

REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUME  
TRIAL COURT CAUSE NO. 2017-73029  
APPELLATE COURT NO. 01-19-00321-CV

WENDY MEIGS	(	IN THE DISTRICT COURT OF
	(	
Plaintiff	(	
	(	
VS.	(	HARRIS COUNTY, TEXAS
	(	
TODD ZUCKER AND BOHREER	(	
& ZUCKER LLP	(	
	(	
Defendant	(	133rd JUDICIAL DISTRICT

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MOTION FOR NEW TRIAL

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On the 17th day of April, 2019, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable JACLANEL McFARLAND, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

DARLENE STEIN  
OFFICIAL COURT REPORTER  
133rd DISTRICT COURT  
HARRIS COUNTY, TEXAS

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( P R O C E E D I N G S )

THE COURT: This is Cause Number  
2017-73029, Wendy Meigs, M-E-I-G-S vs. Todd Zucker,  
Z-U-C-K-E-R.

Would you announce who you are and who  
you represent, please.

MS. JAHANI: My name is Cheryl  
Ellsworth Jahani, C-H-E-R-Y-L, J-A-H-A-N-I and I  
represent Plaintiff, Wendy Meigs.

MR. HOUSTON: My name is Sam Houston  
and I represent Todd Zucker and Bohreer & Zucker LLP.

THE COURT: Okay. So counsel, it's  
your motion.

MS. JAHANI: Yes, Your Honor.

I know that the Court is well aware of  
the facts of this case, but briefly, I'd like to go  
over them.

This is a Motion for New Trial and the  
procedural background is on or about September, 2014.

The Plaintiff, Wendy Meigs, hired  
Defendant, Zucker and Bohreer & Zucker to represent  
her in the corporate aspects of her divorce  
proceedings.

As a result of that, there was a

1 mediation that occurred on October 30, 2015.

2 Plaintiff, clearly, represented to Defendants that  
3 her interest was the preservation and ownership of a  
4 business.

5 This suit arises out of what occurred  
6 at the mediation. There was some activity that  
7 Plaintiff has before the Court in affidavits in  
8 response to a motion for summary judgment. I believe  
9 that was entered the first Defendant's Motion for  
10 Summary Judgment was July the 5th of 2018. And in  
11 response to that, my client was pro se at the time.  
12 Pro se throughout the pendency of this case until the  
13 very end. And she filed a thirty-five page response  
14 to Defendant's No-Evidence Motion for Summary  
15 Judgment, and she also filed a twenty-two page  
16 affidavit. That is attached to the Motion for New  
17 Trial, Exhibit B, I believe. Her Response is Exhibit  
18 B and her affidavit is Exhibit C.

19 She filed suit against Defendants --  
20 this case arises from the mediation that occurred  
21 October 30, 2015. My client filed suit against the  
22 Defendants on October 29, 2017. This is the  
23 procedural history. The Defendants filed Answers and  
24 the Request for Disclosure in November 22, 2017. And  
25 trial was originally set for October 15, 2018.

1                   The Defendants filed an Amended  
2       No-Evidence Motion for Partial Summary Judgment, as I  
3       just stated, on July 5, 2018. And in response, the  
4       Plaintiff filed a thirty-four page response on  
5       July 23rd and a twenty-two page affidavit to that  
6       motion.

7                   Plaintiff requested a Motion for  
8       Continuance on August 3, 2018 that was granted by  
9       this court which extended the trial date to the week  
10      of January 7th.

11                  Defendants in this case three months  
12      later -- and I want to iterate, specifically, and I  
13      know the Court knows this, but she was pro se  
14      throughout the entire pendency of that.

15                  Again, Defendants filed an Amended  
16      No-Evidence Motion for Partial Summary Judgment on  
17      November 21, 2018.

18                  Plaintiff was actually able to procure  
19      counsel in this case on November 30, 2018.

20                  This motion -- no amended evidence  
21      motion -- Amended No-Evidence Motion for Partial  
22      Summary Judgment was filed by Defendants on  
23      November 21st. So nine days before the Plaintiff  
24      hired me.

25                  The Plaintiffs states that she never

1 received the new motion. She states that there were  
2 problems with the efile system at the time. And so,  
3 she states that she never received it.

4 The issue about the No-evidence Motion  
5 for Summary Judgment is that in a legal malpractice  
6 case it's required to have expert testimony to inform  
7 the jury of things that they don't have any knowledge  
8 of.

9 The Plaintiff was pro se. And as  
10 such, she was unable to procure counsel through no  
11 lack of due diligence.

12 THE COURT: Because I gave her like a  
13 year, didn't I?

14 MS. JAHANI: Yes, Your Honor, you did.

15 I mean, the Plaintiff contacted me ten  
16 months before I agreed to even come on and be her  
17 attorney, and those conversations were painful. But  
18 I consistently said that I just wasn't in a position  
19 where I could do that. So I personally know that she  
20 did and I don't want to testify, but I know that she  
21 contacted me a few times.

22 So I filed a notice of appearance, I  
23 think, as I've already stated on November 30th, ten  
24 days after the defendant had filed their Amended  
25 No-Evidence Motion for Partial Summary Judgment. The

1 new trial date was January 7, 2019.

2 A motion -- and this is the crux to  
3 me, is that a Motion for Continuance was requested by  
4 Plaintiff, by her new counsel on December 7, 2018 and  
5 was granted by this Court on December 31, 2018. This  
6 grant of continuance reset all deadlines in the new  
7 docket control order. My motion is wrong. It was  
8 actually entered on the court the 31st of  
9 December 2018. I have January 2, 2018.

10 But in reviewing the documents I saw  
11 that discrepancy. It reset the trial date to  
12 August 5, 2019. And the docket control order is also  
13 my Exhibit B along with Defendants. It may be the  
14 only thing we agree on, but the Exhibit D is the new  
15 docket control order that reset trial to August 5,  
16 2019.

17 This Order granting continuance also  
18 reset the timely filing of all motions for Summary  
19 Judgment.

20 *THE COURT:* I don't think it would  
21 have reset them. It would have reset a -- you have  
22 to do it by this date. It doesn't mean you have to  
23 do it that day. It just means by a certain date.

24 *MS. JAHANI:* Yes. Well, Your Honor,  
25 on --

25 MS. JAHANI: Well, but it is. It says

1 right there, 7/05/19.

2 THE COURT: You're reading it wrong.

3 MR. HOUSTON: I have looked at these a  
4 long time. I have a different argument. I'm sorry  
5 to interrupt.

6 MS. JAHANI: That's okay.

7 THE COURT: So you're thinking that  
8 when it doesn't have any date that the date above on  
9 something is --

10 MS. JAHANI: Governs.

11 THE COURT: No. It just governs the  
12 one that's it's out beside of.

13 MS. JAHANI: Okay, Your Honor. When  
14 7(C) says Rule 166a(i), motions may not be heard  
15 before this date, what date is it referring to  
16 because it specifies a date?

17 THE COURT: Well, no. What it meant  
18 was in the original Docket Control Order, there was a  
19 date -- not in the subsequent ones.

20 MS. JAHANI: It means that in the  
21 original Docket Control Order that goes way back.

22 THE COURT: See, it says, look at the  
23 very top, second sentence. "If no date is given  
24 below, the item is governed by the Texas Rules of  
25 Civil Procedure." You see that?

1 MS. JAHANI: Yes, Your Honor, I do see  
2 that. And if I might --

3 THE COURT: And there are several  
4 things that don't have a date.

5 MS. JAHANI: All right.

6 THE COURT: And that's why it says --  
7 and that's why that right at the very top second  
8 sentence says that.

9 MS. JAHANI: They're governed by the  
10 Texas Rules of Civil Procedure.

11 Would you like for me to go into the  
12 arguments that I have from the Texas Rules of Civil  
13 Procedure or should we wait?

14 THE COURT: Go ahead.

15 MS. JAHANI: Rule 1 of the Texas Rules  
16 of Civil Procedure. I know you know this rule, Your  
17 Honor. I'm not being condescending.

18 THE COURT: No, you're not. I might  
19 have forgotten it.

20 MS. JAHANI: "The proper objective of  
21 rules of civil procedure is to obtain a just, fair,  
22 equitable and impartial adjudication of the rights of  
23 litigants under established principles of substantive  
24 law. To the end that this objective may be attained  
25 with as great expedition and dispatch and at the

1 least expense to both the litigants and to the state  
2 as may be practicable, these rules shall be given a  
3 liberal construction."

4 My argument to not applying the  
5 limitations on a motion for summary judgment to the  
6 new docket control order is that the whole reason we  
7 got the motion for continuance was to reset the  
8 docket control order.

9 THE COURT: To get a new trial date.

10 MS. JAHANI: Yes, Your Honor. But  
11 also to reset the docket control order.

12 THE COURT: Which it does. It resets  
13 deadlines that need to be reset. And everything that  
14 doesn't have a date out beside it flips back to the  
15 rules, which don't mean that you have to wait until a  
16 certain date.

17 Now, in my original docket control  
18 order, I usually do put a date on that because I  
19 don't want people filing a no-evidence Motion for  
20 Summary Judgment while the discovery is going on  
21 during the first docket control order.

22 Does that make sense?

23 MS. JAHANI: Yes, Your Honor, it does.  
24 Thank you. And if I might proceed?

25 So what happened was, Ms. Meigs hired

1 me on -- I filed a notice of appearance on  
2 November 30th, and filed a Motion for Continuance on  
3 December 7th, that was granted by this court  
4 resetting the docket control order, and that was our  
5 primary purpose. Well, that was our only purpose  
6 really, was to give us time to develop her case and  
7 proceed with her claims. And that was entered  
8 December 31st.

9                   Unbeknownst to my client and to  
10 myself, there was a No-Evidence Motion for Summary  
11 Judgment, again, filed that had been filed on  
12 November 21, 2018 by the Defendant and it was also  
13 placed on the submission docket.

14                   THE COURT: It was in the Court's  
15 file, right?

16                   MS. JAHANI: Yes, Your Honor. And  
17 if -- I know, but if I could say, that the defense  
18 has submitted Exhibit C. And that's a five page  
19 clerk's file. And I could argue -- I mean, there has  
20 been a ton of filings in this case. And if I could  
21 argue that the clerk's record, even though I'm her  
22 attorney, the clerk's record is not the way you  
23 receive notice of submission. You receive notice of  
24 submission by receiving notice.

25                   I attempted to contact the defense

1 counsel to see if they agreed to the motion for  
2 continuance. They didn't answer the phone and I left  
3 a message. I never got a call back. And that was on  
4 or about the 5th or 6th of December. If defense  
5 counsel had called me back, they could have told me  
6 hey, by the way, we filed this. I know you came on  
7 afterwards and given us an opportunity to respond.

8 I believe with the way that my client  
9 responded to the first no-evidence motion for summary  
10 judgment with a thirty-six page response and a  
11 twenty-two page affidavit, it bears consideration  
12 that she really wasn't on notice because --

13 THE COURT: Well, how could she have  
14 not been on notice if she filed a response?

15 MS. JAHANI: No, Your Honor. That was  
16 the first one. This was the second no-evidence  
17 motion for summary judgment and there was no response  
18 ever filed on that. She didn't make me aware that it  
19 was on file. I saw the motion, but I didn't see the  
20 notice of submission in reviewing the five page  
21 clerk's record.

22 THE COURT: And did you contact  
23 anybody to see if it was set?

24 MS. JAHANI: No, Your Honor, I didn't.  
25 I didn't see it. It was extensive. I was working on

1 the motion for continuance. I mean, it's not that  
2 we've been inactive or haven't done anything. We  
3 were just working on the motion for continuance which  
4 was actually granted before the Court signed the  
5 No-Evidence Partial -- No-Evidence Motion for Partial  
6 Summary Judgment on January 23rd. So it was not that  
7 we were inactive, or you know, failing to take an  
8 interest or develop the claim. It was the timing of  
9 the thing. I came on nine days after it was actually  
10 filed. I was never notified. I'm not saying it's  
11 defense counsel's responsibility to do that.

12 *THE COURT:* Because it's right there.  
13 And if you had pulled it up on the website, it's  
14 right there. There was an amended notice or amended  
15 no-evidence motion for summary judgment filed on  
16 11/21.

17 Now, I don't have all the exhibits.  
18 But -- was there anything that said that -- well,  
19 here's on 11/21, it says, "notice of submission of  
20 Defendant's Amended No-Evidence Motion for Summary  
21 Judgment."

22 *MS. JAHANI:* Yes, Your Honor. My  
23 client states that she never received that notice.  
24 She was representing herself at the time.

25 *THE COURT:* Well, but it's in the

1 Court's file.

2 MS. JAHANI: Yes, Your Honor. And my  
3 client has talked about, you know, all the problems  
4 that were going on with efile system. I mean,  
5 regularly, we received notices that there are  
6 problems, especially, in October and November. But  
7 she was not aware and she didn't make me aware. And  
8 when I did review the five page clerk's record, I  
9 didn't see the notice of submission. It was  
10 December. I was working on the motion for  
11 continuance. It was the holiday time, and I just  
12 didn't see it, Your Honor. If I did, we would not be  
13 sitting here today.

14 THE COURT: Anything else?

15 MS. JAHANI: Well, let me just make  
16 sure.

17 MR. HOUSTON: I have a few things, but  
18 not much.

19 MS. JAHANI: I would just like to say  
20 that my client has a constitutional right to due  
21 process of her claims that she has been -- she  
22 struggled through and limped through this thing on  
23 her own. She couldn't find anyone to defend her or  
24 represent her. She's got a great deal of time and  
25 money in this.

1                   And we would just ask for the liberal  
2                   construction of the rules of the Texas Rules of the  
3                   Civil Procedure and the leniency of this court to  
4                   grant a motion for a new trial, and just, you know,  
5                   reinstitute -- reinstate the motion for continuance  
6                   that the court has already granted.

7                   MR. HOUSTON: I'll be very brief, Your  
8                   Honor.

9                   I do believe the Court has done  
10                  everything to facilitate justice. In fact, your  
11                  first motion when you denied or granted the motion  
12                  for continuance and allowed more time, you said, "In  
13                  the interest of justice reset this case to  
14                  January 7th."

15                  We filed another motion for summary  
16                  judgment because we had a January trial setting.  
17                  Under the rules, under Rule 166a, adequate time for  
18                  discovery had passed. And Defendants have a right to  
19                  expediency and justice the same as pro se Plaintiff  
20                  which you have allowed. The motion was set. We've  
21                  set forth the record in our response to the Motion  
22                  for New Trial which showed not only that the Court's  
23                  file reflected that there was a notice of submission  
24                  and a motion for summary judgment, but we efiled it  
25                  pursuant to the Rules of Procedure, Rule 21a and

1 attached the relevant documentation to show that the  
2 motion was served upon Ms. Meigs when she was pro se.

3 And so, I think we've disputed and  
4 refuted the allegation that she didn't receive notice  
5 that's required under the rules.

6 As an aside, there have been  
7 allegations raised. I think we've covered the docket  
8 control order, and it would be, in fact, reasonable  
9 when there is something that's set for submission  
10 that you can reset trial, but that doesn't take away  
11 summary judgment motions. Those are two different  
12 procedural avenues. I will say and it wasn't  
13 necessary, but when a Plaintiff in a legal  
14 malpractice case intends to come forward on a motion  
15 for new trial and say, we would have had we known  
16 about it, we would have had evidence to dispute it.

17 Well, we're here in April. She's had  
18 counsel from December, January, February, March, and  
19 there is not -- and it's not procedurally required,  
20 but I would think it would be practically required to  
21 convince the court to overrule your procedure that  
22 there would now be evidence from a lawyer that  
23 something was done improperly. That's not before the  
24 court. That's not going to be in the record which  
25 would indicate to me and perhaps can indicate to the

1 court that there is no case here. And it would make  
2 sense if there's no case here -- because since this  
3 case does hinge on a mediation and a mediation  
4 agreement, there is no proof that that agreement was  
5 ever enforced, set aside, or done anything. So there  
6 would not be the requisite causation or the elements  
7 of the case.

8 It's our position that as opposed to  
9 the moving papers before the court and today, that  
10 the Court correctly granted summary judgment, that  
11 proper notice was provided to Ms. Meigs in a pro se  
12 fashion and to her lawyer who would look at the  
13 file -- any lawyer who took at it. So there's no  
14 constitutional. There's is no due process. There  
15 has been every process provided to the Plaintiff as  
16 due.

17 And we, respectfully, urge the Court  
18 to uphold its earlier position and deny -- I don't  
19 want to say the wrong thing -- deny the Motion for  
20 New Trial. And we have an order that's, I believe,  
21 it's in the Court's file. I think it's just a  
22 standard Order. Had we not had this hearing, it was  
23 about to get overruled by operation of law. But I  
24 think the record is fairly clear now and we've  
25 clarified anything that would be a problem. And if

1 they think that we're wrong, then there's another  
2 court down the street. So that's my position, Your  
3 Honor.

4 MS. JAHANI: And Your Honor, if I can  
5 just respond that when we learned that the  
6 no-evidence motion order was granted for partial  
7 Summary Judgment, I did request permission to appeal  
8 the interlocutory order. The order that was signed  
9 would have to be amended. And I received no response  
10 from that. So there has been some activity by Ms.  
11 Meigs.

12 THE COURT: Was it set on a submission  
13 docket or --

14 MS. JAHANI: -- it was a request for  
15 appeal and a request for a hearing.

16 THE COURT: That was made how?

17 MS. JAHANI: It was made through a  
18 submission to the court.

19 THE COURT: Was it set on a submission  
20 docket?

21 MS. JAHANI: No.

22 THE COURT: Well, how did you submit  
23 it?

24 MS. JAHANI: I filed it with the  
25 court.

1                   THE COURT: Well, how would it come to  
2 my attention, I guess, is what I'm trying to say?

3                   MS. JAHANI: Well, I filed a motion  
4 with it granting the additional language that was  
5 required in the original motion in the original order  
6 that granted the permission to appeal.

7                   MR. HOUSTON: I think that -- maybe  
8 we're talking --

9                   THE COURT: You may be talking about  
10 two different things.

11                  MR. HOUSTON: Right. I think what  
12 happened was, since there was a counterclaim by the  
13 law firm for the unpaid attorney's fees, after the  
14 Court granted -- that's why it would have been a  
15 partial and it wouldn't have been final for the  
16 purposes of appeal --

17                  MS. JAHANI: That's correct.

18                  MR. HOUSTON: -- but then, my client  
19 on the counterclaim, they nonsuited without prejudice  
20 those claims which that's a four-year statute of  
21 limitation.

22                  MS. JAHANI: That's correct, Your  
23 Honor.

24                  MR. HOUSTON: And when the Court  
25 signed the order, I think it's final. I think all we

1 need now is an order denying, and that would set  
2 forth -- and I'm not saying -- but for appeal  
3 purposes, we wouldn't need an interlocutory because  
4 it's now final. I think we're saying the same thing.

5 MS. JAHANI: You're correct. That is  
6 what happened, Your Honor. And so it made our  
7 request moot because the case was dismissed in total.

8 MR. HOUSTON: Right.

9 MS. JAHANI: Again, I would just like  
10 to conclude by requesting leniency, and you know, my  
11 client does intend to appeal as I'm sure opposing  
12 counsel knows. I would like to save my client the  
13 court costs of ordering that extensive clerk's record  
14 and proceeding with that process, Your Honor.

15 THE COURT: I'm just looking just for  
16 my information. But oh, I see. It was nonsuited on  
17 1/31.

18 MS. JAHANI: Yes, Your Honor.

19 THE COURT: And then, I guess that's  
20 the same day then you filed your motion for  
21 permission to appeal. But then I signed an order on  
22 the nonsuit.

23 MR. HOUSTON: And I think what had  
24 happened initially --

25 THE COURT: -- I think you filed it --

1 MR. HOUSTON: -- without an order.

2 And then somebody said you've got to do an order.

3 THE COURT: Technically, under the  
4 rules you don't, but in the system to get it off you  
5 do.

6 MR. HOUSTON: I learned that.

7 THE COURT: So technically, you're  
8 right. When you file it, it's done. But to get it  
9 out of the system, you file an order or sometimes we  
10 just draw a line and I sign it. But I think it's  
11 kind of moot. And I don't see -- I'm just looking  
12 back at the -- I don't see where it was ever set on  
13 submission -- not that it really matters, but --

14 MS. JAHANI: -- and because it was  
15 nonsuited, Your Honor, it was kind of like boom,  
16 boom, boom --

17 THE COURT: -- the same day. That's  
18 fine.

19 I'm going to deny your Motion for New  
20 Trial. But now, that makes it final and you can  
21 appeal. And you know, Court of Appeals sometimes  
22 says I'm wrong. That's fine with me.

23 MR. HOUSTON: Do you need another  
24 order?

25 THE COURT: I have one.

1                   MR. HOUSTON: And it will be in the  
2 system, I suspect.

3                   THE COURT: I suspect. I assume it's  
4 the one that was filed on 4/12; is that the right  
5 one? Y'all can look at that one.

6                   MR. HOUSTON: I have no problem with  
7 that form. That's the one I attached.

8                   THE COURT: It's file stamped. So  
9 that's why I will sign that one.

10                  MR. HOUSTON: I think that's the  
11 cleanest way --

12                  MS. JAHANI: -- is this for me?

13                  MR. HOUSTON: No. That's for her.  
14 That's the one she's going to sign.

15                  THE COURT: No. I'm going to sign it.

16                  MR. HOUSTON: Thank you, Your Honor.

17                  THE COURT: But it's in the Court's  
18 file. He filed it.

19                  MS. JAHANI: Yeah, I know. I reviewed  
20 it, Your Honor.

21                  MR. HOUSTON: Is there anything else,  
22 Your Honor?

23                  THE COURT: No. Y'all are excused.

24                  MR. HOUSTON: Thank you.

25                  (Proceedings concluded)

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3 I, DARLENE STEIN, Official Court Reporter in and  
4 for the 133rd District Court of Harris, State of  
5 Texas, do hereby certify that the above and foregoing  
6 contains a true and correct transcription of all  
7 portions of evidence and other proceedings requested  
8 in writing by counsel for the parties to be included  
9 in this volume of the Reporter's Record in the  
10 above-styled and numbered cause, all of which  
11 occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record of  
14 the proceedings truly and correctly reflects the  
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$175.00 and  
18 was paid by Ms. Cheryl Ellsworth Jahani.

19  
20 /s/Darlene Stein  
21 DARLENE STEIN, CSR  
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