

## Governor and AG Make ‘Silly and Dangerous’ Hot Mess of Shelley Luther Case

MAY 8, 2020

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“How can you send someone to jail for giving a haircut?”

That question was posed to me by a longtime friend who didn’t know much about the case of *City of Dallas v. S&B Hot Mess Enters, LLC*, an aptly styled case involving a hair salon that has gathered the attention of a variety of state leaders and the national media.

At the center of the controversy is Shelley Luther, the owner who in defiance of state and county orders, a cease and desist letter from the county, and ultimately a duly issued court order, repeatedly opened her salon for business. She didn’t try to hide any of her actions.

Ms. Luther publicly stated that she would not comply with the restrictions on her business and, in one widely publicized episode, tore up the cease and desist letter from Dallas County at a protest rally.

Ms. Luther’s actions landed her, not surprisingly, in a courtroom. The City of Dallas sued her for her actions and sought to have her restrained from operating her salon in violation of the state, county and city orders.

Judge Eric Moyé of the 14<sup>th</sup> District Court in Dallas held a hearing and, after hearing argument from both sides for almost 90 minutes, entered an order restraining Ms. Luther from operating her salon. Ms. Luther sought an immediate review of the order from the Texas Supreme Court, which denied all relief.

Rather than comply with the order, Ms. Luther disregarded it and continued to operate her salon. The City of Dallas went to court and sought to have her held in contempt, which is the usual and customary remedy when a party refuses to comply with a court order.

Judge Moyé set the matter for hearing this week. At the hearing, which went on for over an hour, Ms. Luther did not argue that the court order was unclear, ambiguous, or even illegal. She could have. Instead, she argued that she was operating her salon safely and that she needed to operate her business to support her family.

At the conclusion of the hearing, Judge Moyé made findings, which were consistent with the facts and the law. He held her in criminal contempt for disobeying the portion of his order requiring her to stop operating the business. He held her in civil contempt for opening her salon in violation of the order. As a penalty for criminal contempt, Judge Moyé ordered Ms. Luther to jail for seven days and imposed a fine.

It is axiomatic that, in deciding a contempt case, a judge is supposed to consider any contrition or regret expressed by the offending party. Ms. Luther expressed none and indeed refused to do so when asked. She expressed the view that her ability to support her family was more important than the law and that she would not abide by the court's order.

As the above summary reveals, the proceedings in front of Judge Moyé, a highly regarded and experienced judge, were routine, even pedestrian. A lawsuit is filed. Temporary relief is sought. A hearing is held where all parties make arguments. A temporary restraining order is entered. The order is disobeyed. The judge enforces the order with contempt penalties.

The only thing unusual about this sequence is that the defendant here sought expedited review of the temporary restraining order in the Texas Supreme Court, which was denied in a thoughtful but brief opinion that stands for the unremarkable proposition that no one is above the law and court orders must be respected.

The matter is now back in front of the Texas Supreme Court which ordered the release of Ms. Luther while it considers her legal challenge to the punishment Judge Moyé entered for contempt.

What is remarkable is the reaction these proceedings have produced, including:

- Texas Attorney General Ken Paxton wrote a letter to Judge Moyé harshly criticizing his ruling and urging him to reconsider it;
- Paxton also went on Fox News to broadcast his criticisms more widely, including suggesting that the ruling belonged more in China, a country notoriously indifferent to human rights, than America;
- Texas Governor Greg Abbott, a former state Supreme Court justice who wielded contempt power and presided over contempt proceedings, made a similar public statement of criticism; and
- Governor Abbott issued an order today, May 7, purporting to “free” Ms. Luther by making it impermissible to jail anyone for violation of his COVID-19 orders.

The controversy surrounding Ms. Luther is both silly and dangerous.

It's silly because she wasn't punished for “giving a haircut.”

Ms. Luther wasn't punished for expressing her strong opposition to any constraint on her ability to do business or feed her family. And in spite of Governor Abbott's peculiar attempt at clemency, she wasn't punished for violating one of *his* orders. Ms. Luther was punished for the most routine and non-controversial of reasons: she violated a legitimate and legal order from a court, even after her request for appellate review was denied.

To suggest otherwise or to make her some kind of a martyr for a cause is a disservice to martyrs and causes.

But the controversy is dangerous too. The criticism of the judge in this instance undermines the rule of law, which is a cornerstone of our democracy.

What Judge Moyé did in Ms. Luther's case is what judges all over the country do regularly—enforce their orders. Judge Moyé himself has presided over dozens of contempt hearings in his career without a hint of controversy. Why? Because enforcing court orders is as routine a part of our judicial system as the bailiff saying “All rise” when the judge enters the courtroom. Standing up is about respect for the court and enforcing orders is about respect for the law.

The controversy is made more dangerous by the obvious political winds motivating the criticism, almost all of it from the right of the political spectrum. But under different circumstances, the criticism could come from the left as well.

The courts and our judges become political footballs to be kicked around by the team that sees itself losing in court.

Would Attorney General Paxton have criticized a judge who used jail time to punish contempt if the defendant were a doctor who performed non-medically necessary abortions in violation of a court order? Would we have heard a peep out of the Governor's office?

That seems very unlikely.

And since when did the Texas conservatives, vocal supporters of "law and order" deem it a colorable defense to a violation of the law to plead "I needed the money?" If that is the new philosophy, there are many people in the Dallas County jail other than Ms. Luther who would like to know about it.

But perhaps the most disheartening aspect of all this is the following: In the tweets issued by the governor or the attorney general lambasting the judge, there is not a word of criticism or restraint directed towards those who have made threats to the judge's personal safety on the internet and elsewhere, threats that have been widely reported in the media.

That silence says a lot politically, but it also further undermines the rule of law that both men are sworn to uphold.

To do all of this while the judicial process continues to play out — now in the Texas Supreme Court — simply undermines the public's faith in the courts and in the rule of law itself. Ms. Luther has an avenue for relief and she is pursuing it.

Perhaps she has served her last day in jail. Perhaps she will be ordered back to finish her punishment. We will know that soon enough through the judicial process, not through tweets and appearances on cable news. The involvement of non-party elected officials may be smart politics for their supporters, but at what cost? The independent judiciary is vital to our democracy and outside and uninformed criticism is toxic to its ability to operate freely and fairly.

The legal entity through which Ms. Luther operates her business is called "Hot Mess." She and her allies have proved true to that name.

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