JUDGE DENISE PRATT MUST GO

by Greg Enos
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I am writing out of respect for our system of justice and out of concern for the parents and families of Harris County. The only two contested trials I ever presented to Judge Denise Pratt were won by my clients, so I am not a sore loser. I am a board certified family law attorney with 27 years experience who cares deeply that courts reach the right decisions and follow proper procedures. Like most folks, I believe family court judges must protect children, follow the law, apply common sense and treat everyone fairly. I know full well the powers the family court judges wield and I know that this article will anger Judge Pratt and some rich, powerful attorneys who seem to do so well in her court. I am not running for political office and I have no personal gain at stake other than the satisfaction of seeing mothers and fathers and children treated fairly. In fact, my law firm loses money because I am turning down cases that are pending before certain judges. However, the truth is the truth and this article is based on 100% provable facts. I will print verbatim in my newsletter any rebuttal from Judge Pratt or the attorneys involved in these cases if they have facts to submit which contradict what I write here. I am not repeating rumors swirling around the courthouse about Judge Pratt's personal life because I simply do not believe them until I see proof. Judge Pratt is still a judge and her office deserves our respect and she deserves to be treated fairly by her legal colleagues. Just as I expect Judge Pratt to rule in her court on the basis of evidence, I am content to prove Judge Pratt's incompetence with facts and not gossip.

Judge Pratt has six basic problems as a judge:

1. Judge Pratt's work ethic is terrible. She often does not come to work or leaves early or refuses to hear cases or reschedules hearings for months or years in the future. She has been known to start a hearing, then take a break, and then just leave the courthouse forcing her staff to tell the bewildered attorneys that the hearing will have to resume at a later date. It can take months to get a ruling from Judge Pratt. Lately, Judge Pratt has "backdated" some of her rulings to make it appear that she ruled months or weeks earlier than the date the rendition or order was actually signed.

2. Judge Pratt routinely refuses to accept agreements between parents who know and love their children. Pratt makes her own handwritten changes to orders that the parties have not agreed to and for which there has been no hearing or evidence and then she signs the orders!

3. Judge Pratt appoints amicus attorneys when no other judge on the planet would consider an expensive third attorney necessary. Communications between Judge Pratt and some of the amicus attorneys she appoints is a whole other, even more ominous, issue, and that will be addressed in a later newsletter.

4. Judge Pratt follows bizarre policies that clearly are not based in reality. For example, she refuses to approve for any child, even a 17 year old, to fly on an airline unaccompanied for visitations out of fear of "human trafficking." She will not let fathers have overnight possession of very young children even when the parents agree and they have been doing it

for months!

5. It is widely believed that a small group of attorneys can get almost anything they ask for from Judge Pratt.

6. Most importantly, Judge Pratt clearly does not know the law, she does not follow the law and she does not make common sense decisions regarding children. Here are but three examples, of so many I could provide, which should be enough to blow the mind of any lawyer or judge or caring parent:

2002-59200. Mother with primary custody of an 11 year old boy hit with TRO that eliminates her possession just because she did not take the boy to baseball practices and might not take him to a state tournament. An agreed paternity order was entered in July 2003. The mother was granted primary custody and the father was awarded visitation that was a little less than SPO and ordered to pay child support. In August 2010, an agreed modification order was entered that said the parents were to reside within 15 miles of Frostwood Elementary and that the boy would live with his father until the mother moved into that area and that once the mother lived in that area that she would have primary custody and the father would have possession according to an expanded SPO. The agreed order also provided that both parents could sign the child up for extracurricular activities and stated (but did not use order language),"Each parent shall timely take [the child] to all extracurricular activities, including but not limited to, games, practices and team parties. If the parent in possession of the child is unable to take [the child] to an extracurricular activity then that parent shall notify the other parent at least 2 hours before said activity is scheduled to occur and give the parent not in possession the opportunity to make arrangements so that [the child] can attend the activity."

On May 31, 2013, the father filed a petition to modify that did not even ask for temporary orders. On June 17, the father filed an amended petition that sought extraordinary relief via TRO and the father's affidavit was attached. The affidavit said the boy is 11 years old and he plays on an elite tournament baseball team. The father alleged that the mother has failed to take the child to practices and he fears the mother will not take the child to the state tournament to be held the next weekend. The father did not allege abuse, violence, drug use, illegal or immoral activity. The affidavit did not say that the mother refuses to take the kid to the tournament nor does it mention any efforts by the father to switch weekends or encourage the mother to go. The affidavit actually contains no specific evidence that the mother will not take the child to the tournament, just the father's concerns based on past missed practices. What lawyer would even try to cut off the mother's visitation based on just those allegations and what judge would ever do so? The father is represented by a super successful lawyer, who had the nerve to ask and the persuasive abilities to get the extraordinary order he was asking for. Judge Pratt on June 17, 2013, signed an order that restrains the mother from "having physical access and possession to the child" pending further order of the court or until the order expires. A hearing is set for July 30, 2013 (well after even an extended TRO would expire).

The father also filed a petition for enforcement seeking to send the mother to jail for not taking the child to sports practices even though the 2010 order does not specifically ORDER her to do so with language that could possibly be enforceable. At the top of page 19, the order says,"In addition to all other provisions for possession provided for in this order, the following periods of possession are

ORDERED:" but then what follows is not about any possession periods. Immediately thereafter are the provisions regarding extracurricular activities. The order says "Each parent shall timely take [the child] to all extracurricular activities..." but the use of "shall" is not an order to do so and taking a child to games and practices is not a period of possession awarded to one parent, so there is simply no enforceable ORDER language.

A reasonable judge would have looked at the affidavit and said,"Mom probably should take the kid to the tournament or let Dad take him, but I am not going to order her to do so without hearing her side of the story and I am certainly not going to eliminate her possession because of this. " There is of course the pesky Texas Family Code which does not appear to mention missing baseball tournaments as a reason to suspend a conservator's possession of the child. Also, what if the mother had a long planned vacation or her father's funeral to go to or the boy was signed up for a robotics camp or the kid simply did not want to go? No judge I have ever known would have granted this ex parte relief based on that affidavit. The vast majority of judges in this area consider a child's time with a parent to be more important than extracurricular activities.

2012-35606. NFL star gets raped in paternity case and ordered to pay $500,000 in interim attorney's fees even though his lawyers were not at the hearing and the mother's attorneys at best only "prove up" $362,000 in fees. Do not even bother to search for this case on the District Clerk's website because this file is sealed and Pratt issued a gag order to the attorneys and parties. However, the truth is out and Judge Pratt cannot order everyone on the planet not to discuss this obscene ruling. The father is a star player for the Houston Texans. He lived with the child's mother but never married her and there is no dispute he is the father of the child. The father filed a paternity action on June 2012. On November 2, 2012, Judge Pratt issued temporary orders and named the parents JMC, awarded primary custody to the mother and granted the father standard possession. Judge Pratt ordered the father to pay $2,500 per month in child support and to pay 100% of the child's medical expenses. Remarkably, Pratt also ordered the father to pay $3,000 a month for the mother's monthly rent, pay up to another $1,000 a month for school tuition, pay the mother $35,000 toward a new car, and pay the mother $50,000 in interim attorney's fees. To the father's credit, he paid as ordered even though clearly Judge Pratt lacked the authority to order most of those payments in a paternity case (he may have balked at paying the mother's rent because she would not produce a lease proving she was actually renting a place).

Texas Family Code 105.001 allows a court to enter a temporary order in a SAPCR, including a paternity case, "for the safety and welfare of the child" including an order "(b) for payment of reasonable attorney's fees and expenses." Case after case has held trial courts did not have authority to award interim attorney's fees in such cases. See *Saxton v. Daggett*, 864 S.W.2d 729, 736 (Tex. App. - Houston [1st Dist.] 1993, no pet.) and *In re Sartain*, No. 01-07-00920-CV (Tex. App. - Houston [1st Dist.] Apr. 3, 2008, no pet.) (mem. op.). A recent example is *In re Rogers*, 370 S.W.3d 443 (Tex. App. - Austin 2012)(orig. proc.). There, the Austin Court of Appeals quoted the wife's attorney's testimony and said:

> Although he testifies that the jury trial will have an adverse impact on the children and that the children are " under assault" because their father does not see them as often as he is allowed, an award of interim attorney's fees will not affect those unfortunate situations either

> favorably or adversely— the trial will presumably still occur and Christopher will remain free to interact with his children in the manner he chooses. But more importantly, Weeks acknowledges that the temporary orders already in place adequately protect the safety and welfare of the Rogers children and that no additional protections are necessary before the jury trial.
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> Even if we were to disregard Weeks's testimony, however, there is simply no evidence in the record that supports the conclusion that an award of interim attorney's fees would have an effect on the safety and welfare of the Rogers children. Amy testified extensively about Christopher's ability to pay the interim fees and various incidents and allegations that go to the merits of the conservatorship decision. She also discussed her job and salary and explained that, in her opinion, Christopher's contentious litigation positions substantially increased the costs of litigating this matter such that she was " strapped" and did not " have any extra money for anything." But other than mentioning that she wanted to rent a house so that her children could ride bikes, she did not testify at all regarding how her finances were affecting the children. Most importantly, she did not explain how or even suggest that the award of interim attorney's fees were necessary for the safety and welfare of the children. To that extent, Amy failed to satisfy her burden under family code section 105.001(a)(5).

In the case of the NFL star's child in Judge Pratt's court, on March 27, 2013, the mother's attorneys filed a motion for more attorney's fees. The hearing was reset twice. On May 13, the mother's attorney hand delivered to the father's attorney a notice of a hearing for May 17. Both of the father's attorneys had previously said they would be unavailable that day. The father's lawyers filed a motion for continuance of the May 17 hearing but they did not appear and they did not send anyone to speak for them. Judge Pratt denied the motion for continuance, heard evidence from the mother's attorneys and ruled that the father had to pay $200,000 in interim attorney's fees by May 24 and another $300,000 by August 1, 2013. The father's attorneys filed a motion to reconsider which was denied. The father's attorneys then filed a petition for writ of mandamus and the Fourteenth Court of Appeals issued an order staying Pratt's order and requested a brief from the mother. As of today, no opinion has been issued.

The mother is represented by two great attorneys, Robert Hoffman and Earle Lilly. Hoffman at the May 17 hearing testified that he was owed $162,296.7 and Lilly said he was owed $42,754.0 for work already done. Some of Hoffman's paralegals were charged at $240 per hour! Hoffman estimated his future fees would be $100,000 and Lilly estimated his future fees would be $58,500. Even if all those enormous numbers were accepted, they only added up to $362,000! Judge Pratt generously rounded up to $500,000. In fairness, it should be noted that Mr. Hoffman also introduced an exhibit that showed the father had paid one of his attorneys, Rusty Hardin, $186,000.

A few conclusions:

1. My response to these legal fees is dumbfounded amazement. I have represented millionaires in jury trials and not had total fees over $100,000. This is a paternity case where the only real dispute is whether the mother and child can live in California. The father, who does not live in Houston year-round, has requested a jury trial (wonder why?). To the average attorney, the amount of fees both parents are being charged is beyond belief.

2. I am very surprised that no one was sent to present the father's motion for continuance in person. Lawyers should never just "not show up" at a hearing. I know a hundred lawyers who would have loved to have gone and represented this particular NFL star for free that day and explain why Mr. Cole and Mr. Hardin could not be there. After all, is it ever hard to get a continuance from Judge Pratt? On the other hand, should the mother's attorneys have agreed to one more resetting just because one attorney was in New York and the other was in mediation and they knew it? There were no vacation letters on file and an associate attorney surely could have been sent. Given the exalted status of everyone involved, I am surprised that Judge Pratt did not at least have someone call the father's attorneys and tell them they had better send someone because she was going to proceed with the hearing. On many occasions, when my opposing attorney did not appear, I have asked the judge to wait while I called his or her office to see where they were. Profession courtesy is a lot like Karma or the "Golden Rule" and what goes around usually comes around.

3. Lawyers will be lawyers (especially when very rich clients are involved), just like vampire bats will be vampire bats, but a judge's job is to follow the law and apply reason and common sense. Did Judge Pratt ask any of these lawyers,"How the hell are you charging so much in this paternity case?"

4. Did Judge Pratt realize that Sec. 105.001 severely limits her ability to award interim attorney's fees in a SAPCR case?

5. If the mother's attorneys only proved up at most $362,000 in fees, why did Judge Pratt award $500,000?

Copies of the petition for writ of mandamus filed by the father and the response filed by the mother are circulating and I have copies of both. However, those documents for some reason are not visible even on the court of appeals' website. I am not providing links to those documents because of some evidence regarding the child, which should be kept private.

2011-07230. Pratt "sua sponte" without evidence temporary gave custody of a 3 year old to a non-party step-grandmother and then left the child with the step-grandmother for another four months after the step-grandmother tested positive for pot and cocaine. The child is 3 years old. In 2011, there was a "Child Support Review Order" with the AG that established paternity, visitation and child support. The mother had primary custody of the child and the father had a SPO, even though then the child was only a year and two months old. The father clearly did not see the child as much as he could, in part because he was off in drug rehab. In September 2012, the father filed a petition to modify and alleged that the mother's boyfriend burned the child in the eye with a cigarette and that the mother had a history of drug abuse and alleged that the child had been born addicted to drugs. As often happens in Judge Pratt's court, the hearing on temporary orders was reset many times, but an Amicus Attorney was appointed. The mother contended that the father had a history of illegal drug use but the father said he had been to rehab for four months from March 2012 through July 2012 and had been clean since then (which his drug test results confirmed). Finally, on January 3, 2013, the attorneys were able to get a conference with Judge Pratt in her chambers. Judge Pratt, without hearing any evidence, ruled that the child would be placed with the maternal

step-grandmother. The maternal step-grandmother was not a party to the case. On January 11, Judge Pratt signed "Interim Orders" that said "On January 3, 2013, the Court, sua sponte, entered the following temporary orders." This order states that the parents remain JMC but the primary residence of the child is restricted to the home of the step-grandmother, that the mother only have supervised visitation through SAFE and the father's visitation is reduced from a SPO to just first, third and fifth weekends with no mid-week or holiday or summer possession. This order was signed by the attorneys "approved as to form only" but it was not based on any evidence presented in court. Later, the attorneys disagreed whether there had been an agreement in Pratt's chambers. The father's first attorney who was present in Pratt's chambers on January 3 signed an affidavit that said there was no agreement but the mother's attorney in her mandamus response said all three attorneys agreed. The order signed by Judge Pratt on January 11 very clearly does NOT say it was based on agreement but the order does falsely state that evidence and argument of counsel was presented on January 3 (which everyone agrees did not happen that day in chambers).

Oddly, Judge Pratt on January 31, signed another order entitled "Interim Temporary Orders" that was signed only by the amicus attorney and which falsely states that the parties appeared on January 13 and evidence was presented and which omits the true statement that the judge, "sua sponte entered orders." This order took away the father's weekend periods of possession and gave him from 1:00 p.m. to 4:00 p.m on three days a week as long as the child did not leave Baytown. Again, this order was entered without evidence and the District Clerk's web site does not even show a hearing was set for held on January 13. There was, however, a hearing set on January 17 at 9:30 a.m. The affidavit of the father's first attorney submitted as part of the mandamus action states that the parties showed up for a hearing on January 17 but eventually, late in the afternoon, the attorneys were called back to Pratt's chambers. This is part of what his sworn affidavit states:

> The parties reconvened on January 17, 2013 with the hopes of submitting evidence to the court and having a full evidentiary hearing. Instead, Judge Pratt called the attorney's back to her chambers to have a discussion. As I recall, drug testing data was actually returned to the Court's file at the time of this conference, and such testing showed the mother was positive for methamphetamine, and the step-grandmother... tested positive for cocaine and marijuana. The Honorable Judge Denis Pratt, knowing the positive drug test results of the mother and of the step-grandmother, stated that she was not going to move the child from the step-grandmother whom she knew was using cocaine and alcohol mixed together. I respectfully requested the Court reconsider as this was not in the best interest of the child, however, the Honorable Judge Denise Pratt stated that it was going to be her ruling and that since it was late in the day she would not hold an evidentiary hearing and would make her recommendation an official Order of the Court.

We know for sure that drug testing was done on January 3 and reports dated January 8 showed that the mother was positive for methamphetamine, and the step-grandmother was positive for marijuana, cocaine, cocaethylene (alcohol combined with cocaine) and benzoylecgonine. The dates on these reports would seem to confirm the father's attorney's recollection that the amicus and Pratt on January 17 knew about the positive drug test results. Multiple drug tests for the father all came back negative.

The father switched attorneys and the new attorney filed an motion for reconsideration. A hearing

was not started on the motion for reconsideration until February 26 (so, for almost four weeks the little girl was left with the step-grandmother who had tested positive for illegal drugs until a hearing could be started). Pratt on February 1 signed an order granting an additional $10,000 in fees for the amicus attorney.

On February 26, only the father and Bruce Jefferies from the drug testing company testified. Mr. Jefferies testified that the 12 drug tests he had seen for the father were negative but the drug test results for the ste-grandmother indicated that she was a heavy pot smoker and that she had used cocaine more than once during the 90 days covered by the hair test. He said a second urine test showed the step-grandmother was continuing to smoke marijuana. The father testified about his drug rehab, his prior relapses and his numerous negative drug tests, the steps he had taken to turn his life around and his normal visitation with his other child from another mother. Judge Pratt heard the evidence about the step-grandmother testing positive for illegal drugs but she just reset the continuation of the hearing until March 12. But, then the mother's attorney had a death in the family (her elderly father who lived with her) and Judge Pratt reset the continuation of the hearing to April 26 - all the while knowing that the step-grandmother had tested positive for illegal drugs.

Judge Pratt's problems with dates also continued. Judge Pratt signed a "band-aide" order that gave the father some weekend visitation with the child. The order in a typed first sentence states it was signed on May 8 and in handwriting it says Pratt made the order on May 3. The court did hear testimony on May 3 and May 8. However, the order is file stamped April 8 and Judge Pratt hand wrote the date of "April 8" right above her signature. Oddly, no hearing in this case was held on April 8.

The father filed an application for a writ of mandamus with the court of appeals (01-13-00223-CV). The parties were ordered to file briefs but then mandamus was denied. Presumably, the court of appeals was giving Pratt a chance to correct her ruling. Before Judge Pratt, testimony was presented at a resumed hearing on April 26, April 29 and 30, May 2, 3, 7 and 8. Of course, the hearing often started late and ended early on those days because of Judge Pratt's relaxed attitude toward working hours.

Finally, on May 17, Judge Pratt signed a handwritten "Judge's Rendition" that took the child from the step-grandmother (after four and a half months) and divided possession as follows: the father has Sunday at 6 pm through Friday but the father is ordered to have the child in daycare from 7:30 a.m. Monday through Friday. The mother is given possession every single weekend with the child "supervised by maternal grandmother or aunt." The father still has to pay full child support. Thus, the father (who has been negative for drugs for over a year) is ordered to pay for daycare and have the child in daycare all day and he gets the kid only five evenings a week even though he is not working and lives off the proceeds of a business sale. However, the mother gets the child every weekend and she can be supervised by her mother (not the same lady who tested positive for illegal drugs). Simply amazing.