ORIGINAL

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FILED
LOS ANGELES SUPERIOR COURT
JAN 30 2009
JOHN A. CLARKE, CLERK
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

In re the Conservatorship of the Person and the Estate of: BRITNEY JEAN SPEARS, Conservatee.	CASE NO. BP 108870 **DECLARATION OF JEFFREY D. WEXLER IN SUPPORT OF REQUEST FOR ORDERS TO STOP HARASSMENT** Date: January 30, 2009 Time: 9:45 a.m. Department: 11 Judge: Hon. Aviva K. Bobb

DECLARATION OF JEFFREY D. WEXLER

I, Jeffrey D. Wexler, declare:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm of Luce, Forward, Hamilton & Scripps LLP ("Luce Forward"), counsel of record for James P. Spears ("Mr. Spears"), conservator of the person and co-conservator of the estate of Britney Jean Spears. Except as otherwise stated, the statements contained herein are based on my personal knowledge and experience. If called as a witness, I could and would testify competently to those facts.

2. On January 27, 2009, attorney John T. Anderson sent a letter by facsimile to Luce Forward partners Geraldine A. Wyle and Jeryll S. Cohen. Lodged concurrently herewith is a true and correct copy of Mr. Anderson's January 27, 2009 letter to Ms. Wyle and Ms. Cohen of January 27, 2009 attaching pleadings styled as follows: (a) Ex Parte Petition for Authority by Conservatee to Retain and Pay for Independent Counsel and for the PVP Attorney to be Relieved; (b) Memorandum of Points and Authorities in Support of Ex Parte Petition for Authority by Conservatee to Retain and Pay for Independent Counsel and for the PVP Attorney to be Relieved; (c) Declaration of John T. Anderson in Support of Ex Parte Petition; (d) Nomination of Legal Counsel; and (e) Declination to Stipulate to Commissioner. (As stated below, these pleadings have not been filed with the Court.)

3. On the afternoon of Tuesday, January 27, 2009, I received a telephone call from Mr. Anderson, who told me that he had spoken earlier that day with Ms. Wyle and that he was speaking with me because Ms. Wyle was out of the office and unavailable to take his call. Mr. Anderson told me that he was calling to provide some information that Ms. Wyle had requested in their phone call earlier that day. In that conversation and in a second telephone conversation later that afternoon, Mr. Anderson provided me with the following information.

4. Mr. Anderson said that he was initially contacted by attorney Jon Eardley, who had asked him for his expertise in helping Mr. Eardley to decide what documents he would be able to file on behalf of conservatee Britney Jean Spears ("Ms. Spears"). Mr. Anderson told me that he had been contacted by Mr. Eardley about three or four weeks ago, and that he had spoken with him a couple times.

5. Mr. Anderson said that he was thereafter contacted by Sam Lutfi, who said that Ms. Spears wanted to retain an attorney but was not allowed to speak to one. Mr. Anderson said that he had spoken with Mr. Lutfi about two or three weeks later.

6. Mr. Anderson said that he told Mr. Lutfi that he would not talk to Ms. Spears unless he received documents with her signature. Mr. Anderson told me that he had prepared a petition, engagement letter, and related papers and sent them to Mr. Lutfi, and that Mr. Lutfi thereafter returned signed versions of those documents to him.

7. I explained to Mr. Anderson that the Court had found in February 2008 that Ms. Spears lacks capacity to hire counsel. I also told Mr. Anderson that in February 2008 Mr. Eardley had filed papers removing the conservatorship proceedings to the United States District Court for the Central District of California, and that the Central District had subsequently remanded the case on the grounds that Ms. Spears lacks capacity to hire counsel and that Mr. Eardley therefore was not authorized to file the notice of removal on her behalf.

8. I also told Mr. Anderson that on October 28, 2008 the Court had granted the Co-Conservators' *ex parte* application for a protective order against a deposition of Ms. Spears noticed by the plaintiffs in a Florida lawsuit.

9. Mr. Anderson told me on January 27, 2009 that he had not yet filed the *ex parte* application and related papers with the Court. In our conversation and in two e-mails that he sent me later that day, Mr. Anderson agreed that he would not file his *ex parte* papers on Thursday, January 29, 2009, and that he would not file them at all pending his further investigation of the issues.

10. On January 27, 2009, I e-mailed Mr. Anderson certain publicly filed pleadings and orders related to the Court's finding as to lack of capacity.

11. In a telephone conversation on January 29, 2009, Mr. Anderson told Ms. Wyle and me that he had sent e-mails to Mr. Lutfi and Mr. Eardley telling him that he had a conflict and would have no further involvement with the matter.

12. Attached hereto as Exhibit A is a true and correct copy of a letter dated January 28, 2008 from Mr. Eardley to Ms. Spears.

13. Attached hereto as Exhibit B is a true and correct copy of a Minute Order filed on February 26, 2008 by the United States District Court for the Central District of California, the Honorable Philip S. Gutierrez presiding.

Executed on January 30, 2009 at Los Angeles, California. I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

JEFFREY D. WEXLER

EXHIBIT A

JON EARDLEY, ESQ.
ATTORNEY AT LAW
LAW OFFICES OF JON EARDLEY

16020 PUESTA DEL SOL
WHITTIER, CALIFORNIA 90603 (TELE.) 562.947.2008

January 28, 2008

PERSONAL AND CONFIDENTIAL

Britney Spears
12094 Summit Circle
Beverly Hills, CA 90210

BY FEDEX

Dear Britney:

I had not been paying much attention to your case, until the LAPD and your ex-husband's lawyer conspired to have you falsely arrested and thrown into a 72 hour involuntary lock-down detention at Cedars. You may not be aware of the fact that your civil rights were violated pursuant to 42 U.S.C. § 1983 et al., as a result of these actions and the significant implications of those actions with respect to your custody case. In a way, what happened to you may be a blessing in disguise with respect to delivering a knock out punch to your ex-husband's legal team (i.e. Kaplan) and winning your custody case immediately and unconditionally.

I have developed a legal strategy for you that I am confident will turn everything around, and ultimately garner you **full custody** of your children within approximately 30 to 60 days. I am a father of two girls, ages 3 and a half and one and can only imagine the heartbreak you are going through. These orders that Scott Gordon has handed down are media driven, and designed to facilitate their economic motivations in denying you even the most basic custody rights, particularly at a time when toddler boys and girls need to develop a strong and consistent bond with their mother. After having practiced law for years in Los Angeles, I find myself, at many times sickened by the corruption of the downtown court system. However, your case is the worst I have ever seen because they are unabated in the

EXHIBIT A

systematic destruction of your character and reputation; and they will not be happy until they have denied you your freedom and milked you for your last dime. The custody case, as you know, is nothing more than a flat out extortion scheme, with your children being used as pawns.

Thus, this situation needs to be put to an immediate end, and the only way that can happen is with the implementation of a completely innovative, tactical legal strike against the downtown court system, and your ex-husband's lawyers—all at once in a surprising and devastating strategy that will put all of them on the immediate defensive. This will allow you to be in control of the situation, instead of being controlled by it.

When the LAPD forced their way into your house for not handing *your children over to a "bodyguard" of your ex-husband*, they had no probable cause to search and seize your home, or to make any such entry, irrespective of the provisions contained in the court's custody order. Additionally, the LAPD had your husband's lawyer drive over to your property and had him provide them with an interpretation of the court's custody order so they could justify an illegal search, seizure, and arrest. My understanding is that he entered your property at the invitation of the police, and that you specifically instructed Kaplan to leave the premises. Then, in front of the media, they had you strapped to an ambulance gurney and hauled you away.

Secondly, Commissioner Gordon, about whom I know some interesting things, was quick to deny you all of your visitation rights, even before Cedars issued its evaluation that you were not under the influence of illegal drugs or alcohol. Commissioner Gordon clearly is biased against you. (I used to work with him when he was a deputy Los Angeles District Attorney.) He is clearly accepting media reports as evidence; additionally, he is considering declarations provided by Kaplan, based upon Kaplan's knowledge of things and events that he unlawfully obtained at your house.

Think about this for a second: in the last few days, you have been followed everywhere, nearly run off the road, and otherwise interfered with by tabloid journalists. Yesterday, I saw a recent report that questions whether you can be safe just driving to a store. Do you think Commissioner Gordon is going to be inclined to return the boys to you under these circumstances, even if all of the scurrilous tabloid coverage were wiped clean from the slate and particularly when you know other things are being

communicated behind the scenes? Not unless you have a legal strategy in place that aggressively confronts the due process, equal protection, fair trial, and other Constitutional violations that predominate in your case. The first step is in disqualifying Kaplan from further representation of your ex-husband. I need to discuss in detail with you the events surrounding the raid on your house.

Please believe me when I tell you that a conventional approach in the family law court, through the conventional emissaries of "star" family law lawyers, will not work. Your case will continue to spiral until they have denied you your freedom, your children and your assets. By then, it will be too late. (Sorrell is an excellent attorney; however, your current posture in the case is primarily defensive. You need an immediate offensive strategy to pound your ex-husband's lawyer into the ground and bring this circus to an end. My proposal is that we integrate innovative legal arguments into the matrix of your custody case to supplement and back up standard Family Law Code litigation that involves child custody issues, providing you with significantly more control over the situation. There is also the nuclear option: the filing of a lawsuit, the specifics of which I will discuss with you privately.)

I have some of the largest class-action cases in the nation pending in the downtown courts against some of the largest corporations in the world. I have affiliate offices in New York and Washington, D.C. None of the "standard" family law lawyers in this country will be able to obtain for you what you need more than anything: a devastating offensive strike against the court system, and your ex-husband's lawyers, all of whom are using you to promote their personal financial and other agendas. I will help you any way I can.

I will explain to you what needs to be done and why it will have the intended results. I will also help you completely overcome any anxieties about testifying in court or showing up at court. I am willing to take you to court and see to it that you get into the courtroom and are able to speak without any anxiety.

All I want is to see you win. I do not want anything in return and am willing to volunteer my time with you to see to it that you are successful in this custody case. I am not interested in publicity, money, or anything other than seeing you obtain full custody of your children.

Please recognize that aside from some anxiety and depression, which are totally normal under these circumstances, there is **nothing wrong with you**, but that the court system routinely engages in character assassination to conceal its internal bias and to break you down. You are a strong and beautiful woman who has been working all your life, and I know you can do this. They are all intensely jealous of you. It is my opinion that Kaplan and your ex-husband had this raid on your house planned well in advance, and had been waiting for an opportunity to spring it on you. What they ultimately want is to get you into a conservatorship; at that point, your freedom will be denied, giving them the full opportunity to steal all of your money and to deny you any access to your children. (This is why they keep pushing the mental illness, multiple personality issue.) You definitely do not want this to happen.

The court's order requiring you to submit to an Evidence Code § 730 evaluation can be satisfied by an out-patient evaluation pursuant to Evidence Code § 733. Evidence Code § 733 clearly states:

> "Nothing contained in this article shall be deemed or construed to prevent any party to any action from producing ***other expert evidence on the same fact or matter mentioned in Section 730***; but, where other expert witnesses are called by a party to the action, their fees shall be paid by the party calling them and only ordinary witness fees shall be taxed as costs in the action."

You have a right to provide your own private evaluation in lieu of submitting to a § 730 examination. Before now and the next scheduled hearing in February, it is my opinion that you should map out an evaluation plan that is consistent with § 733. As soon as you have this in place, an *ex parte* motion for reconsideration could be heard before the Commissioner. There are two advantages to this: 1) it demonstrates to the court that you are complying with the Evidence Code; and 2) it allows the court to see you. The Commissioner "noted" your absence from the last hearing. Most importantly, however, it allows you to establish a record in the event he denies your request. With a record of the proceedings, a ruling not in your favor could be reviewed by the Second District Court of Appeal through a petition for a writ of mandate. This would also provide you with the opportunity to raise other important issues. In practical effect, it would also help in your being afforded a degree of fairness at the next scheduled

hearing in February, particularly if the Commissioner knows that you intend to seek appellate relief as to every unfavorable order he issues from this point forward.

Between now and your next scheduled custody case hearing in February, there are some vitally important things that need to be done as soon as possible. There are many things I would like to discuss with you, including a strategy to disqualify Gordon from your case. Time is very much of the essence in your case.

I am in LA right now. Everything we discuss will be absolutely confidential. Call me as soon as you read this, anytime, night or day. My number is 562-947-2006; my cell is 562-298-8385. If I do not pick up, leave a number where you can be reached. My personal email is jjeardley@aol.com.

I look forward to hearing from you.

Sincerely,

Jon Eardley, Esq.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LA County Superior Court Case No.: BP108870 **JS-6**

CIVIL MINUTES - GENERAL
****CORRECTED****

Case No.	CV 08-1021 PSG (RCx)	Date	Feb. 26, 2008
Title	In re the Conservatorship of the Person and Estate of Britney Jean Spears		

Present: The Honorable Philip S. Gutierrez, United States District Judge

Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s): Not Present

Attorneys Present for Defendant(s): Not Present

Proceedings: (In Chambers) Corrected Order on the Conservator's Motion to Remand

Before this Court is the Conservator's Motion to Remand. The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local R. 7-15.

I. BACKGROUND

On February 14, 2008, attorney Jon J. Eardley ("Mr. Eardley") filed a notice of removal for the conservatorship proceedings of Britney Jean Spears ("Ms. Spears") from Los Angeles Superior Court ("Probate Court") to this federal district court. Mr. Eardley claims authority to act on behalf of Ms. Spears despite the Probate Court's orders to the contrary. On February 1, 2008, the Probate Court appointed Samuel D. Ingham III ("Mr. Ingham") as Ms. Spear's attorney. Also on that date, the Probate Court appointed Mr. Spears (Ms. Spears' father) as temporary conservator of Ms. Spears' person and estate. On February 4, 2008, the Probate Court extended the conservatorship over Ms. Spears until February 14, 2008 making the explicit finding that "Ms. Spears does not have the capacity to retain counsel." Then on February 14, 2008, the Probate Court again extended the conservatorship until March 10, 2008. At no time during the conservatorship did the Probate Court find that Ms. Spears had the capacity to retain counsel.

On February 19, 2008, this Court issued an Order to Show Cause to the removing party ordering the party to explain why this action should not be remanded due to the Court's lack of subject matter jurisdiction. Also on that date, Mr. Spears filed the current motion, in which Mr. Ingham joined, to remand the case to the Probate Court. Mr. Spears also requested an award of attorney's fees and sanctions against the removing attorney.

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL
****CORRECTED****

Case No.	CV 08-1021 PSG (RCx)	Date	Feb. 26, 2008
Title	In re the Conservatorship of the Person and Estate of Britney Jean Spears		

For the following reasons, this Court grants Mr. Spear's motion to remand. Also, the Court declines to award attorney's fees.

II. LEGAL STANDARD

While 28 U.S.C. § 1441 provides that some actions filed in state court may be removed to federal district court, "[t]he removal statute is strictly construed against removal jurisdiction, and the burden of establishing federal jurisdiction falls to the party invoking the statute." *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004), *amended*, 387 F.3d 966 (9th Cir. 2004), *cert. denied*, 544 U.S. 974 (2005) (citation omitted). The Ninth Circuit applies a "'strong presumption' against removal jurisdiction." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citation omitted). Furthermore, "[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Id.* (citation omitted).

III. DISCUSSION

A. Mr. Eardley's Standing to Remove the State Court Case

The conservator and Ms. Spears' court-appointed attorney make a simple argument for remand: Mr. Eardley is not Ms. Spears' attorney and acted improperly by removing her conservatorship proceeding to federal court. While Mr. Eardley argues that this Court has subject matter jurisdiction over the case because Ms. Spears' due process rights were violated in the conservatorship proceeding, Mr. Eardley fails to explain why he can bring this claim for her in the first instance. He cannot.

The federal removal statute clearly allows only a defendant to remove a case to federal court. Section 1441(a) states that, under the proper circumstances, "any civil action brought in a State court ... may be removed by the defendant or the defendants." 28 U.S.C. § 1441(a). Several courts have considered the issue and have been uniform in determining that non-parties do not have a right to remove cases to federal court. *See, e.g., Newman and Cahn, LLP v. Sharp*, 388 F. Supp. 2d 115, 117 (E.D.N.Y. 2005) (Both a non-party and an individual claiming to be a real party in interest have "no authority to seek removal."); *Geiger v. Arctco Enterprises, Inc.*, 910 F. Supp. 130, 131 (S.D.N.Y. 1996) ("It is clear beyond peradventure of a doubt that the right of removal is vested exclusively in defendants."); *Kane v. Republica De Cuba*, 211 F. Supp. 855, 856-58 (D.P.R. 1962) (a non-party who has not formally intervened may not remove a case from state court).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL
****CORRECTED****

Case No.	CV 08-1021 PSG (RCx)	Date	Feb. 26, 2008
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Here, Mr. Eardley had no authority to remove the case from state court. He is neither a defendant nor a party. While he claims to be Ms. Spears' attorney, the Probate Court appointed Mr. Ingham as her attorney and found that she was incapable of retaining her own counsel. Mr. Eardley did not challenge the Probate Court's appointment of Mr. Ingham and has not attempted to intervene in the conservatorship proceeding on her behalf. Instead, Mr. Eardley caused the case to be removed to federal court while clearly lacking the authority to do so.

B. Attorney's Fees Award

The Court finds that it is inappropriate to award attorney's fees in this case.

IV. CONCLUSION

For the foregoing reasons, the Court REMANDS this case to the Probate Court.