

1999

Rhonda Lynn Cameron Barton v. John Kimball Barton : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

RHONDA LYNN CAMERON
BARTON,

Petitioner-Appellant,

Case No. 991026-CA

vs.

Oral Argument
Priority 15

JOHN KIMBALL BARTON,

Respondent-Appellee.

BRIEF OF APPELLEE

BRIEF IN OPPOSITION TO APPEAL FROM THE FINAL JUDGEMENT
OF THE FOURTH DISTRICT COURT OF WASATCH
COUNTY, THE HONORABLE LYNN W. DAVIS AND THE HONORABLE
RAY M. HARDING, JR.

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FILED
Utah Court of Appeals

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Julia D'Alesandro
the Court

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JURISDICTION

The Court of Appeals has appellate jurisdiction over this matter pursuant to Utah Code Ann.

S78-2a-3(2)(i) (Supp. 1992).

STATEMENT OF THE ISSUES

- I. The trial court did not err in its determination of contempt and sanctions nor did it err in exercising jurisdiction in this matter as this proceeding is a matter of contempt and sanctions and not one of custody.

The decision to hold a party in contempt rests within the sound discretion of the trial court and will not be disturbed on appeal unless the trial court's action is so unreasonable as to be classified as capricious and arbitrary, or a clear abuse of discretion. Marsh v. Marsh, 973 P. 2d 988 (Utah App. 1999). Here, the decision to hold Mrs. Barton in contempt was not done capriciously. Her refusal to cooperate with the Special Master despite the provisions in the Divorce Decree and her failure to appear at the August 11 hearing, despite being noticed of the hearing, demonstrates her wilful and continuous disregard for the judicial process. Furthermore, there can be no argument that the court abused its discretion as evidenced by the fact that Mrs. Barton was given time (60 days) to comply with the court order before sanctions were imposed and yet, she--once again--wilfully ignored the court order.

- II. The trial court did not err in exercising jurisdiction since Petitioner had already been found in contempt and the trial court was only addressing the issue of sanctions.

Judge Harding made it clear that he would only entertain matters regarding contempt and the

imposition of sanctions. Judge Harding said:

In regards to the makeup visitation I want the order to reflect clearly that I do not believe I have jurisdiction further to enter orders regarding makeup visitation, that my order in no way deals with the makeup visitation to which Mr. Burrows' client may be entitled, and that I'm referring that matter to the special master and court in California for determination and adjudication." (Transcript, October 18 page 143).

The matter addressed before this court was one of contempt and sanctions and the trial court was well within its powers to adjudicate it.

- III. The trial court did not abuse its discretion in its imposition of sanctions against Petitioner due to Petitioner's wilful and continuous refusal to comply with court orders.

The trial court inquired as to Petitioner's financial status in awarding Respondent fees and costs due to Petitioner's wilful disobedience and disregard of court orders. The decision to hold Petitioner in contempt was based on her continued refusal to cooperate in the judicial process. It was not done capriciously or arbitrarily. Petitioner decided not to cooperate with the Special Master. Petitioner decided not to attend the hearing in Utah and was, subsequently, found in contempt. The judge gave her 60 days in which to remedy the situation and comply with the court order. Petitioner decided, once again, to ignore the court order. Petitioner's disobedience and wilful disregard precipitated the contempt order and the imposition of sanctions.

- IV. The trial court did not err in excluding hearsay testimony meant to justify Petitioner's actions when evidence demonstrates Petitioner's knowingly and wilfully violated the contempt order.

The trial court did not err in excluding hearsay evidence and Petitioner could not assert a good faith defense in allowing the testimony to demonstrate a reliance upon advice of counsel. She has continually refused to cooperate with Respondent and the Special Master; furthermore, she has ignored court orders. This bad faith precludes her from asserting a good faith defense in an attempt to introduce hearsay evidence. The court appropriately excluded such testimony.

- V. Respondent is entitled to an award of his reasonable attorney's fees and costs incurred in responding to Appellant's appeal.

The award of attorney's fees on appeal is based on the authority of Rule 33(a) of the Utah Rules of Appellate Procedure as a sanction for frivolous appeal or for delay.

DETERMINATIVE STATUTES AND LAW

33(a) Utah Rules of Appellate Procedure

(a) Damages for delay or frivolous appeal. If the court determines that a motion made or an appeal taken under these rules is either frivolous or for delay, it shall award just damage and single or double costs, including reasonable attorney fees, to the prevailing party.

STATEMENT OF THE CASE

This is a matter of contempt and sanctions arising out of a divorce proceeding. The parties were divorced by a bifurcated decree entered on April 9, 1997. (Record 59-58). An Addendum to the Decree of Divorce was entered on December 22, 1998. (Record 324-303). The Divorce Decree provided Mr. Barton visitation with his children, namely Joshua, 11 at the time of the contempt hearing, Brooke (9), and Jacob (7). (Transcript, October 18 page 16). Shortly after the Divorce Decree was filed, Mr. Barton began communicating and cooperating with the Special Master, Dr.

Barker. Mr. Barton paid Dr. Barker's fees in its entirety to expedite the process. Mrs. Barton, on the other hand, did little to cooperate with the Special Master and did little to facilitate Mr. Barton's visitation with his children. After the visitation and non cooperation became unbearable, Mr. Barton sought assistance from the courts. On July 19, 1999, Mr. Barton obtained an Order to Show Cause regarding contempt which scheduled a hearing for August 11, 1999. An Affidavit filed by Mr. Barton detailed his visitation problems with Mrs. Barton. Mrs. Barton did not appear at the hearing but filed an Affidavit (Record 406-388) responding to the claims and making counter arguments. Mrs. Barton also filed an Ex parte order in an attempt to have California take emergency jurisdiction. This action was denied on all four (4) grounds raised by Petitioner.

At the August 11 hearing, Judge Lynn Davis found Mrs. Barton in contempt of court for failing to "appear on this date after having been properly and personally served, and for her... failure to comply with the decree or the addendum to the decree." (Transcript, August 11 page 31). Judge Davis ordered Mrs. Barton to pay \$1397.00 for travel, wage loss, and attorney's fees and costs. Judge Davis reserved the issue of sanctions for contempt for 60 days in order to give Mrs. Barton time to comply with the Divorce Decree.

Mrs. Barton, once again, tried unsuccessfully to transfer jurisdiction to California. On September 7, 1999, Mrs. Barton was admonished by the Honorable Glen M. Reiser:

I think the Utah Court has jurisdiction at this point. But they also have contempt powers, and I think its incumbent on your client to recognize that. If she doesn't want to go to jail in Utah she ought to think about that." (Transcript, September 7 page 13).

Per the 60 day grace period, stemming from the August 11 hearing, a sanctions hearing was held on October 18, 1999. Judge Harding found Mrs. Barton had not complied with the provisions

outlined in her contempt hearing and sanctioned her with incarceration for two (2) days and imposed fees and costs of \$3,631.88. Prior to this, California and Utah courts conferred, transferring jurisdiction to California with regards to all issues except contempt and sanctions. (Record 447). To date, Mrs. Barton has not paid the monetary judgement. Mrs. Barton now brings this appeal. This case is quite clear. Utah has jurisdiction over matters regarding contempt and sanctions and properly imposed sanctions against Mrs. Barton for her contempt of court.

SUMMARY OF THE ARGUMENT

The Utah court exercised appropriate jurisdiction. The parties were, indeed, divorced in Utah by bifurcated decree entered on April 9, 1997. (Record 59-58) and Mrs. Barton moved to California on or around August 15, 1997. However, Mr. Barton remained domiciled in Utah but took extended contract work in California in order to facilitate visitation without disruption in the children's lives. The Addendum to the divorce decree provides that:

A.(iv) The Fourth District Court of Utah, State of Utah, shall maintain jurisdiction of this case until a Special Master/Interventionist in California is established and agreed upon between the parties. The Special Master will act as a child advocate and an arbitrator on behalf of the children and will be able to work with each parent to improve the parties' post divorce relationship. (Record 323-322).

Here, the Special Master had been designated and Mr. Barton paid the fees and began cooperating with him. Mrs. Barton, on the other hand, was not cooperating with the Special Master. She would not return phone calls and she did not make appointments. In fact, it has been established that her tone towards the Special Master was belligerent and non cooperative. The Special Master had been designated, but arguably, Mrs. Barton's actions could be viewed as a direct rejection of his services. In which case, the Special Master had not yet been "established and agreed upon by both parties"

and Mr. Barton's attempt to enforce the divorce decree was properly heard by the Utah Courts.

The Federal Parental Kidnaping Act does not apply in this case since Mr. Barton was still a Utah resident at the time of the contempt proceeding. The court, then, exercised appropriate jurisdiction.

The court's rulings were appropriate. Judge Davis inquired as to Mrs. Barton's financial condition. The judge inquired as to her salary, her support payments, and her monthly expenses before making his decision. Mrs. Barton was allowed time to comply with the court order. She did not comply with the court order. Mrs. Barton's wilful disregard of existing court orders precipitated the judge's rulings. In light of Mrs. Barton's conduct and behavior, the ruling was appropriate. The trial court also properly excluded testimony meant to justify Mrs. Barton's actions. The testimony was excluded based on rules governing hearsay. Assuming arguendo that Mrs. Barton was allowed to introduce hearsay evidence meant to establish some justification for her actions, she can only do so by a showing of good faith. Mrs. Barton knowingly disregarded the court order. She attempted to have California exercise emergency jurisdiction to avoid any punishment for her action. She wilfully disregarded the contempt order and continues to attempt to shirk from accepting responsibility for her actions. Due to Mrs. Barton's actions, the ruling to exclude hearsay evidence was proper.

ARGUMENT

POINT I

THE COURT EXERCISED APPROPRIATE JURISDICTION.

- A. The Agreement Regarding a Special Master Set Out in the Divorce Decree Had Not Been Met.

First and foremost, it has been established that the proceedings that have led to this appeal were for contempt and sanctions and not regarding custody. The Addendum to the Divorce Decree provides that:

A.(iv) The Fourth District Court of Utah, State of Utah, shall maintain jurisdiction of this case until a Special Master/Interventionist in California is established and agreed upon between the parties. The Special Master will act as a child advocate and an arbitrator on behalf of the children and will be able to work with each parent to improve the parties' post divorce relationship. (Record 323-322).

A Special Master had been designated but was not established and was not functioning in working "with each parent to improve the parties' post divorce relationship" as indicated in the Addendum. Arguably, the Special Master had not been established and agreed upon by both parties since Mrs. Barton was not cooperating with him. Appellant argues: "A court's initial inquiry should always be to determine whether it has jurisdiction to determine a controversy." (Appellants Brief, page 11 quoting Otteson v. State, 945 P. 2d 170, 171 (Utah App. 1997). At the August 11 hearing, Judge Davis did inquire as to whether Utah had jurisdiction. After reading relevant portions of the Divorce Decree, the judge said:

If it says Utah shall maintain jurisdiction of this case until a special master interventionist in California is established, and that in fact has been established or to have been established then it was, I don't know whether it was the judges belief that once that occurred Utah has no further jurisdiction." (Transcript, August 11, 1999 page 8-9).

The argument was raised that in essence the Special Master has not been established because in Mrs. Barton's correspondence she has said that she didn't acknowledge the Special Master. She even attempted to have California take emergency jurisdiction and California denied that request. Why would she do that if she believed jurisdiction had already transferred to California? After the

judge's inquiry, the judge decided Utah maintained jurisdiction to hear the matter. Mr. Barton brought this action in a Utah court because the provisions of the Divorce Decree, specifically the provision regarding cooperation with the Special Master, were not being met. Having properly established jurisdiction, the court exercised appropriate jurisdiction in finding Mrs. Barton in contempt of court for failure to appear at the hearing and for failure to comply with the decree or the Addendum to the divorce Decree.

B. The PKPA Does Not Affect Jurisdiction in This Matter.

The Parental Kidnaping Protection Act (PKPA) provides for jurisdiction. In this case, the PKPA does not apply since Mr. Barton had not moved from Utah. At the time of the contempt hearing, Mr. Barton did work in California but his primary place of residence was Utah. He owned property in Utah and not in California. He paid his insurance in Utah. All in all, Mr. Barton was a Utah resident. Liska v. Liska, cited in Appellant's brief, states "Jurisdiction remain in the decree state as long as one parent continues to reside in the original state and maintains some contact with the child." 902 P. 2d 644 (Utah App. 1995) quoting Rawlings v. Weiner, 752 P. 2d 1327, 1330-31 (Utah App.) (Bench, J. Concurring), cert. denied, 765 P. 2d 1278 (Utah 1988).

Utah retained jurisdiction. Even if the PKPA does preempt State law, it does not apply here since Mr. Barton was a Utah resident at the time of the contempt proceeding. Utah Code Ann. 78-45c-3 is not disturbed. All of the cases cited in Appellant's brief discuss jurisdiction when all parties have moved from the decree state. This is simply not the case here. The PKPA does not apply and the Utah Court exercised appropriate jurisdiction in this matter.

C. The Trial Court Exercised Appropriate Jurisdiction Per an Agreement Between the California and Utah Courts.

Utah had jurisdiction to hear the contempt and sanctions proceedings per an agreement between the Utah and California courts. On September 28, 1999, Commissioner Pattie in California and Judge Ray M. Harding in Utah conferred regarding jurisdiction. The courts agreed:

The [Utah] Court rules that it will hear the contempt matter currently set for October 18, 1999, at 3 PM. All other issues, including custody and visitation, are to be heard by the California court. (Record 447).

There can be no question of jurisdiction. In Liska v. Liska, the court states:

Until Utah declined to exercise jurisdiction, the Colorado court was without power to unilaterally assume jurisdiction over this case, unless it did so on an emergency basis. 902 P. 2d 644 (Utah App. 1995) quoting State ex. rel. D.S.K. v. Kasper, 792 P. 2d 118. 123 (Utah App. 1990).

Despite Mrs. Barton's attempts, California would not take emergency jurisdiction in this matter.

Mrs. Barton cannot use the legal system to avoid being held responsible for her disobedience in complying with court orders.

D. The Court Properly Ruled in This Matter.

The court did make inquiries as to whether the Special Master had been established. The court also heard testimony as to the failure on the part of Mrs. Barton to cooperate with the Special Master. The court heard testimony of Mrs. Barton's failure to comply with visitation provisions in the Divorce Decree. The court also heard testimony of Mrs. Barton's rejection of the Special Master. The court also heard testimony that Mr. Barton was finding it impossible to enforce the Divorce Decree due to Mrs. Barton's wilful disregard for its provisions. The court also noted Mrs. Barton's failure to appear for the hearing and was aware that she had attempted to have California take

emergency jurisdiction in this matter. With all of this information in hand, the court properly ruled in this matter.

POINT II

MRS. BARTON ACTED IN BAD FAITH REGARDING COMPLIANCE WITH THE CONTEMPT ORDER AND THE COURT PROPERLY EXCLUDED TESTIMONY MEANT TO JUSTIFY HER ACTIONS.

On August 11, 1999, Mrs. Barton was found in contempt of court. At the hearing, the judge found her

in contempt of court as it relates to her failure to appear on this date after having been properly and personally served, and for her...failure to comply with the decree or the addendum to the decree. (Transcript, August 11 page 31).

In an attempt to afford Mrs. Barton time to remedy the situation and avoid a penalty, the judge said that he would

reserve the issue of...a penalty or, the imposition of incarceration pending a review of her compliance with the order. It won't purge it but...I will hold it in reserve for 60 days...(Transcript, August 11 page 32).

Since the order was issued, Mrs. Barton has done nothing to comply with it. In fact, she has done everything in her power to keep the children from Mr. Barton and has not cooperated with the Special Master. At the contempt hearing held on October 18, 1999, Mrs. Barton attempted to explain why she had not appeared at the August 11 hearing and why she has continued to deny visitation to Mr. Barton. Much of this explanation was stating advice supposedly given her by others, namely her California counsel. Judge Harding appropriately denied such testimony as hearsay. Utah Rules of Evidence 801(c) states: hearsay is limited to statements "offered in evidence to prove the truth of the matter asserted." Appellant cites State v. Sorenson in arguing the evidence

should have been admitted. State v. Sorenson states:

When an out of court statement is offered simply to prove that it was made, without regard to whether it is true, such testimony is not proscribed by the hearsay rule." 617 P. 2d 333 (Utah 1980).

Sorenson further states, "Evidence of a statement by a third person is therefore admissible, irrespective of the fact that it was made out of court, if it is offered to support a defense of good faith." In the case at hand, Mrs. Barton cannot make a good faith defense. The evidence justifying Mrs. Barton's actions was properly excluded since her actions prior to the contempt hearing and after the hearing, demonstrate she clearly had no intention of complying with the divorce decree or the contempt order. Mrs. Barton comes to the table with unclean hands. She is seeking to have her actions made in bad faith explained away by introducing hearsay evidence that is only admissible to support a good faith defense. This course of action was properly not allowed by the Judge Harding. Mrs. Barton's actions prior to and after the contempt hearing demonstrate her hostility towards Mr. Barton and her desire to make visitation and communication with the children difficult, if not impossible, for him.

Mellor v. Cook also cited in Appellant's brief discussed the exclusion of testimony demonstrating reliance on advice of counsel, where defendant manifested an attitude of knowing and wilful disobedience of the court order. 597 P. 2d 882 (Utah 1979). Once again, Mrs. Barton knowingly disregarded the court order. Mrs. Barton knew the duty imposed upon her by the court order as evidenced by the ex parte orders requesting emergency jurisdiction which she filed in California prior to the August 11 hearing. Mrs. Barton was not prejudiced by the exclusion of testimony justifying her actions because she wilfully and knowingly violated the court order. Moreover, she has no good faith defense as evidenced by her actions warranting the contempt

hearing. The exclusion of such testimony did not prejudice Mrs. Barton in any way. Rehn v. Rehn, 974 P. 2d 306 (Utah App. 1999).

POINT III

THE CONTEMPT FINDING WAS APPROPRIATE IN LIGHT OF MRS. BARTON'S BLATANT DISREGARD FOR THE JUDICIAL PROCESS.

In Thomas v. Thomas, 569 P.2d 1119 (Utah 1977), it states: "When a proper order or judgment has been made, one who stands in wilful defiance or disobedience thereof may be found in contempt of court and punished by imprisonment." Mrs. Barton wilfully defied the court order and was, subsequently, found in contempt. Further, Judge Davis afforded her 60 days in which to comply with the court order. Once again, Mrs. Barton refused to comply. Appellant contends that neither Judge Davis nor Judge Harding inquired as to Mrs. Barton's finances and ability to pay. This contention is incorrect. Judge Harding went into some detail regarding Mrs. Barton's salary, living expenses and support payments (See, Transcript, October 18 page 22-23). Furthermore, Appellant attempted to offer testimony of a recent bankruptcy and the financial conditions that led to that bankruptcy to which Judge Harding responded:

...you probably know this court well enough to know that's not going to make a difference in my decision. It may feel good to your client to be able to state that but it's not going to make any difference to me. (Transcript, October 18 page 52).

Appellant's attorney then stated:

No. And, we only bring that out for the purpose, Your Honor, of showing what her financial condition is. (Transcript, October 18 page 52).

To which Judge Harding responded, "Well, it doesn't show...I've ruled." (Transcript, October 18 page 52-53). As demonstrated, inquiries were made into Mrs. Barton's ability to pay. Appellant

also argues that the court placed Mrs. Barton in an impossible situation. "If she failed to pay Mr. Barton, she would be in continued contempt. If she failed to pay the Special Master, she would be found in contempt for failing to cooperate with the Special Master." (See, Appellant's Brief, page 16). This statement is also incorrect. Mr. Barton pre-paid the Special Master start-up fees to allow the Special Master to begin working with both Mr. and Mrs. Barton. To date, Mrs. Barton has not paid her portion of the fees. Appellant's argument that she is unable to incur the cost of the Special Master is an attempt to shift the focus from being unwilling to pay to being unable to pay. Appellant is attempting to extract sympathy for her position and cloud the issue of her wilful disobedience of the court order.

A contempt finding was proper in this case considering Mrs. Barton's actions. The court may find a party in contempt if there is a continued disregard of court orders. Kelly v. Draney established that contempt may be found when one party exhibits a "consistent refusal to follow the direct court order." 754 P. 2d 92, 95 (Utah App. 1988). Had Mrs. Barton put forth every reasonable effort to comply with the court order and still failed to do so, she may not be guilty of contempt on account of that failure. Myers v. Myers, 768 P. 2d 979 (Utah App. 1989). Nevertheless, this was not the case with Mrs. Barton who has made no visible attempt to comply with the court order—even after being found in contempt of court. Prior to being served notice of the August 11 hearing, Mrs. Barton had written to Mr. Barton's attorney wherein she states she was "agreeable to John's request to make up visitation." (Transcript, October 18 page 119). Now, when she was served with the August 12 order, she still did nothing to allow visitation. To date, Mrs. Barton still has not made an effort to comply with the court order and this appeal is yet another way to avoid her responsibilities.

Rule 33(a) of the Utah Rules of Appellate Procedure allows the court to award attorney's fees and costs as a sanction for a frivolous appeal or for delay. In Porco v. Porco, 752 P. 2d 365 (Utah App. 1988) this court ruled sanctions should be imposed for a frivolous appeal when:

An appeal is obviously without merit and has been taken with no reasonable likelihood of prevailing, and results in delayed implementation of the judgement of the lower court; increased costs of litigation; and dissipation of the time and resources of the law court.

The Porco court so ruled even though it "recognize[d] that sanctions for frivolous appeals should only be applied in egregious cases, lest there be an improper chilling of the right to appeal erroneous lower court decisions."

Here, Respondent seeks an award of his reasonable attorneys fees incurred in this appeal under Rule 33 (a) of the Utah Rules of Appellate Procedure, as this appeal is frivolous as defined by Porco. Under this rule, Respondent seeks either the entire amount of his reasonable fees or such amount as may be determined to have been incurred for that portion of the appeal that this court finds to be frivolous, if the court finds the appeal only partially frivolous.

CONCLUSION

The trial court exercised appropriate jurisdiction since this was a contempt and sanctions issue and not one of custody. Furthermore, the California and Utah courts agreed upon jurisdiction for contempt. The Parental Kidnaping Protection Act does not apply to matters of contempt and should, therefore, be disregarded. Moreover, the decision to exclude hearsay evidence was appropriate as no good faith defense can be asserted to justify Mrs. Barton's actions. Mrs. Barton

wilfully refused to comply with the court order and was not prejudiced by the judge's decision to exclude the testimony. Further, Respondent should be awarded fees and costs as Appellant is filing a frivolous appeal and for delay.

The judgement of the trial court should not be reversed.

DATED this 26th day of July 2000.



DANA D. BURROWS
Attorney for Respondent-Appellee

CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing were mailed to the following,
postage prepaid, this 26th day of July 2000.

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Appendix "A"

Addendum to Decree of Divorce, entered Dec. 22, 1998

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IN THE FOURTH JUDICIAL DISTRICT COURT
OF WASATCH COUNTY, STATE OF UTAH

RHONDA LYNN CAMERON,
BARTON,

Petitioner,

vs.

JOHN KIMBALL BARTON,

Respondent.

ADDENDUM TO DECREE OF DIVORCE

Civil No. 954400090

Judge Ray M. Harding, Jr.

The above-entitled matter having come before the court by way of Petitioner's Complaint for Divorce and the parties having entered into a stipulation, which stipulation is approved by the court and the court being fully advised in the premises, and having entered its Findings of Fact and Conclusions of Law, now makes the ADDENDUM TO DECREE OF DIVORCE AS FOLLOWS:

ADDENDUM TO DECREE OF DIVORCE

1. The parties were previously divorced on April 9, 1997 after the court entered an order granting bifurcation allowing the Respondent to proceed with the divorce with all remaining issues reserved for trial.

2. The parties have entered into a stipulated agreement incorporating:

A. the terms and conditions of Dr. Jay Jensen's custody evaluation and addendum dated August 13, 1997 and October 18, 1997, respectively, and

child advocate and an arbitrator on behalf of the children and will be able to work with each parent to improve the parties' post divorce relationship.

v. The children should maintain their residence with their mother in the state of California. Consideration should be given to maintaining an area in which to live so that the children's relationship with their father is not compromised by frequent moves by the mother.

vi. Mr. Barton should maintain child oriented visitation with his children. He should sustain frequent contact with them, but do so respecting the children's developing interests. For instance, on visitation weekends where a child has a scheduled soccer game he should facilitate the child's and his own attendance to the game. In this regard, Petitioner should take care not to schedule activities which compete with the children's time with their father.

vii. Pursuant to (30-3-33) Of Utah statute the following is agreed:

a. Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule.

b. The custodial parent shall have the child ready for visitation at the time he is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time he is returned.

c. The court (including the Special Master) may make alterations

than surrogate care and the court (including the Special Master) shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care.

k. The custodial parent shall provide all surrogate care providers with the name, current address and telephone number of the non-custodial parent and shall provide the noncustodial parent with the name, current address and telephone number of all surrogate care providers unless the court (including the Special Master) for good cause orders otherwise.

l. Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

B. Unless, and until, modified by the Special Master, Mr. Barton should maintain Utah Statutory Visitation with the children expanded during the alternating weekends in lieu of any midweek visit to commence on Thursday at the conclusion of school (or at the same time when school is not in session) with the pick-up to occur at the school, and/or preschool, and run through Monday morning when school recommences with the drop-off to occur at the school and/or preschool. When school is not in session, the same visitation is to be maintained with pick-up and drop-off to occur at another arranged location. The Petitioner will notify the Respondent at least fifteen (15) days in advance of any change in school, or preschool location.

i. Alternating weekends, as defined above, beginning on the first weekend after the entry of the decree and continuing each year;

until 11:00 p.m. on the holiday;

f. Veteran's Day holiday beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday; and

g. The first portion of the Christmas school vacation (which term means the time period beginning when the child gets out of school for the Christmas school break until the time the child returns to school after the school break, except for Christmas Eve, Christmas Day, and the New Year's Day), plus Christmas Eve and Christmas Day until 1:00 p.m., so long as the entire holiday is equally divided;

vi. In years ending in an even number, the noncustodial parent is entitled to the following holidays:

a. Child's birthday on actual birthdate beginning at 3:00 p.m. until 9:00 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

b. New Year's Day beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday;

c. President's Day beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday;

d. July 4th beginning at 6:00 p.m. the day before the holiday until 11:00 p.m. on the holiday;

e. Labor Day Beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

parent;

b. Two weeks shall be uninterrupted time for the noncustodial parent;

c. and the remaining two weeks shall be subject to visitation for the custodial parent consistent with these guidelines;

xii. The custodial parent shall have an identical two week period of uninterrupted time during the children's summer vacation from school for the purposes of vacation;

xiii. If the child is enrolled in year-round school, the noncustodial parent's extended visitation shall be one-half of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

xiv. Notification of extended visitation or vacation weeks with the child shall be provided at least 30 days in advance to the other parent; and

xv. Telephone contact shall be at reasonable hours.

C. A neutral site for pick-up and drop-off of the children should be established, if necessary. If the children transition from parent to school, pick-up and drop-off between parents will be reduced. However, during those times when school is not in session, an additional neutral site should be selected with pick-up and drop-off times to be the same as when the children are in school.

i. Given the young ages of the children, there are a number of strategies that can be used to help them maintain a sense of constancy and to help maintain the relationship with their father as follows:

a. Freedom with telephone contact, letters, cards, etc., between

5. The Special Master may make orders resolving conflicts between the Petitioner and the Respondent which do not affect the court's exclusive jurisdiction to determine fundamental issues of custody and visitation. Each party specifically agrees that the Special Master may make decisions regarding possible conflict they may have. The Special Master shall have the authority 1) to enforce the terms of this agreement, 2) to expand the Respondent's rights of visitation, and 3) to resolve disputes between the parties regarding the following issues:

- A. The decision making on behalf of the parties' minor children that would normally be made by the parties and articulated in a parenting plan.
- B. The joint decision making between the parties and when and if it should be commenced and a parenting plan to implement it. (See 3-A of this agreement)
- C. The issue of whether or not the Petitioner shall provide the Petitioner's street address to the Respondent is reserved for determination by the Special Master.
- D. The issue of the religious upbringing of the children is reserved for determination by the Special Master including:
 - i. baptism and religious training
 - ii. church attendance
 - iii. priesthood ordinations
- E. How to arrange the transportation between the parties for visitation including how to allocate the costs of transportation and the responsibility for participating in the transportation.
- F. Where the pick-up and drop-off of the children shall take place.
- G. The grandparent's and extended family's involvement with the exchange and

children in year round school, is reserved for determination by the Special Master.

- O.** The issue of resolving, in accordance with this agreement, visitation scheduling conflicts that may arise between the parties shall be addressed by the Special Master if there is a dispute between the parties.
- P.** The issue of resolving hinderance of visitation, and/or communication via phone, mail, and/or email shall be addressed by the Special Master if there is a dispute between the parties.
- Q.** The issue of whether or not the Respondent is current on his child support obligation to allow the Respondent to claim the minor children as dependents, as set forth in this agreement, shall be addressed by the Special Master if there is a dispute between the parties.
- R.** The issue of tax neutrality, as set forth in this agreement, for tax years 1996 & 1997, as established in this agreement, shall be addressed by the Special Master if there is a dispute between the parties.
- S.** The issue of payment of capital gains obligations, as set forth in this agreement, as well as any unforeseen areas of conflict regarding tax liabilities that may arise between the parties, shall be addressed by the Special Master if there is a dispute between the parties.
- T.** The issue of dividing the retirement, pension or profit sharing plan shall be addressed by the Special Master.
- U.** The issue of alternating the pre-Christmas break weekend visitation to allow the parent with the second half of the Christmas break to spend the weekend

9. It is reasonable and proper that the Respondent shall pay child support to the Petitioner in the amount of \$1,300.00 per month for July, August and September of 1998. Commencing in October of 1998 and onward it is reasonable and proper that the Respondent shall pay child support to the Petitioner in the amount of \$1,075.00 per month with one-half due on or before the 5th and one-half due on or before the 20th of each month.

10. Pursuant to Utah Code Annotated §78-45-7.10, when the oldest of the children becomes 18 years of age or is graduated from High School during the child's normal and expected year of graduation, whichever occurs later, the base child support award is automatically reduced to reflect the lower base combined child support obligation shown in the Utah Child Support Table for the remaining number of children due child support.

11. Pursuant to Utah Code Annotated §78-45-7.11, the Respondent shall be entitled to a fifty percent 50% abatement in child support when the Respondent has the children with him for twenty-five (25) out of thirty (30) consecutive days. Normal visitation and holiday visits to the custodial parent during said period of time shall not be considered an interruption of the consecutive day requirement.

12. If the custodial parent desires to relocate more than just a few blocks, sixty (60) days notice of the intent to move shall be given, which would be communicated through the Special Master if the parties are unable to communicate directly. If a dispute over the move arises, said dispute shall be addressed by the Special Master.

13. It is reasonable and proper that the Respondent shall pay alimony to the Petitioner for July, August and September of 1998 in the amount of \$200.00 per month. The Respondent's alimony obligation to the Petitioner shall forever terminate from October of 1998 onward.

14. It is reasonable and proper that each party be responsible for one-half of the

divided profits of \$31,500.00 that each party received and shall hold the other party harmless there from.

18. During the course of the marriage the parties acquired debts and obligations, which debts and obligations shall be divided as follows:

A. To the Petitioner:

i. Petitioner's student loans after separation in September of 1995;

B. To the Respondent:

i. The cost for the storage unit of \$2,250,

ii. Marital debt obligations of:

a. Credit card debt totalling \$11,310,

b. Respondent's remaining student loans of \$10,760;

C. The remaining jointly incurred debts of the marriage prior to separation, if there are any outstanding, shall be divided equally and the parties shall otherwise hold each other harmless there from.

D. Each party shall be responsible for their own debts and obligations incurred subsequent to the parties' separation, which separation occurred in September of 1995.

E. The costs of the custody evaluation shall be permanently divided as temporarily divided by the court and paid by the parties.

F. Each party shall hold the other party harmless from the debts that they have assumed as set forth above.

19. It is reasonable and proper that the parties divide the dependency exemptions for the children as follows:

A. For the tax years 1996 and 1997, each of the parties claimed the parties' three

accident, eye care and orthodontia coverage that the Respondent is presently maintaining, if any, through July of 1998 under the Cobra plan.

B. The Petitioner shall maintain health, dental, accident, eye care and orthodontia coverage on behalf of the children from September 1, 1998 and onward. The Petitioner states that the Petitioner will have no difficulty nor limited coverage because of pre-existing conditions.

C. The Respondent may maintain additional health, dental, accident, eye care and orthodontia coverage on behalf of the minor children, as secondary insurance, if it is of benefit to the children and is economically feasible taking into consideration the monthly premium, with the Petitioner being responsible for one-half of the children's portion of the monthly premium. Irrespective of whether or not the Respondent maintains said secondary insurance coverage, the Respondent shall be responsible for no more than one-half of the remaining reasonable and necessary health, dental, accident, eye care and orthodontia costs incurred on behalf of the minor children, if any, that are not covered by the Petitioner's primary insurance including the children's portion of the monthly premium of the Petitioner's primary coverage.

21. The Petitioner alleges that because of treatment on Jacob's eye that there is a bill for \$3,000.00. Respondent shall be responsible for one-half of the bill of up to \$3,000.00 with the Respondent's one-half maximum being \$1,500.00 subject to the Petitioner providing prompt documentation.

22. If medical, dental, orthodontia, eye care, or accident treatment on behalf of the children is of a non-emergency nature, the Petitioner is directed to wait until the Petitioner's coverage on the children commences on September 1, of 1998.

incurred in pursuing the divorce action and shall further be responsible for 33% of the Petitioner's attorney's fees in the amount of \$3,547.00.

21

Appendix "B"

Transcript, Hearing, Ventura County, Sept. 7, 1999

1 SIMI VALLEY, CALIFORNIA; TUESDAY, SEPTEMBER 7, 1999

2 A.M. SESSION

3 --oo0oo--

4

5 THE COURT: Barton versus Barton.

6 MR. CASTELLANO: Good morning, your Honor.

7 John Castellano, from Richard Ross Associates,
8 on behalf of the plaintiff, Rhonda Barton, who is not in
9 court today.

10 THE COURT: Mr. Castellano, welcome.

11 MS. DICHTER: Sally Dichter, D-i-c-h-t-e-r, specially
12 appearing for Mr. Barton for the sole purpose of contesting
13 the subject matter, as well as other jurisdiction of the
14 Court, although I think, for purposes of this ex parte, the
15 only subject matter is jurisdiction.

16 THE COURT: Ms. Dichter, good morning.

17 Well, I read this file, such as it is, and I'm
18 still a little -- I'm not confused as to what's in the file.
19 I'm confused as to what the current status quo is with
20 respect to where the children are.

21 MR. CASTELLANO: Actually -- Well, the plaintiff --
22 It's a little confusing, because the plaintiff has a
23 Complaint, too.

24 THE COURT: Petitioner.

25 MR. CASTELLANO: It's actually to establish and
26 modify a Utah decree. She is the petitioner in the Utah
27 divorce case, as well.

28 THE COURT: I don't understand what you just said.

1 MR. CASTELLANO: Okay. As to the status quo, the
2 children are with the mother.

3 THE COURT: They are with the mother?

4 MR. CASTELLANO: Yes.

5 THE COURT: Even though the Utah order says four
6 weeks to the father?

7 MR. CASTELLANO: That's right.

8 THE COURT: Okay. Why is that?

9 MR. CASTELLANO: Well, your Honor, there's -- at the
10 same time that the order says that Mr. Barton shall have
11 visitation with them from August 16 to September 13, it also
12 instructs Mrs. Barton to immediately contact --

13 THE COURT: The special master. Right.

14 MR. CASTELLANO: -- to resolve the custody disputes
15 in the case.

16 THE COURT: Right. And I have Dr. Cole's report,
17 so -- but -- So why are the kids with their mom, if there's
18 a court order to have them with their father?

19 MR. CASTELLANO: Because if she abides by that, the
20 provision in the Utah order that directs the kids to be with
21 the father, during visitation, there's a risk of harm based
22 on Dr. Cole's recommendation.

23 THE COURT: Dr. Cole recommends supervised visitation
24 with the father?

25 MR. CASTELLANO: That's all we are asking for,
26 pending her reasonable opportunity to go to Utah to resolve
27 this conflict in the order.

28 THE COURT: Ms. Dichter, what's going on?

1 MS. DICHTER: Okay. All 50 states have enacted the
2 UCCJA for a reason. It's to avoid exactly what's happened
3 here.

4 There was a hearing scheduled in the State of
5 Utah on August 11.

6 THE COURT: Right. And the mother was a no-show.

7 MS. DICHTER: On August 9 -- We have to back up in
8 order to understand what's really happening here.

9 On August 9, they came into court ex parte
10 asking for emergency jurisdiction, which was denied.

11 On August 11, Utah held a hearing in which she
12 was found in direct contempt of that court, and it issued an
13 order signed on August 12th.

14 The children have then disappeared. In
15 essence, they have been kidnaped. That is why Dad does not
16 have them.

17 Mom did nothing between August 12 and
18 September the 1st. So to say she was waiting for Dr. Cole
19 is absurd. She did nothing.

20 Now, there is a Utah court hearing pending on
21 October 13th. They gave her 60 days to get herself in
22 compliance, after which they intend to sentence her. She
23 has been held in contempt of court.

24 In the California statutory scheme, assuming it
25 were even here, once she is held in contempt, this court
26 will not issue affirmative relief until she is in
27 compliance. So even if we were in California, she would now
28 be in contempt, and she is not entitled to affirmative

1 relief.

2 There's a very, very limited, limited exception
3 in the UCCJA. It says if there is extreme impending harm to
4 the children, this court can make the barest amount of order
5 it deems necessary to protect the children.

6 The problem here is, if you read Dr. Cole's
7 letter -- By the way, I don't think it's a recommendation.
8 Dr. Cole could have only seen these children under the
9 operative court order, Utah court order. If anything, that
10 directs us to Utah, not California.

11 The other little glitch here, Dr. Cole was
12 given a vacated California court order. Mr. Ross, who
13 represents Mom, Petitioner, here, on August 9, the Court
14 denied all ex parte relief.

15 On August 19th, out of the blue, no notice to
16 anyone, a court order issues staying all of Utah's action.

17 By about August 22nd -- That was in the State
18 of Utah, but never served on anyone else. No one else knows
19 how this order came to be. It got served on Dad and on his
20 counsel, who appeared because I was out of town on the 9th.

21 It gets served on Dad and his counsel, Jim
22 Eliaser, and Mr. Eliaser immediately faxes to
23 Commissioner Pattie the two inconsistent orders, saying,
24 "What's going on?" Because that destroys everything Utah
25 has done for three years now, three years for custody
26 litigation resulting in a contempt and a turnover order.

27 So now what happens is, Commissioner Pattie
28 vacates that order. He vacates it on the 26th. Jim Cole

1 gets it on the 1st. And if you read the first page of his
2 report, you can see he's heavily relying upon it, and he's
3 very confused as to his status.

4 He never sees Mr. Barton. There's nothing in
5 his letter indicating that Dad is physically abusive or even
6 really emotionally abusive. The kids say he yells too much.

7 There's no emergency. No harm to the kids.

8 THE COURT: All of that being said, have the children
9 started school?

10 MR. CASTELLANO: No. That's the problem here, your
11 Honor, is that --

12 THE COURT: Sounds like there's more than that
13 problem, but --

14 MR. CASTELLANO: Well, the problem is, there's a Utah
15 order in effect that gives Mr. Barton visitation, and it
16 doesn't say anything about Dr. Cole's recommendations. It
17 just instructs Mrs. Barton to go seek an interview with
18 Dr. Cole.

19 Mr. Barton has gone to the two schools that the
20 children are supposed to enroll in, and he's provided the
21 Utah order to the school.

22 What we are afraid of is that he's going to go
23 take the children away from the school under that provision
24 of the order and take them to Utah, while the school doesn't
25 have --

26 THE COURT: Well, there's three minors?

27 MR. CASTELLANO: Right.

28 THE COURT: Do they all go to the same school?

1 MR. CASTELLANO: Two go to one. In the
2 declaration --

3 MS. DICHTER: The oldest goes to Los Cerritos. The
4 other two go to elementary.

5 THE COURT: What elementary?

6 MR. CASTELLANO: It's --

7 THE COURT: If it's Los Cerritos, it's in T.O.

8 MR. CASTELLANO: Right. They are both in Thousand
9 Oaks.

10 MS. DICHTER: Your Honor --

11 THE COURT: Hang on.

12 MS. DICHTER: Okay. I just don't want to get --

13 THE COURT: Lang Ranch.

14 MS. DICHTER: Lang Ranch. That's it.

15 I just don't want to get distracted.

16 THE COURT: I don't want to get distracted. Hang on.

17 The two oldest to Los Cerritos. The youngest
18 to Lange Ranch.

19 When did school start?

20 MR. CASTELLANO: Started on September 1st.

21 MS. DICHTER: It started --

22 THE COURT: So we have got -- we have got a lawful
23 Utah order which says that these children are to be with
24 their dad until -- What is it? September what?

25 MS. DICHTER: 13.

26 MR. CASTELLANO: 13th.

27 THE COURT: And we also have their school.

28 Both Petitioner and Respondent live locally;

1 right?

2 MS. DICHTER: Respondent is a consultant. He is
3 presently under a long-term contract in Thousand Oaks, which
4 is all within the last -- since March. Very recent. He was
5 previously in long-term contracts in other states. His
6 home base is Utah.

7 MR. CASTELLANO: He's had an apartment in Ventura
8 County.

9 THE COURT: He's residing in Thousand Oaks right now?

10 MS. DICHTER: Correct.

11 THE COURT: Okay.

12 MS. DICHTER: He is not residing. The answer is,
13 your Honor -- Got to be very careful --

14 THE COURT: Domiciling?

15 MS. DICHTER: Not domiciling either.

16 He is maintaining an apartment here.

17 While he has a home in Utah, he obviously has
18 to have a place to live that doesn't cost as much as a hotel
19 would cost on a long-term contract.

20 THE COURT: So we have the kids in school. They are
21 supposed to be with this dad.

22 What's the problem with that?

23 MR. CASTELLANO: The problem is Dr. Cole has
24 recommended --

25 THE COURT: Right. But you have to have the
26 mediator's -- you have to have the special master's report.
27 It has to come to hearing with respect to the appropriate --
28 Well, first of all, there's a jurisdictional issue.

1 But even if California were to -- even if there
2 were communication between the two courts, allowing
3 California to begin to handle custody and visitation issues,
4 you don't just say, "I'm relying on a report," and just take
5 the kids.

6 That's not appropriate, is it?

7 MR. CASTELLANO: Well, based on Dr. -- Dr. Cole says
8 that the kids are quite fearful. There's a serious
9 question --

10 THE COURT: Well, right. I don't care what Dr. Cole
11 says at this point. I care what is the existent order of
12 the Court.

13 You don't unilaterally act without an order of
14 the Court, do you? Or do you?

15 MR. CASTELLANO: To the extent the Court orders,
16 directs the parties to seek Dr. Cole's counseling on the
17 disputed custody issues, that is part of the order.

18 THE COURT: But it doesn't say Dr. Cole can issue
19 court orders that supersede the existing orders, does it?

20 MR. CASTELLANO: That's right, your Honor.

21 THE COURT: If Dr. Cole says the kids should never
22 see Dad again, that's not self -- that's not -- it requires
23 a hearing of some sort, doesn't it, Counsel?

24 MR. CASTELLANO: Well, it, I think, provides a
25 sufficient basis to protect the children pending that
26 hearing, if Dr. Cole is saying that these kids fear -- are
27 quite fearful of their father.

28 I'm not saying that there should be a reversal

1 of custody right now. I'm just saying, just preserve that
2 recommendation pending her ability to go to Utah to resolve
3 this conflict.

4 THE COURT: It sounds to me like there's a lawful
5 Utah order in effect, which gives Mr. Barton -- I don't know
6 if it's visitation or joint custody during this period of
7 time until September 13.

8 In terms of the best interest of the minors,
9 obviously, they need to stay in school. They can't be
10 spirited out of the jurisdiction to Utah.

11 But other than the fact that -- other than when
12 they are in school, why shouldn't Dad have custody and/or
13 physical custody and/or visitation until you have your
14 hearing before Commissioner Pattie on the 13th?

15 MR. CASTELLANO: Well, because Dr. Cole feels that
16 they are --

17 THE COURT: Is there anything in Dr. Cole's report
18 that suggests there's some emergency?

19 MR. CASTELLANO: I mean, he says that they are all
20 quite fearful. There's no relationship of trust.

21 THE COURT: Right. But what precipitates that?

22 We don't know that at this point.

23 Is the mom telling the kids, "Hey, your dad is
24 going to do X, Y, Z"?

25 I mean, there really isn't -- This is a very,
26 very brief report. What is it? Three pages?

27 And I don't think it's appropriate for the
28 petitioner, unilaterally, to be flagrantly violating Utah

1 court orders because the court-ordered special master has
2 concerns about the temperament of the father. I think that
3 needs to be addressed at a judicial hearing.

4 So, Ms. Dichter, do you have any other
5 comments?

6 MS. DICHTER: No. That's -- That's just --

7 THE COURT: It sounds to me like these kids need to
8 be going to school, and there needs to be an order.

9 If there's a concern about these children being
10 spirited out of the state pending -- you know, for the next
11 six days, that they be ordered to attend their school here
12 in California, but, otherwise, visitation and custody is
13 with the father.

14 Right?

15 MS. DICHTER: The answer is yes.

16 And if I were in a position to stipulate
17 without destroying my special appearance here, father would
18 only pick them up, take them to school. His work is here.
19 He has no intention of going anywhere, nor has he.

20 Despite the fact, by the way, he has this court
21 order, when he did attempt to find the children, he brought
22 police officers with him. He has made no effort to do
23 anything that would embarrass his children.

24 THE COURT: Is Mr. Barton here?

25 MS. DICHTER: Yes.

26 THE COURT: Mr. Barton, please step forward.

27 And this is without your concession to this
28 Court's jurisdiction, because I don't want you to have to

1 concede that, because that remains to be heard for another
2 day.

3 But you have no intention of taking these kids
4 outside the jurisdiction?

5 MR. BARTON: No.

6 THE COURT: And you will see to it that they attend
7 their respective schools --

8 MR. BARTON: Absolutely.

9 THE COURT: -- until the 13th?

10 MR. BARTON: Yes.

11 THE COURT: I mean, I don't see any reason why we
12 need to interfere with the lawful order of the Utah court at
13 this point.

14 The matter is set for September 13th on a
15 plenary hearing before Commissioner Pattie on all kinds of
16 issues.

17 I'm sure Commissioner Pattie can get into the
18 how's, when's and why's of visitation, whether it needs to
19 be supervised or otherwise.

20 Sounds like Mr. Barton needs to trust Dr. Cole
21 to provide his perspective, if that hasn't been done yet.

22 MR. CASTELLANO: It has, your Honor.

23 He's met with Dr. Cole.

24 MS. DICHTER: Actually, he met with Dr. Cole in May
25 when he was seeing his children regularly, and Dr. Cole left
26 town the moment he issued this letter, and wouldn't be back
27 until tomorrow.

28 So he hasn't had an opportunity to discuss this

1 already.

2 THE COURT: Well, Dr. Cole's report is a
3 recommendation to a court which is not self-enabling in and
4 of itself.

5 Dr. Cole's report is not before this court
6 today. It's an emergency request that the Court act under
7 the Uniform Child Custody Jurisdiction Act, and I'm not
8 inclined to do so.

9 I will state that, to the extent this court has
10 jurisdiction, it orders Mrs. Barton to turn over the
11 children, so that Mr. Barton can have his court-ordered
12 custody and visitation through the remainder of this
13 purported four-week visitation, which is September 13.

14 And Mr. Barton has been here. He's agreed he
15 won't remove them from the jurisdiction. He is going to
16 take them to school.

17 So we will comply with the existing orders and
18 have this matter heard on the 13th before
19 Commissioner Pattie on the various other issues.

20 MS. DICHTER: Thank you, your Honor.

21 MR. CASTELLANO: Thank you, your Honor.

22 MR. BARTON: Thank you.

23 THE COURT: So the ex parte application is denied.

24 MS. DICHTER: Thank you.

25 THE COURT: Any question as to what I just ruled?

26 MR. CASTELLANO: Well, so there will be a plenary
27 hearing as to the emergency nature of this on the 13th?

28 THE COURT: This was denied. You will have your

1 hearing on the 13th, which was noticed some time ago.

2 MR. CASTELLANO: Right.

3 MS. DICHTER: That is correct.

4 THE COURT: And I see moving and opposing papers
5 filed by the parties, but I think you would -- you would
6 behoove your client to immediately turn the kids over to
7 their father, because there's a lawful court order which
8 compels that, and I don't think you want to continue to be
9 in violation of a lawful order.

10 I think the Utah court has jurisdiction at this
11 point. Whether we have concurrent jurisdiction or whether
12 California is going to step forward and take primary
13 responsibility is a different question. But they also have
14 contempt powers, and I think it's incumbent on your client
15 to recognize that. If she doesn't want to go to jail in
16 Utah, she ought to think about that.

17 Okay?

18 MR. CASTELLANO: Yes, your Honor.

19 MS. DICHTER: Thank you.

20 MR. CASTELLANO: Thank you.

21 THE COURT: Thank you.

22

23 (Proceedings concluded.)

24

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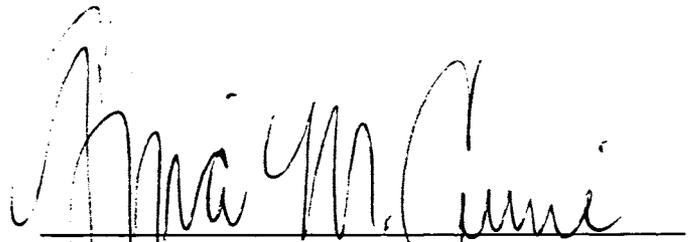
28

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, Gina M. Currie, CSR 8429, Certified Shorthand Reporter of the State of California, for the County of Ventura, do hereby certify that the foregoing pages, numbered 1 through 13, inclusive, are a true and correct transcript of the proceedings held on Tuesday, September 7, 1999, in the above-entitled cause.

Dated at Ventura, California, this 16th day of May, 2000.



GINA M. CURRIE, CSR 8429
Official Court Reporter

Appendix "C"

Order on Order to Show Cause and Judgement, entered Aug. 12, 1999

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Telephone: (801) 222-9700

FILED 8-12-99
Fourth Judicial District Court of
Wasatch County, State of Utah
CARMA B. SMITH, Clerk
RB Deputy
[Signature]

IN THE FOURTH JUDICIAL DISTRICT COURT
OF WASATCH COUNTY, STATE OF UTAH

RHONDA LYNN CAMERON,
BARTON,
Petitioner,

vs.

JOHN KIMBALL BARTON,
Respondent.

**ORDER ON ORDER TO SHOW CAUSE
AND JUDGEMENT**

Civil No. 954400090

Judge Lynn Davis

The above-entitled matter having come before the court for Order to Show Cause in Re Contempt on Wednesday, August 11, 1999, before the Honorable Judge Lynn Davis. The Petitioner was not present nor was the Petitioner represented by counsel. The Respondent was present and represented by counsel, Dana D. Burrows. The court having reviewed the matter and being fully advised in the premises, now, therefore, IT IS HEREBY ORDERED:

1. Petitioner was personally and properly served with the Motion, Affidavit and Order to Show Cause and filed an Affidavit in Response to Respondent's Order to Show Cause Re Contempt but failed to personally appear or through counsel.
2. The court finds that the Petitioner had an obligation to appear in court in person regardless of whether the Petitioner felt that the Fourth District Court of Wasatch County, State of Utah has jurisdiction over the action or not since the Decree of Divorce and the Addendum to

shall be heard in Provo, Utah regardless of who requests the hearing, if in fact the Respondent so desires said hearing to occur in Provo, Utah.

8. The Petitioner shall immediately contact the Special Master, Dr. Cole, and shall immediately schedule an appointment and make arrangements to meet with Dr. Cole and to address the issues raised by the Respondent and set forth in the Addendum to Decree of Divorce entered by the court on December 22, 1998 and attempt to resolve said issues promptly and in good faith.
9. Petitioner shall immediately reimburse the Respondent for the judgement amount as set forth in paragraph 3 above and shall further cooperate with the Respondent's makeup and extended visitation as outlined in paragraph 5 above and cooperate by contacting and cooperating with the Special Master as set forth in paragraph 7 above, all of which are part of the Finding of Contempt. The court will reserve implementation of penalty or incarceration pending a review hearing to determine the Petitioner's compliance with the terms and conditions of this order which review hearing shall occur 60 days or more from August 11, 1999 to enable the Petitioner sufficient time to comply with the court order regarding payment of the judgement as well as Make Up and Extended Visitation and cooperation with the Special Master. The review hearing will not be scheduled but can be noticed up which notice may be served upon the Petitioner by mailing to the Petitioner's last known address.

DATED for this 12 day of August, 1999.



JUDGE LYNN DAVIS
DISTRICT COURT JUDGE

Appendix "D"

Order for Sanctions, entered Nov. 5, 1999

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

CLERK OF DISTRICT COURT
STATE OF UTAH
Nov 5 1 23 PM '99
MCS

IN THE FOURTH JUDICIAL DISTRICT COURT
OF WASATCH COUNTY, STATE OF UTAH

RHONDA LYNN CAMERON,
BARTON,
Petitioner,

vs.

JOHN KIMBALL BARTON,
Respondent.

ORDER FOR SANCTIONS

Civil No. 954400090

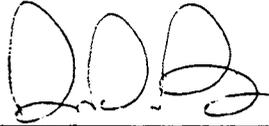
Judge Ray M. Harding, Jr.

The above-entitled matter having come before the court for Review Hearing before the Honorable Judge Ray M. Harding, Jr., on Monday, October 18, 1999, on what sanctions to impose against the Petitioner based upon the finding of contempt entered by the court in the Order on Order to Show Cause and Judgment on August 12, 1999. Petitioner was present and represented by counsel Don Petersen. Respondent was present and represented by counsel Dana D. Burrows. The court having heard testimony of both parties as witnesses and being fully advised in the premises, now, therefore, the court hereby enters its Findings and Order:

1. The court finds that the Petitioner has continued in her ongoing willful and intentional disregard of the order of the court of August 12, 1999 especially as it relates to the issue of ongoing and makeup visitation.
2. The Petitioner shall be sentenced to two (2) days in jail at the Utah County Jail with said sentence to commence immediately.

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DATED this 22nd day of October, 1999.



DANA D. BURROWS
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of October, 1999, I mailed a true and correct copy of the foregoing Order and Judgment, postage prepaid, to the following:

Don R. Petersen
120 E 300 N
PO Box 1248
Provo UT 84603



DANA D. BURROWS