

1986

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

Utah Court of Appeals

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BRIEF

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DOCKET NO. 860274-CA IN THE UTAH COURT OF APPEALS,
STATE OF UTAH

WENDY MARIE CHRISTENSEN
RAWLINGS,

Plaintiff

v.

MARK DOUGLAS WEINER,

Defendant.

*

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BRIEF OF CROSS-APPELLANT

Case No. 860274-CA

Appeal of Order on Order to Show Cause of the First District
Court of Box Elder County, the Honorable Omer J. Call
modifying Divorce Decree re: Custody.

Argument of Counsel
Argument Priority No. 7

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COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS,

STATE OF UTAH

WENDY MARIE CHRISTENSEN	*	
RAWLINGS,	*	BRIEF OF CROSS-APPELLANT
Plaintiff	*	
v.	*	
MARK DOUGLAS WEINER,	*	Case No. 860274-CA
Defendant.	*	

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JURISDICTION OF THE COURT

Respondent filed her Cross-Appeal after Plaintiff appealed the Order on Order to Show Cause issued by the First District Court of Box Elder County. Respondent is entitled to cross-appeal pursuant to Rule 4(d) of the Rules of the Utah Court of Appeals.

NATURE OF THE PROCEEDINGS

Defendant filed an Order to Show Cause requesting the Court to modify the Decree of Divorce entered in the above-entitled action awarding Defendant custody of the minor children of the parties. Plaintiff objected on the basis of lack of jurisdiction of the District Court for Box Elder County and requested the Court to transfer all matters related to custody and visitation to the State of Washington, where the children of the parties were residing. The Trial Court denied all motions of Plaintiff to transfer jurisdiction and proceeded with the Hearing on Defendant's Order to Show Cause, subsequently modifying the Divorce Decree allowing joint custody, with Plaintiff maintaining primary physical custody of the children. Defendant appealed the Order of the Court which was subsequently dismissed for lack of prosecution by Defendant. Plaintiff cross-appealed on the basis of

jurisdiction and is requesting the Court of Appeals to rule on the issue of jurisdiction.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Respondent presents one issue to be determined by the Court of Appeals, to-wit: Does the First District Court in and for Box Elder County, State of Utah, have jurisdiction pursuant to the Utah Uniform Child Custody Jurisdiction Act, UCA 78-45c-1, et. seq., in order to hear Defendant's request to modify the Decree of Divorce entered in the Action.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, OR REGULATIONS

The issue raised by Respondent in this Appeal is determined solely by the Utah Uniform Child Custody Jurisdiction Act, SUPRA, and specifically UCA 78-45c-3 and UCA 78-45c-7.

STATEMENT OF THE CASE

1. Nature of the Case.

The Action appealed herein is the Trial Court's Order on Order to Show Cause dealing with the Defendant's request to modify the Decree of Divorce entered in the Action granting

Defendant custody of the minor children of the parties.

2. Course of Proceedings.

Defendant/ Appellant, Mark Weiner, on or about October 28, 1985, filed and served on Plaintiff/Respondent an Order to Show Cause requesting, among other things, that the Decree of Divorce entered in this action be modified to award custody of the minor children of the parties to Defendant. Plaintiff, by and through counsel, filed a Motion for Change of Jurisdiction on or about November 15, 1985. Plaintiff was served with the Order to Show Cause on or about December 5, 1985.

Plaintiff's Motion for Change of Jurisdiction was denied, whereafter Plaintiff filed a Motion to Partially Set Aside the Memorandum Decision regarding the Court's decision on jurisdiction, which was also denied. Thereafter, Plaintiff filed a Petition to Appeal an Interlocutory Order in the Supreme Court of Utah, Case No. 860116, which Petition was also denied.

The hearing on Defendant's Order to Show Cause was held in the District Court on May 21, 22 and 26, 1986, and the Order of the Court was entered October 21, 1986. The copy of the Order on Order to Show Cause is attached to Plaintiff/Respondent's Docketing Statement. Defendant/ Appellant filed a Notice of Appeal on or about November 18, 1986, and Respondent filed a Notice of Cross Appeal on or

jurisdiction issue. Defendant's Appeal was dismissed by Order of the Honorable Russell W. Bench, Judge, for failure to take action as is required by the rules of the Utah Court of Appeals failing to file a docketing statement and a request for transcript of certification and no transcript would be requested.

3. Disposition at Trial Court.

At the Order to Show Cause Hearing held in the District Court on May 21, 22, and 26, 1986, the trial judge modified the Decree of Divorce granting the parties joint custody, leaving primary physical custody with Plaintiff and further revising and defining visitation and other matters.

4. Statement of Facts.

Plaintiff and Defendant were married on or about August, 1974, and divorced on May 18, 1982. Plaintiff was awarded custody of the five minor children of the parties pursuant to the Decree of Divorce entered in Box Elder County, Civil No. 16868, with Defendant being awarded visitation.

Plaintiff married Mark Rawlings on or about December 23, 1982. On or about June 1, 1984, Plaintiff and her new husband, together with the minor children of the parties, moved to Auburn, Washington, in the Seattle area, where

Mark Rawlings had accepted employment as an engineer with Boeing. An Order to Show Cause hearing was held in the Box Elder District Court on or about October 23, 1984, to modify the Divorce Decree regarding visitation since Defendant could no longer exercise weekend visitation rights. The Court's Order modifying the Divorce Decree was entered on or about December 17, 1984.

On or about April 19, 1985, a Shelter Care Hearing was held in the Superior Court of the State of Washington in and for King County, Juvenile Department, No. 85-7-00307, et seq, before Court Commissioner Steven M. Gaddis. The Washington Court assumed emergency jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act (hereinafter "UCCJA") to determine allegations of child abuse filed by Plaintiff against Defendant. At the Shelter Care hearing, the Washington Court noted that it had assumed emergency jurisdiction only and that if it appeared that further litigation in Washington would be necessary to determine custody and visitation matters, the question of jurisdiction needed to be reviewed in order to determine which court, Washington or Utah, had proper jurisdiction to hear matters relating to care, custody and visitation of the children. The Washington Court recommended that Counsel prepare the appropriate motions to transfer jurisdiction to Washington and indicated that he would confer with the Utah Court on that matter. Each of the parties in this action was present at the

Shelter Care Hearing and subsequent matters in Washington and was represented by counsel at all hearings before the Washington Court.

On or about November 15, 1985, Plaintiff filed in the Superior Court of the State of Washington for King County, No. 85-3-04844-03, her "Motion for Transfer of Jurisdiction from Utah to Washington" pursuant to Washington's version of the UCCJA. On or about November 15, 1985, Plaintiff's Utah attorney filed a "Memorandum of Points and Authorities in Support of Motion for Change of Jurisdiction" with the Utah Court to assist the Utah Court, the Honorable Omer J. Call, in making a determination regarding jurisdiction at such time as Judge Call would be contacted by the Washington Court to confer regarding jurisdiction.

On or about December 4, 1985, Defendant, acting pro se, had served on Plaintiff and filed in the Utah action, among other things, a Motion for Order to Show Cause requesting that he be awarded by the Utah Court care, custody and control of the minor children of the parties. At that time, no determination had been made by either Court regarding jurisdiction to hear such matters. Immediately thereafter, Plaintiff's Utah Counsel formally filed with the Box Elder District Court a "Motion for Change of Jurisdiction" pursuant to the Utah Uniform Child Custody Jurisdiction Act, Sec. 78-45c-1, et. seq., Utah Code Annotated (hereinafter "U.C.A."). By the time the Order to Show Cause had been

served on Plaintiff, the children had resided in Washington for approximately eighteen (18) months. It had been more than thirteen (13) months since the Utah Court had heard any matters related to the action, that hearing being related to visitation due to the change of residence for the children.

On or about December 23, 1985, apparently after the Washington Court had communicated by telephone with Judge Call, the Utah Court, by VeNoy Christoffersen, District Judge, entered a Memorandum Decision, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, denying Plaintiff's Motion for Change of Jurisdiction and stating as the reason for denying Plaintiff's Motion for Change of Jurisdiction as, "since Washington has declined to take jurisdiction." Thereafter, or on or about January 13, 1986, the Washington Court entered its Order Declining Jurisdiction, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, stating, among other things, "that upon communication with [the Box Elder County Court] it [meaning Box Elder] has elected and determined to continue exercising sole and exclusive child custody jurisdiction."

Plaintiff thereafter filed a motion to partially strike the Utah Memorandum Decision of December 23, 1985, indicating to Judge Christoffersen an apparent mistake or miscommunication in that the only reason Washington had declined jurisdiction was because Utah had refused to

relinquish jurisdiction, not that Washington did not want to exercise jurisdiction, and pointing out to the Court again that Utah did not have jurisdiction to hear Defendant's request for change of custody. Plaintiff's "Motion to Partially Strike Memorandum Decision" was denied by the Court, the Honorable Omer J. Call, the Honorable VeNoy Christoffersen concurring, on or about March 1986, again refusing to grant Plaintiff's Motion for Change of Jurisdiction.

The matter came before the Court on May 21, 22, and 26, 1986 for determination on Defendant's request for change of custody. At the beginning of the trial, Plaintiff objected to the proceeding based on the Court's lack of jurisdiction, which objection was overruled. Plaintiff excepted to the Court's refusal to grant the objection, which exception was noted by the Court. Plaintiff renewed the objection at various times throughout the hearing. Following the hearing, the District Court modified the Decree granting Defendant joint custody, but leaving physical custody of the children with Plaintiff and modifying and reducing visitation.

The Order on Order to Show Cause was signed by the Court on October 21, 1986, whereafter Defendant appealed to the Supreme Court and Plaintiff Cross Appealed based on jurisdiction.

SUMMARY OF ARGUMENTS

Plaintiff claims that the District Court had no jurisdiction to hear any matters regarding custody of the children pursuant to the Uniform Child Custody Jurisdiction Act, Section 78-45c-1, et. seq., Utah Code Annotated, in that the children of the parties had been out of the State of Utah almost two years by the time of the hearing held on May 21, 22, and 26, 1986, and because Utah is an inconvenient forum. Because the District Court has no jurisdiction, any subsequent Order of the Court should be set aside with an Order directing the District Court to defer jurisdiction to the State of Washington.

ARGUMENTS

I

WASHINGTON HAS BEEN AND IS READY, WILLING AND ABLE TO ASSUME JURISDICTION OVER CUSTODY AND VISITATION MATTERS IN THIS ACTION AND IS THE ONLY PROPER STATE TO EXERCISE JURISDICTION OVER CUSTODY AND VISITATION

The Superior Court for King County, State of Washington, assumed temporary emergency jurisdiction over this matter in the State of Washington in or about March, 1985. A Shelter Care hearing was held on or about April 19, 1985, wherein the Washington Court, by and through the Honorable Stephen M. Gaddis, Commissioner, addressed the issue of jurisdiction between Washington and Utah, among other things. Commissioner Gaddis stated at the beginning of the hearing that it was his

opinion that jurisdiction was in Utah until jurisdiction could be transferred to Washington. Commissioner Gaddis also indicated, however, that if there were a likelihood of continued litigation, it was best to have the litigation in one forum. Commissioner Gaddis stated:

...If it is likely that there is going to be ongoing litigation after that point, there is certain value of having everything happen -- well, there is always a value of having it happen in one forum, and ordinarily you want the forum to be in the area where the most witnesses are, where the least financial expense is, and these kind of things would favor a Washington forum...I don't think this family can afford to keep travelling to Utah, and I am persuaded the father cannot afford to keep coming to Washington, hiring Washington counsel and Utah counsel, so I think there is a likelihood of continued litigation here and the forum question really ought to be addressed and I would intend to call the Utah judge to see exactly what is happening there. And I would intend to give each of the attorneys an opportunity to make a presentation before there is any kind of substantive decision on that. But, we have got to keep expenses down -- I mean the poor families are suffering emotionally, as well as financially. I respect that. (Transcript, pp 16-17)

In Commissioner Gaddis' Order Declining Jurisdiction, it should be noted that the reason the Washington Court declined jurisdiction and denied Plaintiff's Motion in Washington for Change of Jurisdiction was that the Utah Court "refused to relinquish jurisdiction" (emphasis added) and the Washington Court felt, pursuant to the Uniform Child Custody Jurisdiction Act, that it did not have the authority to assume jurisdiction unless or until jurisdiction was released by Utah. In a Clarification Order entered by Commissioner Gaddis, the

Washington Court again stated that it would be willing to entertain jurisdiction should the Utah Court wish to transfer jurisdiction. It should be noted that Plaintiff is not requesting the Utah Court to completely divulge itself of jurisdiction over the entire divorce case. Plaintiff is merely requesting the Utah Court to defer jurisdiction over custody and visitation matters to the Washington Court and allow the Washington Court to entertain any such motions to modify the Decree. Of course, the Washington Court is aware of the proceedings in Utah and is cognizant of the orders previously entered in this matter and can make determinations of future matters taking into account the orders entered in Utah and granting those orders full faith and credit as if they had been originally entered in Washington.

It should also be noted that there is a distinct difference between having jurisdiction and exercising jurisdiction. In the instant action, both Utah and Washington have jurisdiction. However, it is important to determine which of the two Courts should exercise jurisdiction or if jurisdiction can be exercised concurrently. An example is the case of *Etter v. Etter*, 405 A.2d 760 (Ct. of Sp. Ap., 1979). In that case, the Maryland Court was asked to determine custody of a child who had resided in Delaware with his father and had come to Maryland asking to stay in Maryland with his mother. At that time there was no divorce decree and each of the parties had filed for custody. The Maryland Trial Court ruled that both States had jurisdiction over the matter but

that the evidence clearly established that it was for the best interest of the boy involved to be with his mother. Both Maryland and Delaware had adopted the Uniform Child Custody Jurisdiction Act and the Maryland Court of Appeals noted that the language in the Act did not divest one court of jurisdiction once jurisdiction had been found in another State. The Act deals with guiding the courts of the two States involved and working out which is the appropriate court to exercise jurisdiction.

The difference between the exercise of jurisdiction and having jurisdiction is also apparent not only from the statutes but on examination of the decision in *Greene v. Greene*, 276 N.W.2d 472 (Mich. App. 1978). Therein the Michigan Court of Appeals pointed out that the two district court judges involved in Texas and Michigan had called and spoken with each other in an effort to determine which State should properly exercise jurisdiction. After they had determined that Michigan should exercise its concurrent jurisdiction to modify the decree, it took evidence and did so. Both the Trial Court and the Appellate Court determined that under those circumstances, applying the same provisions in the UCCJA as raised in this action, the Michigan court properly exercised jurisdiction to determine the case.

Most of the cases interpreting the UCCJA have been incidents where one parent has abducted the children and secreted them from the other parent and then attempted to modify a custody decree of another state months or years

later. Although not directly on point, since in the instant action there has never been an incidence of abduction and all matters of custody and visitation have been handled properly through the Courts, the cases do offer some insight into the intent and purpose of the UCCJA and may be of assistance to this Court in rendering a decision.

For example, in the case *Settle vs. Settle*, 556 P.2d 962 (Or., 1976), the mother was attempting to modify in Oregon a custody decree which was entered in Indiana. The decree was originally entered in the mother's absence after she had left Indiana with the children. However, the action had been commenced prior to the mother's leaving Indiana for Oregon. The trial court had originally allowed jurisdiction and modified the custody decree. The Oregon Appeals Court then overturned the trial court and the Appeals Court was subsequently overturned by the Oregon Supreme Court, reinstating the decision of the trial court that jurisdiction was proper in Oregon.

In determining whether Oregon had jurisdiction to modify the decree, the Supreme Court of Oregon followed a two tiered determination, first determining if jurisdiction were proper in Oregon and then determining if jurisdiction should be maintained by Oregon. As noted by the Court, the two main factors for determining jurisdiction as mentioned in the UCCJA are: (1) If the state is the home state of the children at the time of commencement of the action, or (2) If it is in

the best interest of the child that the court assumes jurisdiction because the child and at least one contestant have a significant connection with the state and there is available in the state potential evidence concerning the child's present or future care, protection, training, and personal relationships.

The Oregon Court determined that the necessary thresholds had been met to establish jurisdiction since the children had been in Oregon for at least six (6) consecutive months prior to the commencement of the proceedings and hence, Oregon was the children's home state. In determining whether the Court should exercise its jurisdiction, the Court noted, in reference to the second tier of the test, the "significant connection test" that:

One parent [the father] certainly has a significant connection with Indiana, and there is available there substantial evidence concerning the children's relationship with that parent and, thus, the future care, protection, training, and personal relationships if they are to be returned to Indiana. However, at the time of the hearing by the trial court the children had no significant connection with Indiana because of the length of time they had been away. In the lives of children four and eight years of age, eighteen months is a long time. 556 P.2d at 966.

It should be noted that in the instant action, the children had resided in Washington almost two years by the time of hearing held on May 21, 1986.

The Oregon Supreme Court also reviewed the Commissioner's Note, 9 Uniform Laws Annotated 107, 108, Section 3 (Master Ed.

1973), dealing with the UCCJA which contained the following:

Paragraph (2) [the significant connection test] perhaps more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes expressed in section 1. The paragraph was phrased in general terms in order to be flexible enough to cover many fact situations too diverse to lend themselves to exact description. But its purpose is to limit jurisdiction rather than proliferate it. The first clause of the paragraph is important: Jurisdiction exists only if it is in the child's interest, not merely the interest or convenience of the feuding parties, to determine custody in the particular state. The interest of the child is served when the forum has optimum access to relevant evidence of the child and family. There must be maximum rather than minimum contact with the State. The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the State. Divorce jurisdiction does not necessarily include custody jurisdiction. See Clark, Domestic Relations 578 (1968) (emphasis in original) 556 P.2d at 966.

The Supreme Court of Oregon concluded that the significant connection test, which includes an examination of the best interests of the children, was one of the most important factors in determining whether Oregon should exercise its jurisdiction. The Court also noted that the Commissioners Note comment indicated that the requirement of the availability of "substantial evidence" should be understood to require optimum access to relevant evidence. The Court determined that since the children had been in Oregon for eighteen months, Indiana no longer had optimum access to relevant evidence.

It should also be noted that even though the court where

the divorce decree and custody determination were originally entered is the original court of jurisdiction, there are some occasions when the court of original jurisdiction either should not exercise its jurisdiction or has lost its jurisdiction. In *McCarron v. Dist. Ct. in and for Jefferson Cty.*, 671 P.2d 953 (Col. 1983), the father and mother were married in 1974 in New Jersey. On July 1, 1976, a divorce decree was granted upon the mother's petition by an Oklahoma District Court and she was awarded the custody of the parties child. The father later moved from New Jersey to Colorado in 1981 where the son made several visits to his father and eventually in August, 1982, it was decided that the son would be entered in school in Colorado. The mother thereafter moved to Texas and in May, 1983, or approximately nine months after the son had been with his father, the mother removed the child from school without the father's knowledge or consent and took the child to Texas. The father thereafter immediately filed for a Writ of Habeas Corpus and a verified petition for custody pursuant to the Colorado provisions of the UCCJA. The Colorado court then conferred with the Oklahoma court whereupon the Oklahoma judge stated that he would retain jurisdiction on issues of custody, support and visitation. Based on the Oklahoma court's statement, the Colorado court declined jurisdiction.

On an appeal to the Colorado Supreme Court, the Court noted, as had the Oregon Supreme Court, the two distinct

inquiries which should be made in order to determine whether a Colorado district court should hear a child custody case under the UCCJA. The first is whether jurisdiction exists in the state and the second is whether the state should exercise its jurisdiction. The Colorado Supreme Court determined that jurisdiction did exist since the child had lived in Colorado for more than six months and Colorado had become the child's home state.

In determining whether jurisdiction should be exercised, the Colorado Supreme Court stated that before modifying a decree of another state, the Colorado court must find either that (1) the original state no longer has jurisdiction or (2) that the other state has declined to assume jurisdiction. In that case, of course, the second criteria was not applicable because Oklahoma had said that it desired to retain jurisdiction. In determining if Oklahoma still had jurisdiction, the Colorado court noted that the provisions of the UCCJA state that the original state shall have continuing jurisdiction as long as it is exercising jurisdiction substantially in conformance with the UCCJA. The court noted that original jurisdiction could be lost by the erosion of child and parent significant connections with the state.

In holding that Colorado should properly exercise its jurisdiction and that Oklahoma no longer had jurisdiction, the Colorado Supreme Court stated that:

...We must keep in mind the other policies of the Act, namely, that litigation concerning the child take place in the state with which the child and his family have the closest connection and where significant evidence concerning the child is available. Clearly, the best interest of the child would not be served through the exercise of jurisdiction by Oklahoma in this case. The child has not resided in that state for nine months at the time the father filed the petition and neither the parents nor the child now live there.

We hold that the exercise of jurisdiction by a Colorado court is appropriate because Oklahoma no longer has jurisdiction. The district court abused its discretion by deferring to the jurisdiction of the Oklahoma court. We therefore make the rule absolute. 671 P.2d at 957, 958.

In another Colorado case, *In Re Custody of Dunn*, 701 P.2d 158 (Colo. App., 1985), the Colorado Appeals Court held that where the natural parents of a child were divorced by a Texas decree but the child, after the death of his father, had lived with his stepmother for six months in Colorado prior to the filing by the stepmother of a petition for custody, and that the child and stepmother had significant connections with Colorado, Colorado had jurisdiction as the home state of the child, and Texas, under its version of the UCCJA, did not have home state jurisdiction nor significant connection jurisdiction, and therefore Texas no longer had jurisdiction and the trial court abused its discretion in refusing to exercise jurisdiction.

In the *Dunn* case, the parents had separated and the mother and son had moved to Texas. In March of 1980, the

mother permitted the son to travel to California for an overnight visit with his father. The father did not return the child to Texas and the son stayed with the father and his father's girlfriend. In September of 1980, the mother obtained a divorce decree in Texas in which she was awarded custody. However, the child continued to reside with his father. The father and his girlfriend were married in 1981. The father was killed in an automobile accident in 1983, whereafter the stepmother and the son moved to Colorado. After being in Colorado for six months, the stepmother filed a petition seeking custody of the son. The trial court determined that it had home state jurisdiction because the child had resided in Colorado for six months and because the ties to Colorado made it in the best interest of the child for Colorado to assume jurisdiction. However, the trial court communicated with the Texas court of original jurisdiction and was advised by the Texas court that it felt it still had jurisdiction to consider any modifications of its custody order. The Colorado court thereafter ruled that it was precluded from modifying the Texas decree because Texas still had jurisdiction.

On appeal, the Appellate Court ruled that the trial court had correctly determined that because the child and stepmother had significant connections with Colorado, and because there was substantial evidence concerning the child in Colorado, it

was in the best interest for Colorado to assume jurisdiction. However, the Appellate Court did not agree with the trial court in ruling that Texas still had jurisdiction. The Court noted the provisions of the Texas version of the UCCJA which are similiar to Section 78-45-3, UCA, particularly noting a provision in the Texas Act that states: "If it appears that no other state would have jurisidiction under Subdivision (1) of subdivision (a) of this section." That provision is similar to Section 78-45-3(d) of the Utah Act. The Court then stated:

Under the Texas statute, because the child did not live in Texas at anytime during the six months prior to commencement of the Colorado custody proceedings, it is not entitled to jurisdiction under the "home state" provision of the [Texas Act]. Further it does not appear that Texas had jurisdiction under...the "significant connection" provision, because unlike the comparable Colorado statute [citation omitted] the Texas statute does not permit "significant connection" jurisdiction where another state has "home state" jurisdiction..., and here, Colorado has such jurisdiction. In addition, the child's contact with Texas has become slight, and substantial evidence concerning his welfare is present here: thus, modification of jurisdiction should shift to Colorado.

The Court concluded by noting with dissatisfaction earlier cases which held that the court which enters the original custody order will always have jurisdiction, and stating that such rulings were overly broad and overlooked the

intent and purpose of the UCCJA and that under certain circumstances the state of original jurisdiction can and should lose jurisdiction.

Plaintiff has been unable to find a Utah case on point dealing with jurisdiction for custody modification under the UCCJA. However, in *McLane vs. McLane*, 570 P.2d 692, the Utah Supreme Court held that notwithstanding that courts of one state have acquired original jurisdiction over children, such as by way of custody awards on divorce, a judgment that had been entered therein does not mean that the original state retains permanent and exclusive control over them. The Utah Supreme Court noted the need of children for sustenance and protective care is continuous and, hence, properly interested parties may invoke the jurisdiction of a court based on either the domicile of the child, the presence of the child within the state or in personam jurisdiction over the parties seeking custody, and any one of those would be sufficient foundation for the court to hear and determine the controversy. In other words, the Supreme Court of Utah has recognized, similar to the rulings in *McCarron* and *Dunn*, that original jurisdiction is not in and of itself sufficient to allow a state to retain permanent jurisdiction indefinitely.

In the instant action, the original decree was entered in 1982 in Utah. The children moved to Washington with their mother and stepfather in June of 1984 and have continuously

resided in the State of Washington since June, 1984, which is currently more than three years and was a period of almost two years at the time the hearing, which was held on May 21, 22 and 26, 1986. The family moved to Washington so that the stepfather could accept employment with Boeing. The move to Washington was not an attempt to in any way sidestep the jurisdiction of the Utah Court.

In short, Utah simply has no significant connections, other than the Defendant's presence in Utah, in order to exercise jurisdiction. Utah has neither "home state" jurisdiction nor "significant connection" jurisdiction as outlined in the Dunn case. On the other hand, the State of Washington is the childrens' home state since they have resided there for more than six months and Washington has numerous, and has the most substantial and significant connections with all of the parties in this action, including the Defendant, who has been involved in several hearings in Washington and has been represented by an attorney in Washington actions. Furthermore the "substantial evidence" that would be necessary to properly hear a custody determination is found only in the State of Washington. It is clearly in the best interest of the children for jurisdiction to be maintained only in the State of Washington. And, as stated in the UCCJA, it is the best interest of the children which is controlling and not the interests of the parties to the action nor the interests of the Court. In fact, the

purpose and intent of the Uniform Child Custody Jurisdiction Act dictate that Utah defer jurisdiction to Washington for custody and visitation matters and allow the Washington Court to make a determination on any such matters.

II
WASHINGTON IS THE MOST CONVENIENT
FORUM TO DETERMINE ISSUES REGARDING
CUSTODY AND VISITATION OF THE CHILDREN

In addition to the requirements which must be met in order for District Court in this State to exercise jurisdiction (as outlined in UCA 78-45c-3 and previously discussed), Section 78-45c-7 of the Act lists several factors which should be considered by the Court in deciding whether to exercise jurisdiction on the basis of forum nonconveniens:

(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 purposes stated in Section 78-45c-1.

In conjunction with those considerations, of the purposes listed in the beginning of the Act, of greatest importance are the following found in Section 78-45c-1:

(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 as most readily available, and as 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.

In reviewing the factors listed in Subsection 7 of the Act 978-45c-7) and applying those to the stated purposes of the Act found in Subsection 1 (78-45c-1), it is clear that, in the instant action, the State of Washington is far and above the most convenient forum. As previously stated, those factors include:

1. Washington is the children's home state, it was the children's home state for nearly 2 years at the time the hearing was held in May of 1986, and has now been the children's home state in excess of 3 years. (As stated earlier, the children moved to Washington in June of 1984).

2. The only connection Utah has with the children is their father and maternal grandparents. All other connections are found in Washington, eg. friends, neighbors, school teachers, principals, ecclesiastical

leaders, doctors, therapists, psychologists, etc.

3. Any evidence, except as may be provided by the children's father, concerning the children's present and future care, protection, training and personal relationships is more readily available in Washington.

4. The exercise of jurisdiction by the District Court in this action seriously contravenes the purposes stated in the Act. One purpose of the Act is to 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 as most readily available and that the COURTS OF THIS STATE [SHOULD] DECLINE THE EXERCISE OF JURISDICTION WHEN THE CHILD AND HIS FAMILY HAVE A CLOSER CONNECTION WITH ANOTHER STATE. U.C.A. Section 78-45C-1(c) (emphasis added). Another major purpose is to discourage continuing controversy over child custody in the interest of greater stability of home environment and of secure family relationships with the child. Prior to the hearing upon which this appeal is based, the parties have appeared in Court on various matters in excess of 12 times. In addition, even after this appeal had been filed, the Defendant has filed a petition to modify the Divorce Decree again requesting custody of the children. As can be seen, the purposes of

the Act are not being met by allowing the District Court to maintain jurisdiction over this action.

Plaintiff readily admits that the trial court should be granted great latitude when applying the factors indicated in Subsection 7 of the Act to determine if jurisdiction should be exercised on the basis of convenience. In this action, however, the Trial Court has greatly abused its discretion by failing to properly apply the factors stated in the Act to the facts of the instant action and by failing to follow the general purpose as stated in the Act. In contrast to the ruling of the Supreme Court of Utah in *TRENT v. TRENT*, 54 UTAH ADV. REP. 30, Plaintiff has shown that the interest of the children would be better served by relinquishing jurisdiction to Washington and that it is severely prejudicial to both Plaintiff and the children to refuse to do so. Plaintiff has further shown that all necessary and relevant evidence concerning custody matters can be found only in Washington.

It should be further noted that even though the Trial Court has discretion in applying the factors stated in Subsection 7 of the Act in determining jurisdictional matters, the Trial Court does not have discretion to determine if the Court has jurisdiction as required in Subsection 3 of the Act. The Act requires that specific conditions be met in order for this Court to maintain jurisdiction. Those

conditions include (See U.C.A. Section 78-45c-1(a) (b) (c) and (d). (a) if this state is the home state of the child; (b) the best interest of the child and the child has significant connections with the state; (c) the physical presence of the child in the state; (d) if no other state has jurisdiction. The State of Utah simply does not meet any of those criteria as stated in the Act. Washington, and not Utah, is the home state of the children. Washington, and not Utah, has the most substantial connections with the children. In fact, Utah's connections with the children are relatively insignificant and there is no evidence, let alone substantial evidence, concerning the children's care, protection, training and personal relationships. Furthermore, none of the children is present in this state and it is absolutely clear that Washington does have grounds to exercise jurisdiction. Therefore, even if this Court were to conclude that the Trial Court did not abuse its discretion in failing to properly consider the factors in determining whether to exercise jurisdiction, this Court must conclude that the basis necessary for the District Court to exercise jurisdiction in this action have not been met and that the District Court simply no longer has jurisdiction over the children.

It must also be noted that the Honorable Omer J. Call, the District Court Judge who has heard all matters relative to this action in Utah, has retired effective July 31, 1987, and will no longer hear any matters relative hereto, further weakening any claim by Defendant or the District Court that

jurisdiction be maintained in Utah since the trial judge who is familiar with the case will no longer be sitting on the case. Thus, a judge in Washinton is as well qualified and as familiar with the case, if not more familiar with the case because of the Shelter Care Hearings in Washington, than the new judge appointed in the Utah First District.

CONCLUSIONS

The Court's refusal to grant Plaintiff's Motion for Change of Jurisdiction and subsequent refusal to grant Plaintiff's objections to jurisdiction at the time of the hearing is manifest error in that the Utah District Court clearly had no jurisdiction under the Uniform Child Custody Jurisdiction Act to make any determinations regarding custody, visitation or other matters relevant to the children. Such matters can be and should be determined only by the Superior Court in Washington where the children currently reside and have been residing now for several years.

Plaintiff respectfully requests that this Court enter an Order setting aside the Order on Order to Show Cause entered by the Court on or about October 21, 1986, for lack of jurisdiction and further ordering this Court to defer any matters relevant to custody, visitation and other matters relative to the children to the Washington Superior Court.

DATED this 21 day of August, 1987.



Stephen W. Jewell

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing BRIEF OF CROSS APPELLANT to Mark Weiner, Pro Se, 665 South 700 West, Brigham City, Utah 84302 and deposited the same in the U.S. Mail, postage prepaid envelope this 2nd day of August, 1987.

Frances Dwyer, Secretary

ADDENDUM

1. Copy of Utah Uniform Child Custody Jurisdiction Act, UCA 78-45c-1, et. seq.
2. Copy of December 23, 1985 Memorandum Decision from Judge Christoffersen.
3. Copy of Washington Court's Order Declining Jurisdiction.
4. Copy of the Order on Order to Show Cause dated October 21, 1986.

78-45b-17.1.

Judicial Code

UTAH CODE
1987-1992

become subject to a collection action to satisfy the support debt. 1975

78-45b-17.1. Posting of bond or security for payment of support debt.

(1)(a) The department shall, or an obligee may, petition the court for an order requiring an obligor to post a bond or provide other security for the payment of a support debt, when the department or an obligee determines that action is appropriate, if the payments are more than 90 days delinquent. The department shall establish rules for determining when it shall seek an order for security.

(b) For purposes of this section, "support debt" includes court ordered obligations for the support of a spouse or former spouse with whom the child resides, if that support is collected with the child support.

(2) When the department or an obligee petitions the court under this section, it shall give written notice to the obligor, stating:

- (a) the amount of support debt;
- (b) that it has petitioned the court for an order requiring the obligor to post security; and
- (c) that the obligor has the right to appear before the court and contest the department's or obligee's petition.

(3) After notice to the obligor and an opportunity for a hearing, the court shall order a bond posted or other security to be deposited upon the department's or obligee's showing of a support debt and of a reasonable basis for the security. 1985

78-45b-18. Extensions of time for good cause authorized - Service of documents.

(1) Whenever, for good cause, it appears that an extension of time should be given in relation to any proceedings under this act, the same shall be granted.

(2) The manner provided for service of any documents under this act shall be in addition to other manners of service provided by law. 1975

78-45b-19. Actions involving orders prohibited unless plaintiff applies to department for hearing.

No action, proceeding, or suit to set aside, vacate, or amend an order issued under this chapter, may be brought unless the plaintiff first applies to the department for a hearing on every issue to be presented in the action, proceeding, or suit. 1984

78-45b-20. Conflict of orders.

If any order pursuant to this act is, or becomes, in conflict with any order of a court of competent jurisdiction, to the extent of such conflict the court order shall govern. 1975

78-45b-21. Charge off of uncollectible support debts.

The department may charge off as uncollectible any support debt upon which it finds there is no available, practical and lawful means by which that debt may be collected and may transfer those accounts from accounts receivable to a suspense account and cease to account for them as assets. 1975

78-45b-22. Repealed.

78-45b-23. Medical and dental expenses of dependent children - Assigning responsibility for payment - Insurance coverage provision in order.

In any action under this chapter the department or the administrative hearing examiner shall include in its order a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children. If coverage is available at a reasonable cost, the dep-

artment or the examiner may also include a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children. 1984

78-45b-24. Provision of support debt information to consumer reporting agency.

(1) As used in this section, "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information bearing on credit worthiness, standing or capacity, for the purpose of furnishing consumer credit reports to third parties.

(2) The department shall supply information regarding a support debt in excess of \$1,000 to any consumer reporting agency only upon its request.

(3) The department may supply information regarding a support debt of \$1,000 or less to a consumer reporting agency only upon its request.

(4) Before it supplies any information to a consumer reporting agency under this section, the department shall give written notice to the obligor, specifying the information which will be disclosed to the consumer reporting agency and providing the obligor with a reasonable opportunity to contest the accuracy of the information in an administrative hearing.

(5) The department shall establish rules implementing this section.

(6) The department may charge the consumer reporting agency a fee for furnishing information under this section. That fee may not exceed the department's actual cost of providing the information.

(7) The notice provisions of this section do not apply to a support debt which has been reduced to judgment and is public information. 1985

78-45b-25. Information received from State Tax Commission to be provided to other states' collection agencies.

The Office of Recovery Services shall, upon request, provide to any other state's child support collection agency the information which it receives from the State Tax Commission under Subsection 59-10-54(2), with regard to a support debt which that agency is involved in enforcing. 1987

Chapter 45c. Uniform Child Custody Jurisdiction

78-45c-1. Purpose - Construction.

78-45c-2. Definitions.

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

78-45c-4. Persons to be notified and heard.

78-45c-5. Service of notice outside state - Proof of service - Substitution to jurisdiction.

78-45c-6. Proceedings pending elsewhere - Jurisdiction not exercised - Inquiry to other state - Information exchange - Stay of proceeding on notice of another proceeding.

78-45c-7. Declining jurisdiction on finding of inconvenient forum - Factors in determination.

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.

78-45c-9. Information as to custody of child and litigation concerning required in pleadings - Verification.

78-45c-10. Holder of person having custody or claiming custody or visitation rights.

78-45c-11. Ordering party to appear - Enforcement - Out-of-state party - Travel expense.

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78-45c-3.

78-45c-12. Parties bound by custody decree - Conclusive unless modified.

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

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

78-45c-15. Filing foreign decree - Effect - Enforcement - Award of expenses.

78-45c-16. Registry maintained by clerk of court - Documents entered.

78-45c-17. Certified copies of decrees furnished by clerk of court.

78-45c-18. Taking testimony of persons in other states.

78-45c-19. Request to court of another state to take evidence, to make studies or to order appearance of party - Payment of costs.

78-45c-20. Taking evidence for use in court of another state - Ordering appearance in another state - Enforcement - Costs.

78-45c-21. Preservation of records of proceedings - Furnishing copies to other state courts.

78-45c-22. Requesting court records from another state.

78-45c-23. Foreign countries - Application of general policies.

78-45c-24. Priority on court calendar.

78-45c-25. Notices - Orders to appear - Manner of service.

78-45c-26. Short title.

78-45c-1. Purpose - 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. 1988

78-45c-2. Definitions.

As used in this act:

- (1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;
- (2) "Custody determination" means a court deci-

sion and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, or legal separation, and includes child neglect and dependency proceedings;

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;

(6) "Initial decree" means the first custody decree concerning a particular child;

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "Physical custody" means actual possession and control of a child;

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by the court or claims a right to custody; and

(10) "State" means any state, territory or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia. 1988

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 (ii) 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

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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.

78-45c-4. Persons to be notified and heard.

Before making a decree under this act, 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 the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 78-45c-5.

78-45c-5. Service of notice outside state - Proof of service - Submission to jurisdiction.

(1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

(a) By personal delivery outside this state in the manner prescribed for service of process within this state;

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court (including publication, if other means of notification are ineffective).

(2) Notice under this section shall be served, mailed, delivered, or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

78-45c-6. Proceedings pending elsewhere -

Jurisdiction not exercised - Inquiry to other state - Information exchange - Stay of proceeding on notice of another proceeding.

(1) A court of this state shall not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 78-45c-10 and shall consult the child custody registry established under section 78-45c-16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 78-45c-19 through 78-45c-22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

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.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(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.

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.

(3) Where the court declines to exercise jurisdiction upon petition for an initial custody decree pursuant to subsection (1), the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. If a request to that effect is received from the other state, the court shall order the petitioner to appear with the child in a custody proceeding instituted in the other state in accordance with section 78-45c-20. If no such request is made within a reasonable time after such notification, the court may entertain a petition to determine custody by the petitioner if it has jurisdiction pursuant to section 78-45c-2.

(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 cus-

todian. 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.

(5) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees and the cost of returning the child to another state.

78-45c-9. Information as to custody of child and

litigation concerning required in pleadings - Verification - Continuing duty to inform court.

(1) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath as to each of the following whether:

(a) He has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state;

(b) He has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtains information during this proceeding.

78-45c-10. Joinder of persons having custody or

claiming custody or visitation rights.

If the court learns from information furnished by the parties pursuant to section 78-45c-9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state he shall be served with process or otherwise notified in accordance with section 78-45c-5.

78-45c-11. Ordering party to appear -

Enforcement - Out-of-state party - Travel expense.

(1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against such party to secure his appearance with the child.

78-45c-12.

Judicial Code

UTAH CODE
1967-1988

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under section 78-45c-5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances. 1980

78-45c-12. Parties bound by custody decree - Conclusive unless modified.

A custody decree rendered by a court of this state which had jurisdiction under section 78-45c-3, binds all parties who have been served in this state or notified in accordance with section 78-45c-5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act. 1980

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. 1980

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. 1980

78-45c-15. Filing foreign decree - Effect - Enforcement - Award of expenses.

(1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or his

witnesses

78-45c-16. Registry maintained by clerk of court - Documents entered.

The clerk of each district court shall maintain a registry in which he shall enter all of the following:

(1) Certified copies of custody decrees of other states received for filing;

(2) Communications as to the pendency of custody proceedings in other states;

(3) Communications concerning a finding of inconvenient forum by a court of another state; and

(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding. 1980

78-45c-17. Certified copies of decrees furnished by clerk of court.

The clerk of a district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person. 1980

78-45c-18. Taking testimony of persons in other states.

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken. 1980

78-45c-19. Request to court of another state to take evidence, to make studies or to order appearance of party - Payment of costs.

(1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid. 1980

78-45c-20. Taking evidence for use in court of another state - Ordering appearance in another state - Enforcement - Costs.

(1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced shall be forwarded by the clerk of the court to the requesting court.

UTAH CODE
1967-1988

Judicial Code

78-45d-1.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. If the person who has physical custody of the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against such person to secure his appearance with the child in the other state. 1980

78-45c-21. Preservation of records of proceedings - Furnishing copies to other state courts.

In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents. 1980

78-45c-22. Requesting court records from another state.

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 78-45c-21. 1980

78-45c-23. Foreign countries - Application of general policies.

The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons. 1980

78-45c-24. Priority on court calendar.

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this act the case shall be given calendar priority and handled expeditiously. 1980

78-45c-25. Notices - Orders to appear - Manner of service.

(1) Whenever the terms of this act impose a duty upon the court to notify a party or court of a particular fact or action, such notification may be accomplished by the clerk of the court or a party to the action upon order of the court.

(2) Orders of the court for parties or persons to appear before the court in accordance with the terms of this act shall include legal and sufficient service of process in accordance with the Utah Rules of Civil Procedure unless otherwise ordered for good cause shown. 1980

78-45c-26. Short title.

This act may be cited as the "Utah Uniform Child Custody Jurisdiction Act." 1980

Chapter 45d. Mandatory Income Withholding for Child Support

78-45d-1. Definitions.

78-45d-1.5. Administrative procedures.

78-45d-2. Provision for income withholding in child support order.

78-45d-3. Procedure for obligee seeking income withholding.

78-45d-4. Office procedure for income withholding - Notice to obligor - Opportunity for hearing - Appeal - Payment of overdue child support may not be sole basis for not withholding income.

78-45d-5. Notice to payor.

78-45d-6. Payor's procedure for income withholding.

78-45d-7. Termination of income withholding.

78-45d-8. Payor's compliance with income withholding.

78-45d-9. Violations by payor.

78-45d-10. Priority of notice to withhold income.

78-45d-11. Income withholding regardless of residence of child or state in which order entered - Governing law.

78-45d-12. Records and documentation - Distribution or refusal of collected income - Allocation of payments among multiple notices to withhold.

78-45d-13. Income withholding upon obligor's request.

78-45d-1. Definitions.

As used in this chapter:

(1) "Child" means a son or daughter who is under the age of 18 years, or who is physically or mentally handicapped and incapable of earning income sufficient to support himself.

(2) "Child support" means a financial obligation ordered by a court or administrative body for the support of a child, including current periodic payments and all arrearages. Child support includes court ordered obligations for the support of a spouse or former spouse with whom the child resides, if the spousal support is collected with the child support.

(3) "Child support order" means a judgment, decree, or order of a court or administrative body whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise, which:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

(c) establishes child support or confirms a child support order under Chapter 31, Title 77.

(4) "Delinquent" or "delinquency" means that child support in an amount at least equal to current child support payable for one month is overdue.

(5) "Department" means the Department of Social Services.

(6) "Income" means earnings or compensation for personal services whether denominated as wages, salary, commission, bonus, contract payment, or otherwise, including gain derived from capital assets, periodic payments made under pension programs, retirement programs, or insurance policies, and unemployment compensation insurance benefits.

(7) "Jurisdiction" means a state or political subdivision, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) "Obligor" means a person owing a duty of child support.

(9) "Obligee" means a person or entity entitled to receive child support, including an agency of this or another jurisdiction.

(10) "Office" means the Office of Recovery Services.

(11) "Payor" means an employer or any person who is a source of income to an obligor. 1987

EXHIBIT "A"

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 of December 1985, to Stephen W. Jewell, Attorney for Plaintiff, James

-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 Sharon Nancy
Deputy

EXHIBIT "B"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

WENDY MARIE CHRISTENSEN RAWLINGS,)

Petitioner,)

v.)

MARK DOUGLAS WEINER,)

Respondent.)

NO. 85-3-04844-3

ORDER DECLINING
JURISDICTION

Petitioner's motion for determination of jurisdiction and communication with Box Elder County District Court having duly and regularly come on for hearing, the same being referred to the undersigned commissioner who had presided over contemporaneous Juvenile Court proceedings concerning the custody of the children subject of this proceeding and retained jurisdiction therein; the court having further communicated with the appropriate judge of Box Elder County District Court; now therefore,

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

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

January 13, 1985

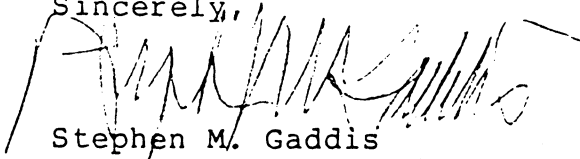
Venoy Christofferson
District Court Judge
Box Elder County District Court
Box Elder County Courthouse
Brigham City, Utah 84302

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 of 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
Chas. J. [unclear]
JAN 20 1985

OCT 23 1986

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:

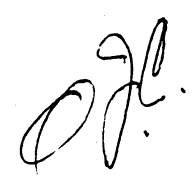
RAWLINGS OTSC

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 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 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 Esnelman 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

either
weeks. For 1986 said visitation shall begin on June 22 for six (6) weeks, on June 29 for six (6) weeks, ^{or} 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 ~~Sunday~~ ^{Saturday} 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 ~~Bellevue City~~ ^{the parent of visit} 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.

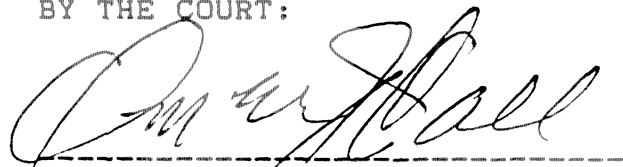
16. Neither of the parties shall be allowed to recover for costs and expenses in this action, whether travel, medical, legal or otherwise, and each party shall bear his or her own costs and expenses incurred in this action and prior hereto.

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