

Court Transcript Summary

In re The Matter of: Ioan Gruffudd v. Alice Evans (Case No. 21STFL2019)

Ex Parte Hearing on Stipulation and Order for Appointment and Payment for Child Custody Evaluation

August 17, 2023 – Los Angeles County Superior Court

Hon. Josh Freeman Stinn, Superior Court Judge

Appearances:

Anne Kiley ("Anne"), representing Petitioner Ioan Gruffudd ("Ioan")

Bernal Ojeda ("Bernal") representing Respondent Alice Evans ("Alice")

Elise Greenberg ("Ms. Greenberg"), representing minor children of the marriage: Ella Evans Griffith ("Ella") and Elsie Evans Griffith ("Elsie")

The judge, Hon. Josh Freeman Stinn, calls the case and the hearing begins. The attorneys make their appearances. The attorneys are the only ones present; Ioan, Alice, Ella, and Elsie are not present in court.

The judge states that there are two items on the agenda that day: (i) to deal with Ioan's request for a custody evaluation; and (ii) to see if the request for a custody evaluation changes the previously set date of February 7, 2024 for the oral argument on the RFO (request for order) that was pending for interim visits to the children by Ioan pending trial. The judge said that dates will be set for the three-day bifurcated trial on this day as well.

Judge: "Let's start with the big enchilada, which is the custody evaluation." The judge states that he has read through all the court filings, but that he wants to allow Anne the opportunity to argue on behalf of Ioan, Bernal the opportunity to respond on behalf of Alice, and Ms. Greenberg the opportunity to advocate on behalf of the minor children.

Anne Kiley begins, stating that she will keep her argument brief and not repeat anything that is already in the filed court papers. She says that while the children have an individual therapist as well as a conjoint therapist in place, neither of them have the ability to make custody or visitation recommendations to the Court.

Anne: "Mr. Gruffudd loves his children very, very much. Does not know what is in their best interest in this extremely complicated situation. And he is seeking the recommendation, the analysis assessment of a mental health professional and the recommendation as to the best interest of the children, taking into consideration some of the most complex facts and family dynamic situations that I've certainly ever seen in a custody case."

Anne states that they are seeking the appointment of Dr. Dupee as child custody evaluator because she is a psychiatrist and has the ability to make psychiatric assessments. One of the children's therapists

previously recommended a psychiatric assessment of Ella. loan believes that there are complications with Alice that will be assisted by having a psychiatrist as the child custody evaluator. Further, there are not a lot of people doing child custody evaluations, and those that are, are booked up. Dr. Dupee is available to start in October if she is appointed now. Anne is concerned that Ms. Greenberg's suggestion to "wait a week and submit names" is going to further delay the process of finding an evaluator, and she doesn't know anyone that can start sooner than Dr. Dupee. Anne states that Dr. Dupee is experienced, and excellent in that her psychiatric background would be of assistance in this particular matter. With that, Anne ends her argument.

The judge turns to Bernal Ojeda to make his argument.

Bernal states that Alice believed that "with a little bit more time and the children now with their therapist that it might be prudent to wait on child custody evaluation. It is expensive. It's going to take a long time. If there is a concern of serious emotional harm to the children, I think that will be borne out fairly quickly." Bernal asks that he be able to provide to the court a list of at least 3 names of potential child custody evaluators by Monday. With that, Bernal ends his statement to the court.

The judge says his understanding is that Bernal originally recommended Dr. Dupee for one of the children, and asks Bernal, "what is the hangup or the objection to Dr. Dupee being the evaluator. If I'm correct in my understanding that at one point, you were advocating for Dr. Dupee for, I believe, either conjoint or individual therapy but not for the custody evaluation so I guess where's the line here? Why would she be qualified for task A but not for task B?"

Bernal states: "Well, your Honor, I think that my client was okay in terms of therapy. But for whatever reason—and I don't know whether she's done some research on Dr. Dupee and now she doesn't feel comfortable that Dr. Dupee be the custody evaluator."

Judge: "Okay. Fair enough. So I gleaned from your two emerging arguments: number one, mom, Respondent, does not think the custody evaluation is warranted. But if an evaluation is to take place for whatever reason, which has not been articulated to the Court, she's not particularly fond of the idea of it being Dr. Dupee. Is that the two takeaways?" Bernal answers in the affirmative.

The judge turns to Elise Greenberg.

Ms. Greenberg states that, unless the Court has changed its positive inclination to order the evaluation in general, that she won't speak to that point since she doesn't want to waste anyone's time.

The judge states that the parties are to assume for the sake of argument that the Court is positively inclined toward having an evaluation done. He asks them: what, if anything, do they want him to know about who ought to do it and, if so, why and what the process ought to be?

Anne Kiley states that her concern is that if there's not some sort of participation or suggestion by Alice and her attorney that there won't be a buy-in. "There might not be a buy-in anyway." And on behalf of loan, she thought it would be helpful if there would be 48 hours by which a name of a child custody evaluator could be supplied as well as their availability, so narrowing it down to evaluators who could start by October or sooner, if the court is inclined to give a few more days for some names of child custody evaluators to be provided.

The judge directs a question to Ms. Greenberg (but states that Anne or Bernal can weigh in as well): If Alice “is resistant to an evaluation being done, period, I don’t understand how we’re going to necessarily get more “buy-in” with the selection of three different names.” The judge states that if Alice provided a name, that there may be perhaps less resistance, but the bigger hurdle is that if Alice doesn’t want an evaluation, his sense is that the person opposed to an evaluation would oppose it no matter what, and that more delay or the selection of 3 names doesn’t give a lot better information and it doesn’t really solve the problem, which is that “mom, fundamentally, doesn’t believe an evaluation is necessary.”

Ms. Greenberg states that she is comfortable with the judge making a decision on the child custody evaluator that day. Ms. Greenberg states that “my concern is that we get something done because the therapists, who haven’t started really working in earnest with this family yet, will not be able to make recommendations, will not be able to give an analysis and provide an expert opinion. Unlike other cases, where there’s tons of people involved who can provide that evidence, that doesn’t exist in this case. So I urge the Court to order the evaluation and let’s get it done.”

The judge asks if Anne Kiley has anything further. She says no.

The judge rules. “So what the Court is going to do, the Court does believe that this case does warrant the appointment of a custody evaluator. The Court is clearly familiar with the case, clearly familiar with the allegations. It is apparent, abundantly, for whatever reason in part of the -- I believe, the analysis to help inform the Court as to what has happened, you know, most importantly through the -- you know, the perspective of the girls to cause this estrangement. We need to -- we need to get to the bottom of it, so that ultimately when we do make orders in the long run, that they are informed. These girls are clearly estranged from dad. Again, I’m not prepared to say exactly why or what the emanating source is. You know, the least of which or the most recent of which example is the eldest of the two children seeking a domestic violence restraining order against her father, which, again, foretells estrangement. It doesn’t mean, you know, that it was, you know, bad faith or anything like that. It just means that there’s clearly a deep rupture in the relationship and we need to figure out what the source of that is and most importantly figure out how we can make informed custody orders going forward.”

“So the Court does believe that there is enough allegations of estrangement, enough allegations of alienation that we need to have a more wholesome understanding. So I am going to order the appointment of Dr. Dupee. I don’t believe in letting the perfect be the -- I mean, the good being the enemy of the perfect or however you say it correctly. I want progress and I want it to start sooner rather than later. If Dr. Dupee is available, I think that that makes a lot of sense. I am going to order the fees paid from the blocked account that we have been discussing in earlier hearings subject to reallocation.” The judge states that these orders are being made pursuant to Family Code 3111, Evidence Code 730, and California Rules of Court 5.220.

[EDITOR’S NOTE: Family Code 3111 refers to the authority granted under the law to courts to order a custody evaluation if it believes that doing so is in the best interests of the minor child. Evidence Code 730 refers to the court’s authority to appoint an expert to give an unbiased, objective evaluation of a matter for which an expert opinion will help the Court. This allows the court to appoint an expert to investigate, report, and testify about issues relevant to the case. California Rule of Court 5.220 refers to the rules and regulations surrounding the job of a child custody evaluator and what he or she is expected to do.]

The judge asks for a Sanchez waiver and Anne, Bernal, and Ms. Greenberg agree.

[EDITOR'S NOTE: A Sanchez waiver means that the parties all agree that the child custody evaluator's reports may be admitted into evidence without foundation (establishing qualifications of a witness or authenticity of evidence) and without objection, subject to cross-examination of the child custody evaluator.]

The judge then turns to the next issue.

The judge asks what else needs to be discussed before setting the court dates. He asks what the time estimate is for Dr. Dupee's evaluation, and if the parties are still thinking 3 days is a good estimate for the actual hearing itself. The judge states that he is going to hear from Anne Kiley first, then the other two lawyers, because he knows Anne did some research in terms of Dr. Dupee's availability and how long the evaluation might take.

Anne agrees that the hearing should take 3 days or less, perhaps even 2 days, based on the stipulation that Dr. Dupee's report will be received into evidence (see the Sanchez waiver above). Anne states that Dr. Dupee said that she could start the child custody evaluation in October and it could take approximately 3 months. Anne states that, out of an abundance of caution, they should look at trial dates at the end of February 2024 and she would agree to a 2-day trial if Bernal and Ms. Greenberg did as well.

Bernal agrees to a 2-day trial. Ms. Greenberg asks if a two-day hearing means that they stay with this department. The judge replies that "Two days means you're stuck with me. Three or more days means you get to find another judge, a lot more likely than not, to hear it because it's long cause. So this will be an incredibly interesting answer. My ears are veiled. I won't take offense one way or the other. I'm joking with you."

Ms. Greenberg: "You know that I love you so this is more of a scheduling issue. So when would the Court have two days for custody trial available?"

The court clerk responds that the 2-day hearing would be broken into 4 afternoons because they cannot give a full day of arguments because of other court cases. The 4 afternoons would be on consecutive weeks at the end of February and early March 2024.

Ms. Greenberg asks Anne and Bernal if they are still okay with a 2-day trial, based on this information. Anne says yes and that she thinks there is a lot of efficiency in keeping the case in the same court. Bernal says that he agrees with Anne.

The court clerk says that they are going to set the 4 afternoons on that day, and 30 days prior, they will set a status conference on the evaluation to make sure everything is done and all parties have a copy of it.

Judge: "Okay. So you all belong to me. Meaning, I'm going to keep the hearing. And we're going to nail down four afternoons in late February early March. And we'll get those to you in just a few moments. And we'll also schedule a status conference as [the court clerk] said probably a month before that just to make sure we're all set. Again, I renew my offer, I'm happy to also have case management calls as we get a little bit closer to make sure that, you know, we have all the orders that we need for purposes of, you know, trial briefs, witness list, exhibit list, exchange. We can take care of all that, as we get a little

bit closer but that would be my intent so that when we hit the ground running, we are really efficient. We've got a game plan and we've got a script. And all we have to do is then try the facts and apply them to the law and get you guys a decision."

Bernal: "Your Honor, I don't mean to interrupt, but didn't we have a February 7th —"

Court Clerk: "Yeah, no."

Bernal: "-- date."

Court Clerk: "That's what I was going to ask you, so now that we're doing this evidentiary hearing, are we vacating the initial one afternoon for the February 7th date?"

Bernal: "Could we keep that as a trial readiness and then see about the status of the report from Dr. Dupee and see —"

Court Clerk: "Well, no. We can vacate the hearing itself. I don't mind setting the -- a status for that same date, that's fine. But, I mean, for what it's currently set for which is an afternoon on that hearing, do the parties stipulate to vacate it now that we're going to be setting the four afternoons?"

Ms. Greenberg asks to be heard, as does Anne Kiley. The judge agrees.

Anne states that she doesn't have the authority to vacate a hearing on loan's request for interim custody and visitation orders, since loan is not present in court. She is concerned that loan is not seeing the children due to these series of events, and would hope that they could get to a place where there would be an agreement for loan to see the children. But she is concerned about not having a date in order for the Court to make orders absent agreements. Anne would like to keep the date on calendar so they have "the opportunity for a court date absent the ability to reach an agreement to address this very difficult interim situation pending trial."

The judge asks if the date should still be kept based on the fact that the trial will commence within 30 days from the February 7 date, and there is not a big likelihood of the court making orders on February 7th if the court knows it is going to make further orders in early March.

Anne says that they would not proceed on February 7, but things do happen and people get sick, "just like we were to be in trial in July and minor's counsel came in and now it's several months later. So...that's my concern with not having a date before the court to address—and I want to be efficient. I'm very mindful of the cost of the proceedings as well."

The judge says that the February 7 date is not to be vacated. "We keep it but we all have a mental note in our head that if things are going according to the schedule we anticipate, we're unlikely to do anything tectonic on February 7th. That's kind of what I think is the practical harmonization that preserves your client's concern, but we're also being practical in setting expectations." Anne, Bernal, and Ms. Greenberg all agree to this.

The court clerk asks if that February 7 date should also be the status conference for Dr. Dupee's report. Anne, Bernal, and Ms. Greenberg all agree.

Judge: "See Mr. Ojeda how smart you are. You floated an idea and by the time we got around to a decision, you had persuaded all of us that your suggestion was our suggestion, that was brilliant. Okay."

The court clerk asks if someone can email the court a week before the February 7 date in order to confirm that there will be no substantive hearing on that date and that the date is just for the status conference on Dr. Dupee's report. Anne says she will do that.

The clerk sets each afternoon on the court calendar after getting confirmation from Anne, Bernal, and Ms. Greenberg that each date works for their calendar.

First Afternoon – February 29, 2024

Second Afternoon – March 6, 2024

Third Afternoon – March 7, 2024

Fourth Afternoon – March 13, 2024

Anne, Bernal, and Ms. Greenberg all waive notice for those dates.

The judge asks Anne Kiley to prepare the court order with regard to the order for Dr. Dupee, the source of the payment being the blocked account, and the trial readiness conference on February 7, 2024, as well as the four trial dates, 2/29, 3/6, 3/7, and 3/13.

The judge states that he is not ending the hearing because there is something else he wants to discuss—the allegation that Alice changed Elsie's school.

Judge: "The only other thing on my agenda that I wanted to ask about is, I read, I believe, in dad's reply something to suggest that the -- that mom was alleged to have changed the grade school for the younger child despite the Court's orders in July, is that -- did I read that right?"

Anne: "I believe, your Honor, there were some issues about signing up for school. And that she did sign them both up for school in Beverly Hills. He had his concerns because he's got his concerns that she won't remain in the Beverly Hills school district, however, I know nothing more than what is in his reply. And I -- you know, I'm certainly aware that from respondent's standpoint, it's the closest school and she intends to stay in the area. His concern was for not staying in the area and I think that he would defer to whatever knowledge that minors' counsel has."

Judge: "Okay. I thought I read a very clear statement that said notwithstanding the court's orders, mom changed school of the younger child but maybe I'm wrong. I thought I read that."

Anne: "Well, the Court said that the minor child is to go to Third Street absent agreement of the parties. I think what he's saying is, I didn't expressly agree to her staying in Beverly Hills or going -- changing the Beverly Hills school because he had conditions upon it that were met in his opinion as it relates to her ability to remain within the district given that her apartment is up and he looked at her income and expense declaration and it made no sense based upon her state of expenses and income. So the Gruffudds remaining in Beverly Hills is of extreme concern to the Petitioner which is why it made sense to him that she would remain in the school she was in rather than perhaps having to move mid-year."

The judge thanks Ms. Kiley for giving him context, and says that he has nothing else on his agenda, unless anyone has anything further.

Anne states that she and Bernal emailed back and forth that they were concerned about the media, and that there was a Daily Mail article that "essentially quoted from a lot of the custody issues." She is

concerned about that issue going forward, particularly with the custody evaluation. Anne asks the judge if the court would entertain an RFO for sealing the custody portion of the case, or if she needs to file an RFO to seal anything related to the custody case.

Judge: "My general philosophy, unless somebody is going to tell me that it's wrong, is that I don't like to make orders that aren't -- I call it on the "menu" in other words, fully noticed. But if everybody is bought in and fine with it, then I don't think we offend any kind of due process if people agree. And I'm happy to make orders that are consistent with stipulations. So that's my general philosophy, so I'm not hostile unless there's some sort of disagreement about that issue."

Anne: "So, your Honor, not as Petitioner's counsel. Because petitioner does stipulate to and wishes to seal the proceedings, as it relates to custody -- the custody orders and the pleadings on custody. But as an officer of the court, I believe that the California Rules of Court are very clear that no aspect of any case can be sealed based upon stipulation of the parties."

[EDITOR'S NOTE: All attorneys in California are considered 'officers of the court' and are held to high ethical standards.]

The judge states that he would have to make findings. Anne states that there would have to be a noticed motion to seal the custody aspect, so the press has an opportunity to come and oppose the motion, if they desire to do so. The judge agrees.

The judge asks Ms. Greenberg to file an ex parte motion to seal the custody proceedings. The court will set it on shortened time so there will be a properly noticed hearing, and then anyone that wants to come in and argue why those aspects of the case should be sealed can do so.

Anne states that she will work with the attorneys to make it a joint ex parte motion so that no one has to file extra pleadings and incur costs.

The judge asks if there is anything further. Nothing being heard, the judge adjourns the hearing at 9:51 a.m.
