

1986

Wendy Marie Christensen Rawlings v. Mark Douglas Weiner : Brief of Respondent

Utah Court of Appeals

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BRIEF

DOCKET NO. 860274-CA

IN THE UTAH COURT OF APPEALS

WENDY MARIE CHRISTENSEN)	
RAWLINGS,)	
)	BRIEF OF CROSS-RESPONDENT
Plaintiff/Cross-)	
Appellant,)	
vs.)	
)	
MARK DOUGLAS WEINER,)	Case No. 860274-CA
)	
Defendant/Cross-)	
Respondent.)	

Cross-Appeal of an Order
on Order to Show Cause
by the Honorable Omer J. Call
of the First Judicial District Court
in and for Box Elder County, State of Utah

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Priority No. 7

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COURT OF APPEALS

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JURISDICTION OF COURT

On November 18, 1986, Defendant and Cross-Respondent Mark Douglas Weiner (hereinafter "Mark Weiner") appealed an Order on Order to Show Cause signed and entered October 21, 1986 by the First Judicial District Court in and for Box Elder County, Utah (hereinafter "First District Court"), the Honorable Omer J. Call presiding. Mark Weiner's appeal was dismissed by order of this court dated June 9, 1987. On November, 26, 1986, Plaintiff and Cross-Appellant Wendy Marie Christensen Rawlings (hereinafter "Wendy Rawlings") cross-appealed.

This Court has jurisdiction over the appeal in this matter by virtue of the Constitution of Utah, Article VIII, Section 1 et seq., Section 78-2a-1 et seq. Utah Code Ann. (1953 as amended), and Rule 3 R.Utah Ct.App.

NATURE OF PROCEEDINGS

Wendy Rawlings cross-appealed Judge Call's October 21, 1986 Order on Order to Show Cause on the grounds that the

First District Court lacked jurisdiction to hear and enter the order.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the trial court have jurisdiction? If so, did the trial court abuse its discretion in retaining and exercising its continuing jurisdiction to modify the parties' divorce decree?

APPLICABLE STATUTES

Section 30-3-5(1) Utah Code Ann. (1953):

When a decree of divorce is rendered, the court may include in it such orders in relation to the children, property and parties, and the maintenance and health care of the parties and children, as may be equitable.

The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support, maintenance, and health and dental care, or the distribution of the property as shall be reasonable and necessary. Visitation rights of parents, grandparents, and other relatives shall take into consideration the welfare of the child.

Applicable sections from the Utah Uniform Child Custody Jurisdiction Act:

Section 78-45c-1. Purposes - Construction.

(1) The general purposes of this act are to:

(a) avoid jurisdiction competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) to make uniform the law of those states which enact it.

(2) This title shall be construed to promote the general purposes stated in this section.

Section 78-45c-3. Bases of jurisdiction in this state.

(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the conditions as set forth in any of the following paragraphs are met:

(a) This state (i) is the home state of the child at the time of commencement of the proceeding, or (i) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume

jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(d) (i) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with Paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(2) Except under Paragraphs (c) and (d) of Subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

Section 78-45c-7. Declining jurisdiction on finding of inconvenient forum--Factors in determination--Communication with other court--Awarding Costs.

(1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a

party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in Section 78-45c-1.

(4) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.

Section 78-45c-8. Misconduct of petitioner as basis for refusing jurisdiction--Notice to another jurisdiction--Ordering petitioner to appear in other court or to return child--Awarding costs.

(1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction for purposes of adjudication of custody if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(4) Where the court refuses to assume jurisdiction to modify the custody decree of another state pursuant to Subsection (2) or pursuant to Section 78-45c-14, the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state and may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within a period of a few days, the court may place the child in a foster care home for such period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to the appropriate court of the other state which has continuing jurisdiction, or, in the event that that court declines jurisdiction, to a court in a state which has jurisdiction pursuant to Section 78-45c-3.

Section 78-45c-13. Recognition and enforcement of foreign decrees.

The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in

accordance with jurisdictional standards substantially similar to those of this act.

Section 78-45c-14. Modification of foreign decree--Prerequisites--Factors considered.

(1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (a) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and (b) the court of this state has jurisdiction.

(2) If a court of this state is authorized under Subsection (1) and Section 78-45c-8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with Section 78-45c-22.

28 U.S.C.S. Section 1738A:

(1) Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (i) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by

a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or
(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody determination is made, reasonable notice and opportunity to be

heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

- (1) it has jurisdiction to make such a child custody determination; and
- (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this Section to make a custody determination.

STATEMENT OF THE CASE

1. Nature of the Case.

The Order on Order to Show Cause from which Wendy Rawlings cross-appealed made numerous rulings: held Wendy Rawlings in contempt for her failure to obey a previous order of the Court requiring her to use the Weiner name for the children; required counseling for the parties and the children; set out guidelines for visitation and phone calls with the children; awarded Mark Weiner joint custody of his children with primary physical custody to Wendy Rawlings and carefully defined visitation to Mark Weiner; as well as making orders on several other matters. The order contained twenty paragraphs, nearly all of which ruled on a different aspect of the case.

In her statement on the nature of the proceedings, Wendy Rawlings incorrectly characterized the Order on Order to

Show Cause as only changing custody of the parties' children to Mark Weiner. The Order on Order to Show Cause only awards joint custody while leaving the primary residence of the children with Wendy Rawlings. As stated above, the Order on Order to Show Cause also covered several matters in addition to the joint custody award.

2. Course of Proceedings, and Disposition at Trial Court.

Wendy Rawlings' statements on these points are accurate as far as they go. However, a long history of proceedings in the First District Court predates the Order on Order to Show Cause from which Wendy Rawlings takes her cross-appeal. The history will be as briefly stated as possible in the Statement of Facts below.

3. Statement of Facts.

A rendition by Mark Weiner of the facts in this case in addition to the facts stated by Wendy Rawlings is necessary for two reasons: (1) the facts stated in Wendy Rawlings' brief are not tied to the record as required by Rule 24(e) R.Utah Ct.App.; and (2) Wendy Rawlings' Statements of Facts did not include several facts essential to the deciding of this appeal. A response on several facts stated by Wendy Rawlings is also necessary as those facts are not properly before this Court. The response is set out in Argument III at page 39 herein.

Concurrent with the filing of this brief, Mark Weiner filed a motion to supplement the record in this case. Assuming this Court will allow Mark Weiner's motion, but not yet having a numbered record to refer to, many of the facts stated herein are referenced to original pleadings in the trial court file by title of the pleading and date filed.

1. Mark Weiner and Wendy Rawlings were married August 16, 1974, in Manti, Utah. The parties had five children as issue of their marriage: Mark Christian Weiner; America Jerusha Weiner; Samuel Nathan Weiner; Esther Noel Weiner; and Joseph Todd Weiner. (Amended Findings of Fact and Conclusions of Law, paragraphs 3 and 4, filed 9/27/82.)

2. On November 17, 1981, Wendy Rawlings (then Wendy Weiner) filed in the First District Court for a divorce from her husband, Mark Weiner. At the time of filing, the children's ages ranged from 6 years old to 1 month old. (Amended Findings of Fact and Conclusions of Law, paragraphs 1 and 4, filed 9/27/82.)

3. After a trial on May 6, 1982, before Judge Call, the parties were divorced on May 18, 1982. An original decree was entered at that time but later amended on September 27, 1987. The Amended Decree provided that Wendy Rawlings be awarded custody of the parties' children. Mark Weiner was awarded carefully enunciated visitation rights with his

children. (Amended Decree of Divorce, paragraph 2, filed 9/27/82.)

4. On November 3, 1982, Mark Weiner filed an Affidavit and Motion for Order to Show Cause alleging Wendy Rawlings' disregarding of the visitation provisions of the Amended Decree of Divorce. The Court signed an Order to Show Cause. (Affidavit, filed 11/3/82; Motion for Order to Show Cause, filed 11/3/82; and Order to Show Cause filed 11/10/82.)

5. On November 8, 1982, Wendy Rawlings filed an Order to Show Cause, Motion for More Definite Statement, and Petition for Modification of Decree (all filed 11/8/82).

6. Mark Weiner's Order to Show Cause was heard November 8, 1982. Judge Call admonished the parties "to live in accordance with the visitation order as presently set forth by the Court," rejected Wendy Rawlings' Motion for More Definite Statement, and ordered a trial date be set to hear Wendy Rawlings' Order to Show Cause and Petition for Modification requests. No hearing was ever held on Wendy Rawlings' Order to Show Cause and Petition for Modification. (Findings of Fact and Conclusions of Law and Order on Order to Show Cause filed 11/17/82.)

7. On December 13, 1982 a hearing was held in front of Judge Call for the purpose of interpreting the Amended Decree of Divorce as to Christmas visitation. Judge Call hand-wrote on the Order entered December 22, 1982 that "any Law Enforcement officer is hereby requested and authorized to

assist if needed in carrying out this Order. Dec. 22, 1982
Omer J. Call, Dist. Judge." (Order, filed 12/22/82.)

8. On May 9, 1983 a hearing was held on an Order to Show Cause filed by Mark Weiner. Judge Call had before him family studies by Dr. T. Brent Price (hired by Mark Weiner) and Dr. Kim Openshaw (hired by Wendy Rawlings). In the Order on Order to Show Cause, Judge Call again ruled: "That the visitation schedule as set forth in the Amended Decree of Divorce entered on the 25th day of September, 1982, be strictly adhered to by the parties." (Order on Order to Show Cause, filed 5/16/83.)

9. As part of the 12/22/82 order, Mark Weiner was ordered to submit to a home study to be arranged by Wendy Rawlings. (Order, paragraph 3, filed 12/22/82.)

10. On December 23, 1982, Wendy Rawlings married Mark Rawlings.

11. On October 18, 1983, a hearing was held before Judge Call on Mark Weiner's request that there be counseling for the parties' children. Dr. T. Brent Price testified. Judge Call found the following:

1. That hostility and disappointment which (Wendy Rawlings) feels toward Defendant is being allowed to upset the children.

2. That Plaintiff has concluded that she and her present husband provide a new set of parents for the minor children of the parties, with the ultimate authority in Plaintiff and in Plaintiff's present husband, which conclusion is not in the best interests of the children.

3. That it is in the best interests of the children to require Plaintiff and her present husband and the children to obtain family therapy.

4. That based upon the recommendations of Dr. T. Brent Price and Drs. Fairbank and Openshaw in a letter, in testimony by Dr. Price and in a letter presented to the Court, the Court recommends that therapy of Plaintiff, Plaintiff's present husband, and the minor children of the parties be had through either Dr. Meredith Alden, Dr. Curtis Canning, or Dr. William Dobson.

(Findings of Fact and Conclusions of Law and Order on Order to Show Cause, filed 2/16/84.)

12. At the proceedings on October 18, 1983, Judge Call made the following comments from the bench:

Now, it's true you were awarded custody, Mrs. Rawlings. But you won't find anything in my decree, in any order I've issued, in anything else that's come out of this court that displaces Mark Weiner as the father of these children. Now, the fact that you married Mark Rawlings didn't alter in the slightest the paternity nor the paternal rights.

Now, I can see that you, either because of your training or something else, have decided that, in the best interest of these children, that they immediately learn that there is a new father figure in your home. You don't find anything in the decree or any order of this court to that effect. I'm not prepared to say that. And I have never said it. None of the psychologists have said it. They recognize that the new husband may well have a role. I may even be required to impose some discipline as the breadwinner or the provider to some extent. But in this case none of that deprives the father, the natural father, of his role as father. But I find from everything that has gone on here that you have concluded that you and Mark Rawlings are now the parents. You and Mark Rawlings have the responsibility to dictate

what is best for the children. You and Mark Rawlings have the right to say what is best for the children.

I have to dispose your mind of that. That isn't the case. He has some visitation privileges and custodial rights while they are with him. And in the absence of harm or upsetting circumstances, it's not your problem that the children sleep in a sleeping bag. It's not your problem that all of the children end up in the same room in one night. I'd be surprised if they didn't. If you're able to carry on an activity in one room and put the children in another room, you're lucky. All the kids want to be where the action is. When they go to bed I'm not alarmed at that. Apparently the psychologist isn't alarmed at that. Don't decide that you, then, have got to arrange the physical set up over at the Weiner home.

(Partial Transcript of Proceedings held 10/18/83, filed 11/22/83.)

13. On May 29, 1984, Judge Call entered Findings of Fact and Conclusions of Law and an Order on Order to Show Cause on a hearing held before him on April 6, 1984 on an Order to Show Cause initiated by Mark Weiner. The Court's edict was the same:

1. That the visitation of the children by [Mark Weiner] be as specifically stated in the Amended Divorce Decree. There are to be no changes in the visitation as specifically set forth in the Amended Divorce Decree except by mutual agreement of the parties. In the case where the children are sick, the keeping of the children from visitation by [Wendy Rawlings] must be supported by a doctor's statement that the child is in fact unable to go to visitation.

(Findings of Fact and Conclusions of Law and Order on Order to Show Cause, filed 5/29/84.)

14. On June 22, 1984, a letter from Wendy Rawlings and her husband, Mr. Mark Rawlings, was filed with the Court. The letter stated:

Dear Mr. Weiner:

Mark has accepted employment in the Des Moines area, so we have moved. Our forwarding address is: Mark Rawlings, P. O. Box 477, Brigham City, Utah 84302.

We will contact you to make suitable visitation modifications.

With Best Wishes,

Mark and Wendy Rawlings

(Letter, filed 6/22/84.)

15. During the summer of 1984, multiple Motions for Orders to Show Cause were filed by Mark Weiner and multiple Orders to Show Cause were signed by the Court attempting to find the whereabouts of Wendy Rawlings and the children. In an August 8, 1984 Order, Judge Call extended indefinitely Mark Weiner's summer visitation with the children pending Wendy Rawlings providing Mark Weiner a residential address at which Wendy Rawlings and the children resided. (Motion for Order to Show Cause, Affidavit, and Order to Show Cause, filed 7/16/84; Motion for Order to Show Cause, Order to Show Cause and Temporary Order, and Order for Service, filed 7/26/84; Order, filed 8/8/84.)

16. On October 23, 1984, a hearing was held before Judge Call on an Order to Show Cause initiated by Mark Weiner, and an Order to Show Cause filed by Wendy Rawlings. Besides

the parties, Sheila Miller of Bear River Mental Health and Dr. Kim Openshaw, both child counselors, testified. On December 17, 1984, the Findings of Fact and Conclusions of Law and Order on Order to Show Cause were entered on the October 23, 1984 hearing. The trial court found that where Wendy Rawlings had moved herself and the children some 800 miles, the move constituted a substantial change in circumstances upon which the Court modified the visitation. The Court provided for visitation by the maternal grandparents when the children were in Brigham City, where their grandparents live. Further, the Court found that "it is not in the best interests of the children nor of their father, Mr. Weiner, that the children be called Rawlings. Accordingly, only the Weiner name should be used." (Clerk's Minute Entry, filed 10/23/84; Findings of Fact and Conclusions of Law and Order to order to Show Cause, filed 12/17/84.)

17. On September 17, 1985, upon motion and affidavit of Mark Weiner (Mark Weiner was representing himself at this point), Judge Call signed an order providing that Wendy Rawlings provide Mark Weiner "with the address of the new domicile of the minor children of the parties and with the new phone number at said domicile" and that child support be held by the Clerk of the Court until the new address and phone number were provided. On an October 10, 1985 letter to the Clerk from Stephen W. Jewell, Wendy Rawlings' counsel, Judge Call noted: "Sharon you can release the current checks to

Wendy's parents. Oct. 16th-85. O.J.C." (Order, filed 9/17/85; Letter, filed 10/15/85.)

18. On October 23, 1985, Mark Weiner filed his Motion for Order to Show Cause and Temporary Order and Affidavit in support thereof. (Motion for Order to Show Cause and Affidavit, filed 10/23/85.)

19. On or about November 5, 1985, Wendy Rawlings filed a Motion to Transfer Jurisdiction From Utah to Washington State. (Motion of Petitioner for Transfer of Jurisdiction from Utah to Washington, filed 11/18/85.) Apparently relying on the motion filed in Washington, Wendy Rawlings filed a memorandum with the First Judicial District Court in Box Elder County, Utah. (Record, page 1.)

20. On December 18, 1985, Wendy Rawlings filed a Motion to Disqualify Judge Call, with a certificate by counsel, Stephen Jewell, and Affidavit of Wendy Rawlings in support of the motion. (Record, pages 12-18.)

21. On December 23, 1985, Judge Call filed a Statement and Order and certified the matters of disqualification and jurisdictional to Judge VeNoy Christoffersen of the First Judicial Court for Utah for determination. (Record, pages 26-28. There is a copy of the Statement and Order in the Addendum.)

22. Responding to the disqualification claim, Judge Call summarized the case:

(a) That numerous documents appearing to be letters or statements of both parties,

requests and reports have been presented to the Judge's secretary and the clerks of court, all of which the Judge has declined to receive or review, but has ordered the same returned or held in a separate file by the secretary;

(b) The Judge has further refused to accept phone calls or otherwise discuss or meet with the defendant;

(c) That the Judge has advised the secretary and court clerks that the defendant would have to comply with applicable procedures, including notice to the opposing party in order to bring his requests before the court.

After numerous hearings dating from the year 1981, the court has entered a decree, amended decree, and several orders on orders to show cause, the effect of which was to fix rights of visitation for defendant with his children, including weekly short telephone visits at defendant's expense which required plaintiff's keeping defendant apprised of her phone number and residence. Contrary thereto plaintiff and prior to the current disputes, notified defendant that her address was P. O. Box 477, Brigham City, Utah 84302 and contact would be made to make suitable visitation modifications. Thereafter plaintiff notified the clerk's office to forward child support to Wendell Christensen, 519 Hawthorne Drive, Brigham City, Utah 84302. That on August 8, 1984 the court entered its order requiring plaintiff to provide an address where plaintiff resided and could be served personally and where defendant may visit the minor children of the parties. On September 17, 1985 (see Document No. 16868-83), pursuant to affidavit and motions, the court ordered child support payments held by the clerk until plaintiff provided the court and the defendant the address and phone number of the children. After some delay and receipt of letters stating why the addresses and phone numbers should not be given, plaintiff did provide the court clerks such address and phone number and the court directed the support payments be forwarded to her.

(Record, pages 26-28; Addendum.)

23. Regarding the jurisdiction issue, Judge Call documented his phone conversation with Commissioner Gaddis of Washington State in the Statement and Order:

That pursuant to the plaintiff's earlier motion made in the State of Washington for transfer of jurisdiction to the State of Washington and the request contained therein that the Washington Court communicate with Judge Omer J. Call, Box Elder County, Commissioner Gaddis of the said Washington Court contacted this court declining to accept jurisdiction, noted the problems the minor children were having because of the visitation fights, and urged this court to retain jurisdiction for the purpose of enforcing, adjusting or modifying custody and visitation orders.

(Record, page 28; Addendum.)

24. Judge Christoffersen denied Wendy Rawlings' Motions to Dismiss Mark Weiner's Order to Show Cause, Motion to Disqualify Judge Call, and Motion to Change Jurisdiction. (Record, page 68.)

25. On January 20, 1986, the Order Declining Jurisdiction from Washington was filed. The order, after acknowledging a hearing in Washington on the issue of jurisdiction and communication with Judge Call, stated:

IT IS HEREBY ORDERED ADJUDGED AND DECREED that this court finds that the custody and visitation of the children subject to this proceeding has also been subject to the subject matter jurisdiction of the Box Elder County District Court of the State of Utah; that said court acquired jurisdiction over the parties and the subject matter several years ago and has continuously exercised jurisdiction in enforcement and modification proceedings; and that one of the named parties, father of the children, continues to reside in the State of Utah; that upon communication with said court it has elected and determined to continue

exercising sole and exclusive child custody jurisdiction; and

IT IS FURTHER ORDERED that pursuant to the Uniform Child Custody Jurisdiction Act (RCW 26:27) it is determined that Box Elder County District Court of the State of Utah continues to have exclusive subject matter jurisdiction over the custody and visitation of the parties' children, the parties not having agreed to litigate exclusively in the State of Washington and there being no emergency justifying intervention in the matter by Washington Courts; and

IT IS FURTHER ORDERED that all Washington proceedings concerning the custody of said children are hereby stayed until further order of the court or until an appropriate motion for dismissal proceedings is filed and granted; and

IT IS FURTHER ORDERED that the courts of Washington and this proceeding shall remain open for enforcement provisions of such orders as have been and may be entered by the Box Elder County District Court of the State of Utah pursuant to the provisions of the UCCJA.

The order was signed on January 13, 1986. (Record, pages 70-72. There is a copy of the Order Declining Custody in the Addendum.)

26. After discovery and various other motions, the hearing on Mark Weiner's Order to Show Cause was heard by Judge Call on May 21, 22 and 27, 1987. The Clerk's Minute Entry shows that Judge Call heard testimony from: the parties; Mark Rawlings; Mark Rawlings' former wife, Judy Evans; Nels Sather of Bear River Mental Health; Dr. Thomas Charles Fairbanks, a psychologist; Dr. Kim Openshaw, a psychologist from Utah State University; Dr. Jack M. Reiter, psychiatrist from the Seattle, Washington area; Dr. Elliott

Landau, a psychologist from the University of Utah; and Wendell and Rosalie Christensen, maternal grandparents of the children and residents of Box Elder County. Judge Call interviewed the children in chambers. Numerous exhibits were presented and received by the trial court, including copies of several psychologists' reports and court documents from Washington State. (Record, pages 313-319; Exhibits #01-18.)

27. Wendy Rawlings filed an Order to Show Cause against Mark Weiner on October 16, 1986. (Record, page 336.)

28. On October 21, 1986, the Findings of Fact and Conclusions of Law and Order on Mark Weiner's Order to Show Cause were signed and entered by Judge Call. (Record, pages 338-347.)

SUMMARY OF ARGUMENT

1. Having heard the original divorce of the parties in 1982 and several orders to show cause prior to the Order to Show Cause filed in October, 1985, which is the subject of this appeal, the First District Court had continuing jurisdiction of this case.

2. Where Mark Weiner has never moved from the state and the children continue to have significant contacts with Utah and substantial evidence concerning their interests is available in Utah, the requirements of Utah UCCJA and FPKPA are fully satisfied. Being fully satisfied, the First District Court properly exercised its continuing jurisdiction in this case.

3. Whether or not to retain jurisdiction was in the discretion of the First District Court. There being no abuse of that discretion, the First District Court should be affirmed on this appeal.

ARGUMENT

Wendy Rawlings' cross-appeal in this case claims the trial court had no jurisdiction to enter the October 21, 1986 Order on Order to Show Cause. Wendy Rawlings did not appeal the substance of the decision.

To argue the jurisdiction issue requires a step-by-step analysis. The analysis necessarily includes a discussion of the trial court's basic jurisdictional authority in this case, the effect of the Utah Uniform Child Custody Jurisdiction Act (hereinafter "Utah UCCJA") and the Federal Parental Kidnapping Prevention Act (hereinafter "FPKPA") on the trial court's authority, and the trial court's exercise of discretion relative to jurisdiction in this case. In short, did the trial court have jurisdiction and was the trial court authorized to exercise that jurisdiction.

I

THE FIRST DISTRICT COURT OF BOX ELDER COUNTY,
STATE OF UTAH, HAD JURISDICTION TO SIGN AND
ENTER THE ORDER ON ORDER TO SHOW CAUSE IN THIS
CASE.

On September 27, 1982, the Amended Decree of Divorce between Wendy Rawlings and Mark Weiner was filed. The Amended Decree provided that custody of the parties' five small

children go to Wendy Rawlings, with carefully outlined visitation to Mark Weiner.

Before and after the filing of the Amended Decree, Mark Weiner has sought the aid of the court in compelling Wendy Rawlings to honor the visitation order and allow the children and their father their visitation time together.

Having heard and decided the divorce of the parties, the First District Court has "continuing jurisdiction to make such subsequent changes or new orders with respect to ... the custody of the children and their support, maintenance, and health and dental care ... as shall be reasonable and necessary." Section 30-3-5 Utah Code Ann. (1953 as amended). Numerous subsequent orders were made in this case by the trial court, including the Order on Order to Show Cause entered October 21, 1986, all of which were entered under the First District Court's continuing jurisdiction.

II

THE TRIAL COURT'S EXERCISE OF JURISDICTION IN THIS CASE IS CONSISTENT WITH THE UTAH UCCJA AND FPKPA.

In October, 1985, the trial court signed an Order to Show Cause pursuant to a Motion and Affidavit filed by Mark Weiner. The Order to Show Cause sought modification of the Amended Decree and/or enforcement of the numerous previous orders of the trial court relative to visitation, the proper surname of the children, visitation expenses and so on.

In November, 1985, Wendy Rawlings filed a motion in Washington State seeking to have Mark Weiner's Order to Show Cause heard in Washington. Pursuant to Wendy Rawlings' request, Washington Court Commissioner, Stephen M. Gaddis, spoke on the phone with District Judge Omer J. Call.

Both Commissioner Gaddis in his Order Declining Jurisdiction and Judge Call in his Statement and Order acknowledge the continual exercise of jurisdiction in this case by the First District Court beginning with the filing of the divorce complaint filed by Wendy Rawlings in 1981. (Record, pages 70-71 and 26-28 respectively.) Commissioner Gaddis' order acknowledges Mark Weiner's continued residence in this state. Judge Call's order points out Wendy Rawlings' failure to keep Mark Weiner informed of the children's whereabouts and phone number. Both orders clearly confirm the First District Court's continuing jurisdiction in this case and the intent of both courts that the First District Court has exclusive jurisdiction concerning custody and visitation.

Every procedure mandated and envisioned by the Utah UCCJA was correctly followed in this case.

The first provisions of the Utah UCCJA which should be considered in this case are Sections 78-45c-13 and 14. Section 78-45c-13 requires the "recognition and enforcement of foreign decrees." Section 78-45c-14 sets out the prerequisites for modification of a foreign decree. Commissioner Gaddis correctly concluded in his order declining

custody, pursuant to Section 78-45c-14(1)(a) "that the court which rendered the decree (First District Court) does ... now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act ... (and did not decline) to assume jurisdiction to modify the decree"

To determine what is meant by the first provision of Section 78-45c-14(1)(a), it is necessary to review the Commissioner's notes, other portions of UCCJA, and applicable case law. The Commissioner's note to Section 13 of the Uniform Child Custody Jurisdiction Act (hereinafter the "UCCJA") (virtually identical to Section 78-45c-13) states:

This section and sections 14 and 15 are the key provisions which guarantee a great measure of security and stability of environment to the "interstate child" by discouraging relitigations in other states. See Section 1

"Jurisdiction" or "jurisdictional standards" under this section refers to the requirements of section 3 in the case of initial decrees and to the requirements of sections 3 and 14 in the case of modification decrees. The section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance.

9 U.Laws Annot. (1979 ed.) Section 13, page 151.

Section 1 of UCCJA (virtually identical to Section 78-45c-1) states the general purposes of the UCCJA. (Section 78-45c-1 is reproduced in the "statutes" section of this brief.) The general purposes of the Utah UCCJA were met by the trial court retaining jurisdiction in this case because "jurisdictional competition and conflict" with Washington was

avoided, cooperation with the Washington court was promoted, litigation over custody and visitation took place in the state where the children have significant contacts with their father, maternal grandparents, numerous aunts and cousins, and counselors and psychologists, continuing controversies involving custody and visitation and continued attempts to forum-shop and relitigate custody and visitation was discouraged.

The "jurisdictional standards" referred to in the Commissioner's notes on Section 13 are more fully discussed in the Commissioner's note on Section 14:

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. *** In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere.

The First District Court has continuing jurisdiction under Section 30-3-5. The First District Court exercised that jurisdiction nearly continuously since Wendy Rawlings filed

the complaint in 1981. Though Wendy Rawlings moved with her new husband and the children out of Box Elder County, Mark Weiner still resides in Box Elder County, exercises much of his rather extensive visitation in Box Elder County, the maternal grandparents reside in Box Elder County, counselors to the children and parties work and reside in Utah. The children's contacts with this state continues to be significant, and were certainly so in 1985-86 at the time the order to show cause was brought, heard, and decided.

The Commissioner's note refers to Section 3. The statutory cite in the Utah UCCJA is Section 78-45c-3. Section 78-45c-3(1)(b) provides that the court has jurisdiction in a modification petition in child custody matters if it is in the child's best interest by virtue of the child and one of the contesting parties having "a significant connection with this state" and "there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships." Section 78-45c-3(2) and (3) makes clear that physical presence of the child is not the sole determining factor under Section 78-45c-3(1)(b).

Section 78-45c-8 provides that a court may decline jurisdiction if a petitioner does not have "clean hands." Section 78-45c-8(2) provides: "If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just

and proper under the circumstances." There are several expressions of concern by the trial court for the well being of the children in light of Wendy Rawlings' conduct. Specifically, the various orders on orders to show cause and notations thereon, the Statement and Order, and the Findings of Fact and Conclusions of Law and Order on Order to Show Cause appealed from to this Court.

The FPKPA (which is essentially the last word on full faith and credit of custody orders in this country) requires that full faith and credit be given to a custody order made by a state which "has jurisdiction under the law of such state" (28 U.S.C.S. Section 1738A(c)(1)), the state has continuing jurisdiction (Section 1738A(E)) and the state "remains the residence of the child or any contestant" (Section 1738A(d)).

Again, under Section 30-3-5, the First District Court has continuing jurisdiction. Mark Weiner continues to reside in this state. Where those two elements are present, under FPKPA, Judge Call's Order on Order to Show Cause is entitled to full faith and credit.

FPKPA goes even further than requiring full faith and credit to a sister state's order. FPKPA also restricts the right of a sister state to modify the decree between the parties in this case until Mark Weiner moves and the First Judicial District otherwise loses jurisdiction of the case through the loss of all significant contacts with the children.

There are several well-considered cases which support the above analysis:

In State Ex Rel. Cooper v. Hamilton, 688 S.W.2d (Tenn. 1985), the parties were divorced in 1980 by an Indiana court. The parties and the children had lived in Indiana many years. The day after the divorce the mother moved to Tennessee. Shortly after the divorce the father moved the Indiana court for modification of the decree relative to custody of the child in the mother's care. The mother later moved the Tennessee court for modification of the decree relative to the visitation of the Indiana decree. The Tennessee judge took jurisdiction of both the father's and mother's petitions.

On appeal, the Supreme Court of Tennessee held that though Tennessee was the "home State" of the child under the Tennessee version of UCCJA," the fact that a state is or has become a 'home state' does not, in and of itself, give that state authority to pre-empt the authority of other states." 688 S.W.2d at 824. Relying on Tennessee's equivalent to Utah's Section 78-45c-14(1), the Commissioner's notes to Section 14, quoted above, and Steele v. Steele, 250 Ga.101, 296 S.E.2d 570 (1982), the Court concluded:

There can be no question but that the intention of the drafters of the Uniform Act was to give priority to the original rendering state, and not to other states, so long as at least one of the contestants to the original action remained in that state, and the state otherwise retained jurisdiction.

688 S.W.2d at 825.

The Supreme Court of Tennessee then quoted extensively from a law review article by Brigitte M. Bodenheimer, the Reporter who aided in the preparation of the Uniform Child Custody Jurisdiction Act. Bodenheimer "The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws," 22 Vand.L.Rev. 1207 (1969). Of particular interest is an example quoted from the article:

A typical example is the case of the couple who are divorced in state A, their matrimonial home state, and whose children are awarded to the wife, subject to visitation rights of the husband. Wife and children move to state B, with or without permission of the court to remove the children. State A has continuing jurisdiction and the courts in state B may not hear the wife's petition to make her the sole custodian, eliminate visitation rights, or make any other modification of the decree, even though state B has in the meantime become the 'home state' under section 3. The jurisdiction of state A continues and is exclusive as long as the husband lives in state A unless he loses contact with the children, for example, by not using his visitation privileges for three years. Bodenheimer, op.cit.supra at 1237.

688 S.W.2d at 826.

After citing the FPKPA, the Supreme Court of Tennessee held in the case that until Indiana declined jurisdiction, "primary jurisdiction to modify the Indiana decree remains with the Indiana courts, not with the Tennessee courts, even though this has become the 'home state' of the child whose custody is involved." Ibid.

In Kumar v. Superior Court of Santa Clara County, 32 Cal.3d 689, 186 Cal.Rptr. 772, 652 P.2d 1003 (1982), the Supreme Court of California held that the California courts

could not modify a New York decree unless New York declined to exercise jurisdiction. In that case, the parties were divorced in New York in 1974. The parties continued to live in New York until 1979 when the mother, who had custody, moved with the child to California. In 1980, the father filed in New York for modification of the decree. Shortly thereafter, the mother petitioned a California court for modification.

In a lengthy, scholarly, and very helpful opinion, the California court cites sections from its version of UCCJA, Commissioners Notes, also quoted at length herein, three of Reporter Bodenheimer's law review articles on UCCJA, including the quote from the Vanderbilt Law Review, and FPKPA. Acknowledging California to be the "home state," the California court nevertheless ruled that the child and child's father had significant contacts with New York and there was substantial evidence concerning the child in New York. In support of its decision, the California court noted that: The child was born and lived in New York until moving to California; the divorce and initial custody decree were rendered by New York; the child had continued contact with his father who continued to live in New York; "maternal grandparents and other relations, neighbors and friends live in New York;" and there was evidence the mother left with the child for California without providing an address or phone number to the father or making arrangements for visitation by the father with the child. 652 P.2d at 1004-5.

The above facts are nearly identical to the facts in this case.

The Supreme Court of California held that "... California has no authority to modify the New York decree so long as that state has jurisdiction and does not decline to exercise it" The First District Court of Utah had jurisdiction to enter the Order on Order to Show Cause and did not relinquish its jurisdiction to do so.

In Cotter and Woods, 64 Or.App. 173, 666 P.2d 1382 (Or.App. 1983), the Oregon courts refused to modify a California decree even though Oregon was the "home state." Subsequent to the California divorce, the father filed for modification of the decree in California and later obtained an order of joint custody of the child with the physical custody to the mother and specific visitation to the father. The mother moved to Oregon between the time the modification petition was filed and decided. Approximately 7 to 8 months later, the mother petitioned an Oregon court to modify the California decree.

The Court of Appeals of Oregon, citing Oregon's version of UCCJA, ruled that though Oregon was the "home state," California still had jurisdiction where one of the contestants was still living in California and there was a "'substantial connection' between the child, father and California."

Again, Mark Weiner still resides in Utah and the substantial connection between the children, Mark Weiner, and Utah continues.

In yet another lengthy, scholarly, and helpful decision, the Supreme Court of Connecticut upheld a decision by the trial court to dismiss a petition for modification of a Florida decree even though Connecticut was the "home state." Brown v. Brown, 195 Conn. 98, 486 A.2d 1116 (Conn. 1986). What is further interesting about the case is the petition for modification was dismissed even though Florida's "Order Relinquishing Jurisdiction" provided that Florida would "resume jurisdiction over this dispute 'should the courts of the State of Connecticut express their willingness that this be done.'" 486 A.2d at 1125.

The requirements of UCCJA and FPKPA were met in this case. The First District Court had jurisdiction and properly exercised its jurisdiction to hear and enter the Order on Order to Show Cause.

Wendy Rawlings cites several cases in support of her position that the First District Court had no jurisdiction or at least should not have exercised its jurisdiction. The first case was Etter v. Etter, 45 Md.App. 395, 405 A.2d 760 (1979). Etter, supra, involved parties who weren't even divorced yet. Initial custody orders and modifications of existing custody orders require wholly different analyses under UCCJA and FPKPA. See generally Kumar v. Superior Court

of Santa Clara County, supra, and analysis therein. Since this case involves a modification and in Etter, supra, there was as yet no decree, Etter, supra, is not relevant to this case.

Green v. Green, 87 Mich.App. 706, 276 N.W.2d 472 (1978), favors Mark Weiner's position as the Michigan court allowed jurisdiction only after the Texas court that issued the original decree relinquished its jurisdiction in the case. The First District Court never relinquished its jurisdiction in this case.

Marriage of Settle, 276 Or. 759, 556 P.2d 962 (1976), is distinguishable from this case as Oregon took jurisdiction of a modification request only after it determined that Indiana, the state that issued the divorce decree, had no "significant connection" with the children or substantial evidence" about the children. Both are present in this case. In addition, there is no mention of correspondence with the Indiana court in Settle, supra. The mother did not attend the trial in Indiana as she had already moved to Oregon with the children of whom she had an order of temporary custody. The Oregon court's finding that the Indiana decree was punitive, the kids had never been in the custody of their father, and there was no significant contacts or substantial evidence in Indiana, formed the basis of Oregon's jurisdiction, none of which is present in the case before this Court.

In McCarron v. District Court in and for Jefferson County, 671 P.2d 953 (Colo. 1983), both parties had left the state where the original decree was rendered. Mark Weiner has never moved. Though Commissioner's notes to Section 14 of the UCCJA indicate when both parties move the state may lose jurisdiction, that is not the case here. McCarron, supra, is not relevant in this case.

As to McLane v. McLane, 570 P.2d 692 (Utah 1977), the case is pre-Utah UCCJA and would necessitate an entirely different analyses, if not result, if UCCJA was applicable.

The last case, Trent v. Trent, 735 P.2d 382 (Utah 1987), is discussed in Argument III below.

III

WHETHER OR NOT TO EXERCISE JURISDICTION UNDER UTAH UCCJA IS DISCRETIONARY WITH THE FIRST DISTRICT COURT.

In this case it is apparent that Judge Call and Commissioner Gaddis determined that the First District Court exercise its jurisdiction and hear and decide the several matters raised by Mark Weiner's Order to Show Cause of October, 1985. Judge Call's Statement and Order and Commissioner Gaddis' Order Declining Jurisdiction appear in the record and so state that the First District Court had exclusive jurisdiction. After receiving the go ahead from Judge Christoffersen by virtue of Judge Christoffersen's memorandum decision of December 23, 1985, Judge Call went on to exercise the jurisdiction of his court.

In Trent v. Trent, 735 P.2d 382 (Utah 1987), the Fourth District Court exercised its continuing jurisdiction to enforce the visitation provisions of a divorce decree it had issued some years prior. Evidence was noted by the Utah Supreme Court that the children had not lived in Utah since before their mother was served with the divorce complaint. Though the Supreme Court essentially ruled Utah UCCJA did not apply to the case, the Court noted in reference to Section 78-45e-7 that: "Application of the foregoing factors to the facts and circumstances of this case leads to the conclusion that the court did not abuse its authority in declining to relinquish jurisdiction."

The use of the words "abuse its authority" suggests the Utah Supreme Court allows the trial court to exercise the same discretion in applying Utah UCCJA as is allowed in divorce and modifications generally. The standard of review of divorce modifications is outlined in Harding v. Harding, 26 Utah 2d 277, 488 P.2d 308, 309 (1971):

This proceeding seeking to modify the divorce decree is in equity; and it is the prerogative of this court to review the evidence, to make its own findings, and to substitute its judgment for that of the trial court when the ends of justice so require. However, due to the prerogatives and advantaged position of the trial court, we pursue that broad authorization under certain rules of review which are now well established: Its actions are indulged with a presumption of validity and correctness and the burden is upon the appellant to show a basis for upsetting them: either (1) that findings have been made when the evidence clearly preponderates the other way, or (2) that there has been a misunderstanding or misapplication of

the law resulting in substantial and prejudicial error; or (3) that it appears plainly that there has been such an abuse of discretion that an inequity or injustice has resulted.

(Footnotes omitted.)

Citing Connecticut's equivalent provision to Utah's Section 78-45c-7(1) and the word "may," the Supreme Court of Connecticut ruled in Brown, supra:

Declining jurisdiction under Section 46b-97 is discretionary with the court. By the inclusion of the word "may" in that section, the legislature clearly intended that the inconvenient forum issue in UCCJA cases remain discretionary; as is the common law forum non conveniens principle. This discretion must be exercised in accordance with the overall purposes of the UCCJA; see General Statutes Section 46b-91; which have been summarized by some courts as consisting of the elimination of "jurisdictional fishing with children as bait." A determination by the court under Section 46b-97 that Connecticut "is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum"; General Statutes Section 46b-97(a); will not be reversed absent a clear abuse of discretion. This standard of review is necessary in order to "discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child."

486 S.2d at 1116 (a substantial number of case and statutory citations are omitted).

The First District Court did not abuse its discretion in retaining jurisdiction in this case.

As further suggested by Trent, supra, the burden was on Wendy Rawlings to show that the parties' children would suffer "prejudice or that the interests of the children would best be

served by relinquishing jurisdiction" 735 P.2d 382. There is no evidence before this Court that the parties' children were in any way prejudiced or their interests compromised by the First District Court's exercise of jurisdiction in this case. In fact, the record shows that there were three full days of trial at which numerous witnesses appeared, including Wendy Rawlings, her husband, Wendy Rawlings' parents, and Dr. Reiter, a psychiatrist from the Seattle, Washington area.

Utah's and Washington's versions of the UCCJA call for cooperation between the states in custody matters. In Utah, Sections 78-45c-16 through 22 (Washington's provisions are essentially identical) provide for the ready exchange and discovery of information in custody cases. Those provisions were certainly available to Wendy Rawlings. The record reflects the presenting of many Washington Court documents.

In her statement of facts, Wendy Rawlings refers to continuing objections to jurisdiction made at the trial on May 21, 22 and 27, 1986. There is no record of those objections before this Court since no transcript was ordered by Wendy Rawlings. As held in Fackrell v. Fackrell, 60 Utah Adv. Rep. 39 (July 1, 1987), citing Sawyer v. Sawyer, 558 P.2d 607 (Utah 1976):

Appellate review of factual matters can be meaningful, orderly, and intelligent only in juxtaposition to a record by which lower courts' rulings and decisions on disputes can be measured. In this case without a transcript no such record was available, and therefore no

measurement of the district court's action can be made as urged upon us by defendant. Id. at 608-09.

Without "adequate citations to the record, the judgment of the lower court is presumed to be correct." Fackrell, supra, 60 Utah Adv.Rep. at 39.

The First District Court properly exercised its jurisdiction in this case and its Order on Order to Show Cause should be upheld.

CONCLUSION

The First District Court had continuing jurisdiction and properly retained and exercised that jurisdiction in issuing the Order on Order to Show Cause in this case on October 21, 1986. This Court should so hold and affirm the First District Court ruling in this case.

Dated this 21st day of October, 1987.

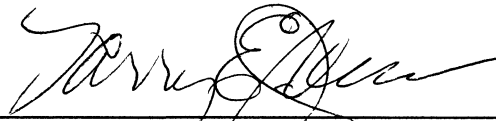
HILLYARD, ANDERSON & OLSEN



LARRY E. JONES
Attorney for Defendant and Cross-
Respondent Mark Douglas Weiner

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing BRIEF OF CROSS-RESPONDENT was mailed, postpaid, to Stephen W. Jewell, Attorney for Plaintiff/Cross-Appellant, at First Security Bank Building, 15 South Main, Logan, Utah 84321, this 21st day of October, 1987.

A handwritten signature in cursive script, appearing to read "Larry E. Jones", written over a horizontal line.

LARRY E. JONES
Attorney for Defendant and Cross-
Respondent Mark Douglas Weiner

ADDENDUM

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IN THE DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH

WENDY MARIE CHRISTENSEN)	
WEINER (RAWLINGS),)	STATEMENT AND ORDER
Plaintiff,)	
vs.)	
)	Civil No. 16868
MARK DOUGLAS WEINER,)	
Defendant.)	

Hearing having been set for December 30, 1985, on defendant's Order To Show Cause, plaintiff on December 18, 1985, filed Motions as follows:

- (a) For change of jurisdiction to King County, State of Washington;
- (b) For dismissal of defendant's order to show cause;
- (c) To continue the hearing on the matter for at least eight to ten weeks;
- (d) For disqualification of Judge;
- (e) A motion for hearing on disqualification of Judge;
- (f) Motion for hearing on plaintiff's motion for continuance and for dismissal of defendant's order to show cause.

With regards to motions for disqualification of Judge, the court states:

- (a) That numerous documents appearing to be letters or statements of both parties, requests and reports have been presented to the Judge's secretary and the clerks of court, all of which the Judge

has declined to receive or review, but has ordered the same held in a separate file by the secretary;

(b) The Judge has further refused to accept phone calls or otherwise discuss or meet with the defendant;

(c) That the Judge has advised the secretary and court clerks that the defendant would have to comply with applicable procedures, including notice to the opposing party in order to bring his requests before the court.

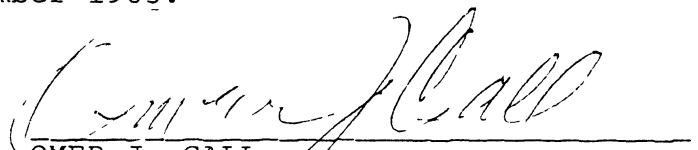
After numerous hearings dating from the year 1981, the court has entered a decree, amended decree, and several orders on orders to show cause, the effect of which was to fix rights of visitation for defendant with his children, including weekly short telephone visits at defendant's expense which required plaintiff's keeping defendant apprised of her phone number and residence. Contrary thereto plaintiff and prior to the current disputes, notified defendant that her address was P. O. Box 477, Brigham City, Utah 84302 and contact would be made to make suitable visitation modifications. Thereafter plaintiff notified the clerk's office to forward child support to Wendell Christensen, 519 Hawthorne Drive, Brigham City, Utah 84302. That on August 8, 1984 the court entered its order requiring plaintiff to provide an address where plaintiff resided and could be served personally and where defendant may visit the minor children of the parties. On September 17, 1985 (see Document No. 16868-83), pursuant to affidavit and motions, the court ordered child support payments held by the

clerk until plaintiff provided the court and the defendant the address and phone number of the children. After some delay and receipt of letters stating why the addresses and phone numbers should not be given, plaintiff did provide the court clerks such address and phone number and the court directed the support payments be forwarded to her.

That pursuant to the plaintiff's earlier motion made in the State of Washington for transfer of jurisdiction to the State of Washington and the request contained therein that the Washington Court communicate with Judge Omer J. Call, Box Elder County, Commissioner Gaddis of the said Washington Court contacted this court declining to accept jurisdiction, noted the problems the minor children were having because of the visitation fights, and urged this court to retain jurisdiction for the purpose of enforcing, adjusting or modifying custody and visitation orders.

In view of the foregoing motions and pursuant to Rule 63 (b) U.R.C.P. the court orders that copy of such motions and the file herein be certified to Judge VeNoy Christoffersen for determination of the sufficiency of such motions.

Dated this 23rd day of December 1985.


OMER J. CALL
District Judge

IN THE DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH

WENDY MARIE CHRISTENSEN
WEINER (RAWLINGS),

Plaintiff,

vs.

MARK DOUGLAS WEINER,

Defendant.

MEMORANDUM DECISION

Civil No. 16868

The plaintiff has filed a motion for change of jurisdiction to King County in the State of Washington, which motion is denied, since Washington has declined to take jurisdiction. Plaintiff's Motion for dismissal of defendant's Order To Show Cause will be denied. Request for continuance will be granted to the extent that the December 30th, 1985 hearing will be vacated and set at the further convenience of the court. Plaintiff's motion for disqualification of the Judge will be denied, the Judge indicating by his statement and order that he is not communicating with defendant and Judge Call is qualified to hear any further action.

DATED: 23 December 1985.

BY THE COURT:

VENOY/CHRISTOFFERSEN-DISTRICT JUDGE

MAILING CERTIFICATE

Copy of the foregoing Memorandum Decision mailed this 26th day of December 1985, to Stephen W. Jewell, Attorney for Plaintiff, James

MICROFILMED
ste 1-582 Roll No. 223

-2-

C. Jenkins & Associates, 67 East 100 North, P. O. Box 3700, Logan
Utah 84321 and to Mark D. Weiner, Pro Se, 665 South 700 West,
Brigham City, Utah 84302.

Jay R. Hirschi
Box Elder County Clerk

By William S. S. S. S.
Deputy

1
2
3
4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

6 WENDY MARIE CHRISTENSEN RAWLINGS,)

7)
8 Petitioner,)

NO. 85-3-04844-3

9 v.)

10 MARK DOUGLAS WEINER,)

ORDER DECLINING
JURISDICTION

11 Respondent.)
12

13 Petitioner's motion for determination of jurisdiction and
14 communication with Box Elder County District Court having duly
15 and regularly come on for hearing, the same being referred to
16 the undersigned commissioner who had presided over contemporane-
17 ous Juvenile Court proceedings concerning the custody of the
18 children subject of this proceeding and retained jurisdiction
19 therein; the court having further communicated with the appropri-
20 ate judge of Box Elder County District Court; now therefore,

21 IT IS HEREBY ORDERED ADJUDGED AND DECREED that this court
22 finds that the custody and visitation of the children subject to
23 this proceeding has also been subject to the subject matter
24 jurisdiction of the Box Elder County District Court of the State
25 of Utah; that said court acquired jurisdiction over the parties
26 and the subject matter several years ago and has continuously
27 exercised jurisdiction in enforcement and modification proceed-
28 ings; and that one of the named parties, father of the children,

ORDER - 1

-A6-

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16868-148
A. L. Lewis

1 continues to reside in the State of Utah; that upon communica-
2 tion with said court it has elected and determined to continue
3 exercising sole and exclusive child custody jurisdiction; and

4 IT IS FURTHER ORDERED that pursuant to the Uniform Child
5 Custody Jurisdiction Act (RCW 26.27) it is determined that Box
6 Elder County District Court of the State of Utah continues to
7 have exclusive subject matter jurisdiction over the custody and
8 visitation of the parties' children, the parties not having
9 agreed to litigate exclusively in the State of Washington and
10 there being no emergency justifying intervention in the matter
11 by Washington Courts; and

12 IT IS FURTHER ORDERED that all Washington proceedings con-
13 cerning the custody of said children are hereby stayed until
14 further order of the court or until an appropriate motion for
15 dismissal proceedings is filed and granted; and

16 IT IS FURTHER ORDERED that the courts of Washington and this
17 proceeding shall remain open for enforcement provisions of such
18 orders as have been and may be entered by the Box Elder County
19 District Court of the State of Utah pursuant to the provisions of
20 the UCCJA.

21
22 Dated and signed in open this 13 of January, 1986
23

24 *Stephen Gaddis*
25

26 STEPHEN M. GADDIS, COURT COMMISSIONER
27
28

Stephen M. Gaddis
COURT COMMISSIONER
KING COUNTY SUPERIOR COURT
SEATTLE WASHINGTON 98104

January 13, 1985

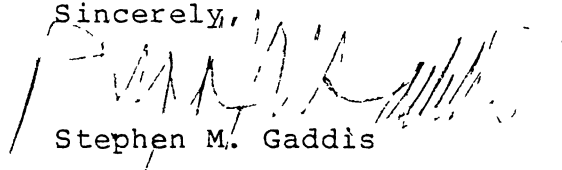
Venoy Christofferson
District Court Judge
Box Elder County District Court
Box Elder County Courthouse
Brigham City, Utah 84302

Re: Rawlings v. Weiner
King County Cause No. 85-3-04844-3

Dear Judge Christofferson:

Pursuant to my communication with your court in December, 1985, I have drafted and entered the original of the enclosed order. At this time I do not know what further steps will be requested of the Washington court, but would appreciate your forwarding to the clerk of our court copies further substantive orders or decrees as may be entered in Utah respecting this family.

Sincerely,



Stephen M. Gaddis

SMG/jl

cc: Mark Weiner
Ralph Thompson, Jr.
Lynn Pollock

RECEIVED
JAN 14 1985

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WENDY MARIE CHRISTENSEN
WEINER (RAWLINGS),

Plaintiff,

VS.

MARK DOUGLAS WEINER,

Defendant.

MEMORANDUM

Civil No. 16868

Plaintiff filed her motion to partially set aside a Memorandum Decision dated December 23, 1985, by Judge Christoffersen, asserting that such decision was erroneously based on the State of Washington's having declined to take jurisdiction.

Since the motion and the memorandum in support thereof was addressed to me notwithstanding the Memorandum Decision was made by Judge Christoffersen, I conclude from the language of the rulings of the Washington Court Judge that the Memorandum Decision of December 23, 1985, was accurately based on the Washington Court's conclusion that Utah was the proper forum.

Aside from those considerations the undersigned would not consider it appropriate to attempt to modify Judge Christoffersen's

16868-124

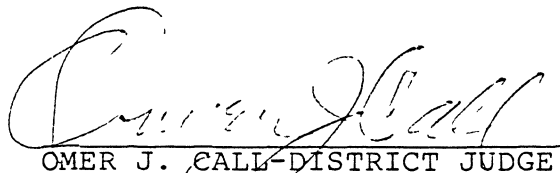
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Date 3/98 Roll No. 874

J. Flanagan
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Memorandum Decision, and therefore plaintiff's motion should be denied.

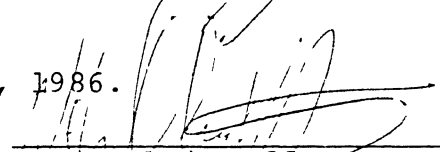
Dated this 26th day of February 1986.

BY THE COURT:


OMER J. CALL-DISTRICT JUDGE

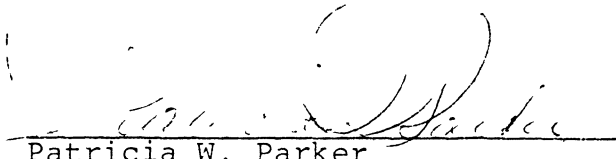
I Concur In the Foregoing:

Dated this 11th day of March, 1986.


VeNoy Christoffersen
District Judge

MAILING CERTIFICATE

Copy of the foregoing Memorandum mailed this 11th day of March, 1986, to Stephen W. Jewell, Attorney for Plaintiff, First Security Bank Bldg., Third Floor, 15 South Main, Logan, Utah 84321 and to Mark Douglas Weiner, Pro Se, 665 South 700 West, Brigham City, Utah 84302.


Patricia W. Parker

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF UTAH

WENDY MARIE CHRISTENSEN WEINER Plaintiff	}	ORDERED ENTERED 21st and 22nd May 1986 CASE NUMBER 16868
vs.	}	Judge <input type="checkbox"/> VeNoy Christoffersen <input checked="" type="checkbox"/> Omer J. Call Court Reporter George Parker Wendy Randall Court Clerk ... Mary C. Holmgren.....
... MARK DOUGLAS WEINER ... Defendant	}	

TRIAL:

This is the time set for bench trial in the above entitled matter with plaintiff present represented by counsel, Stephen W. Jewell and defendant present acting pro se.

Opening statements are made and Mr. Weiner presents his case.

Defense calls Mark B. Rawlings, present husband of Wendy Rawlings, who is sworn, examined, and cross-examined.

Defense calls Wendy Rawlings, plaintiff, as an adverse witness, who is sworn, examined, and cross-examined. The court recesses at 12:00 noon with the children to be interviewed by Judge Call at 1:15 pm in chambers.

Court resumes at 2:05 pm after the interviews by Judge Call with the children and the plaintiff returns to the witness stand and resumes testimony. The plaintiff is excused and defendant recalls Mark Rawlings for testimony. The witness is excused and defense calls, Judy Evans, former wife of Mark Rawlings who is sworn, examined and cross-examined. Objection is made by Mr. Jewell to the testimony of Judy Evans and the court overrules the objection.

Defendant is sworn and gives testimony to the court and Exhibits are offered, marked and received as to both plaintiff and defendant as listed on the attached Exhibit List. The court recesses at 4:55 pm until 9:00 am on the 22nd day of May.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF UTAH

WENDY .MARIE. CHRISTENSEN .WEINER. Plaintiff	}	ORDERED ENTERED 21st and 22nd May 1986 CASE NUMBER 16868
vs.	}	Judge <input type="checkbox"/> VeNoy Christoffersen <input checked="" type="checkbox"/> Omer J. Call Court Reporter George Parker XXXXXX Wendy Randall
MARK DOUGLAS WEINER..... Defendant	}	Court Clerk Mary .C.. Holmgren.....

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May 22, 1986, 9:00 am - Objections are made by Mr. Jewell to the entering of any of the tapes offered by the defendant and the court overrules the objection and will receive the tapes already submitted for a limited purpose. A standing objection is made by Mr. Jewell.

Defense counsel calls the following witnesses who are sworn, examined and cross-examined:

Nels Sather, associated with Bear River Mental Health;
Thomas Charles Fairbanks, Dr. of Psychology;
Dr. Kim Openshaw, Utah State University Family Therapist;
Dr. Jack M. Reiter, Psychiatrist of the Seattle, Washington area.

The court recesses at 12:00 noon and resumes at 1:00 pm with plaintiff's witness, Dr. Elliott Landau testifying before Dr. Reiter resumes the witness stand. Dr. Landau is qualified as an expert witness and is sworn and gives testimony. Witness is excused and Dr. Reiter resumes the witness stand for cross-examination, and after witness is excused the defense rests.

Plaintiff's counsel moves for a direct verdict which is denied pro forma. Plaintiff's counsel objects to this court's jurisdiction. The court recesses for a five minute break and resumes at 3:55 pm with the plaintiff calling the following witnesses who are sworn, examined and cross-examined:

Rosalie Christensen, mother of plaintiff;

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF UTAH

WENDY MARIE CHRISTENSEN WEINER Plaintiff	}	ORDERED ENTERED 21st and 22nd May 1986 CASE NUMBER 16868
vs.	}	Judge <input type="checkbox"/> VeNoy Christoffersen <input checked="" type="checkbox"/> Omer J Call Court Reporter George Parker XXXXXXXX Wendy Randall
MARK DOUGLAS WEINER Defendant	}	Court Clerk Mary C. Holmgren

-3-

Wendell Christensen, Father of plaintiff;
Mark Rawlings, present husband of plaintiff.

The court recesses at 5:05 pm until 9:30 am Tuesday the 27th day of May, 1986.

May 27, 1986 - Plaintiff's counsel calls defendant Mark Weiner for testimony and submits letter by Mark Rawlings marked as Exhibit No. 16. Counsel for plaintiff is sworn and gives testimony as to attorney's fees expended by plaintiff. Plaintiff's counsel recalls plaintiff and when the witness is excused the plaintiff rests.

Closing arguments are made by both counsel and the court finds:

1. Plaintiff is found to be in contempt of the court;
2. Plaintiff does not indicate any willingness to obey court's order and/refers to letter of October 3, 1983. As to the names of the children used in record keeping or the names the children go by in every day life, plaintiff shows no willingness to obey the court's order in that respect.

3. Plaintiff indicates no willingness to obey the court's order as to the telephone calls and the receiving of mail as to the children.

The court grants:

1. Each party joint custody of the children.
2. School records and any other records are to be changed to the name

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF UTAH

WENDY MARIE CHRISTENSEN WEINER
.....
Plaintiff

vs.

MARK DOUGLAS WEINER
.....
Defendant

ORDERED ENTERED 21st and 22nd May 1986
CASE NUMBER 16868

Judge ☐ VeNoy Christoffersen ☒ Omer J. Call
Court Reporter George Parker ~~XXXXXX~~
Wendy Randall
Court Clerk ..Mary.C..Holmgren.....

-4-

of Weiner and the children are to be made to understand that their name is to be Weiner.

3. Mental Health counseling is to be resumed for the children and whoever does the said counseling is to be provided with Dr. Jack Reiter's recommendations.

4. Visitation for the summer is to begin with the defendant:

Either on,

Sunday, the 22nd day of June and run for six weeks;

Sunday, the 29th day of June and run for six weeks;

Sunday, the 6th day of July and run for six weeks;

Sunday, the 13th day of July and run for six weeks;

and on the condition that plaintiff is to notify defendant of which time period is to be chosen by June 1, 1986, with defendant to be notified by registered mail. Plaintiff to have a weekly telephone call with all the children and be allowed two weekend visitations from Friday to Sunday. If defendant moves to the Seattle area then defendant to have four weeks of summer visitation to be divided 2 weeks and a break and then another 2 weeks.

Thanksgiving and Christmas visitation is to be as heretofore specified with children to be picked up at 3:00 pm Christmas Day and returned by

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF UTAH

<div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><p>WENDY MARIE CHRISTENSEN WEINER Plaintiff</p><p style="text-align: center;">vs.</p><p>MARK DOUGLAS WEINER Defendant</p></div><div style="width: 5%; text-align: center; font-size: 4em;">}</div></div>	<div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><p>ORDERED ENTERED 21st and 22nd May 1986 CASE NUMBER 16868</p><p>Judge <input type="checkbox"/> VeNoy Christoffersen <input checked="" type="checkbox"/> Omer J. Call Court Reporter George Parker XXXXXX Wendy Randall</p><p>Court Clerk Mary C. Holmgren.....</p></div><div style="width: 5%; text-align: center; font-size: 4em;">}</div></div>
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3:00 pm the afternoon two days before the return to school.

If defendant makes visits to the Seattle Area he is to have six weekend visitations or may have instead 3 to 4 days at the November break of school and 4 to 5 days at the Easter break of school.

It will be the responsibility of Mark Weiner to pick up the children and return for summer visitation; Mr. Weiner to be responsible for the Easter; November visits and Christmas and may deduct \$400.00 from support money for the summer visitation period. Plaintiff to pay \$300.00 towards three of the six visitations or may have \$200.00 credit if children are delivered to Utah.

Visitation for the 30th, 31st of May and June of this year is granted by the court.

The Order that the Court signs will be enforced.

The court will require a current and regularly updated home phone number and address to be furnished to each party and to the court where the children can be reached by both parties.

The children of the parties are to be allowed to receive calls on a weekly basis with the calls, not to be monitored by any party, and to be for a reasonable time of 10 minutes and not to exceed 20 minutes with each child.

Mail is to be picked up and received as to each child.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF UTAH

ORDERED ENTERED 21st & 22nd May 1986
CASE NUMBER

WENDY MARIE CHRISTENSEN WEINER
Plaintiff

vs.

MARK DOUGLAS WEINER
Defendant

Judge ☐ VeNoy Christoffersen ☒ Omer J. Call
Court Reporter George Parker ~~XXXXXX~~
Wendy Randall
Court Clerk Mary C. Holmgren

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As to the money claims, each party will be required to pay his or her own attorney's fees and other bills.

Defendant is to keep children on his insurance or if plaintiff desires to then plaintiff will be required to furnish a letter to the court stating her willingness to maintain the children on her insurance and to pay all costs associated therewith and the children's name of Weiner is to be retained on any insurance carried.

There is to be no guardian ad litem.

No law enforcement officers are to be brought to either home.

Division of Family Services may be used only to enforce compliance of visitation.

In the absence of a Dr.'s Certificate all of the children are to visit as to both parties.

As to all other issues the Order of December 14, 1984, will remain in full force and effect.

Either party to prepare Order and submit to the opposing party before submitting to the court for signature.

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Stephen W. Jewell 3814
Attorney for Plaintiff
First Security Bldg., Third Floor
15 South Main
Logan, Utah 84321
Telephone: (801) 753-2000

IN THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY,
STATE OF UTAH

WENDY MARIE CHRISTENSEN	*	
RAWLINGS,	*	FINDINGS OF FACT AND
	*	CONCLUSIONS OF LAW
Plaintiff,	*	
vs.	*	Civil No. 16868
MARK DOUGLAS WEINER,	*	
Defendant.	*	

The above-entitled matter came on regularly for hearing on May 21, 22, and 26, 1986, the Honorable Omer J. Call presiding. The Plaintiff appeared personally and by and through her attorney, Stephen W. Jewell. The Defendant appeared personally. Sworn testimony and evidence was presented to the Court. The Court having heard the testimony and having reviewed the pleadings on file herein and the Exhibits presented, including the information from the Washington Shelter Care proceedings, and having heard the arguments of Plaintiff's counsel and Defendant, and good cause appearing therefore, now makes the following:

FINDINGS OF FACT

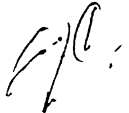
1. That Plaintiff has continued to use the name of Rawlings as the name for the children.

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RAWLINGS FINDINGS & CONCLUSION

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2. That the reports offered by the expert witnesses, ~~Dr. Elliott Landau~~ and Dr. Jack Reiter, are accepted by the Court and shall be provided to current mental health care providers. 

3. It is in the best interest of the children to terminate all litigation in this matter.

4. It is in the best interest of the children for all parties to receive counselling, while recognizing that the best therapy is termination of all conflict.

5. It is in the best interest of the children to receive regular mail and regular telephone contact with their father.

6. It is in the best interest of the children that phone calls not be monitored by either party, except as to time limitation, and that any other recording, video taping or like method be discontinued.

7. It is in the best interest of the children that there be no change in actual physical custody of the children but that legal custody should be vested jointly in Plaintiff and Defendant.

8. It is in the best interest of the children to revise the visitation schedule and method of establishing the visitation schedule.

9. For the emotional health and well-being of the children all conflicts between the litigants must be terminated.

10. It is in the best interest of the children that the orders of this Court be enforced, but that no party or other individual or entity exert undue influence, force or control.

11. It is not necessary to appoint a Guardian Ad Litem, but one may be appointed if requested by the parties.

12. It is in the best interest of the children that no police officers or other individuals intervene in visitation except as to compel reasonable compliance with the orders of this Court.

13. None of the claims of either of the parties for medical bills or attorney's fees shall be allowed; and each party shall bear his or her expenses.

14. There is insufficient evidence of a substantial change in circumstances to warrant any change in child support paid by Defendant.

15. Defendant is obligated to provide medical insurance for the children but said insurance and all medical expenses can be provided by the Plaintiff at her own expense if she so desires, and after notice to Defendant.

16. Transportation expenses for visitation should be modified.

17. All other orders and provisions of the Court shall remain in full force and effect.

WHEREFORE, the Court having heretofore entered its Findings and Facts, now enters its

CONCLUSIONS OF LAW

1. Plaintiff should be held in contempt of Court for failing to obey the order of this Court to discontinue the use of the Rawlings name as the name for the children.

2. The reports offered by expert witnesses ~~Dr. Elliott Landau and~~ Dr. Jack Rieter shall be used by the Court and current family therapy providers.

3. Jurisdiction lies with this Court to hear this action.


4. There have ^{been} substantial changes in circumstances since the Decree of Divorce was entered and since the previous order of the Court was entered, which substantial changes necessitate a modification of the Divorce Decree pursuant to the Findings of Fact as stated above.

DATED this 21st day of October, 1986.

BY THE COURT:


Omer J. Call
District Judge

Confirmed copies mailed this date to Stephen W. Jewell and Mark D. Weiner by:


Mary Q. Holmgren, Deputy

Stephen W. Jewell 3814
Attorney for Plaintiff
First Security Bldg., Third Floor
15 South Main
Logan, Utah 84321

IN THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY,
STATE OF UTAH

WENDY MARIE CHRISTENSEN	*	
RAWLINGS,	*	ORDER ON ORDER TO
	*	SHOW CAUSE
Plaintiff,	*	
vs.	*	Civil No. 16868
MARK DOUGLAS WEINER,	*	
Defendant.	*	

The above-entitled matter came on regularly for hearing on May 21, 22, and 26, 1986, the Honorable Omer J. Call presiding. The Plaintiff appeared personally and by and through her attorney, Stephen W. Jewell. The Defendant appeared personally. The Court having heard sworn testimony and evidence and having reviewed the pleadings on file herein and the Exhibits presented, including the information from the Washington Shelter Care proceedings, and having heard the arguments of Plaintiff's counsel and Defendant, and having heretofore entered its Findings of Fact and Conclusions of Law, and good cause appearing therefore, now enters the following:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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Date 11/18/88 Roll No. 211

RAWLINGS OTSC

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1. Plaintiff shall be and is hereby held in contempt of Court for failing to comply with the previous order of the Court to discontinue the use of the Rawlings name for the children.

2. The name of the children is Weiner and there shall be no use by the Plaintiff of the Rawlings' name as the last name of the children, either for school records, medical records, or otherwise. *And the Court holds Plaintiff responsible for revising all records, church, school and otherwise, and all identifying material to reflect the name Weiner for said children, and Rawlings to be deleted therefrom.*

3. The reports of ~~Dr. Elliott Landau~~ and Dr. Jack *WR* Reiter shall be presented to all current mental health care providers for their review and consideration.

4. Counseling and therapy as ordered by this Court and by the Washington Court shall be resumed with Dr. Marilyn Eshelman or such other qualified mental health care provider as determined by Plaintiff and therapy shall be continued with Dr. Tom Fairbank for Defendant. The Court specifically orders that once said mental health care provider is selected by Plaintiff, there shall be no change of therapists without an order of the Court. Therapy will continue until terminated by the Court on the recommendation of the therapists. Should the therapist become unavailable or desire to terminate the relationship, Plaintiff shall immediately thereafter petition the Court for removal thereof and appointment of another mental health therapist.

5. All mail sent by Defendant or Plaintiff to the children shall be received by Plaintiff or Defendant and ^{without alteration} delivered to the children, whether said mail is sent first class or registered.

6. Each party shall provide the other party and the Court with a current and regularly updated home phone number and address. During visitation, Defendant shall reasonably inform Plaintiff of the whereabouts of the children and shall provide an address and telephone number where the children can be reached.

7. There shall be no monitoring of telephone calls or other recording of conversations or video taping of children.

8. It is the order of the Court that telephone conversations need be no longer than ten (10) to twenty (20) minutes long, ^{but shall not be otherwise limited by Plaintiff.}

9. Legal custody of the minor children of the parties shall be jointly vested in each of the parties, with Plaintiff being granted primary physical custody of the children with visitation to Defendant as herein provided.

10. Defendant shall be granted visitation with the children as follows, recognizing that visitation is for the children, and their needs are of primary importance in determining visitation arrangements:

- A. During the children's school summer vacation, Defendant shall be entitled to six (6) continuous

weeks. For 1986 said visitation shall begin, on June 22 for six (6) weeks, on June 29 for six (6) weeks, on July 6 for six (6) weeks, or on July 13 for six (6) weeks at the discretion of Plaintiff. Plaintiff shall notify the Defendant June 1, 1986, by registered mail, when said visitation shall begin, and on each year thereafter on or before June 1. Said visitation to be scheduled in future years shall substantially comply with the order as as stated above. Said six (6) weeks visitation shall begin ^{Saturday} ~~Sunday~~ at 5:00 p.m., and continue for six (6) weeks to the sixth ~~Sunday~~ ^{Saturday} at 5:00 p.m.

B. During said six (6) week visitation, Plaintiff shall be granted at least weekly telephone conversations with each of the children and shall be allowed visitation for at least two (2) weekends, beginning Friday at 5:00 p.m., to Sunday at 5:00 p.m. Plaintiff shall notify Defendant of the visitation schedule on or before June 1, 1986, and subsequent years, by registered mail. Said visitation may be exercised by Plaintiff ~~or her parents, Wendell and Rosalene Christensen,~~ and the children shall be picked up and returned to ~~Belgium City~~ ^{the parent of record} with no other restrictions except as stated herein.

C. Defendant shall be allowed further visitation of four to five (4 to 5) days during the children's school Easter vacation in the spring and three to four (3 to 4) days during October or November as is allowed by the children's school vacation as scheduled, not to include Thanksgiving. Plaintiff shall notify Defendant of the dates and times such visitation shall take place by registered mail at least sixty (60) days prior to said visitation, or when the school schedule is available. Said visitation shall in no way interfere with regularly scheduled school.

D. Thanksgiving and Christmas visitation shall continue as provided in previous orders of the Court.

11. Travel expenses for all visitation, including picking up the children in Washington and returning them to Washington for the summer visitation, shall be the responsibility of Defendant. Defendant shall be entitled to deduct from child support payments a total of \$300.00 per year for all visitation and travel expenses. If Plaintiff delivers the children to Brigham City and picks up the children from Brigham City for any visitation, Defendant shall be entitled to deduct only \$200.00 for total travel expenses rather than \$300.00. Defendant shall continue to be allowed to reduce child support obligations by \$400.00 during summer visitation.

12. There shall be no other changes in child support paid by Defendant except as ordered for travel expenses.

13. All repeated conflict and emotional distress and strain shall be discontinued by the parties.

14. No police officers or other individuals shall intervene or otherwise be used to force compliance with this order. Washington Social Services or such other qualified agency shall be allowed to assist in compelling compliance of the Court order if deemed reasonably necessary by such agency after a proper review. The Court will allow reasonable exclusions from visitation for illness if any such child is isolated because of said illness or upon a doctor's certification.

15. Defendant shall continue to be responsible for and maintain health insurance coverage for the children. If Plaintiff desires to obtain medical insurance and provide insurance and health care coverage, Plaintiff is allowed to provide the same at her own expense. If Plaintiff so elects, she shall inform the Defendant thereof in writing and Defendant shall thereafter be relieved of further duty and obligation to provide health insurance or medical coverage.

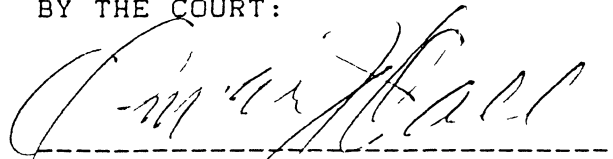
16. Neither of the parties shall be allowed to recover for costs and expenses in this action, whether travel, medical, legal or otherwise, and each party shall bear his or her own costs and expenses incurred in this action and prior hereto.

17. All other requests and motions of Defendant except as herein specifically provided shall be and are hereby denied.

20. All other orders of the Court as previously entered and not modified by this order shall stand as otherwise provided.

DATED this 21st day of October, 1986.

BY THE COURT:



Omer J. Call
District Judge

Confirmed copies mailed this date
to Stephen W. Jewell and Mark
D. Weiner by:

Mary C. Holmgren
Mary C. Holmgren-Deputy

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