

1999

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

Utah Court of Appeals

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

<p>RHONDA LYNN CAMERON BARTON,</p> <p>Petitioner-Appellant,</p> <p>vs.</p> <p>JOHN KIMBALL BARTON,</p> <p>Respondent-Appellee.</p>	<p>Case No. 991026-CA</p> <p>Oral Argument Priority 15</p>
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BRIEF OF APPELLANT

APPEAL FROM THE FINAL JUDGMENT 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'Alessandro
Clerk of the Court

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

<p>RHONDA LYNN CAMERON BARTON, Petitioner-Appellant, vs. JOHN KIMBALL BARTON, Respondent-Appellee.</p>	<p>Case No. 991026-CA Oral Argument Priority 15</p>
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JURISDICTION

The order appealed from was entered November 5, 1999. The order was a final judgment. Boggs v. Boggs, 824 P.2d 478, 480 (Utah Ct. App. 1991). Mrs. Barton filed her notice of appeal on December 3, 1999. The notice was timely. Utah R. App. P. 4(a). The contempt claim arises out of a domestic relations action, and this Court therefore has original appellate jurisdiction under Utah Code Ann. § 78-2a-3(2)(h) (1996).

ISSUES PRESENTED

1. Where a divorce decree provided that the Utah would retain jurisdiction only until a Special Master was established in California, and where the Special Master had been established, did the Utah court err in holding that it still had jurisdiction? This issue presents a question of the effect of a prior judicial decision and is reviewed for correctness. Billings v. Union Bankers Insurance Co., 918 P.2d 461, 464 (Utah 1996). This was raised in Mrs. Barton's Affidavit in Response to Respondent's Order to Show Cause re Contempt. (Record 406-403.)

2. Where the children and both parents had moved from the state of Utah, did the decree court retain jurisdiction to modify visitation rights as a sanction for perceived contempt? This is a question of law reviewed for correctness, with no deference to the ruling of the trial court. Liska v. Liska, 902 P.2d 644, 646-647 (Utah Ct. App. 1995). This was raised in Mrs. Barton's Affidavit in Response to Respondent's Order to Show Cause re Contempt. (Record 406-403.)

3.t Where a party presented evidence that she lacked the money to pay a contempt judgment and there was no contrary evidence, did the court abuse its discretion in finding the party in continued contempt for failing to pay the judgment? Orders relating to contempt of court are reviewed for abuse of discretion. Dansie v. Dansie, 1999 Utah App. 92, ¶ 6, 977 P.2d 539, 540. Mrs. Barton's lack of income was raised by testimony and argument. (Transcript Oct. 18 pp. 22-23, 127-128)

3. Are the contempt citations supported by adequate findings, where there was no finding that petitioner had the ability to comply with the court orders, and where the court failed to address petitioner's claim that an independent therapist strongly counseled against allowing respondent to exercise unsupervised visitation with the minor children? This Court reviews de novo the question of whether the findings are adequate. Butler, Crockett and Walsh Development Corp. v. Pinecrest Pipeline Operating Co., 909 P.2d 225, 232 (Utah 1995).

4. In a proceeding to determine the penalty for contempt, is evidence of legal and other advice given to the party relevant, and is the party's testimony concerning that advice admissible over a hearsay objection? Matters relating to the admission of evidence are reviewed for abuse of discretion. Trolley Square Associates v. Nielson, 886 P.2d 61, 66 (Utah Ct. App. 1994). This was raised by offering the testimony at trial and preferring the evidence. (Transcript Oct. 18 pp. 17, 20-21.)

DETERMINATIVE STATUTES, RULES OR CASES

A copy of the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, is attached in the Addendum.

STATEMENT OF THE CASE

A. Nature of the Case. This was a contempt proceeding arising in the context of a divorce case.

B. Course of Proceedings And Disposition Below.

The parties were divorced by a decree entered April 9, 1997. (Record 59-58.) An Addendum to Decree of Divorce was entered December 22, 1998. (Record 324-303.) The Addendum to Decree of Divorce granted specific rights of visitation to Mr. Barton. The Addendum appointed a Special Master in California to monitor visitation, and further provided that jurisdiction would then be transferred to California.

John Barton asserted that Rhonda Barton had interfered with his visitation rights, and on July 19, 1999, he obtained an Order to Show Cause in Re Contempt which scheduled a hearing for August 11, 1999. Rhonda Barton was served with the order on Aug. 3, 1999. (Transcript Aug. 11, page 4.) Mrs. Barton did not physically appear at the hearing, but filed an affidavit (Record 406-386) responding to the claims in the order to show cause, asserting that Mr. Barton was emotionally abusive to the children (Record 395-394 ¶ 37, 393 ¶ 41, 390 ¶ 53), and asserting that the Court should defer jurisdiction to a proceeding which Mrs. Barton had commenced in California. Judge Lynn Davis found Mrs. Barton in contempt for

failing to personally appear and for failing to allow visitation. (Transcript Aug. 11, page 31.) Judge Davis also ordered that Mrs. Barton reimburse Mr. Barton \$1397.00 for travel expenses and attorney fees relating to the hearing. Judge Davis reserved the issue of penalty for contempt, to be determined at a review hearing after 60 days. (Record 413.)

On September 13, 1999, Mrs. Barton filed a motion to transfer jurisdiction to California. (Record 429-428.) She also filed an Ex Parte Motion for Order Staying Unsupervised Visitation, supported by a letter from the Special Master stating that the children were fearful of Mr. Barton and that it would not be in their best interests to have unsupervised visitation with him. (Record 439-434.) Judge Lynn Davis reviewed the Ex Parte Motion for Order Staying Unsupervised Visitation, but declined to enter any order because a hearing on the contempt issues was scheduled to be heard before Judge Harding. (Record 440, 450-448.)

On September 28, 1999, Judge Harding conferred with the California court and transferred to California jurisdiction over all matters except the pending contempt hearing. (Record 447.)

A hearing on the contempt issues was held October 18, 1999. Judge Harding found Mrs. Barton to be in continued contempt of court, ordered her incarcerated immediately to serve two days in jail, and imposed attorney fees and expenses of \$3,631.88. Judge Harding refused to consider Mrs. Barton's oral motion for a stay of execution (Transcript October 18 p. 148), so the jail time has been served. The monetary judgments remain outstanding.

C. Statement of Facts.

The parties have three children. Joshua was age 12 at the time of the contempt hearing, Brooke, age 9, and Jacob, age 7. (Transcript October 18 page 16.) Both parties resided in Thousand Oaks, California. (Transcript October 18 page 16; Record 382 ¶ 5, Record 366, Record 404-405 ¶ 2.) Mrs. Barton and the children moved to California in August 1997. (Record 406 ¶ 2.) Mr. Barton moved to California in early 1998. (Record 406-405 ¶ 2, 382 ¶ 5.)

In a bifurcated proceeding, the parties were divorced by decree entered April 9, 1997. (Record 59-58.) The remaining issues were addressed in a stipulated Addendum to Decree of Divorce entered December 22, 1998. (Record 324-303.) At that time the parties still had unresolved disputes regarding custody and visitation issues. (Record 382 ¶ 4.) Mrs. Barton contended that Mr. Barton had abused her and the children. (Record 396.) The Addendum provided for appointment of a Special Master in California to resolve the visitation disputes:

The parties are in agreement that Patrick C. Barker, Ph.D., 260 Maple Court, Suite 129, Ventura, California, 93003-3512, telephone number 805-654-1018, fax number 805-654-1098, shall be appointed as the Special Master between the parties. In the event that Dr. Barker is unable, or unwilling, to act as the Special Master between the parties, then Dr. James B. Cole, Ph.D., 993 West Seventh Street, Oxnard, California, 93030, telephone number 805-483-9565, fax number 805-486-5483, shall be appointed as the Special Master between the parties.

(Record 315 ¶ 4.)

At the time of the Addendum, the parties were already living in California, so the Addendum provided for a transfer of jurisdiction:

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 ¶ 3.A.vi.)

Consistent with the Addendum, Patrick C. Barker commenced to act as Special Master for the parties. Mrs. Barton met with him in March 1999. (Transcript October 18 p. 18.) Dr. Barker then withdrew (Record 354), and, as provided in the Addendum, Dr. James P. Cole then served as Special Master. Mrs. Barton met with Dr. Cole in June 1999. (Transcript Oct. 18, p. 19.) At that time, she discussed with him the fact that she was a school teacher and did not get paid during the summer months, and asked to not meet with him until September when she would receive her first paycheck for the new school year. Dr. Cole agreed to that delay. (Id.)

On June 11, 1999, Mr. Barton sent Mrs. Barton a letter requesting summer visitation from August 5, 1999, through September 9, 1999, a period which included the children's first week of school. (Record 366-365, 398 ¶ 27.) Mrs. Barton responded by

agreeing to the first two weeks of the summer visitation, but objecting to the balance because it would prevent her from exercising the visitation and holidays awarded to her. (Record 398 ¶ 26. 397 ¶ 29.) Mr. Barton contacted the Special Master, but he declined to intervene apparently because Mrs. Barton had asked to delay meeting with him until September. (Record 377-376 ¶ 21.)

On July 19, 1999, John Barton obtained in Utah an Order to Show Cause In Re Contempt, which claimed that Mrs. Barton had not complied with the provisions of the Addendum to Decree of Divorce relating to the Special Master. (Record 409-408.) The Order to Show Cause scheduled a hearing in Heber City for August 11, 1999, and was served on Mrs. Barton in California on August 3, six business days before the hearing. (Record 407.)

Mrs. Barton obtained counsel in California and commenced an action in California to determine the visitation issues there. The California counsel also assisted Mrs. Barton in preparing an affidavit which she filed in the Utah action. (Transcript Oct. 18 p. 16.) Mrs. Barton understood, based on the Addendum to Decree of Divorce and the affidavit she had prepared, that the case would be transferred to California. Based on that understanding, she did not personally appear at the Utah hearing. (Transcript Oct. 18, p. 18.)

The hearing on August 11, 1999, was held before Judge Lynn Davis. Judge Davis expressed concern that this was really a matter which should be addressed by the California courts. (Transcript Aug. 11 pp. 6-8.) Judge Davis nonetheless undertook to exercise

jurisdiction and found Mrs. Barton in contempt for failing to personally appear in Utah and for failing to allow visitation. Judge Davis awarded judgment against Mrs. Barton for travel expenses and attorney fees and awarded make-up visitation. (Record 415-412.) The make-up visitation was to be unsupervised, contrary to the recommendation of the Special Master in California.

A hearing on contempt sanctions was scheduled for October 18, 1999. (Record 416, 447.) At the time of the contempt hearing, Mrs. Barton was employed as a schoolteacher in California. (Transcript October 18 page 19.) She did not get paid during the summer months. (Id. pp. 19, 27.) Even when she was receiving her paycheck, her income was not sufficient to meet expenses. Her monthly take-home pay was \$2,100 per month, plus she received \$1,075 per month for child support. Her rent was \$1,550, plus she had a car payment of \$264, expenses for utilities, food, clothing, gasoline, etc.. She testified that she went in the hole every month. (Transcript October 18 page 23.) Mr. Barton did not present any evidence concerning the ability of Mrs. Barton to pay the judgment against her.

At the hearing on October 18, 1999, Judge Harding found that Mrs. Barton had "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." Judge Harding sentenced Mrs. Barton to two days in jail, to commence immediately, and ordered that all other issues of make-up visitation and other sanctions would be determined

by the California court. (Record 480-479.) Mrs. Barton was immediately incarcerated and has served the two days jail time.

SUMMARY OF ARGUMENT

The parties were divorced in Utah, but then moved to California. The decree provided for appointment of a Special Master in California and stated that jurisdiction would transfer to Utah when the Special Master became "established." The Special Master had met with the parties regarding visitation issues, although there were ongoing disputes concerning the parties' relationship with the Special Master. The trial court should have found that the Special Master had been "established," and declined to exercise jurisdiction.

The federal Parental Kidnapping Prevention Act also divested the trial court of jurisdiction. Under the PKPA, jurisdiction continues only so long as a party remains a resident of the decree state. Both parties and the children had moved to California, so the trial court lacked jurisdiction to proceed.

Even if the court had jurisdiction, its rulings were in error. The court failed to make any finding concerning the ability of Mrs. Barton to pay the contempt judgment against her. The only evidence on the issue showed that she was a school teacher with no salary during the summer, and did not have the ability to pay the judgment.

The trial court also erred by excluding Mrs. Barton's evidence to explain why she took the actions she did. The court excluded as hearsay evidence of advice Mrs. Barton received from her attorneys and from the Special Master. That evidence was not offered for the truth

of the advice, however, but only to show that Mrs. Barton received the advice. That Mrs. Barton was acting on the advice of officers of the court was relevant to whether she was in contempt and relevant to the level of sanctions to be imposed. It was not hearsay and should have been admitted.

ARGUMENT

POINT I

THE TRIAL COURT LACKED JURISDICTION.

A. The Decree Required that Utah Defer to California's Jurisdiction.

The Addendum to Decree of Divorce contained a clear provision that jurisdiction would be transferred to California as soon as a special Master was "established" there. The evidence showed the special Master had been appointed and was functioning. The trial court erred in failing to transfer jurisdiction to California.

The Addendum stated:

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.

(Addendum to Decree of Divorce, ¶ 3.A.iv at Record 323-324.)

Mrs. Barton's affidavit asserted that a special Master had been established in California, and that both parties had participated with the special Master. Based on this

claim of lack of jurisdiction, the trial court should have first determined whether it had jurisdiction before proceeding to hear the other issues. Even though Mrs. Barton did not personally appear at the hearing, a court always has an obligation to affirmatively inquire into its own jurisdiction. "A court's initial inquiry should always be to determine whether it has jurisdiction to determine a controversy." Otteson v. State, 945 P.2d 170, 171 (Utah App. 1997) (citation omitted).

B. The PKPA Precluded Utah from Exercising Jurisdiction.

In this case, the jurisdiction prerequisites under Utah Code Ann. § 78-45c-3 were no longer satisfied. Because the child and both contestants had moved away from Utah, Utah no longer had jurisdiction. Liska v. Liska, 902 P.2d 644, 647 (Utah Ct. App. 1995) ("Only when the child and all parties have moved away is deference to another state's continuing jurisdiction no longer required.")

Although Utah Code Ann. § 30-3-5(3) purports to grant a trial court "continuing jurisdiction to make subsequent changes or new orders for the custody of the children," this provision is superseded by the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. 1738A. Section 1738A(d) of the PKPA states:

The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

This federal statute preempts the Utah provision. "Where the PKPA and the state's version of the UCCJA conflict, the PKPA preempts state law." Crump v. Crump, 821 P.2d 1172, 1174 (Utah App. 1991), quoting State ex rel. D.S.K., 792 P.2d 118, 128 (Utah App.1990). "Unlike the UCCJA, the PKPA "anchors exclusive continuing jurisdiction to modify a previous custody decree in the original home state as long as the child or one of the contestants remains in that state." Crump, 821 P.2d at 1174-75 (citation omitted).

Cases from other jurisdictions confirm that Utah lost jurisdiction when Mr. Barton moved to California. Maxie v. Fernandez, 649 F. Supp. 627 (E.D. Vir. 1986), addressed the question of whether the decree jurisdiction, the District of Columbia, retained jurisdiction. The mother and child had moved to Virginia. The father had physically moved to New York, although he claimed to retain a residence in the District of Columbia. The court found the father had moved, and concluded that the District of Columbia no longer had jurisdiction even though the District's own statutes provided for continuing jurisdiction. 649 F. Supp. at 630. Dahlen v. Dahlen, 393 N.W.2d 765 (N.D. 1986), similarly involved a situation where the state's statute provided for continuing jurisdiction, but the court held it had lost jurisdiction because all parties had moved from the state.

In In re marriage of Pedowitz, 225 Cal. Rptr. 186 (5th Dist. 1986), the mother and child had moved permanently to Florida, but the father claimed to still reside in the decree state of California. The evidence showed that the father had lived in Florida for nearly a year, but had moved back to California. The California court held there were insufficient

facts to show whether the father had remained a resident of California, and remanded the case for additional evidence.

Here the evidence showed that all parties were residing in California. Utah had lost jurisdiction, both under the PKPA and under the clear terms of the decree itself. The trial court erred in exercising jurisdiction.

C. The Trial Court Should Have Deferred to California's Jurisdiction.

Even if Utah had technically retained jurisdiction, it should have concluded that jurisdiction should be in California. Both parties and children were in California. The children were born in Thousand Oaks, California, and all of their grandparents resided in California. (Record 404-405.) The decree itself provided that jurisdiction should shift to California. Under these circumstances, it would have been an abuse of discretion to fail to transfer jurisdiction to California. Liska v. Liska, 902 P.2d 644, 649-650 (Utah Ct. App. 1995).

D. The Ruling on Jurisdiction Was Not Supported by Adequate Findings.

If the trial court had inquired concerning jurisdiction and determined to retain jurisdiction, one would have expected the court to make appropriate findings of fact and conclusions of law to support that decision. Particularly, one would have expected findings on the critical issues of the parties' residence and whether a Special Master had been "established" in California. Where the testimony of the parties was in conflict on these issues, the trial court was required to make express findings.

E. Summary.

Mrs. Barton anticipates that Mr. Barton may assert that Utah retained jurisdiction over contempt issues. The decree, however, provided otherwise. In addition, it appears that Judge Harding imposed a harsh penalty in response to the perceived failure to comply with the make-up visitation ordered by Judge Davis, even though Judge Davis lacked jurisdiction to modify visitation.¹

The conclusion that jurisdiction should have been transferred to California was confirmed when the trial court actually transferred jurisdiction to California. This transfer left an anomalous state of affairs. Mrs. Barton was held in contempt for, in essence, trying to following the Addendum's requirement that visitation be determined by the Special Master and the California courts. The Utah court ultimately agreed with her.

The end result is that Mrs. Barton served two days in jail and has a judgment against her for nearly \$5000 for asserting that jurisdiction was in California, the same position ultimately adopted by the Utah court. This is clearly unfair. This court should hold that the trial court erred in addressing contempt issues without having first determined whether the court had or should exercise jurisdiction over the visitation issues. This court should further hold that the trial court did not have jurisdiction over the visitation issues.

¹It is interesting that Judge Harding held that he lacked jurisdiction to award makeup visitation as a sanction. (Transcript Oct. 18 p. 143.)

POINT II

MRS. BARTON WAS PREJUDICED BY THE TRIAL COURT'S EXCLUSION OF EVIDENCE JUSTIFYING HER ACTIONS.

At the hearing on October 18, 1999, Mrs. Barton attempted to explain why she had not appeared at the hearing on August 11, and to further explained why she had not made children available for visitation with Mr. Barton. (Transcript Oct. 18 page 17.) Mr. Barton objected to testimony on the ground that was hearsay. The trial court sustained the objection.

Hearsay is limited to statements "offered in evidence to prove the truth of the matter asserted." Utah R. Evid. 801(c). When a statement is offered merely to prove that it was made, without regard to whether it is true, such testimony is not prohibited by the hearsay rule. State v. Sorensen, 617 P.2d 333 (Utah 1980).

Although Judge Davis had already determined that Mrs. Barton was in contempt, the justifications for that contempt were still relevant in determining an appropriate sanction. That Mrs. Barton acted on advice of counsel or the advice of the Special Master is evidence was should have been received in justification of her actions. Mellor v. Cook, 597 P.2d 882 (Utah 1979); In re Thomas, 56 Utah 315, 109 P. 952 (1920).

POINT III

THE CONTEMPT FINDING WAS IMPROPER BECAUSE MRS. BARTON DID NOT HAVE THE ABILITY TO PAY THE REIMBURSEMENT ASSESSED AGAINST HER.

In Thomas v. Thomas, 569 P.2d 1119 (1977), the Utah Supreme Court explained that a party cannot be held in contempt for failing to do something not within the party's power to perform. Neither Judge Davis nor Judge Harding made any finding concerning Mrs. Barton's ability to pay the reimbursement amounts assessed against her. Findings are required on this issue where there is a conflict. Coleman v. Coleman, 664 P.2d 1155, 1157 (Utah 1983).

Mrs. Barton testified, without contradiction, that she was employed as a school teacher on a ten month contract. During the summer months, she received no salary. Even when she received her salary, her expenses exceed her income.

Judge Harding found Mrs. Barton in continued contempt for failing to pay amounts assessed by Judge Davis, yet there was no evidence that Mrs. Barton could have paid those amounts. Mr. Barton was already critical of her for failing to pay the charges of the Special Master. 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.

At the very least, findings on the issue of ability to pay should have been made. Without those findings, it is impossible for this Court to determine whether there was

MAILING CERTIFICATE

I hereby certify that two true and correct copies of the foregoing were mailed to the following, postage prepaid, this 24th day of April, 2000.

Dana D. Burrows, Esq.
1149 West Center Street
Orem, UT 84057




A handwritten signature in cursive script, appearing to read "Paul Slough", is written over a solid horizontal line.

MAILING CERTIFICATE

I hereby certify that two true and correct copies of the foregoing were mailed to the following, postage prepaid, this 24th day of April, 2000.

Dana D. Burrows, Esq.
1149 West Center Street
Orem, UT 84057



A handwritten signature in cursive script, appearing to read "Paul Slough", is written over a horizontal line.

APPENDIX "A"

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

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Wasatch
12-22-98 *Ray*

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

all

B. the involvement of a Special Master,

C. certain Utah statutory provisions.

3. Both parties shall be awarded the joint legal custody of the parties' three minor children, to wit: Joshua Johns Barton, born September 29, 1987; Brooke Marie Barton, born July 25, 1990; and Jacob Pack Barton, born July 8, 1992, with the Petitioner being awarded the actual physical custody and the Petitioner residence, in California, designated as the primary residence of the children, subject to the conditions and visitation as follows:

A. At the present time the parties should not be obligated to make joint decisions on behalf of the children because of the conflict this creates. The resolution of the decision making and when and if joint decisions should be made in the future is assigned to the Special Master. The court finds that the children will benefit from having an enduring relationship with both of their parents and that both parents participate as parents.

i. The parties are directed to prioritize the goal of promoting each other as vitally important in the children's development.

ii. Both parents shall take the necessary steps towards establishing a new divorced relationship where the parents will eventually be able to communicate with each other effectively concerning the children.

iii. Both parents should take the necessary steps to remove the conflict from their relationship so that the children's bonds with each parent will be less challenged.

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.

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

in the visitation schedule of both parents and may increase the visitation allowed to the noncustodial parent but shall not diminish the standardized visitation provided in Section 30-3-35 nor the recommendations of Dr. Jay Jensen's custody evaluation.

d. The court (including the Special Master) may make alterations in the visitation schedule to reasonably accommodate the distance between the parties and the expense of exercising visitation.

e. Neither visitation nor child support is to be withheld due to either parent's failure to comply with a court-ordered visitation schedule.

f. The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.

g. The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.

h. Each parent shall provide the other with his current address and telephone number within 24 hours of any change.

i. Each parent shall permit and encourage liberal and unhindered telephone contact during reasonable hours and uncensored mail privileges with the child.

j. Parental care shall be presumed to be better care for the child

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;

ii. Holidays take precedence over the weekend visitation, and changes shall not be made to the regular rotation of the alternating weekend visitation schedule;

iii. If a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

iv. If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period;

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

a. Child's birthday on the day before or after the 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. Human Rights Day beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday;

c. Easter holiday beginning at 6:00 p.m. on Friday until Sunday at 7:00 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

d. Memorial 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;

e. July 24th beginning 6:00 p.m. on the day before the holiday

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;

f. Fall school break, if applicable, commonly known as U.E.A.

weekend beginning at 6:00 p.m. on Wednesday until Sunday at 7:00 p.m.

unless the holiday extends for a lengthier period of time to which the

noncustodial parent is completely entitled;

g. Columbus Day beginning at 6:00 p.m. the day before the

holiday until 7:00 p.m. on the holiday;

h. Thanksgiving holiday beginning Wednesday at 7:00 p.m. until

Sunday at 7:00 p.m.; and

i. The second portion of the Christmas school vacation (as that

term is defined above), plus Christmas Day beginning at 1:00 p.m. until 9:00

p.m., so long as the entire Christmas holiday is equally divided;

vii. Father's Day shall be spent with the Respondent father every year

beginning at 9:00 a.m. until 7:00 p.m. on the holiday;

viii. Mother's Day shall be spent with the Petitioner mother every year

beginning at 9:00 a.m. until 7:00 p.m. on the holiday;

ix. Father's birthday shall be spent with the Respondent father every year

beginning at 9:00 a.m. until 7:00 p.m. on the birthday; at the discretion of the father,

he may take other siblings along for the birthday;

x. Mother's birthday shall be spent with the Petitioner mother every year

beginning at 9:00 a.m. until 7:00 p.m. on the birthday; at the discretion of the mother,

she may take other siblings along for the birthday;

xi. Extended visitation with the noncustodial parent may be:

a. Up to four weeks consecutive at the option of the noncustodial

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

visits.

b. Use of transitional objects from both environments. Such things as photographs, music, stories, comforters, should be allowed to be passed back and forth freely between the homes.

c. Maintenance of custodial home routines e.g., bedtimes, mealtimes, etc.

d. Helping the children plan for visitation by holding concretely to the visitation order and by describing these plans in understandable ways.

e. The custodial parent should provide written instructions with each visit transition of important information regarding care of the children.

The non-custodial parent should make himself familiar with the children's lives to the extent he is informed of important events.

f. Both parties shall refrain from making disparaging remarks towards the other party and limit moments of conflict to occur when the children are not observers. The parties must recognize the children's best interests will be served through mutual cooperation and support, despite personal differences.

4. The parties are in agreement that Patrick C. Barker, Ph.D., 260 Maple Court, Suite 129, Ventura, California, 93003-3512, telephone number 805-654-1018, fax number 805-654-1098, shall be appointed as the Special Master between the parties. In the event that Dr. Barker is unable, or unwilling, to act as the Special Master between the parties, then Dr. James B. Cole, Ph.D., 993 West Seventh Street, Oxnard, California, 93030, telephone number 805-483-9565, fax number 805-486-5483, shall be appointed as the Special Master between the parties.

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

visitation.

H. Regarding the consideration of section 3-A-v of this agreement, if the custodial parent wants to, or should be entitled to, move from her present location and how that would impact custody, visitation and transportation costs.

I. The issue of if the non-custodial parent wants to move from his present location and how that would impact custody, visitation and transportation costs.

J. The issue of implementing notification of the non-custodial parent of any lapse of insurance coverage for the minor children, as agreed to here in as section 20-B, shall be addressed by the Special Master if there is a dispute between the parties.

K. The issue of medical treatment, decisions, and all information and records concerning the children shall be addressed by the Special Master if there is a dispute between the parties.

L. The issue of school records and participation, as well as all other materials relating to the children, shall be addressed by the Special Master if there is a dispute between the parties.

M. The issue of the non-custodial parent's visitation rights during additional school break periods if there is a dispute between the parties.

N. The issue of whether or not Respondent's rights of summer visitation should be expanded from the Utah Statutory Visitation of four (4) consecutive weeks for children attending traditional school, or 50% of any off track periods for

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

prior to the Christmas break with the children shall be addressed by the Special Master if there is a dispute between the parties.

V. In the event that unforeseen areas of conflict arise, whether from unintended contradiction within this agreement, or otherwise, the issue of resolving the conflict, in compliance with the terms of this agreement, is reserved for determination by the Special Master. In making any such determination, the following precedence shall govern: this decree, highest precedence, Dr. Jensen's custody evaluation and addendum, second, and governing statute, third. If an area of dispute is not covered within those three areas, then the issue is reserved for determination by the Special Master.

6. The Special Master shall not make any orders which alter an award of physical custody, alter an award of legal custody, or substantially interfere with a party's contact with his/her children. In an emergency, the Special Master may ask the court to initiate an Order to Show Cause on its own motion.

7. The Respondent's rights of summer visitation for 1998 shall be exercised from June 29th for a period of four (4) consecutive weeks. The Respondent will be entitled to his weekends, at the beginning and/or end of his four (4) consecutive weeks, and that the visitation would conclude on July 27th at 9:00 a.m.

8. The Petitioner shall promptly provide to the Respondent the following:

A. a Post Office Box for mailing information to the children,

B. a home telephone number for contacting the children so that the Respondent

can have unlimited access to the children.

C. an E-mail address if, and when, it becomes available in the future.

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

reasonable and necessary work related child care costs incurred on behalf of the parties minor children, commencing September of 1998 and onward. The Respondent shall have no child care obligation prior to that time. Said child support obligation commencing in September of 1998, shall be subject to the incurring party providing written verification of the cost and identity of the child care provider to the other parent upon initial engagement of the provider and thereafter upon the request of the other parent. Said parent shall notify the other parent of any change of child care provider or the monthly expense of child care within thirty (30) days from the date of the change.

A. In addition to any other sanctions provided by the court (including the Special Master), the parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring expenses fails to comply with the provisions set forth above.

15. During the course of the marriage, prior to the entry of the Decree of Divorce, the parties acquired personal property, which personal property shall be awarded as presently divided except that there are photos to which the Respondent is entitled. The Respondent shall be entitled to review the photos and obtain any duplicates that he desires with the Respondent bearing those costs. If there is a dispute between the parties in implementing this arrangement then it shall be resolved by working through the Special Master.

16. During the course of the marriage the parties acquired real property, which real property was sold. The Respondent has likewise purchased property in Midway, Utah, that is awarded solely to the Respondent free and clear of any claim of the Petitioner and the Petitioner acknowledges that she has no interest therein.

17. As it relates to the sale of the real property that was acquired during the course of the parties' marriage, each party shall be responsible for 100% of the capital gains on their own equally

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

(3) minor children as dependencies. To resolve this dispute, the Respondent will be entitled to claim all three (3) children as dependencies but must hold the Petitioner tax neutral. That is to say that the Respondent will be entitled to claim the three (3) minor children as dependencies or any number of said children but only by putting the Petitioner in the same position she would have been in had she claimed said children as dependencies. This will be accomplished by the Petitioner sharing with the Respondent, within fifteen (15) days of June 26, 1996, her tax information with claiming three (3) children and without claiming any of the children. If the parties are unable to resolve their differences as it relates to the dependency exemptions, then that issue shall be addressed by the Special Master or, if the Special Master is unable to resolve the dispute, then by the court by way of an Order to Show Cause.

B. Commencing with the tax year 1998 and onward, the Respondent shall be entitled to claim the parties' children, Joshua and Jacob, as dependencies for income tax purposes on condition that the Respondent is current in his child support, child care, medical and dental costs. The Petitioner will be entitled to claim the parties' minor child, Brooke, as a dependency for income tax purposes, commencing with the tax year 1998 and onward. Presuming that the Respondent satisfies the obligation to be current in support then the Petitioner will sign the IRS 8332 Form by January 15th and provide it to Respondent directly. If the parties are unable to resolve their differences as it relates to support obligations, then that issue shall be addressed by the Special Master or, if the Special Master is unable to resolve the dispute, then by the court by way of an Order to Show Cause.

20. As it relates to health, dental, and accident insurance it shall be arranged as follows:

A. It is reasonable and proper that the Respondent maintain health, dental,

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.

23. The Petitioner's Protective Order, which originated as an Ex-Parte Protective Order and resulted in a stipulated Protective Order, against the Respondent in the Fourth District Court of Wasatch County, State of Utah, Case No. 954400090, is hereby dismissed.

24. Both parties are mutually restrained and enjoined from harassing, annoying, threatening or harming the other or from making disparaging comments about the other parent in the presence of the children.

25. It is reasonable and proper that each party be awarded one-half of any pension, profit sharing plan, or retirement that the other party accrued during the course of the marriage up until entry of the Decree of Divorce. Both parties shall cooperate and share the information with each other. If there is a way of dividing the retirement, pension or profit sharing plan without preparing Qualified Domestic Relations Order(s) then the parties are encouraged to do so. Otherwise, the Petitioner shall have the appropriate Qualified Domestic Relations Order(s) prepared in a timely fashion.

26. The Respondent shall be entitled to pay child support to the Petitioner by sending the payments directly to the Petitioner's Post Office Box. In the event that the Respondent falls in arrears in his ongoing child support in the future by more than thirty (30) days, then the Petitioner will be entitled to mandatory income withholding relief pursuant to Utah Code Annotated Section 62a-11-401 (1953) as amended.

27. The initial retainer required by the Special Master shall be deposited by the Respondent. However, any costs incurred for the Special Master shall be divided between the parties with the Petitioner bearing 32.5% and the Respondent bearing 67.5% of the total cost. At the conclusion, the initial deposit or retainer will be reimbursed in its entirety to the Respondent.

28. The Respondent shall be responsible for his own attorney's fees of \$10,968.47

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.

APPROVAL AS TO FORM

WENDY HUFNAGEL
Attorney for Petitioner

DATED this 21st day of December, 1998.

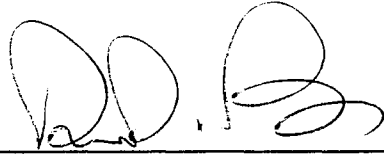


JUDGE RAY M. HARDING, JR.
DISTRICT COURT JUDGE

4-504 MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 11th day of December, 1998.

Wendy Hufnagel
190 N Main St Ste 200
Heber City UT 84032



DANA D. BURROWS

APPENDIX "B"

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

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

FILED 8-17-99
Fourth Judicial District Court of
Wasatch County, State of Utah
CARMA B. SMITH, Clerk
RB Deputy
Bj

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

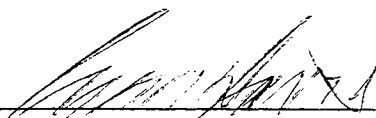
Decree were entered in the Fourth District Court of Wasatch County, State of Utah and there has been no Order transferring jurisdiction from Utah to the State of California.

3. The Court finds Petitioner in contempt of court for failing to appear at the Order to Show Cause hearing and especially for failure to comply with the Addendum to Decree of Divorce entered by the court on December 22, 1998, regarding the Special Master and other provisions.
4. The Respondent incurred costs for service and notarization in the amount of \$38.00, as well as for an airline ticket for travel in the amount of \$259.00, and lost wages at a rate of \$300.00 per day for 1½ days of employment for a total of \$450.00 as well as attorney's fees in the amount of \$650.00 necessitated by this Order to Show Cause and Petitioner's failure to comply with the Addendum to Decree of Divorce. Respondent is awarded judgment against the Petitioner for the amount set forth above for a total judgment in the amount of \$1,397.00 and the Petitioner is ordered to immediately reimburse the Respondent for said amount.
5. The Respondent is entitled to makeup visitation for the lost visitation on the weekend of Thursday, August 5th, through Monday, August 9, 1999. Said makeup visitation shall commence on Thursday, August 12, 1999 at 2:30 p.m. and continue until Monday, August 16, 1999 at 8:30 a.m.
6. The Respondent is entitled to extended visitation for a period of four consecutive weeks which is to commence at the conclusion of the makeup visitation at 8:30 a.m. on Monday, August 16, 1999 and is to run until Monday, September 13, 1999 at 8:30 a.m. when the children are to be returned by the Respondent to the Petitioner.
7. Any future hearings scheduled in the Fourth District Court of Wasatch County State of Utah

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

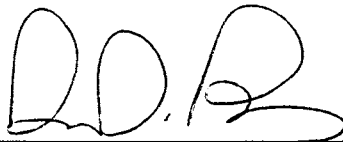
MAILING AND FAX CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was faxed and mailed to the following, postage prepaid, this 12th day of August, 1999.

Fax: (805)492-1079, Attn: Rhonda Barton (805) 493-8392

and

Rhonda Barton
2874 Conejo Canyon Rd #21
Thousand Oaks CA 91362



DANA D. BURROWS

APPENDIX "C"

Order for Sanctions, entered Nov. 5, 1999

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

FILED
CLERK OF DISTRICT COURT
STATE OF UTAH
NOV 5 1 23 PM '99
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IN THE FOURTH JUDICIAL DISTRICT COURT
OF WASATCH COUNTY, STATE OF UTAH

<p>RHONDA LYNN CAMERON, BARTON, Petitioner,</p> <p>vs.</p> <p>JOHN KIMBALL BARTON, Respondent.</p>	<p>ORDER FOR SANCTIONS</p> <p>Civil No. 954400090</p> <p>Judge Ray M. Harding, Jr.</p>
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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:

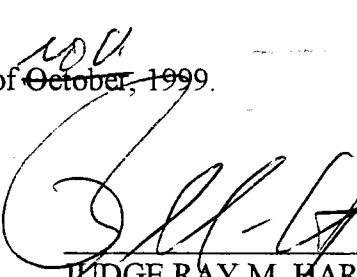
1. The court finds that the Petitioner has continued in her ongoing willful and intentional disregard of the order of the court of August 12, 1999 especially as it relates to the issue of ongoing and makeup visitation.
2. The Petitioner shall be sentenced to two (2) days in jail at the Utah County Jail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

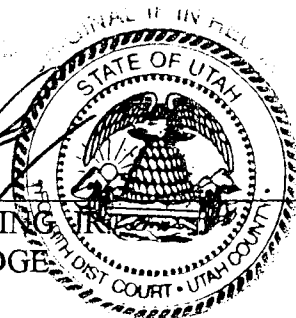
3. The issue of additional makeup visitation besides that already ordered by the court in the Order of August 12, 1999, as well as other sanctions that should be opposed upon the Petitioner and other relief that the Respondent may be entitled to as a result of the Petitioner's contemptuous behavior are reserved and shall be addressed in the State of California in that all remaining issues including custody and visitation have been transferred to the State of California.

APPROVAL AS TO FORM

DON R. PETERSEN
Attorney for Petitioner

DATED this 4th day of October, 1999.


JUDGE RAY M. HARDING, JR.
DISTRICT COURT JUDGE



NOTICE TO PETITIONER'S ATTORNEY

TO: DON R. PETERSEN

PLEASE TAKE NOTICE that the undersigned, attorney for Respondent, will submit the above and foregoing Order 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 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

APPENDIX "D"

Order Awarding Attorney's Fees and Judgment, entered Nov. 5, 1999

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

JUDGMENT

FILED
IN DISTRICT COURT
STATE OF UTAH
Nov 5 1 23 PM '99
1167

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

<p>RHONDA LYNN CAMERON, BARTON, Petitioner, vs. JOHN KIMBALL BARTON, Respondent.</p>	<p>ORDER AWARDING ATTORNEY'S FEES AND JUDGMENT Civil No. 954400090 Judge Ray M. Harding, Jr.</p>
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The above-entitled matter having come before the court to address the issue of the amount of attorney's fees that Respondent is awarded and the court having reviewed the Affidavit of counsel for the Respondent and having determined that said fees are reasonable and necessary under the circumstances, it is hereby ordered as follows:

1. The Respondent is awarded judgment against the Petitioner for attorney's fees incurred in securing visitation with the parties' minor children in the amount of \$3,027.38.
2. The Respondent is awarded judgment against the Petitioner for travel expenses in the amount of \$154.50 for an airline ticket and lost wages for 1½ days in the amount of \$450.00.
3. The total judgment that Respondent is awarded against the Petitioner as a result of attorney's fees, travel expenses and lost wages is the amount of \$3,631.88.

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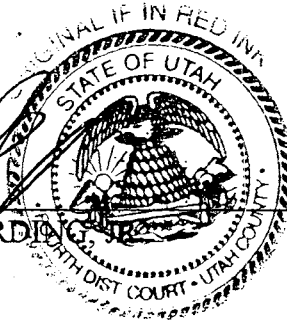
APPROVAL AS TO FORM

DON R. PETERSEN
Attorney for Petitioner

DATED this 4th day of October, 1999.



JUDGE RAY M. HARDING

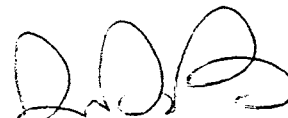


NOTICE TO PETITIONER'S ATTORNEY

TO: DON R. PETERSEN

PLEASE TAKE NOTICE that the undersigned, attorney for Respondent, will submit the above and foregoing Order Awarding 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 29th day of October, 1999.



DANA D. BURROWS
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of October, 1999, I mailed a true and correct copy of the foregoing Order Awarding Attorney's Fees and Judgment, postage prepaid, to the following:

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



DANA D. BURROWS

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APPENDIX "E"

Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A

UNITED STATES CODE ANNOTATED
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART V--PROCEDURE
CHAPTER 115--EVIDENCE; DOCUMENTARY

Current through P.L. 106-73, approved 10-19-1999

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term--

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

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

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

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

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.