State of New Hampshire
Supreme Court

NAME CHANGE OF
ALEXANDER GOUDREAU

N.H.Sup.Ct. No. 2011-0833

LAW OFFICE OF JOSHUA L. GORDON • CONCORD, NH • WWW.APPEALSLAWYER.NET

OBJECTION TO MOTION TO EXCLUDE RECORD

NOW COMES Veronica Goudreau, by and through her attorney, Joshua L. Gordon, and respectfully objects to "Petitioner's Motion to Exclude Respondent's References to and Exhibits From the Previously Decided Case, *In the Matter of Maurice & Gisele Lemieux, p/n/f Andrew Lemieux and Raymond & Bridget Goudreau, p/n/f Veronica Goudreau* in its Appeal."[1]

As grounds it is stated:

I. Supreme Court Rules Define the "Record"

1. The rules of this Court define what constitutes the "record."

> The papers and exhibits *filed* and *considered* in the proceedings in the trial court or administrative agency, the transcript of proceedings, if any, and the *docket entries* of the trial court or administrative agency shall be the record in all cases entered in the supreme court.

SUP.CT.R. 13(1) (emphasis added); *see In the Matter of Gendron*, 157 N.H. 314, 317 (2008) (acknowledgment of paternity part of record pursuant to Rule 13 because trial court gave it "some weight" in making paternity determination).

[1]The motion and memorandum are collectively cited herein as "Motion to Exclude."

2. Thus the rule specifies four types of items that comprise the "record":

- "papers and exhibits filed … in the proceedings in the trial court,"
- "papers and exhibits … considered in the proceedings in the trial court,"
- "docket entries of the trial court,"
- "transcript of proceedings, if any."

3. Because the rule says an item "*shall* be the record in all cases entered in the supreme court," if an item is any of these four things it is mandatorily part of the record.

4. The only portion of the rule arguably limiting the record to the particular docket being appealed is "the docket entries of the trial court." Nothing in the rule describing papers, exhibits or transcripts, however, limit the record to the particular docket. Those items are part of the record if they were "considered" by the trial court.

II. Genesis of the Name Change Case

5. The "record" in this appeal comprises two separate dockets heard by the same judge in the same court. To understand the connection between them, it is necessary to explain how the name change case arose in the context of the parenting plan case.

A. Andrew Gets Veronica Pregnant

6. Veronica Goudreau and Andrew Lemieux grew up around the corner from each other in Gorham, New Hampshire, *EX PARTE* MOTION FOR PARENTING TIME (Apr. 15, 2010), *Appx*. at 3,[2] and dated for over a year while students at Gorham High School. GUARDIAN AD LITEM PRELIMINARY REPORT at 3 (May 12, 2010), *Appx.* at 45. When Veronica was 16 and a junior, GUARDIAN AD LITEM PRELIMINARY REPORT at 4 (May 12, 2010), *Appx.* at 45, and Andrew 15

[2]All citations refer to the appendixes filed with Ms. Goudreau's brief, and to the transcripts already filed with this Court.

and a sophomore, Veronica learned she was pregnant. Veronica never had any question who the father was. *Aug31* at 6-7. Veronica and Andrew broke up in January 2010, *Aug31* at 8, when Veronica was 5 months pregnant, and their child was born on April 9, 2010. At the time of the hearing in this name change case, Veronica had just turned 18 and Andrew was 17; the child, Alexander, was 16 months old.

7. Although Andrew maintains Veronica did not tell him until five or six months after conception, *Aug31* at 14, Veronica testified that she told him "the day I was pregnant" because "I couldn't hide it from Andrew. … I had to tell him, because at the time he was everything." *Aug31* at 18. During the pregnancy Veronica did not get any help from Andrew or his family, *Aug31* at 9, and no contact except for one email through his parents.

8. Andrew did not want to have a baby. He testified "I had no idea what I was going to do," and did not understand "the baby game." *Aug31* at 16. Veronica knew from Andrew that he did not want to be a father, *Aug31* at 8, and that he thought she was crazy for wanting to keep the child. *Aug31* at 8. Andrew and his parents preferred to put the baby up for adoption, *Aug31* at 7, and Veronica's refusal precipitated the couple's breakup in January 2010. GUARDIAN AD LITEM PRELIMINARY REPORT (May 12, 2010), *Appx.* at 45. Consequently Veronica received no help – emotional, financial, or otherwise – from Andrew or his family during her prenatal term. *Aug31* at 7-8.

9. The pregnancy significantly altered Veronica's life. She withdrew from school and continued most of her education on-line. GUARDIAN AD LITEM PRELIMINARY REPORT at 4 (May 12, 2010), *Appx.* at 45. Andrew, however, made no change in his curricular or extra-

curricular activities. *Aug31* at 9. He was embarrassed by Veronica, and insisted the school alter her class schedule to avoid contact with him. *Aug31* at 8; GUARDIAN AD LITEM PRELIMINARY REPORT at 4 (May 12, 2010), *Appx.* at 45. Although it was a maturing experience for Veronica, the pregnancy appears to have made little immediate impact on Andrew. *Aug31* at 11-12.

B. Veronica Names the Baby

10. Alexander was baptized immediately after birth. *Aug31* at 13. Although it was done without his family's involvement, *Aug31* at 4-5, Andrew told Veronica he was content having the baby baptized, *Aug31* at 13, and the couple do not appear to have significant religious differences. GUARDIAN AD LITEM PRELIMINARY REPORT (May 12, 2010), *Appx.* at 45.

11. After the child was born, Andrew's parents sent an email saying they wanted to see him. *Aug31* at 10. A few days later Andrew got in touch with Veronica. *Aug31* at 17. Andrew would not visit at Veronica's house however, because he felt there was hostility between their families. *Aug31* at 10, 17.

12. Veronica testified that Andrew told her he did not want his name on the child's birth certificate, and that she complied out of respect for Andrew and his family. *Aug31* at 7-8, 18. As to naming their child, Andrew and Veronica had no communication, *Aug31* at 13, and thus Veronica chose the name. *Aug31* at 4-5, 14.

C. Breast Feeding, Infant Visitation, Child Support

13. Because Andrew was not willing to visit with Alexander in Veronica's presence, and because Veronica was a brand-new inexperienced mother, visitation caused immediate difficulties for Veronica and the baby's breast-feeding routine. Thus Andrew, through his

parents as next friend and within a few days of birth, filed a parenting petition in the Berlin Family Court and an *ex parte* motion for parenting time. PARENTING PETITION (Apr. 13, 2010), *Appx.* at 1;EX PARTE MOTION FOR PARENTING TIME (Apr. 15, 2010), *Appx.* at 3; EX PARTE MOTION FOR CLARIFICATION AND ORDER (Apr. 22, 2010), *Appx.* at 7. The court (*Anne D. Barber*, Marital Master) held a hearing when Alexander was two weeks old.

14. The court (*Anne D. Barber*, Marital Master) awarded joint decision-making on major issues, and daily decisions to each parent during the time each was caring for the child. Because of the nature of the breast-milk problem, the court got into the minutia of visitation scheduling, which provided that Andrew would have the child in two-hour increments four days a week. TEMPORARY ORDER AND PARENTING PLAN (Apr. 26, 2010), *Appx.* at 11. Although Veronica was sure Andrew was the father, *Aug31* at 6-7, the court (*Anne D. Barber*, Marital Master) also ordered paternity testing.

15. Within days problems arose concerning feeding the child formula rather than breast-milk, for which the parties sought judicial remedies. MOTION FOR *EX-PARTE* ORDERS (May 4, 2010), *Appx.* at 15; ANSWER TO RESPONDENT'S REQUEST FOR *EX PARTE* ORDERS (May 11, 2010), *Appx.* at 23. The court (*Anne D. Barber*, Marital Master) entered orders on supplementing Alexander's diet. ORDER ON *EX PARTE* MOTION (May 5, 2010), *Appx*. at 18. The court (*Anne D. Barber*, Marital Master) also appointed a Guardian *Ad Litem* to report on the needs of the infant, the parenting capacities of each young parent, the role of each set of grandparents, and issues regarding supplementation of Veronica's lactation. ORDER ON APPOINTMENT OF GUARDIAN AD LITEM (May 5, 2010), *Appx.* at 19.

16. The GAL filed the first of three reports a few days later, explaining the communication problems Veronica and Andrew faced regarding pregnancy and birth, their respective home and family situations, and their hopes and plans for the future. The GAL explained the natural difficulties Veronica encountered with breast-feeding and the additional problems associated with breast-milk pumping, and offered suggestions from the baby's doctor and the hospital's lactation consultant about how to alleviate them. The GAL made detailed recommendations about how to share parenting and parenting time, and suggested education and communication resources. GUARDIAN AD LITEM PRELIMINARY REPORT (May 12, 2010), *SealedAppx.* at 45.

17. Another hearing was held and the court (*Anne D. Barber*, Marital Master) entered further orders regarding visitation timing and breast-milk versus formula, and facilitating communication between the two parents. ORDER AFTER EX PARTE HEARING (June 9, 2010), *Appx.* at 29. Paternity testing was scheduled. LETTERS FROM DHHS TO PARTIES (June 9, 2010), *Appx.* at 27. In July 2010 the court (*Anne D. Barber*, Marital Master) slightly adjusted visitation, again addressed breast-feeding and supplementation with formula, and scheduled a final hearing on child support. ORDER ON REVIEW HEARING (Sept. 8, 2010), *Appx.* at 32.

18. Also in July 2010 results from the paternity testing confirmed, as Veronica already knew, that Andrew was Alexander's father. LABCORP REPORT (July 29, 2010), *Appx.* at 31. The birth certificate was commensurately amended. *June16* at 17.

19. The parties entered mediation regarding visitation, which appears to have been unsuccessful. ORDER ON MOTION TO AFFIRM AND ENFORCE (Oct. 18, 2010), *Appx.* at 33. In

preparation for the final hearing on those matters, in November 2010 the GAL filed her second report. It suggested progress in Veronica's and Andrew's efforts at communication, but pointed out remaining difficulties cooperating on scheduling. The GAL proposed a parenting plan attempting to accommodate everyone. GUARDIAN *AD LITEM* PRE-TRIAL STATEMENT (Nov. 30, 2010), *SealedAppx.* at 61. The court (*Anne D. Barber*, Marital Master) held a hearing and made minor changes to visitation schedules. PRETRIAL CONFERENCE AND FURTHER ORDER (Dec. 20, 2010), *Appx.* at 34.

20. In May 2011 the GAL filed her third and final report in anticipation of the June final hearing on the original parenting petition. The GAL reported that Andrew had been suspended from school for possessing drug paraphernalia and a knife. GUARDIAN *AD LITEM* PRE-TRIAL STATEMENT (May 29, 2011), *SealedAppx.* at 57; *Aug31* at 12. The GAL reported that Veronica, on the other hand, after graduation would be attending college in Manchester "to pursue a nursing career," and thus might be in need of daycare. GUARDIAN *AD LITEM* PRE-TRIAL STATEMENT (May 29, 2011), *SealedAppx.* at 45; *Aug31* at 12-13.

21. The GAL also reported that co-parenting counseling was progressing, but described a recurring pattern:

> Within sessions … Andrew [is] very willing to negotiate, but when he goes home to talk to his family, often changes his position. This leaves Veronica being more rigid and distrustful.

GUARDIAN *AD LITEM* PRE-TRIAL STATEMENT 3-4 (May 29, 2011), *SealedAppx.* at 45. The GAL again proposed what she believed was a workable parenting schedule.

22. The final hearing was held on June 16, 2011, after which the court (*Anne D. Barber*,

Marital Master) ratified the parties' parenting plan in which they agreed to: shared decision-making responsibility, Alexander residing primarily with Veronica, establishment of regular visitation schedules that appear to be largely what the GAL proposed, and plans for working out last-minute modifications.

23. The court (*Anne D. Barber*, Marital Master) ordered Andrew to pay child support, however, below the statutory minimum of $50 per month. Andrew was ordered to pay just $5 per week, despite making $250 per month from his part-time job at Mr. Pizza and driving a "new conversion van." *Aug31* at 11; FINANCIAL AFFIDAVIT (June 16, 2011), *SealedAppx.* at 66.

D. Name Change Arose in Context of Parenting Case

24. Shortly before the June 16 final parenting plan hearing, Andrew's family filed, in the parenting plan docket, an amended pre-trial statement seeking to add an issue for the court to decide at the final hearing:

> As a result of the paternity test confirming Andrew Lemieux is the father of Alexander, Petitioners have proposed in their Parenting Plan that Alexander's name be changed from Alexander Goudreau to Alexander Lemieux.

AMENDED PRETRIAL STATEMENT (June 6, 2011), *Appx.* at 35.

25. During the parenting plan final hearing the parties discussed the name change. Andrew's amended pre-trial statement was Veronica's first notice of the issue, and it assumed both that the family court had jurisdiction and that it could be decided within the existing parenting plan docket. After discussion, the court (*Anne D. Barber*, Marital Master) directed Andrew's lawyer to file a separate name change petition, and also suggested avoiding jurisdictional difficulties by waiting to file it until after July 1 when the Circuit Court was

created. *June16* at 4-11.

26. Thus Andrew's family opened a new case to address the issue, PETITION FOR CHANGE OF NAME RELATED TO FAMILY DIVISION JURISDICTION FOR MINOR (June 16, 2011), *Appx.* at 36, to which Veronica objected.

27. The court (*Anne D. Barber*, Marital Master) held a half-hour hearing on August 31, 2011. The lawyers for both parents made short offers of proof, and both Andrew and Veronica very briefly testified. The GAL was not involved and there was no expert. Andrew's explanation for why he wanted the name change was that paternity had been established, *Aug31* at 6, that the child should feel proud and connected to his father, *Aug31* at 4-5, 14-17, that giving the child Andrew's surname would create "a greater probability that [Andrew] will be involved going forward," *Aug31* at 17, and that generally a child should bear his father's name. *Aug31* at 4-5. Veronica argued the child should retain his given name.

28. The court (*Anne D. Barber*, Marital Master) then issued an order. It found that although Andrew had since developed a relationship with the child, his reaction to Veronica's pregnancy was "not positive," he did not want his name on the birth certificate, he refused to support her during pregnancy, and he lobbied her to give the baby up for adoption. The court (*Anne D. Barber*, Marital Master) recognized that the child "has two parents who both care for him and love him." It ruled that "Andrew's Lemieux's commitment to [the child] should be demonstrated in [the child's] name, as should Veronica Goudreau's." The court (*Anne D. Barber*, Marital Master) then changed the toddler's name. ORDER ON PETITION FOR NAME CHANGE (Sept. 23, 2011), *Appx.* at 39 (emphasis added).

29. Veronica asked for clarification, MOTION FOR CLARIFICATION (Oct. 7, 2011), *Appx.* at 40, to which Andrew's family objected. PETITIONERS' OBJECTION TO RESPONDENT'S MOTION FOR CLARIFICATION (Oct. 20, 2011), *Appx.* at 42. The court (*Anne D. Barber*, Marital Master) made clear what it intended the child's name to be, MOTION FOR CLARIFICATION (handwritten order) (Oct. 24, 2011), *Appx.* at 40; CERTIFICATE OF CHANGE OF NAME (Nov. 10, 2011), *Appx.* at 44, and Veronica appealed.

III. Two Docket Numbers, One Case

30. Marital Master Anne D. Barber has been the only known judicial officer involved in this case. Master Barber heard the parenting plan case, recommended opening a separate docket for the name change, and heard it as well. In making her decision on the name change, both the parties and Master Barber repeatedly harkened to the parenting plan case, relying on the assumption that all, including the marital master, had knowledge of the underlying case facts.

31. In his offer of proof on behalf of the father Andrew, for instance, Attorney Crisp noted the father had "successfully bonded with Alexander," and "demonstrated a strong commitment to Alexander's upbringing." *Aug31* at 4. Attorney Crisp based his offer on "Alexander's mother and father's youth at the time," and on "the circumstances of his birth." *Aug31* at 4. Although these may be minor facts, they were made by offer and easily accepted because the same marital master who had presided over every aspect of the parenting case already knew them.

32. Further, Andrew's lawyer explicitly used facts only available from the parenting case. He offered that:

> It is unfortunate that Veronica and Veronica's parents do not embrace the fact that Andrew has this desire to be involved in his son's life. But rather present to the Court a lot of misstatements of fact and distortions of what has happened in an attempt to poison the well towards him and continue the conflict and animosity between these families that has been the hallmark of what's been going on here since Day One.

Aug31 at 14. Attorney Crisp's discussion of a "continu[ing] … conflict and animosty … since Day One" is an explicit reference to the parenting case and the facts developed in it, which the court could not have misunderstood.

33. Veronica's lawyer did the same thing. In the name change case, without objection, Attorney Shuchman explicitly referred to non-public exhibits in the parenting case. His offer of proof included:

> Andrew pays not even the statutory minimum amount of support. He pays $5 a week. And based upon his last affidavit that was filed in June, I believe, his income from McDonald's is in excess of $250 a month. But he continues to pay just $5 a week, which isn't enough to buy one month's box of diapers for Alexander.[3]

Aug31 at 11. These facts are *only* available in financial affidavits and child support documents in the parenting case, and neither Andrew nor his lawyer objected to crossing the docket-number divide. Likewise, referring to Andrew, Veronica's lawyer offered: "He got caught with a pot pipe. He got caught with a knife. He's been arrested for assaulting his brother."[4] *Aug31* at 12. These facts were theretofore *only* available in the sealed GAL reports in the underlying parenting case. Again, neither Andrew nor his lawyer objected to use of these facts from the

[3]Under the tests developed in many jurisdictions, the amount of support may be a factor in determining whether a parent is allowed to exert a name preference. *See* VERONICA GOUDREAU BRF. at 25.

[4]Under the tests developed in perhaps all jurisdictions that have reached the issue, misconduct is a factor in determining whether a parent is allowed to exert a name preference. *See* VERONICA GOUDREAU BRF. at 22.

parenting case.

34. The court itself even made reference to facts that were not presented in the name change case, but were only available in the parenting case. Arguably this back-referring finding by Master Barber is the most important conclusion the court made in the name change case:

> The court declines to fault a fifteen year old boy for his reluctance immediately to accept responsibility for Alexander. *The reluctance did not last beyond Alexander's birth.*

ORDER ON PETITION FOR NAME CHANGE (Sept. 23, 2011), *Appx.* at 39 (emphasis added). Regardless of whether it is accurate, the court's conclusion regarding Andrew's "reluctance" has behind it the entire history of the parenting petition – how Andrew handled Veronica's pregnancy, his actions and non-actions around the time of birth, and his subsequent performance in Alexander's infancy.

35. Finally, the court based its name change on its core finding that "Alexander has two parents who both care for him and love him." ORDER ON PETITION FOR NAME CHANGE (Sept. 23, 2011), *Appx.* at 39. There is nothing to support a finding of parental love in the name change case, but lots of it in the parenting case. Such a judgment can thus be made only by reference to a depth of knowledge which the master could not have gained except by hearing the parenting case. Again, no party objected to the master's obvious cross-docket reference.

36. The parties in their offers of proof and testimony, and the court in its order, freely made reference to matters that are otherwise only available in the parenting plan proceeding. There was no need to discuss them in depth in the name change case because the two cases were intertwined from the outset.

37. Given these references-back by both parties and the court itself, it is apparent that although there were two docket numbers, the name change case flowed directly from the parenting case and was essentially part of the same proceeding. The name change was raised by Andrew in the last stages of the parenting case. The new docket number was merely a formal delineation created by a reorganization of the courts, and not by any inherent distinction in the case itself. The failure of any party to object to the cross-docket references shows that both: 1) Andrew's objection to the nature of the record was not preserved below; and 2) everyone accepted that the parenting case was a necessary background to the name-change proceeding.

IV. Relevance and Prejudice

38. Finally, in his motion to exclude the record Andrew makes two opposing claims. He suggests that the parenting case is not *relevant*, but also alleges the facts developed there are *prejudicial*. MOTION TO EXCLUDE §§ B and C (June 20, 2012). Prejudice and relevance are two sides of the same coin; if a fact is prejudicial, it is likely relevant. N.H. R. EVID. 401 ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Of course some facts can be excluded because they are duplicative or unduly prejudicial, N.H. R. EVID. 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."), but facts that are merely inconvenient to a party does not put them off limits. The parenting case is relevant *because* it is prejudicial.

V. Facts from the Parenting Case were Considered in the Name Change Case

39. As noted, the record in this Court consists of the "papers and exhibits filed and considered" by the trial court. SUP.CT.R. 13(1). The parenting case was the necessary backdrop to the name change case, and all involved regarded it that way. The marital master, who sat on both, explicitly considered the facts developed during the parenting case.

40. Had a new judge been assigned to the name change case, the parties would have been compelled to insert into it much of the evidence generated in the parenting case. Because of recent statutory changes allowing the family rather than the probate court to hear name change cases, they and the court were spared the time and expense of doing that. Separating them now, just because there are two different docket numbers, would vitiate the efficiencies which court reorganization demands, and would artificially create a boundary where there has heretofore been none.

WHEREFORE, Veronica Goudreau respectfully requests this honorable Court deny the relief requested in Andrew Lemieux's motion to exclude the record.

Respectfully submitted
for Veronica Goudreau
by her attorney,

Dated: June 26, 2012

Joshua L. Gordon, Esq.
N.H. Bar. No. 9046
Law Office of Joshua Gordon
75 S. Main St., #7
Concord, NH 03301
603-226-4225

I hereby certify on this 26th day of June 2012, a copy of the foregoing is being forwarded to Jack Crisp, Esq.

Dated: June 26, 2012

Joshua L. Gordon, Esq.