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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)
)
Plaintiff,) CVB No. OR45-1208446
)
vs.) October 13, 2010
)
DANIEL A. BERNATH,) Portland, Oregon
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PAUL PAPAK
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES

FOR THE PLAINTIFF: Fred Weinhouse
Amy Geerhart
Attorneys at Law

FOR THE DEFENDANT: Jason Short
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Witnesses: (For the Defense) Direct Cross Redirect

Michelle Bondurant

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1 (October 13, 2010)

2 **EXCERPT OF PROCEEDINGS**

3 (Open court; defendant present:)

4 THE COURT: Does the defense intend to call any
5 witnesses?

6 MR. SHORT: We do, Your Honor. We have two
7 witnesses we would like to call.

8 THE COURT: Call the first one.

9 MR. SHORT: Michelle Bondurant.

10 THE COURT: Ms. Bondurant, if you would come
11 forward here please. Raise your right hand.

12 (The witness was duly sworn.)

13 THE COURT: State your full name for the record
14 and spell your last name.

15 THE WITNESS: Michelle Lynne Bondurant.

16 B-O-N-D-U-R-A-N-T.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MR. SHORT:

20 Q Ms. Bondurant, thank you for being here. A few
21 questions. How do you know Mr. Bernath?

22 A I only know Mr. Bernath over the phone.

23 Q So you don't know him very much at all; is that
24 right?

25 A Correct. I don't know him at all.

1 Q How do you know Administrative Law Judge Hyatt?

2 A He was a judge in my husband's disability case. We
3 had eight hearings before him.

4 THE COURT: Did you say --

5 THE WITNESS: Eight, yes.

6 BY MR. SHORT:

7 Q You had eight hearings in front of Judge Hyatt?

8 A Correct.

9 Q How long would you estimate each of those hearings
10 took place? Or how long did they take place for? How
11 many minutes, if you can estimate?

12 A It depended on the content of the hearing. It could
13 last anywhere from 15 minutes to 30.

14 Q Were you ever present in those hearings with your
15 husband?

16 A Yes.

17 Q How many of those eight would you say you were with
18 your husband?

19 A All of them.

20 Q Do you have a clear recollection of what Judge Hyatt
21 said in some of those hearings?

22 A Yes.

23 Q Do you have any doubt in your mind as to certain
24 statements that you are prepared to testify about today
25 that he said?

1 A No, I have no doubt.

2 Q The ethnicity of your husband, what is that?

3 A He is African-American.

4 Q How long have you been married to him?

5 A 23 years.

6 Q And what statements did Administrative Law Judge
7 Hyatt say with regard to his opinion on interracial
8 marriages?

9 MR. WEINHOUSE: Your Honor, I object. It is
10 irrelevant. Judge Hyatt has testified that he didn't know
11 about the defendant's marriage. So how is this relevant?

12 THE COURT: Overruled. Go ahead.

13 THE WITNESS: Could you repeat your question.

14 BY MR. SHORT:

15 Q What, if any, do you remember Administrative Law
16 Judge Hyatt telling you his opinion was about interracial
17 marriages?

18 A Yes. The first time I met Mr. Hyatt during my
19 husband's first Social Security hearing, when I walked
20 into the courtroom, Mr. Hyatt -- or Judge Hyatt -- simply
21 stated that he did not approve of interracial marriages.

22 Q Do you know why he may have said that or what was the
23 context of that statement?

24 A He didn't like the fact that I was white. He claimed
25 my husband had lied to him, because my husband did not

1 initially tell Mr. Hyatt -- or Judge Hyatt -- that I was
2 white before I walked in the courtroom.

3 Q Were there any other statements that he made that
4 caused you some concern?

5 A Yes.

6 Q What is that?

7 A He called me white trash off the record for being
8 married to a black man. He made several remarks about
9 myself, my husband. He made one remark about our
10 children. Yes, Mr. Hyatt was not kind. He was not kind
11 at all.

12 Q Did he ever get upset? How was his demeanor?

13 A Angry.

14 Q When you say "angry," what do you mean?

15 A He would throw pencils at his desk -- I mean, not at
16 anybody -- but throw them down at his desk. He would turn
17 red in the face. A couple of times he did yell, but he
18 was not a nice person.

19 Q How would you classify -- would you say he had a
20 temper? During these eight hearings, is there a pattern
21 as to how he behaved?

22 A Towards us, yes. He was -- he showed he did not like
23 us at all, and he showed he did not like us being
24 interracial. He did not like me appearing at any of the
25 hearings. He did not -- he didn't want to basically hear

1 anything that we had to say. He thought my husband was a
2 lazy black man, and he claimed that he was never going to
3 allow -- he was never going to allow Thomas to get
4 disability, whether Thomas was disabled or not, because he
5 didn't like the fact that we were interracial.

6 Q How sure are you about them?

7 A I'm positive. I was there when he said them.

8 MR. SHORT: Those are all the questions I have.

9 CROSS-EXAMINATION

10 BY MR. WEINHOUSE:

11 Q Ms. Bondurant, how are you employed?

12 A No.

13 Q Are you employed?

14 A No.

15 Q Is your husband employed?

16 A Not any more.

17 Q Did he lose all eight hearings before Judge Hyatt?

18 A Yes, he did.

19 Q So he is rather mad about Judge Hyatt?

20 A Actually, no. He wasn't -- he wasn't mad -- he
21 wasn't mad particularly at Judge Hyatt.

22 Q Are you upset at Judge Hyatt for the ruling against
23 your husband eight times in a row?

24 A No.

25 Q How do you get by financially?

1 A Oh, Thomas was awarded his Social Security. Judge
2 Hyatt was recused and another judge was put in his place.

3 Q So this happened in a hearing room in -- in the
4 Social Security courtroom?

5 A Yes.

6 Q And who else is in the courtroom? Would your
7 husband's lawyer have been in the courtroom?

8 A No. The first couple of hearings we didn't have a
9 lawyer.

10 Q Was there a vocational expert?

11 A Yes.

12 Q Was there a court clerk or bailiff?

13 A Yes.

14 Q And this was said -- was the judge sitting up on the
15 bench like this judge is here?

16 A No.

17 Q Where was the judge?

18 A We were sitting at a table, just a regular
19 rectangular table.

20 Q And these hearings are recorded, are they not?

21 A Yes.

22 Q So there were eight hearings where this is mentioned?

23 A Some of it was off the record.

24 Q Do you have any of the recordings for us to hear?

25 A No. Social Security Administration told me I was not

1 entitled to a copy of any of the recordings.

2 Q Would you be surprised to learn that Judge Hyatt's
3 son is probably going to end up getting married to a
4 Korean lady?

5 A No.

6 Q Well, that's interracial.

7 A And?

8 Q You said he has a problem with interracial couples.

9 A He told me he had a problem with interracial couples.
10 What he does outside of what he told me in the courtroom,
11 I don't know.

12 Q Wouldn't you think he would have a problem if his own
13 son was trying to do that?

14 A That's not for me to say. All I can tell you is what
15 he told me.

16 Q Did you have a lawyer during any of the hearings?

17 A No.

18 Q How are you here today? Who called you and asked you
19 to be here today?

20 THE WITNESS: Are they the defense?

21 THE COURT: They are.

22 THE WITNESS: The defense.

23 BY MR. WEINHOUSE:

24 Q Was it Mr. Bernath who called you first?

25 MR. SHORT: Objection, Your Honor.

1 THE COURT: Overruled.

2 BY MR. WEINHOUSE:

3 Q How is it the defense learned about your statements
4 about Judge Hyatt? How do we know about this?

5 A I filed a complaint with the Social Security
6 Administration on several different occasion against
7 Judge Hyatt for the remarks he had made. I filed a
8 complaint with the Oregon State Bar against Judge Hyatt
9 also. That's all I can tell you on how I was contacted.
10 I just got a phone call.

11 Q And those were dropped, weren't they?

12 A Actually, I do not know. I never received anything
13 after the complaint from -- after we filed the complaint
14 with the Social Security Administration. The last hearing
15 that we had, Judge Hyatt was recused from that hearing. I
16 don't know if that was based on the complaint we filed
17 against him or not. I don't know. The Oregon State Bar
18 said because I did not have transcripts of the hearings,
19 that it was basically he said/she said. So at that point
20 they were not going to do anything about it.

21 Q Did Mr. Bernath call you and ask you to be here today
22 or ask you if you had any information about the racial
23 problems he says -- you say that you experienced? Have
24 you talked to Mr. Bernath about this?

25 A Not for some time.

1 Q Do you know who Mr. Bernath is?

2 A I didn't know who Mr. Bernath was until about the
3 first time I ever talked to him about any of this is about
4 two years ago when I got a call out of the blue.

5 Q Did he call you?

6 A Out of the blue, yes.

7 Q Did he ask you about your cases?

8 A Yes, he did.

9 Q Did he ask you what race your husband was?

10 A Actually, I don't remember. We mostly talked about
11 the hearings. I don't specifically remember if he
12 actually asked: Is Thomas black or is Thomas white?

13 Q Do you know how he called you or how he got your name
14 and phone number?

15 A He said he got my name and phone number off the
16 Oregon State Bar where I filed a complaint against
17 Judge Hyatt.

18 Q And you were not happy with Judge Hyatt?

19 A In the sense of the names that were called, no.

20 Q In the sense of ruling against your husband eight
21 times in a row?

22 A Actually, no, because people told us that it was a
23 long process and that, you know, you would probably get
24 denial after denial. So it wasn't -- we had no
25 expectations on what was going to happen because Thomas

1 had never been disabled before. So it was a process we
2 never had to go through.

3 Q Were there guards in the hearing room when this
4 happened?

5 A No.

6 Q No guards?

7 A Not that I can remember. I really couldn't remember,
8 to tell you the truth, if there were any guards.

9 Q Aren't there guards in every hearing that Mr. Bernath
10 is part of?

11 MR. SHORT: Objection, Your Honor. I don't
12 think there has been any evidence --

13 BY MR. WEINHOUSE:

14 Q Have you met with Mr. Bernath in person?

15 A No.

16 Q Were there other people who overheard this?

17 A The vocational expert who was there, the court
18 reporter that was there and then Thomas and myself. Those
19 were the four people besides Judge Hyatt and myself.

20 Q These comments should have been on the tape of some
21 of these hearings?

22 A Yes.

23 MR. WEINHOUSE: Thank you. That's all I have.

24 REDIRECT EXAMINATION

25 BY MR. SHORT:

1 Q Ms. Bondurant, you did request a copy of the tapes;
2 is that right?

3 A Yes, I did.

4 Q You were denied getting those?

5 A Yes, I was.

6 Q And your husband, he doesn't -- you said he doesn't
7 have any ill feelings or ill-will towards Judge Hyatt?

8 A No.

9 Q With regards to his health, it is not very good; is
10 that right?

11 A No, it is not.

12 Q What is it about your husband's health?

13 A He has uncontrolled epilepsy. They have been trying
14 to control it for ten years with medication and they
15 can't.

16 Q Is there any diagnosis about his length of how long
17 he has to live?

18 A He was hospitalized recently in May. He was in ICU
19 for five days, and they told me that I needed to go home
20 and prepare our children because he was going to die.

21 MR. SHORT: Sorry to hear that. No further
22 questions.

23 (End of requested excerpt of proceedings.)
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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature is not certified.

/s/ Dennis W. Apodaca
DENNIS W. APODACA, RMR, FCRR, RPR
Official Court Reporter

October 15, 2010
DATE