

## 1 STATE OF NEW HAMPSHIRE

## 2 6TH CIRCUIT COURT - FAMILY DIVISION - CONCORD

3 IN THE MATTER OF, ) Family Division Case No.  
4 ) 644-2020-DM-00107  
5 JENNIFER EBER, )  
6 Petitioner, ) Concord, New Hampshire  
7 ) January 18, 2023  
8 ) 1:59 p.m.  
9 vs. )  
10 )  
11 GORDAN MACDONALD, )  
12 Respondent. )  
13 \_\_\_\_\_

14 TELEPHONIC CONFERENCE  
15 BEFORE THE HONORABLE DAVID BURNS  
16 JUDGE OF THE CIRCUIT COURT - FAMILY DIVISION

17 APPEARANCES (all present by video or telephone):

18 For the Petitioner: Meegan Reis  
19 DWYER DONOVAN & REIS PA  
20 461 Middle St  
21 Portsmouth, NH 03801  
22  
23 For the Respondent: James Tenn, Jr.  
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26  
27 Audio Operator: Electronically Recorded  
28 \*\*Not Monitored\*\*  
29  
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1 (Proceedings commence at 1:59 p.m.)

2 THE COURT: Good afternoon. We are on the record in  
3 the Concord Family Division. It is Wednesday, January 18th,  
4 2023. This is case number 644-2020-DM-00107. It's a matter  
5 of Jennifer Eber and Gordon MacDonald.

6 And on the line are Attorney Meegan Reis on behalf  
7 of Jennifer Eber and Attorney James Tenn on behalf of Gordon  
8 MacDonald.

9 My name is David Burns, and I'm presiding in the  
10 Concord Family Division this afternoon. So good afternoon to  
11 you both.

12 MR. TENN: Good afternoon, Your Honor.

13 MS. REIS: Good afternoon, Judge.

14 THE COURT: We are scheduled today for a conference  
15 regarding the status of your case. And I need to start out  
16 with a couple of preliminary remarks, if I can. If I can ask  
17 for your indulgence for just a moment or two.

18 For starters, I want both counsel to be aware of --  
19 I've reviewed the file, and I'm aware of the recusal of Judge  
20 McIntyre and Judge Hersh. And I also have reviewed Attorney  
21 Reis' assent to motion for recusal that was granted most  
22 recently. And in it, I noted that Attorney Reis requested,  
23 and I think Attorney Tenn assented, to the appointment of  
24 Judge Tenney to hear the case. But that prayer for relief was  
25 not granted, and I suspect I know why.

1                   So I'm just going to sort of speculate a little bit  
2 as to why. Judge Tenney -- excuse me -- is not sitting here  
3 in the Concord Family Division this year. He clearly was back  
4 in 2021 when he signed one of the initial orders in the case,  
5 but he's not sitting here this year. And so it's possible  
6 that the request to have Judge Tenney hearing this was not  
7 granted, A, because he's not sitting here this year, and B,  
8 because assigning him to the case would have essentially  
9 required a change of venue. And it's not clear whether the --  
10 or the parties and counsel were anticipating or actually  
11 interested in a change of venue.

12                   So I just want to open the conversation with that.  
13 I'm sure there are more substantive things to talk about. But  
14 I just want to open the conversation by referencing that and  
15 just ask your feelings about the assignment to Judge Tenney.

16                   I will tell you, I'm trying to figure out -- I've  
17 made an inquiry or two about where Judge Tenney is sitting  
18 this year and I don't have a solid answer for you as I'm  
19 speaking right now, but I believe he may be at least part of  
20 the time in the Upper Valley, maybe in the Lebanon area or  
21 Newport. He also had been sitting in Franklin some of the  
22 time. So I just -- I'm not entirely sure, as I'm speaking  
23 with you, as to where he's sitting.

24                   So having said all that, let me turn things over to  
25 you both just on the issue of judicial assignment.

1                   MR. TENN: So this is Attorney Tenn.

2                   Judge, I think we were just trying to find a judge  
3 that wouldn't have a conflict. And I think we're fine. I  
4 don't -- unless Attorney Reis thinks that you might have a  
5 conflict -- I think we're just fine. And I don't know of any  
6 conflict with you sitting on the case, and we'd be just fine  
7 to leave it at that. That's my two cents on that. And I  
8 don't know if Meegan has something different.

9                   THE COURT: Okay.

10                  MS. REIS: Judge, if you don't mind, I think in  
11 previous cases judges have kind of let us know if they've --  
12 they themselves have any reason to feel like they've had or  
13 might have a conflict with Gordon MacDonald. I'm not hearing  
14 you share anything on the record that concerns you; is that  
15 correct?

16                  THE COURT: Yes. That's the short answer, but I  
17 also am prepared to give you sort of full disclosure about  
18 both parties, just so both of you as counsel and both parties  
19 know where I stand. I -- the short answer is, I don't believe  
20 that there's a conflict, but I want everybody to be fully  
21 informed.

22                  MS. REIS: Would you mind, Judge, just kind of  
23 letting us know if you've had any contact with the parties?  
24 If you have any awareness of them?

25                  THE COURT: Sure. Sure. So here's my background

1 with regard to each of the -- each of the parties.

2                   For starters, I know Attorney Eber, and I would say  
3 I do not know her well, but I know Attorney Eber. Attorney  
4 Eber and I were admitted to the bar either around the same  
5 time or maybe at the very same time in the fall of 19 -- I was  
6 admitted in the fall of 1991, and I think Attorney Eber was  
7 admitted around that time as well.

8                   She was, at the time, a new associate at the Orr &  
9 Reno law firm in Concord. I was, at the time, a new associate  
10 at a different law firm in Concord.

11                  Over the 30 or so years since then I cannot think of  
12 a case in which I had Attorney Eber on the other side. I  
13 think we just did different types of work and so forth. I  
14 don't believe I've ever had a -- just operating from memory, I  
15 don't believe I've ever had a case with Attorney Eber. I  
16 don't believe that I have any professional history with her.  
17 We've never worked in the same office. I don't believe -- and  
18 again, just operating from memory -- I don't believe I've done  
19 any -- I've been involved in bar association committees and so  
20 forth over the years and other community based civic groups  
21 and so forth. I don't believe we have ever been members of  
22 bar committees or other civic groups.

23                  At the same time, I also don't believe that -- we  
24 are not -- we are not socially involved in the same social  
25 groups or social circles. Although, I'm sure I've been to a

1 bar event over the years where Attorney Eber may have been  
2 present. I've never been to her house. She's never been to  
3 my house. We don't do activities together.

4 I will be candid with you. I think the last time I  
5 saw Attorney Eber, my wife and I -- we live in Concord -- I  
6 think my wife and I were participating in a local road race.  
7 That's a fundraiser for the local hospital. It's called the  
8 Rock'N Race. I think that's in May. I think the last time I  
9 saw Attorney Eber, my wife, Heather, and I bumped into her at  
10 the Rock'N Race. I think she was -- I know she's a runner. I  
11 think she was running the race. And I can assure you that my  
12 wife and I were walking the race because we're --

13 MR. TENN: We'll take note, Judge.

14 THE COURT: Yeah. You can fully disclose this. I  
15 don't think we're quite as athletic as she is. But so I think  
16 that's the last time I bumped into Attorney Eber.

17 So that's -- I think sort of the -- we've always  
18 been able to sort of exchange pleasantries and so forth, but  
19 that's about the full extent of it.

20 Turning to the Respondent, Justice MacDonald, I --  
21 my full disclosure is this: I don't think I had ever met  
22 Justice MacDonald prior to his joining the Supreme Court  
23 bench. I don't believe I've ever served on a committee with  
24 him or a board of any sort.

25 I do not have any social history with Judge --

1 Justice MacDonald. I again, as I said with Attorney Eber,  
2 I've never been to his home. He's never been to mine. Our  
3 kids are not the same age. We don't have social  
4 overlapping -- social networks.

5 I can say that as part of his job, Justice MacDonald  
6 has attended a couple of the circuit court -- the periodic  
7 circuit court training and education days that we have. He's  
8 attended, I think, to give keynote remarks or otherwise,  
9 listen to circuit court presentations relating to the  
10 functions of the courts.

11 So that is -- I'm not on any bar committees or court  
12 committees with him. And so aside from perhaps shaking hands  
13 with him on a couple of occasions and saying hello and  
14 exchanging pleasantries, I don't have any history with Justice  
15 MacDonald.

16 But I need to state the obvious. And the obvious is  
17 that he presides over the judicial branch, and I ultimately  
18 report to him. So that's sort of my full disclosure regarding  
19 Justice MacDonald.

20 MS. REIS: Thank you, Judge.

21 THE COURT: Sure. Sure. So I --

22 MS. REIS: I don't -- I'm not hearing anything on  
23 the record that raises any concern for me at this time.  
24 Obviously, I just want to review with my client to make sure  
25 there's nothing none of us are recalling.

1           I also think for today's purposes we're fine  
2 continuing with the status hearing. And if something comes up  
3 Attorney Tenn and I can certainly bring it to the Court's  
4 attention afterwards.

5           THE COURT: Okay. Sure. And I will say a couple of  
6 things in response.

7           First of all, absolutely neither counsel and neither  
8 party should feel any hesitation about moving for my recusal.  
9 I would totally understand if either party wanted to do that.

10           Having said that, I guess what I would say is, if  
11 you do want a special assignment to a particular judge just  
12 indicate that. And I also, in reviewing the file and  
13 scratching my head about this, I don't -- I guess I want to  
14 just air the question of whether it makes sense to think about  
15 special designations of judges from outside of the state. I  
16 don't know if that's something that's contemplated or not, but  
17 I'll just -- I didn't see any indication of that in the file.  
18 So I don't know if that's a realistic proposition or not.

19           MR. TENN: From my perspective -- this is Attorney  
20 Tenn -- from my perspective, I think what we've done before  
21 is, if I'm not wrong, I think we can proceed with this hearing  
22 and then each of us can speak with counsel and if anybody has  
23 an issue, we'll alert the clerk's office.

24           And if we do have an issue, we'll be more specific  
25 about maybe what the next step might be and what we suggest,

1 ss you won't have to guess at it.

2 THE COURT: Okay. That sounds great.

3 MS. REIS: I would agree with that.

4 THE COURT: All right, that sounds great.

5 Okay. So with all that preliminary stuff out of the  
6 way, let me turn things over to you as to the status.

7 MS. REIS: Attorney Tenn, I'll let you, if you want  
8 to go first, and I'll just correct any mistake.

9 MR. TENN: That's great, why should anything change.

10 So Your Honor, I think substantively, what we were  
11 hoping is that the -- could have until on or about April 1, to  
12 give the Court some indication as to what, if anything, we  
13 think should happen as the next event.

14 The parties are communicating well. We're still  
15 involved in attempting to resolve this case by agreement.  
16 Discovery has not been a problem. Attorney Reis and I are  
17 very cooperative.

18 And so really, from my perspective, if the Court  
19 would let us calendar April 1st to give the Court a heads up  
20 as to what the status is, I think that's all we might need  
21 today substantively.

22 I've talked to Attorney Reis this morning about what  
23 our plan is to move forward, and I think she and I are on the  
24 same page. That's what I'd say.

25 THE COURT: Okay. Attorney Reis?

1 MR. TENN: I would agree with that, Judge.

2 THE COURT: Okay. All right. So is there any  
3 objection to -- I just -- the clerk's office will usually  
4 bring me up short if I neglect to schedule a next event. So  
5 any objection if I -- if I say telephonic status after April  
6 1st, is that -- does that work?

7 MS. REIS: I think that's fine, Judge. And if we  
8 even want to have that as counsel only, we can do that, and if  
9 either party -- if we need to change that or want to change  
10 that, Attorney Tenn and I can be in touch to let the Court  
11 know that.

12 MR. TENN: Yep, that's totally fine. I agree.

13 THE COURT: Okay. All right. That sounds great.  
14 Anything else that can be accomplished today?

15 MS. REIS: I don't believe so, Judge.

16 MR. TENN: I don't think so, Judge. Thank you very  
17 much.

18 THE COURT: All right. Thank you both for calling  
19 in. Appreciate your time today. I'll get a short order out,  
20 and we'll look forward to hearing from you.

21 MR. TENN: Thank you.

22 MS. REIS: Thank you very much, Judge.  
23 Thanks, Attorney Tenn.

24 MR. TENN: Thank you.

25 THE COURT: Thank you both.

1 MS. REIS: Bye-bye.

2 (Hearing concluded at 2:15 p.m.)

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CERTIFICATE

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August 9th, 2025