

1990

# Lloyd D. Coley v. Nancy P. Coley : Reply Brief

Utah Supreme Court

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Randall J. Holgrem; Attorney for Respondent.

Lloyd D. Coley; Petitioner Pro Se.

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UTAH COURT OF APPEALS

8-11-91

U.S.  
D. C.  
R. J.  
50  
A.C.

900446-CA

DOCKET NO. IN THE SUPREME COURT OF THE STATE OF UTAH

LLOYD D. COLEY,

PETITIONER,

vs.

NANCY P. COLEY,

RESPONDENT.

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SUPREME COURT  
CASE NO. 910120

COURT OF APPEALS

CASE NO. 900446-CA

REPLY BRIEF OF PETITIONER

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI DATED MAY 20, 1991,

LLOYD D. COLEY  
1065 LAKE STREET  
SALT LAKE CITY, UTAH 84105  
PETITIONER PRO SE

RANDALL J. HOLGREN  
50 WEST BROADWAY  
SALT LAKE CITY, UTAH 84101  
ATTORNEY FOR RESPONDENT

FILED

JUN 5 1991

CLERK SUPREME COURT,  
UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

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## **JURISDICTION**

THE RESPONDENT INAPPLICABILITY OF JURISDICTION IS  
GROUNDLESS.

## **STATEMENT OF FACTS**

THE RESPONDENT'S STATEMENT # 4 CONTAINS THE WRONG DATE  
OF THE HEARING INSTEAD OF DECEMBER 3, THE HEARING WAS HELD  
OF SEPTEMBER 18, 1988.

THE ORDER REFERRED TO IN # 5 WAS SIGNED BY JUDGE SAWAYA  
WITHOUT NOTICE TO PETITIONER OR HIS COUNSEL, NOR WERE THEY  
GIVEN ANY CHANCE TO OBJECT TO THE CONTENTS OR FORM OF SAID  
ORDER.

STATEMENT # 9 SHOULD REFLECT THE PETITIONER LEFT  
THE STATE FOR EMPLOYMENT AS A TRAVELING SALESMAN AND THAT  
THE PETITIONER WAS NOT CONTINUOUSLY OUT THE STATE DURING  
THAT TIME PERIOD SO DESCRIBED THEREIN.

## **ARGUMENT**

### **STANDARD TO BE USED FOR DETERMINATION STAY ON APPEAL**

THE RESPONDENT/DEFENDANT ERRONEOUSLY PLACES RELIANCE ON  
JENSEN V. SCHWENDIMAN, 744 P.2D 1026, FOR THE STANDARD OF  
REVIEW OF A CASE NOT INVOLVING A STAY OF AN ORDER SUSPENDING  
DRIVING PRIVILEGES TO SUSPECTED DRUNK DRIVERS. THAT CASE  
ENUMERATED THE STAY ON APPEAL RULE TO BE (1) STRONG SHOWING  
OF SUCCESS ON THE MERITS; (2) IRREPARABLE HARM; (3) NO  
SUBSTANTIAL HARM TO THE OTHER PARTY; (4) LACK OF HARM TO THE  
PUBLIC. HOWEVER, THE JENSEN CASE EXPLICITLY STATED ITS  
STANDARD WAS APPLICABLE TO IMPLIED CONSENT CASES:

"DRIVER WOULD HAVE A INCENTIVE TO REFUSE CHEMICAL TESTS KNOWING THAT THERE COULD BE A SUBSTANTIAL DELAY IN ENFORCEMENT OF THE SUSPENSION IF AN APPEAL IS TAKEN FROM THE DE NOVO HEARING IN THE DISTRICT COURT. ABSENT A STRONG SHOWING OF THE LIKELIHOOD OF SUCCESS ON THE MERITS, THE BALANCING OF THE FACTORS TO BE CONSIDERED IN ASSESSING AN APPLICATION FOR A STAY OF A DRIVER'S LICENSE SUSPENSION TIPS IN FAVOR OF DENYING A STAY DUE TO THE IMPORTANT PUBLIC POLICY IMPLICATION."

AND AT:

"AS NOTED IN THIS COURT'S OPINION IN KEHL V. SCHWENDIMAN, 735 P.2D 413 (UT. APP. 1987), NOVEL ISSUES RAISED IN SUCH CASES CAN ELUDE APPELLATE REVIEW DUE TO THE EXPIRATION OF THE ONE-YEAR SUSPENSION PERIOD. FOR THIS REASON, WE CONCLUDE THAT A STAY MAY BE GRANTED IN CASES WHERE THE MERITS WOULD OTHERWISE JUSTIFY AN EXERCISE OF THIS COURT'S JURISDICTION TO DETERMINE THE SUBSTANTIVE ISSUES."

AND,

"AS TO THE THIRD ELEMENT, THERE IS LITTLE LIKELIHOOD OF HARM DIRECTLY 'INTERESTED PARTIES' IN DRIVER'S LICENSE SUSPENSION ACTIONS. HOWEVER, AS TO THE FINAL ELEMENT 'HARM TO THE PUBLIC INTEREST', WE ARE CONVINCED THAT A ROUTINELY GRANTING STAYS BASED SOLELY ON THE POSSIBILITY OF MOOTNESS COULD HAVE AN ADVERSE IMPACT ON THE PUBLIC INTEREST IN REMOVING DRUNK DRIVERS FROM THE ROAD. THE PURPOSE OF THE ADMINISTRATIVE PROCEDURE FOR DRIVERS' LICENSE REVOCATION IS NOT TO PUNISH INDIVIDUAL DRIVERS, BUT TO PROTECT THE PUBLIC. BALLARD V. STATE, 595 P.2D 1302 (UTAH 1979)"

NOT ONLY DOES JENSEN SPECIFICALLY STATE WHAT AND WHY IT IS LIMITED TO, BUT HIDING BEHIND THE CASE IS THE MOOTNESS ISSUE REFERRED TO THE DECISION AT P. 1028, A DEVICE THAT IS USED BY LITIGANTS IN IMPLIED CONSENT CASES IS TO OBTAIN A STAY OF THEIR LICENSE SUSPENSIONS WHILE ON APPEAL, PERMIT THE TIME TO RUN, THEN MOOT THE ISSUE. ALL THE TIME BEING ALLOWED TO DRIVE.

THE JENSEN CASE IS CLEARLY A HYBRID FROM THE GENERAL LAW CONCERNING STAYS FOUND IN STATE V. NEELY, 707 P.2D 647 (UT. 1985), AND STATE V. PAPPAS, 696 P.2D 1188 (UT. 1985), AND RULE 8 OF THE RULES OF APPELLATE PROCEDURE. THOSE CASES

ARE CRIMINAL STANDARDS AND EVEN APPLYING THOSE THE APPELLANT HAS SHOWN HE IS ENTITLED TO A STAY. STATE V. NEELY AT:

"THERE ARE TWO PRONGS TO THE TEST FOR DETERMINING WHETHER ISSUES RAISED ARE "SUBSTANTIAL." FIRST, THE QUESTION RAISED MUST BE EITHER (1) NOVEL, I.E., THERE IS NO UTAH PRECEDENT THAT GOVERNS, OR (2) FAIRLY DEBATABLE. A LEGAL ISSUE IS FAIRLY DEBATABLE IF UTAH PRECEDENT BEARING IF ON THE ISSUE PRESENT CONFLICTING POINTS OF VIEW WHEN APPLIED TO THE FACT OF THE CASE OR IS OTHERWISE UNCLEAR."

THE COURT WENT ON TO FIND THAT THE APPEALS WERE NOT PLAINLY FRIVOLOUS, AT 650.

THE PETITIONER ARGUES THAT RULE 8 OF THE UTAH RULES OF APPELLATE PROCEDURE DOES NOT INVOKE A STANDARD SUCH AS IS FOUND IN JENSEN, SUPRA, AND THAT IN THE JENSEN CASE EXPRESSLY STATES WHAT FACTUAL SITUATION IT IS GOVERNING, AND NOTHING COULD BE FURTHER FROM THE PETITIONERS CASE. HE IS ASKING FOR A STAY FROM AN ORDER TERMINATING ALL CONTACT BETWEEN HIM AND HIS DAUGHTER ONLY BECAUSE HE IS FINANCIALLY INCAPABLE OF PAYING THE AMOUNT OF CHILD SUPPORT ORDER BY THE TRIAL COURT.

THERE IS NO CASE IN THE UNITED STATES, SINCE 1971 THAT ATTEMPTS TO LIMIT, LET ALONE ELIMINATE, CHILD VISITATION FOR THE SOLE REASON OF NON-PAYMENT (EVEN IF WILLFUL) OF CHILD SUPPORT.\* IT IS CLEAR THAT JUDGE SAWAYA IS TRYING TO DO JUST THAT.

EVEN ASSUMING ARGUENDO THAT JENSEN IS THE STANDARD FOR A STAY ON THE ISSUE OF THE CASE BEFORE THE COURT, THE

---

\* PLEASE SEE APPENDIX "A" FOR A LIST OF CASES IN THE UNITED STATES HOLDING AGAINST THE PROPOSITION OF THE LIMITATION OF VISITATION FOR THE NO-PAYMENT OF CHILD SUPPORT.



PETITIONER BELIEVES A STRONG LIKELIHOOD OF SUCCESS HAS BEEN SHOWN FOR HIS PROPOSITION THAT YOU CANNOT CONDITION VISITATION ON CHILD SUPPORT.

THE SITUATION IS PRECISELY OPPOSITE FROM JENSEN - THERE IS A STRONG PUBLIC POLICY IN FAVOR OF THE PARENT-CHILD RELATIONSHIP - TO ANALOGIZE THAT KEEPING A INTOXICATED DRIVER OFF THE ROAD IS THE SAME AS THAT IS WRONG AND NOTHING BUT HARM CAN RESULT IN APPLYING SUCH HARSH STANDARD TO AN OTHERWISE COMMENDABLE ENDEAVOR.

PETITIONER ASSERTS THAT IS WOULD NOT BE PRACTICABLE TO REQUEST RELIEF FROM THE DISTRICT FOR THIS STAY BECAUSE, AS THE COURT OF APPEAL NOTED IN ORAL ARGUMENT, THE ATTITUDE OF JUDGE SAWAYA ASSURES HIS DENIAL OF SUCH A MOTION, AND IN FACT JUDGE SAWAYA DID DENY PETITIONER ORIGINAL REQUEST FOR STAY.\*

### CONCLUSION

THE PETITIONER ASK THIS FOR A STAY OF JUDGE SAWAYA JANUARY 9, 1991 ORDER BECAUSE, NOT ONLY IS HE BEING PUNISH, THE EFFECT OF THE ORDER IS THAT HIS DAUGHTER BE BEING DENIED HER FATHERS' LOVE AND AFFECTION AND HAS SUFFER HARM, IN THAT SHE WAS NOT ALLOWED TO ATTEND HER SCHOOL FATHER DAUGHTER PARTY THIS YEAR AND GRADUATED FROM ELEMENTARY WITHOUT HER FATHER TO WATCH HER, ALONG WITH ALL THE OTHER THINGS THAT ENTAILED WITH A FATHER-DAUGHTER RELATIONSHIP.

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\* SEE APPENDIX "B" FOR A COPY OF THE NOVEMBER 26, 1991 HEARING WHEREIN JUDGE SAWAYA TOLD PETITONER THAT HE WAS GOING TO DENY HIS VISITATION RIGHT.

RESPECTFULLY SUBMITTED THIS 5TH DAY OF JUNE, 1991.

---

LLOYD D. COLEY

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY THAT I PERSONALLY DELIVER A COPY OF  
THE RELPY BRIEF TO THE OFFICE OF:

RANDALL J. HOLGREM  
50 WEST BROADWAY, SUITE 1111  
SALT LAKE CITY, UTAH

---

LLOYD D. COLEY

## APPENDIX

A

CASES THAT HELD THAT IT IS IMPROPER  
TO DENY A FATHER'S VISITATION MERELY FOR  
HIS FAILURE TO PAY SUPPORT

COLORADO

KANE V. KANE, (1964) 154 COLO 440, 390 P.2D 361.

FLORIDA

HOWARD V. HOWARD, (1962, FLA APP D3) 143 SO 2D 502 (BY IMPLICATION); CHAFFIN V GRIGSBY, (1974, FLA APP D4) 293 SO 2D 404 (BY IMPLICATION); HECHLER V HECHLER, (1977, FLA APP D3) 351 SO 2D 1122 (BY IMPLICATION); ACKER V ACKER, (1978, FLA APP D2) 365 SO 2D 180; FRAZIER V FRAZIER, (1981, FLA APP D2) 395 SO 2D 590; OLSON V OLSON, (1981, FLA APP D3) 398 SO 2S 491; MADDUX V MADDUX, (1986, FLA APP D4) 495 SO 2D 863, 11 FLW 2129.

GEORGIA

PRICE V DAWKINS (1978) 242 GA 41, 247 SE 2D 844.

IDAHO

WILSON V WILSON (1953) 73 IDAHO 326, 252 P.2D 197.

ILLINOIS

COMISKEY V COMISKEY (1977, 1ST DIST) 48 ILL APP 3D 17, 8 ILL DEC 925, 366 NE2D 87, APP DEN 66 ILL 2D 629, LATER PROCEEDING (1ST DIST) 125 ILL APP 3D 30, 80 ILL DEC 541, 465 NE2D 653, LATER PROCEEDING (1ST DIST) 146 ILL APP 3D 804, 100 ILL DEC 364, 497 NE2D 342 (BY IMPLICATION); HESS V HESS (1980, 3D DIST) 87 ILL APP 3D 947, 42 ILL DEC 882, 409 NE2D 497.

IOWA

SWEAT V SWEAT (1974) 238 IOWA 999, 29 NW2D 180; SMITH V SMITH (1966) 258 IOWA 1315, 142 NW2D 421 (APPARENTLY RECOGNIZING RULE); KLOBNOCK V ABBOTT (1981, IOWA) 303 NW2D 149.

LOUISIANA

ROSHTO V ROSHTO (1949) 214 LA 922, 39 SO2D 344 (BY IMPLICATION). CROOKS V CROOKS (1982, LA APP 3D CIR) 425 SO2D

344 (BY IMPLICATION).

MARYLAND

RADFORD V RADFORD (1960) 223 MD 483, 164 A2D 904, 88 ALR2D 140; STANCIL V STANCIL (1979) 286 MD 530, 408 A2D 1030.

MICHIGAN

STEVENSON V STEVENSON (1977) 74 MICH APP 656, 254 NW2D 337.

MINNESOTA

VAN ZEE V VAN ZEE (1974) 302 MINN 371, 226 NW2D 865; ENGLAND V ENGLAND (1983, MINN) 337 NW2D 681 (BY IMPLICATION).

MONTANA

STATE EX REL. WILLIAMS V WILLIAMS (1983, MO APP) 647 SW2D 590.

NEW JERSEY

WAGNER V WAGNER (1971) 165 NJ SUPER 553, 398 A2D 918 (BY IMPLICATION); RE ADOPTION OF P. (1980) 175 NJ SUPER 420, A2D 1135 (BY IMPLICATION).

NEW YORK

FARHI V FARHI (1978, 4TH DEPT) 64 APP DIV 2D 840, 407 NYS2D 840; CHIRUMBOLO V CHIRUMBOLO (1980 4TH DEPT) 75 APP DIV 2D 992, 429 NYS2D 112, ENGRASSIA V DI LULLO (1982, 2D DEPT) 89 APP DIV 957, 454 NTS2D 103. SOUTH CAROLINA DEPT. OF SOCIAL SERVICES ON BEHALF OF SALLIE M.H. V JAMES C.D. (1983) 119 MISC 2D 649, 464 NYS2D 942.

OHIO

JOHNSON V JOHNSON (1977, SUMMIT CO) 52 OHIO APP 2D 180, 6 OHIO OPS 3D 170, 368 NE2D 1273; FLYNN V FLYNN (1984, MADISON CO) 15 OHIO APP 3D 34, 15 OHIO BR 57, 472 NE2D 388.

OKLAHOMA

RE MCMENAMIN (1957, OKLA) 310 P2D 381 (BY IMPLICATION).

PENNSYLVANIA

COMMONWEALTH EX REL. LOTZ V LOTZ (1958) 188 PA SUPER 241, 146 A2D 362, AFFD 396 PA 287, 152 A2D 663.

SOUTH CAROLINA

GARRIS V MCDUFFIE (1986, APP) 288 SC 637, 344 SE2D 186.

TEXAS

GANI V GANI (1973, TEX CIV APP TEXARKANA) 500 SW2D 254.

1 2:00 p.m. NOVEMBER 26, 1990

2 THE COURT: Mr. Holmgren, Mr. Coley is present.  
3 He's requested that I put this to the end of the calendar.  
4 Do you have any objection?

5 MR. HOLMGREN: Only that I would just like to be  
6 first.

7 THE COURT: Why will this take any more time than  
8 I think it will take. Shouldn't take very long.

9 MR. COLEY: There are three or four matters, Your  
10 Honor, there's a motion to strike objections to the orders  
11 and two orders to show cause. Each one is going to require  
12 some testimony. I anticipate it will take some time.

13 THE COURT: I doubt that it will take as much  
14 time as he anticipates. I think he has some apprehension  
15 about all these attorneys watching his performance. Why  
16 don't we put it over to the end.

17 (4 o'clock p.m.)

18 THE COURT: What are we doing?

19 MR. COLEY: I believe it is my motions.

20 THE COURT: Pardon?

21 MR. COLEY: I believe it is my motion, objections  
22 to order to show cause, to proposed minute order and order  
23 to show cause and motion to strike the proposed order.

24 THE COURT: Well, okay, I guess the first thing  
25 we need to do is consider your objections to the proposed

1 order.

2 MR. COLEY: What I would like to first do is do  
3 the motion to strike.

4 THE COURT: To strike what?

5 MR. COLEY: To strike the proposed order.

6 THE COURT: That's denied. That didn't take  
7 long, now do you want to talk about your objections,  
8 too?

9 MR. COLEY: Yes. I don't get a chance to argue  
10 on those objections?

11 THE COURT: Strike the order, why do you want to  
12 strike the order?

13 MR. COLEY: There's several reasons. There's a  
14 motion to strike it.

15 THE COURT: You have to speak up.

16 MR. HOLMGREN: It's not an order yet. We have  
17 submitted a proposed amended order to the court and I  
18 suppose that -- so I am standing in here to speak in favor  
19 of that proposed amended order. I submitted it to the  
20 judge -- to the court a few weeks ago, I believe and--

21 THE COURT: I have been holding it, waiting for  
22 his objections and did you file objections?

23 MR. COLEY: Sure did, Your Honor.

24 THE COURT: Okay. Are they in the file? I have  
25 never seen them.

1           MR. COLEY: I believe so. I don't know if they  
2 are in the court file or not.

3           CLERK: They were filed October 29.

4           THE COURT: Have I signed these orders to show  
5 cause? Who stamped them?

6           MR. COLEY: I believe Anita did.

7           CLERK: And you approved the hearing.

8           THE COURT: Okay. Objections to proposed order  
9 and findings of fact, is that what you are --

10          MR. COLEY: Prior to that is a motion to strike  
11 those, I think simply stating just a couple things, there's  
12 no authority to amend the order right now. Rule 52A says  
13 that there has to be findings of fact and conclusions of  
14 law. Mr. Holmgren in his proposed order still doesn't have  
15 conclusions of law. The Court of Appeals said immediately  
16 that Rule 52B provides that they have ten days in which to  
17 modify, 59B and E gives you ten days in which to modify  
18 orders. He's had ten days after the order was vacated, the  
19 order is way past the time. That's the basis of the motion  
20 to strike, plus number four, the motion to strike his  
21 inflammatory statements made in there. I can address  
22 those.

23          THE COURT: Okay, the Court of Appeals, as I  
24 understand it, referred this back to me to make findings of  
25 fact as a basis for the order that I made and you have



1 submitted proposed findings of fact.

2 MR. HOLMGREN: Yes, that is what that is.

3 Contained within that proposed amended order are proposed  
4 findings of fact.

5 THE COURT: Amended order on order to show cause,  
6 okay, findings of fact. You are saying that he has to make  
7 conclusions of law?

8 MR. COLEY: That is correct. I think it is a  
9 case--it is one of of your cases, to have findings of fact  
10 and conclusions of law.

11 THE COURT: I don't know, do you want to make  
12 some conclusions of law, as well, counsel? All it would  
13 would be based on is the findings that -- the findings  
14 would be the same as the -- the conclusions would be the  
15 same as the order.

16 MR. HOLMGREN: Yes. On the next to the last  
17 page, Your Honor, of the proposed amended order it says  
18 that based upon the above findings of fact, it is hereby  
19 ordered and adjudged and decreed, that is, simply to put  
20 conclusions in there would simply be a duplication of the  
21 conclusion that you have reached and the order.

22 THE COURT: That's what the conclusions would be.

23 MR. COLEY: I am sure that probably the  
24 conclusions need to be itemized and how can I argue against  
25 them? How can I say, no, the facts don't bear that out?

1 He needs to itemize it.

2 THE COURT: I disagree, I don't think he needs to  
3 make specific conclusions of law, when he's concluded--

4 MR. COLEY: Okay, the second point of the thing,  
5 we had the same discussion prior to this when I filed my  
6 first objections. He said there was no findings. He said  
7 he didn't need to have findings. You gave the same  
8 argument you just gave. They were incorporated. The Court  
9 of Appeals said, no, they were not incorporated, I think we  
10 are at the same point again.

11 THE COURT: Mr. Holmgren.

12 MR. HOLMGREN: I don't understand what he is  
13 trying to say there.

14 THE COURT: He said you haven't made findings of  
15 fact as required by the Court of Appeals, as I understand  
16 it.

17 MR. HOLMGREN: In this amended order?

18 MR. COLEY: That is correct. There's no  
19 conclusions. That's here in Salzetti vs. Backman.

20 MR. HOLMGREN: You have already said that you  
21 agreed with my point on the conclusions of law. If he is  
22 saying I haven't proposed any findings of fact, there they  
23 are identified on page two as findings of fact.

24 MR. COLEY: Okay, in Salzetti vs. Backman out of  
25 638 P2d at 543, the Supreme Court of Utah states "failure

1 to memorialize judgment of contempt by entering written  
2 findings of fact and conclusions was fatal to the  
3 enforceability of the contempt order--"

4 THE COURT: Counsel, I want to you redo these,  
5 make specific findings of fact and conclusions of law and  
6 then a separate order, okay?

7 MR. HOLMGREN: Yes.

8 THE COURT: That should satisfy that objection.

9 MR. HOLMGREN: I will do that.

10 THE COURT: What else.

11 MR. COLEY: This motion is -- this proposed order  
12 is not stricken, so I don't have to argue the objections to  
13 this proposed order.

14 THE COURT: We will wait until you get his new  
15 findings and conclusions then you can--I am not going to--

16 MR. HOLMGREN: Otherwise we'll go through this  
17 again.

18 THE COURT: Let's hear what the objections --  
19 what are your objection to the findings?

20 MR. COLEY: I would like to stand up here. I  
21 apologize to the court for being back in front of it so  
22 many times.

23 THE COURT: Well, I suppose you are trying to  
24 stay out of jail. That's what you are trying to do. I  
25 don't blame you for that at all, Mr. Coley.

1           MR. COLEY: And the file is growing. It's now  
2 getting a little large.

3           THE COURT: You will have to speak up, I have  
4 trouble--

5           MR. COLEY: I believe what's happened here since  
6 I am doing this case pro se, Mr. Holmgren, as he told the  
7 Court of Appeals he would give me great latitude decided  
8 that that latitude allowed him to do many things that he's  
9 never done before.

10          THE COURT: I think what Mr. Holmgren said I was  
11 giving you great latitude. I haven't been giving him great  
12 latitude but giving you latitude to let you stay out of  
13 jail in order to let you do all of this, letting you stay  
14 out of jail. What's wrong with the findings?

15          MR. COLEY: The findings of fact number one, I  
16 don't have -- well, I do, the amount of the figure in  
17 number one the amount of 27,305, that's the amount that he  
18 argued for in --

19          THE COURT: Well let's not waste a lot of time  
20 Mr. Coley, I haven't got the time to waste, you disagree  
21 with the amount?

22          MR. COLEY: I disagree with the amount.

23          THE COURT: How much do you owe?

24          MR. COLEY: I think an accounting needs to be  
25 done.

1           THE COURT: You tell me how much you owe. If you  
2 don't have a figure then I am going to accept his figure.

3           MR. COLEY: I don't have a figure. I would like  
4 to do an accounting. I would like the opportunity to do  
5 that.

6           THE COURT: That's fine, do your own accounting,  
7 but until then I am accepting this as the amount you owe.

8           MR. COLEY: Let me make this point then, this is  
9 the same amount he said I owed at the June 18 hearing,  
10 1990--June 18, 1990.

11          THE COURT: You will be given credit for whatever  
12 amount you have paid subsequent to the determination of  
13 this amount.

14          MR. COLEY: Number two, he mentions a four  
15 hundred and five hundred dollar payment. However, the  
16 figure in number one does not change, and in this hearing  
17 he's denied ever -- the existence of these two payments  
18 that he now gives me credit.

19          THE COURT: What's wrong with number two? Says  
20 with the exception of a \$400 payment in November of '88 and  
21 a hundred dollars payment in December of '88, you have not  
22 paid any support for four years.

23          MR. COLEY: One of the things that's wrong, I  
24 admit makes no sense is to say this one part, for some four  
25 years not because defendant didn't try to collect. I don't

1 know what that means.

2 THE COURT: It means that the defendant has been  
3 making efforts to collect her child support. Do you deny  
4 that.

5 MR. COLEY: No, I don't deny that. What he is  
6 trying to say I have not made any payments because--I don't  
7 know what he's trying to say. He shouldn't say that that  
8 is not the reason payments have not been made because she  
9 is trying to collect, I don't think that makes sense.

10 THE COURT: Go ahead.

11 MR. COLEY: Now, I believe the court  
12 probably--number three is probably correct or what's --

13 THE COURT: Are you planning to go through all of  
14 these one by one?

15 MR. COLEY: Not all of them, because it's not  
16 important to do all of them. However, there's some things  
17 that are very important to talk about. Number four, Mr.  
18 Coley, starting in the middle, Mr. Coley is much more  
19 intent on resisting his ex-wife's attempts to collect  
20 support and the court's directives than he is in raising  
21 money to support." And you have a copy. I don't see it  
22 anywhere where any of that is ever said by you and any of  
23 it was ever entered into--

24 THE COURT: I wouldn't have found you in contempt  
25 of court if I would not have felt that way.

1           MR. COLEY: I will not argue what you would not  
2 have done or would have done. I can't argue that.

3           THE COURT: What I have found, Mr. Coley, to make  
4 it very simple to you, that you are educated, you are  
5 healthy, you are capable and you have the ability to get a  
6 job and earn money, that's what I have found.

7           MR. COLEY: And I have no objections to that,  
8 Your Honor. I have objections to him saying the other  
9 things he said in here, and I think that you have not found  
10 them in the court transcript. They are not in the court  
11 transcript. That's why I had it made up. No conclusions  
12 were made. What Mr. Holmgren is trying to do is trying to  
13 take a hearing that had already occurred and then take the  
14 Court of Appeals vacation of your order and say we'll make  
15 the hearing fit this Court of Appeals vacation. It is not  
16 done.

17          THE COURT: I will tell what you I am going to  
18 do, I will take these findings and I am going to amend them  
19 to suit my satisfaction. I will make my own findings and  
20 Mr. Holmgren will be satisfied with them as will you.

21          MR. COLEY: Okay, I appreciate that. You know  
22 there are things --

23          THE COURT: You may not like what I end up doing.  
24 These are going to be the findings that the court makes,  
25 and usually counsel prepares findings and submits them to

1 the court.

2 MR. COLEY: I understand.

3 THE COURT: I go over them, look them over. If I  
4 like them, I sign them. If not, I amend them. I intend to  
5 amend these findings to to suit my own feel of what the  
6 evidence supports in terms of findings of fact and  
7 conclusions of law.

8 MR. COLEY: I appreciate that. I have no  
9 argument.

10 THE COURT: If you wait before preparing the next  
11 set, Mr. Holmgren, I will get this back to you with my  
12 amendments.

13 MR. HOLMGREN: Okay.

14 MR. COLEY: The other two matters, I have served  
15 orders to show cause--

16 THE COURT: What do you want -- what kind of  
17 relief are you asking with regard to those?

18 MR. COLEY: First relief--several reliefs.

19 THE COURT: You want her to show cause why--

20 MR. COLEY: For denying visitation.

21 THE COURT: She was doing that pursuant to the  
22 order of the court.

23 MR. COLEY: I am not talking about last time.

24 THE COURT: What is the original order regarding  
25 visitation?



1           MR. COLEY:  There's no order regarding  
2 visitation.

3           MR. HOLMGREN:  Every other weekend.  On the  
4 weekends when he doesn't have visitation, he has it every  
5 Friday -- in other words every other weekend and then over  
6 on these weekends he has it every Friday.

7           THE COURT:  Alternate weekends he has it on --  
8 every other weekend he has visitation, then on alternate  
9 weekends he has visitation on Fridays only.

10          MR. COLEY:  That is right.

11          MR. HOLMGREN:  Then I think he has three weeks in  
12 the summer.

13          THE COURT:  And what is your contention regarding  
14 that?

15          MR. COLEY:  Okay.  Simply that since the order  
16 was signed--this is an amended order giving me three weeks  
17 visitation.  I never received it except the first time in  
18 August I had it.  The next six times--or for six years  
19 consecutively she's found an excuse why not to give it to  
20 me, she very seldom gives me visitation on alternate  
21 Fridays.  She said it is inconvenient.  She's filed  
22 motions.  She said it is inconvenient for her.  She doesn't  
23 want to have it anymore.  She denied my visitation from  
24 February 8, '89 to January or December of 1989.

25          THE COURT:  When did you last visit with your

1 child?

2 MR. COLEY: I had her on Thanksgiving. What I  
3 wanted to bring up since this order was vacated, it's taken  
4 me seven to ten phone calls each time to arrange for  
5 visitation. What I would really like is a couple things.  
6 I would like to have a place where I could pick up my  
7 daughter certain every week so that I can know I can be  
8 there. So I don't have to go up there and wait three or  
9 four hours. I would like to have more time in the  
10 summertime to be with my daughter--she's denied me for the  
11 seven years or six years that she's denied my summer  
12 visitation. And then the other thing I would like, Your  
13 Honor, is I have had to prepare because of this order, this  
14 proposed order I have had expenses of preparing the  
15 transcripts so that we could find out what really went on  
16 and I would like to be credited with the cost of the  
17 transcripts and the cost that it's cost me which is about a  
18 hundred fifty dollars towards payments.

19 THE COURT: You know, what is going to happen  
20 here, Mr. Coley, I guess you don't realize what is  
21 happening. The Court of Appeals didn't deny my right to  
22 order you not to have visitation with your child, what they  
23 did is say that the order wasn't supported by proper  
24 findings.

25 MR. COLEY: I understand that.

1           THE COURT: What is going to happen, I am going  
2 to make proper findings and again enter an order denying  
3 you visitation.

4           MR. COLEY: But, Your Honor, may I ask this  
5 question? If there are no facts, if in this transcript  
6 here there's no evidence that shows that it is in the best  
7 interest of my daughter to be denied my visitation, can you  
8 now enter in in findings of fact in a hearing that didn't  
9 have evidence in it?

10          THE COURT: I found initially that there were  
11 sufficient facts upon which to base that order. I am going  
12 to prepare findings of fact that will support that order  
13 now. And I am going to enter it so you will again be  
14 denied visitation.

15          MR. COLEY: I think the court will vacate it as  
16 soon as you enter that.

17          THE COURT: I guess you will have to keep going  
18 back through that.

19          MR. COLEY: I will go back. And it has to be  
20 done in the best interests of the child. That's what the  
21 law says. There's no findings in here, no evidence of the  
22 best interests of the child being served by my being  
23 denied--

24          THE COURT: I found differently. Apparently, you  
25 and I see the evidence quite differently.

1 MR. COLEY: The transcript is here.

2 THE COURT: There's the issue of your contempt.  
3 When do we get to that?

4 MR. COLEY: I asked for a review hearing. I was  
5 told as long as I kept the payment up--

6 THE COURT: Have you kept them up?

7 MR. COLEY: If you give me credit for the hundred  
8 fifty dollars, I have a hundred dollars to pay her today,  
9 that will --

10 THE COURT: What I am talking about is payments  
11 made to your wife for the support of your child.

12 MR. COLEY: That's what I am talking--

13 THE COURT: Did you make a payment today?

14 MR. COLEY: I have it with me to make today, a  
15 hundred dollars today. I would like credit for the hundred  
16 fifty dollars because I had to --

17 THE COURT: What's the present order, Mr.  
18 Holmgren, I can't -- I can't keep track of this.

19 MR. HOLMGREN: Well--

20 THE COURT: With regard to support payments what  
21 he's supposed to be doing.

22 MR. HOLMGREN: Two hundred fifty dollars  
23 on-going. But to stay out of jail, you told him fifty  
24 dollars a week, and I have provided you with an exhibit  
25 that shows that he has not done that. It is Mr. Coley's