

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

HAROLD M. VOSS, JR. and  
KIMBERLY VOSS, individually and  
as co-guardians of the person and  
estate of Ashley Lynn Voss,  
an incapacitated adult,

50711

Plaintiffs,

vs.

Case No. CJ-2005-3319

INDEPENDENT SCHOOL DISTRICT  
NUMBER 5 OF TULSA COUNTY,

Defendant.

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TRANSCRIPT OF FRIENDLY SUIT

HAD ON THE 28TH DAY OF JUNE, 2005

BEFORE THE HONORABLE RUSSELL P. HASS  
SPECIAL DISTRICT JUDGE

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APPEARANCES:

MR. J. DEREK INGLE, Attorney at Law, 4111 South  
Darlington, Suite 1050, Tulsa, Oklahoma, 74135, appeared  
for and on behalf of the Plaintiffs.

MR. KENT B. RAINEY, Attorney at Law, 525 South Main  
Street, Suite 700, Tulsa, Oklahoma, 74103, appeared for  
and on behalf of the Defendant.

Reported by: Peggy A. Hayes, CSR, RPR

PROCEEDINGS

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THE COURT: We are on the record this morning in this matter of Harold M. Voss, Jr. and Kimberly Voss, individually and as co-guardians of the person and estate of Ashley Lynn Voss, an incapacitated adult, v. Independent School District Number 5 of Tulsa County, Oklahoma, CJ-2005-3319. Present in court for the plaintiffs is Mr. Derek Ingle, attorney at law. The defendants appear not, however, are represented by Mr. Beau Rainey, attorney at law.

This matter comes on for purposes of hearing this morning, the Court having been advised by counsel that all issues currently pending before this Court have been resolved, a settlement agreement has been reached. Is that correct, Mr. Ingle?

MR. INGLE: Yes, Your Honor.

THE COURT: Mr. Rainey?

MR. RAINEY: Yes, Your Honor.

THE COURT: You may call your first witness.

MR. RAINEY: Call Kimberly Voss, Your Honor.

THE COURT: If you'd come forward and be sworn, please. Raise your right hand. Do you solemnly swear the testimony you're about to give is true and

1 correct to the best of your knowledge, so help you God?

2 THE WITNESS: I do.

3 THE COURT: Please be seated and make  
4 yourself comfortable. Would you state your true, correct,  
5 and legal name, spelling your last name for the court  
6 reporter.

7 THE WITNESS: It's Kimberly S. Voss. It's  
8 V, as in Victor, o-s-s, as in Sam.

9 THE COURT: Miss Voss, I need you to answer  
10 all questions out loud verbally for the benefit of the  
11 court reporter.

12 THE WITNESS: Okay.

13 THE COURT: That is, if you'd please speak  
14 your answers. Do not shake your head or nod your head.  
15 The reporter is unable to take down a head shake or head  
16 nod. Also, if you'd speak loudly enough so that everyone  
17 in the courtroom is able to hear your testimony. Last but  
18 most importantly, if you would allow the attorneys to  
19 complete their questions prior to you responding. Again,  
20 the court reporter is only able to take down one person  
21 speaking at a time. Do you have any questions regarding  
22 my instructions?

23 THE WITNESS: No, sir.

24 THE COURT: Mr. Rainey, you may inquire.

25 MR. RAINEY: Thank you.

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KIMBERLY VOSS,

the Plaintiff herein, called on her own behalf, after having been duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. RAINEY

Q. Mrs. Voss, are you married?

A. Yes, I am.

Q. What is your husband's name?

A. Dr. Harold Voss.

Q. And is Dr. Voss a physician?

A. Yes, he is.

Q. What type of physician?

A. He's an anesthesiologist.

Q. Mrs. Voss, do you and Dr. Voss have a daughter by the name of Ashley Voss?

A. Yes, we do.

Q. And are you and Dr. Voss Ashley's natural parents?

A. Yes, we are.

Q. How old is Ashley today?

A. Ashley is 20.

Q. And where does Ashley currently reside?

A. She lives with us at our home.

Q. Does Ashley suffer from any type of disabilities?

A. Yes, she does.

1 Q. And if you would, explain to the Court briefly what  
2 type of disabilities that she suffers from.

3 A. Okay. She was born with Down's syndrome, D-o-w-n  
4 syndrome. And she as a result of that, had a congenital  
5 heart defect and then had to have open heart surgery when  
6 she was two and a half years old. She sustained a  
7 postoperative encephalopathy. It's basically she had a  
8 hypoxic event, enough oxygen didn't get to her brain, so  
9 she sustained additional disabilities from the  
10 postoperative complications.

11 Q. As a result of Ashley's disabilities, have you and  
12 Dr. Voss been appointed by the District Court of Tulsa  
13 County as co-guardians of Ashley?

14 A. Yes, sir.

15 Q. And is the appointment reflected in the Letters of  
16 Guardianship that were filed with the District Court of  
17 Tulsa County on April 14 of 2004?

18 A. Yes, sir.

19 Q. Have the Letters of Guardianship been modified or  
20 revoked in any manner?

21 A. No, they have not.

22 Q. Miss Voss, I'm an attorney for Independent School  
23 District Number 5, Tulsa County, which is the Jenks Public  
24 Schools. And do you understand that we're here today to  
25 have the Court approve a settlement of a claim that you

1 and your husband have brought on Ashley's behalf against  
2 the Jenks School District?

3 A. Yes, sir.

4 Q. Do you understand that you're the named plaintiff in  
5 this lawsuit?

6 A. Yes, sir.

7 Q. Are you represented by an attorney?

8 A. Yes, we are.

9 Q. And is that Mr. Ingle, who is here?

10 A. Yes, sir.

11 Q. Have you had an opportunity to discuss with Mr. Ingle  
12 the proceedings here today?

13 A. Yes, we have.

14 Q. And have you had an opportunity to consult with Mr.  
15 Ingle regarding all the documents that you've signed in  
16 this case, including the Release, which is attached to the  
17 Joint Application to Settle the Claims of an Incapacitated  
18 Person?

19 A. Yes, we have.

20 Q. And does your signature on the Release reflect that  
21 you understand the Release?

22 A. Yes.

23 Q. And does your signature on any of the documents  
24 reflect your understanding of the documents?

25 A. Our understanding of all, yes.

1 Q. Ma'am, are you under the influence of any type of  
2 substance today that would affect your thinking?

3 A. No.

4 Q. Have you ever been adjudged incompetent, insane, or  
5 had a guardian appointed for you by a court of law?

6 A. No, I have not.

7 Q. Mrs. Voss, you understand that the lawsuit that you  
8 filed against Independent School District Number 5 of  
9 Tulsa County alleges that your daughter, Ashley, sustained  
10 personal injuries as a result of exposure to pollutants at  
11 Jenks School District in or about April of 2004?

12 A. Yes, sir.

13 Q. Would you briefly describe what injuries you believe  
14 Ashley suffered?

15 A. The injuries we're aware of are respiratory problems  
16 from probably the particulate exposure, damage to her  
17 lungs, and a rash on her face that we still are not to the  
18 bottom of yet of what the rash is from, but it came up  
19 just within four or five days of the exposure and she  
20 still has it. It's been over a year.

21 Q. Has Ashley received medical treatment for her  
22 injuries?

23 A. Yes, she has.

24 Q. Is she still undergoing medical treatment for her  
25 injuries today?

- 1 A. Yes.
- 2 Q. Do you understand that you have agreed to settle any  
3 claims known and unknown for any claims you and Ashley may  
4 have against Jenks Schools for \$50,000?
- 5 A. Yes, sir.
- 6 Q. Do you understand that this money will be used by you  
7 as Ashley's guardian for the care and well-being of  
8 Ashley?
- 9 A. Yes, sir.
- 10 Q. Have you discussed this settlement with Ashley?
- 11 A. It's not possible to do that, unfortunately.
- 12 Q. Do you realize that you don't have to settle this  
13 case?
- 14 A. Yes, sir.
- 15 Q. Do you realize that you could proceed to have a judge  
16 and jury hear the evidence and make a decision regarding  
17 the claim for damages alleged in the petition, and you  
18 might get more or you might get less or you might get the  
19 same amount?
- 20 A. We realize that, yes.
- 21 Q. Do you understand that by settling you give up the  
22 right to have a judge and a jury hear the case and decide  
23 what damages you and Ashley should receive?
- 24 A. Yes, sir.
- 25 Q. Do you wish to proceed, knowing all these things?

1 A. Yes, we do.

2 Q. Are you here today requesting the Court to approve  
3 this settlement?

4 A. Yes, we are.

5 Q. Has anyone forced or threatened you to settle this  
6 case?

7 A. No, sir.

8 Q. Has anyone promised you anything other than the  
9 \$50,000?

10 A. No.

11 Q. Are you entering in to this settlement of your own  
12 free will?

13 A. Yes, we are.

14 Q. Finally, is it your decision to settle this case?

15 A. Yes, it is.

16 Q. And do you believe it to be in Ashley's best  
17 interests to settle the case?

18 A. We do.

19 MR. RAINEY: I have no further questions.

20 THE COURT: Thank you.

21 Mr. Ingle, do you wish to inquire?

22 MR. INGLE: Yes, sir.

23

24 CROSS EXAMINATION BY MR. INGLE

25 Q. Mrs. Voss, even though the law does not require it,

1 have you and your husband undertaken to set up a trust  
2 account on behalf of Ashley for her medical expenses  
3 related to this exposure?

4 A. Yes, we have.

5 Q. And is your intention to put those proceeds into this  
6 trust account to be used solely for those medical  
7 expenses?

8 A. I don't believe they're solely for medical expenses,  
9 but it is a special needs trust that's being set up that  
10 will allow us to do what's necessary for her care.

11 Q. Thank you for correcting me on that.

12 MR. INGLE: Your Honor, that's all I have  
13 at this time.

14 THE COURT: Mr. Rainey, anything further?

15 MR. RAINEY: No further questions.

16 THE COURT: Mr. Ingle, may I inquire of  
17 your client?

18 MR. INGLE: Absolutely, Your Honor.

19  
20 EXAMINATION BY THE COURT

21 Q. Miss Voss, as you sit here this morning, do you  
22 believe that you fully and completely understand  
23 everything that's happening in the courtroom today?

24 A. I do.

25 Q. Do you have any questions regarding anything that has

1 happened up until this time?

2 A. No, sir.

3 Q. Have you discussed this matter with your husband,  
4 Harold Voss?

5 A. Yes, I have.

6 Q. Is he aware of this settlement agreement?

7 A. Totally, yes, sir.

8 Q. And is he in agreement with this settlement  
9 agreement?

10 A. Yes, he is.

11 Q. My understanding is he's unable to be here this  
12 morning. Is that -- oh, I'm sorry. Mr. Voss is present.  
13 I apologize.

14 So he is here and he is in agreement?

15 A. Yes, sir.

16 Q. Have you had sufficient time to discuss this matter  
17 with your husband and your attorney?

18 A. Yes, we have.

19 Q. Do you wish any additional time to discuss this  
20 matter with your attorney, your husband, or a third party?

21 A. No, sir.

22 Q. Have you had sufficient time to review all of the  
23 settlement documents?

24 A. Yes, we have.

25 Q. Do you have any questions regarding how those

- 1 settlement documents read or what they have to say?
- 2 A. No, sir.
- 3 Q. Do you wish any additional time to review those  
4 settlement documents?
- 5 A. No, sir.
- 6 Q. Is it your belief that you fully and completely  
7 understand all of the terms and conditions of the  
8 settlement of this matter today?
- 9 A. Yes, I do.
- 10 Q. Do you have any questions regarding those terms and  
11 conditions?
- 12 A. No, I don't.
- 13 Q. Do you believe that you fully and completely  
14 understand the rights you have and are giving up today?
- 15 A. Yes, I do.
- 16 Q. Do you have any questions regarding those rights?
- 17 A. No, sir, I don't.
- 18 Q. Do you believe you fully and completely understand  
19 the rights that your daughter, Ashley, has and that you  
20 are giving up on her behalf today?
- 21 A. Yes, I do.
- 22 Q. Do you have any questions regarding those rights?
- 23 A. No, sir.
- 24 Q. Again, you understand that this is a full, final, and  
25 complete settlement regarding all issues regarding this

1 particular incident and this particular defendant?

2 A. Yes, sir.

3 Q. Do you have any questions regarding that fact?

4 A. No, sir.

5 Q. And finally, you and Mr. Voss have determined this  
6 settlement agreement to be in Ashley's best interest. Is  
7 that correct?

8 A. Yes, sir.

9 Q. Do you have any questions of your attorney?

10 A. No, sir.

11 Q. Any questions of me?

12 A. No, sir.

13 THE COURT: Mr. Rainey, anything further of  
14 this witness?

15 MR. RAINEY: Nothing of this witness, Your  
16 Honor; however, I would like to call Dr. Voss for just a  
17 few questions.

18 THE COURT: Now that I've established he's  
19 here.

20 Ma'am, you may step down. Thank you.

21 Sir, if you'd come forward and be sworn. Would  
22 you raise your right hand. Do you solemnly swear the  
23 testimony you're about to give is true and correct to the  
24 best of your knowledge, so help you God?

25 THE WITNESS: I do.

1 THE COURT: Please be seated. Would you  
2 state your true, correct, and legal name, spelling your  
3 last name for the court reporter.

4 THE WITNESS: Harold Matthew Voss, Jr.  
5 Last name is V, as in Victor, o-s-s.

6 THE COURT: Mr. Rainey, you may inquire.  
7

8 HAROLD M. VOSS,  
9 the Plaintiff herein, called on his own behalf, after  
10 having been duly sworn to testify the truth, the whole  
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION BY MR. RAINEY

13 Q. Dr. Voss, were you present during the testimony of  
14 your wife?

15 A. I was.

16 Q. Is there anything that she said that you disagreed  
17 with?

18 A. No.

19 Q. There are a few questions that I just need to go  
20 through and ask you that are similar to those asked of  
21 your wife.

22 You are Ashley Voss's natural father. Correct?

23 A. I am.

24 Q. And you are married to Kimberly Voss. Correct?

25 A. I am.

1 Q. And you have been appointed as a co-guardian with  
2 your wife with respect to the person and estate of Ashley  
3 Voss. Is that right?

4 A. I have.

5 Q. Dr. Voss, you understand we're here today to settle a  
6 claim that you and your wife have brought against  
7 Independent School District Number 5 of Tulsa County, the  
8 Jenks School District?

9 A. I do.

10 Q. And during the time of this lawsuit, have you, as  
11 well, been represented by Mr. Ingle?

12 A. I have.

13 Q. Have you had an opportunity to discuss with Mr. Ingle  
14 the proceedings here today?

15 A. I have.

16 Q. Have you had the opportunity to consult with Mr.  
17 Ingle regarding all the documents that you've signed in  
18 this case, including the Release attached to the Joint  
19 Application to Settle the Claim of an Incapacitated  
20 Person?

21 A. I have.

22 Q. Did you sign the Release?

23 A. I did.

24 Q. Does your signature constitute your understanding of  
25 the Release?

1 A. It does.

2 Q. Are you under the influence of any type of substance  
3 that would affect your thinking today?

4 A. I'm not.

5 Q. Have you ever been adjudged incompetent, insane, or  
6 had a guardian appointed for you by a court of law?

7 A. No.

8 Q. Dr. Voss, do you realize that you don't have to  
9 settle this case today?

10 A. I do.

11 Q. And you understand that you, as a co-guardian of  
12 Ashley, are bringing this lawsuit, as well as your wife?

13 A. I do.

14 Q. Do you realize that you could proceed to have a judge  
15 and jury hear the evidence and make the decision regarding  
16 the claims or damages alleged in the petition and you  
17 might get more or you might get less or you could get the  
18 same amount?

19 A. I understand that.

20 Q. Do you realize that by settling you give up the right  
21 to have a judge or jury hear the case and decide what  
22 damages, if any, you and Ashley should receive?

23 A. I do.

24 Q. Do you wish to proceed knowing all these things?

25 A. I do.

1 Q. Are you here today requesting the Court to approve  
2 the settlement?

3 A. I am.

4 Q. Has anyone forced or threatened you to settle this  
5 case?

6 A. No.

7 Q. That is, has anyone promised you anything other than  
8 the \$50,000?

9 A. No.

10 Q. Are you entering this settlement of your own free  
11 will?

12 A. I am.

13 Q. Is it your decision to settle this case?

14 A. It is.

15 Q. And do you believe it to be in Ashley's best  
16 interests to settle this case?

17 A. I do.

18 Q. To your knowledge, have the Letters of Guardianship  
19 that were attached to the petition been withdrawn or  
20 modified in any way since they were issued by the District  
21 Court of Tulsa County?

22 A. No.

23 MR. RAINEY: I have no further questions,  
24 Your Honor.

25 THE COURT: Mr. Ingle?

1 MR. INGLE: None, Your Honor.

2 THE COURT: May I inquire of your client?

3 THE COURT: Absolutely.

4

5 EXAMINATION BY THE COURT

6 Q. Mr. Voss, do you believe that you fully and  
7 completely understand everything that's happening in the  
8 courtroom today?

9 A. I do.

10 Q. Do you have any questions regarding anything that is  
11 happening here today?

12 A. No, sir.

13 Q. Do you have any questions regarding the rights you  
14 have and are giving up today?

15 A. No, sir.

16 Q. Do you have any questions regarding the rights that  
17 you're giving up on Ashley's behalf today?

18 A. No, sir.

19 Q. Have you had sufficient time to review all the  
20 settlement documents?

21 A. I have.

22 Q. Do you wish any additional time to review these  
23 settlement documents?

24 A. No, sir.

25 Q. Do you believe that you fully and completely

1 understand all of the terms and conditions of the  
2 settlement of this matter today?

3 A. I do.

4 Q. Do you have any questions regarding those terms and  
5 conditions?

6 A. No, sir.

7 Q. Do you wish any additional time to discuss this  
8 matter with your wife, your attorney, or a third party?

9 A. No, sir.

10 Q. And you're asking the Court to accept and adopt this  
11 settlement agreement and make it the order of the Court.  
12 Is that correct?

13 A. I am.

14 Q. Any questions of your lawyer?

15 A. No, sir.

16 Q. Any questions of me?

17 A. No, sir.

18 THE COURT: Anything further, Mr. Rainey?

19 MR. RAINEY: No, sir.

20 THE COURT: Mr. Ingle?

21 MR. INGLE: No, Your Honor.

22 THE COURT: The Court determines that  
23 Harold M. Voss, Jr. and Kimberly Voss, individually and as  
24 co-guardians of the person and estate of Ashley Lynn Voss,  
25 an incapacitated adult, are both capable of making

1 knowingly, intelligent, and voluntary waivers of their  
2 rights, as well as the rights of the incapacitated adult.  
3 The Court specifically finds that Mr. and Mrs. Voss have  
4 waived their rights to trial, to trial by jury, and all  
5 rights associated therewith. They further waived the  
6 rights of Ashley Lynn Voss to trial, to trial by jury, and  
7 all rights associated therewith.

8 The Court will accept and adopt the terms and  
9 conditions of the settlement of this matter as set out in  
10 the record by counsel, more specifically set out and  
11 delineated in the Order Approving Settlement Agreement  
12 with Incapacitated Person submitted to the Court this  
13 morning. The record should reflect the Court has executed  
14 said document in open court. That will be the order of  
15 this Court.

16 Anything further, Mr. Rainey?

17 MR. RAINEY: No, sir.

18 THE COURT: Mr. Ingle?

19 MR. INGLE: No, Your Honor.

20 THE COURT: If there's nothing further,  
21 we'll be in recess. You may be excused. Good luck to  
22 you.

23  
24 (Whereupon, the hearing concluded.)  
25

