

Excerpted from the Continued transcript of proceedings held before the
17 Honorable Renee Roche, Judge of the Circuit Court, Orange
18 County, Florida, on Wednesday, October 26, 2005,
19 beginning at 8:50 a.m., at the Orange County Courthouse,
20 Orlando, Florida, before Laura J. Landerman, R.M.R.,
21 C.R.R., and Notary Public, State of Florida at Large.
Complete transcript at <http://www.healthcareretaliation.com> under Trial
Transcripts, Volume 16.

17 (A 70-minute lunch recess was had.)

18 THE COURT: Be seated. Counsel, why don't you
19 approach the bench.

20 (Bench conference.)

21 THE COURT: The deputies have Baker Acted your
22 client.

23 MR. TOWNSEND: Oh, my God.

24 THE COURT: So he is in custody, and subject
25 to an evaluation, when that will be concluded, I do
2204

1 not know, but I certainly don't expect he will be
2 here today.

3 MR. OSBORNE: How did that happen, Judge? Who
4 is the complaining party?

5 THE COURT: I don't know all of the details.
6 I just know that he has been Baker Acted and taken
7 into custody.

8 MR. OSBORNE: My understanding was that would
9 take somebody who would have to say that they
10 thought he was a danger to himself or others, and it
11 would have to be an attesting party to do that, and
12 that the deputies couldn't take that upon themselves
13 without a party complaining in that regard. I was
14 just wondering if you knew who that party was that
15 was the attesting party.

16 THE COURT: I don't know, Mr. Osborne. I
17 think the deputies concluded themselves, based upon
18 the testimony that was given, and so whether they
19 can take that on themselves or not, I don't --
20 that's a legal question I don't know the answer to
21 under the Baker Act.

22 MR. OSBORNE: Okay.

23 THE COURT: I don't believe there was a
24 complaining party, per se, a witness in here,
25 certainly not anybody that I know of other than that
2205

1 the deputies made that decision. But I don't know
2 the details of that, so -- so where does that leave
3 us?

4 MR. OSBORNE: That's a good question. I need
5 to think about that.

6 THE COURT: Uh-huh. Talk to -- you can talk
7 to your clients. Unfortunately, you're not going to

8 be able to do that. You know, think about it for a
9 few minutes, and then I'll hear from you.

10 MR. OSBORNE: Yes, ma'am. Can I confer
11 with --

12 THE COURT: Is Mr. Conway here?

13 MR. OSBORNE: He went to try to find out --

14 THE COURT: I'm not sure he's going to be able
15 to.

16 MR. TOWNSEND: I just want to make sure who is
17 entitled to know this and not know this, and do I
18 have an obligation not to disclose what's happened
19 here, all that type of stuff.

20 THE COURT: Well --

21 MR. TOWNSEND: It would be running rampant
22 around our office what happened, he got Baker Acted.
23 If we're not supposed to tell anybody that --

24 MR. OSBORNE: I certainly don't want it
25 getting to the jury for darn sure.

2206

1 MR. TOWNSEND: For sure not that. I mean,
2 obviously we have to tell our clients, I think, to
3 get their opinion on what they want us to do, but do
4 we need to be silent on that or do you want to give
5 us any instruction or not? I just raise it so we
6 don't all get in a pickle.

7 MR. OSBORNE: I don't mind clients knowing,

8 but I don't think it should go beyond the litigation
9 team and clients.

10 THE COURT: I think you all would agree to
11 that, won't you?

12 MS. MARSHALL: Yes.

13 MR. TOWNSEND: Yes. That's all I was
14 concerned about.

15 THE COURT: And get passed this issue.

16 MR. OSBORNE: Let me confer for a minute.

17 THE COURT: Let me say this. I don't know --
18 Bill, this is -- I did dependency for six years. I
19 did criminal. I've never had this happen, so I'm
20 sorry that I can't be --

21 MR. OSBORNE: There is nothing you can do to
22 help?

23 THE COURT: I really don't know. This was not
24 at the Court's instruction. I don't know how this
25 happened except that it was told to me. I don't
2207

1 even know if Conway can find him and talk to him.
2 He must be somewhere here about to be transported.
3 My guess is he's not going to be able to find him.

4 MR. OSBORNE: They'll send him to Lakeside
5 Alternatives.

6 THE COURT: Yeah, whoever the receiving
7 facility is. I know it was Lakeside for a long

8 time, so --

9 MR. OSBORNE: Give me about five or ten
10 minutes, Judge.

11 THE COURT: Sure, oh, sure. Dave, would you
12 tell the jury to relax. It will probably be another
13 15, 20 minutes before you can get to them. I just
14 want to advise you, I guess, that Madam Clerk tells
15 me that the receiving hospital that she has done the
16 Baker Act hearings at is Florida Hospital, so you
17 might want to just consider that, you know. I mean,
18 there's probably nothing you can do about that, but
19 that is apparently where they do the Baker Act
20 hearings. It's not a good thing in the context of
21 this case.

22 MR. OSBORNE: At Florida Hospital?

23 MR. EVANS: And South Seminole Hospital, which
24 is our facility, which is the other Baker Act
25 receiving facility.

2208

1 MR. TOWNSEND: Is that the only two?

2 THE COURT: I don't know that there is
3 anything we can do about that. I'm just telling you
4 for your --

5 MR. OSBORNE: There is nothing the Court can
6 do to intercede in this matter?

7 THE COURT: I can't. That was a security

8 decision. I can't tell them how to do their -- make
9 their decisions. That's a completely separate
10 thing. So I'm wondering if -- you got me. I don't
11 know whether you want to make a phone call.

12 MR. OSBORNE: If you both can make phone calls
13 about expediting the process. They're your
14 facilities that he's being taken to.

15 THE COURT: That's not what I mean. I just --
16 he made it very clear -- he made --

17 MR. TOWNSEND: If we --

18 THE COURT: One at a time. He made it very
19 clear his feelings about this hospital in
20 particular, and I guess, you know, I'm concerned
21 about when he gets there whether the situation is
22 going to be, you know, how that situation's going to
23 play out. Maybe Conway needs to go over there or --

24 MR. OSBORNE: He's trying right now to track
25 him down.

2209

1 MS. MARSHALL: We can make some phone calls
2 and try and find out.

3 THE COURT: Maybe Tracy can find out just what
4 the procedure is from her contacts.

5 MR. TOWNSEND: If they haven't taken him from
6 the courthouse yet --

7 THE COURT: Sergeant, do you know the status

8 of Mr. Destefano?

9 THE COURT DEPUTY: He's been transported now,
10 I believe, to Lakeside. I can confirm that.

11 THE COURT: Will you confirm where he's going?

12 That would help. Okay. Thank you.

13 (A 5-minute recess was had.)

14 THE COURT: It's apparently a joint receiving
15 facility, personnel from other -- all the hospitals.
16 It's on Mercy Drive. It's not --

17 MR. OSBORNE: What's the name of the facility,
18 Judge?

19 THE COURT DEPUTY: It's the Central Receiving
20 Center is the name of it. It's a joint effort of
21 all the hospital in Orange County.

22 MR. TOWNSEND: Mrs. Pierce, our
23 representative, she's not a hundred percent sure,
24 but she thinks there's a 72-hour minimum once
25 they're -- before they're out of there.

2210

1 MR. OSBORNE: That's what I would imagine.

2 MR. TOWNSEND: Would you like us to make a
3 call?

4 THE COURT: I think it's a maximum also.

5 MR. OSBORNE: If you don't mind checking, that
6 would be great.

7 MR. TOWNSEND: Mrs. Pierce gave me the name of

8 somebody that knows a lot about that. We can call
9 down there and just ask in general terms, if you'd
10 like to.

11 THE COURT: That's always been my
12 understanding it's 72 hours.

13 MR. OSBORNE: Does it go up from the Central
14 Receiving Facility to someone else then?

15 THE COURT DEPUTY: I think they're evaluated
16 then and then they determine --

17 MR. OSBORNE: That's on Mercy Drive?

18 THE COURT DEPUTY: Yes, sir.

19 THE COURT: They determine whether they can be
20 held --

21 MR. TOWNSEND: Longer.

22 THE COURT: Uh-huh.

23 MR. TOWNSEND: She must have been thinking
24 about the maximum then.

25 MR. OSBORNE: All right, Judge. Mr. Conway,

2211

1 you know about this stuff, don't you?

2 MR. CONWAY: Yes, ma'am. I'm on my way over
3 there now.

4 THE COURT: You're going to the Central
5 Receiving Facility on Mercy Drive.

6 MR. TOWNSEND: What's the time frame?

7 MR. CONWAY: 72 hours.

8 THE COURT: Maximum?

9 MR. TOWNSEND: Minimum they get turned loose
10 right away.

11 MR. CONWAY: Yep, I'm working on it now.

12 MR. OSBORNE: I need to talk with Mr. Conway,
13 my co-counsel. I think we're about to come up with
14 a solution on this.

15 THE COURT DEPUTY: It's 1800 Mercy Drive.

16 (A 2-minute recess was had.)

17 MR. OSBORNE: Your Honor, may I address the
18 Court?

19 THE COURT: Yes, sir.

20 MR. OSBORNE: Judge, we've discussed this, and
21 we think what we'd like to do at this juncture is to
22 go forward with the videotaped deposition of
23 Dr. Krop, put in the rest of our -- we've got a few
24 minor exhibits to put in, rest our case. And I
25 would ask the Court not to have DV motions without
2212

1 my client being here. I think he has a
2 constitutional right to be here. Hopefully, he'll
3 be here in the morning.

4 That's all I -- I can't -- I'm renascent to
5 even do anything without him being here, but I think
6 playing the video would be fine, but I do think he's
7 entitled to be here for DV motions.

8 THE COURT: I would also -- and I'll hear from
9 the defense on this -- but I would also suggest in
10 that event that I advise the jury that as instructed
11 at the outset, that in a civil case, parties or
12 lawyers may come and go from the courtroom. They're
13 to draw no conclusions from the absence of any
14 person at counsel table for whatever reason.
15 They're not to draw any conclusions from that.

16 MR. OSBORNE: That would be fine, Judge.

17 THE COURT: Anything from you, Ms. Marshall,
18 at this time, having reserved on your motion for
19 mistrial?

20 MS. MARSHALL: I don't think so, Your Honor.

21 THE COURT: Mr. Townsend?

22 MR. TOWNSEND: That seems like about as
23 reasonable approach as we could think of at this
24 point.

25 MR. EVANS: Although I'm not sure that there

2213

1 is a constitutional right for a client to be present
2 during legal argument.

3 MR. OSBORNE: It's a trial by jury, a
4 privilege.

5 THE COURT: I'll bring the jury in, and we'll
6 press on with the videotape deposition, and we'll
7 see what happens at the conclusion of that and

8 consider further at that juncture.

9 (A 2-minute recess was had.)

10 MS. MARSHALL: What happened is in the last
11 part of his comments to the jury, Ms. Jerauld was,
12 Landerman was turning to putting her earphones on to
13 do the sidebar because we were all walking up and so
14 it's not on the transcript.

15 THE COURT: Bring in the jury.

16 (Jury enters.)

17 THE COURT: Ladies and gentlemen, we made up
18 for your shortened lunches a little bit. Thank you
19 for your patience. Mr. Osborne will be calling his
20 next witness by videotape.

21 As you all remember, I'm sure, the Court
22 instructed at the outset of the case that from time
23 to time for business reasons, personal reasons, any
24 number of things, you may see the litigants leave
25 the courtroom. This is a civil case, not like a
2214

1 criminal case. You are to draw no conclusions from
2 the absence of any person or lawyer as they come and
3 go here from counsel table. So I would remind you
4 and underscore that earlier instruction, and with
5 that, I would request that you call your next
6 witness, Mr. Osborne.

7 MR. OSBORNE: Dr. Harry Krop by video

8 deposition.

9 - - - - -

10 (Whereupon, the videotaped deposition of Harry
11 Krop, PhD, was played.)

Continued - Volume 17, pages 2333 - 2335

14 MR. OSBORNE: Judge, I do have a point of
15 inquiry, and I think it might be appropriate to make
16 it now. It's our understanding, talking to Brad
17 Conway, that a deputy who was not in the room is the
18 one that signed the affidavit that got Mr. Destefano
19 Baker Acted, and the statement was that
20 Mr. Destefano stated that he was going to kill
21 somebody today.

22 And I would like -- I would like to have the
23 paragraph published by the court reporter that we're
24 talking about so we're not doing what we remember.
25 It's only one paragraph, if we can get the court

2334

1 reporter to go back. I would like to make that a
2 part of the record.

3 THE COURT: For the benefit of this Judge.

4 MR. OSBORNE: For the benefit of this Judge,
5 Your Honor.

6 THE COURT: You've got your record. You'd

7 like for me to remember and recall specifically what
8 was said. Sure, that's fine.

9 THE REPORTER: (Reading from notes.) "My
10 fight is with them. It's taking up my time, and
11 it's taking up my life. And I'm still going --
12 whatever happens here, I'm still going to make sure
13 they never do this to anyone else again. That's my
14 only focus in life because that will destroy
15 someone. That will get people killed. You say that
16 to the wrong person, that's going" --

17 MR. OSBORNE: Judge, I would like to inquire
18 if someone that's associated with this trial talked
19 to the deputy that did sign the statement to give
20 him information that would change the content of
21 what's in the -- in the record of that will get
22 people killed to saying I'm going to kill somebody
23 today. If the deputy didn't see it, I would like to
24 know if anybody told the deputy something that's
25 contrary to what --

2335

1 THE COURT: I don't think this is the forum
2 for you to take that up in, Mr. Osborne. This
3 was -- the only focus of this Court is whether it's
4 appropriate right now. What's before the Court is a
5 motion for mistrial and motion for sanctions. I
6 intend to reserve on that. I would not rule on that

7 before hearing from you fully.

8 MR. OSBORNE: Thank you.

9 THE COURT: With respect to your other
10 inquiry, the Court has no knowledge of the
11 circumstance of that, and I don't intend to conduct
12 some kind of inquiry or investigation. If that's to
13 be done, that needs to be done separately from this.