

2007

# Hanson v. Hanson : Brief of Appellant

Utah Court of Appeals

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Bradley G Nykamp.

Scott L Wiggins.

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**IN THE UTAH COURT OF APPEALS**

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CHAD JASON HANSON,	)	
	)	Case No. 20070575-CA
Petitioner / Appellee,	)	
	)	
v.	)	
	)	
ALLISON SARA HANSON,	)	
	)	
Respondent / Appellant.	)	

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**BRIEF OF APPELLANT**

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Appeal from the Memorandum Decision and Amended Order Modifying  
Decree of Divorce, of the Third Judicial District Court of Utah,  
Salt Lake County, the Honorable Robert P. Faust, presiding

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**CONSTITUTIONAL PROVISIONS CITED**

None.

## **STATEMENT OF JURISDICTION**

The Utah Court of Appeals is conferred with jurisdiction over the instant appeal pursuant to Utah Code Ann. § 78A-4-103(2)(h).

## **STATEMENT OF ISSUES / STANDARDS OF REVIEW**

1. Whether the trial court abused its discretion and erred as a matter of law in the course of modifying the child custody provision of the divorce decree. Custody determinations “are matters within the broad discretion of the trial court,” which the appellate court will not disturb “so long as they are consistent with the standards set by appellate courts, and are supported by adequate findings of fact and conclusions of law.” *Paryzek v. Paryzek*, 776 P.2d 78, 83 (Utah Ct. App. 1989) (citing *Martinez v. Martinez*, 728 P.2d 994, 995 (Utah 1986)); see also *Walton v. Walton*, 814 P.2d 619, 621 (Utah Ct. App. 1991) (citing *Hagan v. Hagan*, 810 P.2d 478, 481 (Utah Ct. App. 1989)). “Further, in reviewing the trial court’s actions, the appellate court ‘will not substitute [its] judgment for that of the trial court’ if substantial evidence supports the factual findings and there was proper application of the legal standards.” *Paryzek*, 776 P.2d at 83 (quoting *Bake v. Bake*, 772 P.2d 461 (Utah Ct. App. 1989)). Notwithstanding the broad discretion customarily applied to such determinations, questions involving the trial court’s interpretation of common law and rules are questions of law that the appellate court is well-suited to address, thus granting no

deference to the lower court. See *Trujillo v. Jenkins*, 840 P.2d 777, 778-79 (Utah 1992); *State v. Richardson*, 843 P.2d 517, 518 (Utah Ct. App. 1992) (stating that “we consider the trial court’s interpretation of binding case law as presenting a question of law and review the trial court’s interpretation of that law for correctness.”); *Loporto v. Hoegemann*, 982 P.2d 586, 587 (Utah Ct. App. 1999) (quoting *Hartford Leasing Corp. v. State*, 888 P.2d 694, 697 (Utah Ct. App. 1994, cert. denied, 899 P.2d 1231 (Utah 1995))).

Preservation of Issue Citation or Statement of Grounds for Review:

Ms. Hanson preserved this issue by way of her presentation of evidence and arguments at trial as set forth at R. 307-40 and *in passim*.

**DETERMINATIVE AUTHORITY**

The constitutional provisions, statutes, ordinances, rules, regulations, or case law whose interpretation is determinative, are set out verbatim, with the appropriate citation, in the body and arguments of the instant Brief of Appellant.

**STATEMENT OF THE CASE**

This case involves, among other things, a trial court’s misinterpretation and misapplication of Utah law and the attendant legal principles in the course of granting a petition to modify well-established custody.

Petitioner / Appellee, Chad Jason Hanson, and Respondent / Appellant, Allison Sara Hanson, were husband and wife from 1993 until 2001, when the district court entered a Decree of Divorce.

Four children were born as issue of the marriage. The Decree of Divorce granted Ms. Hanson the primary physical custody of all four of the minor children.

In December 2002, Ms. Hanson moved to Louisiana with the minor children to pursue a relationship with her former husband. Thereafter, on July 14, 2004, Ms. Hanson filed a Petition to Modify Decree of Divorce, seeking an increase in child support and the award of two of the children as dependants for income tax purposes.

On September 3, 2004, Mr. Hanson filed a Verified Answer to Petition to Modify Decree of Divorce and Counterclaim, denying the Petition to Modify and, in turn, requesting custody of the minor children.

Pursuant to stipulation of the parties, the court appointed an evaluator who performed and completed a custody evaluation. The parties appeared before the district court for a two-day trial on May 8 & 9, 2007. Upon the conclusion of trial, the district court took the matter under advisement.

On June 12, 2007, the district court issued its Memorandum Decision, modifying the Decree of Divorce and awarding custody of the children to Mr. Hanson if by June 25, 2007, Ms. Hanson has not

notified, in writing, Mr. Hanson and the Court of her decision to reside in Utah and if Ms. Hanson has not returned and established residence in Utah consistent with the court's dictates.

The district court's Memorandum Decision was signed on June 12, 2007, and accordingly entered that same day and the Amended Order Modifying Decree of Divorce was signed and entered on July 9, 2007. Ms. Hanson, through appellate counsel, filed a timely Notice of Appeal on July 12, 2007.

### **STATEMENT OF FACTS**

1. Chad Jason Hanson and Allison Sara Hanson were husband and wife from 1993 until 2001, when the district court entered a Decree of Divorce (R. 2; R. 44-52). A true and correct copy of Decree of Divorce is attached to this Brief of Appellant as Addendum A.

2. The provisions set forth in the Decree of Divorce were the result of the parties' nonadjudicated negotiation and ultimate stipulation (R. 16-17; R. 440).

3. The parties had the following four children born as issue of the marriage: Tylar Jason Hanson (DOB: June 26, 1993); Skylar Sara Hanson (DOB: June 26, 1993); Mackenzie Renae Hanson (DOB: January 24, 1995); and Brenna Kaye Hanson (DOB: June 19, 1997) (R. 33).

4. By way of the Decree of Divorce, Ms. Hanson was granted the primary physical custody of the minor children (R. 45).

5. The Decree of Divorce provides, "Respondent (Ms. Hanson) shall provide Petitioner (Mr. Hanson) at least 30 day advance written notice of intent to move from Utah to any other State. If Respondent does move from the State of Utah, she shall bear all transportation costs for the minor children to visit Petitioner." (R. 45).

6. For over a year after the divorce, both parties and the children resided in Utah (R. 559:190:5-6; R. 440).

7. In December 2002, Ms. Hanson moved to Louisiana with the minor children to pursue a relationship with her former husband, which ultimately failed (R. 440).

8. On July 14, 2004, Ms. Hanson filed a Petition to Modify Decree of Divorce in which she requested an increase in child support, and that she be awarded two of the children as dependants for income tax purposes (R. 110-13).

9. On September 3, 2004, Mr. Hanson filed a Verified Answer to Petition to Modify Decree of Divorce and Counterclaim, denying the Petition to Modify and requesting custody of the minor children (R. 117-21).

10. Pursuant to stipulation, the court appointed Kim Peterson, MSW, LCSW, to conduct a custody evaluation (R. 252).

11. According to the Child Custody Evaluation Report, "All of the children appear to be happy and reasonably well adjusted. They do not present with significant emotional or behavioral



difficulties.” See Child Custody Evaluation Report, p. 3A, a true and correct copy of which is attached to this Brief of Appellant as Addendum B.

12. The Child Custody Evaluation Report further notes that “Allison has been the children’s primary care giver and she appears to do a good job of meeting their basic needs.” See *id.* at p. 3B.

13. By way of the Evaluation, Mr. Peterson “recommended that the parents share joint legal and physical custody.” See *id.* at p. 6C.

14. According to the Suggested Parent-Time Arrangements set forth in the Child Custody Evaluation Report, there are two alternative recommendations, which follow:

The first recommendation is for Allison to return to the Salt Lake area. Her home would be the children’s primary residence and Chad would have liberal parent time. The actual schedule

would need to be negotiated and should center around the parent’s work schedules.

The alternative recommendation would be for the children to remain in Louisiana and Allison would have physical custody during the school year, subject to Chad’s parent time at Christmas and another visit Spring and Easter break. Chad would have primary physical custody during summers, subject to Allison’s parent time in Utah if she chooses to exercise it. Arrangements would also need to be made for the children to spend time with their maternal grandparents.

See *id.* at p. 6D.

15. The parties appeared before the district court for trial on May 8 & 9, 2007 (R. 599 and 600).

16. At trial, Mr. Peterson, the custody evaluator, testified,

I do not feel that there is sufficient justification to say - grant dad custody. They have a very significant bond with their mother. She's a good mother. She's responsible and I can't for the life of me in weighing each one of their strengths or weaknesses say that based on parenting skills alone that dad would be the preferable parent. Dad was a very good parent too. He's had some problems in the past. He's grown up a lot in the last few years, he's really matured and the children have become much more of a priority to him.

(R. 599:83:15-24).

17. Mr. Peterson further testified that the children are "happy and well adjusted in their mother's home. In the long run, the children will likely be happier if they were to live in Utah but there is no reason to believe they would be better adjusted here." (R. 599:97:13-18). See also Child Custody Evaluation Report, p. 8E.4.

18. Additionally, Mr. Peterson testified that he would not recommend removing the children from their mother's custody inasmuch as "they would be stressed." (R. 599:104:7-11).

19. In response to questioning by the district court concerning the possible removal of the children from their mother, Mr. Peterson adamantly testified, "Well, I would not remove the children from their mother. I'm opposed to that. So I'm not talking about leaving mom in

Louisiana and having the kids come here. I do not support that.” (R. 599:112:111-12).

20. At the conclusion of trial, the district court took the matter under advisement (R. 600:345:14-15).

21. On June 12, 2007, the district court issued the following order modifying the Decree of Divorce:

- Custody shall remain with [Ms. Hanson], as long as she resides by August 15, 2007, in Salt Lake County, or a nearby county within reasonable distance (less than 150 miles) of [Mr. Hanson's] residence, including, but not necessarily limited to, Salt Lake, Utah, Wasatch, Morgan, Davis or Weber Counties. The reason for this deadline is so that the children may be enrolled and start in school in Utah at the beginning of the 2007/2008 school year. If [Ms. Hanson] returns to reside in Utah, [Mr. Hanson] is awarded parent time consistent with Section 33-3-35.5, Utah Code Ann.

- [Mr. Hanson] is awarded custody of the children, if by June 25, 2007 [Ms. Hanson] has not notified, in writing, [Mr. Hanson] and the Court of her decision to reside in Utah and if [Ms. Hanson] has not returned and established residence in Utah consistent with the preceding paragraph. If [Ms. Hanson] remains in Louisiana or another location outside of Utah or if she resides in Utah further than 150 miles from Petitioner, she is awarded parent time consistent with Section 33-3-37 and Section 33-3-35.5, Utah Code Ann.

(R. 456-57). See Memorandum Decision, R. 439-59, and Amended Order Modifying Decree of Divorce, R. 482-502, a true and correct copy of which are attached to this Brief of Appellant as Addendum C.

22. The district court's Memorandum Decision was signed on June 12, 2007, and accordingly entered that same day and the Amended Order

Modifying Decree of Divorce was signed and entered on July 9, 2007 (R. 439-59; R. 482-502).

23. Ms. Hanson, through appellate counsel, filed a timely Notice of Appeal on July 12, 2007 (R. 511-13). See Notice of Appeal, R. 511-13, a true and correct copy of which is attached hereto as Addendum D.

### **SUMMARY OF ARGUMENTS**

1. The trial court abused its discretion and erred as a matter of law in the course of modifying the child custody provision of the divorce decree. According to the bifurcated analysis for obtaining a change of custody, first, a parent seeking a change in custody must establish a substantial change in circumstances occurring subsequent to the initial decree, and second, the change in custody must be shown to be in the best interests of the child.

Upon concluding there is a material change in circumstances justifying a reconsideration of the custody issue, the trial court must consider the changes in circumstances along with all other evidence relevant to the welfare or best interests of the child, including the advantage of stability in custody arrangements that will always weigh against changes in the party awarded custody. Although the court may consider many factors, each is not on equal footing. The importance of the multitude of factors used in

determining a child's best interests ranges from the possibly relevant to the critically important. At the critically important end of the spectrum, when the child is thriving, happy, and well-adjusted, lies continuity of placement.

In this case, the trial court stated that it did "not put much weight on the determination that [Ms. Hanson] is the primary care giver because her being in Louisiana necessitates this fact."

As a whole, the record demonstrates that the trial court explicitly disregarded the undisputed facts that the children had resided with Ms. Hanson well over five years prior to the custody trial, that the children progressed well in the Louisiana environment, and discounted, if not ignored, the potential harm to the children that would result if a change in the lengthy custody arrangement with their mother occurred.

The trial court's analysis and findings in this case are defective in several respects. There is little or no reference to the evaluator's adamant recommendation and insistence that children not be removed from their mother. The trial court's findings also failed to consider undisputed evidence of the children's "very significant bond with their mother", Ms. Hanson's lengthy status as the primary caregiver, and the evidence that the children thrived while living with their mother in Louisiana. These omissions constitute an abuse of discretion. Additionally, the trial court ignored Mr. Peterson's warnings of the negative impact to the

children if they were removed from their mother. In fact, the expert testimony of Mr. Peterson as well as his recommendation preponderated in favor of continuing custody at the very least with Ms. Hanson in some fashion or another. The trial court gave little of no explanation for its refusal to follow this recommendation. Consequently, the record demonstrates that the court's disregard of the need for consistency and stability, especially given the rather even parenting abilities, constitutes an improper application of the law and a resulting abuse of discretion.

Like *Larsen v. Larsen*, based on the established case law, statutory law, and legal principles, the record on appeal does not demonstrate a compelling reason why residing in Salt Lake County or thereabouts would be better for the children than allowing them to reside with their life-long primary caregiver where they undisputedly thrived and flourished. The trial court, in its ruling, focused on the children being in close proximity to extended family in Utah. While this factor is an appropriate factor for the court's consideration, this, by itself, is insufficient to disturb a previously established custody arrangement in which the children are happy and well-adjusted.

### **ARGUMENTS**

**I. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN THE COURSE OF MODIFYING THE CHILD CUSTODY PROVISION OF THE DIVORCE DECREE.**

**A. Bifurcated Change of Custody Analysis**

The Utah Supreme Court, in *Hogge v. Hogge*, 649 P.2d 51 (Utah 1982), established a bifurcated analysis that must be followed to obtain a change of custody. First, a parent seeking a change in custody must establish a substantial change in circumstances occurring subsequent to the initial decree, and second, the change in custody must be shown to be in the best interests of the child. See *id.* at 53-54; see also Utah Code Ann. § 30-3-10.4(1).<sup>1</sup> "[I]n change of custody cases involving a nonlitigated custody decree, a trial court, in applying the changed-circumstances test, should receive evidence on changed circumstances and that evidence may include evidence that pertains to the best interests of the child." *Elmer v. Elmer*, 776 P.2d 599, 605 (Utah 1989); *Smith v. Smith*, 793 P.2d 407, 410 (Utah Ct. App. 1990) ("[A]s part of a change of custody analysis in the requested modification of a on litigated

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<sup>1</sup>This subsection provides:

(1) On the motion of one or both of the parents, or the joint legal custodians if they are not the parents, the court may, after a hearing, modify an order that established custody if:

(a) the circumstances of the child or one or both custodians have materially and substantially changed since the entry of the order to be modified; and

(b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child.

Utah Code Ann. § 30-3-10.4(1).

custody determination . . . , the court may consider evidence bearing on the effect of custody on the child.").

#### **B. Best Interests of the Children Factors**

Upon concluding there is a material change in circumstances justifying a reconsideration of the custody issue, the trial court "must consider the changes in circumstances along with all other evidence relevant to the welfare or best interests of the child, including the advantage of stability in custody arrangements that will always weigh against changes in the party awarded custody." *Hogge v. Hogge*, 649 P.2d 51, 54 (Utah 1982). In *Moon v. Moon*, 790 P.2d 52 (Utah Ct. App. 1990), this Court articulated the following factors that may be considered by the trial court in performing the best-interests-of-the-child analysis:

The need for stability in custodial relationship and environment; maintaining an existing primary custodial bond; the relative strength of parental bonds[;] [t]he relative abilities of the parents to provide care, supervision, and a suitable environment for the children and to meet the needs of the children; [p]reference of a child able to evaluate the custody question; [t]he benefits of keeping siblings together, enabling sibling bonds to form; [t]he character and emotional stability of the custodian; and [t]he desire for custody; the apparent commitment of the proposed custodian to parenting.

*Id.* at 54 (citations omitted).<sup>2</sup>

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<sup>2</sup>These factors substantially reflect those set out in Rule 4-903 of the Utah Code of Judicial Administration, which provides in part:

[E]valuators must consider and respond to each of the following factors:

- (A) the child's preference;
- (B) the benefit of keeping siblings together;
- (C) the relative strength of the child's bond with one or



Although the court may consider many factors, each is not on equal footing. *Hudema v. Carpenter*, 1999 UT App 290, ¶26, 989 P.2d 491. Ordinarily it is within the trial court's discretion to determine, based on the specific facts before it and within the constructs established by the appellate courts, where a particular factor falls within the spectrum of relevant importance and its appropriate weight. See *Davis v. Davis*, 749 P.2d 647, 648 (Utah 1988); *Childs v. Childs*, 967 P.2d 942, 945 (Utah Ct. App. 1998), *cert. denied*, 982 P.2d 88 (Utah 1999). The importance of the multitude of factors used in determining a child's best interests

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both of the prospective custodians;

(D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;

(E) factors relating to the prospective custodians' character or status or their capacity or willingness to function as parents, including:

(i) moral character and emotional stability;

(ii) duration and depth of desire for custody;

(iii) ability to provide personal rather than surrogate care;

(iv) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;

(v) reasons for having relinquished custody in the past;

(vi) religious compatibility with the child;

(vii) kinship, including in extraordinary circumstances stepparent status;

(viii) financial condition; and

(ix) evidence of abuse of the subject child, another child, or spouse; and

(F) any other factors deemed important by the evaluator, the parties, or the court.

Utah Code of Jud. Admin. R4-903(5).

“ranges from the possibly relevant to the critically important.” *Hudema*, 1999 UT App 290 at ¶26. “At the critically important end of the spectrum, when the child is thriving, happy, and well-adjusted, lies continuity of placement.” *Id.* (citing *Davis*, 749 P.2d at 648 (“In considering competing claims to custody between fit parents under the ‘best interests of the child’ standard, considerable weight should be given to which parent has been the child’s primary caregiver.”); *Paryzek v. Paryzek*, 776 P.2d 78, 82 (Utah Ct. App. 1989) (“[T]rial courts must examine a child’s need for stability, and therefore, consider prior custody arrangements, and the potential harm to the child if the arrangement is changed.”)).

In the case at bar, the trial court simply noted that the custody evaluator, “Mr. Peterson[,] found that [Ms. Hanson] had been the ‘children’s primary care giver’ and she appears to do a good job of meeting their basic needs. However, the Court does not put much weight on the determination that [Ms. Hanson] is the primary care giver because her being in Louisiana necessitates this fact.”<sup>3</sup>

In *Elmer v. Elmer*, 776 P.2d 599 (Utah 1989), the Utah Supreme Court stated:

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<sup>3</sup>While this statement is an indication of the trial court’s refusal to duly consider Ms. Hanson’s status as the primary caregiver, in violation of Utah law, it is also troublesome because it inaccurately portrays Ms. Hanson solely as the primary caregiver while residing in Louisiana. In fact, Ms. Hanson has been the primary caregiver for essentially the children’s entire lives, not to mention since the divorce in October 2001.

Nevertheless, if an existing custody arrangement is not inimical to the child, the continuity and stability of the arrangement are factors to be weighed in determining a child's best interests. What particular weight to be accorded those factors in a given case must depend on the duration of the initial custody arrangement, the age of the child, the nature of the relationship that has developed between the child and the custodial and noncustodial parents, and how well the child is thriving physically, mentally, and emotionally. A very short custody arrangement of a few months, even if nurturing to some extent, is not entitled to as much weight as a similar arrangement of substantial duration. Of course, a lengthy custody arrangement in which a child has thrived ought rarely, if at all, to be disturbed, and then only if the circumstances are compelling.

*Id.* at 604 (citation omitted). Other Utah Supreme Court cases similarly hold that stability is a fundamental consideration in original custody awards as well as subsequent modifications. In *Pusey v. Pusey*, 728 P.2d 117 (Utah 1986), the Court stated that decisive factors in child custody determinations should be function related, and include the "identity of the primary caretaker during the marriage." *Id.* at 120. In addition, the Court in *Pusey* also states that another factor to consider is the "identity of the parent with whom the child has spent most of his or her time pending custody determination if that period is lengthy." *Id.*

In *Davis v. Davis*, 749 P.2d 647 (Utah 1988), the father had custody of the child for over a year prior to trial on the issue of permanent custody. The trial court considered a number of

factors, including that the father had provided a stable environment and had been the primary caretaker during the interim period. The Utah Supreme Court affirmed the custody award to the father, stating that “[i]n considering competing claims to custody between fit parents under the ‘best interests of the child’ standard, *considerable weight* should be given to which parent has been the child’s primary caregiver.” *Id.* at 648 (emphasis added).

In this case, the trial court stated that it did “not put much weight on the determination that [Ms. Hanson] is the primary care giver because her being in Louisiana necessitates this fact.”

As a whole, the record demonstrates that the trial court explicitly disregarded the undisputed facts that the children had resided with Ms. Hanson well over five years prior to the custody trial, that the children progressed well in the Louisiana environment, and discounted, if not ignored, the potential harm to the children that would result if a change in the lengthy custody arrangement with their mother occurred.

At trial, on direct examination by Mr. Hanson’s counsel, Mr. Peterson, the custody evaluator, testified,

I do not feel that there is sufficient justification to say - grant dad custody. They have a very significant bond with their mother. She’s a good mother. She’s responsible and I can’t for the life of me in weighing each one of their strengths or weaknesses say that based on parenting skills alone that dad would be the preferable parent. Dad was a very good parent too. He’s had some problems in the past. He’s grown up

a lot in the last few years, he's really matured and the children have become much more of a priority to him. (R. 599:83:15-24). He also testified that the children are "happy and well adjusted in their mother's home" and that he would not recommend removing the children from their mother's custody inasmuch as "they would be stressed." (R. 599:97:13-15; R. 599:104:7-11).

In response to questioning by the district court concerning the possible removal of the children from their mother, Mr. Peterson adamantly testified, "Well, I would not remove the children from their mother. I'm opposed to that. So I'm not talking about leaving mom in Louisiana and having the kids come here. I do not support that." (R. 599:112:111-12).

The trial court's analysis and findings in this case are defective in several respects. There is little or no reference to the evaluator's adamant recommendation and insistence that children not be removed from their mother. The trial court's findings also failed to consider undisputed evidence of the children's "very significant bond with their mother", Ms. Hanson's lengthy status as the primary caregiver, and the evidence that the children thrived while living with their mother in Louisiana. These omissions constitute an abuse of discretion.<sup>4</sup> Additionally,

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<sup>4</sup>"The findings of fact should reflect that the court considered stability as a factor in the custody decision and the weight the court accorded it." *Elmer v. Elmer*, 776 P.2d 599, 605 (Utah 1989); accord *Cummings v. Cummings*, 821 P.2d 472, 479 (Utah Ct. App. 1991).

the trial court ignored Mr. Peterson's warnings of the negative impact to the children if they were removed from their mother. In fact, the expert testimony of Mr. Peterson as well as his recommendation preponderated in favor of continuing custody at the very least with Ms. Hanson in some fashion or another. The trial court gave little or no explanation for its refusal to follow this recommendation. "[A]lthough the trial court is not bound to accept the evaluation [of the court appointed evaluator], . . . some reason for rejecting the recommendation . . . is in order." *Sukin v. Sukin*, 842 P.2d 922, 925-26 (Utah Ct. App. 1992) (quoting *Tuckey v. Tuckey*, 649 P.2d 88, 91 (Utah 1982)).

Notwithstanding the principles of deference given to the trial court's evidentiary findings, the record demonstrates that the court's disregard of the need for consistency and stability, especially given the rather even parenting abilities, constitutes an improper application of the law and a resulting abuse of discretion.

In *Larsen v. Larsen*, 888 P.2d 719 (Utah Ct. App. 1994), a case that is eerily similar to the case at bar, father and mother were divorced after nine years of marriage and three children, with mother receiving by way of stipulated settlement custody of the children. *Id.* at 721. Shortly after the divorce, mother decided to move with the children to Oregon where she intended to marry her fiancé. *Id.* Father filed a petition to modify custody

because he believed that the move would inhibit his relationship with the children, disrupt the children's religious training, and remove them from their family and friends. *Id.* The trial court granted the petition, ordering that if mother moved from Summit County, Utah, physical custody of the children would transfer to father. *Id.* at 721-22. On appeal, this Court reversed the trial court's modification, concluding that there was not compelling evidence that residing in Summit County would be better for the children than allowing them to continue to reside with their life-long primary caregiver. *Id.* at 723, 727.

As in *Larsen*, the trial court in the instant case determined that the children should be removed from the custody of their mother and placed in their father's custody if, and only if, their mother were to reside "in Salt Lake County, or a nearby county within reasonable distance (less than 150 miles)" of their father's residence. Based on the trial court's analysis and findings, the court's ruling basically means that the trial court believed the children's domicile in Salt Lake County is so essential to their welfare that not residing there would be more detrimental than separating them from their life-long primary caregiver. Based on the above-mentioned case law, statutory law, and legal principles, the record on appeal does not demonstrate a compelling reason why residing in Salt Lake County or thereabouts would be better for the children than allowing them to reside with

their life-long primary caregiver where they undisputedly thrived and flourished.

The trial court, in its ruling, focused on the children being in close proximity to extended family in Utah. While this factor is an appropriate factor for the court's consideration, "this, by itself, is insufficient to disturb a previously established custody arrangement in which the children are happy and well-adjusted." *Id.* at 726. In fact, according to Utah case law, this factor, on the spectrum of relevant and important factors, is at the less significant end of the spectrum. See *Hudema v. Carpenter*, 1999 UT App 290, ¶36, 989 P.2d 491.

Like *Larsen*, it is not disputed that Mr. Hanson is and can continue to be a positive factor in the children's lives. In fact, the evaluator stated that sharing longer blocks of time together,<sup>5</sup> in contrast to more frequent visitation, could facilitate relationships between Mr. Hanson and the children.

### **CONCLUSION**

Based on the foregoing, Ms. Hanson respectfully requests that this Court reverse the trial court's modification ruling and remand the case to the trial court for further proceedings consistent

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<sup>5</sup>See Child Custody Evaluation Report, p. 6.D. (suggesting primary physical custody of the children by Mr. Hanson during summers, subject to Ms. Hanson's parent time in Utah if she chooses to exercise it.)



with the Court's opinion, including a reconsideration of her request for reasonable attorney fees.

RESPECTFULLY SUBMITTED this 17th day of February, 2009.

ARNOLD & WIGGINS, P.C.

---

Scott L Wiggins  
*Counsel for Appellant*

**CERTIFICATE OF SERVICE**

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed by First-Class Mail, postage prepaid, two true and correct copies of the foregoing **BRIEF OF APPELLANT** to the following on this 17th day of February, 2009:

Mr. Bradley G. Nykamp  
Peterson & Nykamp  
5383 South 900 East, Suite 103  
Salt Lake City, UT 84117-7266  
*Counsel for Appellee*

---

Scott L Wiggins

## **ADDENDA**

Addendum A: Decree of Divorce  
Addendum B: Child Custody Evaluation  
Report  
Addendum C: Memorandum Decision and Amended Order  
Modifying Decree of Divorce  
Addendum D: Notice of Appeal

Addendum A: Decree of Divorce

JENNIFER P. LEE #6765  
LAW OFFICE OF JENNIFER P. LEE  
ATTORNEY FOR PETITIONER  
1775 SUNRISE PARK DRIVE  
SALT LAKE CITY, UTAH 84093  
TELEPHONE: (801) 545-9939

ENTERED IN REGISTRY  
OF JUDGMENTS  
DATE 10/30/01

*[Handwritten signature]*

IN THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH

CHAD JASON HANSON,

Petitioner,

vs.

ALLISON SARA HANSON,

Respondent.

)

)

DECREE OF DIVORCE

)

)

)

Civil No.

014905177

)

Judge

Henriod

)

Commissioner

Evans

The above-captioned case was submitted to the Court upon the pleadings and affidavits previously filed. Respondent has executed an Acceptance, Appearance, Waiver and Consent to Default, which has been filed with the Court. Based upon such pleadings, and good cause appearing, and the Court having made its Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED, DECREED AND ADJUDGED that:

I. Petitioner is granted a divorce on the grounds of irreconcilable differences, the same to be final upon entry in the Registry of Actions.

Divorce Decree @J



014905177

JD2113027

HANSON, ALLISON

JD

IMAGED

44

2. Respondent is granted primary physical custody of the minor children, subject to Petitioner's reasonable visitation rights as set forth below.

- a. Respondent shall provide Petitioner at least 30 day advance written notice of intent to move from Utah to any other State. If Respondent does move from the State of Utah, she shall bear all transportation costs for the minor children to visit Petitioner.
- b. Neither parent shall disparage the other parent, or any member of the other parent's household or family, in the presence of the minor children. Each parent shall immediately remove the minor children from the presence of any third parties engaged in such disparagement.
- c. Neither party shall involve any of the minor children in visitation scheduling, or any issues of this divorce, including but not limited to child support payments, child support reimbursements, or debt allocation. No child shall be asked to bear messages from another parent pertaining to such issues.
- d. The parties shall share legal custody of the minor children. Each parent shall have the right to access to all records and information concerning the health, education or welfare of the minor children. Each parent shall be entitled to participate in all special events, presentations, and recognitions of the minor child. Each parent shall inform the other parent, within 24 hours of that parent's first notice, of any parent-teacher conferences, appointments, or events involving the minor child. If

the parent's disagree as to any decision concerning the health, welfare or education of the minor children, then Respondent's decision shall govern.

- e. Reasonable visitation should be defined as the parents may agree. If they are not able to agree, the definition will be as follows:

**Midweek:** One evening, at noncustodial parent's choice, 5:30 - 8:30 p.m. or, at the election of the noncustodial parent, from the time the child's school is regularly dismissed until 8:30 p.m.

**Alternate Weekends:** Friday 6:00 p.m. to Sunday 7:00 p.m.  
OR, at noncustodial parent's choice  
From the time that school is dismissed on Friday until 7:00 p.m.  
Sunday

HOLIDAYS TAKE PRECEDENCE OVER THE WEEKEND VISITATION AND  
DOES NOT CHANGE THE ALTERNATING WEEKEND SCHEDULE

**Holiday Visitation:** 6:00 p.m. day before the holiday to 7:00 p.m. of the holiday unless specified otherwise  
And  
If a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's school attendance on that day

And

If a holiday falls on a weekend or Friday or Monday and the total holiday period extends so that the child is free from school and the parent is free from work, the noncustodial parent is entitled to the longer holiday period

AND

The noncustodial parent may choose to begin visitation at the time that the child is dismissed from school

### Odd Numbered Years

Human Rights Day, from 6:00 p.m.  
Friday until 7:00 p.m. Monday  
Spring Break or Easter from 6:00 p.m. on  
the day school lets out until 7:00 p.m.  
the Sun. before school resumes  
Memorial Day Fri. 6:00 p.m. to  
Mon. 7:00 p.m.  
July 24th from 6:00 p.m. the day before  
the holiday until 11:00 p.m. July 24  
Veteran's Day  
Day before or after Child's Birthday  
From 3:00 p.m. to 9:00 p.m.  
First Half Christmas Vacation, including  
Christmas Eve and Christmas Day  
To 1:00 p.m., so long as the entire  
holiday is evenly divided

### Even Numbered Years

President's Day  
July 4<sup>th</sup> to 11:00 p.m.  
Labor Day from 6:00 p.m. Friday to  
Mon. 7:00 p.m.  
Columbus Day  
Fall Break/UEA weekend from Wed. 6:00  
p.m. to 7:00 p.m. the last night  
Thanksgiving from Wed. 7:00 p.m.  
to Sun. 7:00 p.m.  
Child's birthday, from 3:00 p.m. to 9:00 p.m.  
Second Half Christmas Vacation  
Beginning 1:00 p.m. Christmas Day,  
so long as the entire holiday is  
evenly divided

**Christmas:** The Christmas holiday, as defined at §30-3-32(3)(b), begins on the evening that the child gets out of school for the Christmas break. The holiday lasts until the evening before the child returns for school, except for Christmas Eve, Christmas Day, and New Year's Day.

**Father's Day:** With Father 9:00 a.m. to 7:00 p.m.

**Mother's Day:** With Mother 9:00 a.m. to 7:00 p.m.



**Summer:**

4 weeks during summer or, if year round, ½ school breaks. The custodial parent is allowed two weeks uninterrupted time. The remaining two weeks are subject to visitation by the custodial parent. If the child is in year-round school, the custodial parent must be permitted holiday visits and telephone contact. Notification of summer visitation or vacation weeks with children should be provided in writing to the other parent at least 30 days in advance.

**Telephone:**

Contact at reasonable hours and for reasonable duration

3. Petitioner is ordered to pay to the Respondent as and for child support from the date of filing of this action:

a. A sum of not less than \$1190 per month as base support for the minor children of the parties, pursuant to the Uniform Child Support Guidelines until said children become 18 years of age, or have graduated from high school during the children's normal and expected year of graduation, whichever occurs later.

b. The base child support award shall be reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days. If the dependent child is a recipient of Aid to Families with Dependent Children, any agreement by the parties for reduction of child support during extended visitation shall be approved by the Office of Recovery Services. However, normal visitation and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

c. Each of the parties should be under mutual obligation to notify the other within ten (10) days of any change in monthly income.

4. For the health and well-being of the minor children:

a. Respondent shall maintain insurance for medical expenses for the benefit of the minor children.

b. Both parties shall share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance. The children's portion shall be calculated by dividing the premium amount by the number of the parties' children.

c. Both parties shall share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the minor children and actually paid by the parties.

d. The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, upon initial enrollment of the dependent children, and thereafter on or before January 2, of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services, of any change of insurance carrier, premium, or benefits within 30 calendar days of the date that parent first knew or should have known of the change.

e. A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

f. A parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with the Subparagraphs "d" and "e" above.

5. Both parties shall share equally the reasonable work-related child care expenses of the custodial parent. Petitioner shall be given the opportunity to provide personal care for the minor children as opposed to any other child care provider or relative. The non-custodial parent shall begin paying his or her share of child care expenses on a monthly basis immediately upon presentation of proof of the child care expense.

6. As to each and every joint indebtedness incurred by the parties during the marriage, Petitioner shall ensure that any amount outstanding at the time of filing of this action is paid off to a zero balance. As soon as the AMOCO card is paid off, the account shall either be closed or Petitioner's name shall be removed from that account. Similarly, the Capitol One credit card, and all other credit cards held jointly in Petitioner's name shall be closed or Petitioner's name shall be removed from the account as soon as the balance is reduced to zero.

7. Personal property acquired during the marriage should be awarded to each of the parties as they have heretofore divided it.

8. As to the marital home at 184 West 1380 North, Tooele, Utah, Respondent should be awarded all right, title and interest. Accordingly, Petitioner shall convey all right, title and interest in the home and real property to Respondent. Petitioner should receive an equitable lien in said property in an amount equal to one-half of the net equity accrued by the parties at the time of satisfaction of the lien. Said net equity shall be determined by an appraisal conducted by a

professional appraiser, and deducting from the appraised value the amount of all encumbrances and costs of sale. The lien shall be payable upon the first of the following conditions:

- i. The youngest child of the parties reach eighteen (18) years of age, marries, or otherwise become emancipated;
- ii. Respondent remarries;
- iii. Respondent ceases to use the home as the primary residence;
- iv. Respondent cohabits with a non-relative adult of the opposite sex in the home.

9. Respondent is awarded \$1000.00 per month as alimony from Petitioner. Alimony payments shall continue for the duration of the marriage, 8 years, 6 months.

10. The Respondent is entitled to claim one of the parties' minor children as a tax deduction. Petitioner is entitled to claim three of the parties' minor children as a tax deduction. Either party may "purchase" from the other party the right to claim additional children as tax deductions for the amount of tax detriment suffered by the other party as a consequence of the loss of such a deduction. (For example, if Respondent's taxes will increase \$400 because of the loss of the tax deduction, then Petitioner must pay \$400 for the right to claim the additional child as a deduction. Respondent must consent to the sale of the tax deduction.)



11. Petitioner and Respondent shall file a joint income tax return for the year 2001. Any income tax refund received for said year shall be divided equally between the parties. Any tax liability shall be divided equally between the parties.

12. Each party shall bear his or her own attorney fees and expenses incurred in this action.

13. Each party shall execute and deliver to the other such documents as are required to implement the provisions of the Decree of Divorce entered by the Court.

DATED this 2 day of October, 2001

BY THE COURT:

  
\_\_\_\_\_  
District Court Judge



Approved as to form:

  
Alison Sara Hanson, Respondent

Addendum B: Child Custody Evaluation  
Report

**IN THE THIRD JUDICIAL COURT,  
SALT LAKE COUNTY, STATE OF UTAH**

Chad Hanson  
Petitioner

vs.

Allison Hanson  
Respondent

**CHILD CUSTODY  
EVALUATION REPORT**

Civil No: 014905177

Judge: Stephen L. Henroid

Commissioner: Michael Evans

APPOINTED CUSTODY EVALUATOR: Kim D. Peterson, M.S.W.

DATE OF REPORT: September 18, 2006

DATE OF SETTLEMENT CONFERENCE: May 31, 2006

MINOR CHILD(REN) & DATES OF BIRTH: Tylar, age 12 (DOB: 6-26-93); Skylar, age 12 (DOB: 6-26-93); MacKenzie, age 10 (DOB: 1-16-95); Brenna, age 8 (DOB: 6-19-97)

MOTHER: Allison Hanson

FATHER: Chad Hanson

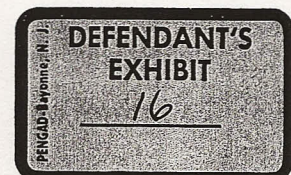
**OTHER PARTIES EVALUATED AND RELATIONSHIP TO CHILDREN:**

Kim Hanson, step-mother

GUARDIAN ad LITEM: None

MOTHER'S COUNSEL: Joseph lee Nemelka

FATHER'S COUNSEL: Jared G. Colman





**KIM D. PETERSON, M.S.W.**  
**LICENSED CLINICAL SOCIAL WORKER**

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## CONCLUSIONS

### A. Summary of Children's Needs

The children's basic needs include nutrition, shelter and medical care. They need nurturing and support as well as attention and positive interaction with parents and significant others. They need appropriate guidance, structure and discipline and positive role models who will teach them values and appropriate conduct. They need educational support as well as parents who will be sensitive to and aid in their emotional development. The children need to be raised in a stable environment free of family dysfunction or significant parental impairments where their relationship with each parent is supported.

All of the children appear to be happy and reasonably well adjusted. They do not present with significant emotional or behavioral difficulties. They are, however, stressed about their parent's divorce and the conflict between them which is a risk factor for emotional and/or behavioral problems.

### B. Summary of Each Parent's and Step-parent's Ability and Propensity to Provide for the Children's Needs

Mother: Allison has been the children's primary care giver and she appears to do a good job of meeting their basic needs. Allison presents as responsible and she provides appropriate structure and she helps the children educationally. As a single parent, Allison struggles to find time to do things with the children, but this is not indicative of any kind of neglect and she is putting a lot of energy into taking care of them. Allison presents as quite nurturing and the children have a good relationship with her. She is, however somewhat rigid in how she deals with the children's emotions and she is less sensitive than Chad to their feelings. She appears to do



reasonably well with limits and discipline and she has taught the children to be responsible and well mannered. The three older children report no inappropriate discipline. Brenna reports her mother has spanked, hit and also swore at her, but there is no indication that her behavior has reached the point of abuse.

Father: Chad was not that involved in parenting when the children were younger, secondary to being more focused on work and being with friends. However, over time, Chad has matured and he has become a much better father and the children are now very much a priority to him. Chad takes good care of the children and he meets their needs. Chad presents as nurturing and, in comparison to Allison, he is more tuned in to his children's feelings and they have a good relationship with him. Chad presents as attentive and, when the children visit, he makes a concerted effort to do a lot of fun things with them. The children see their father as being more attentive than their mother, but in this evaluator's opinion, he could have made a greater effort to see the children more frequently since they moved to Louisiana. Chad appears to have reasonably good disciplinary skills. He has reasonable limits and there is no indication of him mistreating the children.

Step-mother: Kim presents with good parenting skills and she has done a good job with her daughter, Brianna. Kim takes an active role in parenting Chad's children. She presents as nurturing and attentive and she does well with limit setting and discipline. Kim is very accepting of Chad's children and they have developed a good relationship with her.

### **Impairments**

There are currently no concerns about either parent's mental health, functioning or behavior.



### **Availability**

Both parents work and one does not appear to be significantly more available than the other. However, Chad's schedule often requires him to work later in the evening which would be less conducive to having custody.

### **Facilitating a Relationship with the Other Parent**

The children are quite aware of the conflict between their parents. For the most part, they deny hearing their parents say negative things about each other, but they occasionally overhear things and they are aware of their parents getting into arguments over the phone. Some of the father's correspondence with Allison which I reviewed, did come across as threatening and intimidating and the summer of 2005, he used poor judgement in talking to the children about custody and telling them they could choose where they live. On the other hand, it appears as though Allison, at times, has been somewhat obstructionistic about visits. Her move to Louisiana is a concern, especially given her unwillingness to return to Utah once her relationship with her ex-husband did not work out. In spite of these problems, the conflict between these two parents seems fairly mild in comparison to many of the cases where custody is an issue. Never-the-less, the children are caught in the middle and, in the long run, it will be in their best interest if each parent is able to take more responsibility for their own behavior and reduce the conflict.



### **Unique Fit Between Children's Needs and Parent's Capabilities**

Both parents present as adequate and capable and one does not appear to be significantly better than the other. Each parent presents with their own unique strengths and weaknesses and, in many ways, they seem to compliment one another. For example, Allison has been more of a constant in the children's lives, whereas Chad presents as more sensitive and tuned in to their feelings.

#### **C. Suggested Custody Arrangements (Legal and Physical)**

It is recommended that the parents share joint legal and physical custody.

#### **D. Suggested Parent-Time Arrangements**

There are two alternatives. The first recommendation is for Allison to return to the Salt Lake area. Her home would be the children's primary residence and Chad would have liberal parent time. The actual schedule would need to be negotiated and should center around the parent's work schedules.

The alternative recommendation would be for the children to remain in Louisiana and Allison would have physical custody during the school year, subject to Chad's parent time at Christmas and another visit Spring and Easter break. Chad would have primary physical custody during summers, subject to Allison's parent time in Utah if she chooses to exercise it. Arrangements would also need to be made for the children to spend time with their maternal grandparents.



It is strongly recommended that the parents try one more time to mediate a settlement. It is in the children's best interest for the parents to reach an agreement and to spare everyone the stress associated with further litigation.

**E. Rule-4-903 Considerations**

**I. Children's Preference**

The children were interviewed twice. In both instances, Tylar indicated a desire to live with his father. Skylar, however, indicated she would rather live with her mother. MacKenzie, when interviewed the first time, reported she would rather live with her father, but if her mother returned to Utah, then she would rather live with her. During the second interview, she indicated she would rather live with her father. During the first interview, Brenna reported she would like to see her father more but she would rather live with her mother and, during the second interview, she had no opinion. It is noteworthy, that all of the children prefer Utah to Louisiana which has a lot to do with not only missing their father, but also wanting to spend more time with both extended families.

**2. Benefit of Keeping Children Together.**

Moving from Utah to Louisiana and being separated from their father and other relatives has been hard enough on the children, but to separate any of the children now would create an even greater sense of loss. The children have a significant bond with each other and, separating them at their current ages, especially if they were to live in different states, would not be in their best



interest.

3. Relative Strength of the Children's Bond to One or Both of the Prospective Custodians.

Currently, Tylar presents as slightly more bonded to his father. On the other hand, Skylar is more bonded to her mother. MacKenzie and Brenna appear to be equally bonded to their parents.

4. General Interest of Continuing Previously Determined Custody Arrangements Where the Children are Happy and Well Adjusted.

Although the children are not especially happy about living in Louisiana, they do present as happy and well adjusted in their mother's home. In the long run, the children will likely be happier if they were to live in Utah, but there is no reason to believe they would be better adjusted here. The current amount of time Chad spends with the children is unacceptable. It is in their best interest to spend significantly more time with him.

5. Factors Relating to the Prospective Custodians Character or Status or Their Capacity or Willingness to Function as Parents, including:

1. Moral Character and Emotional Stability.

Allison suffers from low self-esteem and she has been prone to anxiety when stressed. Following Mackenzie's birth she experienced panic attacks for a period of one and a half to two years. However, there is no indication of significant psychiatric symptoms at this time. Allison has experienced



considerable frustration in dealing with Chad, but otherwise, she is viewed as emotionally stable and functional and she is of good character.

Chad was a very difficult child. He was diagnosed with ADHD and had significant behavioral difficulties. His acting out became more pronounced during adolescence and he began using drugs and alcohol and he eventually ended up in treatment for chemical dependency. Chad was medicated for ADHD as a child, but as an adult, he has matured and he has become more functional and stable and he is no longer on medication. Never-the-less, in comparison to Allison, Chad's history has been less stable and as early as February of 2000, in a letter to Allison he refers to himself as being unstable and having problems in being a responsible parent and he implies problems with substance abuse. In 2002, in another letter to Allison, he talks about consulting a doctor to find out if he is bi-polar. Never-the-less, there are no indications at this time of severe mood or behavioral difficulties. Chad is of good character, but he admits to a brief affair when married to Allison.

ii. Duration and Depth of Desire for Custody.

Allison has always wanted custody of her children and she has a strong and sincere desire to continue to be the children's custodial parent. Chad did not seek custody until recently. It should be noted that his petition before the Court is to obtain custody of Tylar, but not his siblings and his motivation is based primarily on Tylar telling him he would



like to live with him.

iii. Ability to Provide Personal Rather than Surrogate Care.

Both parents work and, overall, one is not available more than the other. However, because Chad often works evenings, his schedule is less compatible with custody.

iv. Significant Impairment of Ability to Function as a Parent Through Drug Abuse, Excessive Drinking or Other Causes.

Chad has a history of past drug and alcohol abuse and he was a patient at Day Spring when age 19. After leaving treatment he continued to dabble in drugs for several years. He denied problems with substance abuse since shortly after his marriage to Allison. However, it is noteworthy that he received an alcohol related reckless driving ticket when age 31.

Allison denies ever using drugs, however, Chad claims that they used drugs together at the beginning of their relationship.

Currently, there is no indication that either parent is abusing drugs or alcohol.

v. Reasons for Having Relinquished Custody in the Past.

At the time of the divorce, the parents agreed on joint legal custody. Chad, however, agreed that Allison should



have physical custody of the children. Chad, at the time, recognized Allison's role as the children's primary care giver and he was struggling somewhat emotionally at the time.

vi. Religious Compatibility With Children.

Religion is not an issue in this case.

vii. Kinship, Including Extraordinary Circumstances and Step-parent Status.

It is significant that the father is remarried and has the advantage of a two-parent household. Kim presents as stable and she has good parenting skills and she contributes to the children's welfare. It also appears as though Kim adds to Chad's stability. Together, they function well as parents supporting each other and they have a family oriented lifestyle.

It is very significant that the majority of the children's extended families, on both sides, live in Utah. Being away from these relatives has been difficult for the children and it would be in their best interest to have more contact with them.

viii. Financial Condition.

Chad has greater financial resources and he is able to provide the children with more material things. Allison is providing the children with an adequate home, but she is



struggling financially.

ix. Evidence of Abuse of Subject Children and Subject Spouse.

Neither parent has ever abused the children. There is no history of domestic violence.

6. Other Factors Deemed Important by the Evaluator, Other Parties or the Court.

Chad expressed concern about the living conditions in Louisiana. For example, they are living in an area where there are swamps and alligators and poisonous snakes. He is also concerned about hurricanes. However, living in Louisiana per se is not an issue in this evaluator's opinion. Allison's home is not as spacious as Chad's, but she is providing adequate housing and, contrary to Chad's portrayal, I did not view her home as being cramped. There are swamps nearby, but they are not next to the house and there does not appear to be any significant danger to the children. They live in a rural area with little traffic and, one could argue that, in their neighborhood, they are safer than if they were to live in a large city.

**F. Special Considerations**

If the children remain with their mother in Louisiana, it is felt appropriate that once they reach high school, if they should desire to live with their father, they should be allowed to do so. However, if that should occur, the parenting plan would need to be revised to some degree in as much as that would necessitate the children being separated from each other.



## **BACKGROUND**

### **A. Mediation Resolution Attempted?**

Yes.

### **B. Temporary Custody and Parent-Time Arrangement.**

Currently, the parents share joint legal custody, but the mother has physical custody of the children. For the past several years the children's contact with their father has primarily consisted of summer and Christmas visits.

### **C. Current Living Arrangements.**

Currently, the mother lives in Ponchatoula, Louisiana in a three-bedroom home which she is renting. Aside from the children, no one else lives in her home. The father and his current wife, Kim Hanson, live in South Jordan, Utah in a five-bedroom home which they are buying. Also in the home, is Kim's child from a previous marriage, Brianna, age 10)

### **D. Each Parent's Perception of Custody Issues.**

Chad is taking the position that Allison should return to Utah and that he should have significantly increased parent time with the children. If she does not return to Utah, Chad believes he should be granted primary physical custody. Since moving to Louisiana, Allison has not provided the children with much stability and he felt he has more to offer as he has remarried and can provide the children with a two-parent home where their needs are more likely to be met. He believed he would provide more stability and that he and the children have a closer bond and they are happier when they spend time with him. He believed that Allison has been



putting herself first and not considering the children's best interest and there is a long history of her being obstructionistic and not being cooperative with his parent time. In comparison, he would do more to facilitate the children's relationship with the other parent.

Allison believes she should retain physical custody of the children as she has been a good parent. She has done a good job of raising the children and they are happy and well adjusted in her home. She would not want to return to Utah as she does not fit in there and she has no roots (even though her parents now live in Utah). She felt that living in a small town offers the children many advantages over living in a large city and she has provided them with a stable and safe environment. Allison also believes that the children are more closely bonded to her.

## **EVALUATOR'S PROCEDURES**

### **A. Interviews with Adults and Children**

**Identifying Data:** The mother, Allison Hanson, age 35 (DOB: 9-27-70) lives in Ponchatoula, Louisiana. The father, Chad Hanson, age 35 (DOB: 12-4-70), lives with his current wife, Kim, age 32 (DOB: 11-2-73), in South Jordan, Utah. Allison and Chad were married January 16, 1993 and they have been divorced since October 30, 2000. Allison has custody of their four children Tylar, age 12 (DOB: 6-26-93); Skylar, age 12 (DOB: 6-26-93); MacKenzie, age 10 (DOB: 1-16-95) and Brenna, age 8 (DOB: 6-19-97). Also in Chad's home is a child from Kim's first marriage, Brianna, age 10 (DOB: 6-19-95).

**Mother:** Allison Hanson is the youngest of two children and she was raised in Michigan, Tennessee and Louisiana. She described her family as normal and she reported a happy childhood and a good relationship with her parents. She denied family dysfunction and her parents have been



together for 38 years. Allison denied significant childhood difficulties and she did very well in school, graduating in the top ten in her class. She has since attended two and a half years of college.

When asked about mental health issues, Allison reported that after MacKenzie's birth, she began having panic attacks which went on for a period of one and a half to two years. At the time, she was on medication. Since then she has done well emotionally with only occasional mild symptoms of anxiety when she is stressed. Allison denied any history of alcohol abuse, drug use or trouble with the law.

Allison has been married twice. She was previously married to her high school sweetheart, Ricky Murphy, for a period of five years and, after she and Chad divorced, she returned to Louisiana to be with him. They were together for approximately one year, but they separated October 2003.

Allison was age 22 when she met Chad and they lived together for three months prior to their marriage. At first, things went fairly well, but there was a lot of stress, including the birth of four children in four years. They were also trying to run a business which created a lot of stress. Chad was disconnected from family life and he never helped with the children and "it was like having a fifth kid." They began growing apart and Chad had a brief affair, although at the time, Allison did not know about it. The main problem in their relationship was a lack of communication. Money was always an issue as their income was up and down and Chad tended to be an impulsive spender. Furthermore, they were never able to get on the same page regarding child rearing and discipline. Chad was described as being very controlling and, it had to be his way or no way. On one occasion, they separated and Chad saw a therapist who told him he was bi-polar. He took medication for a period of two years, but he was never very compliant with it. Allison denied domestic violence, but Chad was either



very high or very low and, when angry, he would throw things. At one time, they were separated for a period of nine months. When they got back together, they moved to Tooele to start a new life, but things didn't get any better. Chad never seemed happy and he started coming home later and later. When he was home, he did not help with the children and he was only interested in playing video games. "We both knew we were done," and they separated for good. Allison was upset when Chad left, but on the other hand, she knew the marriage wasn't right and "it just wasn't working."

Chad filed for divorce, but custody was never an issue. They agreed to share joint legal custody with Allison being granted primary physical custody. At first, their divorce was amicable and she and Chad were able to be friends. Chad took the children every other week-end and he came to her house to watch them when she worked on Wednesday evenings. However, things changed once he met and married his second wife, Jennifer. Allison tried to befriend Jennifer, but she bad mouthed her to Chad. They changed the visitation schedule and, when Allison was unable to comply because of her work schedule, they accused her of being uncooperative. Chad was only with Jennifer for approximately one year, but by the time they separated, Allison's relationship with Chad had become very negative and he was really angry and hard to get along with. They had a lot of conflict over the visitation schedule and Chad was very manipulative and, when he refused to bring the children back at Christmas, "I was devastated." Allison never tried to keep the children from Chad, but when he did not get his way, he would accuse her of being uncooperative.

Eventually, Allison decided to move back to Louisiana to be with her first husband, December 2002. At first, Chad seemed okay with the idea of her moving, but as they got closer to the actual date, he became more reluctant. They worked out an agreement where Chad would have the children eight weeks every summer and every other Christmas.



Unfortunately, custody became an issue again December 2005 as Tylar was asking to stay with his father for the school year. Allison suspected some of this was Tylar's doing, but she also believes Chad had been putting pressure on him to live with him. Chad subsequently filed for custody of Tylar, but not the other children and, since then, "we haven't been able to talk," which Allison said "really sucks." Allison said she would like to be able to once again have an amicable relationship with Chad where they are able to talk about the children, but now there are so many negative feelings, "I just can't do it."

When asked about Chad's parenting, Allison said he helped out quite a bit with the twins, but as the other children came, he became less and less involved in their physical care. Chad worked all of the time and he left the majority of parental responsibility to her. He didn't have time to support Tylar in Scouts and he never went to parent/teacher conferences or to Tylar's soccer games. Chad played with the children when they were little, but as time went on, he became less attentive and, as the marriage fell apart, he spent less and less time at home. Since the divorce, Chad initially left the majority of parental responsibilities to Jennifer and, now to Kim. He has, however, been pretty good about doing activities with the children. Allison saw Chad as being weak in terms of discipline and, when they were together, he never took an active role in limit setting. The children have a good relationship with their father and they enjoy spending time with him.

Allison saw herself as being a good parent, but "I'm sure I could do better." People are always telling her they are amazed at how well she has handled the children by herself and it's getting easier as they get older. In the past, Chad always thought of her as being a good parent. She felt she has always taken good care of the children and met their needs. She saw herself as being patient and organized. She has always helped the children academically and she goes to parent/teacher conferences. Allison saw herself as being attentive and she has always been very involved in doing



things with the children and taking them on activities. She has also had them involved in a lot of extra curricular activities. Allison felt she does well with limits and discipline and the children know what their limits are and, they are well behaved. She is consistent and she usually stays calm when dealing with negative behavior, although there are times when she does yell. The children are very close to her.

After they separated July 2001, Allison remained in the family home. Her former husband, Ricky, contacted her July 2002 and she subsequently moved back to Louisiana to be with him December of that year. She and Ricky began living together and Allison felt the children adjusted well to the situation. She and Ricky stayed together for a year and a half, but unfortunately, "we came from two different worlds," and there were too many differences. He has three children who came for visitation and it was also difficult trying to blend their families. Ricky's other ex-wife was threatening to take the children and move to Texas and he eventually went back to her October 2003. The separation was hard on Allison, but also a relief.

At the time of their separation, Allison moved to a home where she stayed for on year. In 2004, she moved next door to a three-bedroom home which she is renting. For the past two and a half years, Allison has been employed by Care, Inc. as the Human Resource Director. Her hours are from 8:00 a.m. to 4:00 p.m. Monday through Friday and she earns \$23,000 per year. In the past, she mostly did clerical work and, at one time, she helped Chad run an insulation business.

Allison said she has been happily single for the past two and a half years. Her life centers around doing things with her children and supporting them in their school and extra curricular activities. She has only been on one date since she and Ricky separated and there is not room for more drama in her life. Allison goes out with girlfriends maybe once a



month and, at one time, she and several friends were in a book club. Allison has a good support system with friends and her landlord has "adopted us to be a part of their family." Allison reported she is in good health and she doesn't smoke. Her interests include arts and crafts, scrap booking and reading, but she really doesn't have the time to pursue these activities. Allison was raised in the Episcopal church, but she is no longer involved in that religion. She occasionally attends other churches with friends and she has thought about getting the children involved in one of the youth groups in her town. Allison reported occasional use of alcohol, but she doesn't keep it in the house.

When asked about the children's adjustment, Allison indicated they are all doing well in school and none of them have had significant emotional or behavioral problems. All are doing well socially.

When asked if she had any concerns about things going on in Chad's life, Allison reported that prior to his marriage to Kim, there were a lot of women in and out of his life. However, since being with her, he appears to be more settled. Kim was described as "great," and she is the one Allison arranges visitation with. The children enjoy going with their father and, during visits, he makes more of an effort to do things with them. However, he does have a demanding job and he still spends a lot of time at work when they are there with him.

Allison indicated she has given consideration to Tylar's request to live with his father, but she is unable to picture him living away from her or his siblings. She felt Tylar was happy living with her, but if he was miserable in her home or not doing well in school, then that would be another matter. Allison said she has no objection to the children spending more time with their father, but because she has to pay for all of the transportation, she has not been able to afford additional visits. Allison said she has considered moving back to Utah, but she never felt like she fit in



there, even though that is where her parents live. She also prefers living in a small town and she would not want to start over again and it would be difficult finding a job as good as the one she now has. Allison felt she should retain custody because "I'm all they have ever had." She strongly believed the children should stay together. She also believed the children are more closely bonded to her.

Father: Chad Hanson was raised in the Salt Lake area. He is adopted and the fourth of five children in a good family. Chad reported a good relationship with his parents and a happy childhood. He denied significant family dysfunction, but two of his siblings had a lot of medical problems which created quite a bit of stress. As a child, Chad was diagnosed with ADHD and, for a time, was on medication and in resource classes. He reported inconsistent school performance, but overall, he maintained a "C" average and he graduated from high school. When asked for more details about mental health issues, Chad reported that after he and Allison separated, he went through a period of depression and he sought counseling and was briefly on medication. When age 17, Chad was drinking quite a bit and he ended up in a residential and day treatment program for a period of nine months. He denied problems with alcohol since that time. However, he received an alcohol related reckless driving ticket when age 31. He denied any other trouble with the law. After leaving treatment, Chad continued to dabble in drugs including: marijuana, cocaine, LSD and mushrooms. When he and Allison got together, they used drugs together, but both stopped when they started their family. Chad indicated he has not used drugs since 1995 and for the rest of my life "I'll be in recovery."

Chad met Allison when age 21 and, seven months later they were married. At the time, Allison was pregnant and otherwise he would not have married her as they communicated poorly and were very different. Chad described himself as being a high energy person and he enjoys being



with people, whereas Allison tends to be more quiet. Chad started an insulation business, which took a lot of time and he was putting more energy into that than into the family which had a negative impact on their relationship. There was never that much romance in their relationship and Chad never felt that connected to Allison. They tried working on their relationship but Allison was very closed emotionally and "I eventually went numb." Allison was unhappy that he smoked and used drugs and also that he didn't pay enough attention to the family and "I can't argue with that." They never argued much and, when there were problems, Allison didn't want to discuss them and things were never resolved. There was quite a bit of financial stress and conflict over money and they eventually had to file bankruptcy. Chad admitted he had an affair that went on for a couple of months, but Allison never knew about it until after their first separation. After getting back together, things were not getting better and, in fact, they were getting worse. Chad subsequently left and filed for divorce.

Chad gave Allison everything and they agreed on joint legal custody with Allison having physical custody and Chad having standard visitation. Because of Chad's job, it was difficult for him to exercise visitation, but Allison was usually flexible and willing to work with his schedule. However, there was periodic conflict over his parenting time as she was bitter about the divorce. Things got a lot worse after he married his second wife, Jennifer. During that time, the conflict between them intensified and she began accusing him of not caring about the children. Chad believed that, during that time, Allison was telling the children negative things about him and they became overly cautious and appeared to be caught in the middle. Chad had voluntarily agreed to pay Allison \$2,200 a month in child support and alimony, but he eventually realized he couldn't afford that much. She agreed that alimony would be reduced from \$1,000 to \$400 per month, but she later seemed quite angry about it and accused him of tricking her. After the divorce, Allison stopped making house payments and she continued to use his credit cards, contrary to the Court order. Her car



was repossessed and, thereafter, he took over her debts and she agreed to pay him back, but never did.

The fall of 2002, Allison gave Chad a letter stating her intention of moving to Louisiana. Chad was really frustrated and he called an attorney, but was told there was nothing he could do about it. Chad pled with Allison not to move the children away from him. All of the children's friends and extended family, including her parents were in the Salt Lake area, but she refused to listen. Chad said he honestly believes Allison's primary motivation in moving was to punish him and to separate him from the children and, even though her relationship with her ex-husband, Ricky, did not work out, she has refused to return to Utah. Chad has been very disappointed with the current visitation schedule as he usually only has the children for 28 days in the summer and every other Christmas, although this past summer, he had them for two months.

Chad reported that Allison's life in Louisiana has not been stable. Her relationship with her ex-husband did not work out and the children did not like him and they complained of him hitting them and using corporal punishment. Allison has continued to have a lot of financial problems. She has moved the children four times and she had another vehicle repossessed and they had to evacuate twice due to hurricanes and they have consequently, missed over 15 days of school. Allison has been very secretive about what is going on with the children and he is not informed about things that are going on in their lives. He also complained about Allison listening in on his calls with the children.

The summer of 2004, the children began making statements about not wanting to return to Louisiana as they wanted to be with their old friends and relatives in Utah. In spite of this, Chad told them they needed to make the best of their situation. Chad visited the children in Louisiana, Christmas of 2004 and, seeing their environment there, he became even



more concern about their welfare. He learned they were living next to a swamp where there are snakes and alligators. It also appeared as though the children were not well supervised and the older children were allowed to take the younger ones on four-wheelers. They were living in cramped conditions and the children did not have much privacy. The summer of 2005 Tylar said he wanted to live with Chad. Chad tried to put Tyler off by playing the devil's advocate, but he has continued to be very adamant about living with him. Chad eventually told Tylar if that is what he really wanted, he would support him, but he needed to talk to his mother about it. He also had a family meeting and told the children they were old enough to have an opinion and he would support them if they wanted to live with him. When Tylar talked to Allison on the phone about wanting to live with his father, she told him they would talk when he returned to Louisiana. Since then, Tylar continues to want to live with Chad, but Allison is unwilling to consider his feelings.

When asked about Allison's parenting, Chad said she has basically been a good mother and she has taken care of the children's basic physical needs. However, Allison has poor communication skills and she is not able to discuss issues or problem solve with the children. She is not in tune with their feelings and, consequently it seems as though they are not that connected to her emotionally. When the children visit, they seem starved for attention and it appears as though she does not do that much with them. Allison tries hard with limits and discipline, but this is an area of relative weakness, because if the children push limits enough, she tends to give up. At times, she seems overly rigid and strict and she refuse to give the children any explanation about rules and she is easily irritated by them. She expects the children to address her "yes Mam" and her relationship with them is more formal and matter-of-fact and lacking in warmth. Chad complained of Allison being vindictive and putting the children in the middle. She has been unsupportive of their relationship with Chad and over the past three years, she has made it quite difficult for him to spend



time with them. The children appear fearful of their mother and, when they talk to Chad on the phone, they seem very inhibited. It seems as though they do not have their mother's permission to have a relationship with Chad and he believed she would be completely happy if he was totally out of their lives as long as she got child support.

When asked about his own parenting, Chad saw himself as being a good provider and he has always made sure the children's needs have been met. He admitted that, in the past, he should have been more involved in the children's lives and, at times, work did take priority. Never-the-less, he has always been very concerned about the children's welfare and what was going on in their lives. Over the years, Chad has become more and more focused on the children and he has become more emotionally connected with them than their mother and he takes the time to understand their feelings. He has realized that time with the children is the most important thing and he has spent a lot more quality time with them. Chad felt he does well with limits and discipline and he has reasonable rules. When the children are in his home, they receive a lot of structure. He stays calm when dealing with misbehavior and he takes the time to explain things to them. Chad saw himself as being much more supportive of the children's relationship with the other parent.

After Chad and Allison separated, he lived with a friend for a period of less than one year. He met his second wife, Jennifer, and they began living together and were subsequently married March 2002. However, things did not work out and they separated March 2003. They divorced because of a serious communication problem and she called the police on him, claiming that he had hit her and pulled a gun, which he said was totally untrue. After separating, Chad lived with his parents. He met his current wife, Kim, September 2003. They were engaged October 2004 and they began living together. They were subsequently married July 2005.



Kim, was raised in Maryland in a "strange and screwed up" family. Her parents divorced when she was quite young and, thereafter she lived with her father. He was a functional alcoholic and was in and out of rehabilitation. When age four, she went to live with her aunt for a period of two years. Her step-mother came into her life when she was six and she reported a great relationship with her. She reported an okay relationship with her father and, as an adult, she has only had limited contact with him. Kim's childhood was mostly happy and she learned to cope in spite of her family. She reported being a "good kid". Kim was a good student and, since graduating from high school, she has attended one year of college and she has been trained as a dental assistant. Kim denied any history of psychiatric difficulties and she has never had a drinking problem. She tried marijuana in high school, but otherwise, she has not used drugs and she has never been in trouble with the law.

Kim married her first husband, David, when age 21. They were together for three and one-half years, but subsequently divorced because he was seeing someone else. David has stayed involved in Brianna's life and they now have an amicable relationship.

Chad and Kim are currently buying a five-bedroom house in South Jordan, which they moved to in March 2005. Chad has been employed by Hinckley Dodge for seven years and he is now the sales manager. His hours are variable and he has a lot of flexibility and is able to take time off when the children visit. He usually works from approximately 10:00 a.m. to 8:00 p.m. Monday, Tuesday, Friday and Saturday. He reported an income of \$130,000 to \$140,000 per year. He is currently paying \$1,700 per month in child support, plus \$400 in alimony. Kim is employed by Oral Facial Surgical Art as a dental assistant. She began working there September 2005 and her hours are Tuesday from 8:00 a.m. to 5:00 p.m. Wednesday from 8:00 a.m. to 3:00 p.m. and Thursday and Friday from 8:00 a.m. to 5:00 p.m. She earns \$14 per hour. She previously worked for a



temporary dental agency for a period of three years. Kim currently receives \$200 per month in child support.

Chad and Kim report a good marriage. Kim has developed a very good relationship with Chad's children and she is very supportive of him obtaining custody. There have been some blending issues, but Chad's relationship with Brianna is improving. They report a family oriented lifestyle and they plan a lot of activities with the children and, when Brianna is with her father, they go on dates. They visit extended family most every week-end. Chad was raised in the LDS church and Kim is Episcopalian, but they report minimal religious involvement. They reported only occasional use of alcohol. Kim enjoys reading and Chad said his hobby is his work and seeing his salesmen succeed.

Chad complained of Allison being obstructionistic and uncooperative about his time with the children. Even when the children are in Utah, Allison dictates the amount of time he sees them and he has to plan his time around the time they spend with their maternal grandmother. Chad has never gotten the children's school schedules and he was unable to get their report cards until he got his attorney involved. When Chad paid for the children's school pictures, Allison took what she wanted and he got what was left over. Allison has refused to consider returning to Utah even though he has offered to help her financially and her mother has offered to allow her to stay in her basement. Chad said he does not want to take the children from Allison and he felt very strongly that the best solution would be for her to return to Utah where he and members of their extended family would have considerably more time with them as well. Chad felt, if Allison refuses to return to Utah, then the children should live with him as he has just as much right to be involved in their lives as she does. Allison does not have roots in Louisiana and she has not provided the children with that much stability since moving there. Chad said he has more to offer as he has remarried and he can provide the children with a two-



parent home. He and Kim live in a great neighborhood and he can provide more stability. He also felt the children would be better off with him as they are more bonded to him and they have a healthier and more relaxed relationship. Chad felt Allison is simply not thinking about the children's best interests and she is putting herself first. Chad said if he is able to obtain custody, he would never put the children in the middle as she has done.

Children (To Be Kept Strictly Confidential From Parents)

The children were first interviewed at their mother's home on 11-5-05.

Tylar felt okay about his parents being divorced. He indicated that living with his mother has been good, but he only sees his father during the summer and at Christmas. Tylar wished he could see his father a little more often. He thought his mother felt good about him seeing his father.

Tylar reported a good relationship with both parents and he indicated he gets along with them equally well. The best thing about his mother, was she does fun things with him and, the best thing about his father, was "he likes to play with us too." Tylar could not think of anything he disliked about either parent.

Tylar felt positive about his father being married to Kim. He likes Kim and, the best thing about her, was that she is really nice and fun and he could not think of anything he did not like about her. He perceived his father and Kim to have a good relationship. During visits, his father and Kim share equally in taking care of the children. When asked what it had been like when his mother was married to Ricky, Tylar said it was okay but it did not bother him that they had broken up.



In comparing his parents, Tylar reported his parents have been equally likely to play and do fun things with him. When he is with his mother, she helps him with his homework every day and, when he is with his father, they read for a half hour daily. His parents are equally likely to praise him and to give him hugs and kisses and, one is not more likely than the other to get angry or yell. If Tylar had a problem, he would feel comfortable discussing it with either parent and, if ill, he would be happy with either taking care of him. Tylar feels as happy when with one parent as the other. He was not sure who he felt closer to.

Tylar denied hearing either parent say negative things about the other.

Tylar reported he has told his father he wants to live with him and he still feels that way. He has wanted to live with his father for the past year and, if he gets to live with him, he would be able to see all of his extended family more. Tylar thought his mother has been a little upset with him for wanting to move back to Utah, but she has not been pressuring him or giving him reasons he should stay with her. He denied that his father had ever pressured him or given him reasons why he thought he should live with him, Tylar indicated that, if his mother moves back to Utah, he would still want to live with his father, but he was not able to explain why he felt that way.

Skylar felt okay about her parents being divorced and she said that living with her mother has been fun. She likes to see her father and she wished she could see him more often. Skylar believed her mother felt okay about her spending time with her father.

Skylar reported a good relationship with her parents and she indicated she gets along with them equally well. The best thing about her mother, was she is nice and she "does a lot of stuff for us." The best thing



about her father, was he is always nice and at his home, they always have fun and don't get bored. Skylar could not think of anything she disliked about either parent.

Skylar felt fine about her father being married to Kim. The best thing about her, was she is funny and there is nothing she dislikes about her. She perceived her father and Kim to have a good relationship. She reported that Kim takes care of the children a little more than her father during visits.

When asked how she felt about her mother moving back to Louisiana, Skylar said she was okay with it, but she likes it better in Utah as she has more family there. Skylar said she liked Ricky and she was not sure why her mother had broken up with him.

In comparing her parents, Skylar reported her father has been more likely to play and spend time doing things with her. She saw her parents as equally likely to praise her and to give her hugs and kisses. On the other hand, her mother is more likely to get angry or yell. If Skylar had a problem, she would prefer to discuss it with her mother and, if ill, she would want her to take care of her. She reported feeling as happy when with one parent as the other, but she feels closer to her mother.

Skylar indicated her parents do not say bad things about each other.

Skylar said, if it were up to her, she would rather live in Utah, but she hasn't thought about living with her father. If her mother were to return to Utah, she would rather live with her.

MacKenzie, when asked how she felt about her parents being divorced, indicated it is hard being so far away from her father. She likes living with her mother, but she wishes she could see her father more often.



MacKenzie reported a good relationship with both parents and she indicated she gets along with them equally well. The best thing about her mother, was she helps her and, the best thing about her father, was he takes her on activities. She could not think of anything she disliked about either parent.

MacKenzie felt okay about her father being married to Kim. The best thing about her, was she is funny and there is nothing she dislikes about her. She perceived her father and Kim to have a good relationship. When asked about her mother moving to Louisiana, MacKenzie said it was a big change for her, but she feels as happy there as she did in Utah. When her mother lived with Ricky, it was okay and he was nice to the children.

In comparing her parents, MacKenzie reported her father has been more likely to play and spend more time with her. Her mother is more likely to praise her, but also more likely to get angry and yell. She saw her parents as being equally likely to give her hugs and kisses. If MacKenzie had a problem, she would prefer discussing it with her father, but if ill, she would want her mother to take care of her. She reported feeling happier when she spends time with her father, but she feels equally close to her parents.

MacKenzie indicated her parents do not say negative things about each other.

MacKenzie reported if it were up to her, she would rather live with her father "cuz we hardly get to spend time with him." However, if her mother were to move back to Utah, she would rather live with her.

Brenna, when asked how she felt about her parents being divorced, indicated she does not like her parents fighting and she wished they would get back together. At this point, Brenna stated she wants to spend five



months at a time with each parent and they way it has been, "it's not fair."

Brenna indicated she likes living with her mother and she also likes to see her father and she wished she could see him as much as she sees her mother. Brenna reported a good relationship with both parents and she gets along with them equally well. The best thing about her mother, was she is nice and kind and the best thing about her father, was he is fun and he takes her to the park a lot. When asked if there was anything she disliked about her parents, Brenna talked about her mother grounding her and she said her father "fusses." She went on to explain by saying he gets a little upset and mean.

Brenna was positive about her father being married to Kim. When she visits, they watch "R" rated movies but her mother doesn't allow that. Brenna indicated she likes Kim and, the best thing about her, was that she is fun and kind and there is nothing she dislikes about her. She perceived her father and Kim to have a good relationship.

When asked how she felt about moving to Louisiana, Brenna indicated she likes it more in Utah. She has more fun there and she likes the snow and there are more things to do. Brenna indicated she did not like Ricky and she described him as mean and "he wouldn't let us play."

In comparing her parents, Brenna indicated her father has been more willing to play and spend time with her and her mother doesn't have the time to play. However, she went on to indicate her mother gets home at 4:00 p.m., whereas her father doesn't get home until 8:00 p.m. Brenna said her parents are equally likely to praise her, but she wasn't sure who gave her more hugs and kisses. She saw her mother as being more likely to get angry or yell and "she gets mad easy," and she "makes me cry." If Brenna had a problem, she would feel comfortable discussing it with either parent. However, if she cries, her mother tells her to stop, whereas her



father just listens. At this point, she stated she doesn't want to be away from her father and she became quite tearful. Brenna indicated she feels happier when she spends time with her father, but she feels equally close to her parents.

Brenna indicated her mother sometimes says negative things about her father, but he never says anything negative about her mother. She talked about her mother getting angry at her father and she hangs up on him when the children try to talk to him.

Brenna indicated, if it were up to her, she would rather see her father more, rather than live with him.

The children were next interviewed at their father's home on 12-24-05.

Skylar was excited to be at her father's for Christmas and, being with him is about as good as being with her mother. She sees her father for two months in the summer and at Christmas and she talks to him on the phone about once every two weeks. Skylar felt she saw her father often enough. However, she feels happier when she spends time with him. On the other hand, she has a better relationship with her mother and she feels closer to her.

When questioned about the types of things her parents do with her, Skylar indicated when she is with her father, they hang out and go on activities to places like Lagoon. When she is with her mother, they go to the movies, but she is always working and "so we don't really have time to do things." In comparison, her father spends more time doing fun things with the children, but she was not sure which parent had more fun spending time with her. Skylar indicated if she had a problem, her parents would be equally likely to stop what they were doing to help her. She



reported that, at her father's, Kim takes care of her more than him.

Skylar saw her mother as being a stricter parent, but neither parent's rules are that hard. Her parents give her an equal amount of chores. In comparison, she felt it would be easier to talk her father out of a "no." Skylar saw her mother as being more concerned about school performance and staying away from negative peers. Her parents are equally concerned about her not swearing, but she was not sure who was more concerned about her not using drugs or alcohol.

When asked about discipline, Skylar indicated, if she does something wrong, her mother grounds her, but she was not sure what her father would do as he has not punished her for a long time. In the past, both parents spanked her, but neither has ever hit her or called her names.

Skylar thought her mother felt okay about her spending time with her father and she never hears her say anything negative about him. Likewise, her father and Kim never say anything negative about her mother.

Skylar sometimes feels sad about living in Louisiana and she would rather return to Utah. She perceived her mother moved to Louisiana because she likes living in smaller towns and it has never felt like she moved there to keep the children from their father. Skylar would rather live with her mother, but things would be even better if she moved back to Utah.

MacKenzie was happy to be at her father's home. Everything is good at his house and she would like to see him more often. She reported feeling as happy in one home as the other and she gets along with her parents equally well. MacKenzie reported she feels equally close to her parents.



When asked about the types of things her parents do with her, MacKenzie indicated, when she is with her father, they play hide and seek and board games and they play with the dog. When she is with her mother, they sometimes go to the movies. When asked if there was anything else they do together, she said "no." In comparison, her father is more willing to do fun things with her and he has more fun spending time with the children. On the other hand, MacKenzie felt her mother would be more likely to stop what she was doing if she needed help with a problem. MacKenzie reported that, at her father's, Kim spends more time taking care of her as her father is usually at work.

Mackenzie saw her mother as being the stricter parent and, in comparison, it would be easier to talk her father out of a "no." Her mother has harder rules, but her parents give her an equal amount of chores. MacKenzie saw her parents as being equally concerned about school performance, staying away from negative peers, not swearing and not using drugs or alcohol.

When asked about discipline, MacKenzie indicated if she does something wrong, her mother grounds her and her father puts her in time-out. Neither parent has spanked her and neither hits or calls her names.

MacKenzie was not sure how her mother felt about visits. She talks with her father quite often on the phone. She thought her mother felt okay about phone calls and she never listens in.

MacKenzie said she likes Utah more than Louisiana and she would rather live where it snows. She would rather live in Utah, but she doesn't tell her mother how she feels. She went on to state she would rather live with her father, and when asked why, she reported he does more things with the children.



MacKenzie reported she sometimes over hears her mother talking negatively about her father on the phone. On the other hand, she has never heard her father or Kim say anything bad about her mother.

Tylar reported things were going well in his life. He was happy about coming to see his father and he likes it more at his house. He reported feeling happier when he gets to spend time with his father and he feels closer to him, although he indicated he gets along with his parents equally well.

When asked about the types of things his parents do with him, Tylar reported, when he is with his father, they go to the park and to Lagoon and they play together at home. When he is with his mother, she takes him to the skate park. In comparison, his father, is more willing to do fun things with him, but he was not sure which parent had more fun spending time with the children. In comparison, he felt his parents would be equally willing to stop what they were doing to help him with a problem. When Tylar visits his father, he and Kim share equally in taking care of him.

Tylar reported his parents are equally strict and it would not be any easier to talk one or the other out of a "no." His parents have equally hard rules and one does not give him more chores than the other. Tylar saw his parents as being equally concerned about school performance, staying away from negative peers, not swearing and not using drugs or alcohol.

When asked about discipline, Tylar reported if he does something wrong, both parents send him to his room. Neither parent hits, spanks or calls him names.

Tylar reported he likes Utah better than Louisiana as all of his friends and family live here. Tylar reported he would rather live with his father, even if his mother lived in Utah too as he and his father have more



fun together.

Tylar reported his parents do not say negative things about each other. He thought it was okay with his mother for him to spend time with his father.

Brenna indicated she was happy being at her father's, but she likes her parent's homes the same. She was not sure if she felt happier in one place or the other, but she indicated she gets along better with her father. On the other hand, she feels equally close to her parents.

When asked what her parents do with her, Brenna indicated when she is with her father, they play games, watch television and play with the dog. When Brenna is with her mother "she doesn't have time to play," and she was unable to identify things they have done together. In comparison, her father is more willing to spend time with her, but she was not sure who had more fun spending time with the children. Brenna felt her parents would be equally likely to stop what they were doing if she needed help with a problem.

Brenna saw her mother as being the stricter parent and she has harder rules and gives her more chores. Brenna did not feel she could talk either out of a "no." Brenna saw her mother as being more concerned about school performance, but her parents are equally concerned about her staying away from negative peers and not swearing.

When asked about discipline, Brenna indicated, if she does something wrong, her mother grounds her and her father puts her in time-out. Sometimes her mother spansks. She also slaps and swears at her, but her father doesn't.



Brenna indicated she likes Utah more than Louisiana as it is not as hot here. She was unsure though, if she would rather live with one parent or the other.

Brenna reported her mother does not say bad things about her father. However, she gets angry and hangs up on him. On the other hand, her father never says anything negative about her mother. When asked how her mother felt about visits, Brenna indicated she feels sad. She thought her mother felt okay about her talking to her father on the phone.

During the home visit, Brianna was also interviewed. When asked what it was like in her family, Brianna indicated it is really good. She and her mother have a really good relationship. She was happy about her being married to Chad. He is more like a friend than a father and she has a good relationship with him. The best thing about her mother, was she is really caring and, the best thing about Chad, is that he is fun. Brianna could not think of anything she disliked about her mother or step-father. Brianna perceived her mother and Chad to have a really good relationship.

Brianna reported that she has a really good relationship with Chad's children and she never had any problems getting along with them. If it were up to Brianna, she would be happy to have them live in her home. She also felt her mother wanted them to live there.

**B. Home Visits and Other Observations**

The children were observed with their mother at her home on 11-5-05. They were later observed with their father and step-mother at their home on 12-24-05. In both cases, the children were noted to relate well to their parents as well as to their step-mother. No appreciable difference was noted in the quality of the parent/child relationship.



**C. Psychological Testing**

None

**D. Collateral Contacts**

Letters were received on Allison's behalf from the following individuals and are attached:

- |      |  |         |
|------|--|---------|
| I.   | Letter to Kim Peterson from Gail A. Gaudet                         | 11-1-05 |
| II.  | Letter to Whom it May Concern from Sheri Legoria                   | 1-4-05  |
| III. | Letter to Kim Peterson from Jada Begmaud                           | 11-3-05 |
| IV.  | Letter to Kim Peterson from James Griffith                         | 11-2-05 |
| V.   | Letter to Whom it May Concern from Vickie Childress                | 10-4-05 |
| VI.  | Letter to Whom it May Concern from Susan and Dale<br>VanMaastricht | 11-3-05 |
| VII. | Letter to Whom it May Concern from Stacy Ball                      | 11-1-05 |

Telephone interviews were conducted with the following individuals on Chad's behalf:

Mat Hennefer, friend of Chad's, described him as being a great person, responsible and a hard worker. During Chad's childhood, he was pretty wild, but he has learned from it and he is much more stable as an adult. Chad gets along with others and he doesn't have problems with anger and he handles frustrations well. In the past, Chad has had problems with substance abuse, but he hasn't used drugs for eight years, but he had a DUI approximately five years ago. Never-the-less, it does not appear as though he has had problems with alcohol now for a considerable amount of time.

Chad was felt to be a really good parent and, at one time, Mat lived with Chad and Allison and, during that time, Chad was really involved in the



children's care. Chad has always been a responsible parent and he takes good care of his children. He was felt to be an attentive father and he has spent a lot of time playing with the children and doing things with them, especially on week-ends. Family is very important to Chad and he takes the time to work with the children if they are having problems. Chad has good disciplinary skills. He is good at setting limits and he is able to be firm. There has never been any indication of abusive behavior. The children respond well to their father and they have had a close relationship with him. The children seem to really enjoy spending time with their father and they communicate openly with him.

Kim was felt to be emotionally stable. Chad is really happy being with her and they have a good marriage. Kim is very accepting of Chad's children and she takes an active role in parenting them. Kim is firm with the children and she demands respect. The children have a good relationship with their step-mother. They mind her well, but they are also able to joke and tease with her.

Mat reported he also likes Allison a great deal and she always seemed to be a nice person. At times, she was a little depressed, but she never seemed to have significant emotional difficulties. She has been in a power struggle with Chad since the time of their divorce and it appears as though she moved to get away from Chad. Chad has offered to help her financially if she would move back, but it appears as though she does not want to be controlled. During the marriage, she always seemed to be an okay parent, although she had a hard time dealing with the children if they acted out and she would yell and scream at them.

Jodi Sadler, Chad's neighbor, described him as being a hard worker and very responsible. Chad is a good neighbor and he keeps his house and yard up. He was felt to be very stable emotionally and he gets along well with others. There has been no indication of problems with anger or abuse of substances. He and Kim appear to have a good marriage. Chad has been a wonderful father. He shows a lot of concern for his children's



welfare and, if they have been at Jodi's house, he calls to checkup on them. Chad is attentive and he spends a lot of time doing fun things with the children and there have been a lot of family activities. Chad does well with limits and discipline and the children are expected to do chores before they play. He is always on top of their behavior and he teaches them to be responsible. The children are very polite and well mannered and they have had a close relationship with their father.

Kim is a good person and she is going to school and working and trying to better herself. She was felt to be emotionally stable. She gets along well with neighbors and she is very outgoing. There has never been any indication of substance abuse. Kim was felt to be a very good mother and she has taught her daughter to be independent. Kim has been very involved in helping to take care of Chad's children, although he is good about doing his part and he is not overly reliant on her. Kim has been very accepting of Chad's children. The children speak positively of her and they enjoy being around her.

James Hinckley, Chad's employer, reported that in years past, Chad had his problems and his personal life was a bit scattered when he was having marital difficulties and going through his divorce. However, his problems did not significantly interfere with his work life. It appears as though he has worked through his difficulties and, overall he has been stable. Chad has never had problems with anger and there is no indication of substance abuse. Chad has been a very good employee and, consequently he has been promoted to the Sales Manager position. He is responsible and he gets along well with the customers and other employees.

Jim stated he has seen Chad with his children on numerous occasions and he appears to do very well as a parent. He and the children interact positively with each other and he is very focused on them when they come to visit. Chad seems to really care about his children and he always looks forward to the times when they can be together. During visits,



there are lots of activities and family outings.

Diane Lee, a friend of Chad's, described him as being a great person and he treats Kim very well. Chad is a hard worker and a good provider. He appears to be very emotionally stable and there is no indication of problems with anger and his demeanor is laid back and there has been no indication of substance abuse. Chad is very family oriented and he has been a good parent. He is very patient and he doesn't get stressed out with the responsibilities of parenting and he seems very happy when the children are with him. He makes sure the children are well cared for and he is very attentive and there are a lot of family activities. Chad does well with limits and discipline and he and Kim have the same rules and they back each other up. Chad has been very accepting of Kim's daughter and he has been very involved in parenting her. Chad's children always appear happy when they visit and they show their father respect and they have a good relationship.

Kim has been in bad relationships in the past, but she has always been emotionally stable and responsible. Kim is a good parent and she takes an active role with Chad's children. She has been very accepting of them and they have developed a great relationship with her. Chad jumps in does his part though and he has not been reliant on her and, when he is not at work he is 100% involved in parenting.

Dennis Hanson, Chad's father, stated he felt badly about Allison taking the children to Louisiana and they need both parents. Following the separation, Allison lived with Dennis and his wife until she decided to go back to Louisiana to be with her ex-husband and, even though they are no longer together, she does not want to return to Utah. However, Allison's parents would like her to come back too.

Chad has been an excellent father and he really cares about his children. Chad is loving and affectionate and he and the children have a close relationship. In the past, Chad could have been more involved in parenting the children as he worked long hours, but he has always been a



good provider. Chad was described as very attentive and focused on his children and he takes them on a lot of activities. Dennis has never seen Chad be harsh with the children when he disciplines them. If there is a problem, he stays calm and he uses time out.

As a child, Chad had ADHD and behavior problems and he was in counseling. Chad, however, has overcome his past and he has really settled down and he has become a very loving son. He is now very emotionally stable and his boss told Dennis that Chad is the greatest thing that ever happened to Hinckley Dodge. There has been no indication of substance abuse since the time that Chad was a teenager.

Kim has really fit in with their tight knit family. She was felt to be emotionally stable and she and Chad have a good marriage. Kim and Chad have done a good job of blending their families and they work together as a team. The children have developed a good relationship with Kim and, likewise, her daughter has developed a good relationship with Chad. Kim is a very good parent and she is a "nine" on a scale from one to ten. She has been very accepting of Chad's children and they accept her and show her respect.

In the past, Allison appeared stable, although she did spend too much money and, after she moved, creditors were calling the house looking for her. When Allison moved, she stated she was going to put her life first. It was uncertain why she had not returned to Utah, although at times it seems she is trying to get back at Chad. Allison has been a pretty good mother, but since moving to Louisiana, it appears as though the children are on their own a lot when she is at work. The children have been less happy since they moved to Louisiana and, when they visit, they say they do not want to go back.

Joanne Wood, Allison's mother and a reference of Chad's, stated that the children are not old enough to be separated from their mother. Allison has been an excellent parent and she was described as being very caring and she thinks of the children's best interest and she has concern for



their welfare. Allison meets the children's basic needs and she gives them attention and she helps them with their school work. At one time, she was Tylar's Scout leader. Allison is good about giving the children attention and doing things with them. She also does well with discipline and, for the most part, Allison sticks to the rules, although at times she can be indulgent. The children were felt to have a close relationship with their mother. Allison was felt to be emotionally stable, although at times she has had problems with her self image. There has been no indication of substance abuse.

Chad was described as immature and unstable and he has been a wheeler/dealer. During the marriage, he had no concept about how to deal with money and he did some bizarre things. For example, Joanne discovered he was growing marijuana in their basement and he always had to have one of his friends living with them. He had a business that he ran into the ground and he smoke and drank. Joanne never saw any indication of Chad physically abusing Allison, but he was mentally abusive. Chad got along with the children and he helped quite a bit with the twins following their birth, but the with the other two, he seemed less involved in parenting. Chad could have been more attentive, but since the divorce, he has spent more time doing things with the children. Chad left discipline mostly to Allison. The children have had a good relationship with their father and they are excited to see him.

Joanne did not have any major concerns about the children's adjustment since moving to Louisiana. They are always sad when they have to leave, but once they return home, they appear to be doing fine. If it were up to Joanne, she would like to see Allison move closer. She was unsure though what would be best for the children as they seem to be doing well in school and they have friends in Louisiana and a decent place to live "yet I would like to see them closer." When Joanne has asked Allison why she doesn't want to return to Utah, she states that she doesn't feel comfortable in Utah. She also has a good job and she doesn't want to start over.



**E. Documents and Other Material Reviewed**

Additional written information was reviewed and is attached including:

- |       |  |                      |
|-------|--|----------------------|
| I.    | Letter to Jared Coleman from Kirk Read, LCSW | 7-11-05              |
| II.   | Letter to Alison from Chad                   | 2-13-00              |
| III.  | Tooele Police Arrest Report                  | Case Number 03-02931 |
| IV.   | Tooele Police Call for Service               | Case Number 03-02951 |
| V.    | Tooele Police Call for Service               | Case Number 03-02962 |
| VI.   | Tooele Police Call for Service               | Case Number 03-03057 |
| VII.  | Tooele Police Call for Service               | Case Number 03-03557 |
| VIII. | Correspondence between parents               |                      |
| IX.   | Notes of Allison                             |                      |
| X.    | Concerns of Chad                             |                      |

The following legal documents were reviewed:

- |      |   |         |
|------|---|---------|
| I.   | Recommendation and Order Re: Temporary Orders and Approval of Custody Evaluator | Undated |
| II.  | Supplemental Affidavit of Petitioner in Support of Motion for Temporary Orders  | 9-19-05 |
| III. | Respondent's Affidavit and Opposition to Petitioner's Order to Show Cause       | Undated |
| IV.  | Financial Declaration (Chad)  | Undated |
| V.   | Order to Show Cause   | 7-16-03 |

Kim D. Peterson, M.S.W.  
Licensed Clinical Social Worker.

Addendum C:      Memorandum Decision and Amended Order  
                         Modifying Decree of Divorce



INDEXED

**FILED DISTRICT COURT**  
Third Judicial District

JUL -9 2007

Bradley G. Nykamp (USB # 8390)  
**PETERSON & NYKAMP**  
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By PJ SALT LAKE COUNTY  
Deputy Clerk

Attorney for Petitioner Chad Hanson

**IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH  
IN AND FOR THE COUNTY OF SALT LAKE, SALT LAKE DEPARTMENT**

CHAD JASON HANSON,

Petitioner,

v.

ALLISON SARA HANSON,

Respondent.

**Amended**

**ORDER MODIFYING DECREE OF  
DIVORCE**

Civil No. 014905177 DA

Judge Robert P. Faust

A bench trial on Respondent's Petition to Modify Decree of Divorce and on Petitioner's Verified Answer to Petition to Modify Decree of Divorce and Counterclaim was conducted by the Court on May 8<sup>th</sup> and 9<sup>th</sup> 2007. Petitioner was represented by Bradley G. Nykamp and Respondent was represented by Joseph Lee Nemelka. The Court having considered the testimony of the parties, other witnesses at trial and the evidence accepted by the Court hereby Find, concludes as a matter of law and Orders as follows:

(Amended) Order Modifying Decree of Divorce @J



JD21535111

pages:

014905177 HANSON, CHAD JASON



### FINDINGS OF FACT

1. Petitioner and Respondent were husband and wife. A

Decree of Divorce ("Decree") was entered by the Court on October 26, 2001.

The Decree is incorporated herein by reference.

2. The custody and visitation provisions in the Decree resulted from the parties' negotiation and ultimate stipulation. The matter was not adjudicated.

The Decree provides for joint legal custody. The Decree also provides that the Respondent was to pay all of the travel costs for the minor children to visit the Petitioner in Utah. At the time of the negotiation of this provision of the Decree, the parties had not actually discussed Respondent relocating from Utah.

3. For over a year after the divorce both parties and children resided in Utah.

4. In December 2002, Respondent moved to Louisiana with the minor children so she could pursue a previous romantic relationship with her ex-husband. Respondent cohabitated with her former husband while he was still married to another woman. The Respondent's attempt at a new relationship with her ex-husband failed.

5. The Respondent then returned to Utah for a brief two to three month



time period in the late spring of 2003. Respondent stated to Petitioner that she was unemployed and Petitioner would have to pay the airfare for her and the children to return to Utah. Petitioner agreed and refinanced the marital house to pay for the airfare. Respondent and the children came to Utah and moved into the marital residence. *In the fall of 2003 the Respondent returned to Louisiana and repaid the Petitioner for the airfare expenses. pff*

6. Respondent failed to give the 30 days written notice required in the Decree prior to her going to Louisiana in 2003.

7. Currently Petitioner resides in the State of Utah. Respondent and the minor children reside in the State of Louisiana.

8. On or about July 13, 2004, Respondent filed a Petition to Modify Decree of Divorce wherein she requested that Petitioner's child support be increased and that she be awarded two (2) of the children as dependants for income tax purposes.

9. On or about September 2, 2004, Petitioner filed a Verified Answer to Petition to Modify Decree of Divorce and Counterclaim wherein he denied Respondent's Petition to Modify and requested custody of the minor children.

10. The four minor children are now ages 14, 14, 12, and 10.

11. The Petitioner has continually lived in Utah since the entry of the Decree. Petitioner and his current wife, Kim Hanson, lived together for some months prior to their marriage. Petitioner and his wife have a newborn baby



which is a stepbrother to the children involved in this case. Petitioner and his wife are purchasing a five bedroom home in South Jordan. Petitioner and his wife have a two-parent household.

12. Petitioner has worked at Hinckley Dodge since the divorce. His monthly gross income is approximately \$10,522.00. Petitioner's current child support obligation is \$1,708.10 per month.

13. Respondent has worked for CARE, Inc., since she moved to Louisiana and is struggling financially despite getting a substantial raise in 2006. Her monthly gross income is approximately \$2,742.62 based upon the Respondent's 2006 W-2 submitted to the Court.

14. Respondent openly acknowledge under oath to the Court that she has deprived Petitioner of his visitation rights and she started denying Petitioner his visitation when in her mind Petitioner became unreasonable. Further, Respondent admitted under oath that she has not given Petitioner the visitation rights set forth in their Decree and she has not granted him visitation rights according to the statutory minimum for out-of-state visitation pursuant to *Utah Code Ann. § 30-3-37*.

15. The Child Custody Evaluation notes that Respondent has been somewhat obstructionistic about Petitioner visiting with his children. Respondent has made it difficult for Petitioner to have his visitation. Prior to leaving to



Louisiana, Respondent took the kids to her parents' house. Petitioner tried to visit the children and Respondent refused. Petitioner called the police to assist him in seeing his children. Respondent told the police officer that Petitioner had already had his 28 days and was not entitled to any more time. The officer then declined to assist. The only visitation Respondent currently allows Petitioner is every other Christmas and part of the summer break.

16. Respondent admits she has refused to pay the travel costs required of her in the Decree to permit Petitioner to have his visitation/parent time. Respondent's refusal/failure to comply with the Decree, which specifically ordered Respondent to assume all costs of out-of-state visits, has occurred on more than one occasion.

17. At least one of the children reported Respondent hanging up on Petitioner when the children attempted to talk to him.

18. Prior to her move to Louisiana in 2002, on one occasion, the Respondent dropped the minor children off at a parking lot rather than at the Petitioner's home.

19. Respondent makes the children feel guilty about visiting Petitioner. The children have reported that the Respondent "feels sad" about them (the children) visiting the Petitioner.

20. Respondent has eavesdropped in on conversations and telephone



calls between the petitioner and the children.

21. When Petitioner has visitation with the children in Utah, the

22. Respondent frequently calls or sends text messages to the minor children, including during the periods of what are to be uninterrupted visitation. In addition, sometimes as a condition of allowing Petitioner to have visitation in the first place, Respondent has required her parents (grandparents) to get visitation with the children prior to Petitioner getting to exercise his visitation with the children.

23. Petitioner has not denied or attempted to limit these calls and messages by Respondent or her parents' visitation, which demonstrates that he has not and would not hamper Respondent's contact with the children.

24. The Court finds the conduct by Respondent has affected the relationship between the petitioner and the children.

25. None of the children report Petitioner saying anything negative about Respondent.

26. Each and every one of the four children expressed a desire to live in Utah and want to spend more time with the Petitioner and with both extended families which are in Utah.

27. The children need meaningful relationships with both extended families



that live in Utah. This includes grandparents on both sides and aunts and uncles on Petitioner's side. Petitioner's entire extended family gets together on a monthly basis for dinner and to spend time together. The relationships of the children to the extended family, including the Petitioner, however, are being hampered due to the children residing in Louisiana.

28. Because the Respondent is at work, the children are unsupervised every day from the time they get out of school until Respondent gets home from work. The period of unsupervised time averages at least 2.5 hours daily.

29. The Petitioner's wife is at home and she is available to be with the children after they return home from school. The children and Petitioner's wife have a close and warm relationship. Mrs. Hanson actively involved Petitioner's children in the planning and participation of her wedding to the children's father. Ms. Hanson clearly cares for and loves the children and will be fully involved in their lives and activities. Mr. Peterson, the custody evaluator, found that Ms. Hanson also has good parenting skills and is nurturing and attentive and that Respondent herself indicated that until recently, she enjoyed a positive relationship with Mrs. Hanson. Mr. Peterson indicates the children have developed a good relationship with Mrs. Hanson.

30. The Petitioner and his wife have a baby boy who was born in



December, 2006. This baby boy is the children's half-brother. If the children remain in Louisiana they will be unable to develop as meaningful a relationship with their half-brother as they would if they lived in Utah and had contact with him on a regular basis.

31. Mr. Kim Peterson, M.S.W., was appointed as the custody evaluator in this case. Both parties stipulated to Mr. Peterson conducting the evaluation. Mr. Peterson conducted the evaluation over a period of a year, and completed the evaluation in September, 2006. Mr. Peterson visited both parties' homes and contacted several collateral sources.

32. Mr. Peterson testified to the following conclusions, which the Court finds persuasive (the order in which the conclusions are listed has no significance):

- All the children prefer to live Utah over Louisiana.
- The children are not especially happy about living in Louisiana.
- Respondent's move to Louisiana is a concern, especially given her unwillingness to return to Utah once her relationship with her ex-husband did not work out.
- In the long run, the children would be happier if they were to live in Utah.
- The twins, Tylar and Skylar, differ as to which parent they desire to



live with. Tylar desires to live with his father and Skylar would rather live with her mother. The third child, Mackenzie would rather live with her father, unless her mother returned to Utah, then she would rather live with her, but later indicated that she would rather live with her father. The youngest child, Brenna, indicated that she would like to live with her mother and then had no opinion.

- Tylar, was slightly more bonded to his father, while Skylar was more bonded to her mother, and Mackenzie and Brenna appeared to be equally bonded to both parents. The Court finds that this really benefits both parents.
- All of the children preferred Utah to Louisiana which has to do with the children missing their father, but also wanting to spend more time with extended families.
- The children have a significant bond with each other and "separating them, especially if they were to live in different states, is not in their best interests."
- Respondent struggles to find time to do things with the children.
- Respondent is somewhat rigid in how she deals with the children's emotions and is less sensitive to their feelings than Petitioner.
- Petitioner is more tuned to the children's feelings than is



Respondent and they have a good relationship with him.

- Respondent was "somewhat obstructionistic about visits."
- With regard to the children's needs and capabilities, the parents compliment one another and have unique strengths and weaknesses.
- Both parents are adequate and capable and one does not appear to be significantly better than the other.
  
- The children needed to spend significantly more time with their father and extended family and that it was in their best interests to do so.
- The Petitioner is remarried and has a two-parent household. Mr. Peterson believes this to be an advantage to Petitioner and that his being married adds some stability.
- It is the children's best interests to have more contact with their relatives.
- Petitioner has greater resources and the Respondent has less money and is struggling financially.

33. The Petitioner is the parent most likely to allow frequent and continuing contact with the non-custodial parent.

34. Mr. Peterson found that the Respondent had been the "children's



primary care giver" and she appears to do a good job of meeting their basic needs. However, the Court does not put much weight on the determination that the Respondent is the primary care giver because her being in Louisiana necessitates this fact.

35. While both parents work, the Petitioner's position as manager, which occurred after the custody evaluation was completed, allows him to set his own work schedule. Because the Petitioner has a more flexible working environment, he can better handle the children's needs.

36. The Court finds Respondent's parents (maternal grandparents) are and remain an important support factor for her, as evidenced by the fact that the Respondent's mother flew from Utah to Louisiana to care for the children, while Respondent was in Utah for the hearing on this matter.

37. The court finds that Respondent has not demonstrated a willingness to submit her own personal desires or interests, even though it would be in her children's best interests and despite the children's desires to live in Utah to be closer to their father and their extended family.

Based on the foregoing Findings of Fact, the Court now makes the following:



### CONCLUSIONS OF LAW

1. The Court's analysis requires a two-step determination and, in fact, the second step is not reached unless the Court makes the threshold determination that a substantial change of circumstances exists, which change is sufficient to justify the Court in even considering a modification. *Elmer v. Elmer*, 776 P.2d 599 (Utah 1989). The *Elmer* case concerned a change of custody. A custody change is only one of the possible outcomes in this case, but the Court believes that the *Elmer* standard nevertheless applies.

2. If there are changed circumstances, *Elmer* requires that the change(s) must "have some material relationship to and substantial effect on the parenting ability or the functioning of the presently existing custodial relationship." *Id.* One purpose of the changed circumstances test is to favor "onetime adjudication" of a matter, but this "res judicata aspect of the rule must always be subservient to the best interests of the child." *Id.* In addition when, as in this case, the custody arrangement was stipulated, but not adjudicated, "the res judicata policy underlying the changed circumstances rule is at particularly low ebb." *Id.*

3. There have been material changes in the parties' circumstances to this date. Those changes include the following:

Respondent's move to Louisiana to pursue a previous romantic



relationship which was unknown to either party at the time the custody agreement was made.

- The relocation of the children to Louisiana materially and inevitably impacts Petitioner's relationship with the children. Respondent's relocation outside Utah was certainly not anticipated by the parties, despite generic language in the Decree.
  - Petitioner enjoyed liberal visitation until the Respondent moved from Utah.
  - By moving with the children out-of-state, the Respondent has placed an immense logistical barrier between the Petitioner and the effective exercise of his visitation rights.
  - The difficulties of the children's move to Louisiana were compounded by the Respondent's refusal/failure to comply with the visitation Decree or comply with the minimum statutory guidelines set out in *Utah Code Ann.*, § 30-3-07, thus Respondent's depriving Petitioner of his rights.
  - Respondent's failure to pay the costs of visitation. As such this Court finds that the Respondent has failed to bear the costs inherent in her voluntary decision to move out of state.
4. It is also this court's opinion that the present custody arrangement in



conjunction with their location is detrimental to the best interests of the children. Specifically, this Court finds that the Respondent's conduct has damaged the relationship between the Petitioner and the children because of the Respondent's move to Louisiana and refusal to allow the Petitioner full visitation rights. The Petitioner and the children have had significantly less time together than is necessary for the proper development of a father-child relationship.

5. The changes set forth above are materially related to the parenting relationship of both parents to the children, and also, to some extent, to Respondent's parenting ability. The expert was unequivocal that the children need both parents, and they need both parents on a more frequent basis. Not only will the proximity be physically impaired, but the long distance has affected the children. The move to Louisiana was done solely for Respondent's personal desires and not for the benefit or welfare of the children or for their needs.

6. Because custody was never adjudicated, the relative parenting skills of the parties, and the best interests of the children, were never submitted for the objective and impartial consideration of a court or the expert evaluation of a child custody expert. Accordingly, the attributes, character and limitations of the parties as parents that are set forth in the Court's Findings of Fact were never objectively considered until now.

7. For the foregoing reasons, the Court concludes that the threshold



requirement set forth in Elmer and numerous other cases has been met in this case. The Court will now turn to the final question; namely, is any modification of the Divorce Decree in this case required in the children's best interests?

8. This Court rules that the Respondent's move to Louisiana, and her failure to comply with the Decree and state law regarding out-of-state visitation has damaged the functionality of the original custody arrangement. As such the first prong of the test has been met.

9. Modification could include a change of custody, or custody could be maintained as at present, but conditioned on Respondent relocating to Utah and not beyond a certain distance from Petitioner. The Court could also modify the Decree to change visitation to reflect changed circumstances and, if necessary to further the children's best interests, the Court could adjust child support.

10. The Court's decision is controlled by several relevant cases, including: *Larson v. Larson*, 888 P.2d 719 (Utah App. 1994); *Sigg v. Sigg*, 905 P.2d 908 (Utah App. 1995); and *Reinhart v. Reinhart*, 963 P.2d 757 (Utah App. 1998).

11. *Larson* is probably the closest case on the issue of relocation. In *Larson*, the mother (the custodial parent) desired to relocate to Oregon, where her fiancé resided. The trial court entered an order that would have divested the mother of custody if she moved *anywhere* outside of Summit County. The appellate court ruled that "unless there were compelling evidence that residing in



Summit County, Utah, would be better for the children than allowing them to continue to reside with their life-long primary caregiver, we would conclude that the trial court exceeded the exercise of sound discretion in entering the order . . . “

12. At trial, the expert clearly opined that the best case for the children is for both the children and Respondent to return to the State of Utah. However, that option will not be possible if Respondent refuses to return to Utah. Having the children reside with Petitioner will be better than having them reside with Respondent, if she does not relocate to Utah to offer the children meaningful relationships with both parents, grandparents and extended family. By the children living in Utah the children would be able to enjoy a stable and nurturing relationship with their grandparents of both sides, as well as aunts, uncles, and cousins. This is an improvement over their present situation. In addition, with the children in Utah would allow for the development of a relationship between the children and their half-brother.

13. This Court does not believe the evidence leads to the conclusion that the children should not reside anywhere but Salt Lake County, but the Court is amply persuaded to conclude that it is not in the children's best interests to be physically separated from their father by a significant distance; that if the children remain in Louisiana or another location comparably distant or inaccessible to the father and other extended family, the children will lose the needed parent with



Petitioner the expert witness deems necessary in this case; that Respondent will continue to use the realities of physical separation to subtly, but inexorably, impact the natural father's relationship with the children (that the mother's parenting ability, while generally good in the present circumstances, could be impaired due to financial difficulties); and that the likely decrease in effectiveness of the mother's parenting skills as all the children attain adolescence creates an unusually strong need for the father to be readily available and involved.

14. The Court determines that residence in Salt Lake County or within a reasonable distance of Petitioner and other extended family members on both sides of the family, with the Respondent continuing her role as physical custodial parent, is the best result for the children, but it is not the only acceptable outcome. The critical need is proximity to Petitioner and extended family. The next most important objective is to maintain, as far as possible, the children's associations with both parents and extended family, which is almost entirely centered in the Salt Lake City area, but this objective may have to yield to Respondent's own desires as to where she desires to live and to practical necessity.

15. The Court does not believe it is the children's best interest to change



custody, unless Respondent persists in her desire to live out of state or a substantial distance from the Petitioner, thus substantially diminishing the children's contact and involvement with Petitioner, both sets of grandparents and extended family. The Court believes that if Respondent does remain in Louisiana or a comparable location, Petitioner is the parent who is more likely to work to maintain a strong relationship with each parent.

16. The Court concludes that whether the motive is conscious or not, Respondent has used distance to diminish, at the expense of the children's, their relationship with their father, grandparents and extended family and such conduct is, in fact, a parenting deficiency which is best ameliorated not by taking the children from Respondent, but by having both the children and Respondent return to Utah as the evaluator recommended and by increasing the father's parent time and time with both extended families and grandparents as much as possible consistent with the children's own desires and need for stability in their primary home.

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW SET FORTH HEREIN AND THE MEMORANDUM DECISION ENTERED BY THIS COURT, THE SAME ALSO BEING INCORPORATED HEREIN BY THIS REFERENCE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:



1. Custody shall remain with Respondent, as long as she resides by August 15, 2007, in Salt Lake County, or a nearby county within reasonable distance (less than 150 miles) of the Petitioner's present residence, including, but not necessarily limited to, Salt Lake, Utah, Wasatch, Morgan, Davis or Weber Counties. The reason for this deadline is so that the children may be enrolled and start in school in Utah at the beginning of the 2007/2008 school year. If Respondent returns to reside in Utah, petitioner is awarded parent time consistent with *Utah Code Ann.*, § 33-3-35.5.

2. Petitioner is awarded custody of the children, if by June 25, 2007, Respondent has not notified, in writing, Petitioner and the Court of her decision to reside in Utah and if Respondent has not returned and established residence in Utah consistent with the preceding paragraph. If Respondent remains in Louisiana or another location outside of Utah or if she resides in Utah further than 150 miles from Petitioner, she is awarded parent time consistent with *Utah Code Ann.*, §§ 33-3-37 and 33-3-35.5.

3. If Petitioner is awarded custody of the children due to Respondent's desire to remain outside of Utah and Respondent at a later date chooses to return to Utah, she may not use her subsequent return to Utah as the sole basis to try to re-obtain custody of the children.



4. If Respondent chooses not to move to Utah, the parties shall equally split the available parent time for the summer of 2007. If

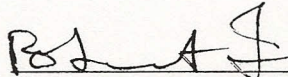
Respondent exercises her summer 2007 parent time in Louisiana, she is to return the children to Utah by July 15, 2007. *Respondent is awarded the first half of the summer parent time and Petitioner is awarded the second half of the summer parent time.*

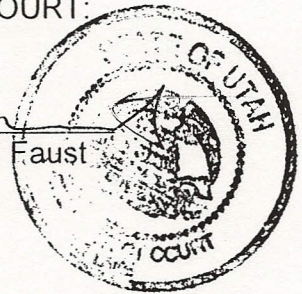
5. Respondent's Petition to Modify the Decree is denied.

6. Both parties have incurred substantial fees in this case. Neither party is clearly the prevailing party in this matter. Petitioner has failed to change custody (unless Respondent persists in her desire to not return to Utah), and respondent's ill-advised decision to relocate has not been vindicated. Therefore, neither party is awarded fees and costs.

DATED this 9th day of July 2007.

THIRD DISTRICT COURT:

  
Honorable Robert P. Faust  
District Court Judge



APPROVED AS TO FORM AND CONTENT:


\_\_\_\_\_  
Joseph L. Nemelka  
Attorney for Respondent



**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2007, a true and correct copy of the foregoing **ORDER MODIFYING DECREE OF DIVORCE** was sent postage pre-paid, via United States First Class Mail to the as addressed as follows:

Joseph L. Nemelka, Esq.  
Attorney at Law  
6806 South 1300 East  
Salt Lake City, UT 84121

A handwritten signature in black ink, appearing to be 'J. Nemelka', is written over a horizontal line.



Addendum D: Notice of Appeal



ORIGINAL

SCOTT L WIGGINS (5820)  
ARNOLD & WIGGINS, P.C.  
American Plaza II, Suite 105  
57 West 200 South  
Salt Lake City, UT 84101  
Telephone: (801) 328-4333  
Facsimile: (801) 328-2405

FILED DISTRICT COURT  
Third Judicial District

JUL 12 2007

By [Signature]  
Deputy Clerk

Attorneys for Appellant

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY  
STATE OF UTAH

CHAD JASON HANSON, )  
 )  
Petitioner / Appellee, )  
 )  
v. )  
 )  
ALLISON SARAH HANSON, )  
 )  
Respondent / Appellant. )  
 )

NOTICE OF APPEAL  
Case No. 014905177 DA  
Judge Robert P. Faust

NOTICE OF APPEAL

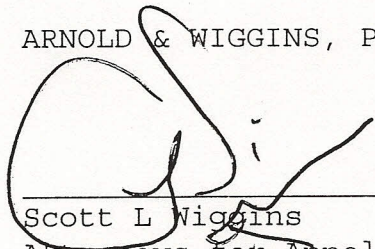
NOTICE IS HEREBY GIVEN that Allison Sarah Hanson, by and through counsel, Scott L Wiggins, of and for Arnold & Wiggins, P.C., hereby appeals to the Utah Court of Appeals from the Memorandum Decision of the Third Judicial District Court of Utah, Salt Lake County, the Honorable Robert P. Faust, presiding, which



was signed by the district court on June 12, 2007, and entered  
that same day, namely, June 12, 2007.

DATED this 12th day of July, 2007.

ARNOLD & WIGGINS, P.C.



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Scott L Wiggins  
Attorneys for Appellant

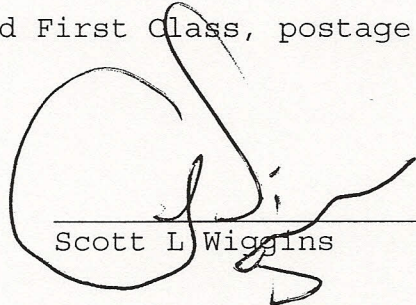


**AFFIDAVIT OF SERVICE**

I, SCOTT L WIGGINS, being duly sworn, state that I, as appellate counsel for Appellant, Allison Sarah Hanson, served a true and correct copy of the foregoing NOTICE OF APPEAL upon the party(ies) listed below by placing the same in an envelope addressed to:

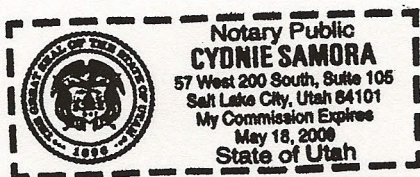
Mr. Bradley G. Nykamp  
Peterson & Nykamp  
5383 South 900 East, Suite 103  
Salt Lake City, UT 84117  
*Counsel for Chad Jason Hanson*

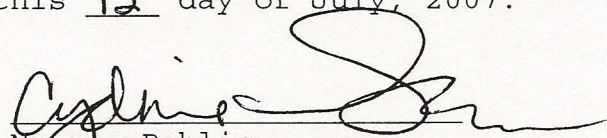
and causing the same to be mailed First Class, postage prepaid, on the 12 of July, 2007.

  
\_\_\_\_\_  
Scott L Wiggins

STATE OF UTAH                                 )  
  : SS.  
COUNTY OF SALT LAKE                    )

Personally appeared before me SCOTT L WIGGINS and signed the foregoing AFFIDAVIT OF SERVICE on this 12 day of July, 2007.



  
\_\_\_\_\_  
Notary Public