

THE ULTIMATE DO-OVER DIVORCE

Drama and divorces go hand in hand, but not usually from alleged forum-shopping and filing successive divorces in multiple Texas jurisdictions.

BY MIRIAM ROZEN

"WHAT A MESS," 306TH DISTRICT JUDGE ANNE Darring in Galveston, Texas, declared to a courtroom full of lawyers in July.

Darring uttered that assessment shortly before ruling to toss a \$400 million judgment against an estranged husband and his family's company.

Darring tossed the judgment after the estranged husband's lawyer, Robert Clements Jr. of Alvin, argued that his client's wife had obtained that judgment and other victories through incessant forum-shopping—specifically, filing for successive divorces against the same spouse in multiple Texas jurisdictions without properly notifying him.

About 80,030 divorces were filed in Texas in 2012, the most recent year for which a state agency tallied those figures; 14,030 of those were filed in Harris County, 1,946 in Montgomery County and 1,123 in Galveston County.

Although Winnie Alwazzan didn't file them all in 2012, she (and her lawyers, including high-profile attorney Jared Woodfill, a former chairman of the Republican Party in Harris County) certainly should get credit for bolstering those statistics.

Represented by Woodfill, Winnie Alwazzan filed

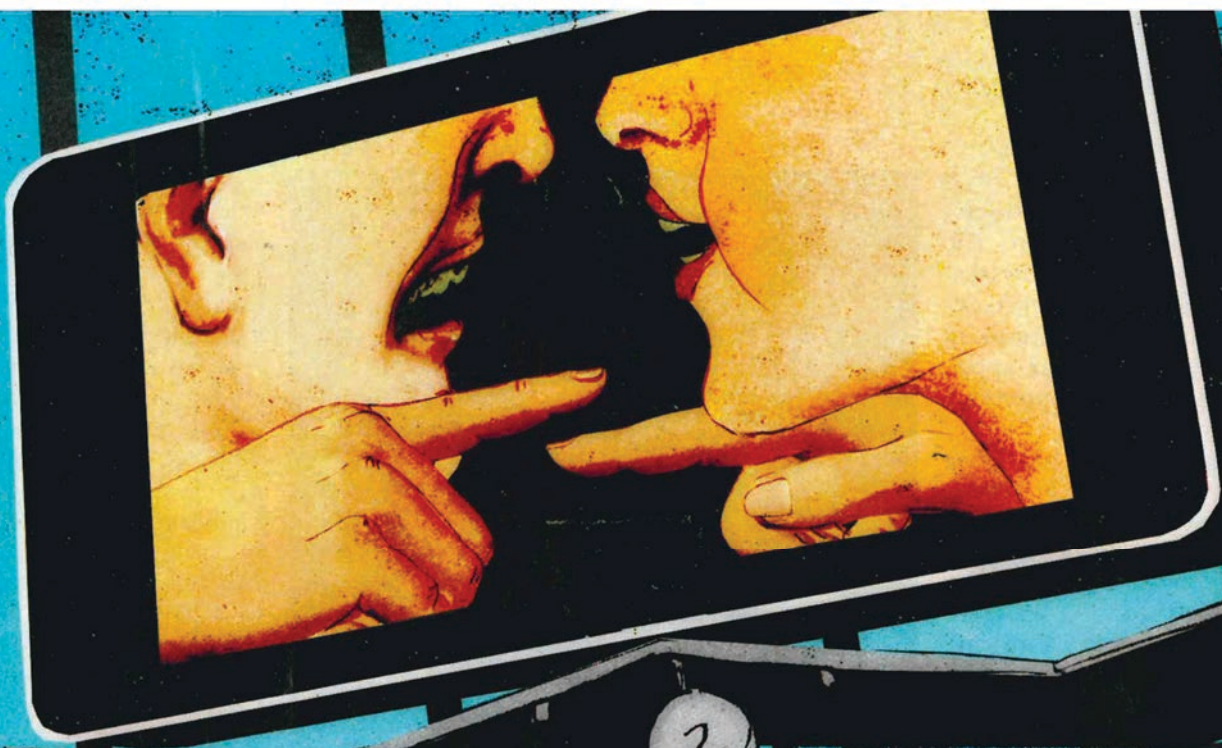
divorce papers in all three counties, each time seeking more than \$400 million from her husband, Isa Alwazzan, who had immigrated to this country from Bahrain, where his family owned a distribution company.

At some point during the time when Winnie Alwazzan was filing the multiple divorces, Isa Alwazzan left these shores—allowing her lawyers to aggressively pursue the large default judgment against him and his family's company.

He lived abroad with his mistress, the mother of one of their child's best friends, his estranged spouse testified.

Sometimes she heard from their children that he was in London; other times, Bahrain. She had been unable, however, to reach him herself to tell him when she was filing for divorce again, Winnie Alwazzan testified.

But, according to his lawyers, Winnie Alwazzan knew how to reach her estranged husband at other times, such as when she wanted to ensure that he would meet their youngest son at a London airport. Despite that, she filed a nonsuit in divorce litigation in one court, after having reached a mediated settlement in which she had failed to win a large judgment, and then on the same day filed a new divorce petition in another county.



"After she got the result she didn't like, she would have her lawyer file a Motion to Dismiss in the uncooperative county and—on the same day—have her lawyer file suit in the new county of her choosing," Clements wrote.

To circumvent the requirement that she live in the county for 90 days, she'd simply lie or alter the statutory language and say "and a resident of this county or will have resided in this county by final trial for the preceding 90 days," Clements wrote.

"She knew that she had little risk of being caught because her husband was in Bahrain, recovering from a severe stroke and surgery to get a pacemaker, and—though she was communicating with him regularly—she made sure he had no way to know the suit was pending," Clements wrote.

In response to Darring vacating the judgment and after granting her estranged husband's plea to jurisdiction, Winnie Alwazzan filed an emergency motion asking an appeals court in Houston to issue a stay of the trial judge's ruling, arguing it was "premature and procedurally improper" and that she will suffer substantial

and irreparable harm if that stay is not granted, she argued. The court denied that emergency motion, but Winnie Alwazzan will pursue further appeals, according to her lawyers, Christopher Kratovil in the Dallas office of Dykema Cox Smith and Daniel Lemkuil of The Law Office of Daniel J. Lemkuil in Houston. Woodfill, who did not respond to telephone calls to his office for this story, may still represent Winnie Alwazzan, but he did not appear in court at the hearing held before Darring vacated the \$400 million judgment.

On Aug. 15, Isa Alwazzan filed an amended motion for sanctions against Winnie Alwazzan, Lemkuil, and Woodfill. The chronology of activities of Winnie Alwazzan and those lawyers "shows that

the reprehensible behavior before this Court was not some single, impulsive, ill-conceived, misguided error of judgment, but a well-thought-out, orchestrated and detailed, course of conduct, the motion states.

"I think this is probably one of the most egregious examples of forum-shopping out there," Darring told the

"YOU KNOW, THE
RULES OF LAW AND
PROCEDURE ARE HERE
TO PROTECT OUR
DUE PROCESS AND
CONSTITUTIONAL RIGHTS,
NOT TO BE ABUSED."

— JUDGE ANNE DARRING

hearing.

Kratovil disagreed with that characterization. The history of the case shows that trial counsel Lemkuil ranks as "master of procedure in a way that takes an appellate lawyer to appreciate," Kratovil said.

Isa Alwazzan had "gone radio silent" on his client, Kratovil said. Even though Winnie sent emails, she never received Isa's responses, she testified.

"She was throwing pebbles into the void," Kratovil said about Winnie Alwazzan's attempts to reach her estranged spouse.

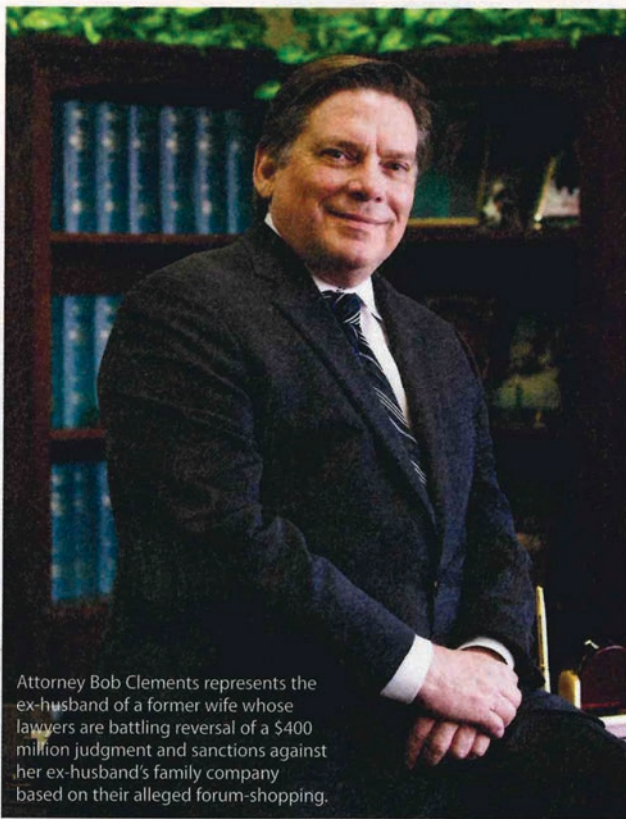
Kratovil acknowledged that the \$400 million judgment that Winnie Alwazzan initially won might make Darring, and even other judges, uncomfortable because she won it by default, since Isa Alwazzan and his family's company had not appeared before the Galveston court. Only W. David Marion of Galveston, whom the court appointed at the time to serve as an ad litem, represented Isa Alwazzan's interests when the court issued that judgment.

Marion, who testified that he has since been retained directly and is being paid \$250 per hour by Isa Alwazzan, filed a motion that bolsters the husband's arguments and the theory that Winnie Alwazzan and her lawyers aggressively forum-shopped.

In a Motion in Support of Isa Alwazzan's Motion for a New Trial, Marion wrote that neither Winnie Alwazzan nor her lawyers told him that the couple had mediated a binding agreement in Montgomery County. In an email, Marion declined to comment further on the litigation.

Default judgments, although disliked by judges, are "a necessary evil," Kratovil said. If they weren't part of Texas law, parties would have a license to not show up in court to get the outcome they want, he said. Was his client's strategy of filing in multiple courts and seeking a default judgment within the rules? "Yes," Kratovil said. It reflects his co-counsel Lemkuil's ability to provide "zealous advocacy," Kratovil said.

Lemkuil, a former associate judge in Harris County family courts, whose wife currently serves as judge for the same courts, would likely know the peculiarities of the system there. It allows for unelected associate judges to preside over divorce proceedings and therefore a gap nonexistent in other courts between such an associate judge's rulings and finality to litigation. Such a procedural window arguably allowed for Winnie Alwazzan to nonsuit litigation there, before filing in Galveston.



Attorney Bob Clements represents the ex-husband of a former wife whose lawyers are battling reversal of a \$400 million judgment and sanctions against her ex-husband's family company based on their alleged forum-shopping.

After Darring's decision to vacate the judgment, Lemkuil took a philosophical view of his client's loss. "The judge did what she thought was right. I don't agree, but I respect that," Lemkuil said.

For Darring, however, the strategies that first Woodfill, then Lemkuil and now Kratovil have devised for their client, didn't sit well. In Montgomery County, although there appeared to be active pleadings for Isa Alwazzan, Winnie Alwazzan had the litigation dismissed without prejudice, the judge said.

"I'm not sure he doesn't still have an active case there," Darring told the court about Isa Alwazzan.

Darring also said a distinction exists between a court of continuing versus exclusive jurisdiction in

Texas. Given the Alwazzan children's names were included in the cases filed in Montgomery, Harris and Galveston counties: "There was a court of continuing jurisdiction in both cases every time these things overlapped," Darring said. "So when the Harris County case was filed, there was still a court of continuing jurisdiction in the Montgomery County case. In the Harris County case, there was a court of continuing jurisdiction when the Galveston County case was filed," she said.

In Harris County, the judge said that a notice of nonsuit did not automatically nonsuit the litigation. "I think it's active and still lives on," Darring said. What about in her Galveston courtroom, where Winnie Alwazzan won her \$400 million judgment? "I think there wasn't any due diligence ... while Mrs. Alwazzan might not have gotten any responses from Mr. Alwazzan, I think his court-appointed attorney would have."

However, Darring did not blame court appointed ad litem Marion, noting that he "was not allowed to protect his client." Darring also didn't think that Isa Alwazzan or his company had been properly notified before the judgment was issued. "In Galveston County, there's a rule that, even if this was theoretically a default judgment, it really wasn't because there was an answer on file. This should have been a regular final hearing with a 45-day notice," Darring said. Winnie Alwazzan's claims of residency in the three counties also raised concerns, Darring said.

"Venue was not proper. And, you know, the Rules of Law and Procedure are here to protect our due process and Constitutional rights, not to be abused and misused and to trample on rights and I think that's what was done here," Darring said.