

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 23-02935CF

TOMASZ KOSOWSKI,

Defendant.

_____/

VIRTUAL DEPOSITION OF
HONORABLE JUDGE PATRICIA MUSCARELLA

DATE: May 9th, 2024

TIME: 11:32 a.m.

PLACE: Various Remote Locations
Via Zoom Video Communications

REPORTER: KIMBERLY L. RENFROE, RPR

VIRTUAL
APPEARANCES:

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1 DEPOSITION IN DISCOVERY

2 HONORABLE JUDGE PATRICIA MUSCARELLA

3 Pursuant to notice duly given, the virtual
4 deposition of HONORABLE JUDGE PATRICIA MUSCARELLA,
5 called by the Defendant in the above-styled cause, was
6 taken by me, a Notary Public in and for the State of
7 Florida at Large, at the time and place and in the
8 virtual presence of counsel enumerated on Page 2
9 hereof.

10 Thereupon, it was stipulated and agreed by and
11 between the attorneys for the respective parties, by and
12 with the consent of the said HONORABLE JUDGE PATRICIA
13 MUSCARELLA, that signature to the said deposition be
14 waived.

15 THE COURT REPORTER: Would you raise your
16 right hand for me, please?

17 Do you swear or affirm that the testimony
18 you're about to give in this cause will be the
19 truth, so help you God?

20 THE WITNESS: Yes, I do.

21 THE COURT REPORTER: Thank you.

22 HONORABLE JUDGE PATRICIA MUSCARELLA, having
23 been first duly sworn via Zoom Video Communications,
24 upon interrogation in discovery, testified as
25 follows:

DIRECT EXAMINATION

BY MR. BRUNVAND:

Q. My name is Bjorn Brunvand. I represent
Tom Kosowski. We're here on State of Florida versus
Tom Kosowski.

If you could please state your full name?

A. Patricia A. Muscarella.

Q. And you are currently a circuit judge in the
Sixth Judicial Circuit?

A. Correct.

Q. And how long have you been a circuit judge in
the Sixth Judicial Circuit?

A. I was elected in 2010. I think I started --

Q. Bef --

A. -- early January 2011, so, 13-plus years.

Q. Okay. For some reason on my end you're
freezing up, I don't know if that's true for the rest.

MR. BRUNVAND: Is anyone else having the same
problem?

No?

Okay. Well --

MR. VONDERHEIDE: I'm not.

MR. BRUNVAND: Okay.

Q. (By Mr. Brunvand) And before that, you were
practicing law here in Pinellas County?

1 A. Yes.

2 Q. And what area of law were you practicing
3 primarily?

4 A. Primarily real estate and contracts.

5 Q. Okay. And for how long?

6 A. I -- I think I graduated law school in '84 --

7 Q. Okay.

8 A. -- potentially.

9 Q. All right. So, 40 -- 40 years as a lawyer.

10 A. A couple of years.

11 Q. Very good. Very good.

12 The -- do you recall whether or not you were
13 assigned to -- to the matter of Tomasz Kosowski versus
14 Dunedin Surgical Consultants, LLC, et al. from the
15 beginning of the lawsuit?

16 A. I assume I was.

17 Q. Okay.

18 A. From the beginning? I -- I don't know that
19 for a fact. It's been -- I think it's a '19 case.

20 Q. Yes, it's a 2019 case.

21 A. Yeah.

22 Q. Have you been in the division that you're
23 currently in since 2019?

24 A. Yes.

25 Q. Okay. And initially when the lawsuit was

1 filed, Dr. Kosowski was represented by counsel; do you
2 recall that?

3 A. I only recall it 'cause it's -- her name still
4 appears on my worksheets.

5 Q. Okay. I'm assuming that during the time
6 period that he was represented by counsel that you had
7 limited contact with -- with Dr. Kosowski?

8 A. I assume.

9 Q. Okay.

10 A. I assume.

11 Q. Do you recall having any contact with him
12 during that time period?

13 A. No.

14 Q. Okay.

15 March 23rd, 2022, there's an order in the docket
16 where his counsel is allowed to withdraw from the case;
17 and from that point forward is it your understanding
18 that Dr. Kosowski then represented himself for the
19 remainder of the case?

20 A. Yes.

21 Q. What do you recall as far as actually having
22 contact with Dr. Kosowski in hearings during the time
23 period that he represented himself?

24 A. I believe almost all, if not all, were on the
25 phone.

1 Q. Okay. So would -- would it be fair to say you
2 have no recollection of ever meeting him in person?

3 A. No, I do not recall.

4 Q. Okay. And --

5 A. We might have had a Zoom but I don't -- I
6 don't recall, but mostly was on the phone.

7 Q. All right. So -- so this -- so -- and this --
8 these would all be in -- in-court hearings?

9 A. They would be remote hearings.

10 Q. Right. Right. But -- but --

11 A. Yes, in court. Yes.

12 Q. You would be in court and the parties would --
13 would appear either via telephone or via Zoom.

14 A. Yes.

15 Q. And when the various hearings would take
16 place, is there any type of digital recording that takes
17 place when they're conducted via telephone or via Zoom?

18 A. No.

19 Q. Okay. Who would be --

20 A. Not that -- the -- the Court is not recording
21 it. I'm assuming nobody else is, I don't recall a court
22 reporter.

23 Q. Okay. Who is generally responsible for having
24 a court reporter present so that -- so that a hearing
25 can be preserved?

1 A. The parties.

2 Q. The parties? Okay.

3 And for the various hearings that -- were -- were
4 there multiple hearings that took place between
5 March 23rd, 2022 and May of 2023?

6 A. I'm assuming there were, I don't know.

7 Q. You don't specifically recall.

8 A. I do not.

9 Q. Okay.

10 Do you recall whether or not during any of those
11 hearings if there was a court reporter present remotely?

12 A. I have no idea. I don't -- I don't think so
13 but I have no idea.

14 Q. When the hearings take place do -- is there a
15 court clerk that's present for the hearings?

16 A. No.

17 Q. Okay. So it's just the parties and the Court?

18 A. Yes.

19 Q. The -- in some of the hearings Dr. Kosowski
20 recalls some -- a female from time-to-time interrupting
21 the parties and reminding them not to speak on top of
22 each other. Would -- who would that be, if you know?

23 A. No idea. It would --

24 Q. Okay.

25 A. -- sounds like a court reporter, but --

1 Q. Okay.

2 A. -- I -- I don't -- I have no recollection of
3 that.

4 Q. All right. So if -- if there was such a --
5 such an interruption, it would most likely be a court
6 reporter, not anyone from the court?

7 A. I -- no. It would be a -- sounds like a court
8 reporter.

9 Q. Okay. All right. Very good.

10 Prior to March 21st of 2023, had you formed any
11 opinions about Tomasz Kosowski, you know, putting him,
12 you know, in a unique position compared to any other
13 litigant that comes before you?

14 A. I don't think he was any -- in any unique
15 position, no.

16 Q. Okay. So to you, he was just like any other
17 litigant that came before you?

18 A. Yes. The -- the only thing I recall was
19 discovery issues which we kept going back to. This is
20 my general recollection. And finally, the defendants'
21 attorneys kept saying that what they -- Dr. Kosowski has
22 everything. And I -- I was -- there was no way for me
23 to know so I sent it to a special master and he
24 determined the outcome of that discovery dispute.

25 Q. Okay. And who was the special master?

1 A. I'm pretty sure it was Retired Judge Day.

2 Q. Jack Day?

3 A. Jack Day.

4 Q. Okay.

5 And -- and so when you sent it to the Special
6 Master Jack Day, he then issues a report for your
7 consideration?

8 A. Yes.

9 Q. And then you generally would -- would adopt
10 that, his findings?

11 A. I adopted it and I think I awarded attorneys'
12 fees to the defendants because it's my recollection that
13 Judge Day said everything was there.

14 Q. Okay. And do you recall when that was?

15 A. No idea.

16 Q. Okay.

17 As far as Dr. Kosowski's demeanor, did -- did he
18 have an appropriate polite demeanor in court?

19 A. I don't think it was atypical. He was
20 frustrated; he didn't think that he was getting what he
21 needed in discovery. I think it was the primary dispute
22 was -- was discovery, not unlike a lot of things.
23 That's why I finally just said there's no way for me to
24 go through 3000 documents and I did the special master.

25 Q. Okay. All right. So the -- sometimes it

1 might be a little upset as would law -- parties and
2 lawyers sometimes be?

3 A. Yes, not -- wasn't atypical, I would say.

4 Q. Okay. All right.

5 What do you recall about the March 21st, 2023
6 hearing, if anything?

7 A. Well, it -- I recall having the conversation,
8 I think it was set for CMC, and we were trying to --
9 case management conference, and we were trying to -- I
10 was trying to get this to some closure after all those
11 years. And I think it was Dr. Kosowski who said, well,
12 I have all these motions. And I said, okay, I'm going
13 to set all pending motions at an -- a time in the
14 future. And -- but I think it was -- might have been a
15 week later, something like that.

16 Q. Okay. So -- so he mentions that he has
17 motions.

18 Do you know whether or not those motions were
19 actually set for hearing?

20 A. I just set all pending motions.

21 Q. Right. But do you know whether or not that
22 hearing had been scheduled in advance of -- of March
23 21st, 2023?

24 A. I don't know.

25 Q. There appears to be a Notice of Hearing filed

1 on March 21st, 2023; and do you recall -- let me take a
2 look and see if I can pull it up.

3 A. Let me get my glasses back on.

4 Q. Okay. That's the March 21st hearing. Let me
5 pull up the March 28th hearing.

6 Let me see here. I'll get the -- I'll just share
7 the screen.

8 (Shares screen.)

9 Q. Okay. It appears -- there's a -- a Notice of
10 Hearing that was filed on March 21st, 2023 about
11 4:00 o'clock in the afternoon, or shortly before
12 4:00 p.m.; are you able to see?

13 A. I can see it.

14 Q. Okay.

15 That appears to be a hearing -- a Notice of Hearing
16 for March 28th for 30 minutes and it lists five
17 different motions that are all plaintiff's motions;
18 right?

19 A. Yes.

20 Q. It's a Motion to Strike Affirmative Defenses
21 of DSC, et al.; a Motion to Strike Affirmative Defense
22 of Jennifer Friend; Motion Subpoena Deuces Tecum; Motion
23 to Compel; and Motion for Sanctions.

24 A. Okay.

25 Q. And it appears that this -- can you tell by

1 this who actually filed this Notice of Hearing?

2 A. I can't tell.

3 Q. All right. There doesn't appear to be a
4 signature on there; but for the service there appears to
5 be a service of Blanchard and Pillsbury.

6 So this may have been a Notice that was filed by
7 Dr. Kosowski? Would you agree?

8 A. Well, it looks like it because it says I
9 hereby certify that the other people listed have been
10 served.

11 Q. Okay.

12 All right. So anything else you recall about the
13 March 21st hearing other than the mo -- Dr. Kosowski
14 mentions he had some pending motions and then you
15 providing him with the March 28th date to hear the
16 motions --

17 A. (Nods head).

18 Q. -- is that -- anything else that you recall
19 about that hearing?

20 A. Well, Mr. Cozzi wasn't on the line.

21 Q. Okay. And -- and Steven Cozzi, you're
22 referring to; right?

23 A. Yes.

24 Q. And did you know Steven Cozzi outside of this
25 case?

1 A. No.

2 Q. Okay. But you were familiar with him through
3 this case similarly to being familiar with Dr. Kosowski
4 through this case?

5 A. Yes.

6 Q. Okay.

7 Was that unusual for Steven Cozzi not to appear for
8 the -- for this phone hearing?

9 A. It was the first time.

10 Q. Okay. And were -- were there any discussions
11 about his absence and him being notified of the next
12 hearing?

13 A. Well, Mr. Cozzi's in the same office with
14 Mr. Blanchard and, yes, there was a lot of discussions
15 of why he wasn't there; nobody had any clue.

16 Go ahead.

17 Q. So was -- was Mr. Blanchard part of the
18 March 21st hearing?

19 A. Yes.

20 Q. Who else was part of that hearing?

21 A. I don't recall --

22 Q. Okay.

23 A. -- if Ms. Friend had somebody there; I don't
24 know.

25 Q. All right. Give me a second. I may be able

1 to tell.

2 A. Jacob Pillsbury, I think, was there. I think
3 he was representing Ms. Friend.

4 Q. Okay.

5 A. I believe --

6 Q. Do you recall the time that the March 21st
7 hearing was scheduled to -- to begin?

8 A. No, I don't.

9 Q. Okay. Let me go back to the --
10 I'm going to show you another notice.
11 Okay.

12 You see this notice, Second Amended Notice of
13 Hearing?

14 A. I do.

15 Q. And it looks like it was filed on March 20th,
16 2023 and it relates to the phone hearing before Your
17 Honor on March 21st at 10:30 a.m.

18 A. Okay.

19 Q. And that looks like it was filed by
20 Jake Blanchard.

21 A. Yes.

22 Q. Okay. So let me go to -- okay.

23 So other than -- so Jake Pillsbury, Mr. Blanchard,
24 Dr. Kosowski, yourself, do you recall whether or not
25 there was a court reporter present?

1 A. I do not.

2 Q. Okay.

3 And basically is that something that -- that you,
4 presiding over a case, would generally not be concerned
5 about because it's an obligation of the parties?

6 A. Yes.

7 Q. Okay.

8 The hearing was scheduled for about 15 minutes. Do
9 you recall whether or not it lasted more than
10 15 minutes?

11 A. I couldn't tell you.

12 Q. Okay.

13 The next hearing that's scheduled before Your Honor
14 in this case was scheduled for March 28th, 2023; right?

15 A. Yes.

16 Q. And we -- we just looked at the notice of that
17 earlier and it -- it appeared that maybe the notice was
18 prepared by Dr. Kosowski.

19 Do you recall being present for that hearing?

20 A. Was I present for the hearing?

21 Q. Right.

22 A. I'm sure I was.

23 Q. Yeah.

24 A. I don't recall it exactly but I'm sure I was.

25 Q. Well, prior to March 28th, 2023 you became

1 aware of the fact that Steven Cozzi was missing.

2 A. I think so.

3 Q. Okay. So --

4 A. Well, he wasn't on the 20 -- he wasn't on
5 Mar -- the phone so there was some discussion on the
6 March 21st hearing with all the parties you mentioned.

7 Q. Right.

8 A. And I don't know if I was aware that he was
9 missing a week later or whatever it was. I don't know
10 specific -- I don't know if I knew anything specific.

11 Q. Okay.

12 Did law enforcement contact you at any point in
13 time to advise you that Steven Cozzi had gone missing?

14 A. Bruce Bartlett called me, but I don't recall
15 the timing of that.

16 Q. Okay.

17 A. To be honest, I don't -- I don't know -- I
18 think it was after this would be my guess.

19 Q. After March 28th?

20 A. I think so.

21 Q. Okay.

22 A. I don't -- I don't remember.

23 Q. So he called you on your cell phone, I'm
24 assuming?

25 A. I think he -- I don't know if he left a

1 message with my office and I called him back, I don't
2 recall exactly.

3 Q. Do you recall whether or not Bruce Bartlett
4 called you to advise you that one of the litigants in --
5 in -- in the case that you were presiding over,
6 Tomasz Kosowski had been arrested for murdering one of
7 the lawyers?

8 A. I think by then he had been arrested.

9 Q. Right.

10 Would -- do you -- do you think that that happened
11 shortly after his arrest?

12 A. I have no id -- I have no idea.

13 Q. Okay.

14 There was extensive news media coverage, of both of
15 Dr. Kosowski -- I mean, Steven Cozzi being missing as
16 well as the arrest of Dr. Kosowski.

17 Do you recall seeing any of the news?

18 A. Yes.

19 Q. Okay.

20 If I tell you that Dr. Kosowski was arrested
21 several days prior to March 28th, 2023, and that it was
22 on the news and -- and -- do you think it's likely that
23 you probably knew that he had been arrested when the
24 March 28th, 2023 hearing took place?

25 A. Well, yeah, now that you tell me the timing

1 that he was arrested before; yes, definitely.

2 Q. Okay. All right.

3 And when the March 28th, 2023 hearing commenced,
4 there was a -- five motions scheduled to be heard that
5 we looked at the notices of -- of -- of hearing earlier;
6 right? You recall the motions that we -- that we
7 discussed?

8 A. I do, yes.

9 Q. Okay.

10 And those were all motions that had been filed by
11 Dr. Kosowski, the defendant?

12 A. Yes.

13 Q. Okay. And the purpose of the motion hearing
14 was -- would be an opportunity for him to be heard to
15 present argument as to why you should grant the motions
16 that he had filed.

17 A. Usually, yes.

18 Q. And the other side, generally, would -- would
19 have an op to argue as to why you should not grant the
20 motions that the plaintiff filed.

21 A. Yes.

22 Q. Generally. Sometimes they agree but -- but --
23 but if the hearing' required usually you have to make
24 the call.

25 A. Yes.

1 Q. Okay.

2 And do you recall who was present for that hearing?

3 A. I don't have specific but I'm assuming
4 Mr. Blanchard and Mr. Pillsbury were there.

5 Q. Okay.

6 The -- do you recall whether or not you yourself
7 appeared for that hearing via your -- your cell phone
8 or -- or the -- a court phone?

9 A. It would have been a court phone.

10 Q. Okay. All right.

11 Do you -- do you ever appear for these phone
12 hearings via your cell phone?

13 A. I have.

14 Q. Okay. And the reason I'm asking is that there
15 was a --

16 A. I -- the summary judgment one I think I did on
17 my cell.

18 Q. Okay. Okay. All right. Very good.

19 A. Now that I'm, you know, thinking about it, I
20 think I did that one on my cell.

21 Q. And that was -- that was the hearing that took
22 place on March -- I mean on May 3rd, I believe.

23 A. Let me -- I have May 2nd but I'll --

24 Q. May 2nd. May 2nd, that's correct.

25 A. Okay.

1 Q. Okay.

2 Do you recall -- so now that I -- I've reminded you
3 that Dr. Kosowski had been arrested several days prior
4 to the March 28th hearing, do you recall whether or not
5 there was any discussions between the Court,
6 Mr. Pillsbury and Mr. Blanchard about the fact that the
7 plaintiff had been arrested and was in jail facing
8 first-degree murder charges?

9 A. Did we have any discussions other -- outside
10 of the hearing? No.

11 Q. No, in -- in -- at the beginning of the
12 hearing.

13 A. I don't recall anything specifically.

14 Q. Okay.

15 A. I think you were at that one. You came in and
16 did a limited appearance at the summary judgment hearing
17 I had.

18 Q. I was at the May 2nd hearing, the summ --

19 A. May 2nd. Yes, the summary judgment.

20 Q. Okay. I'm talking about the March -- the --
21 the -- the March 28th hearing.

22 A. March 28th?

23 Q. Right.

24 A. I don't recall any -- anything specific.

25 Q. Okay. Okay. It doesn't have to be specific

1 necessarily. But the -- so the question -- so it's the
2 plaintiff's -- it's the motion on plaintiff's motions,
3 five motions that we discussed; right?

4 A. Right.

5 Q. And, presumably, because -- 'cause
6 Mr. Kosowski -- or Dr. Kosowski does not appear for that
7 hearing; right?

8 A. Yes.

9 Q. So presumably there must be some discussion, I
10 would imagine about the fact that why is he not
11 appearing.

12 A. I don't recall that. We probably -- we -- you
13 know, I don't recall anything specifically about that,
14 but over the years Dr. Kosowski has filed many, many,
15 many, many motions. Most of them not well taken by the
16 Court. By then, he probably -- especially after we went
17 through many, many discovery hearings and I finally just
18 said I don't know; I'm going to send all your discovery
19 issues to the special master and the special master
20 found zero.

21 Q. Okay.

22 A. And so by this time after that, Dr. Kosowski
23 was losing credibility and his motions -- and I don't
24 know when they were filed, to be honest with you, I
25 don't know, but -- but many of those types of -- I think

1 I've ruled on a bunch of motions prior to that, that I
2 was giving Dr. Kosowski the benefit of the doubt, but
3 this needed to be concluded. And so --

4 Q. But --

5 A. -- I don't -- my recollection was I denied all
6 the motions.

7 Q. So, the -- the -- so the first question was,
8 was there any discussion about Dr. Kosowski's absence
9 from the hearing?

10 A. If there was I do not recall anything.

11 Q. Okay.

12 A. It would be likely, I'm assuming, but I don't
13 know.

14 Q. Okay.

15 Being that you were the presiding judge in this
16 case and knowing that, in fact, these were
17 Dr. Kosowski's motions and that he, in fact, was
18 incarcerated at the point, did you make any inquiries as
19 to whether or not Dr. Kosowski had the ability to call
20 in to this hearing?

21 A. Well, I would -- I -- I have no idea. I'm
22 assuming he had the ability to call in.

23 Q. Okay. Were you aware or at that time that he
24 was in a paper suit on suicide watch in a cell at the
25 jail in the medical wing where he was not allowed access

1 to a telephone?

2 A. No idea.

3 Q. Okay. If you had known that at the time of
4 March 28th, 2023, would you still have proceed --
5 proceeded those -- with that motion hearing?

6 A. Possibly, because the nature of the -- many of
7 those can be done on written submissions, and so in
8 my -- in -- under our civil rules, and RAO, so as --
9 whether he was there or not or whether I knew or not,
10 the consideration of those motions could have probably
11 been done on written submissions. The fact that I set a
12 hearing because I needed to get some conclusion in this
13 case doesn't necessarily mean that his arguments in
14 favor of his motions would have been persuasive in this
15 case.

16 Q. Might there have been discussions about his
17 absence?

18 A. Pos -- I -- I would assume there were. I do
19 not recall anything particular. I didn't learn 'til he
20 appeared at the summary judgment hearing.

21 Q. When was that?

22 A. May 2nd. And when he spoke, he said, well,
23 I -- I was under -- I forget the exact term he said but
24 something like suicide watch or restrained in some way.
25 That's when I learned that.

1 Q. Okay.

2 A. At the summary judgment hearing. And he's the
3 one that told me.

4 Q. Did you take any notes on -- on -- during the
5 March 28th, 2023 hearing?

6 A. I have some on my blue sheet, I have some
7 scribbles that I can't probably decipher a year later;
8 but I do have some notes on that piece of paper.

9 Q. Okay. Would you be able to provide copies of
10 those notes to Mr. Vonderheide?

11 A. Yes.

12 What is the date? You wanted from 3/28?

13 Q. I'm wanting from March 21st, March 28th,
14 May 2nd, and I think that's it?

15 A. Okay. Yep, I can do that.

16 Q. Okay.

17 Would those notes ever have the notation as to who
18 was present?

19 A. I don't recall.

20 Q. Okay. All right.

21 Do you have them in front of you or no?

22 A. No.

23 Q. Would your judicial assistant be present for
24 any of these hearings?

25 A. No.

1 Q. And -- and would you be -- I assume you would
2 be in chambers when the hearing takes place?

3 A. I'm in my -- yeah, chambers, my regular
4 office.

5 Q. Okay.

6 And today you are in a room with a nice granite
7 wall behind you and a Sixth Judicial Circuit; is that a
8 courtroom or is that chambers?

9 A. No, I'm in North Carolina and that's my
10 background. I'm doing this on -- I'm on vacation.

11 Q. Okay. I apologize that we're taking up your
12 vacation.

13 A. That's all right. I wanted to do it.

14 Q. It's sort of like Mr. Vonderheide is sitting
15 in a nice library where -- you can't see it now -- but
16 now that he's turned it on you can see he's in a nice
17 library.

18 Do you recall how long the hearing was on
19 March 28th?

20 A. No idea.

21 Q. All right. Do you recall if any of the
22 defense lawyers made any arguments in opposition to the
23 motions that -- that were pending before the Court?

24 A. I have no recollection of it.

25 Q. Okay. Fortunately -- but -- well, not

1 fortunately, it -- these hearings, there's records that
2 basically show when people call in and when the -- when
3 the hearing ended, so, I assume -- would you agree that
4 that's the best information we have about the duration
5 of the hearing?

6 A. Absolutely. If you have record of it, yes.

7 Q. Okay.

8 Other than the blue -- you -- you called it your
9 blue sheets, the notes that we talked about?

10 A. Yes.

11 Q. Did anyone else from the court take notes
12 about what was taking place at the hearing?

13 A. No.

14 Q. Okay.

15 So -- and again, in criminal court we usually have
16 a clerk present at all times to take minutes; that does
17 not happen in civil?

18 A. No.

19 Q. Okay.

20 Do you recall an affidavit that was attached to the
21 one of the motions that was pending for the March 28th
22 hearing by a Durva Sobti, S-O-B-T-I, attached as an
23 exhibit to one of the motions?

24 A. I do not recall.

25 Q. Okay.

1 And if you don't recall, I'm assuming, you don't
2 recall what your opinion, if any, would have been about
3 the substance of what was in that affidavit?

4 A. I don't. I don't recall.

5 Q. Okay.

6 Specifically, as to Jennifer -- the -- the Motion
7 to Strike the Affirmative Defenses of Jennifer Friend,
8 do you recall anything about the length of the arguments
9 that was made reference that?

10 A. I do not.

11 Q. Do you recall if any argument was made on it?

12 A. I don't recall.

13 Q. Okay.

14 Do you -- do you recall -- and I -- I expect I know
15 the answer, but do you recall what Mr. Pillsbury's
16 argument was to -- to deny that same motion, reference
17 Jennifer Friend?

18 A. I do not recall.

19 Q. The -- all of the motions that were set for
20 hearing on March 28th, 2023, were -- let me pull it
21 up -- were denied on or about May 4th, 2023. That's
22 when the written order was -- was issued.

23 A. Okay.

24 Q. Do you recall that?

25 A. No.

1 Q. Okay. I'm going to -- I'm going to show you
2 one of them but they were all basically very similar.

3 (Shares screen.)

4 Q. Okay. So for example this is the order
5 denying Plaintiff's Motion to Enforce the Subpoena
6 Deuces Tecum that was filed on November 14th, 2022 and
7 then denied -- heard on March 28, 2023, and then denied
8 on -- in -- in writing on May 4th, 2023.

9 A. Okay.

10 Q. All of the -- all of the motions are similar
11 in a sense that they're, what I would describe as maybe
12 summarily denying without any type of discussion of the
13 issues and the factual findings. Would you -- would you
14 agree that that's the nature of the order that we're
15 looking at?

16 A. That's what the order says, there's no finding
17 of fact, it's just denied.

18 Q. Okay.

19 Do you have any recollection as to the -- the facts
20 and -- and -- and the law that -- that you relied on in
21 ruling on each one of these particular motions?

22 A. Well, if you look at the -- when it was filed,
23 most --

24 Q. Right.

25 A. -- of those -- as I recall, most of those have

1 been in discussion over many times, over many hearings
2 with everyone and that's why I -- I don't know that I
3 ever did a -- an order prior to that; obviously, I
4 didn't. But there were lots of discussions about
5 procedural type issues that came up during this case.
6 And I don't recall -- I don't recall the specifics on
7 any of this, but obviously I denied it.

8 Q. Okay. And I -- we -- I could go through
9 the -- the other orders that were -- that were issued on
10 that same day reference the motions that were heard on
11 March 28th, but I can tell you, I mean, they -- they're
12 all basically very similar in that there's no
13 discussions of -- of facts or law and it's just
14 basically -- it's summarily -- sum -- summarily denying
15 them.

16 A. Well, I wouldn't say it was summarily denied
17 unless you're just saying because the order says nothing
18 about findings of fact. I wouldn't say I personally
19 would summarily deny it.

20 Q. Sure. Okay. But -- but -- but there's no
21 explanation as to how the Court arrives at its finding.

22 A. Correct.

23 Q. Okay.

24 And you've indicated that, I believe, and -- and
25 correct me if I'm wrong but that -- that -- as to all of

1 the motions, it's your recollection that these were
2 issues that had been discussed over time and -- and
3 maybe some of them had been addressed by the special
4 master.

5 A. I don't recall specifics about that.

6 Q. Okay. Okay. But you don't recall this one
7 specific as to the -- the -- the legal basis for each
8 ruling; is that a fair statement?

9 A. That's fair.

10 Q. Okay.

11 Would it be fair to say that the -- the -- the
12 hearing time that -- and let -- let me take a look
13 again, how much time was set aside for this -- for the
14 March 28th. It wasn't -- it wasn't a long time period;
15 right?

16 A. Let's see.

17 Q. Thirty minutes for -- for five motions. Is
18 that pretty standard?

19 A. Nothing's standard in my world.

20 Q. Okay. Okay. All right.

21 The -- do you have any specific recollection as to
22 arguments that Mr. Blanchard made opposing motions that
23 related to him or to his client or to Mr. Cozzi's client
24 on March 28th?

25 A. I do not.

1 Q. And I -- I think I've already asked this, but
2 just to make sure. You -- you do not know whether or
3 not a court reporter was present for the March 28th,
4 2023 hearing?

5 A. I do not.

6 Q. Nor do you recall the specific arguments that
7 were made by either Mr. Blanchard or Mr. Pillsbury
8 opposing any of the motions that were set for hearing on
9 that particular day.

10 A. I do not.

11 Q. Is it possible that reviewing those blue --
12 blue notes that that would refresh your memory or had
13 you already looked at them prior to today?

14 A. I looked at them and there wasn't anything --
15 it's a lot of scribble.

16 Q. Okay. Okay.

17 A. There wasn't too much meaningful.

18 Q. Okay.

19 A. So.

20 Q. So it -- it really wouldn't refresh your
21 memory on it.

22 A. I don't think so. I'll -- I -- I don't think
23 so.

24 Q. Okay.

25 A. I did review them a few days ago.

1 Q. Okay.

2 Did -- were -- were the orders that were -- that --
3 that were issued on May 5th -- I'm sorry, May 4th, 2023,
4 denying the five motions that had been -- that had been
5 heard on March 28th, were those orders prepared by the
6 Court or were they prepared by one of the attorneys
7 for -- for one of the defendants?

8 A. I believe -- I don't know specifically, but it
9 looks like something I would do.

10 Q. Okay. So do you -- do you frequently prepare
11 your own orders?

12 A. No.

13 Q. Okay.

14 A. I do not.

15 Q. Okay.

16 A. Maybe I --

17 Q. You want to take -- should we take a look at
18 one and just to see and -- and -- let's see here.

19 A. Was -- this is the question, and I would know
20 if it was -- probably, it was -- if it was on JAWS and I
21 signed it and it was prepared by the defense attorneys,
22 that's one thing. If it's signed by me, hard signed --

23 Q. Are you able to -- are you able to see --

24 A. -- I would have prepared it.

25 (Shares screen.)

1 A. Yes, I can see it. Let me -- let me take a
2 look at my signature. I -- they -- these look like they
3 were prepared by me.

4 Q. Looks like they were prepared by yourself.
5 Okay.

6 A. That is not an electronic signature.

7 Q. Okay. Thank you.

8 Now, it appears that on -- on the distribution --
9 and -- and I can go back onto it, but -- let's see.
10 Under distribution list it -- it lists my office.

11 A. Okay.

12 Q. And -- and then it lists Mr. Kosowski at the
13 jail, Mr. Blanchard, and Jacob Pillsbury.

14 Would those have been mailed to those addresses or
15 would they just have been electronically filed and -- if
16 you know?

17 A. I have no idea.

18 Q. Okay.

19 Who would -- if -- if they were mailed, would --
20 would that be something that your office would do or --
21 or would that be something that you would want one of
22 the lawyers to do?

23 A. If they were mailed I would mail them out.

24 Q. Okay. So it looks like --

25 A. It looks like they were mailed. So, yes.

1 Q. Okay.

2 A. They --

3 Q. So you're confident they were mailed because
4 the addresses are on there?

5 A. I think so. I --

6 Q. Okay.

7 A. -- I know -- I'm not -- I don't know that much
8 about my back office, to be honest with you.

9 Q. Okay.

10 A. So I'm assuming that they were mailed based on
11 what I'm looking at.

12 Q. Okay. Very good.

13 A. And that could have been sent in; I don't
14 know. Could have been sent in by the defense attorney
15 and hard copied to me with envelopes. It could have
16 been that way, too.

17 Q. If -- if that was the case, would you have
18 requested that of defense counsel during the March 28th
19 hearing?

20 A. Yes.

21 Q. Or would there have been -- okay. Okay.

22 A. If that was the case, yes.

23 Q. Okay. All right. But you don't recall if you
24 did and -- and -- and --

25 A. I don't.

1 Q. Okay.

2 If there -- so the hearing takes place on
3 March 28th. At that point in time everything is
4 freshest in your mind as far as the motions and what
5 have you; would that be fair?

6 A. I suppose.

7 Q. And would you have likely pronounced the --
8 the order denying the motions during that hearing?

9 A. I'm guessing, yes.

10 Q. Okay.

11 And if you then request counsel to provide orders,
12 is there like a reasonable time period, normally, that
13 the orders would -- would be drafted and provided to the
14 court?

15 A. It just depends on the -- the attorneys.
16 Sometimes it depends on how complicated it is and this
17 is not complicated, so it probably just depends on --

18 Q. Okay. These orders do not appear to be
19 complicated.

20 A. Exactly.

21 Q. What would be a reasonable time period for
22 those to be drafted and -- and -- and brought -- and
23 submitted to the -- you for your signature?

24 A. Your guess is as good as mine.

25 Q. Okay. So you don't have a -- well -- so, let

1 me ask you think. They are signed on May 4th, so
2 about -- what is that, about six -- five weeks after the
3 hearing? Is that a --

4 A. Okay.

5 Q. -- reasonable time period, in your opinion?

6 A. Well, under these circumstances, maybe.

7 Q. Okay.

8 A. Because the office is in turmoil, obviously,
9 and so, I'm not the judge about the reasonableness of
10 when they got it to me or if they got it to me. I don't
11 recall.

12 Q. Okay.

13 I know we discussed this already but do you
14 specifically recall whether or not Mr. Pillsbury
15 indicated to you on March 28th that Dr. Kosowski was in
16 jail?

17 A. I do not recall.

18 Q. I think you've indicated that knowing that he
19 had been arrested several days prior to March 28th, that
20 you probably knew on March 28th that -- that he was in
21 jail.

22 A. I'm guessing I did.

23 Q. Okay.

24 A. Based on what you're telling me.

25 Q. All right.

1 And -- and is it -- I don't think you recall
2 specifically if everyone else in that room knew that he
3 was in jail, but considering the proximity to everyone,
4 would it be fair to say that it's probably reasonable
5 that everyone who is appearing for the March 28th
6 hearing knew that he was in jail?

7 A. I -- I would assume based on the news and how
8 much they were involved, yes.

9 Q. Okay. Okay.

10 Do you know whether or not anyone from law
11 enforcement was present for the phone hearing on
12 March 21st?

13 A. I have no reason to think anyone else was
14 present, no.

15 Q. Okay. What about for the March 28th hearing;
16 do you have any reason to believe that law enforcement
17 may have been present for that hearing?

18 A. No.

19 Q. Okay.

20 When -- when it's a phone hearing like that, I
21 mean, generally, courtrooms are public, so can anyone
22 call in to the -- to the hearing?

23 A. Yes.

24 Q. Okay.

25 And the only record -- or the best record of who is

1 present would be based on the phone numbers that show up
2 in the record for the particular court hearing.

3 A. Makes sense.

4 Q. Okay.

5 There's a reference in the -- in those records to a
6 person by the name of Mark. Is that someone who works
7 in your office or -- or is that someone that you're not
8 familiar with?

9 A. Mark? I don't know if I was having trouble
10 with the phones or something. Mark is an IT guy.
11 That's the only person I can think of as -- as -- that I
12 know that would be around the court area.

13 Q. Okay.

14 A. He retired but I don't know if he was retired
15 by then or not. I don't remember.

16 Q. Okay. All right.

17 Was there any discussion on March 28th about
18 possibly continuing the hearing so that Dr. Kosowski
19 could be heard?

20 A. I don't remember.

21 Q. So the -- the -- the March 28th hearing,
22 basically, was -- I'll take a look here. The case had
23 been pending since May of 2019. So it's -- so it's
24 almost -- almost four years in March -- yeah, in March,
25 2023. And would you agree that the five motions that

1 were pending on that day, they were all plaintiff's
2 motions, might have been significant, at least to Tom
3 Kosowski, the plaintiff?

4 A. Well, I'm assuming; but his demeanor about --
5 insisting about certain things over times have been so I
6 would say he kept saying we'd -- he never set those,
7 obviously, or I would have had an order a lot sooner.
8 So I was trying to get to a conclusion about all pending
9 motions and he identified what he thought was all
10 pending, I guess from his side; and so, yes, my goal was
11 to hear those and I'm assuming they were important to
12 him, yes.

13 Q. Right. And -- and -- and I'm assuming that
14 was the reason why you set them for hearing so that he
15 could be heard for that brief 30-minute time period.
16 If -- if you --

17 A. Okay.

18 Q. -- if you -- if you thought they were
19 completely frivolous you would not have scheduled them
20 for hearing.

21 A. Not necessarily.

22 Q. Okay. You want to elaborate on that?

23 A. No. I was -- there's lots of frivolous
24 motions I hear.

25 Q. Okay.

1 A. Just set them so I can conclude those motions.

2 Q. Sure.

3 A. I'm not saying -- I don't even recall what
4 they are; sanctions are, from what your list showed me.
5 But if I thought they were frivolous I would still set
6 them. But I don't have any recollec -- recollection.
7 You brought up that I -- I would not set a frivolous
8 motion. Yes, I would set a frivolous motion.

9 Q. So the -- the motions basically were -- one
10 motion that had been filed on April 22nd, 2021, which is
11 a Motion to Strike Affirmative Defenses of the Dunedin
12 Surgical Consultants, LLC. The other one was a Motion
13 to Strike Affirmative Defenses of Jennifer Friend.
14 Another one was a Motion for Subpoena Deuces Tecum for
15 Discovery Related. Another motion was a Motion to
16 Compel. And then the last motion was a Motion for
17 Sanctions.

18 So regardless of -- of -- of -- I -- you -- I think
19 you just said that even if they were frivolous you would
20 still offer the hearing time for them; is that --

21 A. Yes.

22 Q. Okay.

23 And if the person who is allowed the hearing time
24 is unable to appear at the hearing time would you
25 normally explore why that person was unable to appear?

1 A. Well, you told me that he was in jail by then
2 and that it had been in the news by then. So I --

3 Q. Right.

4 A. -- assume that I knew he was in jail.

5 Q. Right.

6 A. I didn't assume that he was unable to appear.

7 Q. Okay.

8 A. Because I've done lots of hearings from the
9 jail. So I did not assume that he was unable to appear.
10 He's the one that told me on the May 2nd hearing that he
11 was unable to appear. But --

12 Q. Okay.

13 A. -- by that time, those motions were decided in
14 my mind because I think on March -- May 2nd you're
15 telling me that I -- the motions denying those -- the
16 no -- the orders denying the motions would not come out
17 'til a couple of days later.

18 Q. So May 4 -- May 4th is when they're --

19 A. Right. So I had not decided those officially.
20 Right. I thought --

21 Q. Right.

22 A. -- I might have decided at the hearing and had
23 the attorneys prepare that, that's what it seems like
24 happened. So, in my mind, I probably had already
25 decided.

1 Q. Okay. So on -- on -- on May 2nd when you --
2 when you learned that -- from Kosowski that -- that he
3 was in a suicide cell without access to a telephone, did
4 you, at that time, consider whether or not you should
5 allow him to -- to be heard for 30 minutes on these
6 motions?

7 A. I did not.

8 Q. Okay. Why not?

9 A. My -- it was a summary judgment hearing. It
10 was -- if I denied them the defendants had -- both sides
11 had the opportunity to submit their evidence to me; and
12 we had a hearing; it was based on the evidence provided
13 to me, and I decided the summary judgment.

14 Q. Do you believe that the defense counsel have
15 an obligation to advise the Court if they know that the
16 plaintiff does not have the ability to phone in or -- or
17 prepare for a hearing, if they have that knowledge?

18 A. When was Dr. Kosowski arrested? I don't know
19 or don't recall.

20 Q. Arrested on -- let me take a look here. I
21 think it's --

22 MR. BRUNVAND: Nathan, was it March 25th or
23 24th?

24 MR. VONDERHEIDE: It was twenty -- 25.

25 Q. (By Mr. Brunvand) The 25th, March 25th. So

1 three days prior to the 28th.

2 A. I -- they could have said that or maybe it was
3 general knowledge by that time; you're telling me it was
4 general knowledge anyway. I don't recall any particular
5 conversations about that.

6 Q. Okay. That -- and I guess my -- my -- my
7 question is more of a general question. If -- if
8 there's a hearing before Your Honor and the plaintiff's
9 motions and defense counsel appearing for that hearing
10 has knowledge that the plaintiff is not able to call in,
11 do you think that they have an obligation to advise the
12 Court or do you think that they do not have any
13 obligation to advise the Court?

14 Or do you not have an opinion on the topic?

15 A. I don't really have an opinion.

16 Q. Okay.

17 A. I'm -- I'm sure they have had phone calls with
18 people in jail, too.

19 I -- I -- I don't think you can assume that
20 someone's in jail that they cannot make a phone call.

21 Q. Do you think it would be unreasonable to make
22 a phone call to the jail and -- and ask whether or
23 not -- what his status is?

24 A. Does it matter?

25 Q. Well, I'm -- I'm -- I'm just asking you a

1 question if you think that would be a reasonable thing
2 to do.

3 A. I have no idea.

4 Q. Okay. And you believe that, based on
5 reviewing the court orders that were issued on May 4th,
6 that those were mailed by someone in your office to the
7 people that are listed on that distribution list?

8 A. That's my best guess.

9 Q. Okay. And who is it that normally would mail
10 things out from your office?

11 A. My JA.

12 Q. Okay.

13 Reference the May 2nd, 2023 telephonic hearing for
14 Defendant's Motion for Summary Judgment, was that
15 supposed to be an in-person hearing?

16 A. No, not that I recall.

17 Q. From what I recall, that hearing had been
18 scheduled for some period of time. Do you recall?

19 A. I do not recall.

20 Q. It appears that on March 29th, 2023, an
21 Amended Notice of Hearing was prepared for the one-hour
22 hearing on Defendant's Motion for Summary Judgment and
23 Case Management Conference.

24 Do you know whether or not the hear -- prior to
25 that, that hearing was scheduled to be in-person?

1 A. I don't recall.

2 Q. Could it have been? Were you doing in-person
3 hearings during that time period?

4 A. I was but most summary judgments for an hour
5 are not in-person.

6 Q. Okay. And, generally, who -- who -- who makes
7 the decision about whether or not it's in-person or via
8 telephone?

9 A. Usually the parties request what they want.

10 Q. Okay. All right. And if the parties disagree
11 as to whether or not it's in person or in -- via
12 telephone, then what happens?

13 A. Well, it depends. An hour or less is
14 presumptively, under the Supreme Court rules, can be
15 in-person -- I mean, in -- remote. But also, in -- in
16 general, depends on where people are coming from and
17 who's objecting and why and what makes sense.

18 Q. Okay.

19 A. But for -- I think most, if not all of our
20 hearings were on the -- on the phone.

21 Q. Let me -- let me share a Notice of Hearing
22 that was filed on November 4th, 2022.

23 (Shares screen.)

24 Q. Okay. So this appears to be filed
25 November 4th, 2022; the Notice of Hearing for May 2nd,

1 2023, in person, for one hour, Defendant's Motion for
2 Summary Judgment and Case Management Conference and was
3 filed by Jake Blanchard.

4 So would that refresh your memory that the May 2nd
5 hearing was supposed to be in person?

6 A. Okay.

7 Q. Yes?

8 A. Yes.

9 Q. The -- and then we -- I don't know if you
10 already looked at it but there's a later order then
11 that -- on the 29th of March that changes that to a
12 phone hearing by Mr. Blanchard; and is it your opinion
13 that it -- it doesn't matter whether or not Dr. Kosowski
14 agreed or disagreed with the change of the hearing from
15 in person to -- to via telephone?

16 A. I never heard of an objection about that, and
17 so I would just -- the Notice of Hearing usually is not
18 objected to; but I don't know that he objected.

19 Q. Okay.

20 Did I -- do you want me to -- let me -- I know I
21 mentioned that other notice but did I show it to you to
22 confirm that it was on the 29th?

23 A. I don't think so but it -- I --

24 Q. Yeah.

25 A. -- believe you.

1 Q. Let me -- I appreciate that but I'm going to
2 show it to you anyways just so --

3 A. Okay.

4 (Shares screen.)

5 Q. Okay. All right. Can you -- can you see
6 that?

7 A. Yes.

8 Q. And that appears that March 29th, an amended
9 notice was filed, telephonic for May 2nd at 11:00 a.m.
10 and Jake Blanchard prepared that notice as well.

11 A. Okay.

12 Q. Okay. And it indicates, in the Certificate of
13 Service, that Tomasz Kosowski is notified through a
14 Gmail account but not -- not at the jail; would --
15 would -- would you agree with that?

16 A. I can't see it all, but okay.

17 Q. Oh, you can't? Hold on.
18 Are you able to see it?

19 A. I see pro se Tom Kosowski at Gmail.

20 Q. Yeah.

21 A. Okay. TKosowski. Okay.

22 Q. Yeah.

23 And -- and do -- do you know that inmates in the
24 jail don't have access to their regular email accounts?

25 A. No, I don't.

1 Q. You don't know that?

2 A. (Shakes head).

3 Q. Okay. All right. Well, you learned something
4 new today.

5 So I think you indicated that normally people don't
6 object or they could object if -- if -- if a notice is
7 issued that's inconsistent with their wishes? So is --

8 A. I suppose they could object but I don't
9 usually hear -- usually the parties have agreed to the
10 time and how they're going to do it.

11 Q. Do you -- do you assume when you receive a
12 Notice of Hearing that it's been -- that the parties
13 have consulted and agreed that this is a time and place
14 that they're all in agreement with?

15 A. I don't even normally look at a Notice of
16 Hearing.

17 Q. Why --

18 A. I pick up a phone and the parties are there
19 and I'm on.

20 Q. Okay. But -- but you were -- when you
21 practiced law prior to being a judge, I mean, normally
22 when -- when a Notice of Hearing is scheduled or filed,
23 there's usually been coordination between the parties to
24 make sure that everyone is available and -- and can be
25 there; right?

1 A. Well, I know that from -- I didn't do any
2 court proceedings when I was a working lawyer.

3 Q. Okay.

4 A. I do know that is -- as a judge, that maybe
5 almost all the time people agree; yes.

6 Q. Right. I mean, I would imagine that you would
7 be somewhat frustrated if parties just started filing
8 Notices of Hearings without coordinating and notifying
9 the other side and you constantly having problems as a
10 result of it. It wouldn't -- it wouldn't -- things
11 wouldn't be running very smoothly if that was the case.

12 A. Okay. I agree -- I would agree with that,
13 yeah.

14 Q. Okay. All right.

15 And do you have any knowledge as to whether or not
16 the amend -- the Amended Notice of Hearing was shared
17 with Dr. Kosowski through other means other than the
18 email that's set forth in the notice?

19 A. No idea.

20 Q. Okay.

21 Do you have any information about who arranged for
22 Mr. Kosowski to be brought out of his cell to an area
23 where he could call into this hearing?

24 A. No idea.

25 Q. Okay. Do you re -- do you recall from that

1 hearing there was at some point, I can't remember
2 exactly when, but there was a point where the jail staff
3 basically said, oh, we're done, even though the hearing
4 wasn't done?

5 A. I don't recall that.

6 Q. Okay. All right.

7 My recollection is that that happened and then you
8 advised the jail that you were the circuit court judge
9 and that you were requesting that he be allowed to
10 remain in the hearing; you -- you have no recollection
11 of that?

12 A. Oh, now that you mention that, yeah, I do
13 recall it.

14 Q. Okay.

15 A. That's right.

16 Q. Generally, at the jail the inmates are not
17 allowed to freely roam back and forth. It gets a little
18 complicated sometimes.

19 A. Sounds like me, though.

20 Q. Did you have any involvement in -- in alerting
21 the jail, you or your -- or your judicial assistant have
22 any involvement in -- in alerting the jail that
23 Dr. Kosowski was needed to be present for this hearing
24 on May 2nd?

25 A. I don't recall anything. Sometimes I ask my

1 JA if -- if she needs to coordinate it but I don't
2 recall.

3 Q. Okay.

4 A. Did I really say that --

5 Q. Yeah.

6 A. -- at the hearing?

7 Q. That's my recollection.

8 Do you know -- do you recall -- and -- and I think
9 I know the answer, but do you recall whether or not
10 there was a court reporter present for -- for the
11 summary judgment hearing on May 2nd?

12 A. I do not recall.

13 Q. Okay.

14 And when I say present, it would be present via
15 phone; right. It wouldn't be -- they wouldn't be in the
16 courtroom?

17 A. Yes. They would have been on the phone, yes.

18 Q. Okay.

19 Were you aware of -- of the fact that Dr. Kosowski
20 joined the hearing late on May 2nd?

21 A. No, I'm not aware that he joined late. I
22 think you said something first, as --

23 Q. Right.

24 A. -- I recall. And then I didn't know that he
25 wasn't there initially, if that was the case.

1 Q. Okay.

2 As -- as a pro se plaintiff, would you agree that
3 it would be important for Dr. Kosowski to be able to
4 hear the entire argument of Mr. Blanchard?

5 A. Sure.

6 Q. Okay. But you -- but you -- you didn't know
7 that he was --

8 A. I did not know he wasn't on the line.

9 Q. Okay.

10 I know you recall that I was present for the
11 May 2nd hearing; do you recall who else was present?

12 A. Dr. Kosowski, I think both Mr. Pillsbury and
13 Mr. Blanchard were there.

14 Q. Okay.

15 And as to Dr. Kosowski, you know he was present at
16 some point in time but you don't know --

17 A. No, I -- I have no idea.

18 Q. Okay.

19 Was there any type of audio recording made of the
20 May 2nd hearing?

21 A. Not that I'm aware of.

22 Q. Dr. Kosowski recalls a female voice
23 instructing the participants, on May 2nd -- on the May
24 2nd hearing, not to talk over each other. Do you recall
25 that or --

1 A. I don't.

2 Q. Okay. If there was a female voice that was
3 saying that would -- would -- would it be your belief
4 that that was most likely a court reporter?

5 A. That makes sense.

6 Q. Okay.

7 Have you seen any transcripts of the May 2nd
8 hearing?

9 A. No.

10 Q. When Mr. Blanchard had concluded his
11 argument -- and -- and by the way, do you recall that
12 his argument pretty much lasted an hour?

13 A. I have no idea.

14 Q. Okay.

15 When he concluded his argument, do you recall
16 Dr. Kosowski asking for a continuance?

17 A. I think he did.

18 Q. Okay. Do you recall generally why he was
19 asking for a continuance?

20 A. Because he wanted to get another attorney.

21 Q. Okay. Did he also indicate that he wasn't
22 prepared because he was at the jail?

23 A. He did say that.

24 Q. You denied his request for a continuance. Why
25 did you deny the request for a continuance?

1 A. This case needed to be concluded.

2 Q. Okay. Any other reason?

3 A. Because the evidence supported what the
4 defense was saying.

5 Q. And you -- you were aware that Dr. Kosowski
6 was in jail at that time on May 2nd?

7 A. I was.

8 Q. Okay.

9 Did he also advise you that he was not allowed
10 access to his legal notes or -- and his computer?
11 And --

12 A. He might have said that -- he might have said
13 that.

14 Q. Okay. And therefor was unable to prepare for
15 the hearing; do you recall that?

16 A. Yes.

17 Q. Okay. Do you recall him also indicating that
18 the hearing should not proceed because of the
19 outstanding motions that he had not been able to argue?

20 A. I don't recall that, but he might have said
21 that.

22 Q. So it would be -- and he was referring back to
23 the motions that had been heard by the Court on -- on
24 March 28th when he was not there; do you recall that?

25 A. I don't specifically but what you're saying

1 probably happened, I don't -- I just don't recall --
2 recall it specifically.

3 Q. Okay.

4 And do you recall him indicating to you that
5 because he felt like the motions that you had heard on
6 March 28th, 2023 had not been fully litigated and he had
7 not had an opportunity to participate, that information
8 that he would have obtained as a result of those motions
9 could have impacted the -- the May 2nd hearing?

10 A. I don't recall that specifically, no.

11 Q. Okay. But it may -- and he may have made
12 that --

13 A. He may have made those arguments, yes.

14 Q. Would that have been an appropriate argument
15 for a continuance that his unavailability and his
16 inability to have access to his notes and -- and files
17 in preparation for the -- for the hearing?

18 A. Possibly, yeah.

19 Q. Do you recall Mr. Pillsbury reading out loud
20 the -- the -- your rulings from the March 28th hearing
21 during the May 2nd hearing?

22 A. Now that you're mentioning it, I think he did.

23 Q. Okay.

24 Do you recall whether or not at that time it became
25 apparent that Mr. Pillsbury had not yet provided those

1 orders to the Court?

2 A. I don't know why he said those -- why he did
3 that before -- I don't recall exactly, and I don't
4 recall the timing of all of that that you're asking
5 about.

6 Q. What -- so -- so two days later is when the
7 orders are signed and I would imagine most of the times
8 you say orders are transmitted to the Court
9 electronically via email?

10 A. No, I don't -- at some -- no, I don't take
11 orders electronically.

12 Q. Oh, you don't?

13 A. No. I -- if they're uploading into JAWS?

14 Q. Right. I'm sorry.

15 A. Yes.

16 Q. Okay. Through JAWS.

17 A. Through JAWS, yes.

18 Q. Right. So possibly -- and -- and do you know
19 whether or not if -- if -- if we go and -- and -- and
20 look at the JAWS records whether or not it will tell us
21 when it was uploaded for your consideration?

22 A. I have no idea.

23 Q. Okay.

24 A. It's a whole nother world.

25 Q. Would -- would --

1 A. I don't know.

2 Q. -- that be IT that would be able to provide us
3 with that information, do you think?

4 A. If it was up -- if those orders were uploaded
5 through JAWS, yes. They don't appear to be uploaded
6 through JAWS because they're not electronically signed.

7 Q. Understood. Okay.

8 So -- so, it a -- it appears to you that they would
9 have been mailed, they would not have been emailed to
10 chambers for -- for the Court's consideration?

11 A. I do not take email.

12 Q. Okay. So it would have had to been either
13 unloaded through JAWS or mailed hard copy via U.S. Mail.

14 A. Or delivered to me. Could be hard-delivered
15 somehow.

16 Q. Or delivered either via courier or someone
17 from Mr. --

18 A. Yes.

19 Q. -- Blanchard's office or Mr. Pillsbury's
20 office.

21 A. Yes.

22 Q. Okay. Do you recall anyone from
23 Mr. Pillsbury's office hand-delivering any proposed
24 orders to you?

25 A. No.

1 Q. Okay. All right. But it -- it could have
2 been --

3 A. I would not have noticed. I'm -- I'm --

4 Q. Okay.

5 A. -- working in a separate office.

6 Q. Okay.

7 A. But, no, if there was a hand -- what happened,
8 I wouldn't know.

9 Q. Okay. It -- but mo -- if that happened it
10 would have been delivered to your judicial assistant.

11 A. Yes.

12 Q. Okay.

13 I -- I think I've asked this but -- no, I -- you
14 already answered it. I'm not going to.

15 MR. BRUNVAND: Excuse me. My --

16 THE WITNESS: No problem.

17 MR. BRUNVAND: Give me one second, I'll get
18 the little barker out of here.

19 THE WITNESS: Cute.

20 MR. BRUNVAND: Okay. We're almost done.

21 THE WITNESS: The rain stopped here.

22 MR. BRUNVAND: I'm sorry?

23 THE WITNESS: The rain stopped here.

24 MR. BRUNVAND: Well, good. Good. It's sunny
25 down here.

1 Q. (By Mr. Brunvand) Was the denial of -- the --
2 the granting of the Motion for Summary Judgment on
3 May 2nd, 2023, do you recall specifically why you felt
4 that that was appropriate in this case?

5 MS. SIARA: Mr. Brunvand, can I just interject
6 for just one second?

7 There have been several questions asking the
8 Judge why she did something or why she thought
9 something. I'm pretty sure the case law's clear
10 that judge's don't have to disclose why they ruled
11 a certain way or why they were thinking something.
12 I just want to offer that --

13 MR. BRUNVAND: Yeah.

14 MS. SIARA: -- if Judge Muscarella is
15 uncomfortable answering the why line of
16 questioning.

17 MR. BRUNVAND: Sure. Understood. So can the
18 question be --

19 Q. (By Mr. Brunvand) What was -- what was the
20 ruling based on not why but -- but what was the basis
21 for -- for the ruling?

22 A. I think it's a pretty detailed order.

23 Q. Okay. So you would rely on what's in the
24 order?

25 A. Yes, sir.

1 Q. Okay. Very good.

2 And, I guess, does the order include everything
3 that would be of significance for purposes of your
4 ruling?

5 A. It's probably not everything --

6 Q. Okay.

7 A. -- because that's the nature of it.

8 Q. But the majority.

9 A. It's enough to withstand, hopefully, the
10 Second DCA.

11 Q. Okay.

12 A. It's not -- it's never everything in there.

13 Q. Sure. Sure. Understood.

14 I'm assuming you -- you probably don't know the
15 answer to this, but the -- the Motions to Strike the
16 Affirmative Defenses of DSC and Jennifer Friend were
17 filed in 2021 by the former plaintiff's counsel Joelle
18 Bordeaux. And -- do you know -- do you know why those
19 were never scheduled for hearing up until the time that
20 they were heard in -- in -- on March 28th, 2022?

21 A. No idea.

22 Q. Okay.

23 Is there anything else that I haven't asked you
24 that you -- that you think is important information that
25 you may be privy to as it relates to you being a witness

1 potentially in -- in this case?

2 A. I don't think so. I think you --

3 Q. Okay.

4 A. -- covered quite a bit of ground.

5 Q. Okay. So I -- so I'm assuming that -- as you
6 sit there, you're not saying, oh, my gosh, he forgot to
7 ask me this.

8 A. Oh, no.

9 Q. Okay. All right. Okay.

10 MR. BRUNVAND: Are you familiar with reading
11 and waiving as it relates to the transcript if it's
12 prepared?

13 THE WITNESS: I am.

14 MR. BRUNVAND: Do you want to read or waive?

15 THE WITNESS: I'll waive, that's fine.

16 MR. BRUNVAND: Okay. All right.

17 I don't have any other questions. I don't
18 know if Mr. Vonderheide -- I don't believe he has
19 any questions.

20 MR. VONDERHEIDE: No -- no questions. Thank
21 you, Your Honor.

22 MR. BRUNVAND: Thank you --

23 THE WITNESS: Thank you, everyone.

24 MR. BRUNVAND: -- Your Honor.

25 THE WITNESS: I appreciate your help.

1 MR. BRUNVAND: Have a nice day and sorry to
2 interrupt your vacation.

3 THE WITNESS: No worries. You have a good
4 day, too. Take care.

5 MR. BRUNVAND: Thank you. Bye-bye.

6
7 (THEREUPON, the virtual deposition concluded
8 at 1:09 p.m.)
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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PINELLAS

I, the undersigned authority, certify that
HONORABLE JUDGE PATRICIA MUSCARELLA personally appeared
before me via Zoom Video Communications on May 9, 2024
and was duly sworn.

Witness my hand and official seal this 7th
day of June, 2024.


KIMBERLY L. RENFROE, RPR



Notary Public, State of Florida
Commission No.: HH 80650
Expiration date: 1/31/25

1 REPORTER'S DEPOSITION CERTIFICATE

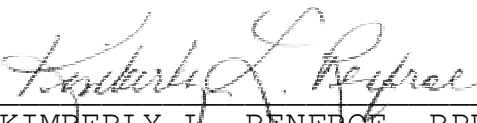
2 STATE OF FLORIDA

3 COUNTY OF PINELLAS

4 I, KIMBERLY L. RENFROE, Registered Professional
5 Reporter, certify that I was authorized to and did
6 stenographically report the virtual deposition of
7 HONORABLE JUDGE PATRICIA MUSCARELLA; that a review of
8 the transcript was not requested; and that the
9 transcript is a true and complete record of my
10 stenographic notes.

11 I further certify that I am not a relative,
12 employee, attorney, or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorney or counsel connected with this action, nor am I
15 financially interested in the action.

16 Dated this 7th day of June, 2024.

17
18 
19 KIMBERLY L. RENFROE, RPR

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21
22 (Transcript was ordered by Bjorn E. Brunvand,
23 Esquire, on May 9, 2024.)
24
25