

IN THE CIVIL DISTRICT COURT
OF THE FIFTEENTH JUDICIAL DISTRICT
IN AND FOR THE PARISH OF LAFAYETTE
STATE OF LOUISIANA

JIMMY A. JONES

CIVIL DOCKET

VERSUS

#2009991134

SUZIE M. JONES

ACTUAL TRIAL COURT RULING
NAMES OF PARTIES, CHILDREN, AND PROFESSIONALS HAVE
BEEN CHANGED
JUDGE & DEFENDANT'S COUNSEL'S NAMES UNCHANGED

The above-entitled case came before the
Honorable David A. Blanchet, Judge of the
above-styled court, Lafayette Parish Courthouse,
Lafayette, Louisiana, on February 10, 2012, pursuant
to notice.

APPEARANCES:

FOR THE PLAINTIFF:
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FOR THE DEFENDANT:
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OPEN COURT

HONORABLE DAVID A. BLANCHET PRESIDING

FEBRUARY 10, 2012

RULING OF THE COURT

THE COURT: Good morning, ladies and gentlemen. I understand that this is a very emotional case and the Court cautions the parties not to engage in any type of verbal outbursts. You are not to address the Court directly. You are to remain at counsel table and to conduct yourself in an appropriate fashion. You certainly can speak to your attorney if you need to, but you are not to address the Court in a direct fashion.

All right. With that said, I'm going to enter my ruling. I've been under the weather all week and remain so. I'll do the best I can. I apologize. My voice is not very strong today and I am suffering from a very bad head cold.

All right. The parties, Suzie Jones and Jimmy Jones, are the parents of two minor children, Johnny and Annie, who are the subject of this proceeding. By way of background, the parties began living together in June of 1999. They married in June of 2000 in Illinois. Johnny was born on January 18th, 2006. Shortly thereafter, Jimmy moved to Louisiana in April of 2006. Suzie followed with baby Johnny in June or July of that year. Annie was

subsequently born in Louisiana on April 14, 2007.

The parties separated in late August of 2008 when Suzie left for Illinois with the children and her maternal aunt, Darcie Boudreaux, preceding hurricane Gustav. Jimmy was under the impression that Suzie and the children were evacuating temporarily. However, Suzie had decided to leave the marriage and did not intend to return to Louisiana. Jimmy visited with Suzie and the children periodically in Illinois.

According to Jimmy's testimony in January of 2009, both children walked in on him and Suzie while they were engaged in sexual activity. Suzie testified that on one occasion, Annie almost came in the bedroom while they were engaged in sex, but they heard her coming, so they stopped and she didn't see anything.

In early February 2009, an incident occurred in Illinois where Suzie fell asleep while the children were in her care. She was awakened by the police who had found the children in an alley adjacent to the home. Suzie was not investigated by the police or the Office of Family Services in Illinois. No charges were ever filed or any legal action taken against her. According to Suzie, she fell asleep due to untreated diabetes and sleep apnea. No medical

records were introduced to support these diagnoses.

Thereafter, that same month, Jimmy traveled to Illinois ostensibly to visit the children. While Suzie was asleep, he left the home with the children and returned with them to Louisiana.

On February 24, 2009, an incident occurred at a gas station in Henry, Louisiana, where Suzie was allegedly shoved and struck in the face by Jimmy. On February 25, 2009, Suzie filed a petition for protection from abuse as a result of this incident.

Jimmy instituted this divorce proceeding seeking incidental relief, including custody of the minor children on February 27, 2009. The hearing on the protective order was scheduled on March 5, 2009. At the hearing, the parties entered into a court-approved consent agreement, and Suzie's petition for protection from abuse was dismissed without prejudice. The Court-approved consent agreement, which was signed by the Court on March 24, 2009, granted the parties temporary joint custody, set periods of custody, and prohibited either party from removing the children from the state of Louisiana.

Thereafter, in violation of the Court order, Suzie relocated with the children to the state of Illinois where counsel also

filed an exception of jurisdiction. A joint telephone hearing was held on April 9, 2009, between this Court and the Court in Illinois in accordance with the UCCJEA. Present were the parties, both judges from each State, counsel for Suzie in Louisiana and Illinois, and counsel for Jimmy. Both courts ruled that Louisiana was the home state of the children, and that if Suzie wanted to argue concurrent jurisdiction between Louisiana and Illinois, she would have to schedule a hearing in this proceeding to show significant contacts existed between the parties, the children, and the state of Illinois. Suzie was instructed to return with the children to Louisiana. No further hearings on jurisdiction were ever scheduled.

When the children were returned to Suzie's care in March of 2009, she claims Johnny was experiencing significant problems. Johnny screamed all the time, hurt himself by biting, bit her breasts, and couldn't sleep. Also, she alleged he regressed in potty training, though she admits he was not fully potty trained at that time.

On April 15, 2009, Suzie brought Johnny to Methodist Hospital in Illinois stating that she didn't know if the child had been abused, but that Mr. Jones had been molested as a child. Johnny was

discharged to outpatient services and began receiving therapy in Illinois.

At some point, Suzie did return to Louisiana with the children. Johnny began seeing Ms. CONNIE DUGGAN, LCSW, in therapy in May of 2009.

At a hearing on June 4, 2009, it was stipulated that the parties and the minor children would undergo a psychological evaluation by a mental health professional to be agreed upon between counsel, possibly AMIE CAJUNE, with a judgment to be submitted in 20 days and the matter to be set for hearing on September 14, 2009. The Court requested that counsel set a status conference with the Court if there was a problem. From the record and the Court's calendar, it does not appear that a judgment was ever submitted or that a conference was ever scheduled by counsel. The transcript of this stipulation was filed into the record on July 20, 2009.

In a hearing officer conference on May 19, 2009, recommendations were made on child custody, visitation, and child and spousal support, injunctive relief, and use of community movables. A temporary judgment was signed by the Court on May 27, 2009.

Thereafter, there was very little activity in the legal matter for quite some time. Also, there were occasions where the Jones children, Suzie, Jimmy, Jimmy's

girlfriend LONNIE TUPELO, and her four children engaged in activities together, such as going to a water park and the beach. It appears the parties were making an effort to get along during this period, though they did have their ups and downs.

On April 22nd, 2010, Suzie contacted CONNIE DUGGAN Duggan to report that Annie had begun dancing provocatively and sitting on Johnny's lap with her legs straddling his waist and attempting to kiss him on the mouth. Johnny also began hip thrusting motions with his pelvis. Suzie inquired as to what he was doing and he said: My daddy does it to me. And then he went on to say that my daddy does it to my butt. Ms. Duggan, as a result of this phone call, made a report to the Louisiana Department of Children and Family Services, which was apparently never investigated, presumably because the child did not make the report directly to Ms. Duggan.

The parties were divorced on June 24th, 2010. An August 9, Suzie again contacted Ms. Duggan stating that on the preceding Friday night, she found Johnny on top of Annie in bed. The children were not clothed. And when she questioned him, he said that his daddy had wee-weed on his butt. Ms. Duggan directed Suzie to report this to the Child Protection Center for investigation, which she did.

On August 17, 2010, Suzie filed another petition for protection from abuse with this Court. The Court converted it to an ex parte application for custody. At the hearing on August 26, 2010, the parties agreed that Suzie would have temporary custody of the children with Jimmy having no contact. The order also provided that if DCFS took no action in juvenile court within 14 days, either party could contact the Court to schedule a conference or move to fix for an expedited hearing.

On August 30, 2010, Johnny was interviewed at Hearts of Hope in Lafayette. On November 10, 2010, DCFS validated for sexual manipulation or fondling and oral sex of Johnny by Jimmy due to the child's statement and disclosure at the Hearts of Hope. This matter was referred to the Vermilion Parish District Attorney's Office who brought it to the grand jury. A "No True Bill" was returned at some point in time.

Another hearing officer conference was scheduled in this proceeding on March 15, 2011. At that time, child support was increased and, due to the bond restrictions, Suzie was granted temporary sole custody, with Jimmy having no visitation or contact with the children.

At a hearing on the objection to the hearing officer conference recommendation on

March 31, 2011, a stipulation was entered ordering Dr. Kenneth Wilson to conduct a full mental health evaluation. Specifically, Dr. Wilson was to investigate the allegations of sexual abuse by the father of Johnny. Also, Dr. Wilson was to speak to the child's therapist, Connie Duggan, and determine whether to maintain or suspend counseling during the evaluation process. In the interim, Jimmy was to visit with the children at the Avec Les Enfants Visitation Center. The attorneys were to obtain their clients' records and provide them to Dr. Wilson, which was apparently done. These records included the Hearts of Hope records, a certified copy of all mental health records of the parents and the children, all investigative reports in Louisiana and Illinois, and the exchange for medical release forms signed by both parents.

Jimmy resumed his visitation with the minor children at the Visitation Center on June 11, 2011. The Court signed the order for mental health evaluation on June 15th, 2011. Unfortunately, the Court's specific directive that the sexual allegations be investigated by Dr. Wilson did not make it into the order and he did no such investigation. In his testimony, he stated too much time had passed for such an

investigation to be conducted.

Dr. Wilson rendered his report on October 13, 2011.

After the "No True Bill" was returned, the Louisiana State Police also instituted an investigation of the sexual allegations, and Johnny was again interviewed by the State Police on September 7, 2011, more than a year after the initial interview at Hearts of Hope. On January 5, 2012, Suzie filed a motion to determine/modify custody and terminate visitation and for relief under R.S. 9:361 through 369 and 9:341.

The Court finds that the parties were in a very volatile relationship commencing prior to their marriage. There were several instances of domestic violence during the marriage. At a barbecue at the parties' home in Illinois after the marriage but before the children were born, Jimmy shoved Suzie into a work bench as witnessed by Karen Tobias. In December of 2008, during a hotel stay in Illinois, Jimmy hit Suzie in the face, breaking her glasses and causing scratches. These injuries were viewed by Suzie's mother as she testified to.

At Charlie's Gas Station in Henry, Louisiana, on February 24, 2009, the Court finds that Jimmy struck Suzie in the face, causing a mark under her eye, as she testified to and as was testified to by

Karen Tobias.

There were allegations of domestic violence by Jimmy against Suzie. According to Jimmy's mother, Gale Jones, Suzie kicked Jimmy in the shin in the kitchen of her home causing him to fall on the ground. This was not refuted by Suzie and constitutes domestic violence as well. Another incident that was testified to by the Jones parents, Mr. and Mrs. Jones, was that Suzie was poking Jimmy in the chest with her finger. The Court does not find that this instance arises to the level of domestic violence.

The Court finds by a preponderance of the evidence that Suzie is an abused parent who has been subjected to family violence as defined by the Post-Separation Family Violence Relief Act R.S. 9:361, et seq. As the Court finds only one instance of domestic violence by Suzie towards Jimmy, the Court makes no such finding with regard to him.

The Court finds that Jimmy was undergoing a serious psychological disturbance from 2004 to 2006. During this time, he was drinking heavily, becoming intoxicated nearly every weekend. This resulted in several suicide attempts and at least two hospitalizations. Suzie testified that Jimmy was cutting himself on a regular basis, which Jimmy never denied,

though he acknowledged cutting himself during one hospital stay only. Jimmy also admitted to hearing voices, though not to the extent that Suzie, Karen Tobias, and Suzie's mother reported.

The Court finds that Jimmy did indeed confess to his mother-in-law, his wife, and Kate Thomas that he had been sexually molested by his father and that he feared that he might do this to his own child.

Jimmy lied to Dr. Wilson about his hospitalization in 2006. He also lied to the hospital about the reason for his admission that year. But it should also be noted that he lied to the -- that year as well. This was about his job loss situation. Dr. Wilson, who was supplied with a copy of the discharge summary from the hospital, read it in his deposition on page 18, lines 10 to 11. The hospital summary states, "The patient lost his job just before admission." From the testimony, Jimmy clearly lied to the hospital in 2006 and Dr. Wilson during his interview in 2011. Dr. Wilson's explanation was that maybe he was trying to present himself in a more positive light to Dr. Wilson. But this does not explain why he lied to the hospital. The Court finds that it was because Jimmy was experiencing shame as a result of the sexual abuse he sustained as a child. Therefore, Jimmy was never treated

for this sexual abuse.

Jimmy did undergo electroshock treatments and his depression abated. He did not follow the hospital's recommendations to engage in aftercare, though he did so for a short period of time. Jimmy made no further suicide attempts after the 2006 hospitalization.

The Court finds that there are other indications that Jimmy was sexually abused as a child. He engaged in promiscuity, seemed to have a preoccupation with sexual simulation. There was testimony about numerous sexual affairs during and before the marriage. Even when he split up with Suzie and he was going out with Leslie Toups, he was cheating on both of them with each other. Jimmy never denied groping and humping Suzie in front of her family members on a regular basis. He also didn't deny putting his hands down her pants and on her chest. He never denied viewing pornography on a regular basis, both homosexual and heterosexual. He also did not deny arranging a threesome with himself, Suzie, and an older man. According to Suzie, she lost her nerve and did not engage in sexual relations on that occasion but that Jimmy had. Jimmy has also engaged in deviant sexual activities. He never denied engaging in instant messaging and online chatting with older men who

pretended to be his father. He also did not deny Suzie's testimony that he requested her to engage in role play where she was younger and younger, according to her testimony, ages 11, 10, and 9. And, also, that he would request that she would pretend to be a virgin and he would pretend to be her daddy taking her virginity. Jimmy also never denied requesting that Suzie be dominant and penetrating him anally and call him Daddy. He also did not deny that he made a lewd gesture with his tongue to one of Louise Tupelo's daughters, causing him to be beaten up by Toby Tupelo, the child's father. The Court does not know which daughter it was, but the Court notes the oldest daughter is 12 years of age.

The Court finds by clear and convincing evidence that Jimmy has sexually abused Johnny within the meaning of the Post-Separation Family Violence Relief Act.

The Court places great weight upon the testimony of Connie Duggan, the child's treating therapist from May 2009 to the present. According to her testimony, Ms. Duggan saw Johnny for approximately 100, 50-minute sessions. Ms. Duggan is an extremely experienced therapist. She has been a licensed clinical social worker since 1987. She was tendered without objection as an expert in the field

of clinical social

work and the diagnosis and treatment of sexual abuse. From 1990 to the present, she's been in private practice, providing therapy for the Office of Community Services and the Department of Children and Family Services. She provides services in connection with this relationship, primarily working with children who have been removed from the care and custody of their parents due to abuse and neglect. She also does a great deal of work with children who have been sexually abused. She's worked with more than 500 children who have been abused, both through individual therapy as well as group therapy. And she is the only therapist in this area offering group treatment for victims of sexual abuse. She, also, has particular training in the area of sexual abuse. She's attended a variety of workshops over the course of the last 20 years. She's a former abuse investigator who was trained through the DCFS to identify child abuse and neglect. She also obtains 24 continuing educational hours and training sessions annually. She has testified as an expert witness in courts in the area in the diagnosis and treatment of sexual abuse as a clinical social worker on some 50 occasions in Lafayette, Acadia, Vermilion, St. Landry, Evangeline, Iberia, Abbeville City Court, Kaplan City Court, and Opelousas City Court.

According to Ms. Duggan' testimony, on August 16 of 2010 Johnny said to her that his daddy had wee-weed in his butt. She asked him where this occurred and he said that they would sleep under a blanket. He also stated he stuck his wee-wee in my butt. He went on to say that his father had done this to both he and Annie and that this had happened more than one time. He made the same statements at the following session the next week, and other statements that he made as visitation with his father began again. At that time, he began to talk about specifics of the abuse. And while she was preparing Johnny for Court-ordered visitation with his father, he stated that he did not wish to visit because he put his pee-pee -- his wee-wee on me. After being reassured about his safety at the Visitation Center, Johnny did agree to attend. On June 27, following his first supervised visit with his father, Ms. Duggan described the visit as good, but that Suzie Jones had reported that he had been quite anxious that night and had trouble sleeping.

The first visitation at the Visitation Center by Jimmy was in June of 2011. The Court notes the testimony of the school teacher for the 2010, 2011 school year where there was no indications of masturbation or sexual stimulation of Johnny during the school year. Also, according to the

testimony of Suzie and her family, Johnny had stopped bedwetting. He was brighter and happier and was doing better in school. After the visitations with Jimmy commenced in June of 2011, testimony indicates that Johnny and Annie began having trouble with bedwetting, that, Jimmy -- Excuse me -- that Johnny experienced bad dreams and night terrors, and that he began masturbation during the 2011, 2012 school year. There was difficulty in redirecting the child from the masturbation. And it continues to be a problem at school to the present. The Court did ask Ms. Duggan if it could be related to his pervasive developmental disorder, not otherwise specified. She indicated that it could be, which tells the Court that she was attempting to be an extremely objective clinician. She admitted that it possibly could be related.

The Court finds that taking all of the constellation of symptomatology, there is an indication that there was sexual abuse in this case of Johnny by his father.

The Court notes the case note of Ms. Duggan on October 24, 2011, that Johnny stated he felt angry with his father because he is lying about something. He went on to state that he was lying about the bad thing he did. Johnny also said he didn't want his dad to get into trouble; that he wanted to

visit with him and he would say prayers for him. Later on, Johnny would say: I want him to lie so that he won't get into trouble. And, finally, Johnny said: I could say it didn't happen so that he won't be in trouble. This tells me that Johnny is struggling with this situation. Johnny knows the truth. And Johnny is in his own mind trying to figure out how his dad could stay out of trouble. Never does he say if I tell the truth, then Daddy won't be in trouble. I think this is a pretty amazing set of statements by the child that indicate to me that the child is telling the truth. Dr. Duggan went on to talk about the instances of inappropriate sexual behavior and sexualized behavior of the child, Johnny, towards his sister and the problematic masturbation and so forth.

The Court also viewed the videotapes, the Hearts of Hope videotape on August 30, 2010, when Johnny was four years and seven months old. Johnny did volunteer, after the case worker said that he could say anything in their session, that his daddy stuck his wee-wee in his butt, indicating with his finger. The way that these revelations were made and viewing the child's interaction, the Court found his statements to be very believable. The Court also found his demonstration of oral sex to be very believable.

The Court also notes that after Johnny talked about the situation with his father, he became very sad. He put his hands up around his ears, turned away, looked down, and then he re-engaged.

The child was again interviewed on September 7, 2011, by the State Police. His interview about what happened was consistent. There were some inconsistencies about where it had occurred. You know, he told the Hearts of Hope case worker that it was at his mother's home and that she might have been there. He told the State Police that it was at his dad's house. He told Connie Duggan that it was at his dad's house in his father's bedroom. This may indicate that it happened in more than one place. The child also initially said that it happened five times in the interview with Hearts of Hope, but just one time in the interview with the State Police. The child also said he was five years old in the Hearts of Hope interview, though he was some four years and seven months. The Court finds that, at least on one occasion, that there was a sexual contact between Jimmy and the minor child, Johnny.

The Court also notes that though it's not binding on this Court's decision, that DCFS validated for sexual manipulation or fondling and oral sex.

The Court does not find that Johnny was

coached to say these things. I believe Johnny understood why he was going to the different sessions that he was going to, but it does not appear to this Court that he was told what to say. The way he answered the questions, the way he was deep in play and would answer the questions without thought, none of that to me indicates a child who is lying or making things up. This Court has been involved, both as a lawyer and as a Court, in situations where there were coached allegations of sexual abuse. This looks nothing like that.

The Court also does not believe Jimmy's testimony that Suzie threatened sexual abuse allegations if he ever left her or that Karen sent him a text message right after Annie's birth that Suzie and the kids would return to Illinois, or she would have him charged with sexual abuse. He never told the case worker, Ms. Broussard, this. I would have expected these to be the first words out of his mouth when he was contacted with the allegations that he had sexually molested his son.

The Court also will comment on Suzie's parenting. There was the situation when the children got out of the house. It seemed to be a one-time issue. It does not seem to have occurred. She indicated a medical situation caused it, though the Court did not see any records to

indicate such.

With regard to the daughter's broken arm, the Court has reviewed those records.

It appears that the child jumped off the bed. It also appears that this was verified by Johnny.

Because the Court finds that Johnny was sexually abused by his father under the Post-Separation Family Violence Relief Act, the Court has no choice but to award Suzie sole custody of the minor children. Also, as the Court has made this finding by clear and convincing evidence, the Court shall prohibit all visitation and contact between the abusive parent and the children until such time following a contradictory hearing that the Court finds by a preponderance of the evidence that the abusive parent has successfully completed a treatment program designed for such sexual abusers and that supervised visitation is in the children's best interest. The Court orders that he receive treatment from either Dr. Lennie Boyd or Dr. Maude Brannanle. The Court is not opposed to him seeking other treatment, but the Court would have to review those providers to ensure they are in compliance with the statute.

Also, pursuant to R.S. 9:366, all child custody judgments in family violence cases shall contain an injunction as defined in

R.S. 9:362. The judge shall cause this to

be issued and prepared on a Uniform Abuse Prevention Order as provided in R.S. 46:2136.2(C), shall sign such order, and shall forward it to the Clerk of Court for filing without delay for transmission by facsimile within 24 hours to the Louisiana Protective Order Registry. The Court will take care of that subsequent to this hearing.

As the Court has made a finding under the Family Violence Act, of course, all court costs and attorney's fees are assessed against Mr. Jones.

The cost of the mental health evaluation by Dr. Wilson shall also be fully assessed to Mr. Jones.

With regard to the attorney's fees, the Court will ask that counsel for Ms. Jones prepare an affidavit, which is to be submitted, filed into the record of the proceeding, and sent to counsel for Mr. Jones by certified mail, return receipt requested. If counsel for Mr. Jones wants to traverse the affidavit, he shall set a hearing within 30 days of receipt.

The Court, also, though not ordering it, would recommend to Suzie Jones that she seek counseling on her own behalf. The

Court believes that she suffers from self-esteem issues precipitated by her family-of-origin issues, as well as by the abuse visited upon her by Mr. Jones, both verbal and physical, and that these self-esteem issues caused her to do things that I believe were in violation of her own moral code in an effort to either appease or make Mr. Jones happy. And the Court would strongly suggest that she receive some therapy so she does not enter into another relationship of this type.

Let me say in closing that I didn't find any collusion in this case between Ms. Jones or her family members, or her friend. There was absolutely no evidence of that. The Court also found that these three ladies all seem to have a great deal of empathy for Mr. Jones. They seem to know that he was a damaged individual as a result of his own childhood. I do not believe that they have conspired to put this man in criminal jeopardy or to deny him contact with his children. I believe he told them the things that he said. I believe that they truly feel sorry for him, would like to see him get help, that Ms. Jones would like to see him get help, and, if in the children's best interest, be restored to a relationship with them. That is this Court's impression.

I will ask counsel for Ms. Jones to

prepare a judgment in this matter. I'm going to ask that the judgment be prepared -- Let's see. All right. I'm going to order that Mr. Ducote prepare the judgment to be submitted on or before the 15th day of March 2012.

THE COURT: All right. I'm going to ask that Ms. Jones and her family members and friends leave the courthouse first. Then Mr. Jones and his family members will be allowed to leave.

THE COURT: Court is adjourned.

(RULING CONCLUDED)

C E R T I F I C A T E

PARISH OF LAFAYETTE

STATE OF LOUISIANA

I, Margaret D. Duhon, in good standing with the Louisiana Board of Certified Court Reporters, hereby certify that I am a duly appointed, certified, and acting official court reporter of the 15th Judicial District Court for the Parishes of Acadia, Lafayette, and Vermilion, State of Louisiana.

I further certify that the foregoing 23 pages is a true and correct transcript of the proceedings had in the above-entitled cause; that the testimony of said transcript was reported to me in shorthand and transcribed by myself or under my personal direction and supervision, and that same constitutes a total transcription of the requested material in the above-captioned matter.

Lafayette, Louisiana, this 12th day of February 2012.

MARGARET D. DUHON, CCR, RPR