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Supreme Court of Texas.  
In Re Gayle E. COPPOCK, Relator.  
No. 08-0093.

December 10, 2008.

Appearances:  
William E. Trantham, Law Office of William Trantham, Denton, TX,  
for Relator.  
Aimie S. Peace, Coffey, Stout, and Peace, LLP, Denton, TX, for  
Real Party in Interest.

Before:

Wallace B. Jefferson, Chief Justice, Nathan L. Hecht, Harriett O  
Neill, Dale Wainwright, Scott A. Brister, David Medina, Paul W. Green,  
Phil Johnson, and Don R. Willett, Justices.

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CHIEF JUSTICE JEFFERSON: The Court is ready to hear argument now  
in 08- 0093, In Re Gayle E. Coppock.

SPEAKER: May it please the Court. Mr. Trantham will present  
argument for the Relator. Relator has reserved five minutes for  
rebuttal.

#### ORAL ARGUMENT OF WILLIAM TRANTHAM ON BEHALF OF THE PETITIONER

MR. TRANTHAM: Good afternoon, Honorable Justices, what's up?  
Actually it's my third appearance here. I show up about every 13 or 14  
years and I noticed Justice Hecht is still here so, there's some  
continuity down here.

MR. TRANTHAM: Yes, it was a much younger Justice Hecht too. We're  
here today on an ancillary matter to a divorce [inaudible] speech  
essentially. The order complained of, here, led to a contempt that an  
order from the judgment ordering my client and her ex to not  
communicate with the other party in person, or writing in vulgar,  
profane, obscene or indecent language or in coarse or offensive  
language.

JUSTICE MEDINA: Apparently some of that was done.

MR. TRANTHAM: Sir?

JUSTICE MEDINA: Apparently some of that was done.

MR. TRANTHAM: Yes, I would say so.

JUSTICE MEDINA: On this order, how -- how is this order just not  
overly broad in violation of [inaudible]?

MR. TRANTHAM: Well, there's a hundred and three violations finding coarse or offensive with a sentence imposed of 180 days for each offense.

JUSTICE MEDINA: Okay.

MR. TRANTHAM: The -- we have a large number of the exhibits that are attached here. The -- the problem from my perspective is that, I think most speeches is protected strictly under Article 1 Section 8 of the Texas Constitution, the Texas Bill of Rights which has been exempted from the general powers of government --

JUSTICE BRISTER: Well, there's lots of exemptions, exceptions. You can't shout fire in a crowded theatre right?

MR. TRANTHAM: Well, in the Texas Constitution --

JUSTICE BRISTER: That was easy. That [inaudible] --

MR. TRANTHAM: That's correct.

JUSTICE BRISTER: I'm starting with an easy one. That's -- Oliver Wendall Holmes.

MR. TRANTHAM: That was easy.

JUSTICE BRISTER: -- Let's add on Holmes.

MR. TRANTHAM: That was actually --

JUSTICE BRISTER: All right.

MR. TRANTHAM: But the Texas Constitution --

JUSTICE BRISTER: And now let's -- let's --

MR. TRANTHAM: -- provides that.

JUSTICE BRISTER: -- Let's call on Holmes. Should you be able to -- to call your spouse, ex-spouse a Nazi in front of the children?

MR. TRANTHAM: No. [Inaudible] --

JUSTICE BRISTER: Of course, some things you shouldn't be able to say to the children after a divorce.

MR. TRANTHAM: Absolutely. And the Texas Constitution Article 1 Section 8 provides for that and says you're responsible for the consequences of your actions, okay? Now, that covers -- well, we're all reminded yesterday morning, you cannot plot to sell a United States Senate seat or you go to jail, okay? I think that's a reasonable restriction of speech. I think plotting a murder would probably be also a reasonable restriction of speech.

JUSTICE O'NEILL: How about turning some -- I'm gonna turn you in for insurance fraud or I'm gonna reveal private medical information about you?

MR. TRANTHAM: The question -- yes, I think you're asking there is a matter of some privacy concerns. And I think reasonable restrictions on privacy, I was thinking earlier about they're almost the same thing. For instance, Class 5 material that you're forbidden to talk about, okay? And -- but I think that that's--we're not talking about that here.

JUSTICE O'NEILL: Well, okay. Let me get back there to you, Sir --

MR. TRANTHAM: Sure.

JUSTICE O'NEILL: -- some of that if he threatens someone's life --

MR. TRANTHAM: Yes.

JUSTICE O'NEILL: But what if he threatened prosecution? What if he threatened, "I'm gonna accuse you of insurance fraud? I'll threaten you with commission of a crime?"

MR. TRANTHAM: I think that -- that -- if you are making a -- a report to a -- a law enforcement agency that that's been ruled many times to be exempt speech from liable slander or anything else, I think everyone has a right to report a crime. I think -- I haven't got the cases with me but I -- I think we litigated that about 25 years ago up in Denton County and I think I wrote a brief on that to the person who

makes a --

JUSTICE O'NEILL: But I mean, you -- you made the analogy of threatened to -- to kill someone.

MR. TRANTHAM: Yes.

JUSTICE O'NEILL: Threaten to cause them to go to jail.

MR. TRANTHAM: If you're making -- if you're making a -- a report through of good faith report --

JUSTICE O'NEILL: No, you're just -- you're telling them I'm gonna -- I'm gonna bring an action that will end you up in jail.

MR. TRANTHAM: Oh, I think it's effect of speech. That may be offensive, okay.

JUSTICE JOHNSON: You decided calling someone a Nazi is not protected?

MR. TRANTHAM: No, Sir, I think it's protected.

JUSTICE JOHNSON: Okay, it is protected all right.

MR. TRANTHAM: Yes, Sir.

JUSTICE JOHNSON: I thought you misunderstood about --

MR. TRANTHAM: Now, I think, under limited circumstances in -- in a divorce -- this comes from divorce. But this is not a divorce, this is 4 years after divorce. I recommend that the judge has to separate the warring parties with their children involved, I think you can have a reasonable restriction on speech that's started in front of the children. What did you said calling that [inaudible] so the children -- I think you can restrict a parent from saying that, you know, you shouldn't be bickering in front of the children.

CHIEF JUSTICE JEFFERSON: There's other forms of communication that are not language. In order say, I don't want to that -- that you are not to be within a thousand feet of your former spouse?

MR. TRANTHAM: Yes, but that's not -- that's not really regulated speech.

CHIEF JUSTICE JEFFERSON: Well, it's a form of communication. You know, when you think of the -- the protesters and abortion clinics, you see them, I mean --

MR. TRANTHAM: Yes.

CHIEF JUSTICE JEFFERSON: -- First Amendment Cases --

MR. TRANTHAM: Yes.

CHIEF JUSTICE JEFFERSON: -- for the person in the cases but --

MR. TRANTHAM: Yes, that was your --

CHIEF JUSTICE JEFFERSON: -- so you could do that -- you could do that why couldn't you in order to keep the peace, to keep these warring parties to -- some semblance of civility to say, don't cuss them out like -- like we've seen in this [inaudible]

MR. TRANTHAM: Every one of those cases, Mr. Chief Justice, involves a reasonable restriction, time, place, and manner with the court making a finding and proceeding to a hearing to determine the facts that we have today. It's like this sexually-oriented businesses. Well, we do not want them clustered together that's been found to be reasonable, that you can [inaudible] them.

CHIEF JUSTICE JEFFERSON: Before this -- the mediated settlement agreement and the divorce decree, was there evidence of this sort of coarse language being used among these former spouse?

MR. TRANTHAM: I didn't try the divorce so I do not know.

CHIEF JUSTICE JEFFERSON: But there's nothing in the record on that in -- in our --

MR. TRANTHAM: Not that we have here. And -- and honestly, I didn't check a transcript of the trial or attend a trial. I was not trial counsel. What I call this rule here though, is this the don't make your



ex-spouse mad rule and it's permanent and goes on forever. So, I would -- I would think that it would be unreasonable as to time, place and manner. There's a -- this Court gets criticized from time to time. I assume you find it offensive, but I also assume that you find it's protected speech.

CHIEF JUSTICE JEFFERSON: Well, here we're talking is not just -- just that mean, vulgar, profane, obscene, or indecent language.

MR. TRANTHAM: Yes. That's the only found coarse or offensive. And offensive is don't make your ex-spouse mad. If you say something that offends your ex-spouse then they go to court, order you to jail or you pay attorney's fees. That's -- that to me is a -- a too extreme solution.

JUSTICE MEDINA: How -- how can that order have been written more narrowly so that parties could comply?

MR. TRANTHAM: Well, I'm not sure you can ever just forbid speech. I think a temporary order in the midst of a divorce to stop ordering spouses from -- from causing further problems, I think's a legitimate reason.

JUSTICE MEDINA: Well, can you pick out 7 magical words not to say?

MR. TRANTHAM: Well, who -- what was the comedian who said -- George Collin, yes --

JUSTICE MEDINA: And you are.

MR. TRANTHAM: I -- I don't know that -- I don't know that at least with that restricted temporarily. That permanently and over the years, I think that -- that presents a major problem. I agree with you, though, that there's seven deadly words or whatever it was. I'm not sure it's got to be that specific, but certainly on a temporary basis. You know, let's stop all the fighting. But to do this on a permanent basis, forever and a day and then to leave it in such obscure language, offensive, what does that mean?

JUSTICE O'NEILL: Well, but wouldn't you agree that these e-mails are offensive under anybody's definition of offensive?

MR. TRANTHAM: No.

JUSTICE O'NEILL: No?

MR. TRANTHAM: I mean -- okay. That depends on what you mean by offensive. It -- it makes me mad, yeah. But if you look, some of these e-mails are reply. There's one attached to the --

JUSTICE O'NEILL: Well, you can pick out one or two that are relatively tame, but you'd have to admit that overwhelming majority are offensive.

MR. TRANTHAM: Well, the -- the one that the response attacks here has -- where she is responding to a claim of misshapen body. I mean, this is going back and forth. I mean, even though it may be offensive, should -- should the government be involved in regulating it? That's -- that's the following issue I think before the Court.

JUSTICE O'NEILL: You can -- you can issue a restraining order to keep someone from harassing, can't you?

MR. TRANTHAM: I think you can. I think you can say don't call somebody at 2 o'clock in the morning, I think that's absolutely right. And I think you would say don't put 50 phone calls into someone's business which actually they don't want to talk with you. Now, these are e-mails, of course, --

JUSTICE O'NEILL: And -- and not --

MR. TRANTHAM: -- don't have to open e-mail.

JUSTICE O'NEILL: But again, let me -- let me follow up on Justice Medina's --

MR. TRANTHAM: Sure.



JUSTICE O'NEILL: -- question. If -- if -- I mean, how do you stop this type of activity? What will be the language that you would craft that -- that would prevent this sort of long continued e-mails?

MR. TRANTHAM: Send them to church or something --

JUSTICE O'NEILL: [inaudible]

MR. TRANTHAM: I -- you know, with a sociology there. I -- I'm not sure if that's a --

JUSTICE O'NEILL: So you can say, forever and a day, anybody can send as many e-mails as they want to -- what -- and say whatever they want to.

MR. TRANTHAM: If it was e-mails, you don't have to open them of course. You know, just ignore them. But I'm -- and I'm not saying that you're -- you're allowed to come out, stand outside their house for the bull horn at 3 o'clock in the morning and scream, you know, you're complaints at them, you follow what I'm saying? But there's got to be some -- some area here where -- where, you know, people are gonna say things between spouses that somebody's not gonna like. You were not fair to me, or you were mean to me, or you're not a good father, or all kinds of stuff like that. It's not the business of the state, I think, to regulate that type of speech. It's -- it's, you know, that's -- we got to protect speech somewhere. And we can't just say, well, you're an ex-spouse, don't make your -- your ex-spouse mad, there's no -- there's no side effect to that. That's not -- that's not a -- that's not a collateral effect of speech, you know. And then the question's well, what makes them mad?

CHIEF JUSTICE JEFFERSON: If the trial court's order had been based on vulgar or indecent language, would you still be here today?

MR. TRANTHAM: I like freedom of speech, Judge. I like it. I wanna say what I want to say, and when I'm mad, I want to say what I want to say, okay? And when I get mad, if I get mad at democrats, I get mad at them and I wanna say what I wanna say.

CHIEF JUSTICE JEFFERSON: So the answer is yes and --

MR. TRANTHAM: I don't understand what he was saying.

CHIEF JUSTICE JEFFERSON: -- so, so, the answer is that you -- that a judge has no business in -- in these warring type situations telling one spouse you cannot use vulgar, offensive language in -- in communicating with us.

MR. TRANTHAM: They are no longer spouses.

CHIEF JUSTICE JEFFERSON: They were former spouse.

MR. TRANTHAM: Yes.

CHIEF JUSTICE JEFFERSON: Or in a child custody situation, any of these family law, violent type --

MR. TRANTHAM: No, I didn't say that.

CHIEF JUSTICE JEFFERSON: -- situations, can the trial judge --

MR. TRANTHAM: And if --

CHIEF JUSTICE JEFFERSON: -- can a trial judge make any restrictions on speech between --

MR. TRANTHAM: Yes, Sir. If you have small children involved, I think adults shouldn't be up there telling those children --

CHIEF JUSTICE JEFFERSON: Okay, there are no children -- let's say there are no children. It's just --

MR. TRANTHAM: No children.

CHIEF JUSTICE JEFFERSON: -- husband -- former husband, former wife, there has been a divorce decree --

MR. TRANTHAM: And then there's -- they're disputing with each other?

CHIEF JUSTICE JEFFERSON: Sure. Is there -- is there any --

MR. TRANTHAM: No, Sir. I don't think -- I don't -- I don't think they will be a law for restriction. They are no longer related, there is no longer a divorce going on, they're just people, argue with each other and people argue.

CHIEF JUSTICE JEFFERSON: How can Congress regulate bill collector's speech?

MR. TRANTHAM: I think they do it --

CHIEF JUSTICE JEFFERSON: [inaudible] would say you cannot use vulgar, obscene, I -- I don't remember exactly what it is but in -- in terms of collecting a debt, there's --

MR. TRANTHAM: I -- I've never had -- I've never had a bill collector kind of [inaudible] --

CHIEF JUSTICE JEFFERSON: I'm asking you -- I'm asking you, if you can --

MR. TRANTHAM: I don't -- think they can.

CHIEF JUSTICE JEFFERSON: You cannot?

MR. TRANTHAM: I think they cannot. Things were -- I think it's a regulation of the content of speech. Now if you're attempting to terrorize someone, you know another story. You know, that's -- that's the fire in the theater. That -- those are regulation of collateral effective speech. And I think, if you try to terrorize someone, or you plot murder, or you plot [inaudible], that's the -- that's a reasonable time, place and manner restriction on the speech. But just simply to say that ex-spouses should not make their ex angry is, of course, beyond that.

CHIEF JUSTICE JEFFERSON: And if you started using -- that you -- you got angry at my questions and start using foul language at -- at this Court, we couldn't -- we couldn't do anything about that either?

MR. TRANTHAM: I've been at too many juror camps, Judge. I don't want to regulate my speech here. I can't -- in front of children, another story, if I'm in the Court, another story.

CHIEF JUSTICE JEFFERSON: Uh huh.

MR. TRANTHAM: But for reasonable -- but I've been in too many juror camps and I'm -- I'm not trying to regulate foul speech, I -- I give them on that one. Let me -- let me say also that the other problem -- that I see other than speech problems is the -- the judgment nunc pro tunc which I think was void on it's face. I used to get to tell people that there's nothing more final in Texas than a final judgment. Then they put this new line about how you can modify to make it enforceable by contempt which I think that legislature can do. But this goes beyond -- this is -- this case has some very screwy procedural history to it. It's giving me a headache trying to figure it out. The time for the plenary power expired and then there was discovery that when the judgment was drawn that the lawyers had put a mistake in it, they just simply hand it to Judge, the Judge signed it. And they came back later, long after plenary power had expired, entered what they call a judgment nunc pro tunc which was not correct, any clerical error from the pronouncement, but simply because lawyers who made a mistake entered at trial, so I think is judgment is void on it's face. I'm gonna --

JUSTICE HECHT: You know if these are -- if this order is used a lot in these cases --

MR. TRANTHAM: It was what?

JUSTICE HECHT: Do you know if an order like this is used a lot in divorce cases?

MR. TRANTHAM: Judge, it's -- of course, this is anecdotal. I haven't taken a survey. But I think that a lot of the judiciary in the

state, divorces and stuff, -- they're complex, they're hard to handle, a lot of human emotion, people trying to do the right thing. I haven't seen an opinion on nunc pro tunc judgments written by this Court or any other court in a long time. I think they have forgotten it. I think they simply in order to resolve, what they decide are problems will do a nunc pro tunc without looking at what it is.

JUSTICE HECHT: And what about the coarse and offensive part?

MR. TRANTHAM: Coarse and what?

JUSTICE HECHT: Coarse and offensive -- that sort of prohibition.

MR. TRANTHAM: I don't think -- again it's anecdotal, most lawyers I have talked to about it and say, well, it's kind of aspirational language in there. Don't expect me to really be able to enforce it because a court somewhere is gonna say, wait a minute, we're talking about speech and the orders don't have proper findings of why it's necessary -- why would be a reasonable time, place and manner type thing. So -- but I don't see it many times. I would say that. This is the first time I have seen it. I'm going to give you all some spare time.

JUSTICE BRISTER: All of the --

MR. TRANTHAM: Drat.

JUSTICE BRISTER: Just one brief question.

MR. TRANTHAM: Go ahead.

JUSTICE BRISTER: They have all of the -- the order of contempt is based solely on the e-mails?

MR. TRANTHAM: Yes, Sir.

JUSTICE BRISTER: None of these were --

MR. TRANTHAM: I believe so. I --

JUSTICE BRISTER: Oral conversations like this or does the record reflect?

MR. TRANTHAM: I don't believe they are ordered not to -- to telephone call each other -- but it says that you could talk, but I think everything said they found that communications were coarse and offensive.

JUSTICE BRISTER: But the only -- the only thing the order is based on is --

MR. TRANTHAM: That's all I have attaches -- these are e-mails and of course, the e-mails you don't have to open, so, that's another interesting topic.

CHIEF JUSTICE JEFFERSON: Any further questions? Thank you.

MR. TRANTHAM: Thank you.

CHIEF JUSTICE JEFFERSON: Court is now ready to hear argument from the real party in interest.

SPEAKER: May it please the Court. Ms. Peace will present argument for the real party in interest.

ORAL ARGUMENT OF AIMIE PEACE ON BEHALF OF THE RESPONDENT

MS. PEACE: May it please the Court, good morning.

JUSTICE O'NEILL: Ms. Peace, that's an interesting name.

MS. PEACE: For a divorce lawyer.

JUSTICE O'NEILL: Yeah.

MS. PEACE: Right. I -- this case I think the -- is different than a lot of cases. In that it is based on a mediated settlement agreement. In divorce cases, a lot of the courts will order families to go to mediation because you could resolve your disputes, they're -- they're absolutely final once you get there, you -- they're not subject to



revocation unless there's-- and very, very specific.

CHIEF JUSTICE JEFFERSON: But was that language in the mediated settlement agreement?

MS. PEACE: Yes -- yes, Sir, it is.

CHIEF JUSTICE JEFFERSON: The coarse and offensive --

MS. PEACE: Yes, Sir.

CHIEF JUSTICE JEFFERSON: What -- I -- I just missed it, I guess.

MS. PEACE: In the mediated settlement --

CHIEF JUSTICE JEFFERSON: What page is that?

MS. PEACE: -- agreement, it is on -- and the parties negotiated that.

CHIEF JUSTICE JEFFERSON: Okay.

MS. PEACE: They felt that it was necessary to protect their interest.

JUSTICE MEDINA: What, being harassed?

MS. PEACE: The interest -- that it was best for them and their children because at the time there were -- there was a minor child, they have two children.

JUSTICE MEDINA: If I saw --

CHIEF JUSTICE JEFFERSON: On page 4 -- on -- on page 4, the -- the 25th paragraph, the parties agreed and include all temporary injunction to get personal, etc. But I missed -- I guess, I missed that language.

MS. PEACE: [inaudible] from the -- yes, and -- and the final decree of divorce and the permanent injunctions prohibiting either party from contacting the other party's employers, workers or families. The injunctions were taken strictly from the record, from the temporary orders --

CHIEF JUSTICE JEFFERSON: But the language that we are -- coarse and offensive, vulgar, indecent, that is not in the mediated settlement agreement. It's just referred to generally from --

MS. PEACE: Right, what was in the temporary orders which is exactly what we -- what we negotiated based on.

JUSTICE MEDINA: Where is -- where did that language come from?

MS. PEACE: That language came from the trial court.

JUSTICE MEDINA: And when those --

MS. PEACE: Because obviously, I think you can look at the long history of this and see that this was a problem throughout the entire case.

JUSTICE MEDINA: My notes indicate that it was language that was similar to a pre-1983 version of the misdemeanor harassment statute, Penal Code Section 42.07 which has since been struck down as unconstitutional.

MS. PEACE: They -- all across the State of Texas. I know in -- in Denton County and in Collin County, they use very similar language in standing orders. Is -- they do that in -- especially in divorce cases to protect children and to protect people from this type of behavior when there is just high conflict type -- high emotions and keep people from just being abusive.

JUSTICE MEDINA: How is that language just vague on its face?

MS. PEACE: I don't think it is vague.

JUSTICE MEDINA: What's offensive to me may not be offensive to Justice Wainwright.

MS. PEACE: Well, I think certainly you can look at the communication that -- that she has sent. And I don't think there is any person in this room that would not find that that was offensive and it was --

JUSTICE BRISTER: Is that the standard that has to be that all

reasonable people would say it's offensive?

MS. PEACE: No, Sir. If you look at -- and in fact most of the case fall -- does fall into the kind of the harassment area. If you look at Kramer v. State, they said, coarse and offensive, you look at the content, you look at what they said. You know, it not -- it wasn't just offensive to him --

JUSTICE BRISTER: But that doesn't answer the question if two judges feel differently.

MS. PEACE: I think it had -- I think she has a right to appeal --

JUSTICE BRISTER: No, a -- a judge with a high level of expectations about people can throw you in jail for something that a judge who has been around the block and seen warring spouses all the time would not throw you in jail.

MS. PEACE: Well, in coarse and --

JUSTICE BRISTER: That's -- that's the definition of arbitrary, isn't it?

MS. PEACE: Well, coarse and offensive is also used in harassment statutes. Still coarse and offensive based -- it is still something that is commonly used in -- in criminal cases.

JUSTICE JOHNSON: Well is offensive enough to throw somebody in jail for 180 days because somebody gets offended that they -- they may say you didn't pay -- you didn't pay your child support, your sorry no good, now that might be offensive to someone who didn't pay their child support. Is that enough to throw them in jail for?

MS. PEACE: No, Sir. I do not believe that that would probably -- unless it was threatening.

JUSTICE JOHNSON: Okay, well let me ask another question. This -- this order says communicate. The opposing counsel says these are all e-mails. She didn't call him in the middle -- there were no calls in the middle of the night --

MS. PEACE: Yes, Sir, there were.

JUSTICE JOHNSON: There were no calls at work. I mean, is that what -- is it what --

MS. PEACE: That was presented -- that was presented at the trial court and the judge --

JUSTICE JOHNSON: That in the record of what she was held in contempt for, the phone calls?

MS. PEACE: That it was pled and the judge decided not to admit the tapes.

JUSTICE JOHNSON: Okay, so --

MS. PEACE: So, that's not --

JUSTICE JOHNSON: -- so, what -- what she's in contempt for, what we're here on are e-mails?

MS. PEACE: Correct.

JUSTICE JOHNSON: Okay. Now, seems like somewhere someone always told me to communicate, you had to have to someone sending and someone receiving?

MS. PEACE: Correct.

JUSTICE JOHNSON: Now, she sends e-mails and opposing counsel says, all he's gotta do is delete those things. I mean, that it's not -- he's not forced to hear them, he doesn't have to hear the phone ringing in the middle of the night. It's -- it's different on an e-mail.

MS. PEACE: They have children.

JUSTICE JOHNSON: So?

MS. PEACE: It could be an issue regarding the children. He's -- what their child in the middle of all this had a pole driven through his chest in a terrible car accident. So, yes they -- they have

children, they have -- I mean, you can't say we'll -- we'll never gonna communicate. The best way for them to communicate would be through e-mail because they cannot have a -- I mean, you've seen the way she communicates. Imagine a telephone conversation.

JUSTICE BRISTER: The position for your client is he really wants to hear her but he really doesn't want to hear her?

MS. PEACE: He doesn't want -- it has taken this.

JUSTICE BRISTER: But you could block the e-mails, forget about deleting. You could just block them and never even know they arrived.

MS. PEACE: That's correct. And then how is he going to know that his son was in a near fatal car accident?

JUSTICE BRISTER: So he wants to communicate but he didn't want to --

MS. PEACE: Regarding the children.

JUSTICE BRISTER: -- to communicate.

MS. PEACE: No, he want -- they have children. So, there has to be some -- I mean, there's got to be some form of communication in the event of an emergency, a car accident, and those types of things. So, those were the types of e-mails that --

JUSTICE BRISTER: Did you --

MS. PEACE: -- he -- you know, you gotta check for those things especially when your -- I mean, their -- their son was in ICU for weeks.

JUSTICE HECHT: He was about 17 during all the -- at the time of the divorce, I think

MS. PEACE: Yes. 16, 17.

JUSTICE HECHT: So -- and this was some years -- some of this was years afterward, so I guess he was -- he had reached the age of majority through the large part of this.

MS. PEACE: Correct.

JUSTICE HECHT: And then there were -- I couldn't understand 'cause the daughter was not mentioned in the divorce decree but --

MS. PEACE: She was already 18. But the children had been completely alienated from him based on this type of behavior. So, the only communication that he can get about his children is from her.

JUSTICE O'NEILL: Well, and he's still obligated on the insurance, isn't that correct? So, there has to be communication on --

MS. PEACE: We -- the amount -- just imagine trying to get a birth certificate? I mean -- and just mean and spiteful and hateful and you know, he said, yet you were terrorizing someone, what has she done?

JUSTICE BRISTER: Let me -- I'm just -- I'm just -- I'm not in favor of mean or spiteful or hateful, I'm against all those those things. But if somebody sent this stuff to me because they didn't like me as a judge, I couldn't do a thing about it, could I?

MS. PEACE: I think you could.

JUSTICE BRISTER: What would I -- what would I do? What would I sue him for--

MS. PEACE: I think you could sue him for -- I would -- I probably turn him into the police for harassment.

JUSTICE BRISTER: Let's -- I haven't read all the e-mails but I don't see that many. Let's set aside if there's any threats to physical violence that the wife was gonna do to your client. If there's nothing but just, you know, you're an idiot, you're an idiot, exclamation, exclamation, exclamation, screaming through e-mails, what would I sue him for?

MS. PEACE: I think you could sue someone for intentional infliction of emotional distress.



JUSTICE: We did -- but we did --

JUSTICE BRISTER: We've been real lax on those. See -- no, no problem that you'll be able to give intentionally infliction of emotional distress from having to read e-mails with a bunch of capital letters in it?

MS. PEACE: That's not what all is there.

JUSTICE BRISTER: That would be -- that would be it. There'd be absolutely nothing I could do about it.

MS. PEACE: Other than call the police.

JUSTICE BRISTER: But -- and what would I tell them?

MS. PEACE: That you are being harassed.

JUSTICE BRISTER: And what does the statute say on that?

MS. PEACE: That if you're harassed? I think they -- they in fact, Mr. Trantham, I think just tried that and he's probably coming this way 'cause it was annoy or alarmed, threaten, harass and I think coarse or offensive is in there as well. And the other, like I said, that she knew what she was not supposed to say. Those things were -- those were the things that were all mediated. When we went to mediation, they both got a bargain. And here is the thing, her free speech, I think -- So, I think she waived her right to free speech when she agreed to that, number one. And number two --

JUSTICE MEDINA: Well, you know that's -- that's a good argument. Could you expound on that? That she would have waived that to a portion of --

MS. PEACE: And there - there's a case law that you can waive it if you freely and voluntarily do it. And you know what you're giving up. She was at mediation with Mr. Klein. She had counsel, the -- the mediator was an attorney. She freely and voluntarily signed that mediated settlement agreement that she agreed to that, it's mutual. It's not just to punish her. She was a getting a benefit from that as well. He was not allowed to do it, she was not allowed to do it. So, you know, she got the benefit of the bargain. She knew what was coarse and offensive, that's what we talked about. And those are the things that happened at mediation that you negotiate for. She knew -- she agreed not to do it.

JUSTICE HECHT: Let me understand that kind of the setting here. One of the e-mails she said, I think, on June 14th 2004 that she was 46, is it -- do you know if that's about -- would that be about right?

MS. PEACE: The -- how old she is? Sir, I don't know how old she is.

JUSTICE HECHT: Or he -- do you have any idea?

MS. PEACE: Yes, and how old he is.

JUSTICE HECHT: And?

MS. PEACE: He is nearly 50.

JUSTICE HECHT: And the order indicates that he works for ADT?

MS. PEACE: Yes, Sir.

JUSTICE HECHT: And then -- I was curious, the communication started in June 2004?

MS. PEACE: Correct.

JUSTICE HECHT: But there was no motion for contempt for two and a half years?

MS. PEACE: That's right. Your Honor, what happened -- basically what happened, Mr. Coppock, he just figured that once the kids got older, she moved on, she's remarried, that the things would settle down. Well, she -- you -- if you read through the e-mails, she has sent e-mails, I will never stop until you are in prison or I'm dead, those were the kinds of things, this will never stop. 4:30, the day before

Thanksgiving, two years ago, she filed a frivolous motion to enforce against him. So, I mean and it was completely groundless. And still, I think it may - it may be out there pending somewhere but the judge, I mean, I don't think anybody would set it.

JUSTICE O'NEILL: Has the hearing held on that motion?

MS. PEACE: On her motion?

JUSTICE O'NEILL: Yes.

MS. PEACE: No, they never filed a hearing. It is to harass him, because it's not, I mean, there's not any merit to it.

JUSTICE JOHNSON: Well, aren't there sanctions available if someone does that?

MS. PEACE: That's correct.

JUSTICE JOHNSON: That would mean they go to jail?

MS. PEACE: We filed -- we filed the motion. No, I think it's -- I don't think she goes to -- for harassing him for that. I think the lawyer can be sanctioned for that, for filing a frivolous motion.

JUSTICE JOHNSON: But can she go to jail for filing a frivolous motion?

MS. PEACE: No.

CHIEF JUSTICE JEFFERSON: Okay.

MS. PEACE: That's not what I'm saying. I'm just saying is that that's the type of behavior we're dealing with. And at that point, everybody's got new families, you know, we haven't -- they're having to tell kids, don't answer it, you know, you can't answer the door if it's -- they were afraid of her.

JUSTICE HECHT: And then -- because of the length of time that was involved, I wondered if it was your position that even if they were 60 or 70, and this sort of flared up again, it would still be a violation of this order?

MS. PEACE: That's correct. At this point, she needs to leave him alone. There's -- I mean, at this --

JUSTICE BRISTER: Are there less restrictive alternatives since --

MS. PEACE: This is --

JUSTICE BRISTER: -- I mean, this is speech, we could set up a system where she has to communicate anything about the children, that's necessary to communicate through a lawyer or a psychologist or a mutual friend or a grandparent and she has to pay \$25 every time she does it.

MS. PEACE: Sir --

JUSTICE BRISTER: That would might -- might discourage her from doing this as often as the e-mails are. Aren't there other alternatives that could be -- I understand you -- okay, we have to hear from her but we don't wanna hear from her. There are other ways you could set that up, aren't there?

MS. PEACE: She has no boundaries. There are no boundaries. I am absolutely saying --

JUSTICE BRISTER: No. But it's a different -- it's a different thing -- it's a different thing if the order says, if you have information you want to get to your former husband, communicate it to the psychologist, who will contact the husband if it's necessary. That if she breaks that, we don't -- it didn't matter the content of the speech were not involved in vague laws that said call this person not that person and if she breaches it, we throw her in jail. That would be a less restrictive alternative, wouldn't it?

MS. PEACE: I don't think in this case it would work.

JUSTICE BRISTER: After she was thrown in jail, it would.

MS. PEACE: Well, if that's the only way so far we've gotten it to stop.

JUSTICE BRISTER: But there's a difference in throwing people in jail for speech and for actions.

MS. PEACE: I don't think that all speech -- that type of speech is vulgar, obscene, there's case law that said that's not protected speech. And I think she waived her right in that mediated settlement agreement. She had a lawyer there, she negotiated, she got the benefit of the bargain. You can absolute -- you can waive your right to a jury trial, you can waive your right to not self-incriminate --

CHIEF JUSTICE JEFFERSON: But I still don't understand that argument because I don't -- that -- that there's language in paragraph 25 about, you know, there may be a future injunction, but it doesn't go into the details that the order goes into. And so, if there's an unconstitutional problem with that order by signing the mediated settlement agreement, she didn't waive the cruel unusual punishment, for example, you know, if the judge inflicted that. So, --

MS. PEACE: She had the opportunity --

CHIEF JUSTICE JEFFERSON: Vague?

MS. PEACE: She had -- it was all there for her, with her lawyers. She had counsel, she knew at that injunction --

CHIEF JUSTICE JEFFERSON: So you're saying that there's gonna be some kind of injunction but where -- where was the language attached to that mediated settlement agreement?

MS. PEACE: The language was not attached to the mediated settlement agreement. It's in the -- it's in the record in the file of the court.

CHIEF JUSTICE JEFFERSON: In -- in the record -- in the divorce decree or prior to the divorce?

MS. PEACE: Prior to.

CHIEF JUSTICE JEFFERSON: And -- and where?

MS. PEACE: In the court stock --

CHIEF JUSTICE JEFFERSON: Do we -- do we have that here?

MS. PEACE: No, you do not have it here.

JUSTICE O'NEILL: It's in the temporary orders?

MS. PEACE: It's at pre-orders.

JUSTICE O'NEILL: The coarse and offensive language is in the temporary orders?

MS. PEACE: Yes, Ma'am.

JUSTICE O'NEILL: But we don't have the temporary orders settlement?

MS. PEACE: No, Sir -- no, Ma'am. And as far as the nunc pro tunc if you look at the mediated settlement agreement and you look at the inventory and appraisal, you see the information regarding RLC investments. It had been in the decree, it said RLC, LLP, I mean, LLC instead of LLP. That's what was changed. If you look at the mediated settlement agreement, if you look at the mediated settlement agreement, everything else has it listed properly. Somebody typed the C instead of a P, the judge in the nunc pro tunc, they have broad discretion to use their personal recollection of what they've heard in that case. The evidence that's before them and it didn't require judicial reasoning. She looked at the documents that we presented to her that said this is the name of this company, it's the only company. There was testimony at different times about that that it's the only RLC, LL -- the limited partnership, that's the only one in -- in the State of Texas.

JUSTICE O'NEILL: Was the injunction language in the original decree?

MS. PEACE: Yes.

JUSTICE O'NEILL: It wasn't added in the nunc pro tunc?



MS. PEACE: No, Ma'am. No. They're complaining about just the fact that that particular -- they're complaining about a P and a C. And the judge, I mean, there was an inventory and a mediated settlement agreement plus what she knew and there was a -- I mean, a lawsuit out there, it's listed. So, it did not require judicial reasoning for her to --

JUSTICE O'NEILL: If the nunc pro tunc order was no good, it wouldn't affect the -- then the other judgment would still stand, and it wouldn't affect the injunctive language that we're addressing today?

MS. PEACE: Correct, correct. So --

JUSTICE JOHNSON: What about the attorney's fees that she had to pay?

MS. PEACE: On - oh, number one, that issue was not raised at the Court of Appeals. But if you look at the case law on that, it's not -- not considered by Second Court of Appeals. She was not -- and that's not why she was incarcerated. She was incarcerated for failing to appear at the county jail. She was ordered to serve two weekends in jail, make payments towards attorney's fees and she wouldn't -- she just chose not to go because the rules and the laws do not apply to her. That has been the underlying theme, I think you can see that in all the -- all of that. There's a case called the Huey case. Her freedom would not be hindered if she complied with the schedule of payments. Number one, I don't think that that argument is even right. That's not why she was arrested. She was arrested for failing to show up to the county jail at 5 o'clock like she was ordered. And she was -- and she wasn't imprisoned for prior claim that Huey says, Huey says that is, you know, that is -- your freedom is not hindered if you comply with the schedule of payments. In Hightower and Chambers, it's the -- those two cases say a trial court can imprison a contemtor for non-payment of a debt or attorney's fees only if the monetary obligation represents child support, punitive fines or attorney's fees applicable to contempt proceedings. Chambers further goes on to say that a court may assess attorney's fees and as a sanction for the willful disobedience of a court order. And it's -- you can go to -- those are the things that are -- that the -- that have -- that have already been decided.

JUSTICE BRISTER: Was this brought back to the trial court more than once?

MS. PEACE: I'm sorry, Sir. I don't think that's --

JUSTICE BRISTER: In other words, you did was the when the trial court entered the contempt order, and was this the first time that the trial judge had heard about these e- mail problems?

MS. PEACE: No.

JUSTICE BRISTER: What had -- what had been at the courts?

MS. PEACE: There had been another issue prior to -- in the beginning. There was the contempt proceeding and there was a technicality in the extension of an -- of a temporary injunction. And so the judge -- obviously, she told her she thought she was probably the most offensive person that she'd ever heard from. And that could not hold her in contempt because she felt like that there was a technicality in the way that the extension was done, that there was a lapse. So, she couldn't do it at that point. The judge, like I said, entered the decree based on the mediated settlement agreement, based on the agreement of the parties. That was what they agreed to, that's what they wanted to do.

JUSTICE HECHT: Oddly in the -- in the decree, it says at one point Gayle Coppock is permanently enjoined from in the -- has a couple

things listed. But on the part above where it has all the subdivisions, it doesn't say you're enjoined from. It just says, the permanent injunction ground below should be effective but it doesn't say, don't do this. You don't have --

MS. PEACE: It's -- that has the declaratory language in that it says, it is granted, which is declaratorial, and permanent injunction and -- and it's an order. It said, it may not be in form book language but I think it puts her on notice as to what she is enjoined from doing. It says it's a permanent injunction and I think it is -- there's no question that -- that she was on notice.

JUSTICE HECHT: Well, it just says --

MS. PEACE: And it is ordered.

JUSTICE HECHT: -- it just says the permanent injunction granted below should be effective immediately, but in there's no injunction. Which is --

MS. PEACE: Was that she isn't --

JUSTICE HECHT: -- at least the claims.

MS. PEACE: The permanent injunction below -- granted below shall be effective if the permanent injunction granted, okay? It shall be binding on the parties and everybody, and then you will see the actual notice of this order.

CHIEF JUSTICE JEFFERSON: Are there any further questions? Thank you, Counsel.

REBUTTAL ARGUMENT OF WILLIAM TRANTHAM ON BEHALF OF THE PETITIONER

MR. TRANTHAM: Nobody said I have to come back. Again --

JUSTICE MEDINA: Did your client waive any free speech protection she may have had when this settlement was negotiated?

MR. TRANTHAM: That was one of the things I want to address. I -- I think -- I think we're down a rabbit trail on that one that goes the wrong direction. The question is not whether or not she agreed to it. As I said, most lawyers kinda consider this aspirational. The question is not whether or not --

JUSTICE MEDINA: But if you -- it's pretty good rabbit trail. I sat in the stand last night, I saw a few rabbits 'cause the wind was pretty high, could've seen it here?

MR. TRANTHAM: Well, here's -- here's the problem.

JUSTICE MEDINA: That's a good rabbit trail 'cause you go negotiate the terms of the settlement represented by counsel. You make an informed decision based on those representations you signed an agreement

MR. TRANTHAM: Yes, Sir.

JUSTICE MEDINA: So I aspire to get a thousand dollars when I settle this case. You get it or you don't.

MR. TRANTHAM: Okay.

JUSTICE MEDINA: And so what's aspiration about it? Their language is clear.

MR. TRANTHAM: That 'cause of the following. First, if I have a right to remain silent and I choose to run my mouth and talk, that's my right, correct? If the government chooses to take for eminent domain property and I choose not to seek just compensation --

JUSTICE MEDINA: Well, this is not --

MR. TRANTHAM: -- I'm waiving mine.

JUSTICE MEDINA: -- this is not the government who restrict us --

MR. TRANTHAM: The government --



JUSTICE MEDINA: Excuse me. It's not the government who restrict their speech. These are parties that agreed to restrict their speech.

MR. TRANTHAM: Point -- point I'm making to you. If -- in both those instances, eminent domain or the right to remain silent. It's -- it's my right, but the government had the power. In this instance, the government doesn't have the power to restrict speech. That's one of our most important constitutional rights. You do not have that power. The Texas Constitution exempts the bill of rights from the general powers of government.

JUSTICE MEDINA: I agree with everything you just said, except here the government is not trying to restrict speech.

MR. TRANTHAM: But the government is, when the government comes in for enforcement.

JUSTICE MEDINA: But by an agreed order.

MR. TRANTHAM: This is -- this is the functional equivalent of the Hecres veto, in my opinion. He may be mad. I'm gonna have the government come in and enforce it.

CHIEF JUSTICE JEFFERSON: Your client did agree to that language, is that correct, during this settlement agreement?

MR. TRANTHAM: Yeah, this is cited in the agreement. Now, there are two objections --

CHIEF JUSTICE JEFFERSON: I'm sorry. The -- the answer is yes to that?

MR. TRANTHAM: That the answer was -- was yes in the settlement agreement, but for the courts -- in Exhibit -- in Exhibit 2 contained the objections that the -- my -- that the client made to the entry of those orders. So, there -- there's not just done by agreement that was signed by the court. There were objections made, they didn't agree to it and the court ordered it anyway.

JUSTICE WAINWRIGHT: So, were there objections to that language?

MR. TRANTHAM: Yes. I don't -- I don't know about that. If they'll look at INT and -- and I did that earlier this morning and I -- I frankly, would have to go back and look, judge to look at -- I want -- I want to spend just a couple of seconds on that. The other was the -- the issue about the judgment nunc pro tunc. If you will look at the response filed by the respondent, Exhibit A has an Exhibit A to it. If you will look at the last paragraph, the names are wrong. This says an LLP.

JUSTICE O'NEILL: I'm having a hard time understanding why that matters to the question that's before us. Because if you throw out the nunc pro tunc judgment, you go back in the original, you're still looking at the same injunctive language, correct?

MR. TRANTHAM: But there was never an enforcement effort made on the injunctive -- under the -- the original order, only on the nunc pro tunc order.

JUSTICE BRISTER: Even though they said the same thing?

MR. TRANTHAM: Yeah. I mean, they could go back and try it and we'd be back on same stuff on that. But I -- I don't believe there's no attempt to enforce the original order which is enforced. The nunc pro tunc was drawn on the basis of a proper settlement which showed that a limited liability partnership, not a limited liability corporation, so there's a big difference --

JUSTICE BRISTER: Help -- help us here -- help us here. If you were right and this couldn't be enforced, what could you do? Nobody wants this to happen, we don't want to encourage the kind of behavior that your client has taken part in. What can we do to stop her?

MR. TRANTHAM: Well, no form of government get rid of the bill of



rights and just let everybody be ruled.

JUSTICE BRISTER: Assume I'm gonna live up to my oath just for the constitutional laws of the United States.

MR. TRANTHAM: I think you're gonna have to say that -- that the Bill of Rights wasn't passed to protect President Bush's right to say what he wants to it's made for coarse, vulgar, unhappy, the people that --

JUSTICE BRISTER: No we can't -- we can't --

MR. TRANTHAM: -- the people that come here are not --

JUSTICE BRISTER: we can't hear

MR. TRANTHAM: -- is not prisoned -?

JUSTICE BRISTER: -- 'cause I can cut to the bottom -- if I can cut to the answer, your answer is nothing? You can't do a thing right --

MR. TRANTHAM: I think you could -- I think -- I think the answer is that given reasonable time and circumstance, restrictions, that a lot of things can be done. We can't make it perfect and leave it with the First -- with the First Amendment under Texas, Article 1 Section 8. But time, place and manner restrictions which are gone reasonably with a reason to do it - -

JUSTICE BRISTER: Some time and place don't really apply here 'cause e-mails are timeless and placeless. But -- and the manner is the thing -- the very thing you're objecting to. I mean, if you're -- if you're answer is legitimate -- if your answer is we can't do a thing about it, say so. If we can do some, just tell me what it is.

MR. TRANTHAM: We can have -- we can and I think the Court ought to render opinion that reasonable time, manner and place restrictions which are set forth in detail as to why it's necessary to restrict speech for a limited time periods, it's necessary to do it in no further are acceptable. I think a prominent -- Justice Hecht asked the right question. These people get to be 70 years old and they -- they're still having an argument. I think it's unreasonable to restrict this and -- and speech is sometimes not pretty -- and this is probably not pretty speech, but I'll -- I'll point out to you a pornographic material is not restricted except to minors and stuff like that and this is not pretty. Obscene, is restricted. There are some limitations on speech, I agree, but I'm -- I believe that speech ought to be given the greatest possible latitude as can be done. You're saying less it's -- it's not honorable of what we're supposed to do.

CHIEF JUSTICE JEFFERSON: [inaudible] counsel and now Justice -- Justice Johnson.

JUSTICE JOHNSON: The parties went to the court and asked the court to make an -- to enter an order. And now the courts got an order entered and one party comes to the court and says, the other side is in violation of this order --

MR. TRANTHAM: Yes, sir.

JUSTICE JOHNSON: Are we really enhancing a great deal of respect for our judicial system, if the court says, I know, I entered the order and I know you asked me to and I know you're coming here asking me to enforce what I wrote and what the court entered, but I'm not just going to do it. Now, it seems like this waiver argument as to her rights to complain might have a little traction when we're talking about our system.

MR. TRANTHAM: Well, the problem with it is -- you -- you're asking and I'll withdraw a little bit wider. Suppose this is not involving -- suppose it involves something that is --

JUSTICE JOHNSON: Well, I'm talking about --

MR. TRANTHAM: -- clearly beyond --

JUSTICE JOHNSON: I'm just talking about this case in front of us right now where they had an agreement --

MR. TRANTHAM: I mean she can -- she can waive her right but you can't enhance the power of the government to enforce what's not enforceable or not within the jurisdiction of the court.

JUSTICE JOHNSON: I understand that --

MR. TRANTHAM: And you can -- you can -- you can't enforce restrictions on speech. That simply do nothing besides make somebody say, I -- I disagree that you may be mad and I'm gonna get the police and the government to do something to you.

JUSTICE JOHNSON: But you've said, you can waive rights to not testify.

MR. TRANTHAM: She can waive rights, but she can't empower the government, if it please the court. You -- you have all the power that -- that the people gave you and the constitution. You are not sitting as a legislature to legislate, decide, whatsoever. You got limited power under our bill of rights, the Texas Constitution says they took it out the powers of government to regulate speech, but I'm gonna believe there are some limitations on it because it says the consequences. Yes, that that's -- that's the murder, criminal conspiracies --

JUSTICE JOHNSON: You've gone over that before --

MR. TRANTHAM: Yes.

JUSTICE JOHNSON: I appreciate your response.

MR. TRANTHAM: Thank you. I appreciate your -- your time here this morning. I don't think I'll be back but if I am, well, somebody have mercy on an old man, please? Thank you.

CHIEF JUSTICE JEFFERSON: Thank you, Counsel. The cause is submitted and the court will take brief recess.

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