

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

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2
3 ROGER WITTEKIND,)
4 Plaintiff,) No. 90 SC 3806
5 vs.)
6 BEVERLY RUSK,)
7 Defendant.)

FILED IN THE CIRCUIT COURT
OF ROCK ISLAND COUNTY
GENERAL CLERK

APR 12 1991

Hennette J. Kenney
Clerk of the Circuit Court

8 REPORT OF PROCEEDINGS of the hearing held before the
9 HONORABLE JOHN M. TELLEN on the 14th day of January, 1991.

10 APPEARANCES:

11 MR. ROGER WITTEKIND, Plaintiff, appears
12 in Court Pro Se;
13 MR. DUANE THOMPSON, Attorney,
14 on behalf of the Defendant.

15 Betty J. Coopman
16 Official Court Reporter
17 Rock Island County Courthouse
18 Rock Island, Illinois 61201
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INDEX OF WITNESSES

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Direct Cross Re-Direct Re-Cross

Plaintiff Witnesses:

Roger Wittekind	5	-	-	-
Beverly Rusk	12	-	-	-

1 THE COURT: Mr. Rusk is on the stand. It
2 is now 11:15 A.M. We recessed at 10:55 A.M. because my other
3 reporter had to go for a felony case. All right, Mrs.
4 Coopman, this reporter, will be available until 12:00 noon.
5 Mr. Wittekind, please proceed with your case.

6 Plaintiff's Exhibits 4 and 2 have been admitted into
7 evidence. The Court does have the entire court file of 90 CM
8 91 which has not been marked as an exhibit, but the Court has
9 taken judicial notice of that file.

10 MR. THOMPSON: I believe it's 90 CM 9.

11 THE COURT: 90 CM 9, and the record will
12 show I called it 91 once before. That's computerization.
13 They didn't put the zero after it. Go ahead.

14 PLAINTIFF: I want to lay a foundation for
15 impeaching a witness. He stated earlier he said he hit me
16 when I was about to hit your wife. Is that correct?

17 MR. THOMPSON: I will object to the line of
18 questioning. It goes to the 1983 incident.

19 PLAINTIFF: It goes to show prior
20 inconsistent statements.

21 THE COURT: I will allow him to impeach on
22 it. It goes to the veracity. Go ahead.

23 PLAINTIFF: This is the report of
24 proceedings of that trial. Can you find anywhere in there

1 that you made that testimony?

2 THE COURT: I am going to sustain the
3 objection at this time. The witness should not be required
4 to read the transcript of the trial.

5 PLAINTIFF: There is no place in here where
6 he says I was about to hit his wife.

7 THE COURT: That's not impeaching. Proceed
8 with something else.

9 PLAINTIFF: I think I will take the stand
10 next.

11 THE COURT: You are excused, Mr. Rusk.
12 (Witness excused)

13 THE COURT: You can go ahead and go outside
14 or you may stay in the courtroom. If you stay in the
15 courtroom, you are not to talk.

16 MR. THOMPSON: For the record, the plaintiff
17 had no questions for Mr. Rusk.

18 PLAINTIFF: I would like to enter this as
19 evidence.

20 THE COURT: Are you testifying? I don't
21 recall if you were sworn. Are you going to testify?

22 PLAINTIFF: I will testify in a bit. I
23 want to enter this as evidence before I start to testify. I
24 will go under oath now.

(Witness sworn)

1
2 THE COURT: Each statement you have I am
3 not going to require you to ask questions and then answer
4 them because that would probably be confusing to everybody
5 here, but I don't want you to launch into a long narrative
6 without giving Mr. Thompson an opportunity to object. If Mr.
7 Thompson does object, please stop until the Court has had an
8 opportunity to rule. It is difficult for the reporter to be
9 able to write down the statements of two people talking at
10 once, and in the second place, we want to proceed in an
11 orderly manner. Please proceed.

12 From the beginning start off by saying that your name is
13 Roger Wittekind and you are the plaintiff in this case No. 90
14 SC 3806. Please proceed.

15 ROGER WITTEKIND,
16 the plaintiff herein, being first duly sworn, testified in
17 his own behalf as follows:

18 PLAINTIFF: I would like to enter a phone
19 bill and a transcript. Her daughter testifies to the phone
20 number where she was at. The point I want to make is that
21 the phone call was to the daughter's house, and this woman
22 was trying to claim this phone call as the one that was
23 harrassing. Can I show you this? This is the so-called
24 harrassing phone call.
25

1 MR. THOMPSON: If he is moving for admission
2 of it, I will object that it is irrelevant and non-probative
3 on the issues here today.

4 THE COURT: I can only tell that it's
5 somebody's phone bill. The objection is sustained.

6 MR. THOMPSON: Will that be marked as
7 Plaintiff's Exhibit No. 5?

8 THE COURT: I will not mark it. There are
9 several sheets to that phone bill.

10 PLAINTIFF: There is one main sheet. The
11 one that says January 1st to the daughter's house.

12 THE COURT: I sustained the objection.
13 Improper foundation and it's hearsay. You can tell us
14 anything you wish to testify to. Please proceed.

15 PLAINTIFF: Okay. I want to start with
16 that letter I marked.

17 THE COURT: You want to talk about the
18 letter of April 27, 1983?

19 PLAINTIFF: The one I sent with the court
20 case. The one from my attorney.

21 THE COURT: All right. That's in the court
22 file. Go ahead and testify.

23 PLAINTIFF: This woman has made....

24 THE COURT: The letter from Mr. Thuline

1 addressed to Mrs. Beverly Wingert on April 20, 1983 attached
2 to this complaint is hearsay.

3 PLAINTIFF: Hearsay?

4 THE COURT: Yes. Mr. Thuline is not here
5 to testify about that letter.

6 PLAINTIFF: All right. The letter is
7 hearsay, but I will stand behind everything in that letter.

8 THE COURT: Go ahead and testify. Do you
9 have to look at his letter to refresh your recollection? If
10 you do, you can look at it and tell me what you are
11 refreshing your recollection on.

12 PLAINTIFF: The one that says...

13 THE COURT: Can you testify about anything
14 without refreshing your recollection from Mr. Thuline's
15 letter?

16 PLAINTIFF: Yes, I can.

17 THE COURT: Go ahead and testify. If you
18 need to refresh your recollection, you can.

19 PLAINTIFF: It states that I am well aware
20 of Cheryl Wingert's problem, and my communication with their
21 family isn't to upset them but to help them.

22 MR. THOMPSON: I will object to that
23 testimony. He's characterizing a letter that was held to be
24 hearsay.



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PLAINTIFF: I was pointing to the next letter, the one that Beverly wrote. I was using this one.

THE COURT: Plaintiff's Exhibit No. 4 he has in his hand. What do you have to say about that?

PLAINTIFF: They are accusing me of things that happened years and years ago, and they have no idea of what really happened. They made a lot of accusations against me, and I have never been able to talk in my defense. This one phone call to Cheryl's house, and they try slapping a telephone harrassment charge on me. May I state what did happen?

THE COURT: Please proceed. Go ahead.

PLAINTIFF: You accused me...

THE COURT: Just state the date this happened and where it happened and go ahead and tell us about it. All I ask is that you lay some foundation about when and where it was and what happened.

PLAINTIFF: In this transcript Beverly accused me of following Cheryl home once, and Cheryl said...her description of this alleged event never happened. Where she says I followed her home, I see in here what did happen but I never got to state what the motive for it was. They are trying to say my motives are bad. That's the reason for the malice.



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THE COURT: Go ahead.

PLAINTIFF: You said I harrassed Cheryl in high school. That is one of the accusations I heard. That's one of the accusations I remember.

THE COURT: Please be seated on the witness chair. Don't drape yourself across the bench.

PLAINTIFF: The way I remember this event is completely different. It's completely innocent. There is nothing wrong with it at all. Things got so twisted and so warped to make me look like I am infatuated, and that is not true. That's what is proven in that.

THE COURT: Is it your position that you did contact Mrs. Rusk's daughter but for proper motives?

PLAINTIFF: Yes. We were talking about an alleged event of following her home. The daughter does not testify to that. I testified to what did happen. I want you to know that my motive wasn't infatuation. I respect your daughter. I told you that before. I know her fears.

MR. THOMPSON: I will object at this point to the relevancy of this continued testimony. The case we are talking about was a complaint filed by Beverly Rusk regarding telephone harrassment of her.

THE COURT: I am going to allow him to testify so that we can complete this case. The objection is

1 overruled. Go ahead.

2 PLAINTIFF: I am well aware of your
3 daughter's fears. I know she is afraid of being taken
4 advantage of and being laughed at. In this testimony the
5 two people I had testify for me would point out to you the
6 respect I have for her. Basically that's all I ever wanted
7 to say, but I was never given a chance to say that much.

8 This event where you said I harrassed Cheryl in the
9 hallways, the way I remember that event was we were walking
10 down the hallway, and the guy I was with, Bob Geiger, he
11 teased me about how much trouble I was having talking to
12 Cheryl, and he said all you have to do is this, and he says
13 her name out loud. I remember Cheryl then. She frowned.
14 She was real upset about it. But we weren't teasing Cheryl.
15 Bob was teasing me because of the trouble I was having.

16 Cheryl has been very polite to me. We actually feel the
17 same way about each other. I have fears concerning her. And
18 this fear about me causing her to have a set back. What
19 about me? How do you think I would feel if she walked out on
20 me. I'm afraid of a breakup.

21 This is the reason I have done everything I can to stay
22 away. You make it look like Cheryl is the only one that has
23 fears. We both have fears. That's something I have never
24 been able to say.



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THE COURT: Is that all?

PLAINTIFF: I also want to bring up this statement about where I was supposed to follow Cheryl home. There were three Wingerts in the phone book, and I just wanted to know what her phone number was, and I just wanted to talk to her because she was always polite to me, and I wanted to be polite back. They are saying I might take advantage of Cheryl, but if I don't say anything, then I would be taking advantage of her. All of my motives have been twisted and turned around. It's real simple. I just wanted to point that out. They have my motives completely backwards. I don't think I have much more to say. Can I call Beverly back to the stand?

THE COURT: Do you have any cross-examination of Mr. Wittekind, Mr. Thompson?

MR. THOMPSON: No, I don't.

THE COURT: You can step down.
(Witness excused)

THE COURT: You may call her back to the stand. Come forward please, Mrs. Rusk. You are still under oath. Please answer the questions. Mrs. Rusk is back on the stand.

BEVERLY RUSK,
having been previously sworn, was recalled as a witness by

1 the plaintiff and was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY: MR. WITTEKIND

4 Q She will need to look at this to refresh her
5 memory. I don't think she has ever seen this letter. It's a
6 letter I wrote to one of the people I knew in high school.

7 THE COURT: If she has never seen it, it
8 can't refresh her recollection.

9 MR. WITTEKIND: Okay. She might remember
10 saying some of the things or she might remember some of these
11 events.

12 THE COURT: You will have to ask her
13 specific questions about things you are relying on.

14 Q You have testified that you don't want anything to
15 do with me. Is that correct?

16 A Yes.

17 Q I want to know what started all of this. What
18 started this behavior? What started this pattern?

19 THE COURT: What pattern?

20 MR. WITTEKIND: Where they refused to talk to
21 me. I want to know what started their behavior. If there
22 was something that triggered it.

23 THE COURT: You have asked your question.
24 I heard no objection. Go ahead. Do you understand the

question?

1
2 A Say it again.

3 Q You are saying you don't want anything to do with
4 me. What triggered this? What events triggered this?

5 A I don't know why we have to have anything to do
6 with you. You are not a friend of our family, and you have
7 nothing to do with our family. You are not in our family,
8 and we don't want you as a friend of our family.

9 Q Is there some reason I can't even talk?

10 A Talk to who?

11 Q To you?

12 A Yes.

13 Q What?

14 A Just what I stated.

15 Q Just because you don't want to talk to someone.
16 Is it how I look?

17 A No.

18 Q Is it my color?

19 A No. We don't want to be bothered with you. We
20 don't want you bothering us and harrassing us.

21 Q What have I asked for? What have I ever asked
22 for?

23 A We don't know why you are bothering us at all.

24 Q Your allegations in here, the allegations you
25

1 make, have you ever let me deny them? Have you ever given me
2 a chance to deny them?

3 A I don't know why you want to bother us. Why can't
4 you understand we don't want you to bother us.

5 Q Beverly, I am interested in the allegations you
6 made.

7 A You are obsessed with my daughter. You have been
8 obsessed with her for 17 years ever since high school. She
9 never had a date with you. She never went out with you. She
10 never had a desire to be with you.

11 Q What do I say about your allegations? What have
12 I ever said concerning those?

13 A I don't know what your reasons are behind any of
14 this. I have never had any idea why we have been through all
15 of this all of these years.

16 Q Have you ever given me a chance to say anything?
17 Have you ever given me a chance to say my side of the story?

18 MR. THOMPSON: Objection. Argumentative.

19 THE COURT: The objection is sustained.
20 You don't have to answer.

21 MR. WITTEKIND: Your Honor, I don't know. This
22 might make me look crazy, but I would like to bring up
23 something that might back up my side...back up my motive.

24 THE COURT: You might be able to do that,

1 but it isn't anything you are going to ask Mrs. Rusk, is it?
2 Should she be excused from the witness stand?

3 MR. WITTEKIND: I would like to...

4 THE COURT: I notice when you made that
5 comment that you had a hard cover book in your hand. Is that
6 a book that has any connection with Mrs. Rusk? Did she write
7 something from that or quote something from that to you?

8 MR. WITTEKIND: She is saying she doesn't know
9 why...She keeps saying she doesn't know why. All I ever
10 wanted to do was say why, and this book does contain a major
11 part of it.

12 THE COURT: Do you have any questions of
13 Mrs. Rusk as opposed to you stating your position?

14 MR. WITTEKIND: My original question was what
15 events triggered this attitude.

16 MR. THOMPSON: Objection. That has been asked
17 and answered twice.

18 MR. WITTEKIND: I don't remember the answer.

19 THE COURT: The objection is sustained.
20 She has answered the question.

21 MR. WITTEKIND: I don't think she has.

22 THE COURT: Do you have anything further of
23 Mrs. Rusk?

24 MR. WITTEKIND: I don't know. I don't care. I
25

1 would like her to answer the question.

2 THE COURT: Mrs. Rusk, you may step down
3 from the witness stand.

4 (Witness excused)

5 MR. WITTEKIND: I will just make my closing
6 remarks and head out of here.

7 THE COURT: Do you have any evidence, Mr.
8 Thompson?

9 MR. THOMPSON: If the plaintiff is resting, I
10 would like to make a motion for a directed judgment based on
11 failure to prove malicious prosecution, specifically malice
12 and lack of probable cause. There has been no evidence
13 presented by plaintiff that her conduct in file No. 90 CM 9
14 was motivated by malice and no evidence that there was a lack
15 of probable cause for the filing of those charges. I will
16 submit to the Court a copy of Mack v. First Security Bank of
17 Chicago, 511 N.E. 2nd 714, which gives us a summary of the
18 definitions of malice and probable cause and the elements of
19 the cause of action for malicious prosecution.

20 THE COURT: I will take a glance at it. I
21 read this the other day. You may look at that, Mr.
22 Wittekind. You may respond to the motion of the defendant if
23 you wish.

24 If that book that you are talking about has anything to
25

1 do with your response to the defendant's motion, then you can
2 mention it to me at this time.

3 MR. WITTEKIND: I feel I proved both of these.
4 I feel there is an absence of probable cause and the malice
5 is proved by their not even talking to me. There is so much
6 malice that they can't talk to me. I feel both of these have
7 been proven, Your Honor.

8 THE COURT: Do you want to mention the
9 book?

10 MR. WITTEKIND: Yeah, sure I will mention it.

11 THE COURT: Go ahead please.

12 MR. WITTEKIND: I will take the stand again.

13 THE COURT: You can just talk about the
14 book from that location. I see from the jacket it appears to
15 be a book entitled "Boby Language". That has a public
16 library stamp on it, doesn't it?

17 MR. WITTEKIND: Yes. The Davenport Public
18 Library. I read this book between my sophomore and junior
19 years. I was just curious. There was one thing I remembered
20 about it. There is a line that says "Who imitates who in the
21 family? Imagine before the wife sets a pace for imitating
22 certain movements which the rest of the family follows, then
23 she is probably the dominant partner." Just by watching how
24 people sit or just by watching their movements in general, if
25

1 somebody is copying somebody else, they are the dominant
2 partner. That was hard. That threw me.

3 I knew Cheryl. It was unbelievable at first. Cheryl
4 was copying things. I couldn't figure it out. I have marked
5 this into evidence in the court file. I can point it out.
6 It's the last two pages of the affidavit. They did make
7 copies of all of the stuff I had given. It was
8 unbelievable. I noticed she was following in a lot of
9 gestures she was copying. She would wear the same outfit for
10 four or five days even though she wasn't talking to me
11 verbally.

12 THE COURT: Are you talking about Cheryl or
13 Beverly?

14 MR. WITTEKIND: Cheryl.

15 THE COURT: What you are saying is not only
16 was she copying your gesturees, but four days out of the week
17 she had worn the same outfit that you had worn the previous
18 day, and not only did she buy the same types of clothes you
19 had, but she wore them the day after you wore the outfit.
20 This happened in the 11th grade. Is that what you are
21 referring to?

22 MR. WITTEKIND: Yes. That was one of the
23 things I got out of this book. I hated to think she was
24 calling me the dominant partner, but she was copying me. It

1 happened too many times to be coincidental. There is a
2 phrase in here that talks. I looked up the horoscope stuff
3 to see what it says about a relationship between me and
4 Cheryl. They have indicated an interest in this horoscope
5 stuff. The line in here I think I should read it word for
6 word. As crazy as it sounded, that proved my motive was
7 harmless. I wouldn't do anything to upset these people.

8 There is a line in here that talks about pisces women
9 and scorpio men, and they say their communication can take
10 place in a crowded room and nobody else knows they are
11 talking. This describes what happens. Even though these
12 situations weren't verbal, I have had an effect on the
13 daughter which is in this letter that Beverly wrote. She
14 didn't say anything to me personally. She even agreed I had
15 an effect on the daughter.

16 I just wanted her to know she never has been mistreated
17 but the malice is the reason I have never been able to say
18 that.

19 THE COURT: Okay. Is that it?

20 MR. WITTEKIND: I think so.

21 THE COURT: The Court has heard the
22 evidence in the case. At the close of the plaintiff's case,
23 the defendant has moved for a judgment because of failure of
24 proof on the part of the plaintiff. The Court finds that the

1 plaintiff was obligated to prove, number one, the successful
2 completion of the prior proof. The plaintiff did prove
3 that. The plaintiff has failed to prove, however, that the
4 defendant, Beverly Rusk, did not have probable cause to
5 commence the prosecution. The record shows that there was a
6 probable cause hearing in front of Judge Brinn. The record
7 also is that...

8 MR. WITTEKIND: Can I see that?

9 THE COURT: That Mrs. Rusk did talk to the
10 State's Attorney's office and that although Mrs. Rusk said
11 that that statement was not verbatim what she told them, it
12 is clear that the State's Attorney's office was the one that
13 instituted the prosecution after Mrs. Rusk went to see them
14 which was what any citizen of this state has a right to do.

15 Thirdly, if there wasn't probable cause to commence
16 prosecution, that Mrs. Rusk was acting out of malice towards
17 the plaintiff in this case, the defendant in the other case.
18 Mrs. Rusk did not act maliciously as shown by the evidence in
19 this case. The plaintiff's proof has failed in that regard.

20 The Court finds that judgment should be entered for the
21 defendant and against the plaintiff, and the judgment is
22 entered for the defendant against the plaintiff. If the
23 defendant has incurred costs, the judgment is entered in her
24 favor against the plaintiff for those costs. I don't see

that there are any costs.

MR. WITTEKIND: I have one question. When Judge Brinn signed that so-called probable cause order, that's what this was about. That was on presumption.

THE COURT: The case is terminated. (Which was all the evidence offered and received and all other proceedings had in the hearing in the above cause.)



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I, BETTY J. COOPMAN, an Official Court Reporter for the Circuit Court of Rock Island County, 14th Judicial Circuit of Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above cause; that I thereafter transcribed the same into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable John M. Telleen, Judge of said Court.

Betty J. Coopman
Official Court Reporter

Dated this 10th day
of April ,1991.