

NO. 2016-28606

FILED

Marilyn Burgess
District Clerk

MAY 10 2019

Time: _____
By: _____
Deputy

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IN THE INTEREST OF

PEYTON ALI DAVIS AND
MALEAH LYNN DAVIS

MINOR CHILDREN

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

308th JUDICIAL DISTRICT

AMENDED ORDER

The Court finds that its prior order on the restrictions of the use of information concerning this case was not sufficiently broad enough to apprise the media of the impropriety of the use of confidential information and records. Accordingly, the Court issues this Amended Order to clarify the restrictions.

This Court has a duty to preserve the right to a fair trial, to ensure compliance with the confidentiality requirements of Texas Family Code. The Court is also mindful of the First Amendment rights of the parties, counsel for the parties, the media, as well as the Open Courts Provision of the Texas Constitution. The Court is aware that it must balance these sometimes competing interests. The Court notes that the right to speak and publish does not carry with it the unrestrained right to gather information, and does not authorize the publication of information improperly or illegally gleaned from confidential court files. *See Zemel v. Rusk*, 85 S.Ct. 1271, 1285 (U.S. Conn. 1965); *Florida Star v. B.J.F.*, 491 U.S. 524, 534, 109 S.Ct. 2603, 2609, 105 L.Ed.2d 443 (1989).

This Court takes judicial notice of

- 1) the unusually emotional nature of the issues involved in this case;
- 2) the extensive media coverage (both local and national) this case has already generated; and
- 3) the prior *unauthorized* release or releases of certain, confidential information and records to the media.

The Court reminds the attorneys and advises the parties and all media of the strict confidentiality of the “files, reports, records, communications and working papers used or developed in providing [child welfare] services” and that such papers are “not subject to public release” and “may only be disclosed for purposes consistent” with Title 5 of the Texas Family Code. *See* TEX. GOV’T CODE §§ 261.201, 262.308 & 264.408; TEX. GOV’T CODE §§ 552.101 & 552.352.

The Court **FINDS** that the Texas Family Code only allows release of confidential materials to select individuals and does not permit disclosure or release of these materials to private individuals or unauthorized entities, including the media. Such a disclosure of the following confidential information to unauthorized recipients and entities, including the media, is illegal and improper:

- (1) Documents filed in this cause since July 12, 2016;
- (2) Documents admitted into evidence at any hearings held since July 12, 2016;
- (3) The content or substance of any files, reports, records, communications and working papers used or developed in providing services to these children or these parties;
- (4) The content or substance of any expert reports, summaries, medical records, counseling records, test results, evaluations or other documents produced as a result of this case or filed in this cause;
- (5) The content or substance of any petition, pleading, answer, affidavit, motion or other legal document filed by or on behalf of a party, potential party or witness; and/or
- (6) The content or substance of any temporary order, temporary restraining order, temporary injunction, family plan of service, or any other order issued in this cause.

The Court **FINDS** that if release of confidential information continues, the pre-trial publicity will interfere with the parties’ right to a fair trial and will, in violation of

the law, disclose sensitive and confidential information about the children and the parties.

The Court **FINDS** that it has all powers necessary for the exercise of its jurisdiction and enforcement of its lawful orders, including the authority to issue writs and orders necessary or proper in aid of its jurisdiction. *See* TEX. GOV'T CODE §21.001(a).

The Court **FINDS** has inherent power to sanction attorneys and parties to lawsuits for conduct that obstructs and intentionally interferes with the court's ability to administer its docket and with core functions of the judiciary. These core functions include, but are not limited to, providing parties a fair trial, conducting trials in a dignified and expeditious manner, and entering and enforcing orders and final judgments.

The Court **FINDS** that the release of this information has interfered with the Court's core functions.

The Court further **FINDS** that less restrictive measures would not be effective to stem the release of confidential information.

Accordingly, in its sound discretion and in light of the relevant facts and circumstances of this particular case, the Court **ORDERS** that prior to and during the trial of this case:

1. All attorneys involved in this case shall strictly adhere to the letter and spirit of the provisions of the Texas Code of Professional Responsibility governing comments to the media. Specifically, all attorneys shall refrain from making "extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding." TEX. DISCIPLINARY R. PROF'L CONDUCT 3.07, *reprinted in* TEX. GOV'T CODE, tit. 2, subtit. G app. A (TEX. STATE BAR R. art 10 §9).
2. All attorneys, their staffs, parties and witnesses involved in this case shall not release, provide or discuss with the media:

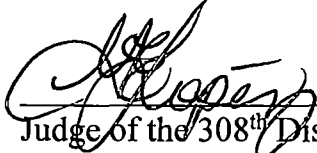
- a. The content or substance of the files, reports, records, communications and working papers used or developed in providing services to these children or these parties;
 - b. The content or substance of any petition, pleading, answer, motion or other legal document filed by or on behalf of a party, potential party or witness;
 - c. The content or substance of any temporary order, temporary restraining order, temporary injunction, family plan of service, or any other order issued in this cause;
 - d. The content or substance of any expert reports, summaries, test results, evaluations or other documents produced as a result of this case or filed in this cause; and/or
 - e. Any other documents filed in this cause after July 12, 2016.
3. No person, including the parties, shall distribute, publish, continue to publish, broadcast, or continue to broadcast in any fashion:
- a. The content or substance of any files, reports, records, communications and working papers used or developed in providing services to these children or these parties;
 - b. The content or substance of any petition, pleading, answer, motion or other legal document filed by or on behalf of a party, potential party or witness;
 - c. The content or substance of any temporary order, temporary restraining order, temporary injunction, family plan of service, or any other order issued in this cause;
 - d. The content or substance of any expert reports, summaries, test results, evaluations or other documents produced as a result of this case or filed in this cause; and/or
 - e. Any other documents filed in this cause after July 12, 2016.
4. Any person who has notice of this Order and violates its provisions shall be subject to sanctions pursuant to its inherent powers, including contempt. *See* TEX. GOV'T CODE §21.001.

5. This Order shall be posted on Harris County's Justex website and made available to all media. Once posted, all persons employed by a media organization, company or entity shall be presumed to have notice of all the provisions of this Order.
6. Each media organization, company or entity shall be responsible for ensuring that its employees have notice of all the provisions of this Order.
7. This Order shall not be interpreted to prohibit attorneys from communicating with the parties in order to prepare for trial, nor shall it be interpreted to prohibit the third parties from attending any live sessions before the Court or from publishing any information they have already obtained or may obtain in the future. The term "third parties" includes any person or organization, not a party, not an attorney for a party, or not a person employed by the parties or attorneys for the parties for the purpose of assisting in this litigation.
8. This Order does not prohibit any individual from stating without elaboration or characterization
 - a. The general nature of an allegation or defense; or
 - b. The scheduling or proceedings.

This Court shall entertain reasonable requests, including those from the media, to modify this Order as the need arises.

The Court **ORDERS** the Harris County District Clerk to serve the attorneys of record and any pro se parties with a copy of this Order.

SIGNED May 10, 2019.



Judge of the 308th District Court
Harris County, Texas