rule to Show Cause. Each petition alleged either that Ozdemir failed to bring the children to a scheduled visitation; arrived late for a scheduled visitation; and/or interrupted a visitation. A-7. Around this time, the New York judge issued another PFA which Ozdemir believed protected her *and* her children from contact with Riley. A-7. Ozdemir also filed pleadings in New York dealing with the custody issue. A-58.

In October 2010, the Delaware judge issued a temporary custody order awarding "joint legal custody and shared residency of the children on an alternating monthly basis for a period of 6 months." A-8. Then, in April, 2011, based on Riley's allegations that Ozdemir did not comply with the October order, the Delaware judge issued another temporary order that granted Riley full custody. A-9, 60. At one point, Riley took this order to New York and presented it to the police, the FBI and the courts. All of these authorities chose not to assist him in retrieving the children. A-60-61.

Ozdemir then filed a petition in New York requesting a modification of Delaware's April, 2011 temporary custody order that granted sole custody to Riley. A-13-15. Initially, the New York judge dismissed her petition after finding that New York lacked jurisdiction. However, a New York appellate court stayed the dismissal and "indicated that temporary order for protection for the family offense was to remain in effect and that [the New York judge] should issue an order granting [Riley] supervised visitation." A-13-15. In response to a similar filing by Ozdemir in Delaware, the Delaware judge issued a decision denying any modification of the April, 2011 custody order. In doing so, the judge used "stern and condemning" language that portrayed Ozdemir as defiant. A-5-12.

At some point prior to April, 2011, the two judges discussed the matter again and, once again, they decided that Delaware retained jurisdiction over the custody case. A-13-15. The New York judge did agree to conduct a hearing so that she could "modify the temporary order of protection to award [Riley] supervised visitation." A-13-15. This hearing did not occur and the New York judge later explained to the Delaware judge that, based on instructions from the appellate court, she extended the coverage of the PFA to October 15, 2012. A-16-18.

The Delaware judge continued to preside over proceedings regarding custody. In April, 2012, he appointed a guardian *ad litem*, ("GAL"), to represent the interests of the children and to monitor the proceedings in the New York court. A-14. Interestingly, it appears from the record that New York had already appointed its own GAL to represent the children. A-14.

There was no final disposition of the proceedings in New York until December 12, 2012 when the New York judge dismissed Ozdemir's petition to modify Delaware's April, 2011 custody order. A-21, 59. It was only after this final disposition that the Delaware judge issued a final order with respect to custody.

On January 28, 2013 the Delaware judge ordered that full custody of the children be given to Riley. He also found Ozdemir in civil contempt for failing to comply with the April, 2011 custody order and failing to cooperate with the Delaware GAL. Again, the judge used "stern and condemning" language that portrayed Ozdemir as defiant. A-19-29. The order also explained that if she did not turn the children over to Riley on February 18, 2013, she would be incarcerated.

On February 19, 2013, the Delaware judge issued a warrant for Ozdemir's arrest because she failed to turn the children over to Riley as required. A-30-33. On February 27, 2013, Riley took the January 28th and

February 19th orders to the New Castle County Police Department and presented them to Officer Ruiz-Ramirez. A-64-67. Riley explained to the officer that the January 28th order was the final custody order. A-67-68.

The officer then contacted authorities in New York regarding the situation. But, he did not receive any cooperation until April when New York detectives informed him that Ozdemir did not live at any of the addresses Ruiz-Ramirez had provided them. A-68-69. Around that same time, Ozdemir was found in Miami, Florida. A-69. Her children were not with her, they were in New York. A-69. Ozdemir was brought back to Delaware and incarcerated pursuant to the February 19th order. A-69. The children were turned over to Riley.

Thereafter, on May 28, 2013, the State charged her with two counts of Interference with custody pursuant to 11 *Del.C.* §785. The State alleged that Ozdemir, "did being a relative of [the respective child], who is less than 16 years old, and intending to hold the child permanently or for a prolonged period and knowing that she has no legal right to do so, took the child from her[/his] lawful custodian, and thereafter caused the removal of said child from Delaware." A-3-4.

I. NOT ONLY DID THE TRIAL COURT ABUSE ITS DISCRETION, IT VIOLATED OZDEMIR'S RIGHTS TO DUE PROCESS AND CONFRONTATION WHEN IT ALLOWED THE STATE TO PRESENT TO THE JURY A PLETHORA OF INADMISSBLE HEARSAY AS WELL AS IRRELEVANT AND HIGHLY INFLAMMATORY COMMENTS MADE BY A FAMILY COURT JUDGE.

Question Presented

Whether a judge's findings of fact and conclusions of law which contain inadmissible hearsay and judgments about the defendant's character, are admissible when only the resulting order is relevant to an element of the offenses with which the defendant is charged. A-46-48, 50.

Standard and Scope of Review

This Court reviews a trial court's "rulings on the admission of evidence for an abuse of discretion. An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances, or so ignored recognized rules of law or practice so as to produce injustice." *Baumann v. State*, 891 A.2d 146, 148 (Del. 2005). Constitutional violations "pertaining to a trial court's evidentiary rulings are reviewed *de novo.*" *Johnson v. State*, 878 A.2d 422, 425 (Del. 2005).

Argument

The trial judge erroneously permitted the State to provide the jury with a Family Court judge's opinion that Ozdemir has a propensity to defy

court orders. The State was also permitted to introduce to the jury several out of court inflammatory statements made by an advocate for another party in prior custody proceedings. The State convinced the trial judge that the 5 unredacted Family Court orders containing this inadmissible hearsay and irrelevant and highly inflammatory comments were all necessary to establish that Riley was entitled to custody of the children. The State also claimed that this evidence was necessary to establish Ozdemir's intent to withhold the children from Riley. However, this evidence was not only inadmissible under the rules of evidence, its presentation to a jury violated Ozdemir's rights to due process and confrontation. Thus, her convictions must be reversed.

A week before trial, the State provided defense counsel with a 480-page Family Court file for the ongoing custody dispute between Ozdemir and Riley in the Delaware Family Court. A-35. On the first day of trial, the prosecutor informed the trial judge that she intended to introduce "five or six" certified court orders from that file in order to establish that Riley had custodial rights to the two children and to establish Ozdemir's intent to keep them from Riley. A-35-36. Ozdemir objected on the grounds that the orders contained hearsay and that their introduction violated her confrontation rights under the Sixth Amendment of the United States Constitution.

The trial judge overruled the objection by finding that "the litigated fact by a court is not done for the purposes of prosecution and I don't think that's a *Crawford*[3] situation." A-36. He also concluded that the orders were relevant as "proof of the custody itself[,]" A-36. The State then introduced the following Family Court orders:

State's Trial Exhibit 1: July 15, 2011 Letter Decision and Order Denying Ozdemir's Motion for New Hearing and Reversal of Decision; ("July 15th Order"); A-5-12.

State's Trial Exhibit 2: April 4, 2012 Letter Decision and Order Regarding Jurisdiction; ("April 4th Order); A-13-15.

State's Trial Exhibit 3: April 19, 2012 Letter Decision and Order Regarding Jurisdiction; ("April 19th Order"); A-16-18.

State's Trial Exhibit 4: January 28, 2013 Letter Decision and Order giving custody of the children to Riley; finding Ozdemir in contempt; and setting forth her sanctions for contempt; ("January 28th Order"); A-19-29.

State's Trial Exhibit 5: February 19, 2013 Letter Decision and Order issuing a capias for Ozdemir's arrest for failing to turn the children over to the father; ("February 19th Order). A-30-33.

[3] *Crawford v. Washington*, 541 U.S. 36 (2004).

The Family Court Orders Contain A Plethora Of Inadmissible Hearsay

The findings of fact and conclusions of law set forth in the written Family Court Orders that were presented to the jury in our case contained significant amounts of inadmissible hearsay.[4] Defense Counsel informed the trial court of this when he objected to the introduction of the orders:

> But I think the records themselves and the orders that the State is referring to that they want to put into evidence, there's difficulty with me having those put in because there are findings of fact and there are allegations against not only my client, I guess, but also against the father and those orders. A-35.
>
> So there's no ability for me to cross examine a witness when they put a document in and they have the finding of facts of a lower court judge, who is not going to testify at this trial. A-35.
>
> [S]some portions of those documents contain hearsay and findings of fact that I'm not able to attack or question. A-36.
>
> They are findings of fact or allegations that have been found in a lower court in Family Court that are now going to be brought up into Superior Court and introduced to a Superior Court jury as fact and I'm not going to have any ability to question or cross-examine the persons who made those allegations before a jury, so the jury doesn't have a full question about why this judge found this way or whether these allegations are true. I think it's a confrontation type of a question there of how I am going to be able to confront an allegation that the State is now saying is fact before a jury in the lower Court? A-36.

[4] *See generally D.R.E.* 801 (c), 803 & 804 (defining "hearsay" and setting forth certain exception to the rule of inadmissibility of hearsay).

The trial judge agreed with the State that the orders were admissible because they were "self-certified by the seal of the Court[.]" A-26-37. However, the judge failed to address the fact that the arguably admissible court orders constituted only one "layer" of hearsay.[5] The orders were replete with a second "layer" of hearsay, i.e. "hearsay within hearsay." This second layer of hearsay consisted of statements by the Delaware GAL relied upon by the Family Court judge.

- The GAL "requested basic information from Mother" about [the children] and "Mother failed to provide [her] with the requested information." A-22.

- "At the hearing, [the GAL] stated that Mother cancelled a therapeutic visitation session with Dr. Franklin less than an hour before it was scheduled to begin. Moreover, [the GAL] reported to the Court on numerous occasions that Mother would fail to respond to her phone calls and emails. When Mother did respond, she would continuously fail to provide [her] with requested information." A-23.

- The GAL "faults Mother for the lack of progress [towards meaningful therapeutic reunification of children with Riley], as she has willfully obstructed any progress that could have been made." A-24.

- "In consultation with Dr. Franklin, [the GAL] believes that the Court should order an abrupt reunification." A-24.

[5] This Court has held that certified court records can be admissible so long as they meet the requirements of *D.R.E.* 902 (4) for self authentication. *Trawick v. State*, 845 A.2d 505, 509-10 (Del. 2004).

- "Mother has refused to allow [the GAL] to conduct a home-visit on Long Island, and [the GAL] has no way of verifying her current location. Mother only communicates with [her] when it is convenient for her, which is seldom. Moreover, Mother has instructed her parents not to speak to [her.]" A-24. [6]

- The GAL "agrees" that Riley "can provide a suitable environment for" the children. A-24.

- The Family Court judge stated that he ordered the children be placed in Father's care based, in part, on "the GAL's "recommendations." A-25.

- The GAL "recommended significant sanctions, and stated that she does not think 'minor' sanctions would be effective" with respect to finding Mother in contempt. A-25, 27.

- The GAL "told the Court that she called Mother's cell phone on Friday February 15, 2013 and left a voicemail. Mother never returned [her] call." A-30-31.

- "Both Father and [the GAL] believe Mother is still living in New York, but [the GAL] noted that some of Mother's family members have lived in Florida." A-31.

To introduce double hearsay such as the GAL's statements in our case, "each aspect must qualify *independently* as an exception to the hearsay rule." *Demby v. State*, 695 A.2d 1152, 1162 (Del. 1997) (*citing D.R.E.* 805). Yet, the admissibility of the GAL's statements was not addressed by the trial

[6] "[I]n-court descriptions of out-of-court statements, as well as verbatim accounts, are "statements" and can violate the Confrontation Clause. *Wheeler v. State*, 36 A.3d 310, 318 (Del. 2012).

court. Had the trial court examined these statements, it would have found them to be inadmissible hearsay.

The GAL was not present and subject to cross examination at trial. Thus, her statements could only be presented to the jury through an exception to the hearsay rule. And, that was lacking in this case. The prior statements were not made under oath and Ozdemir had no prior opportunity to cross examine her.[7] Additionally, the GAL made those statements while advocating for a party, (the children), whose position was contrary to Ozdemir's. Meanwhile, Ozdemir did not have an advocate at the relevant Family Court proceedings.

There is another problem with the GAL's hearsay. The Delaware judge bolstered the statements provided to the jury. In the January 28th Order, the judge stated:

> The Court thanks and commends Ms. Buck for her exemplary service in this matter. At every hearing, Ms. Buck was a well-prepared, effective advocate for the interests of [the children]. In addition, Ms. Buck was of great assistance to the Court not only through her advocacy, but in her diligent monitoring of all the New York proceedings between the parties. As the Court stated at the end of the hearing, Ms. Buck's service is consistent with the finest traditions of the Delaware bar. A-19-20.

[7] With respect to hearings such as those conducted in Family Court in our case, a GAL is a representative of the child and is not to "take the stand as a witness, but instead present[] his or her position in the form of evidence." 29 *Del.C.* 9007A (4) Synopsis. (Ex.C). Thus, while the GAL may have been present at the hearings, she was not subject to cross examination.

The Family Court judge also cloaked the GAL with the authority of the court when he told the parties that if they did not cooperate with her, "the Court will not hesitate to find that party in contempt." A-22. And, finally, when the judge released the GAL from her duties he thanked her again "for her exemplary performance in this matter." A-31. These statements improperly bolstered the statements of a witness the credibility of whom the jury did not have the ability to assess on its own. *See Ramirez v. State*, 958 P.2d 724, 731 (Nev. 1998) (finding that judge's vouching for the credentials of declarant of hearsay statement essentially took the burden away from the State to establish the trustworthiness of the out of court statement).

The inadmissible hearsay along with the Family Court judge's vouching grows more troublesome when viewed in the context of the Confrontation Clause of the Sixth Amendment. That amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." *Sanabria v. State*, 974 A.2d 107, 117 (Del. 2009). In *Crawford v. Washington*, the United States Supreme Court held that "the Confrontation Clause applies to 'testimonial' out-of-court statements, whether or not they 'fall within a firmly rooted

hearsay exception.'"[8] "[T]he principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused." *Crawford*, 541 U.S. at 50.

Because the GAL's testimonial hearsay did not fall within a firmly rooted exception to the bar of its admission and because the hearsay was unfairly bolstered by a judge, it should not have been provided to the jury. By allowing the State to present this evidence, the trial court abused its discretion with respect to the rules of evidence and violated Ozdemir's right to confrontation. Therefore, her convictions must be reversed.

The Family Court Orders Contain Irrelevant and Highly Inflammatory Findings of Fact and Comments By A Family Court Judge

The State claimed that it needed to introduce the Family Court orders to establish that Riley had custodial rights to the children and to establish Ozdemir's intent to keep the children from him. A-35. The trial judge found that each of the 5 unredacted Family Court orders were relevant to the issue of custody. However, he did not even attempt to conduct the balancing test mandated by *D.R.E.* 403 before it allowed the admission of the orders. Had he properly done so, he would have concluded that any probative value of the content of those orders was substantially outweighed by the danger of

[8] *Wheeler v. State*, 36 A.3d at 318 (*quoting Crawford*, 541 U.S. at 40).

unfair prejudice to Ozdemir. He would also have had to conclude that there was a high "prospect of confusing the issues and causing undue delay because of the time necessary to explain to the jury that the findings were made only as they relate to [other] matters […]which, of course, implicate different legal issues than are involved at trial."[9]

Generally, a "family court order underlying or precipitating a criminal charge against one of the parties may be relevant in the criminal prosecution and may be admissible in the criminal trial, within the discretion of the trial court[.]" However, it should be limited "to the extent necessary to establish the parameters of the prior Family Court order and/or any alleged violation thereof." [10]Thus, only the bottom line orders regarding custody resulting from the judge's findings in the 5 Family Court decisions were relevant. This amounted to one sentence each in the July 15th order[11] and the January

[9] *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 505 F. Supp. 1125, 1185-86 (E.D. Pa. 1980) (reversed in part on other grounds).
[10] *State v. Donley*, 607 S.E.2d 474, 484 (W. VA. 2004). *See Commonwealth v. Foreman*, 755 N.E.2d 279 (Mas.App.Ct. 2001) ("Although the introduction of limited testimony that she sought and received a restraining order may have been justified […], the introduction of the entire order, with all of the extraneous and prejudicial information contained therein, was not.").
[11] "On April 12, 2011, this Court issued an order […] granting Father sole legal custody and primary residency of the children." A-9.

28th order.[12] The remaining 18 pages of extraneous and prejudicial information within those orders were not relevant.

The April 4th and April 19th orders were marginally relevant to the extent that they addressed the jurisdictional issue being grappled with by both the New York judge and the Delaware judge. The jurisdictional issue was relevant to custody as it appeared that both States were issuing inconsistent orders effecting custody to some degree. These relevant portions included only 6 lines of the 2-page April 4th order and 6 lines of the 2-page April 19th order. A-13, 17. Finally, the February 19th order issuing a capias for Ozdemir's arrest on the civil contempt was also not relevant to the existence of custody and it did not reveal anything about Ozdemir's intent.

Instead of introducing only the relevant portions of the orders, the State was permitted to introduce pages and pages of irrelevant material. Some of the more prejudicial portions are set forth below:

- "Mother has exhibited a pattern of disregard for this Court's Order[.]" A-8.

- "Mother has flouted this Court's authority and its existing and prior orders. She has failed to promote a relationship between Father and the children. Mother's credibility was questioned at the first hearing held on May 5, 2010." A-9.

[12] Order that the children were "to be placed in Father's care Effective Immediately." A-25.

- The Family Court judge appeared to question Ozdemir's credibility with respect to her claims of abuse when he noted that "[c]uriously, Mother did not file any PFA petitions against Father when she lived in Delaware and allowed Father to have unsupervised contact with the children." A-6.

- The Family Court judge set forth all of Riley's allegations upon which his petitions for a Rule to Show Cause were based. A-7.

- The Family Court judge pointed out that Ozdemir failed to comply with court rules in making a continuance request. A-8.

- "Mother has also continuously attempted to circumvent the hearing process." A-11.

- "Mother has engaged in behaviors designed to delay court proceedings. Moreover the way in which Mother requested to testify by telephone was improper, as Court rules require a written motion. Nor did Mother comply with the Court's rule requiring her to verify her motion. In addition, Mother failed to provide an affidavit with her motion as required by Court rules." A-23.

- "Throughout this litigation, Mother has engaged in evasive behavior with the Court and with others acting in the interest of" her children. A-23.

- "Mother's obstinacy has made therapeutic reunification [between Riley and the children] an exercise in futility." A-24.

- "Based on mother's continual thwarting of Court orders and therapeutic reunification, the [GAL]'s recommendations and the Father's testimony, the Court finds that it is in the best interests of [the children] to be placed in the father's care effective immediately." A-25.

- "Mother has disobeyed numerous court orders." A-25.

- Mother has "thwarted all attempts to reunify" the children with their father. A-25.

- The judge allowed her "yet another opportunity to comply with Court orders. Instead, she again dragged her feet[.]" A-26.

- "Based on this history of defiance, the Court is satisfied that Mother has disregarded numerous Court mandates. The Court gave Mother numerous opportunities to comply with Court orders, but it can no longer allow Mother to place herself above the law and thwart this Court's orders." A-26.

- The judge also set forth that it had no other option by to order that she be incarcerated if she did not comply with the Court's order. A-26.

None of these comments and none of the GAL's statements, which were adopted by the Family Court judge, were relevant to establish that Riley had custodial rights to the children.

Even if this Court were to find these comments to be relevant, it must conclude that they were inadmissible because their probative value was "substantially outweighed by the danger of unfair prejudice" to Ozdemir. *D.R.E.* 403. [13] It was for the jury and not a judge to make factual findings in this case. However, the court orders informed the jury that a judge in a related case had already made "conclusions regarding [Ozdemir]'s character and propensity to engage in inappropriate divisive actions such as the very action she was accused of committing in the criminal case[.]"*Donley*, 607

[13] *See U.S. Steel, LLC, v. Tieco, Inc*., 261 F.3d 1275, 1288 (11th Cir. 2001) (finding reversible error where judge's opinion making factual findings was relied upon by the government throughout the trial, including closing argument).

S.E.2d at 484. The jury was told that a judge had already found Ozdemir "capable of egregious acts toward [Riley] involving the custody and visitation of their children." *Id.*

Because the factual findings were made by a judge, it is likely the jury gave it "undue weight" and "creat[ed] serious danger of unfair prejudice."[14] It would have been difficult for the jury to weigh the Family Court judge's opinion against contrary evidence elicited on cross examination. This difficulty must be "especially great" when the jury "is apt to give exaggerated weight to an official finding of a state body."[15] Also significant with respect to the unfair prejudice to Ozdemir by the introduction of the Family Court judge's finding of civil contempt is that the jury was "not informed that the order was issued by the judge under the less stringent civil standard" of "clear and convincing evidence"[16] rather than "the criminal

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[14] *Zenith Radio Corp.*, 505 F. Supp. at 1185-86. *See Foreman*, 755 N.E.2d at 283 ("Further, to a jury without more guidance, it would likely appear that a judge had already reviewed the facts and decided the credibility dispute that the jury were being asked to consider.").

[15] *McCorkle Farms, Inc. v. Thompson*, 84 S.W.3d 884, 888 (2002) (finding reversible error, in negligence suit against a crop duster for negligently exposing his crops to certain chemicals, the introduction of conclusions of the Plant Board Pesticide Committee).

[16] *Watson v. Givens*, 758 A.2d 510, 512 (Del. Fam. Ct. 1999) (setting forth the standard for establishing civil contempt and noting that it must be proved by clear and convincing evidence).

standard of proof beyond a reasonable doubt." *Foreman*, 755 N.E.2d at 284.

It is partly out of a desire to prevent the unfair influence on a jury that "the requirement that judges be impartial [i]s a fundamental principle of the administration of justice." *Los v. Los*, 595 A.2d 381, 383 (Del. 1991). In fact, "[a]s a matter of due process, a litigant is entitled to neutrality on the part of the presiding judge[.]" *Id.* While the comments in our case were not made by the sitting trial judge, they were "generated by a family court judge who addressed almost identical facts and relationships and were therefore capable of effectuating a similar adverse impact on the jury." *Donley*, 607 S.E.2d at 484.

The case of *State v. Donley*, is strikingly similar to ours. In that case, the defendant was convicted of concealment of minor children. 607 S.E.2d 474. A Family Court judge entered an order setting forth the visitation requirements to which the parties were to be bound. Due to her continued violation of that order, the defendant was indicted on eight felony counts of concealment of a minor child from a person entitled to visitation. At trial, the State introduced the court order into evidence.

On appeal, Donley argued that the order was "biased an unduly

prejudicial" and should have been excluded. *Donley*, 607 S.E.2d at 481. The order contained many comments similar to those in our case. For example, the family court judge in *Donley* stated: "the Guardian ad litem in this matter […], spent tireless hours investigating this matter, and engaging in efforts to establish a relationship between this father and his daughters, in the face of overwhelming opposition from the plaintiff their mother;" the defendant was "responsible for instigating the bad acts engaged in by the two children when they were living with their father;" and "this court has seen no evidence throughout the long history of this case that the plaintiff is willing to comply with this Court's orders when they direct the reunification of her children with their father, the defendant." *Id.* at 481.

Donley ultimately concluded that the trial court abused its discretion when it permitted "the unabridged Family Court order to be introduced into evidence in its entirety where the probative value of the entire text of the order was substantially outweighed by the danger of the unfair prejudice. The stern and condemning nature of the Family Court's comments in the order presented a real danger of unfair prejudice in the criminal prosecution." *Id.* at 484

Just as in *Donley*, it was necessary for the State in our case to establish custody. And, just as in *Donle*y, the trial judge in our case abused

his discretion when he allowed the State to present court orders to the jury that went beyond the relevant portions and contained a judge's "stern and condemning" comments about Ozdemir. This introduction was not just a violation of the Rules of Evidence, it violated Ozdemir's rights to Confrontation and Due Process. Thus, her convictions must be reversed.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Ozdemir's convictions should be reversed.

\s\ Nicole M. Walker
Nicole M. Walker, Esquire

DATE: January 17, 2014