

REPORTER'S RECORD
VOLUME 4 OF 4 VOLUMES
TRIAL COURT CAUSE NO. 2016-06434

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE MATTER OF) IN THE DISTRICT COURT
THE MARRIAGE OF)
SHERRY MENGER) HARRIS COUNTY, TEXAS
AND)
MAREK E. MENGER) 310th JUDICIAL DISTRICT

PROCEEDINGS

On the 27th day of February, 2018, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Lisa Millard, judge presiding, held in Houston, Harris County, Texas; Proceedings reported by machine shorthand.

A P P E A R A N C E S

Lynn Kamin Mary Van Orman
SBOT No. 08441650 SBOT No. 00788762
JENKINS & KAMIN LLP VAN ORMAN & ASSOCIATES PC
Two Greenway Plaza 1790 Huges Landing Boulevard
Suite 600 Suite 400
Houston Texas 77046 The Woodlands Texas 77380
713-600-5500 713-650-8800
ATTORNEY FOR SHERRY MENGER ATTORNEY FOR MAREK E. MENGER

Michael C. Bynane Carlos A. Ryerson
SBOT No. 03555700 SBOT No. 17492500
THE BYNANE LAW FIRM RYERSON & ASSOCIATES, PC
5100 Westheimer Road 2800 Post Oak Boulevard
Suite 200 Suite 4100
Houston Texas 77056 Houston Texas 77056
713-397-9382 832-390-2398
ATTORNEY FOR INTERVENOR ATTORNEY FOR INTERVENOR



1 MS. KAMIN: Do you want us to identify
2 ourselves for the record?

3 THE COURT: Sure.

4 MS. KAMIN: My name is Lynn Kamin. I am here
5 on behalf of Sherry Menger.

6 MR. BYNANE: Michael Bynane on behalf of
7 myself as Intervenor.

8 MR. RYERSON: Carlos Ryerson on behalf of
9 myself as Intervenor.

10 THE COURT: And then let the record reflect
11 that Mr. and Mrs. Menger are both present and we are waiting
12 for Ms. Van Orman to call in.

13 (PHONE RINGS)

14 THE COURT: This is Judge Millard.

15 MS. VAN ORMAN: This is Mary Van Orman. I'm
16 in the middle of a trial, but I just stepped out. We don't
17 stop at noon up here in Montgomery County. I wish they would.
18 I'm stepping out. I have a protective order that's been
19 issued, but I'm asking the Court to honor the protective order
20 and be reset.

21 THE COURT: That's denied, Ms. Van Orman.
22 We're all present, and I'm ready to proceed.

23 MS. VAN ORMAN: Okay. Well, I have about five
24 minutes. Then Judge Gilbert told me I have to come back in.
25 So I'll do it as long as I can before I get in trouble.

1 THE COURT: Thank you. I believe it's you
2 that has the objection to the order; is that not correct,
3 Ms. Van Orman?

4 MS. VAN ORMAN: Yes, Your Honor. First of
5 all, Your Honor -- and I'm not trying to be disrespectful. But
6 first of all, as you know, on the 14th when I appeared in court
7 and asked that the case be passed, reset because I was in
8 trial, you were kind enough to reset it. And I understand the
9 frustration with the Court.

10 I also asked for a quicker trial hearing date.
11 They originally gave us the 13th; and because my trial ended, I
12 moved it up. And then when Judge Gilbert put me in trial
13 yesterday, he didn't care even though I told him about the
14 setting. Not that he didn't care. I shouldn't say that. He
15 cares; but he said, "I'm sorry. You're in trial with me."

16 So in abundance of caution -- also, the
17 arbitration I object to that because the intervention, in my
18 opinion, was not timely; and I know the Court's well aware. I
19 can give you a brief on that.

20 But the ruling from judge -- I mean from
21 Mr. Uzick, we never should have had arbitration because you
22 can't file for an intervention after there has been a
23 rendition. I know this Court is well aware. I'm objecting to
24 that ever being a part of it.

25 I think you were kind enough last time to say

1 you'd sever it out; but I couldn't do that at the point where
2 I'm in the middle of a trial, the Lombardino trial. However,
3 I'm asking you not enter anything as to attorney's fees. I do
4 object to the decree as drafted. I understand Mr. Uzick has
5 signed off on it, but at the least I'd ask you not enter the
6 decree. But if you enter the decree, I ask you to take out all
7 the attorney's fees awarded to Mr. Menger's previous lawyers
8 that did not do their job. They did not have appraisals.

9 I was cut off in the middle of my
10 cross-examination. They did not prove reasonable and necessary
11 fees. There is a tape recording. It's not a court reporter,
12 but there is a recording that will prove it. Mr. Uzick only
13 gave us an hour. It's not his fault. It's clearly the
14 parties' fault.

15 So I'm just asking that the intervention be
16 dismissed pursuant to the rules. I can give the Court a brief.
17 And I'm also asking if you enter the decree, I'm objecting to
18 it; but I understand the Court's frustration with this case
19 just as much as me. Just to remind everybody, I didn't get on
20 this case until December. I asked for it to be dismissed in
21 December.

22 The tragedy that's happened to the Menger
23 family, I appreciate it. It's not the wife or the husband's
24 fault. But, Judge, we're talking \$30 million of problems in
25 this case. This is a bad case and these lawyers that

1 represented Mr. Menger -- I'm not talking about Ms. Kamin.
2 She's done a fine job as she always does. I'm talking about
3 Michael Bynane and Carlos -- I don't know them because -- and
4 they testified that their attorney's fees are reasonable and
5 necessary.

6 Judge, in my career I've never heard since the
7 rendition of a Mediated Settlement Agreement and rendition from
8 your great court in September that they could file this, in
9 addition have over a hundred and fifty thousand dollars in
10 attorney's fees after a mediated agreement. They never did
11 appraisals.

12 MR. BYNANE: Your Honor, I object to this.

13 MS. VAN ORMAN: They did nothing to protect my
14 client, which is why I've informed them --

15 THE COURT: Overruled.

16 MS. VAN ORMAN: -- that a malpractice suit
17 will be filed. So whatever the Court needs to do, I understand
18 the frustration. I just am not trying to frustrate the Court,
19 but I'm only one person. And unfortunately Mr. Newman and I,
20 we get set. The judges -- I'm just in a bad thing. I tried to
21 get Underwood to help. I don't know if Judge Gilbert tried to
22 call you today, but I tried to tell him I'd come tomorrow late.
23 He told me I couldn't.

24 I've tried everything to accommodate. I know
25 the Court's frustration. I'm just asking what's fair to the

1 Menger family is my client should not be charged a dime for
2 those things as to the Mediated Agreement because they're not
3 timely. You can't intervene in January when a case has already
4 rendered. All I'm asking, Your Honor --

5 THE COURT: When was the arbitration finalized
6 with Mr. Uzick?

7 MS. VAN ORMAN: It's prior to --

8 THE COURT: Not intervention but the divorce
9 issues.

10 MS. VAN ORMAN: The original Mediated
11 Agreement, Your Honor, was finalized in June. It was rendered
12 by your associate judge in September. Nothing was done.
13 Nobody filed entries. Nobody did -- I don't know. I know Ms.
14 Kamin probably did. I know my client's former lawyers that got
15 awarded all these fees did not --

16 MR. BYNANE: That is wrong, Judge.

17 MS. VAN ORMAN: -- did not file anything to
18 enter the decree because you know your Court gives settings all
19 the time. And I know Ms. Kamin does her job, so I don't know
20 what the situation is. So when I came --

21 THE COURT: Okay. Slow down, Ms. Van Orman,
22 because I want to be sure that we get a good record.

23 MS. VAN ORMAN: That would be great. Thank
24 you. And I apologize. I'm trying. I'm running out --

25 THE COURT: I know you are, and I greatly

1 thank you for calling us. Okay. And, Mr. Bynane, you want to
2 explain why I should grant?

3 MR. BYNANE: Your Honor, this same objection
4 was raised in front of Mr. Uzick. He overruled it and
5 proceeded.

6 MS. VAN ORMAN: And I apologize. I really
7 can't hear. I'll try to go back in the courthouse.

8 THE COURT: Step up a little bit so we can be
9 sure --

10 MR. BYNANE: I'm so sorry, Judge.

11 THE COURT: -- everyone hears. If you will,
12 start over for me.

13 MR. BYNANE: Yes. Ms. Van Orman's objection
14 was raised in front of Mr. Uzick, and he rejected it. He
15 overruled the objection.

16 Second thing is the M.S.A. was proved up
17 September 29, and actually we filed a motion to enter on the
18 M.S.A. on June 10. But more to the point of Your Honor's
19 question, Judge Moren accepted the M.S.A. and approved it. He
20 did not render judgment in the case. The key as to when --

21 MS. VAN ORMAN: Yes, he did.

22 MR. BYNANE: -- intervention may be made, it
23 must be made before final judgment. There was no final
24 judgment. I have a case on it. There is only one in Texas
25 jurisprudence on it. It's a Dallas case. It's Bailey versus

1 Mason, 122 Southwest 3rd 894. I am happy to hand to the Court.

2 THE COURT: Hold on, Ms. Van Orman. Let him
3 finish stating that on the record, and then I'll allow you to
4 object.

5 MS. VAN ORMAN: Thank you, Judge.

6 MR. BYNANE: There is only one case that I was
7 able to find in Texas jurisprudence on the issue. It accords
8 with my position. There is no authority supporting Ms. Van
9 Orman's position whatsoever. Bailey versus Mason, 122
10 Southwest 3rd 894. I have a copy for the Court if you would
11 like to have that copy in hand, Judge.

12 THE COURT: All right. And did you have any
13 other objection now, Ms. Van Orman?

14 MS. VAN ORMAN: Yes, Your Honor. First of
15 all, again, I'm in a trial, issued a protective order
16 yesterday, was trying to get there today. I'm in trial still
17 right now. I'm sitting out. I'll take a picture if somebody
18 wants to see a picture. Montgomery County Courthouse.

19 So -- and that the objection would be he's
20 wrong on the law again. That's probably why he didn't get
21 appraisals for my client and in that time --

22 MR. BYNANE: Objection.

23 THE COURT: Can't hear you --

24 MR. BYNANE: Sidebar, Judge.

25 THE COURT: -- Ms. Van Orman. Make sure

1 you're talking into your phone.

2 MS. VAN ORMAN: I'm talking. The wind is
3 going in front of the courthouse. Maybe I have to go back in.
4 The other thing is, Your Honor, is as this Court's well aware
5 of the law, when he accepted and announced them divorced,
6 pronounced them divorced in September, in fact, Ms. Kamin, as
7 she should have, filed sanctions against these lawyers because
8 of their shady things because the setting was at 10:00. They
9 went down at 9:30, went behind Ms. Kamin's back. They filed
10 sanctions.

11 In fact, Ms. Menger has filed a grievance
12 against my client's --

13 MR. BYNANE: Objection to all this.

14 MS. VAN ORMAN: -- former lawyers.

15 MR. BYNANE: It's completely irrelevant.

16 MS. VAN ORMAN: And then in addition -- can I
17 finish please? In addition, Judge, you know -- the Court's
18 well aware of the law. Don't need to teach you because you
19 know it better than anyone -- entering of a decree is a
20 ministerial act. And we've been trying to do that.

21 And Ms. Kamin has been working with these
22 lawyers. I'm not trying to speak for her, but I'm sure she's
23 just as frustrated as Mr. Folger is. And these parties just
24 need closures in their life.

25 And I respect Mr. Uzick's rulings on the other

1 part of the case. I mean, you know, he's doing what he's
2 doing; but I don't believe he has any authority to do anything
3 to arbitrate any attorney's fees after the M.S.A. We didn't
4 agree to arbitrate. It's not timely. I objected on February
5 14th. Nobody made this argument on February 14th. And then I
6 objected again.

7 And I'm just asking the Court to follow the
8 law that we have in place that indicates that -- I'm back in
9 the courthouse -- that indicates that their intervention is not
10 timely and that they take-nothing judgment or sever it out and
11 let's have a trial on those issues, Judge, where I can have
12 more than an hour -- actually, more than 20 minutes to protect
13 my client's rights and Ms. Menger's rights as well.

14 THE COURT: Do you have anything additional,
15 Ms. Kamin?

16 MS. KAMIN: Your Honor, Ms. Menger really
17 isn't part of this argument; but I will clarify something for
18 the Court.

19 THE COURT: Yes, ma'am.

20 MS. KAMIN: Once the final judgment is
21 entered, then nothing else can be done to the order. The final
22 judgment has not been entered, and their property was
23 partitioned. Within the decree Mr. Menger was to pay all of
24 his attorney's fees, and Ms. Menger was to pay all of her
25 attorney's fees.

1 What this Court decides to do is up to this
2 Court; but just to get straight as far as the law is concerned,
3 there is two cases that I think Ms. Van Orman gave us
4 yesterday. But the difference in those two cases is that the
5 Court no longer had plenary power. The Court has plenary power
6 until the Court signs an order.

7 But, Judge, again, Ms. Menger doesn't have a
8 fight in this. She just wants the order entered, so whatever
9 this Court rules is fine.

10 MS. VAN ORMAN: May I respond?

11 MR. BYNANE: I do have another --

12 THE COURT: Yes, please, ma'am.

13 MS. VAN ORMAN: Judge, I did not give any
14 cases. Maybe she's confusing it. Maybe mister -- the other
15 two lawyers, I can't remember the names because they don't
16 regularly practice family law. I don't mean to be
17 disrespectful.

18 However, I can tell you that there was no
19 cases provided. I can do a brief to this Court for
20 reconsideration. I offered that to Mr. Uzick. He said no, and
21 I respect that. But I do believe he has no authority. Under
22 his Mediated Agreement the only thing he can do is do drafting
23 disputes.

24 There is nothing -- and, Ms. Kamin, I may be
25 wrong. Obviously I wasn't there for mediation. It's my

1 understanding he has no authority to go outside that. If he
2 does -- and there is some other issues, Judge. I don't know if
3 you know this, but my client did not sign the Mediated
4 Agreement at the same time. It's a bunch of issues.

5 But I'm respecting the Court because my client
6 wants this over with, to some extent. Ms. Menger did not file
7 the M.S.A., did not deposit money into Mr. Uzick's IOLTA like
8 she was supposed to, many violations of the order. We were
9 trying to let it go. But I can't let these attorneys' fees go
10 and I really can't let the \$30 million deficit on valuation,
11 which Ms. Kamin did her job and these lawyers didn't.

12 I want the Court to hear the testimony that
13 I'm entitled to put on to show that these lawyers did not do
14 their job. And they should be sued for malpractice.

15 MR. BYNANE: Objection.

16 THE COURT: Overruled.

17 MS. KAMIN: One more very small matter.

18 THE COURT: Yes, ma'am.

19 MS. KAMIN: On all -- and Ms. Van Orman may
20 not be aware of this, but all of the parties and their
21 attorneys signed off on a very broad arbitration agreement for
22 Mr. Uzick. And this Court ordered us back to arbitration on
23 those fees. But, again, I just wanted the record to be
24 straight because I know Ms. Van Orman wasn't part of that.

25 MS. VAN ORMAN: Thank you, Ms. Kamin.

1 MR. BYNANE: Judge --

2 MS. VAN ORMAN: And, Judge, we do not have a
3 copy of that, just like my client was not provided a copy of
4 Mr. Kemp's report, just like my client was not -- copy of
5 anything. My client has been -- I'd like -- if Tom Conner was
6 on this case, we wouldn't be here today. That's all I can say.
7 And I never -- I asked these lawyers in cross-examination what
8 a -- what the deed --

9 MR. BYNANE: Your Honor --

10 MS. VAN ORMAN: They didn't even know
11 anything. They're charging \$450 an hour, and they don't know
12 anything. But, Judge, the fees are not reasonable and
13 necessary. I'm asking to sever that out if the Court is going
14 to enter the decree and let me do my job as to put on a case.
15 And I'll do it quickly. I'll do it as soon as I'm out of this
16 trial. I'll come back from my son's spring break. I'll come
17 back -- my dad's in the hospital. That's how bad I think my
18 client -- and really Ms. Menger. She shouldn't have to be
19 there today because it had nothing to do with her, according to
20 Ms. Kamin.

21 She had to pay attorney's fees as to all
22 that, not the arbitration fees. But, Judge, there has to be
23 justice and sitting there saying that, you know, we're not --
24 I'm delaying it, I just got on this case in December. I've
25 done everything to move this case along. I asked to dismiss it

1 because I don't think it's fair to these parties but, you know,
2 I'm just asking that that be severed out. Let me have a real
3 trial on it. And I'll guarantee it they'll take nothing.

4 It's not Mr. Uzick's fault. He didn't -- he
5 ran out of time. He had to cut me off. And I don't think,
6 when I'm in an arbitration, you can cut me off in 20 minutes.

7 THE COURT: Okay. Thank you, Ms. Van Orman.
8 The Court hereby grants your divorce and enters your proposed
9 decree.

10 And with that, Ms. Van Orman, I'm going to let
11 you go and get back to your trial. Tell Judge Gilbert I said
12 "hello" and good luck on your matter.

13 MS. VAN ORMAN: Thank you, Judge.

14 THE COURT: Thank you, ma'am. Good-bye.

15 (PHONE DISCONNECTED)

16 MR. BYNANE: Judge, do you want to see the
17 case? This issue comes up. Ms. Kamin was right about plenary
18 power.

19 THE COURT: I'm finished.

20 MR. BYNANE: Thank you, Judge.

21 THE COURT: You-all are divorced. Your decree
22 is going to be signed today, and I wish everybody the best.
23 It's always nice to see you-all. Thank you.

24

25

(PROCEEDINGS CONCLUDED)

1 THE STATE OF TEXAS)
COUNTY OF HARRIS)

2

3

4 I, Clarisia R. Ramirez, Official Court Reporter in and for
5 the 310th District Court of Harris County, State of Texas, do
6 hereby certify that the above and foregoing contains a true and
7 correct transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the parties to
9 be included in this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred in open
11 court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 admitted, tendered in an offer of proof, or offered into
15 evidence.

16 I further certify that the total cost for the preparation
17 of this Reporter's Record is \$ 300.00 and was paid by Mary Van
18 Orman.

19 WITNESS MY OFFICIAL HAND this the 9th day of March, 2018.

20

21

Clarisia R. Ramirez

22

Clarisia R. Ramirez, Texas CSR 3862

Expiration Date: 12/31/2018

23

310th District Court

Official Court Reporter

24

201 Caroline, 15th floor

Houston, Texas 77002

25

281-772-8732

Clarisia R. Ramirez
Official Court Reporter