

P R O C E E D I N G S

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(The court reporter was sworn.)

MS. SINCLAIR: Good morning.

THE COURT: Good morning. Ms. Glenney,  
if you can just briefly tell me where we are  
today.

MS. GLENNEY: I certainly can. We are  
finishing up our side of the case, Your Honor.

THE COURT: Okay.

MS. GLENNEY: I anticipate having a  
couple of witnesses.

THE COURT: All right.

MS. GLENNEY: I don't think there are any  
preliminary matters. Did you want to raise -- did  
you have an issue you wanted to raise?

MR. KOEHLER: Sandra, are you speaking  
about --

MS. GLENNEY: The expert.

MR. KOEHLER: No, I'm --

MS. GLENNEY: Okay. Okay.

MR. KOEHLER: I think there is -- there

1 may be -- Ms. Glenney and I spoke about trying to  
2 separate dispositional testimony from adjudication  
3 testimony.

4 THE COURT: Okay.

5 MR. KOEHLER: We just ask that that be --  
6 any dispositional testimony be placed after  
7 there's -- and if there's an adjudication finding  
8 that there be sufficient evidence on that.

9 So we just ask that that be -- I believe  
10 they have one dispositional witness that they had  
11 planned on. And that's --

12 MS. GLENNEY: We have Dr. Lindahl here.

13 THE COURT: Okay.

14 MS. GLENNEY: And she's been called  
15 because Your Honor set the matter of visitation on  
16 for further review today respective to  
17 recommendations that would be made as to whether  
18 visitation should be reinstated.

19 Dr. Lindahl is prepared to testify to  
20 that. And we would be calling her for those  
21 purposes. However, I -- you know, I don't know  
22 what the Court wants to do in terms of taking her

1 out of turn or not.

2 MR. KOEHLER: And it would be my position  
3 that that issue isn't even ripe right now. If  
4 this protective order is dismissed at the end of  
5 this hearing, I don't think there would be any  
6 question about visitation.

7 It sounds to me like that would be a  
8 dispositional evidence aspect. And I would just  
9 ask that that be placed in the appropriate time  
10 which would be after this hearing.

11 THE COURT: Okay. Well, I certainly  
12 can't hold the doctor here all day --

13 MR. KOEHLER: I understand that.

14 THE COURT: -- until we get to -- to that  
15 part.

16 MR. BYRNES: Your Honor, I may be able to  
17 alleviate that issue.

18 THE COURT: Okay.

19 MR. BYRNES: As a party Ms. Nalley has a  
20 right to call witnesses.

21 THE COURT: Okay.

22 MR. BYRNES: And, as you may recall,

1 after a hearing in this matter one of the comments  
2 you suggested is, you know, is Sarah in therapy.  
3 I think we apprised the Court at the visitation  
4 hearing that, yes, Dr. Lindahl is now treating her  
5 in therapy.

6 I believe as a party Ms. Zveare is  
7 certainly permitted to present whatever testimony  
8 she can. And Sarah's progression in therapy and  
9 the continued disclosures she's making I think  
10 certainly are relevant to the underlying issue in  
11 this cause which is this protective order.

12 So I don't think we're -- we're precluded  
13 from presenting her even if that's the same  
14 evidence that the county may decide to use in the  
15 dispositional aspect. So I don't think there's a  
16 problem.

17 MR. KOEHLER: Your Honor, actually, I do  
18 believe there is a problem. The Court asked last  
19 time for us to list our witnesses that would be  
20 present for that purpose of the adjudication. I  
21 do not recall Mr. Byrnes listing any witnesses,  
22 especially not Dr. Lindahl.

1           We are not prepared for Dr. Lindahl to be  
2           testifying in any kind of adjudication matter on  
3           that. So I don't believe it's proper that she be  
4           able to -- permitted to testify.

5           Again, we have no issue if there's  
6           dispositional evidence; that she would be found to  
7           be proper. But I don't believe it would be proper  
8           for her to be listed in this matter as any kind of  
9           adjudication.

10          THE COURT: Well, I do agree with you,  
11          because I have the list of what everyone  
12          represented would be a witness. Now, if this is  
13          newly found testimony, newly found evidence, I  
14          suppose that would not apply; but I don't know  
15          what the -- where we are.

16          MR. BYRNES: Well, I agree, Your Honor.  
17          I just -- actually, I had a Post-It note on my  
18          last -- right near the last page of notes. And I  
19          think all I said was -- was Ms. Zveare and  
20          possibly her husband.

21          THE COURT: Correct.

22          MR. BYRNES: But I'm not calling him, you

1 know. And at that time Dr. Lindahl was -- had  
2 only testified to the Court regarding Sarah's  
3 ability -- availability to testify. She had not  
4 gone into the therapeutic role. On Mr. Nalley's  
5 motion for visitation she was a witness.

6 There has been no discovery issued in the  
7 case. So we're not under a scheduling order or  
8 a -- or a disclosure requirement. And I would  
9 submit that the testimony she would -- she would  
10 provide is newly discovered testimony. It's based  
11 on continued therapy with Sarah and disclosures  
12 made as recently as this past weekend.

13 So I don't -- at the time that we ended  
14 the last hearing I never could have even said Dr.  
15 Lindahl would be here to testify, because she had  
16 not, I believe -- and we can confirm that. I  
17 don't think she had made that transition from  
18 Sarah's -- to being Sarah's therapist. I think  
19 that transition was made following the hearing.

20 MR. KOEHLER: Your Honor, again, there  
21 was a listing on that aspect. So I do rely on  
22 that. The aspect of newly acquired evidence puts

1 us at such a disadvantage in this regard.

2 The matter of placing her in this  
3 stuff -- we don't know what she's going to  
4 testify. There has been issues about the records  
5 and how they were -- and I know that's part of a  
6 motion to quash that has been withdrawn on the  
7 subpoena.

8 But there was a follow -- subsequent  
9 aspect of trying to get the records pursuant to  
10 the divorce decree that was never responded to  
11 that I believe is -- puts Mr. Nalley in the  
12 position of at least getting some access to these  
13 records.

14 I don't think -- one, it's highly  
15 prejudicial bringing it in. I think there is no  
16 proper notice of this. And I understand the  
17 procedures in this regard.

18 But, again, there was an aspect of who is  
19 going to be there. They knew Dr. Lindahl was  
20 seeing her. They could have said at that time we  
21 reserve the right to call Dr. Lindahl, she may  
22 have evidence. And they would know at this point

1 that it was there. And then it would have been  
2 different as to how we were.

3 I have proceeded with this case in trying  
4 to defend my client with the idea that Dr. Lindahl  
5 is only going to be used to testify for  
6 dispositional evidence.

7 So I think it's, again, highly  
8 prejudicial. I don't believe she was listed. I  
9 don't think it's proper that she be permitted to  
10 testify in that regard.

11 MS. GLENNEY: Your Honor, I would say on  
12 behalf of the department that I don't think we  
13 could have cured that, anyway, because the  
14 department would not have agreed to a disclosure  
15 of what was going on in therapy with Sarah.  
16 Because pursuant to 63.2-105 those are  
17 confidential records of a child who is being  
18 treated for -- in a sexual abuse case.

19 So I don't think it would have been a  
20 cure, frankly, in respect to surprise or prejudice  
21 that's being claimed simply because those records  
22 would have been maintained confidentially.



1 MR. BYRNES: I guess I should bring to  
2 the Court's attention I do have another witness I  
3 didn't disclose to the Court in the last hearing.  
4 And that's the childcare provider.

5 And, again, that's based -- or her  
6 testimony is based on two disclosures that were  
7 made following the last hearing. You know, she  
8 was brought into the last hearing to testify as to  
9 the report she made. So -- you know.

10 But, again, we're under no scheduling  
11 order here. We're talking about the sexual abuse  
12 of a four-year-old child.

13 MR. KOEHLER: We're talking about the  
14 rights of my client, Your Honor, to be able to  
15 defend himself against these accusations. And I  
16 believe -- again, I submit that this is -- these  
17 are -- these are not witnesses that should be  
18 permitted to be called in this hearing.

19 THE COURT: Because this is a child --  
20 allegations of child abuse if, in fact, the  
21 information is newly known, I will permit the --  
22 both of these people to testify.