

1988

Wendy Marie Rawlings v. Mark Douglas Weiner : Respondent's Brief in Reply to Petition for Writ of Certiorari

Utah Supreme Court

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Stephen W. Jewell; attorney for petitioner.

Michael L. Miller; attorney for respondent.

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UTAH

STATE

IN

.58

DOCKET NO 880228

IN THE SUPREME COURT OF THE STATE OF UTAH

WENDY MARIE RAWLINGS,

Plaintiff / Petitioner,

vs.

MARK DOUGLAS WEINER,

Defendant / Respondent.

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:

Court of Appeals No.
86-0274-CA

Supreme Court Case No.
88-0228

RESPONDENT'S BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

APPEAL FROM THE FIRST DISTRICT COURT IN AND FOR BOX ELDER
COUNTY, STATE OF UTAH, THE HONORABLE OMER J. CALL, PRESIDING.

Michael L. Miller, Esq.
Attorney for Respondent
20 South Main Street
P.O. Box 399
Brigham City, Utah 84302

Stephen W. Jewell, Esq.
Attorney for Petitioner
15 South Main, Third Floor
Logan, Utah 84321

FILED

APR 1 1988

Clerk, Supreme Court of Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

WENDY MARIE RAWLINGS,	:	
	:	
Plaintiff / Petitioner,	:	
	:	Court of Appeals No.
vs.	:	86-0274-CA
	:	
MARK DOUGLAS WEINER,	:	Supreme Court Case No.
	:	
Defendant / Respondent.	:	88-0228

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20 South Main Street
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Brigham City, Utah 84302

Stephen W. Jewell, Esq.
Attorney for Petitioner
15 South Main, Third Floor
Logan, Utah 84321

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STATEMENT OF ISSUES

I.

Is the decision of the panel of the Utah Court of Appeals, holding that the trial court did not abuse its discretion in retaining jurisdiction over the issue of custody of the parties' minor children despite the fact that the mother has moved from this state with the children, in conflict with a decision of the Supreme Court.

II.

Has the Utah Court of Appeals, in holding that the trial court did not abuse its discretion in retaining jurisdiction over the issue of the custody of the parties' minor children despite the fact that the mother has moved from this state with the children, decided an important question of municipal, state or federal law which the Supreme Court should but has not decided.

DECISION OF COURT OF APPEALS

In a decision dated April 15, 1988 the panel of the Utah Court of Appeals unanimously affirmed the order of the trial court denying Plaintiff's petition to transfer jurisdiction to Washington State under the provisions of the Uniform Child Custody Jurisdiction Act.

JURISDICTION

The Utah State Supreme Court has jurisdiction to hear this matter pursuant to Utah Code Annotated, Section 78-2-2 (3)(a).

Respondent filed a motion for an extension of time to file a brief in reply the petition for writ of certiorari. An order dated July 22, 1988 granted an extension of time to August 16, 1988.

CONTROLLING PROVISIONS

The controlling provisions, Utah Code Annotated, Sections 78-45C-1 et. seq. and Utah Code Annotated, Section 30-3-5, are set forth in the appendix hereto.

STATEMENT OF THE CASE

Plaintiff Wendy Rawlings (Rawlings) appealed from the district court's modification of her divorce decree, claiming the trial court lacked jurisdiction to modify the decree because of the Uniform Child Custody Jurisdiction Act (UCCJA), in effect in both Utah and Washington. The Utah Court of Appeals affirmed the decision of the trial court. Plaintiff now seeks a writ of certiorari in the Supreme Court.

Defendant Mark Weiner (Weiner) and Rawlings were married August 16, 1974, in Manti, Utah. The parties had five children as issue of their marriage. The parties were divorced on May 18, 1982, by the Honorable Omer J. Call of the First District Court of Box Elder County, Utah. The original decree was later amended on September 27, 1982, by Judge Call. Rawlings was awarded custody of the parties' five children while Weiner was awarded carefully enunciated visitation rights with the minor children. In December

1982, Rawlings remarried.

From 1982 to 1984 Weiner initiated several proceedings to enforce the visitation order in the divorce decree, and each time the judge ordered the parties to comply with the order.

In June 1984, Rawlings sent a letter to Weiner informing him that she and the children had moved to "the Des Moines area" and could be reached at a Utah post office box. Rawlings moved to Washington in June of 1984. During the summer of 1984, Weiner initiated several additional proceedings in an attempt to locate his children.

In October 1984, another hearing was held and the court found that Rawlings' move constituted a substantial change in circumstances allowing modification of the visitation provisions in the divorce decree.

In April 1985, a shelter care hearing was held in Washington, pursuant to emergency jurisdiction provided for in the Washington UCCJA, to determine allegations of child abuse made by Rawlings against Weiner. Commissioner Gaddis of the Washington court noted that the Washington court orders were temporary and any permanent adjudication or realignment of the parties had to come from Utah, until the Utah court declined jurisdiction.

In October 1985, Weiner filed an order to show cause in Utah. In November 1985, Rawlings petitioned for transfer of jurisdiction from Utah to Washington. Pursuant to Rawlings' transfer request,

Commissioner Gaddis contacted the court in Utah and after discussion with Judge Call declined to accept jurisdiction in Washington. Commissioner Gaddis urged the Utah court to retain jurisdiction to enforce or modify custody and visitation orders.

On December 23, 1985, Judge Call filed a statement and order and certified the matters of disqualification and jurisdiction to Judge VeNoy Christoffersen of the First District Court of Utah for determination. Judge Christoffersen denied Rawlings' motion to disqualify Judge Call, denied the Motion to Change Jurisdiction, and set a hearing date in May 1986, for the order to show cause. On October 21, 1986, the findings of fact, conclusions of law, and order on the order to show cause were entered by the court. The court found Rawlings in contempt for continuing to use "Rawlings" as the children's last name after being ordered not to do so, modified the visitation order and ordered that the parties have joint custody of the children, with Rawlings maintaining physical custody.

Weiner timely appealed the October 21, 1986 order. Rawlings cross-appealed on grounds that the First District Court lacked jurisdiction. Weiner's appeal was dismissed for lack of prosecution by order the Court of Appeals on June 9, 1987. The panel of the Utah Court of Appeals issued a unanimous decision, dated April 15, 1988, affirming the decision of the trial court. Plaintiff now seeks a writ of certiorari in the Supreme Court.

ARGUMENT

POINT I.

THE DECISION OF THE PANEL OF THE UTAH COURT OF APPEALS IS NOT IN CONFLICT WITH A DECISION OF THE SUPREME COURT.

Petitioner asserts that the decision of the panel of the Utah Court of Appeals is in conflict with a decision of the Supreme Court, specifically Trent v. Trent, 735 P.2d 382 (Utah 1987); and that the decision is also contrary to the Uniform Child Custody Jurisdiction Act, Utah Code Annotated, Sections 78-45C-1 et.seq. Petitioner claims that Trent is applicable only to cases involving visitation rights and not to cases involving issues of custody. Petitioner asserts that had Trent involved a situation where the father was seeking to gain custody of his children, the court would have ruled differently. While this may or may not be the case, it does not place the holding of the Court of Appeals in conflict with this Court's holding in Trent. The holding in Trent is that the trial court did not abuse its discretion in declining to relinquish jurisdiction over the the father's action under the particular facts of that case which included that the father was only seeking to enforce visitation. In this case Weiner filed an action seeking custody of the children; however unlike Trent the parties' children were born and lived in Utah prior to being taken from the State by Rawlings in June of 1984. In addition the Utah Court had exercised it jurisdiction over the matter on several

occasions following the entry of the initial decree, including to modify the decree with respect to visitation after Rawlings had moved from the State. And finally in this case Washington State had already declined to accept permanent jurisdiction of the matter. In Trent there is no indication that Idaho had made any determination at all or even that an action had been filed there. Although Trent may have dealt exclusively with an issue of visitation it is clear from a reading of the case that the decision to retain jurisdiction is one in which the trial court has discretion and that absent an abuse of that discretion that decision will not be overturned. See also Harding v. Harding, 26 Utah 2d 277, 488 P.2d 308 (1971). In this case there is no record of the May 1986 hearing. Absent such a record it must be presumed that the trial court which heard the evidence acted correctly. Fackrell v. Fackrell, 740 P.2d 1318 (Utah 1987). The mere fact that this case involved an issue of custody does not place it in conflict with this Court's decision in Trent.

The decision of the panel of the Court of Appeals is also not in conflict with the provisions of the Uniform Child Custody Jurisdiction Act. As noted by the decision of the Court of Appeals, the UCCJA does not mandate the loss of jurisdiction to the original state in all cases; but only if Utah chooses to relinquish jurisdiction based upon the best interests of the child, Utah Code Annotated, Section 78-45C-3(1). The UCCJA does

also not require that the child be physically present in this state in order to determine his custody. Utah Code Annotated, Section 78-45C-3(3). Petitioner argues that because the children live outside the state the purposes of the UCCJA are contravened by the decision to retain jurisdiction in this state; and yet Petitioner does not offer any proof that best interests of the child would be better served by relinquishing jurisdiction to the State of Washington. Absent such a showing, the decision of the trial court and the action of the panel of the Court of Appeals in affirming that decision must be presumed correct. It is also important to note that Judge Call and the Commissioner from the Court in Washington State conferred on the decision as to which court should exercise jurisdiction as prescribed by Utah Code Annotated, Section 78-45C-7(4). Based upon this conference the Washington Court declined to accept jurisdiction. Pursuant to Utah Code Annotated, Section 78-45C-3(3)(d)(i) Utah should retain jurisdiction if in is in the best interests of the child. Again it is clear that Petitioner's argument is not that the trial court did not follow the UCCJA; but rather that Petitioner disagrees with the court's decision that the best interests of the children would be served if Utah retained jurisdiction. And again it is noted that Petitioner offers no proof that the trial court abused the discretion which it is allowed in making that decision.

POINT II.

THE HOLDING OF THE PANEL OF THE UTAH COURT OF APPEALS HAS DECIDED AN ISSUE OF STATE LAW WHICH IS NO DOUBT IMPORTANT; BUT NOT ONE WHICH THE SUPREME COURT HAS NOT ALREADY DECIDED.

There is no doubt that the First District Court has jurisdiction to modify the decree of divorce which it entered on May 18, 1982. Utah Code Annotated, Section 30-3-5(3) confers this continuing jurisdiction. The provisions of the UCCJA do not strip this jurisdiction simply because the mother has moved from this state, taking the children with her. The UCCJA provides a procedure for the court to follow in determining whether or not to relinquish this jurisdiction in favor of another state. Judge Call followed this procedure and determined that Washington State had declined to accept jurisdiction and that it was in the best interests of the children that jurisdiction continue to be exercised in Utah. The holding of this court in Trent, supra, is that the trial court is vested with the discretion to determine whether or not to relinquish jurisdiction in favor of another state; and that that decision will not be overturned unless that discretion has been abused. Petitioner has offered no evidence that Judge Call abused his discretion in making that decision. It seems clear that the decision in Trent decided the important issue of state law; and that this decision need not be made again by this Court. What Petitioner seeks is that this Court add its

review to the review of the Court of Appeals. This is simply not what is contemplated by Rule 43, Rules of the Utah Supreme Court. The petition for writ of certiorari should be denied.

DATED this 16th day of August, 1988.

LS/
Michael L. Miller
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and exact copies of the foregoing to the attorney for the Petitioner, postage prepaid, at:

Stephen W. Jewell, Esq.
15 South Main, Third Floor
Logan, Utah 84321

DATED this 16th day of August, 1988.

LS/
Carol M. Jones

APR 18 1988
IN THE UTAH COURT OF APPEALS

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Wendy Marie Christensen Rawlings,)

Plaintiff, Respondent,
and Cross-Appellant,

v.

Mark Douglas Weiner,

Defendant, Appellant,
and Cross-Respondent.

OPINION
(For Publication)

Case No. 860274-CA

FILED

Before Judges Davidson, Garff and Bench.

APR 15 1988
Timothy M. Snea
Clerk of the Court
Utah Court of Appeals

DAVIDSON, Judge:

Plaintiff Wendy Rawlings (Rawlings) appeals from the district court's modification of her divorce decree, claiming the trial court lacked jurisdiction to modify the decree because of the Uniform Child Custody Jurisdiction Act (UCCJA), in effect in both Utah and Washington. We affirm.

Defendant Mark Weiner (Weiner) and Rawlings were married August 16, 1974, in Manti, Utah. The parties had five children as issue of their marriage. The parties were divorced on May 18, 1982, by the Honorable Omer J. Call of the First District Court of Box Elder County, Utah. The original decree was later amended on September 27, 1982, by Judge Call. Rawlings was awarded custody of the parties' five children while Weiner was awarded carefully enunciated visitation rights with the minor children. In December 1982, Rawlings remarried.

From 1982 to 1984 Weiner initiated several proceedings to enforce the visitation order in the divorce decree, and each time the judge ordered the parties to comply with the order.¹

1. All hearings were before Judge Call. The orders on the order to show cause enumerated here dealt exclusively with compliance of visitation rights. The orders by Judge Call were: November 17, 1982; May 16, 1983; February 16, 1984; May 29, 1984.

In June 1984, Rawlings sent a letter to Weiner informing him that she and the children had moved to "the Des Moines area" and could be reached at a Utah post office box. Rawlings moved to Washington in June of 1984.² During the summer of 1984, Weiner initiated several additional proceedings in an attempt to locate his children.³

In October 1984, another hearing was held and the court found that Rawlings' move constituted a substantial change in circumstances allowing modification of the visitation provisions in the divorce decree.

In April 1985, a shelter care hearing was held in Washington, pursuant to emergency jurisdiction provided for in the Washington UCCJA, to determine allegations of child abuse made by Rawlings against Weiner. Commissioner Gaddis of the Washington court noted that the Washington court orders were temporary and any permanent adjudication or realignment of the parties had to come from Utah, until the Utah court declined jurisdiction.

In October 1985, Weiner filed an order to show cause in Utah. In November 1985, Rawlings petitioned for transfer of jurisdiction from Utah to Washington. Pursuant to Rawlings' transfer request, Commissioner Gaddis contacted the court in Utah and after discussion with Judge Call declined to accept jurisdiction in Washington. Commissioner Gaddis urged the Utah court to retain jurisdiction to enforce or modify custody and visitation orders.

On December 23, 1985, Judge Call filed a statement and order and certified the matters of disqualification and jurisdiction to Judge VeNoy Christoffersen of the First District Court of Utah for determination. Judge Christoffersen denied Rawlings' motion to disqualify Judge Call, denied the Motion to Change Jurisdiction, and set a hearing date in May 1986, for the order to show cause. On October 21, 1986, the findings of fact, conclusions of law, and order on the order to show cause were entered by the court. The court found Rawlings in contempt for continuing to use "Rawlings" as the children's last name after being ordered not to do so, modified the visitation order and ordered that the parties have joint custody of the children, with Rawlings maintaining physical custody.

2. The "Des Moines area" referred to in the letter turned out to be a suburb of Seattle, Washington.

3. Weiner's continued attempt to locate his children resulted in additional orders by Judge Call on July 26, 1984 and August 8, 1984.

Weiner timely appealed the October 21, 1986 order. Rawlings cross-appealed on grounds that the First District Court lacked jurisdiction. Weiner's appeal was dismissed for lack of prosecution by order of this Court on June 9, 1987.

Before addressing the issue of jurisdiction it is important to note that there is no transcript of the May 1986 hearing. Rawlings refers to continuing objections to jurisdiction made at the May hearing. There is no record of these objections as Rawlings requested no transcript. As held in Fackrell v. Fackrell, 740 P.2d 1318 (Utah 1987):

Appellate review of factual matters can be meaningful, orderly, and intelligent only in juxtaposition to a record by which lower courts' rulings and decisions on disputes can be measured. In this case without a transcript no such record was available, and therefore no measurement of the district court's action can be made as urged upon us by defendant.

Id. at 1319-20 (quoting Sawyers v. Sawyers, 558 P.2d 607, 608-09 (Utah 1976)). Without "adequate citations to the record, the judgment of the lower court is presumed to be correct." Fackrell, 740 P.2d at 1319.

Utah Code Ann. § 30-3-5(3) (1987) provides:

The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property as is reasonable and necessary.

This statute establishes continuing jurisdiction in the First District Court of Box Elder County as the court granting the decree of divorce. Rawlings argues that notwithstanding the continuing jurisdiction, under the Utah UCCJA, Utah Code Ann. §§ 78-45c-1 to 26 (1987), this state is an inconvenient forum. Section 78-45c-3(1) states:

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

- (a) This state (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;
- (b) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;
- (c) The child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or
- (d) (i) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with Paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

Section 78-45c-3(3) states:

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

Section 78-45c-7(3) states:

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

- (a) if another state is or recently was the child's home state;
- (b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- (c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- (d) if the parties have agreed on another forum which is no less appropriate; and
- (e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in § 78-45c-1.

The UCCJA does not mandate loss of jurisdiction to the original state in all cases. Only if Utah chooses to relinquish jurisdiction, based on the best interests of the children, will such jurisdiction transfer.⁴ In Trent v. Trent, 735 P.2d 382 (Utah 1987), the Utah Supreme Court affirmed the trial court's authority under the Utah UCCJA in declining to relinquish jurisdiction to Idaho. In Trent the

4. It may be argued that jurisdiction may be obtained through the emergency provision in section 78-45c-3(1)(c) as was done in this case. However, accepting such jurisdiction on an emergency basis does not give permanent jurisdiction. The court is still required to contact the original state court to determine which court is most convenient and best serves the interests of the children and the parties.

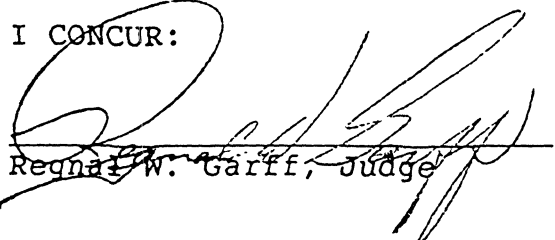
children had neither lived in nor had any contacts with the State of Utah, unlike the children in this case. While Trent dealt exclusively with enforcement of visitation, it makes clear that the UCCJA is not mandatory.

The facts show that Washington specifically declined to exercise jurisdiction because of Utah's past and present involvement with the matter. The judge in Utah and commissioner in Washington conferred and determined that Utah was the more appropriate forum and that Utah would continue to have exclusive subject matter jurisdiction over the custody and visitation of the parties' children. This is precisely the position described in section 78-45c-3(1)(d)(i).⁵ We hold that the First District Court appropriately retained jurisdiction under the Utah UCCJA to make any determinations regarding custody, visitation or other matters relevant to the children.

The judgment of the trial court is affirmed.


Richard C. Davidson, Judge

I CONCUR:


Reginald W. Garff, Judge

BENCH, Judge: (Concurring)

For me, the instant case presents a very narrow question: How does a state's continuing jurisdiction in a divorce case mesh with foreign jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA), 9 U.L.A. 116 (1979)? I believe the

5. Section 78-45c-3(1)(d)(i) is the same version as used by Judge Call in December 1985.

question is answered by section 14(1) of UCCJA,¹ which was not mentioned by the majority but provides as follows:

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

The Commissioner's note to section 14 explains the circumstances under which jurisdiction would shift:

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

1. In Utah, Utah Code Ann. § 78-45c-14(1) (1987); in Washington, RCWA 26.27.140 (1986).

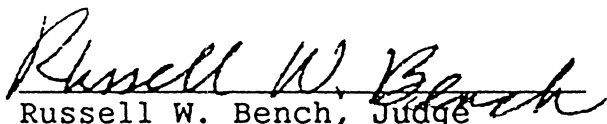
9 U.L.A. at 154 (citation omitted).

The Reporter for the Special Committee preparing the UCCJA was even more specific when she noted the following:

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

Bodenheimer, The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vand. L. Rev. 1207, 1237 (1969) (quoted in State ex rel. Cooper v. Hamilton, 688 S.W.2d 821, 826 (Tenn. 1985)).

Under the facts of this case, Utah's jurisdiction over custody issues was primary and Washington's jurisdiction was secondary. The parties were divorced in Utah. Rawlings subsequently moved to Washington, taking the children with her. Weiner remained in Utah, and continually sought enforcement of his visitation rights under the Utah decree. At Rawlings' request, Washington took emergency jurisdiction under UCCJA. On discovering that Utah had continuing jurisdiction over custody, Washington declined any further jurisdiction under section 14(1). That was precisely what should have happened under UCCJA. Because Utah had primary jurisdiction over custody of the children, I concur in affirming the judgment of the trial court.


Russell W. Bench, Judge

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

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

WENDY MARIE CHRISTENSEN
RAWLINGS,

Plaintiff,

vs.

MARK DOUGLAS WEINER,

Defendant.

*

*

*

*

*

ORDER ON ORDER TO
SHOW CAUSE

Civil No. 16868

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

16868-15

MICROFILMED
Date 6/22/86 Roll No. 211

RAWLINGS OTSC

-A21-

102

21 JUNE


L. Davis

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

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


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

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

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

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

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

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

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

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

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

2-1-87
weeks. For 1986 said visitation shall begin, on June 22 for six (6) weeks, on June 29 for six (6) weeks, on July 6 for six (6) weeks, or on July 13 for six (6) weeks at the discretion of Plaintiff. Plaintiff shall notify the Defendant June 1, 1986, by registered mail, when said visitation shall begin, and on each year thereafter on or before June 1. Said visitation to be scheduled in future years shall substantially comply with the order as as stated above. Said six (6) weeks visitation shall begin ~~Sunday~~ ^{Saturday} at 5:00 p.m., and continue for six (6) weeks to the sixth ~~Sunday~~ ^{Saturday} at 5:00 p.m.

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

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

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

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

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

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

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

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

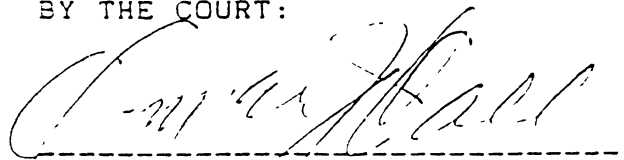
16. Neither of the parties shall be allowed to recover for costs and expenses in this action, whether travel, medical, legal or otherwise, and each party shall bear his or her own costs and expenses incurred in this action and prior hereto.

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

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

DATED this 21st day of October, 1986.

BY THE COURT:


Omer J. Caly
District Judge

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

Mary C. Holmgren
Mary C. Holmgren-Deputy

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

6 WENDY MARIE CHRISTENSEN RAWLINGS,)

7)
8 Petitioner,)

NO. 85-3-04844-3

9 v.)

10 MARK DOUGLAS WEINER,)

ORDER DECLINING
JURISDICTION

11 Respondent.)
12

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

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

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

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

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

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

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

24 *Stephen Gaddis*

25 _____
26 STEPHEN M. GADDIS, COURT COMMISSIONER
27
28

78-45c-1. Purposes - Construction.

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

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

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

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

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

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

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

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

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

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

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

78-45c-2. Definitions.

As used in this act:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary

obligation of any person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 78-45c-5.

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

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

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

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

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

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

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

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

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

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

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

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

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more

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

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

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

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

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

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

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

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

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

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section

78-45c-1.

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

appropriate court and that a forum will be available to the parties.

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

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

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

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

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

30-3-5. Disposition of property - Maintenance and health care of parties and children - Court to have continuing jurisdiction -Custody and visitation - Termination of alimony -Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children; and

(b) if coverage is available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependant children.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the non-custodial parent to provide the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other relatives, the court shall consider the welfare of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are terminated.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) When a petition for modification of child custody or visitation provisions of a court order is made and denied, the court may order the petitioner to pay the reasonable attorney's fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted in good faith.