

2002

# Kimberly and Kenneth Scott v. Susan and Garth Hardinger : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

STATE OF UTAH, in the interest of  B. B.,  A person under 18 years of age.	Case No. 20020404-SC
KIMBERLY and KENNETH SCOTT,  Respondents on Certiorari (Appellants in Court of Appeals),  vs.  SUSAN and GARTH HARDINGER,  Petitioners on Certiorari (Appellees in Court of Appeals).	

HARDINGERS' OPENING BRIEF ON CERTIORARI  
TO THE UTAH COURT OF APPEALS

APPEAL FROM A VISITATION ORDER  
OF THE FOURTH DISTRICT JUVENILE COURT  
HONORABLE JERIL B. WILSON, PRESIDING

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ATTORNEYS FOR HARDINGERS

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UTAH SUPREME COURT

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## **LIST OF PARTIES**

The parties to the current action are as reflected on the case caption.

Hardingers were represented before the Juvenile Court by Dana Burrows, Orem, Utah.

The Guardian ad Litem before the Juvenile Court was Kelly Frye.

Parties and their counsel involved in related proceedings are as follows:

Jenifer Blundell, the biological mother, was represented by Chris Creer in the proceedings which culminated in the termination of her parental rights. She was represented by Gary Weight and by Troy Crossley in divorce proceedings.

Alfie Dominique (Nick) Blundell, the biological father, was represented by Melissa Hawkley in the proceedings which culminated in the termination of his parental rights. He was represented by Rose Blakelock in the divorce proceedings.

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IN THE UTAH SUPREME COURT

STATE OF UTAH, in the interest of  B. B.,  A person under 18 years of age.	Case No. 20020404-SC
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HARDINGERS' OPENING BRIEF ON CERTIORARI  
TO THE UTAH COURT OF APPEALS

**JURISDICTION**

Utah Code Ann. § 78-2-2(3)(a) (Supp. 2002) grants jurisdiction to the Utah Supreme Court to review of an opinion of the Court of Appeals by writ of certiorari. The Court granted Hardingers' petition for writ of certiorari by order entered August 29, 2002. In re B.B., 53 P.3d 1 (Utah 2002).

Hardingers dispute that the Court of Appeals had jurisdiction to review the decision of the Juvenile Court. This is an appeal from an order of the Juvenile Court, and jurisdiction

over this type of appeal is conferred on this Court by Utah Code Ann. § 78-2a-3(2)(c) (Supp. 2002). As explained in Points III and IV of this brief, however, the order appealed from was not a final order and there was no appeal from the attorney fee order. The Court of Appeals therefore lacked jurisdiction to consider the appeal.

### **DECISION OF COURT OF APPEALS**

The opinion of the Court of Appeals was filed March 21, 2002. State ex rel. B.B. (K.S. v. S.H.), 2002 UT App 82, 45 P.3d 527 (referred to herein as “Opinion”). A copy is in the appendix.

### **QUESTIONS PRESENTED FOR REVIEW**

1. Where couples who had participated in raising a child settle their competing claims regarding the child by agreeing in court that one couple will be permitted to adopt the child and the other couple will have ongoing visitation rights, does entry of the adoption decree pursuant to the settlement preclude enforcement of the visitation portions of the settlement? This presents a question of law and statutory interpretation which is reviewed for correctness. L.S.C. v. State (In re Adoption of A.B.), 1999 UT App 315, ¶ 8, 991 P.2d 70, 73.

2. Does the juvenile court have jurisdiction to enforce its own valid orders, even though it may no longer have independent jurisdiction over the child? This presents a question of law which is reviewed for correctness. Department of Human Services, Office

of Recovery Services v. Child Support Enforcement, 888 P.2d 690, 691 (Utah Ct. App. 1994).

3. Where a juvenile court determines it has jurisdiction to consider an order to show cause on visitation issues and denies a motion to quash the order to show cause, but does not enter any order resolving all the issues raised by the order to show cause, is the denial of the motion to quash appealable as a final order? This presents a question of law which is reviewed for correctness. State ex rel. M.W., 2000 UT 79, ¶¶ 23-26, 12 P.3d 80, 85 (Utah 2000)

4. Did the court of appeals have jurisdiction to review a separate order awarding attorney fees where the notice of appeal did not mention the order? This presents a question of law reviewed for correctness. Jensen v. Intermountain Power Agency, 1999 UT 10, ¶ 7, 977 P.2d 474.

### **CONTROLLING STATUTES**

Copies of the controlling statutes appear in the appendix.

### **STATEMENT OF THE CASE**

A. Nature of the Case. This is an appeal from a juvenile court order denying a motion to quash an order to show cause. The order to show cause concerned violation of a visitation order entered in a guardianship case.

B. Course of Proceedings and Disposition Below. The Scotts' (paternal aunt and uncle) petition for custody of B.B. was filed February 23, 1999. (R. 1-9.) Hardingers (maternal grandparents<sup>1</sup>) intervened (R. 41-42) and filed a counter-petition for custody on May 12, 1999. (R. 49-57.) On June 15, 1999, the Guardian ad Litem filed a petition to terminate the parental rights of the natural parents. (R. 134-139.) An order terminating the parental rights was entered January 28, 2000. (R. 278-286.)

Prior to the trial on the competing petitions for custody (treated by the juvenile court as also seeking guardianship of the child, (R. 529 ¶ 6)), the Hardingers and the Scotts reached an agreement that Scotts would be permitted to adopt B.B. in exchange for which Hardingers would be granted certain specified visitation rights. Findings of Fact and Conclusions of Law (R. 330-337) and an Order of Custody and Decree of Guardianship (R. 338-343) were entered on May 19, 2000. A Decree of Adoption entered June 5, 2000, granted the Scotts' petition to adopt B.B. (R. 529, ¶ 8.)

Scotts denied visitation after the adoption decree, and on August 21, 2000, the juvenile court issued an order to show cause to the Scotts. (R. 368-369.) Scotts moved to quash the order, asserting the juvenile court no longer had jurisdiction because of the adoption. (R. 392-393, 370-377.) The juvenile court denied the motion to quash and made

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<sup>1</sup> Although the Hardingers were the biological maternal grandparents of B.B., their rights in this action are based on the stipulation reached with Scotts and approved by the Juvenile Court after the parental rights of both biological parents had been terminated and before the decree of adoption had been entered. At the time of the stipulation and order, B.B. had no legal parents, and neither Hardingers nor Scotts had any legal relationship to her other than as individuals who had historically been her caregivers.

other orders aimed at ultimately resolving the order to show cause. (R. 528-533.) In a separate order, the juvenile court awarded Hardingers their attorney fees. (R. 525-527.)

Scotts filed a notice of appeal. (R. 536-538.) Hardingers moved to dismiss the appeal for lack of jurisdiction. The Court of Appeals denied the motion and deferred the issue for plenary consideration with the merits. Following oral arguments on the appeal, the Court of Appeals entered an opinion resolving the issues in favor of Scotts, with Judge Orme dissenting.

C. Statement of Facts.

B.B. was born July 29, 1996. From the time of her birth until March 12, 1999, a period of 31 months, she resided predominantly with Hardingers, her maternal grandparents. (R. 531 ¶ 27.) On February 23, 1999, while B.B. was still living with Hardingers, the Scotts filed a petition in juvenile court seeking custody of B.B. (R. 1-9). On March 12, 1999, B.B.'s mother signed a document purporting to transfer custody to Scotts. (R. 13-16, 528 ¶ 1.) The mother later rescinded that document and explained she had signed it only because she was mad at her parents, that she had been coerced into signing it, and she understood it was only temporary (R. 96-99), but custody of B.B. was nonetheless transferred to Scotts. Hardingers filed their own petition for custody on May 12, 1999. (R. 528 ¶ 2.) The parental rights of the biological parents were terminated on November 23, 1999. (R. 528.)

Following participation in court ordered mediation, on May 19, 2000, the Hardingers and the Scotts made an agreement to resolve their competing claims for custody. The Scotts

promised to allow future visitation to the Hardingers in exchange for which Hardingers agreed to support the adoption of B.B. by the Scotts. (R. 529 ¶¶ 5-6.) At the time of this agreement, B.B., who was nearly four years old, had lived with Hardingers for the first 31 months of her life and with the Scotts for 14 months.

Seventeen days after the May 19, 2000, settlement agreement, on June 5, 2000, the juvenile court granted a decree of adoption to the Scotts. The decree did not mention the visitation rights. (R. 529 ¶ 8.) The juvenile court expressly found, however, that it would not have granted the adoption but for the prior stipulation and order granting visitation rights to the Hardingers. (R. 531 ¶¶ 2-3; Opinion ¶ 20 (Orme, J., dissenting).)

Only nineteen days after the adoption, Scotts denied Hardingers visitation. (R. 530 ¶ 22.) The initial justification for the denial was a claim of sexual abuse,<sup>2</sup> but the juvenile court found this claim did not justify the visitation denial particularly after safeguards were suggested. (R. 530 ¶ 23.) Hardingers obtained an order to show cause seeking to have Scotts held in contempt for violating the visitation order and seeking makeup visitation and other sanctions. (R. 368-69.) In response, the Scotts filed a motion to quash the order to show cause, claiming the juvenile court lacked jurisdiction to enforce the prior visitation order. (R. 392-393.)

On October 24, 2000, the juvenile court entered an order, entitled “Finding of Fact Conclusions of Law and Order,” denying the motion to quash. (R. 528-533.) The court also

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<sup>2</sup>Subsequent proceedings in the juvenile court, not part of the record, demonstrated that the claim of sexual abuse was completely unfounded.

entered a separate order, entitled “Order of Attorney’s Fees and Judgment,” granting attorney fees to the Hardingers related to the order to show cause. (R. 525-527.) On November 1, 2000, Scotts filed a notice of appeal, stating that they appealed “the ruling of the Court on the Motion to Quash and Objection to Setting Hearings without reopening the file.” (R. 536-538.)

### **SUMMARY OF ARGUMENT**

The Court of Appeals incorrectly viewed this case as implicating the right of parents to raise their child. The right of Scotts to raise their child was not impaired, however, because Scotts voluntarily agreed to the challenged visitation. Rather, this appeal presents the question of whether parties who have stipulated to a court order to resolve a lawsuit can later avoid the stipulation and order simply because the parties have changed their minds. The Court of Appeals erred in holding that the juvenile court’s enforcement of Scotts’ voluntary stipulation somehow interfered with Scotts’ right to raise their child. Although permanency in adoptive placements is an important legislative goal, allowing parents to ignore their own agreements does not promote permanency.

A court always has jurisdiction to enforce its own valid orders. The Court of Appeals erred in holding that because the juvenile court no longer had jurisdiction to issue new visitation orders, it therefore lacked jurisdiction to enforce its prior orders. Nothing in the adoption statutes nor in the juvenile court statutes abrogates the inherent jurisdiction and duty of the juvenile court to enforce its own order.



The order appealed from, by its own terms, was not final. The juvenile court held it had jurisdiction to proceed, and ordered an evaluation as part of the ongoing proceedings. The holding that the order was final departed from prior rulings of this Court.

The purported challenge to the attorney fee award is also jurisdictionally deficient. Scotts' notice of appeal did not include the attorney fee award. The holding of the Court of Appeals to the contrary departed from prior rulings of this Court.

## **ARGUMENT**

### **POINT I**

#### **ADOPTIVE PERMANENCY IS NOT PROMOTED BY PERMITTING PARENTS TO UNILATERALLY CHANGE OR IGNORE THEIR OWN VOLUNTARY AGREEMENTS REGARDING POST-ADOPTION VISITATION.**

The United States Supreme Court recognized in Troxel v. Granville, 530 U.S. 57, 65-66 (2000), that parents have a fundamental liberty interest in making decisions concerning the best interests of their children without interference from the state or others. Utah statutes, as recognized by the opinion of the Court of Appeals, grant adoptive parents these same rights. Opinion ¶ 14. The instant appeal does not in any way challenge the right of parents under normal circumstances to make decisions concerning their child. The issue

presented by this appeal, rather, is whether parents are sovereigns able to make and change those decisions at will without regard to their own prior agreements and court orders.

The Court of Appeals held parents are not bound by their own agreements regarding the best interests of their child if the parents later change their minds as to whether the agreement was in the best interest of the child. The Guardian Ad Litem and the Scotts urged the Court of Appeals to take this position based on a claim that it was necessary to promote the sanctity of adoptions. The public policy of the state does not, however, require the avoiding of a visitation contract made in anticipation of adoption, particularly where that contract merely provided for the continuance of an established relationship which the prospective parents, at the time of the contract, agreed was in the best interest of the child. The validity of pre-adoption visitation contracts is an important issue of law which should be settled by this Court.

- A. The holding that the juvenile court imposed a visitation order on Scotts is contrary to the record.

The Court of Appeals held:

The juvenile court's fashioning of a conditional decree of adoption is not consistent with the above principles. Furthermore, a conditional decree of adoption would impose a duty upon the Parents that is not generally required of natural parents; namely, that the Parents either make their child available to visit with non-relatives *not of their choosing* or be held in contempt of court.

Opinion ¶ 16 (*italics added*).

The fallacy of this conclusion is that the juvenile court order did not require the Scotts to make their child visit with non-relatives not of their choosing. Scotts agreed to the visitation order. It was not imposed on them. Scotts helped choose the times for visitation. Scotts agreed that the visitation be with Hardingers. Scotts' attorney drafted the order. Scotts agreed that the visitation was in B.B.'s best interest. (R. 338-343.) There was no claim nor evidence that Scotts were in any way coerced to make this agreement. It was entirely voluntary. It was simply wrong to hold that the visitation order "imposed" on Scotts an obligation to make B.B. available to visit with non-relatives "not of their choosing."

Granted, the visitation with Hardingers was "not of [Scotts'] choosing" at the time for enforcement of the visitation order. It would be a very dangerous precedent indeed, however, to hold that a stipulated order is somehow rendered less voluntary and less enforceable just because the parties do not continually reaffirm their desire to enter into the stipulation anew. The fact that Scotts do not now choose to honor their contract does not mean that the initial contract was not of their own choosing. Adoptive parents should generally not be forced to make their child available for visitation with non-relatives, but there was no force here.

**B. An Agreement Is Binding Even If the Court Lacked Jurisdiction to Impose It.**

Absent the Scotts' preadoption stipulation, it is likely that the juvenile court could not have awarded visitation to Hardingers postadoption. The lack of an independent basis for visitation does not, however, impair the enforceability of the visitation right. The concept

that a court may enforce an agreement which the court would not have had authority to impose is not new to Utah law. In Despain v. Despain, 627 P.2d 526 (Utah 1981), a father agreed to provide support for two of his children so long as they resided with the mother and were full-time students. He later discovered two court opinions which held the trial court lacked authority to impose support past age twenty-one and sought an order vacating his obligation to provide support past the twenty-first birthday of each child. He also relied on a statutory change which clarified that the court cannot impose support past age twenty-one. The court rejected his claim, noting the distinction between the statutory authority to impose an order and the authority to enforce an agreement:

Defendant has failed to observe the distinction between those cases involving the statutory power of a court in a divorce proceeding to enter orders concerning support and those cases in which the parties in a divorce action have settled their property rights by agreement, the terms of which are incorporated in a decree. The limitations on the power of the court to order support do not limit the rights of a husband and wife to contract with respect to the education of their children as part of an agreement settling their property rights. A husband, who has undertaken an obligation in consideration of the provisions of the property settlement agreement which were for his benefit, cannot subsequently complain that the court, in the absence of such agreement, would have been without power to order him to do so.

627 P.2d at 527.

The court further noted the inequity which would be inherent in allowing the husband to retain all the benefits of his having made an agreement but avoid the burden of that agreement:

Defendant has not urged any compelling reasons for invoking the powers of equity to abrogate the property settlement; nor has he shown a change of circumstances to justify modification of the child support payments. Over a period of three years the parties were involved in attaining an agreement. Both made concessions in exchange for benefits. . . . It is a proper assumption that plaintiff settled for the sum she received in reliance on the availability of additional funds to assist the children, living with her, in completing their education. It would be highly inequitable under the circumstances of this case to permit defendant to retain the benefits and be relieved of the obligations he assumed in his bargain with plaintiff.

627 P.2d at 528.

Other courts have recognized this concept that a party may agree to and be bound by obligations beyond that which the court could have imposed initially. In Kotler v. Spaulding, 510 N.E.2d 770, 772 (Mass. Ct. App. 1987), the court held: “We are of opinion that there is a significant difference between a provision for education rendered by a judge pursuant to [the statutory provision allowing for support until age 21] following litigation, and a judgment or order which incorporates and requires compliance with the provisions of a bargained-for agreement.” The court further held that such a voluntary agreement “may be enforced by means of a contempt proceeding.” Id.

By pretending to promise that Hardingers would have ongoing visitation rights, Scotts obtained Hardingers’ consent to the adoption. The court likely would not have been able to make the finding required by Utah Code Ann. § 78-30-9 (Supp. 2002) that the adoption was in the best interest of B.B. but for the stipulation that B.B. would enjoy

ongoing visitation with the Hardingers—the Juvenile Court expressly found that that stipulation was necessary for the court to have granted the adoption and that the visitation was in B.B.’s best interest. (R. 531 ¶¶ 2, 4.) It was only thirty-six days later, after the adoption had been granted,<sup>3</sup> that Scotts denied any obligation to honor their agreement and allow visitation. Where Scotts already had the benefit they wanted under the agreement, it is manifestly inequitable to shield them from honoring their obligations under the agreement.

C. Conditional adoptions are not contrary to Utah statutes or public policy.

The Court of Appeals held: “The juvenile court’s fashioning of a conditional decree of adoption is not consistent with the above principles,” Opinion ¶ 16, apparently referring to the legislative goal to prevent disruption of adoptive placements. Opinion ¶ 14. This presents an important question of state law which has not been, but should be, settled by this Court: Does this State permit conditional or open adoptions? The negative answer of the Court of Appeals to this question conflicts with prior decisions of this Court and of the Court of Appeals’s own expression of public policy.<sup>4</sup>

In In re Adoption of Halloway, 732 P.2d 962, 972 n.11 (Utah 1986), this Court noted that “[a]n innovative approach to adoption, called an open adoption, is gaining increased

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<sup>3</sup>In light of Utah Code Ann. § 78-30-4.15(2) (Supp. 2002), which provides that a “fraudulent representation . . . is not a basis for . . . vacation of an adoption decree,” and Utah Code Ann. § 78-30-4.16(3) (Supp. 2002), which states that an “adoption may not be contested after the final decree of adoption is entered,” it would have been very difficult for Hardingers to have undone the adoption at that point.

<sup>4</sup>The decision is also squarely at odds with the Juvenile Court’s finding that the visitation was in the best interests of B.B.

recognition among professionals in the adoption field and may be suited to this case.” Notwithstanding this favorable reference by this Court to open adoptions in 1986, the Court of Appeals has now held that Utah law precludes the post-adoption enforcement of any pre-adoption visitation agreement or order, at least where the agreement arises in the juvenile court<sup>5</sup>. The statutes and cases do not support this ruling.

The adoption decree was entered barely two weeks after the visitation order. The juvenile court held it would not have granted the adoption if the parties had not agreed to the visitation order. (R. 531 ¶¶ 2-3; Opinion ¶ 20 (Orme, J., dissenting).) Under established case law, the visitation order and adoption decree must be considered contemporaneous, and the later adoption decree did not bar the prior visitation order. Stubbs v. Hemmert, 567 P.2d 168, 169-70 (Utah 1977) (the determination of whether or not merger occurs depends on whether the terms of the earlier contract are collateral to the subsequent document, and “depends to a great extent on the intent of the parties with respect thereto.”); Shields v. Harris, 934 P.2d 653, 657 (Utah Ct. App. 1997) (“when two agreements are executed substantially contemporaneously and are clearly interrelated, they must be construed as a whole and harmonized if possible”) (quotation marks and citations omitted).

It is important to emphasize the context in which this issue arises. Hardingers and Scotts had competing petitions seeking custody of and guardianship over B.B. Scotts had recently obtained physical custody of B.B., but historically B.B. had resided in the Hardinger

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<sup>5</sup>The court’s logic would apply only to juvenile courts. Pre-adoption visitation orders would continue to be enforceable in district court. See Point II at page 17.

home. (R. 531, ¶ 27.) To resolve the competing petitions, the parties agreed that Scotts would adopt B.B. but Hardingers would continue to have visitation. The Decree of Adoption did not, therefore, change the existing placement of B.B.

In situations where the existing placement does not change, public policy (and the best interest of the involved child) favors continuing, not terminating, existing bonds of the child:

Furthermore, in home placement cases, like the present case, we emphasize that there is no need for the state to intervene on behalf of the child and cut off the rights of the natural father to ensure immediate and continued physical care or uninterrupted bonding of a child to its new adoptive parents, because the mother continues to fulfill a parental role. Especially when the mother and child live with an adoptive grandparent under circumstances which will remain the same, allowing a father to continue to provide financial support and maintain his relationship with the child has the potential of benefitting, not harming, the child.

T.S. v. L.F., 2001 UT App 183, ¶ 20, 27 P.3d 583 (citations, quotation marks, and brackets omitted).

As in T.S., the instant case is a “home placement” case. B.B. had already been living with the Scotts for a brief period, and while living with the Scotts had enjoyed ongoing visitation with Hardingers. Prior to that B.B. had lived with Hardingers. The Decree of Adoption did not change that placement with Scotts, so public policy clearly favors promoting B.B.’s best interest by allowing Hardingers to continue their relationship with her.



The one thing that all of the evaluators agreed on in this case was that Hardingers were important to B.B. and that it was in her best interest that they continue to have extensive visitation rights. Scotts willingly stipulated to those visitation rights in order to procure the Hardingers' cooperation in the adoption. Although Scotts now want to renege on their stipulation, nothing in the statutes or case law shields them from being required to comply with their agreement.

The juvenile court also focused on several Court of Appeals opinions which hold that the visitation rights of grandparents end upon termination of parental rights. Opinion ¶ 13. This principle has no application here, because Hardingers' visitation rights arose by agreement and court order, not because of their status as the biological grandparents of B.B. The parental rights of the biological parents were terminated on November 23, 1999. (R. 528.) The visitation rights at issue in this case were created by stipulation and order on May 19, 2000. At that point, neither the Scotts nor the Hardingers had any legal right to visitation by reason of the biological relationship, but only as historical caregivers to B.B. Cases which hold that biological grandparents have no post adoption visitation rights therefore have no application to this proceeding.

## **POINT II**

### **A JUVENILE COURT HAS JURISDICTION TO ENFORCE ITS OWN ORDER.**

The Court of Appeals determined that the jurisdiction of the juvenile court over B.B. terminated when the adoption occurred. The court extrapolated from that conclusion to hold

that the juvenile court lacked jurisdiction to enforce its own prior visitation order. Not only is it bad policy to hold that a court cannot enforce its own order, but it is contrary to the juvenile court statutes and not supported by the logic of the Court of Appeals.

The Court of Appeals held:

In reading the statutes relating to child welfare proceedings and to adoptions so as to harmonize them, we conclude that the juvenile court had no jurisdiction over the Parents or B.B. after the adoption took place. The statutes share a common goal of providing stable, permanent homes for adoptive children and allowing these newly formed families to exist on the same basis as all other families. Hence, once its basis for jurisdiction ended, the juvenile court could not assume jurisdiction over B.B. until and unless the requisite statutory requirements for jurisdiction were reestablished.

Opinion ¶ 15.

This quotation illustrates that the Court of Appeals was concerned with the concept of open or conditional adoptions. Rather than squarely holding that conditional adoptions are invalid (something which should be left to the legislature, Utah Power & Light Co. v. Provo, 94 Utah 203, 250, 74 P.2d 1191, 1211 (Utah 1937)), the Court of Appeals strained to construct a jurisdictional bar. The logic of the Court of Appeals cannot stand scrutiny.

The fallacy of the court's reasoning is evident when one considers the validity of a pre-adoption visitation agreement made in district court. District courts have jurisdiction over adoptions except where the juvenile court has terminated parental rights, Utah Code Ann. §§ 78-3a-104(1)(o), 78-30-7(1) (Supp. 2002), yet are courts of general, not limited,

jurisdiction. Utah Code Ann. § 78-3-4(1) (Supp. 2002). Had the visitation order here been entered by the district court, there would be no question that the court retained jurisdiction to enforce the order. Principles of equal protection do not permit invalidating a pre-adoption visitation order entered in juvenile court while enforcing an identical order entered in district court.

Utah Code Ann. § 78-3a-121(2)(a)(i) (Supp. 2002) provides that the juvenile court can terminate its own jurisdiction by express order to that effect. The Court of Appeals expanded the statutory language to hold that jurisdiction of the juvenile court continues until there is any order that resolves the initial basis for jurisdiction. Opinion ¶¶ 11-12. The majority of the Court of Appeals ignored the equally binding provision that the juvenile court always retains jurisdiction to enforce its own orders through the contempt power. Utah Code Ann. § 78-3a-901(1) (Supp. 2002) provides: “Any person who willfully violates or refuses to obey any order of the court may be proceeded against for contempt of court.”

The Court held the juvenile court jurisdiction continued “until a permanent custody order or adoption was achieved. Opinion ¶ 12. The Order of Custody and Decree of Guardianship entered shortly before the adoption (R. 338-343), however, was such a permanent custody order. Under the logic of the Court of Appeals, the Order of Custody and Decree of Guardianship terminated the jurisdiction of the juvenile court, leaving it without jurisdiction to grant the adoption.

The Court of Appeals also asserted that the Hardingers' visitation rights terminated upon the termination of the biological parents' rights. Opinion ¶ 13. That termination, however, occurred months before the visitation order under review. (R. 278-286.) The Hardingers' visitation rights arose from the Scotts' agreement and the juvenile court's order, not from the biological relationship. Because the visitation rights were not based on the biological relationship, the adoption did not terminate those rights.

It is important to understand the nature of the order under appeal. All the juvenile court did was enforce its own prior order. The previous order, entered May 19, 2000, only implemented an agreement made by the parties. The appealed order did not "award" post-adoption visitation rights, it only enforced a prior order. No one claimed the prior order was improper or invalid.

The issue presented by this case is whether a court retains jurisdiction to enforce its own order. The answer must be "yes." That is all that occurred here. To enable them to adopt B.B., Scotts agreed that Hardingers could have visitation. The Decree of Adoption was entered only 17 days after the visitation order. Once they got what they wanted, Scotts then attempted to renege on their part of the bargain. Scotts don't deny they agreed to the visitation and agreed in was in B.B.'s best interest, they just claim the juvenile court now lacks jurisdiction to compel them to honor their agreement.

Utah Code Ann. § 78-3a-901 (Supp. 2002) expressly grants the juvenile court the contempt power to enforce its orders. A court has inherent jurisdiction to enforce its own

order, even when the initial justification for jurisdiction is gone. Koehler v. Grant, 213 B.R. 567, 569 (8th Cir. BAP 1997) (bankruptcy court can enforce order by contempt proceeding after case is closed); Cramer v. Petrie, 637 N.E.2d 882, 884 (Ohio 1994) (court can enforce child support order by contempt after child is emancipated). In Cramer, the court held:

Furthermore, we see no reason why a court's inherent authority to enforce a lawfully issued child support order must end when the child is emancipated. More is at stake than the mere nonpayment of support. Also at stake is the court's strong interest in seeing, as a general matter, that its orders are not disobeyed with impunity. *This interest exists independently of the child who is the subject of the order because it concerns the exercise of the court's judicial functions and ultimately the public's confidence in the judicial system.*

637 N.E.2d at 884-85 (italics added).<sup>6</sup>

Scotts have not questioned that the juvenile court had jurisdiction to enter the visitation order. It follows that the court had jurisdiction to enforce that order. Even though the court may have lost jurisdiction to make new orders regarding visitation, the court retained jurisdiction to enforce the order previously made.

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<sup>6</sup>The Court of Appeals asserted that Cramer was distinguishable because it involved an order which was violated before the child's status changed. Opinion at ¶ 16 n. 5. While the facts in Cramer may be technically different than the facts in the present action, the principle for which Cramer was cited is still very applicable. It would seriously erode public confidence in the judicial system to allow a party to disobey an order with impunity solely because of a change in the status of the child—a change that was contemplated at the time the order was entered. Public confidence in the judicial system would be eroded if a party could receive a benefit from promising to grant visitation but then be excused from having to actually allow the visitation. The courts should not condone duplicity.

### **POINT III**

#### **THE ORDER APPEALED FROM WAS NOT FINAL BECAUSE SUBSTANTIVE ISSUES REMAIN PENDING BEFORE THE JUVENILE COURT.**

An appeal as of right may be taken only from a final order. Utah R. App. P. 4(a). A final order is one which “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Crosland v. Peck, 738 P.2d 631, 632 (Utah 1986) (citation and quotation marks omitted). Determining the finality of a juvenile court order is problematic. There may be several final orders during the time the minor is subject to the jurisdiction of the juvenile court. This case presented the situation of retained jurisdiction to review the child’s welfare. In addition, the order to show cause which invoked the court’s jurisdiction had not been resolved. The Court of Appeals focused on the retained jurisdiction, but ignored the incomplete resolution of the order to show cause.

Scotts appealed the denial of their motion to quash an order to show cause. The Court of Appeals held the denial was an appealable order, apparently concluding that the denial order actually ruled on the merits of the order to show cause. The Court of Appeals held: “[t]he finality was not affected by the juvenile court’s retention of jurisdiction over the juvenile for further proceedings.” Opinion ¶ 7. While it is true that the juvenile court retained jurisdiction for further proceedings, the Court of Appeals ignored the fact that the juvenile court never actually ruled on the order to show cause. Although the court resolved

the primary, jurisdictional issue raised by the order to show cause, other substantive issues remain pending before the juvenile court.

The order to show cause raised six specific numbered issues, plus one catch all. Of those six, only two were resolved by the juvenile court's order. Among the issues which remain pending are requested makeup visitation and a re-evaluation of custody. (R. 368 ¶¶ 2, 6.) Also pending was Hardingers' request for more specific orders regarding telephone visitation, (R. 368 ¶ 4) and for reimbursement for counseling costs. (R. 368 ¶ 5.) The order under appeal resolved none of these issues. It ordered a family and psychosexual investigation (R. 531 ¶ 5) and left the cost of that evaluation to be determined by future order. (R. 532, Conclusions ¶ 6, Order ¶ 7.) It temporarily limited Mr. Hardinger's right to unsupervised visitation, with ongoing visitation apparently to be reviewed after the psychosexual evaluation. (R. 532 ¶ 4.) In short, the order resolved the jurisdictional issue and established a plan for resolution of the remaining issues. It did not resolve any issue except jurisdiction to consider the remaining issues.

The Court of Appeals analogized the instant case to a divorce proceeding where the court determines custody but retains continuing jurisdiction to modify the determination. Opinion ¶ 8 n. 2. A more accurate analogy would be to a temporary order of custody in a divorce case. The juvenile court here held that it had jurisdiction and that visitation would continue as provided in the pre-adoption order, but never resolved many of the issues raised by the order to show cause. It is evident from the wording of the post adoption visitation

order that the court intended to resolve the remaining order to show cause issues after the evaluation and investigation by Dr. Jay Jensen. R. 531 ¶ 5.

The denial of a motion to dismiss or a motion to quash leaves the action still pending and is not a final order. Little v. Mitchell, 604 P.2d 918, 919 (Utah 1979); R.H.D. v. S.F. (In re Baby K.), 967 P.2d 947, 950 (Utah Ct. App. 1998). Although the juvenile court's holding that it had jurisdiction resolved the primary disputed issue and left the parties with little interest in fine-tuning the visitation, jurisdiction is not determined from the parties' interest in pursuing the litigation to its final finish, but by whether any part of the dispute still technically remains. ProMax Dev. Corp. v. Raile, 2000 UT 4, ¶ 15, 998 P.2d 254 (an unresolved attorney fee claim defeated finality, even though the primary dispute had been fully resolved); A.J. Mackay Co. v. Okland Construction Co., 817 P.2d 323, 325 (Utah 1991) (finality defeated by pending counterclaim even though the primary dispute had been resolved and no one was interested in pursuing the counterclaim; "acquiescence of the parties is insufficient to confer jurisdiction on the court").

Because there was no final order to appeal, the Court of Appeals lacked jurisdiction. The appeal should have been dismissed. This Court should, accordingly, vacate the opinion of the Court of Appeals.



#### POINT IV

#### **THE HOLDING THAT THE NOTICE OF APPEAL INCLUDED THE ATTORNEY FEE ORDER CONFLICTS WITH THIS COURT'S DECISION IN *JENSEN V. INTERMOUNTAIN POWER AGENCY*.**

The Court of Appeals appears to have adopted a rule that, when multiple orders are issued following a single hearing, an appeal of only one of those orders automatically includes the other orders. This holding is not supported by the language of Rule 3 of the Utah Rules of Appellate Procedure and conflicts with this court's holding in Jensen v. Intermountain Power Agency, 1999 UT 10, 977 P.2d 474.

Rule 3(d) of the Utah Rules of Appellate Procedure requires that “the notice of appeal . . . shall designate the judgment or order, or part thereof, appealed from.” The requirement is jurisdictional. Jensen, 1999 UT 10, ¶ 7, 977 P.2d 474, 476. The Jensen court reaffirmed that the notice of appeal must state “specifically which judgment is being appealed.” Id. (citation and quotation marks omitted).

Is apparent from the record that at least two separate matters were heard by the juvenile court on September 6, 2000. One was the order to show cause issued at the request of the Hardingers, which included a request for attorney fees. The second was the Scotts' motion to quash that order to show cause. The court issued two orders following the hearing: Order of Attorney's Fees and Judgement (“Attorney Fee Order”), which addressed only attorney fees for contempt, and Finding of Fact Conclusions of Law and Order (labeled

by the Court of Appeals as “Visitation Order”), which denied the motion to quash and held the juvenile court had ongoing jurisdiction.

The notice of appeal in this case states that it appeals “the ruling of the Court on the Motion to Quash and Objection to Setting Hearings without re-opening the file.” The Court of Appeals, after quoting the language of the notice of appeal, held: “While the notice provided by this statement is not ideal, it sufficiently notifies the Grandparents that the orders resulting from the September 6, 2000 hearing are being appealed, particularly where the orders bear the same date.” Opinion ¶ 10. This conclusion is puzzling, because nothing in the notice of appeal specifies the date of the hearing nor the date of the order being appealed. Moreover, the language of the notice of appeal was not a generic reference to all matters raised the hearing—in fact, the notice does not even mention the hearing. What the notice of appeal did mention was a single<sup>7</sup> specific ruling: “the ruling of the Court on the Motion to Quash and Objection to Setting Hearings without re-opening the file.” The only order in the file which matches this description is the Findings of Fact Conclusions of Law and Order entered October 24, 2000.

Jensen and Appellate Rule 3 hold the notice of appeal must specify the order appealed from. The Order of Attorney’s Fees and Judgement (R. 525-27) is not specified in the

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<sup>7</sup>The definite article “the” “is a word of limitation as opposed to the indefinite or generalizing force of ‘a’ or ‘an.’” Brooks v. Zabka, 450 P.2d 653, 655 (Colo. 1969) (citations omitted). Accord State v. Gonzales, 2000 UT App. 136, ¶¶ 15, 28, 2 P.3d 954, 958 n.2, 961 (both the majority and concurring opinions agreed on the limiting nature of “the”).

Notice of Appeal, either by inference or by association. This Court should hold there was no valid appeal from the Order of Attorney's Fees and Judgement.

#### **POINT V**

#### **HARDINGERS SHOULD BE AWARDED THEIR ATTORNEY FEES ON APPEAL.**

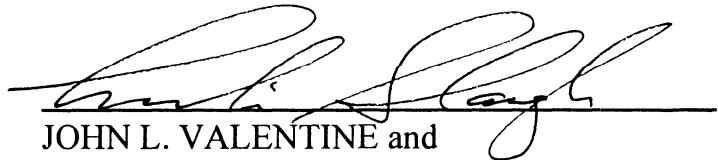
The juvenile court awarded Hardingers their attorney fees incurred in enforcing their visitation rights. This Court should similarly award Hardingers their attorney fees on appeal. Valcarce v. Fitzgerald, 961 P.2d 305, 319 (Utah 1998).

#### **CONCLUSION**

This Court should leave to the legislature the policy determination of whether conditional adoptions should be barred. The attempt of the Court of Appeals to create such a bar through a flawed jurisdictional analysis should be reversed. The case should be remanded to the juvenile court for further proceedings on the order to show cause.

The judgment for attorney fees in favor of Hardingers should be reinstated, and Hardingers should be awarded their attorney fees on appeal.

DATED this 12<sup>th</sup> day of November, 2002.

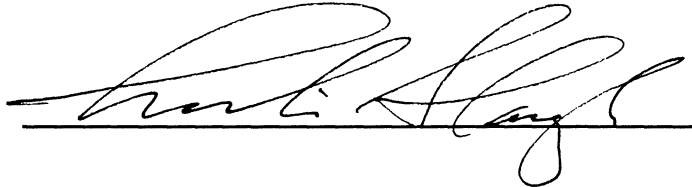
  
JOHN L. VALENTINE and  
LESLIE W. SLAUGH, for:  
HOWARD, LEWIS & PETERSEN  
Attorneys for Appellees

### MAILING CERTIFICATE

I hereby certify that two true and correct copies of this petition were mailed to each of the following, postage prepaid, this 12<sup>th</sup> day of November, 2002.

Brook J. Sessions, Esq.  
Jamestown Square  
Clocktower Building, Suite 200  
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Provo, UT 84604-4438

Martha Pierce, Esq.  
Guardian ad Litem  
450 South State, Second Floor  
P. O. Box 140403  
Salt Lake City, UT 84114-0403

A handwritten signature in black ink, appearing to read "Mark Hardinger", is written over a horizontal line.

G \LWS\Hardinger brief on cert wpd

## APPENDIX “A”

State ex rel. B.B. (K.S. v. S.H.), 2002 UT App 82, 443 Utah Adv. Rep. 45

MAR 25 2002

**FILED**  
Utah Court of Appeals

MAR 21 2002

Paulette Stagg  
Clerk of the Court

This opinion is subject to revision before  
publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	OPINION
of B.B., a person under	)	(For Official Publication)
eighteen years of age.	)	
_____	)	Case No. 20000949-CA
	)	
K.S. and K.S.,	)	F I L E D
	)	(March 21, 2002)
Appellants,	)	
	)	2002 UT App 82
v.	)	
	)	
S.H. and G.H.,	)	
	)	
Appellees.	)	

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Fourth District Juvenile, Provo Department  
The Honorable Jeril B. Wilson

Attorneys: Brook J. Sessions, Provo, for Appellants  
Leslie W. Slauch, Provo, for Appellees  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Billings, Greenwood, and Orme.

GREENWOOD, Judge:

¶1 K.S and K.S. (the Parents) are the adoptive parents of B.B. They appeal a juvenile court order asserting jurisdiction to enforce a pre-adoption visitation order issued in favor of S.H. and G.H., B.B.'s biological maternal grandparents (the Grandparents), after the Parents adopted B.B. The Parents also appeal the juvenile court's order awarding attorney fees to the Grandparents. Because we conclude the juvenile court lacked jurisdiction, we reverse both orders.

#### BACKGROUND

¶2 The parental rights of B.B.'s biological mother and father were terminated after the juvenile court determined B.B. was a

neglected child. The Parents<sup>1</sup> and the Grandparents filed competing petitions for custody and guardianship of B.B. To resolve the dispute, the Grandparents agreed to withdraw their petition and allow the Parents to obtain custody in exchange for visitation rights. The Grandparents also agreed to support the Parents' adoption of B.B. The juvenile court then entered an order establishing a visitation schedule (the Pre-adoption Visitation Order) stipulated to by the parties. Seventeen days later, the juvenile court granted the Parents' adoption petition. The adoption decree did not mention the Pre-adoption Visitation Order or visitation in any form for the Grandparents.

¶3 After the Parents adopted B.B., they initially allowed the Grandparents to exercise visitation as specified in the Pre-adoption Visitation Order. Out of concern for B.B., however, the Parents terminated B.B.'s visits with the Grandparents. The Grandparents then filed an Order to Show Cause requiring the Parents to appear in juvenile court to show cause why they should not be held in contempt for not abiding by the Pre-adoption Visitation Order. The Parents filed a Motion to Quash the Order to Show Cause, claiming the juvenile court's jurisdiction ended when it granted the Parents' petition for adoption. The juvenile court denied the Motion to Quash and entered two separate orders: (1) Findings of Fact, Conclusions of Law & Order (the Visitation Order); and (2) Order of Attorney Fees and Judgment (the Attorney Fee Order). The Visitation Order asserted jurisdiction and granted the Grandparents visitation rights pursuant to the stipulated Pre-adoption Visitation Order. The Attorney Fee Order required the Parents to pay the Grandparents' attorney fees incurred for the Order to Show Cause. This appeal followed.

#### ISSUES AND STANDARDS OF REVIEW

¶4 The Grandparents argue that the Visitation Order is not final; thus denying this court jurisdiction. We determine whether an order is final as a matter of law. See In re M.W., 2000 UT 79, ¶¶23-26, 12 P.3d 80. The Grandparents also contend that the Parents' appeal of the Attorney Fee Order was not adequately raised in the Parents' Notice of Appeal. We determine whether the Notice of Appeal is adequate to grant this court jurisdiction as a matter of law. See Jensen v. Intermountain Power Agency, 1999 UT 10, ¶7, 977 P.2d 474.

¶5 The Parents and the guardian ad litem argue the juvenile court lacked subject matter jurisdiction to enter the Visitation Order subsequent to the adoption decree. Whether a court has

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1. K.S. is the sister of B.B.'s biological father.

subject matter jurisdiction is a question of law that we review for correctness. See Burns Chiropractic Clinic v. Allstate Ins. Co., 851 P.2d 1209, 1211 (Utah Ct. App. 1993). The Parents also argue that because the juvenile court lacked subject matter jurisdiction, it should not have awarded attorney fees. In this context, we review the award of attorney fees for correctness. See Campbell v. State Farm Mut. Auto. Ins. Co., 2001 UT 89, ¶13, 432 Utah Adv. Rep. 44.

## ANALYSIS

### I. Finality of the Visitation Order

¶6 The Grandparents argue this court lacks jurisdiction because the Visitation Order was not a final order. The Visitation Order stated, among other things, that the juvenile court had subject matter jurisdiction to enforce the Pre-adoption Visitation Order, and the Grandparents were entitled to visitation rights as set forth in the Pre-adoption Visitation Order. Subsequent to the Visitation Order, the juvenile court reviewed the Pre-adoption Visitation Order and modified it. Because of these subsequent modifications, the Grandparents argue that the Visitation Order was not a final order. We disagree.

¶7 The Court of Appeals has original jurisdiction over appeals from juvenile court. See Utah Code Ann. § 78-3a-909(1) (1996). Rule 3 of the Utah Rules of Appellate Procedure states: "An appeal may be taken from a . . . juvenile court to the appellate court with jurisdiction over the appeal from all final orders and judgments . . . ." Utah R. App. P. 3(a) (emphasis added). Generally, "a judgment is final when it ends the controversy between the parties litigant." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649 (citation and quotations omitted). In In re M.W., 2000 UT 79, ¶26, 12 P.3d 80, the supreme court held that an order entered after an adjudication hearing on a petition of abuse was final for purposes of appeal. The finality was not affected by the juvenile court's retention of jurisdiction over the juvenile for further proceedings. In so holding, the Utah Supreme Court stated:

The finality of an order in juvenile proceedings is determined the same way as the finality of an order in other courts . . .  
"A final, appealable order is one that ends the current juvenile proceedings, leaving no question open for further judicial action."

. . . . .



[T]he juvenile court continues to have jurisdiction over and periodically reviews the case, but that does not mean the . . . adjudication is not final.

Id. at ¶¶25-26 (citations omitted). Accordingly, even though a juvenile court periodically reviews its orders, the orders may still be final for purposes of appellate review.

¶8 The Visitation Order expressly held that the juvenile court had subject matter jurisdiction over B.B., and that the Grandparents were entitled to visitation rights under the Pre-adoption Visitation Order. The hearing subsequent to the issuance of the Visitation Order was merely a review of that order. The Visitation Order resolved the controversy between the parties as raised in the Order to Show Cause concerning the juvenile court's jurisdiction to enforce the Pre-adoption Visitation Order. Because the Visitation Order was final, we have jurisdiction to hear this appeal.<sup>2</sup>

## II. Adequacy of the Notice of Appeal

¶9 While conceding that the Attorney Fee Order was final for purposes of appeal, the Grandparents argue that because the Parents failed to mention the Attorney Fee Order in their Notice of Appeal, it is not properly before this court. For an appeal to be properly raised, "[t]he notice of appeal . . . shall designate the judgment or order, or part thereof, appealed from . . . ." Utah R. App. P. 3(d). The Utah Supreme Court has held that this requirement is jurisdictional because "'the object of a notice of appeal is to advise the opposite party that an appeal has been taken from a specific judgment in a particular case.'" Jensen v. Intermountain Power Agency, 1999 UT 10, ¶7, 977 P.2d 474 (quoting Nunley v. Stan Katz Real Estate, 15 Utah 2d 126, 388 P.2d 798, 800 (1964)). However, "[n]otices of appeal are to be liberally construed." Roberson v. Draney, 54 Utah 525, 182 P. 212, 213 (1919) (citations and quotations omitted); see also U.P.C., Inc. v. R.O.A. Gen., Inc., 1999 UT App 303, ¶28, 990 P.2d 945.

¶10 The Parents' Notice of Appeal states that they appeal "the ruling of the court on the Motion to Quash and Objection to Setting Hearings without re-opening the file." While the notice

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2. Similar circumstances exist in divorce proceedings when the court initially determines which parent shall have custody of the children and the visitation rights of the non-custodial parent, subject to the court's continuing jurisdiction to modify those determinations. See Utah Code Ann. § 30-3-5 (Supp. 2001).

provided by this statement is not ideal, it sufficiently notifies the Grandparents that the orders resulting from the September 6, 2000 hearing are being appealed, particularly where the orders bear the same date.<sup>3</sup> Therefore, the Notice of Appeal is sufficient for this court to assume jurisdiction over the issue of attorney fees.

### III. Jurisdiction of the Juvenile Court

¶11 The Parents and the guardian ad litem argue the juvenile court lacked subject matter jurisdiction to enter the Visitation Order subsequent to the adoption decree. Under Utah law, the juvenile court can maintain continuing jurisdiction over B.B. until she is 21 years old, unless the court terminates jurisdiction prior to that time. See Utah Code Ann. § 78-3a-121(1) (Supp. 2001). "The continuing jurisdiction of the court terminates . . . upon order of the court." Id. § 78-3a-121(2)(a)(i). Hence, the dispositive issue is whether a decree of adoption is an "order of the court" that terminates the juvenile court's jurisdiction. To resolve this issue, we turn first to the plain language of Utah's juvenile court statutes and adoption statutes. See State v. Fixel, 945 P.2d 149, 151 n.2 (Utah Ct. App. 1997) ("[T]he primary consideration in statutory construction is 'to give effect to the legislature's intent. To discover that intent, this court looks first to the plain language of the statute.'" (Citation omitted.)); see also Lyon v. Burton, 2000 UT 19, ¶17, 5 P.3d 616 ("The plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and 'with other statutes under the same and related chapters.'" (Citation omitted.)).

¶12 Utah's juvenile courts are creatures of statute, and thus are courts of limited jurisdiction. See In re adoption of Trimble, 16 Utah 2d 188, 398 P.2d 25, 26 (1965); In re S.L., 1999 UT App 390, ¶52, 995 P.2d 17 (Wilkins, P.J., concurring). Because they are courts of limited jurisdiction, juvenile courts are allowed to do only what the legislature has expressly authorized. See In re S.L., 1999 UT App 390 at ¶52 (stating juvenile court "powers are necessarily limited"). Utah Code Ann. § 78-3a-104 describes the bases for the juvenile court's original jurisdiction. In this case, the juvenile court acquired jurisdiction over B.B. because she was allegedly abused and neglected. See id. § 78-3a-104(1)(c). The juvenile court ultimately granted the guardian ad litem's petition to terminate

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3. To avoid contentions over this issue in the future, we strongly encourage appellants to provide in the notice of appeal the caption and date of the orders from which they appeal.

the parental rights of B.B.'s biological parents. See id. § 78-3a-411. At that point, B.B. had no legal parents and the juvenile court had jurisdiction until a permanent custody order or adoption was achieved. See id. § 78-3a-104(1)(c). Once the juvenile court granted the Parents' petition for adoption, the original basis for jurisdiction over B.B. ceased to exist because B.B. was no longer an abused or neglected child and permanency had been achieved. See generally Utah Code Ann. §§ 78-3a-312 to -313 (Supp. 2001).

¶13 Based on the above statutory provisions, this court has held that visitation rights of both biological parents and grandparents end upon termination of parental rights. See In re A.B., 1999 UT App 315, ¶21, 991 P.2d 70 ("Grandmother's visitation rights were extinguished by operation of law when the court terminated her child's parental rights."); Kasper v. Nordfelt, 815 P.2d 747, 751 (Utah Ct. App. 1991) ("[W]here a child has been released [for adoption] any visitation rights of the child's natural family end with the initiation of such adoption proceedings.").<sup>4</sup>

¶14 With respect to adoption in Utah, the legislature has expressly found that

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements . . . .

. . . .

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child.

---

4. As permitted by Utah Rule of Appellate Procedure 24(i), the Grandparents submitted Utah Code Ann. § 30-5-2(4) (Supp. 2001) as supplemental authority, claiming that it provides this court with an independent basis to affirm the juvenile court's decision. However, we do not consider this argument because the proceedings at issue were not conducted pursuant to section 30-5-2(4) and, as a result, the juvenile court did not consider any possible application of the cited statute. In addition, the Grandparents failed to raise this issue below and have not briefed the issue.

Utah Code Ann. § 78-30-4.12(2) (1996). In order to grant a petition for adoption:

(1) The court shall examine each person appearing before it . . . separately, and if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

(2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information . . . relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive placement.

Id. § 78-30-9 (Supp. 2001). Consistent with the legislature's stated intent to prevent the disruption of adoptive placements, Utah adoption law states, "[T]he adoptive parent or parents and the child shall sustain the legal relationship of parent and child, and have all the rights and be subject to all the duties of that relationship." Id. § 78-30-10 (1996).

¶15 In reading the statutes relating to child welfare proceedings and to adoptions so as to harmonize them, we conclude that the juvenile court had no jurisdiction over the Parents or B.B. after the adoption took place. The statutes share a common goal of providing stable, permanent homes for adoptive children and allowing these newly formed families to exist on the same basis as all other families. Hence, once its basis for jurisdiction ended, the juvenile court could not assume -- jurisdiction over B.B. until and unless the requisite statutory requirements for jurisdiction were reestablished. See Troxel v. Granville, 530 U.S. 57, 68-69, 120 S. Ct. 2054, 2061 (2000) ("[S]o long as a parent adequately cares for his or her children . . . there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.").

¶16 The juvenile court's fashioning of a conditional decree of adoption is not consistent with the above principles. Furthermore, a conditional decree of adoption would impose a duty upon the Parents that is not generally required of natural parents; namely, that the Parents either make their child available to visit with non-relatives not of their choosing or be

held in contempt of court. See In re A.B., 1999 UT App 315 at n.1 (noting that "[v]isitation between grandmother and the children is now at the discretion of the adoptive parents").<sup>5</sup> Therefore, because B.B.'s adoption ended the jurisdiction of the juvenile court, we reverse the juvenile court's Visitation Order.

#### IV. Attorney Fees

¶17 The Parents appeal the juvenile court's award of attorney fees. Because the juvenile court lacked subject matter jurisdiction, it follows that it lacked jurisdiction to assess attorney fees against the Parents. See Burns Chiropractic Clinic v. Allstate Ins. Co., 851 P.2d 1209, 1212 (Utah Ct. App. 1993) ("Because we reverse the trial court . . . we also reverse the court's grant of attorney fees."). Therefore, we reverse the award of attorney fees and order each party to pay its own attorney fees on appeal.

#### CONCLUSION

¶18 This court has jurisdiction because the Visitation Order is a final order and because the Notice of Appeal provided adequate notice that the appeal included the Attorney Fee Order. The juvenile court lacked jurisdiction over this case after B.B.'s adoption, and could not grant an adoption petition conditional on visitation rights in the Grandparents. Therefore, the juvenile court could neither enforce the Pre-adoption Visitation Order after the adoption, nor assess attorney fees against the Parents. Accordingly, we reverse.



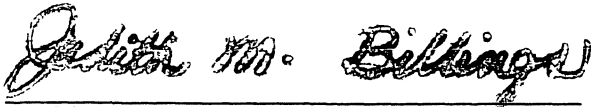
Pamela T. Greenwood, Judge

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5. The Grandparents cite Cramer v. Petrie, 637 N.E.2d 882 (Ohio 1994), for the proposition that allowing the Parents to disregard the Pre-adoption Visitation Order encourages disobedience of juvenile court orders. We find the facts of Cramer to be distinguishable. In Cramer, the court sought enforcement of a child support order that was violated prior to the child's emancipation, although the enforcement action commenced after emancipation. See id. at 883. In this case, the Order to Show Cause related to failure to comply with an order that was lawful when entered, but not lawful or enforceable after the adoption when the order was allegedly violated.

¶19 I CONCUR:



Judith M. Billings,  
Associate Presiding Judge

-----

ORME, Judge (dissenting):

¶20 What actually happened here is this: The adoptive parents and the grandparents, each of whom had had the care of the child at different times, filed competing adoption petitions. The parties ultimately stipulated to a resolution the trial court found to be in the child's best interest: the adoptive parents would adopt the child and the grandparents would have visitation, a schedule for which was specifically agreed to. Once they got what they wanted--adoption--the adoptive parents reneged on their agreement and withheld visitation. When this bait-and-switch was called to the trial court's attention, the court was understandably concerned about the adoptive parents' failure to adhere to their stipulated obligations and the court's order. This failure is particularly troubling in view of the trial court's explicit finding that, but for the visitation agreement, it would not have granted the adoptive parents' adoption petition. Like any court, the trial court here had jurisdiction, even though a final judgment had been entered, to enforce its prior orders. See Utah Code Ann. § 78-3a-901(1) (Supp. 2001).

¶21 In my view, then, this is not a case about whether conditional adoption is permitted in Utah or about the legal effect of an adoption decree. It is, first and foremost, a case about whether a trial court has the power to enforce an order stipulated to by parties over whom it had jurisdiction and which order was a quid pro quo for the judgment both sides asked it to enter.

¶22 Because the trial court clearly has such power and prudently exercised it in this case, I would affirm.



Gregory K. Orme, Judge

## APPENDIX “B”

Findings of Fact and Conclusions of Law (R. 330-337)

**FILED**

**MAY 19 2000**

**Juvenile Court  
Fourth District**

Mr. BROOK J. SESSIONS (6136)  
HARRIS & CARTER, a L.L.C.  
Attorney for the SCOTTS  
3325 N. University Ave., Ste. 200  
Jamestown Square, Clocktower Bldg.  
Provo, Utah 84604

Telephone: 375-9801

---

**IN THE FOURTH JUDICIAL DISTRICT JUVENILE COURT  
PROVO DEPARTMENT  
IN AND FOR UTAH COUNTY, STATE OF UTAH**

---

STATE OF UTAH, In the Interest of:

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**BLUNDELL, BAYLIE** (07/29/96)

Case: 968282

Person(s) under (18) years of age.

Judge: JERIL B. WILSON

---

THIS MATTER having come before the court on March 27, 2000. The issues before the Court were a Petition for Custody and Guardianship filed by Ken and Kimberly Scott; a Petition for Custody and Guardianship filed by Susan and Garth Hardinger; and a Petition for Grandparent Visitation filed by Lorraine Warren. Present before the court were petitioners, Ken and Kimberly Scott with their counsel Brook J. Sessions; Lorraine Warren with her attorney Brook Sessions; Susan and Garth Hardinger with their attorney Dana Burrows; Kelly Frye from the Guardian ad Litem's office on behalf of the child. The parties entered a Stipulation into the record and



agreed to be bound thereby. Based upon the stipulation, the Court hereby makes the following:

### **FINDINGS OF FACT**

1. The Maternal Grandparents, Susan and Garth Hardingers', petition for custody should be allowed to be withdrawn by the Hardingers.
2. The Court should grant guardianship and permanent legal and physical custody of Baylie Blundell to Kimberly and Ken Scott.
3. The Scott's have filed a Petition for Adoption of Baylie Blundell based upon the agreement of the Hardingers; the Hardingers have agreed to support the adoption.
4. Contact with the biological parents should not be allowed unless the Scott's, Lorraine Warren, or the Hardingers supervises contact. The biological parents are never to be with Baylie Blundell in an unsupervised setting. The biological parent's parental rights have been terminated. Nothing in these findings or subsequent order shall give the biological parents any right to enforce any visitation with Baylie Blundell.
5. The Hardingers should be awarded statutory visitation as set forth in Utah Code Annotated 30-33-35. Said visitation should be modified as set forth herein.
6. The Hardingers will exercise visitation with Baylie on alternating weekends. They will be allowed to pick up Baylie at 4:30 p.m. on Fridays and return her by 7:30

p.m. on Sundays every other weekend.

7. Midweek visitation by the Hardingers will be on those weeks when weekend visitation does not occur. The Hardingers will pick up Baylie at 4:30 p.m. and will return her by 7:30 p.m. for midweek visits.

8. *pm.* When statutorily recognized holidays or school holidays fall on a ~~day beginning~~ Thursday, Friday, or Monday, the family having Baylie with them on that weekend will also have the holiday.

9. Thanksgiving holiday should be specifically provided for. For Thanksgiving 2000 the Hardingers will have Baylie with them from Wednesday before the holiday at 6:00 p.m. until Sunday following the holiday at 7:30 p.m. Thereafter, they will have Baylie with them every other year.

10. Christmas visitation should be specified. Baylie will be with the Scott's for their family party on the Sunday prior to Christmas Day from approximately 4:00 p.m. until 8:00 p.m. She will go to the Hardingers' family party every Christmas Eve from approximately 4:00 p.m. to 8:00 p.m. She will always be with the Scotts on Christmas morning and Christmas Eve after the Hardingers' party. The Christmas school break will be *pm.* ~~divided approximately equally~~ *alternated* with one household having Baylie the first half of the Christmas School Break and the other party having the second half of the

Christmas School Break as worked out with the special master.

11. Baylie will spend July 3<sup>rd</sup> and July 4<sup>th</sup> of each year with the Scott's. Baylie will be with the Hardingers on July 23<sup>rd</sup> beginning at 6:00 P.M. and all day on the 24<sup>th</sup> unless the 24<sup>th</sup> (Pioneer Day) is celebrated on Saturday or Monday due to it falling on Sunday, then the visit will begin the day before it is celebrated at 6:00 P.M. and continue until 11:00 P.M. the day it is celebrated.
12. The parties will provide each other with an itinerary of vacation plans for all extended vacations. Said itinerary will include phone numbers.
13. The Hardingers will call Baylie on Wednesday evenings when they do not have mid-week visits and on Sunday evenings when they do not have weekend visits. The calls will be made between 7:30 p.m. and 8:00 p.m. The parties will work with the Special Master to arrange appropriate phone calls during extended visitation and to make arrangements for one additional weekly phone call. Baylie will be allowed to contact either of the families at any time or any place.
14. The Hardingers will have four weeks of vacation time (28 days) with Baylie *which shall not interfere with Baylie's school attendance.* ~~during summer vacation from school.~~
15. For the year 2000, the Hardingers will have vacation with Baylie from April 18<sup>th</sup> at 10:00 a.m. until April 22<sup>nd</sup> at 6:00 p.m.

16. The Hardingers will have Baylie on June 18<sup>th</sup> from 8:30 A.M. through June 24<sup>th</sup> at 7:30 P.M. for an extended vacation.
17. The Hardingers will have Baylie August 15, 2000 through August 21<sup>st</sup>, from 9:00 a.m. on the 15<sup>th</sup> to 7:30 p.m. on the 21<sup>st</sup>.
18. Although not one of the four weeks ~~for summer vacation~~, the Hardingers will have Baylie from December 27<sup>th</sup> through January 1<sup>st</sup>, 2001, this is the second half of the Christmas School Break.
19. The remainder of the Hardingers/<sup>visitation</sup>~~four weeks of summer vacation~~ for the year 2000 shall be worked out with the Special Master.
20. The Scott's shall have four weeks of family vacation with Baylie.
21. For the year 2000, Baylie will be with the Scott's from April 9<sup>th</sup> through April 16<sup>th</sup> for a trip to Disney Land.
22. Baylie will be with the Scott's from May 12<sup>th</sup> through the 14<sup>th</sup> for a baseball tournament in Wendover.
23. Baylie will be with the Scott's from June 30<sup>th</sup> through July 15<sup>th</sup> for a trip to Mexico.
24. Lorraine Warren shall have extended summer visitation each year. The visitation for the year 2000 shall be from August 4<sup>th</sup> through August 13<sup>th</sup> and <sup>at least one week</sup>~~a like amount~~ each year thereafter.
25. The parties will work with the Special Master in

scheduling events such as birthdays and other family events.

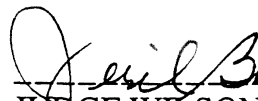
26. The parties have agreed to and the Court should appoint a Special Master. If available, Liz Dalton should be appointed by the Court to be a Special Master. The cost of the Special Master should be shared equally for joint sessions. For individual time with the Special Master, the party who is having the individual time with the Special Master shall be responsible for payment for that time.
27. The Special Master should be appointed to work with the parties to implement the visitation schedule, facilitate communication and assist in problem solving.
28. The Special Master may consult with the Guardian ad Litem as necessary.
29. The parties have agreed to work with a Special Master and to adopt a family plan which will include but is not limited to the provisions set forth in U.C.A. §30-3-33.

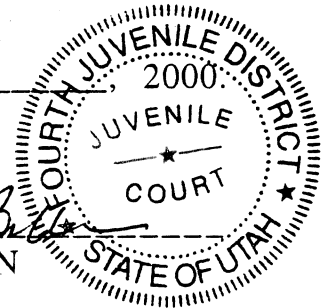
### **CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the parties.
2. This Court has jurisdiction over the subject matter.
3. The Court should enter a Decree of Custody and Guardianship to the Scott's.

4. An Order should be entered by the Court adopting the prior Findings of Fact and implementing the same.

DATED this 19 day of May

  
JUDGE WILSON



Approved as to Form:

-----  
Kelly Frye

Approved as to Form:


-----  
Dana Burrows

**MAILING CERTIFICATE**

I HEREBY CERTIFY that pursuant to the Utah Rules of Civil Procedure, I personally mailed a true and correct copy of the foregoing on this 21 day of April, 2000, by first-class, U.S. Mail, postage prepaid to the following:

Office of the Guardian Ad Litem  
Attn: Kelly Frye  
32 W. Center Street, Suite #205  
Provo UT 84601

Mr. Dana Burrows  
Attorney for Garth and Susan Hardinger  
1149 W. Center  
Orem, Utah 84057

  
Secretary

## **APPENDIX “C”**

**Order of Custody and Decree of Guardianship (R. 338-343)**



**FILED**

**MAY 19 2000**

**Juvenile Court  
Fourth District**

Mr. BROOK J. SESSIONS (6136)  
HARRIS & CARTER, a L.L.C.  
Attorney for the SCOTTS  
3325 N. University Ave., Ste. 200  
Jamestown Square, Clocktower Bldg.  
Provo, Utah 84604

Telephone: 375-9801

---

IN THE FOURTH JUDICIAL DISTRICT JUVENILE COURT  
PROVO DEPARTMENT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

---

---

STATE OF UTAH, In the Interest of:

**ORDER OF CUSTODY AND  
DECREE OF GUARDIANSHIP**

**BLUNDELL, BAYLIE** (07/29/96)

Case: 968282

Person(s) under (18) years of age.

Judge: JERIL B. WILSON

---

THIS MATTER having come before the court on March 27, 2000. The issues before the Court were a Petition for Custody and Guardianship filed by Ken and Kimberly Scott; a Petition for Custody and Guardianship filed by Susan and Garth Hardinger; and a Petition for Grandparent Visitation filed by Lorraine Warren. Present before the court were petitioners, Ken and Kimberly Scott with their counsel Brook J. Sessions; Lorraine Warren with her attorney Brook Sessions; Susan and Garth Hardinger with their attorney Dana Burrows; Kelly Frye from the Guardian ad Litem's office on behalf of the child. The parties entered a Stipulation into the record and

agreed to be bound thereby. Being duly advised and having made appropriate Findings of Fact and Conclusions of Law, the Court hereby enters the following:

**ORDER OF CUSTODY AND DECREE OF GUARDIANSHIP**

1. The Maternal Grandparents, Susan and Garth Hardingers', petition for custody has been withdrawn upon Motion of the Hardingers.
2. The Court hereby grants guardianship and permanent legal and physical custody of Baylie Blundell to Kimberly and Ken Scott.
3. The Hardingers have agreed to and are Ordered to support the Adoption of Baylie Blundell by the Petitioners, Kimberly and Ken Scott.
4. Contact with the biological parents shall not be allowed unless the Scott's, Lorraine Warren, or the Hardingers supervises contact. The biological parents are never to be with Baylie Blundell in an unsupervised setting. The biological parent's parental rights have been terminated. Nothing in this order shall give the biological parents any right to enforce any visitation with Baylie Blundell.
5. The Hardingers are awarded and may exercise statutory visitation as set forth in Utah Code Annotated 30-33-35. Said visitation is modified as set forth herein.
6. The Hardingers shall be allowed to exercise visitation with Baylie on alternating weekends. They may pick up Baylie at 4:30 p.m. on Fridays and return her by 7:30 p.m. on Sundays every other weekend.

7. Midweek visitation by the Hardingers will be on those weeks when weekend visitation does not occur. The Hardingers may pick up Baylie at 4:30 p.m. and shall return her by 7:30 p.m. for midweek visits.
8. When statutorily recognized holidays or school holidays fall on a ~~Q.M. day beginning~~ Thursday, Friday, or Monday, the family having Baylie with them on that weekend will also have the holiday.
9. For Thanksgiving 2000 the Hardingers will have Baylie with them from Wednesday before the holiday at 6:00 p.m. until Sunday following the holiday at 7:30 p.m. Thereafter, they will have Baylie with them every other year.
10. Baylie will be with the Scott's for their family party on the Sunday prior to Christmas from approximately 4:00 p.m. until 8:00 p.m. She will go to the Hardingers' family party every Christmas Eve from approximately 4:00 p.m. to 8:00 p.m. She will always be with the Scotts on Christmas morning and Christmas Eve after the Hardingers' party. The Christmas school ~~break will be divided approximately equally~~ <sup>alternated</sup> with one household having Baylie the first half of the Christmas School Break and the other party having the second half of the Christmas School Break as worked out with the special master.
11. Baylie will spend July 3<sup>rd</sup> and July 4<sup>th</sup> of each year with the Scott's. Baylie will be with the Hardingers on July 23<sup>rd</sup> beginning at 6:00 P.M. and all day on the 24<sup>th</sup> unless the 24<sup>th</sup> (Pioneer Day) is celebrated on Saturday or Monday due to it falling on Sunday, then the visit will begin the day before it is celebrated at 6:00

P.M. and continue until 11:00 P.M. the day it is celebrated. The parties will provide each other with an itinerary of vacation plans for all extended vacations. Said itinerary will include phone numbers.

12. The parties shall provide each other with an itinerary of vacation plans for all extended vacations. Said itinerary is to include phone numbers.

13. The Hardingers may call Baylie on Wednesday evenings when they do not have mid-week visits and on Sunday evenings when they do not have weekend visits. The calls shall be made between 7:30 p.m. and 8:00 p.m. The parties are to work with the Special Master to arrange appropriate phone calls during extended visitation and to make arrangements for one additional weekly phone call. Baylie shall be allowed to contact either of the families at any time or any place.

14. The Hardingers will have four weeks (28 days) of vacation time with Baylie *which shall not interfere with Baylie's school attendance.* ~~during summer vacation from school.~~

15. For the year 2000, the Hardingers will have vacation with Baylie from April 18<sup>th</sup> at 10:00 a.m. until April 22<sup>nd</sup> at 6:00 p.m.

16. The Hardingers will have Baylie on June 18<sup>th</sup> at 8:30 A.M. through June 24<sup>th</sup> at 7:30 P.M. for an extended vacation.

17. The Hardingers will have Baylie August 15, 2000 through August 21<sup>st</sup>, from 9:00 a.m. on the 15<sup>th</sup> to 7:30 p.m. on the 21<sup>st</sup>.

18. Although not one of the four weeks ~~for summer vacation~~, the Hardingers will have Baylie from December 27<sup>th</sup> through January 1<sup>st</sup>, 2001, this is the second half of the Christmas School Break.

19. The remainder of the Hardingers four weeks of <sup>visitation</sup> ~~summer~~ ~~vacation~~ for the year 2000 shall be worked out with the Special Master.

20. The Scott's shall have four weeks of family vacation with Baylie.

21. For the year 2000, Baylie will be with the Scott's from April 9th through April 16th for a trip to Disney Land.

22. Baylie will be with the Scott's from May 12th through the 14th for a baseball tournament in Wendover.

23. Baylie will be with the Scott's from June 30th through July 15th for a trip to Mexico.

24. Lorraine Warren shall have extended summer visitation each year. The visitation for the year 2000 shall be from August 4th through August 13th and <sup>at least one week</sup> ~~a like amount~~ each year thereafter.

25. The parties will work with the Special Master in scheduling events such as birthdays and other family events.

26. The parties have agreed to and the Court should appoint a Special Master. If available, Liz Dalton is hereby appointed by the Court to be a Special Master.

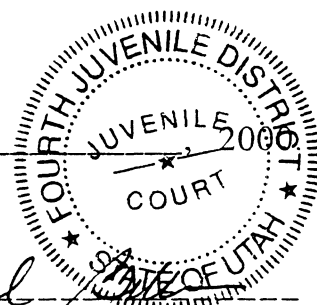
27. The cost of the Special Master is to be shared equally for joint sessions. For individual time with the Special Master, the party who has the individual time with the Special Master shall be responsible for payment for that time.

28. The Special Master is appointed to work with the parties to implement the visitation schedule, facilitate communication and assist in problem solving.

29. The Special Master may consult with the Guardian ad Litem as necessary.

30. The parties have agreed to work with a Special Master and to adopt a family plan which will include but is not limited to the provisions set forth in U.C.A. §30-3-33.

DATED this 19 day of May



  
JUDGE JERIL B. WILSON

Approved as to Form:

-----  
Kelly Frye

Approved as to Form:

-----  
Dana Burrows

## APPENDIX “D”

Order to Show Cause (R. 368-369)

FILED

DANA D. BURROWS - 5045  
Attorney for Intervenor Maternal Grandparents  
1149 West Center  
Orem, Utah 84057  
Telephone: (801) 222-9700

AUG 21 2000

Juvenile Court  
Fourth District

IN THE FOURTH DISTRICT JUVENILE COURT  
FOR UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, in the interest of

**ORDER TO SHOW CAUSE**

BLUNDELL, BAYLIE 2 7/29/96

A Person(s) under eighteen years of age

Case #968282 001  
Judge Jeril B. Wilson

TO KIMBERLY AND KEN SCOTT:

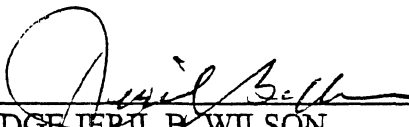
You are hereby ordered to appear before the above-entitled Court on Tuesday, the 29<sup>th</sup> day of August, 2000, at 10:00 a.m., before Judge Jeril B. Wilson, at the courthouse located at Fourth District Juvenile Court, 2021 South State, Provo, Utah then and there to show cause, if any you have:

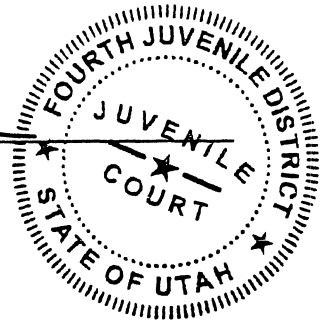
1. Why you should not be held in contempt of court for your refusal to comply with the order of the court as it relates to in person visitation as well as telephone visitation and why the court should not impose appropriate sanctions at the time of the hearing.
2. Why the Hardinger's should not be entitled to make up visitation.
3. Why you should not be responsible for the Hardinger's attorney's fees and costs with the Special Master as a result of your noncompliance and refusal to follow the Special Master.
4. Why the court should not specify the telephone visitation and enter such orders that will allow telephone visitation to occur and ordering you to allow Baylie to return phone calls.



5. Why you should not be responsible for counseling costs that have been necessitated and will continue for a period of time.
6. Why the court should not change custody residence of Baylie Blundell from you immediately to the Hardingers.
7. For such other and further relief as the court deems just and appropriate in this matter.

DATED this 21 day of August, 2000.

  
JUDGE JERIL B. WILSON  
DISTRICT COURT JUDGE



## APPENDIX “E”

Order of Attorney’s Fees and Judgement (R. 525-527)

**FILED**

OCT 24 2000

Juvenile Court  
Fourth District

DANA D. BURROWS - 5045  
Attorney for Intervenor Maternal Grandparents  
1149 West Center  
Orem, Utah 84057  
Telephone: (801) 222-9700

IN THE FOURTH DISTRICT JUVENILE COURT  
FOR UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, in the interest of	<b>ORDER OF ATTORNEY'S FEES AND JUDGEMENT</b>
BLUNDELL, BAYLIE    4    7/29/96	
A Person(s) under eighteen years of age	Case #968282 001 Judge Jeril B. Wilson

The above-entitled matter having come before the court by way of the Maternal Grandparents, Garth and Susan Hardinger's request for attorney's fees as a result of their Order to Show Cause and the court having had the opportunity to consider the matter and being fully advised in the premises, now, therefore, IT IS HEREBY ORDERED:

1. The attorney's fees incurred by Garth and Susan Hardinger were reasonable and necessary under the circumstances.
2. The fees were incurred in large part because of the Scott's failure to comply with the recommendations of the Special Master, Elizabeth Dalton, which necessitated the Order to Show Cause hearing.

00525

3. The Hardinger's are awarded judgment against Ken and Kimberly Scott for attorney's fees  
in the amount of \$2,795.17.

APPROVAL AS TO FORM

---


BROOKE J. SESSIONS  
Attorney for Scotts

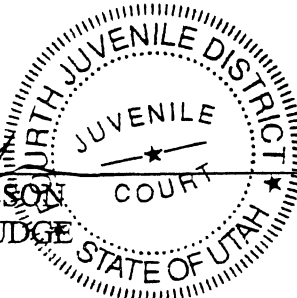
APPROVAL AS TO FORM

---

KELLY FRYE  
Guardian ad Litem

DATED this 24<sup>th</sup> day of October, 2000.

  
JUDGE JERIL B. WILSON  
DISTRICT COURT JUDGE



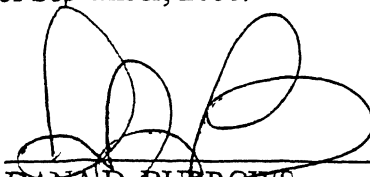
**NOTICE TO SCOTT'S ATTORNEY AND GUARDIAN AD LITEM**

TO: BROOK J. SESSIONS, Attorney for Scotts and KELLY FRYE, Guardian Ad Litem

PLEASE TAKE NOTICE that the undersigned, attorney for Intervenor Maternal Grandparents, Garth and Susan Hardinger, will submit the above and foregoing Order of Attorney's

Fees and Judgment to the Fourth District Court for signature, upon the expiration of five (5) days from the date of this Notice, plus three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Rules of Judicial Administration.

DATED this 18<sup>th</sup> day of September, 2000.



DANA D. BURROWS

Attorney for Intervenor Maternal Grandparents

#### CERTIFICATE OF MAILING

I hereby certify that on this 18<sup>th</sup> day of September, 2000, I mailed a true and correct copy of the foregoing Order of Attorney's Fees and Judgment, postage prepaid, to the following:

Brook J. Sessions  
3325 N University Ave Ste 200  
Jamestown Square, Clocktower Bldg  
Provo UT 84604

Kelly Frye  
Guardian Ad Litem  
32 W Center St  
Provo UT 84601



DANA D. BURROWS

## APPENDIX “F”

Findings of Fact Conclusions of Law and Order (R. 528-533)



IN THE FOURTH DISTRICT JUVENILE COURT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

**FILED**

OCT 24 2000

Juvenile Court  
Fourth District

STATE OF UTAH, In the Interest of:

BLUNDELL, BAYLIE 07/29/96

A person under 18 years of age,

**FINDING OF FACT  
CONCLUSIONS OF LAW  
AND ORDER**

Case Number 968282

This matter having come before the Court on Wednesday, September 6, 2000, for hearing on the Hardinger's Motion for Hearing requesting the Scotts be held in contempt of the Court for failing to allow visitation. Ken and Kimberly Scott appeared with their attorney, Brook Sessions. Susan and Garth Hardinger appeared with their attorney Dana Burrows. Baylie's Guardian Ad Litem, Kelly Frye appeared on Baylie's behalf. The court appointed Special Master appeared and gave a report to the court. The Court heard arguments from counsel and reviewed the pleadings on file and the report from that Special Master but did not take testimony. Being duly advised in the premises, the Court makes the following:

**FINDING OF FACT**

1. On February 23, 1999, Ken and Kimberly Scott, paternal aunt and uncle filed a petition in Juvenile Court for custody of Baylie Blundell.
2. On May 12, 1999, Susan and Garth Hardinger, maternal grandparents filed a petition in Juvenile Court for custody of Baylie Blundell.
3. On September 28, 1999, Fourth District Judge James Taylor certified the issues of custody, visitation, and child support to the Fourth District Juvenile Court.
4. On November 23, 1999, an evidentiary hearing took place wherein the parental rights of both the father and the mother of Baylie Blundell were terminated.

00528

5. Through the efforts of court ordered mediation the Hardingers withdrew their petition for custody and supported adoption by the Scotts. In return, the Scotts agreed to allow future visitation to the Hardingers.

6. On May 19, 2000, pursuant to stipulation, the Court granted custody and guardianship of the minor, Baylie Blundell to Ken and Kimberly Scott. The stipulation provided that the Hardingers would withdraw their Petition for Custody and Guardianship in return for visitation with Baylie. The Stipulation of the parties also included that the Hardingers would support the adoption of Baylie by the Scotts.

7. The visitation order of May 19, 2000 appointed a Special Master to help the parties implement the visitation.

8. The Decree of Adoption entered on June 5, 2000 granted the Scott's Petition to adopt Baylie. The Decree changes Baylie Blundell's name to Baylie Scott. The Decree of Adoption does not address visitation.

9. Juvenile Court file number 986074 is entitled State of Utah in the interest of Baylie Scott and is a sealed adoption file.

10. Juvenile Court file number 968282 is entitled State of Utah in the interest of Baylie Blundell and addresses the proceedings prior to the adoption.

11. Pursuant to statute, the adoption file was sealed.

12. On or about August 11, 2000, counsel for the Hardingers filed a Motion for an Order to Show Cause to enforce the visitation order signed May 19, 2000.

13. On or about August 17, 2000, the Court signed the Hardinger's Order to Appear and Show Cause.



14. Said Motion and signed Order were sent to counsel for Ken and Kimberly Scott by counsel for the Hardingers on August 11, 2000.

15. Personal service on Ken and Kimberly Scott was not obtained.

16. No Motion was made to reopen the closed adoption file.

17. No Motion was made to unseal the adoption file.

18. On or about August 25, 2000 counsel for the Scott's filed a motion to Quash the Order to Appear and Show Cause.

19. The Motion to Quash requests the Order to Show Cause be quashed for the following reasons: the file has not been unsealed nor reopened; the Juvenile Court does not have jurisdiction after the adoption; and that the Order of Custody and Guardianship does not survive the adoption.

20. At the September 6, 2000 hearing counsel for the Scotts made an oral motion to certify the case back to the District Court and transfer the file, which motion was denied.

21. At the September 6, 2000 hearing counsel for the Scotts made an oral motion to stay the order of visitation pending an appeal, which motion was denied.

22. The court finds that after June 24, 2000 the Scotts have not allowed visitation to the Hardingers as required by the Order.

23. Initially such refusal may have been justified because of allegations of sexual abuse, however, continued refusal of visitation after safeguards were suggested was not justified.

24. The Court finds the Scotts have not followed the continuing recommendation of the Special Master for visitation.

25. The Scotts presented by Affidavit the reasons for their denial of visitation.

26. The Court finds that it has jurisdiction to enforce its visitation order of May 19, 2000.

27. Baylie had resided predominately with Hardingers from the time of her birth until March 12, 1999, a period of 31 months and during this period the Hardingers had been Baylie's primary care giver.

28. Baylie has a significant attachment to both the Scotts and the Hardingers.

29. It is in the best interest of Baylie to have visitation with the Hardingers. Both Dr. Featherstone and Dr. Williams (the evaluators) found that there was a strong bond between Baylie and the Hardingers and that visitation was in Baylie's best interest.

30. It is in Baylie's best interest that the parties not discuss the alleged sexual abuse with her.

#### **CONCLUSIONS OF LAW**

1. The Court finds that it has jurisdiction to enforce its visitation order of May 19, 2000

2. The Court granted the Order of Custody and Guardianship dated May 19, 2000 and the adoption dated June 5, 2000, of the minor, Baylie Blundell to Ken and Kimberly Scott because of the stipulation between the Scotts and the Hardingers which provided the Hardingers would withdraw their Petition for Custody and Guardianship in return for visitation

3. The Court finds that the Hardingers withdrew their petition for custody and supported adoption by the Scotts because of the Scotts agreement to allow future visitation to the Hardingers.

4. It is in the best interest of Baylie to have visitation with the Hardingers.

5. The parties are to cooperate with and obtain a family evaluation and psychosexual investigation by Dr. Jay Jensen.

6. Each party is to pay one half of Dr. Jensen's fee. Final apportionment is reserved to a later date.

7. The parties shall follow the recommendations of Dr. Jensen, the Guardian ad Litem, Dr. Jenkins and the Special Master for future visitation.

### ORDER

1. Scott's Motion to Quash is denied.

2. Scott's motion to certify the case back to the District Court is denied.

3. Scott's motion to stay visitation is denied.

4. The parties shall follow the recommendations of Dr. Jensen, the Guardian ad Litem, Dr. Jenkins and the Special Master for future visitation except that Garth Hardinger is to have no contact with Baylie except in a supervised clinical setting.

5. Garth Hardinger is to submit to a psychosexual evaluation prior to the next court review.


6. The parties are to cooperate with and obtain a family evaluation and psychosexual investigation by Dr. Jay Jensen.

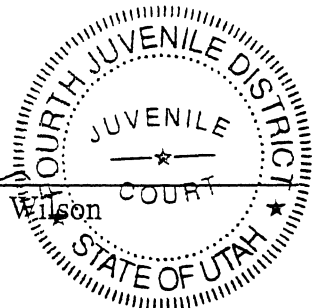
7. Each party is to pay one half of Dr. Jensen's fee. Final apportionment is reserved to a later date.

8. The next court review will be December 11, 2000 at 9:00 a.m.

Dated this 24 day of October 2000

BY THE COURT

  
Judge Jeril B. Wilson




CERTIFICATE OF MAILING

I hereby certify that on this 16<sup>th</sup> day of October, 2000, I mailed a true and correct copy of the forgoing Finding of Fact Conclusions of Law and Order to the following:

Attorney Brook Sessions  
3325 N University Avenue Suite 200  
Jamestown Square, Clocktower Building  
Provo, UT 84604

Attorney Kelly Frye  
Guardian Ad Litem  
Box at Juvenile Court

Attorney Dana Burrows  
1149 West Center  
Orem, UT 84057

  
\_\_\_\_\_  
Deputy Clerk

## APPENDIX “G”

Notice of Appeal (R. 536-538)

FILED

NOV 01 2000

Juvenile Court  
Fourth District

BROOK J. SESSIONS (6136)  
HARRIS & CARTER  
Attorneys for Parents (Scotts)  
3325 N. Univ. #200  
Provo UT 84604

STATE OF UTAH }  
COUNTY OF UTAH } SS

I, the undersigned, Clerk of the Juvenile District Court of Utah County, Utah, do hereby certify that the annexed and foregoing is a true and full copy of an original document on file in my office.

Witness my hand and seal of said court this 2nd

day of November - 2000

Rose Ortega  
Court Clerk

Phone: (801) 375-9801 Fax: (801) 377-1149

IN THE FOURTH DISTRICT JUVENILE COURT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

STATE OF UTAH,  
In the interest of:

**BLUNDELL, BAYLIE (07/29/96)**

Persons under eighteen (18) years of age.

NOTICE OF APPEAL

Case No.: 968282 001

Judge: JERIL B. WILSON

TO THE ABOVE COURT, THE HARDINGERS, THE GUARDIAN AD LITEM,  
THE SPECIAL MASTER, AGENTS OF THE ABOVE, AND TO DANA BURROWS:

NOTICE IS HEREBY GIVEN that Ken and Kimberly Scott, by and  
through his counsel, Brook Sessions of Harris & Carter, hereby  
appeal the ruling of the Court on the Motion to Quash and  
Objection to Setting Hearings without re-opening the file.

This appeal is to The Utah Court of Appeals. This notice is  
filed within 30 days of said judgment and is otherwise timely.

The Clerk of the above court is requested to transmit to the

appellate court the records and other documents as is required by law.

DATED this 1st day of November, 2000.

A handwritten signature in black ink, appearing to read "Brook Sessions", written over a horizontal line.

Brook Sessions PC

**CERTIFICATE OF DELIVERY**


I hereby certify that on the 1 day of <sup>November</sup>~~August~~, 2000, I mailed or delivered a true and correct copy of the foregoing to each of the following:

Dana Burrows  
Attorney at Law  
1149 West Center Street  
Orem, UT 84057

Ms. Elizabeth Dalton  
Court Appointed Special Master  
11509 N. Granite Circle  
Highland UT 84003

Office of the Guardian Ad Litem  
Attention: Kelly Frye  
32 W. Center #205  
Provo UT 84601

Phone: 344-8516 Fax:

  
Secretary



## APPENDIX “H”

Utah Rules of Appellate Procedure 3

MICHIE'S UTAH RULES ANNOTATED  
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FEBRUARY 20, 2002 \*

STATE RULES

UTAH RULES OF APPELLATE PROCEDURE

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF TRIAL COURTS

Utah R. App. P. Rule 3 (2002)

Rule 3. Appeal as of right: how taken.

(a) Filing appeal from final orders and judgments.

An appeal may be taken from a district or juvenile court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

(b) Joint or consolidated appeals.

If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal of another party after filing separate timely notices of appeal. Joint appeals may proceed as a single appeal with a single appellant. Individual appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the separate appeals.

(c) Designation of parties.

The party taking the appeal shall be known as the appellant and the adverse party as the appellee. The title of the action or proceeding shall not be changed in consequence of the appeal, except where otherwise directed by the appellate court. In original proceedings in the appellate court, the party making the original application shall be known as the petitioner and any other party as the respondent.

(d) Content of notice of appeal.

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken.

(e) Service of notice of appeal.

The party taking the appeal shall give notice of the filing of a notice of appeal by serving personally or mailing a copy thereof to counsel of record of each party to the judgment or order; or, if the party is not represented by counsel, then on the party at the party's last known address. A certificate evidencing such service shall be filed with the notice of appeal. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.

(f) Filing fee in civil appeals.

At the time of filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal shall pay to the clerk of the trial court the filing fee established by law. The clerk of the trial court shall not accept a notice of appeal unless the filing fee is paid.

(g) Docketing of appeal.

Upon the filing of the notice of appeal and payment of the required fee, the clerk of the trial court shall immediately transmit a certified copy of the notice of appeal, showing the date of its filing, and a copy of the bond required by Rule 6 or a certification by the clerk that the bond has been filed, to the clerk of the appellate court. Upon receipt of the copy of the notice of appeal, the clerk of the appellate court shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name shall be added to the title.

HISTORY: Amended effective October 1, 1992; November 1, 1996; November 1, 1999

## APPENDIX “I”

Utah Code Ann. § 78-3a-121 (Supp. 2002)

UTAH CODE ANNOTATED  
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\*\*\* STATUTES CURRENT THROUGH THE 2002 5TH SPECIAL SESSION \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH 2002 UT 35, 2002 UT APP 82 \*\*\*  
\*\*\* AND MARCH 10, 2002 (FEDERAL CASES) \*\*\*

TITLE 78. JUDICIAL CODE

PART I. COURTS

CHAPTER 3a. JUVENILE COURTS

PART 1. GENERAL PROVISIONS

Utah Code Ann. § 78-3a-121 (2002)

§ 78-3a-121. Continuing jurisdiction of juvenile court -- Period of and termination of jurisdiction -- Notice of discharge from custody of Division of Substance Abuse and Mental Health or Utah State Developmental Center -- Transfer of continuing jurisdiction to other district

(1) Jurisdiction of a minor obtained by the court through adjudication under Section 78-3a-118 continues for purposes of this chapter until he becomes 21 years of age, unless terminated earlier. However, the court retains jurisdiction beyond the age of 21 of a person who has refused or failed to pay any fine or victim restitution ordered by the court, but only for the purpose of causing compliance with existing orders.

(2) (a) The continuing jurisdiction of the court terminates:

- (i) upon order of the court;
- (ii) upon commitment to a secure youth corrections facility; or
- (iii) upon commencement of proceedings in adult cases under Section 78-3a-801.

(b) The continuing jurisdiction of the court is not terminated by marriage.

(3) When a minor has been committed by the court to the custody of the Division of Substance Abuse and Mental Health, a local mental health authority or its designee, or to the Utah State Developmental Center, the director of the Division of Substance Abuse and Mental Health, the local mental health authority or its designee, or the superintendent of the Utah State Developmental Center shall give the court written notice of its intention to

discharge, release, or parole the minor not fewer than five days prior to the discharge, release, or parole.

(4) Jurisdiction over a minor on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to the court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges. The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

HISTORY: C. 1953, 78-3a-520, enacted by L. 1996, ch. 1, § 67; 1996, ch. 234, § 17; renumbered by L. 1997, ch. 365, § 35; 2002 (5th S.S.), ch. 8, § 141.

NOTES:

AMENDMENT NOTES. --The 1996 amendment, effective April 29, 1996, added "a local mental health authority or its designee" twice in Subsection (3).

The 1997 amendment, effective March 21, 1997, renumbered this section, which formerly appeared as § 78-3a-520, and updated internal references in Subsection (1).

The 2002 (5th S.S.) amendment, effective September 8, 2002, added "Substance Abuse and" before "Mental Health" twice in Subsection (3).

EFFECTIVE DATES. --Laws 1996, ch. 1, § 94 makes the act effective on January 31, 1996.

## APPENDIX “J”

Utah Code Ann. § 78-3a-901 (Supp. 2002)

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\*\*\* STATUTES CURRENT THROUGH THE 2002 5TH SPECIAL SESSION \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH 2002 UT 35, 2002 UT APP 82 \*\*\*  
\*\*\* AND MARCH 10, 2002 (FEDERAL CASES) \*\*\*

TITLE 78. JUDICIAL CODE

PART I. COURTS

CHAPTER 3a. JUVENILE COURTS

PART 9. MISCELLANEOUS PROVISIONS

Utah Code Ann. § 78-3a-901 (2002)

§ 78-3a-901. Violation of order of court -- Contempt -- Penalty

(1) Any person who willfully violates or refuses to obey any order of the court may be proceeded against for contempt of court.

(2) Any person 18 years of age or older found in contempt of court may be punished in accordance with Section 78-32-10.

(3) (a) Any person younger than 18 years of age found in contempt of court may be punished by any disposition permitted under Section 78-3a-118, except for commitment to a secure facility.

(b) The court may stay or suspend all or part of the punishment upon compliance with conditions imposed by the court.

(4) The court may enforce orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions.

HISTORY: C. 1953, 78-3a-901, enacted by L. 1996, ch. 1, § 76; 1997, ch. 358, § 2.

NOTES:

AMENDMENT NOTES. --The 1997 amendment, effective May 5, 1997, substituted the phrase beginning "in accordance with" in Subsection (2) and "any disposition" in Subsection



(3) for a list of specific penalties and in Subsection (3)(b) substituted "the punishment" for "the fine or the commitment to the Division of Youth Corrections."

COORDINATION CLAUSE. --Laws 1997, ch. 358, § 4 directs that "Section 78-3a-118" be substituted for "Section 78-3a-516" in Subsection (3)(a) to conform to renumbering by L. 1997, ch 365.

EFFECTIVE DATES. --Laws 1996, ch. 1, § 94 makes the act effective on January 31, 1996.

#### NOTES APPLICABLE TO ENTIRE CHAPTER

REVISION OF CHAPTER. Laws 1996, ch. 1 revised this chapter by repealing § § 78-3a-1 through 78-3a-65, governing procedure in juvenile courts, and enacting new sections throughout the chapter, effective January 31, 1996. A table of comparable provisions, prepared by the Office of Legislative Research and General Counsel, appears below the repeal note under § 78-3a-1.

COMPILER'S NOTES. Laws 1997, ch. 329, which enacted or amended sections throughout this chapter, provides that it "applies to every abuse, neglect, and dependency case in which parental rights have not been terminated as of July 1, 1997. All other provisions of Title 78, Chapter 3a relating to abuse, neglect, and dependency proceedings, and Title 62A, Chapter 4a apply to every case in which parental rights have not been terminated as of the effective date of the applicable statute."