

2005

Kathleen Lenay Huish v. Glen Frank Munro : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Paige Bigelow, USB; Kruse, Landa, Maycock, and Ricks; Attorney for Appellee.

David Drake; Attorney for Appellant.

Recommended Citation

Brief of Appellee, *Huish v. Munro*, No. 20050440 (Utah Court of Appeals, 2005).

https://digitalcommons.law.byu.edu/byu_ca2/5792

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

PAIGE BIGELOW (6493)
KRUSE LANDA MAYCOCK & RICKS, LLC
136 East South Temple, 21st Floor
P. O. Box 45561
Salt Lake City, UT 84145-0561
Attorneys for Appellee Glen Frank Munro

IN THE UTAH COURT OF APPEALS

KATHLEEN LENAY HUISH,

Appellant,

vs.

GLEN FRANK MUNRO,

Appellee.

)
) Case No. 20050440 CA
)
)
)
)

BRIEF OF APPELLEE

Appeal from the Third District Court, Salt Lake County
Honorable Glenn K. Iwasaki

DAVID DRAKE (0911)
DAVID DRAKE, P.C.
6905 South 1300 East, #248
Midvale, UT 84047
Telephone: (801) 205-9049

Attorney for Appellant

PAIGE BIGELOW (6493)
KRUSE, LANDA, MAYCOCK & RICKS
136 East South Temple, 21st Floor
P.O. Box 455
Salt Lake City, UT 84145-0561
Telephone: (801) 531-7090

Attorney for Appellee

PAIGE BIGELOW (6493)
KRUSE LANDA MAYCOCK & RICKS, LLC
136 East South Temple, 21st Floor
P. O. Box 45561
Salt Lake City, UT 84145-0561
Attorneys for Appellee Glen Frank Munro

IN THE UTAH COURT OF APPEALS

KATHLEEN LENAY HUISH,

Appellant,

vs.

GLEN FRANK MUNRO,

Appellee.

)

)

Case No. 20050440 CA

)

)

)

BRIEF OF APPELLEE

Appeal from the Third District Court, Salt Lake County
Honorable Glenn K. Iwasaki

DAVID DRAKE (0911)
DAVID DRAKE, P.C.
6905 South 1300 East, #248
Midvale, UT 84047
Telephone: (801) 205-9049

Attorney for Appellant

PAIGE BIGELOW (6493)
KRUSE, LANDA, MAYCOCK & RICKS
136 East South Temple, 21st Floor
P.O. Box 45561
Salt Lake City, UT 84145-0561
Telephone: (801) 531-7090

Attorney for Appellee

E.	Finding No. 13	24
F.	Finding No. 15(a).....	25
G.	Finding No. 15(b).....	26
H.	Finding No. 15(c).....	26
I.	Finding No. 16	27
VI.	MS. HUIISH'S SPECIAL MASTER ARGUMENT IS INADEQUATELY BRIEFED, AND EVEN IF DEEMED ADEQUATE, MS. HUIISH'S FAILURE TO OBJECT TO DR. HALE AFTER DISCLOSURE PRECLUDES HER FROM RAISING THIS ARGUMENT ON APPEAL	27
	CONCLUSION	29

TABLE OF AUTHORITIES

Cases

<u>Becker v. Becker</u> , 693 P.2d 608, 610 (Utah 1984)	15
<u>Cummings v. Cummings</u> , 821 P.2d 472, 475 (Utah Ct. App. 1991)	19, 20
<u>Elmer v. Elmer</u> , 776 P.2d 599 (Utah 1989).....	17, 19
<u>Hogge v. Hogge</u> , 639 P.2d 51, 53 (Utah 1982).....	16
<u>Hudema v. Carpenter</u> , 989 P.2d 491 (Utah Ct. App. 1999)	2, 21, 24, 25
<u>In re Estate of Russell</u> , 852 P.2d 997, 999 (Utah 1993).....	1, 11
<u>In re S.H.</u> , 2007 UT App 8, ¶21, 155 P.3d 109.....	14
<u>Maughan v. Maughan</u> , 770 P.2d 156, 160 (Utah App. 1989)	19
<u>Medley v. Medley</u> , 2004 UT App ¶ 6, 93 P.3d 847.....	2
<u>Moody v. Moody</u> , 715 P.2d 507, 509 (Utah 1985)	15
<u>Peterson v. Sunrider Corp.</u> , 48 P.3d 918, 926 n.9 (Utah 2002)	27
<u>Plumb v. State</u> , 809 P.2d 734, 743 (Utah 1990).....	28
<u>Shioji v. Shioji</u> , 712 P.2d 197, 201 (Utah 1985)	25, 27
<u>Sigg v. Sigg</u> , 905 P.2d 908, 912 (Utah Ct. App. 1995).....	1
<u>Smith v. Smith</u> , 793 P.2d 407, 410 (Utah Ct. App. 1990)	14
<u>State v. Gamblin</u> , 1 P.3d 1108, 1110-11 (Utah 2000).....	28
<u>State v. Jaeger</u> , 973 P.2d 404, 410 (Utah 1999).....	28
<u>Walton v. Walton</u> , 814 P.2d 619, 621 (Utah Ct. App. 1991)	21

Rules

611 of the Utah Rules of Evidence.....	11, 13
Utah R. Jud. Admin. 4-903(5)(D)	21

ADDENDUM INDEX

Addendum 1	Decree of Paternity
Addendum 2	Findings of Fact and Conclusions of Law
Addendum 3	Order Modifying Decree of Paternity
Addendum 4	Letter From Paige Bigelow to Richard S. Nemelka, dated May 7, 2001
Addendum 5	Letter from Valerie Hale, Ph.D. to Commissioner Thomas N. Arnett, dated June 13, 2001
Addendum 6	Special Master Services Procedures Agreement Valerie Hale, Ph.D.

JURISDICTION OF APPELLATE COURT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. § 78-2a-3(2)(h).

ISSUES PRESENTED FOR REVIEW

ISSUE 1: Whether the trial court exercised reasonable control over the order and mode of testimony.

Standard of Review: “Rule 611 gives a trial court broad control over the mode and manner in which testimony is offered. Unless such discretion is abused, we will affirm its exercise.” *In re Estate of Russell*, 852 P.2d 997, 999 (Utah 1993).

ISSUE 2: Whether res judicata and issue preclusion bar modification of the parties’ joint custody order.

Standard of Review: “A court’s legal conclusion as to whether a material change in circumstances has occurred that would warrant reconsidering the . . . decree is reviewed for an abuse of discretion.” *Sigg v. Sigg*, 905 P.2d 908, 912 (Utah Ct. App. 1995).

ISSUE 3: Whether the trial court properly heard the testimony of Dr. Monica Christy regarding the best interests of the child in its determination of whether a substantial and material change in circumstance had occurred.

Standard of Review: “A court’s legal conclusion as to whether a material change in circumstances has occurred that would warrant reconsidering the . . . decree is reviewed for an abuse of discretion.” *Sigg v. Sigg*, 905 P.2d 908, 912 (Utah Ct. App. 1995).

ISSUE 4: Whether the trial court's findings of fact were supported by the evidence and were legally sufficient to sustain its custody order.

Standard of Review: "A trial court's factual findings underlying a holding of material change of circumstances in a divorce decree and a determination of the children's best interests may not be disturbed unless clearly erroneous. A court's legal conclusion as to whether a material change in circumstances has occurred that would warrant reconsidering the . . . decree is reviewed for an abuse of discretion. A judge's award of custody . . . is also reviewed for abuse of discretion." Hudema v. Carpenter, 989 P.2d 491, 497 (Utah Ct. App. 1999) (quoting Sigg v. Sigg, 905 P.2d 908, 912 (Utah Ct. App. 1999)).

ISSUE 5: Whether Ms. Huish's argument that Dr. Hale's involvement in this case as special master deprived her of due process is adequately briefed, and if adequately briefed, whether Ms. Huish waived any right she may have had to object to Dr. Hale as special master.

Standard of Review: Although the court generally reviews the determination to modify a divorce decree for an abuse of discretion, insofar as that determination is based on a conclusion of law, it is reviewed for correctness. Medley v. Medley, 2004 UT App ¶ 6, 93 P.3d 847.

DETERMINATIVE PROVISIONS

There are no constitutional provisions, statutes, ordinances, rules or regulations whose interpretation is determinative of this appeal or of central importance to this appeal.

STATEMENT OF THE CASE

Course of Proceedings and Disposition in Court Below

This appeal concerns custody of the parties' minor child, Taylor, who is now 12 years old, having been born on July 11, 1996. The initial custody order in this case was set forth in the parties' Decree of Paternity, entered July 8, 2002 ("the paternity decree"). R.1467 (Add. 1). The paternity decree was based on the parties' stipulation, read into the record on the day that had been set for trial of the custody issues, and subsequent rulings of the trial court clarifying the same. R.1467-68. The recommendations of the custody evaluator appointed by the trial court at this stage in the litigation, Dr. Carol Gage, were incorporated into the paternity decree, R.2788, which awarded the parties joint legal and physical custody of Taylor. R.1468-69.

Respondent and appellee Glen Frank Munro ("Mr. Munro") filed a petition to modify the custody and related provisions of the paternity decree on March 18, 2003. R.1878. Dr. Monica Christy was appointed to conduct a custody evaluation, and thereafter an 11-day trial was held on the petition, commencing July 13, 2004 and concluding September 15, 2004. At the conclusion of the evidence, the trial court first heard argument and made findings regarding whether a substantial and material change in circumstance warranting termination of the joint custody order had been established. Thereafter, the trial court heard argument and made findings regarding Taylor's best interests, and fashioned a new custody order, which is set forth in its Order Modifying Decree of Paternity, entered April 11, 2005 ("the Order"). R.2806. It is from this Order that Petitioner and appellant Kathy Lenay Huish ("Ms. Huish) has appealed.

Statement of Facts

1. Ms. Huish and Mr. Munro began dating in January of 1993. Ms. Huish was 31 years old, recently separated from her husband, John Huish, and living in a home next to her mother's in Murray, Utah. She had one son, Patrick Huish, who was 4 years old. Mr. Munro, was 35 years old when he met Ms. Huish. He had never been married, had no children, and lived in a condominium in Park City. Both parties worked, and continue to work, for Delta Air Lines, as a flight attendant and pilot respectively. R.992.

2. Mr. Munro had serious reservations about his relationship with Ms. Huish when Taylor was conceived some two years later. Nevertheless, after deep reflection, Mr. Munro determined that it was important to give the child he and Ms. Huish were expecting a home and a family, and he asked her to marry him. Ms. Huish refused. R.993.

3. The parties' child, Taylor Munro, was born Thursday, July 11, 1996. Mr. Munro took time off work to care for Taylor after his birth. When Ms. Huish left the hospital on or about July 13, 1996, she went home to stay with her mother in Murray, and Mr. Munro took Taylor to care for him in Park City. From that time until late August of 1996, when the parties began residing together in Las Vegas, Nevada, with the exception of the days that Mr. Munro was flying, Taylor resided with Mr. Munro in Park City and Mr. Munro had primary responsibility for Taylor. R.993.

4. After the parties began residing together in Las Vegas, they arranged their schedules so that one of them was available to care for Taylor directly when the other was out of town. When Mr. Munro and Ms. Huish were both home, and during the

period that Ms. Huish did not work, Glen was primarily responsible for caring for Taylor. He performed the bulk of the primary caretaking tasks for Taylor, including feeding him, changing him, getting up at night with him, bathing him, etc. R.994.

5. The parties' relationship with one another was marked by conflict, and they finally separated on March 30, 1999. From the date of their separation until Ms. Huish was served with Mr. Munro's court papers requesting primary custody of Taylor on November 20, 1999, with rare exception, and with Ms. Huish's acquiescence, Mr. Munro cared for Taylor when he was not flying, generally 20 days or more per month. Ms. Huish was often not home when Glen came to drop Taylor off or pick him up, and Taylor was left with or received by his grandmother, Ms. Huish's mother. Taylor was often left in his grandmother's care by Ms. Huish when Glen was flying, even when Ms. Huish was not flying. R.995.

6. The custody proceedings, initiated in Nevada, were ultimately transferred to Utah. Once here, the court appointed Dr. Carol Gage to conduct a custody evaluation, and she commenced her evaluation in January of 2000. The evaluation was completed in August of 2000. Mr. Munro relayed his account of the custodial arrangement between himself and Taylor to Dr. Gage, which rested on the unstated agreement between the parties that, when Mr. Munro was home, he was responsible for Taylor. Mr. Munro further relayed his sense that Kathy was less committed to direct parenting of Taylor, and that even when she had Taylor, she would often leave him with other caretakers or her mother. Ms. Huish was dishonest with Dr. Gage throughout the evaluation. Where Ms. Huish's version of events conflicted with Mr. Munro's, Dr. Gage adopted Ms. Huish's.

Moreover, she ignored data that corroborated Glen's version of events. Nevertheless, Dr. Gage recommended, based on the strong bond that she observed between Mr. Munro and Taylor, that the parties have joint legal custody, and that Mr. Munro have three weekends per month with Taylor, to include Thursday after school through Sunday evening if Mr. Munro was in Park City and available to take Taylor to school, plus an additional weekday overnight if Mr. Munro was in Park City and available to take Taylor to school. R.999-1000. Dr. Gage's recommendations were premised on her belief that, once the custody issues were resolved, the parties' ability to communicate and work with one another would improve. R.2788.

7. Mr. Munro was upset by the evaluation because he felt that he had not been believed. However, he felt that the access schedule that had been recommended, if complied with by Ms. Huish, would be acceptable. He doubted that Ms. Huish would in fact comply. He continued to feel that he was more capable of acting in Taylor's best interests and should be designated primary custodial parent. However, considering all the factors, and desiring to bring an end to the litigation for Taylor's benefit, he determined that he would reside in Park City when Taylor was in school so that he could enjoy the favorable access schedule, and that he would be willing to settle the case on the terms recommended by Dr. Gage. R.1001.

8. Shortly after the evaluation was released, Ms. Huish filed a motion requesting that the court award her "sole custody" of Taylor and that Mr. Munro's time with Taylor be restricted to the minimum required by law. Mr. Munro felt extremely threatened by Ms. Huish's continued focus on limiting his role in Taylor's life, even after

Dr. Gage had recommended that he should not be so limited. He therefore determined to pursue another custody evaluation, believing that the court would benefit from a more balanced view than that provided by Dr. Gage. Through counsel, he began to contact custody evaluators. Upon contacting Dr. Matthew Davies, however, he became convinced that another evaluation would not be best for Taylor. He therefore determined to work with Dr. Davies to attempt to co-parent Taylor with Ms. Huish, as recommended by Dr. Davies to be in Taylor's best interest. R.1001.

9. From the beginning, Ms. Huish was unwilling to cooperate in facilitated parenting of Taylor. She was unable to focus on Taylor, but instead focused on relationship problems with Mr. Munro. She continued to insist that she could not deal with Mr. Munro. She did not provide Dr. Davies her flight schedules in a timely manner, and then withheld Taylor from Mr. Munro during the time that no access schedule was yet developed by Dr. Davies. She raised concerns about Taylor's well-being, but then refused to take steps recommended by Dr. Davies to address the concerns. She refused to contribute anything financially to Dr. Davies services. Eventually, in April 2001, she notified Dr. Davies, through counsel, that she would not participate further in parenting facilitation. R.1001-02.

10. Mr. Munro felt that it was indeed unfortunate that Ms. Huish would not work with Dr. Davies. He felt Dr. Davies provided a mechanism of lessening the dissention between he and Ms. Huish for Taylor's sake. He therefore filed a motion to appoint Dr. Davies as special master. A hearing was held on the motion on May 2, 2001, and Commissioner Arnett approved the appointment of a special master. However, the

Commissioner *sua sponte* appointed Dr. Valerie Hale to act in that capacity, rather than Dr. Davies. R.1002.

11. Because Dr. Hale had been contacted by counsel for Mr. Munro prior to the Commissioner's *sua sponte* appointment, counsel immediately notified Ms. Huish's counsel of that fact, requesting that he "[p]lease advise at once whether you will object to Dr. Hale acting as special master based on this disclosure." Ex. P-135 (Add. 4). Additionally, Dr. Hale disclosed the prior contact to the parties and the court in a letter to the court dated June 13, 2001, after receiving notice that she had been appointed as special master. Ex. P-112 (Add. 5). With full knowledge of Dr. Hale's previous contact with Ms. Bigelow, Ms. Huish and her counsel executed Dr. Hale's Special Master Services Procedures Agreement on July 23, 2001, agreeing to Dr. Hale's involvement in the case as special master. Ex. R-229 (Add. 6).

12. Trial on the custody and child support issues was scheduled to take place September 4, 2001. On that day, at court, the parties reached a global resolution, and the agreement was read into the record. R.1467. The agreement, which was incorporated into the parties' decree of paternity, included an award of joint legal custody of Taylor to the parties and specifically provided for the continuing involvement of Dr. Hale as special master in the case. R.1468. The agreement further incorporated a custody arrangement substantially similar to that recommended by Dr. Gage, consisting of Mr. Munro having 10 days and 12 days per month with Taylor in alternating months. R.1469.

13. After the custody issues were resolved by legally binding stipulation, Ms. Huish nevertheless persisted in creating problems, and the conflict between the parties

continued unabated. R.2788, 3406:68. Specifically, Ms. Huish was obstructionist and abusive with Dr. Hale, causing Dr. Hale to ultimately seek and obtain a release from further responsibility as the court-appointed special master. R.1879. Ms. Huish also refused to communicate with Mr. Munro regarding Taylor's health, school, scheduling, surrogate care, or any other matters pertaining to parenting of Taylor, insisted upon acting unilaterally on all matters pertaining to Taylor, and consistently violated both the letter and the spirit of the joint legal custody provisions of the decree of paternity. R.1879.

14. In or about November 2002, Ms. Huish remarried and began planning to relocate with Taylor to Kwajalein, a 2-mile atoll located 2,100 miles southwest of Hawaii and 1,400 miles east of Guam. The atoll is off-limits to unofficial visitors and is inaccessible except by military transport. R.1880. Such a move would have severely restricted Mr. Munro's access to Taylor, and would have made enforcement of any custody or parent-time order relating to Taylor extremely difficult. It would have, additionally, required modification of both the residency and joint physical custody provisions of the decree of paternity.

15. Mr. Munro filed a petition to modify the decree of paternity in March of 2003, after trying unsuccessfully to implement the terms of the parties' stipulated agreement for nearly 18 months. R.1878. Ms. Huish sent formal notification of her intent to relocate shortly thereafter, on April 11, 2003. R.2205.

16. The court granted Mr. Munro's motion to appoint a custody evaluator on May 29, 2003, R.2217, and thereafter the parties agreed to the appointment of Dr.

Monica Christy. Dr. Christy completed her evaluation on or about November 21, 2003, R.2411, and after an unsuccessful pre-trial settlement conference, the matter was certified for trial on January 29, 2004. R.2454. Trial ensued several months later, spanning eleven days from July 13, 2004 to September 15, 2004. Dr. Christy testified extensively, as did Dr. Hale, Dr. Davies, Dr. Gage, and numerous lay witnesses, including both Mr. Munro and Ms. Huish. At the close of the evidence, the court made extensive findings of fact based on the evidence, which are incorporated in its Findings of Fact and Conclusions of Law. R.2787 (Add. 2).

SUMMARY OF ARGUMENT

Ms. Huish was not deprived of her due process rights when the trial court did not permit her to attempt another bite at the apple to cross-examine Dr. Christy in rebuttal on matters that she should have covered in her initial, extensive, cross-examination of Dr. Christy.

The trial court was not precluded by the doctrine of res judicata or issue preclusion from modifying the decree of paternity entered in this case in July of 2002. The well-established case law governing modification of custody orders permits modification where a substantial and material change in circumstance is demonstrated, as was done in this case. Further, the trial court complied with the bifurcation requirements set forth by this court, separately conducting its modification and best interest analyses. The trial court was not required to further bifurcate the proceedings, and it acted within its discretion in allowing the testimony of Dr. Christy relating to both issues to be taken at once.

The trial court's findings of fact and conclusions of law are legally sufficient and are supported by the evidence.

Ms. Huish has not adequately briefed her argument that she was deprived of due process by Dr. Hale's involvement in this case as special master, and she waived any claim she may have had relating to Dr. Hale's prior involvement on behalf of Mr. Munro by agreeing to Dr. Hale as special master after full disclosure of that involvement.

ARGUMENT

I. THE TRIAL COURT EXERCISED REASONABLE CONTROL OVER THE ORDER AND MODE OF TESTIMONY

Ms. Huish was not deprived of her due process rights, nor was she precluded from testifying on her own behalf or presenting witnesses. Rule 611 of the Utah Rules of Evidence directs the trial court to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence . . . to avoid needless consumption of time." Utah R. Evid. 611(2). In so doing, the "trial court [has] broad control over the mode and manner in which testimony is offered," *In re Estate of Russell*, 852 P.2d 997, 999 (Utah 1993). The Utah Supreme Court has affirmed this broad control "[u]nless such discretion is abused." *Id.* The trial court exercised reasonable control over the order and mode of testimony in this case, and in fact, was extremely lenient with Ms. Huish.

Ms. Huish's complaint that she was denied her due process rights stems from events occurring on the ninth day of trial after the conclusion of Ms. Huish's testimony during her case-in-chief. Counsel had agreed that Mr. Munro could take some of his rebuttal witnesses out of order at that point, and this agreement was represented to the

court by Mr. Drake. R.3414:1521. The court inquired of Mr. Drake what remained on his case-in-chief. Mr. Drake responded: “We intend to call the respondent and possibly Monica Christy as a direct witness and that would be it.” Id. The court then inquired what Mr. Drake would be asking Dr. Christy in her case-in-chief that he could not cover on cross or rebuttal. R.3414:1521-22. Mr. Drake responded, “Well, your Honor I’m just looking at the scope of the rebuttal and me having to go to questions limited by that scope, if the Court would be willing I’d like to expand that scope just to do that. Then we can end it all at one time.” R.3414:1522. Id. The court then stated: “Well, my sense is as long as Dr. Christy’s here let’s get her on and off, and not have to take her back and forth. So with that I’m going to allow leeway on both sides as to completing her testimony, with the idea that you don’t abuse it and you don’t bring up new issues, but we get her out of the way.” Id. (emphasis added).

At no time did the court state that Ms. Huish could, by purportedly calling Dr. Christy in her case-in-chief, take another stab at cross-examination on issues that she’d neglected to address in day one and two of trial during the cross-examination of Dr. Christy that occurred at that time and extended nearly a full day.

Further, a close reading of the record establishes that the only line of inquiry disallowed by the court was during the rebuttal phase, on the tenth day of trial. Mr. Drake began cross-examining Dr. Christy regarding matters that went beyond the scope of her rebuttal testimony, but which were within the scope of her initial testimony on the first and second day of trial and should have been addressed in cross at that time. This

was the objection that was made, and sustained. In sustaining the objection, the court explained:

This matter should have been taken up on cross. If it wasn't taken up on cross you've waived it, you cannot revive it by calling a witness on your own behalf or terming it to be rebuttal. Rebuttal is only . . . as to what . . . Ms. Bigelow has done. And even though I agree with you [Mr. Drake] that I've allowed you to expand it a bit, it still has to be new information not covered or coverable under cross.

R.3415:1725 (emphasis added). Clearly, the trial court committed no error by thus controlling the orderly presentation of evidence and not allowing Ms. Huish another bite at the cross-examination apple on the tenth day of trial.

The trial court did not rule, as Ms. Huish contends, that Ms. Huish could not pursue a line of inquiry with Dr. Christy that would properly be characterized as direct testimony in her case-in-chief, that is, new information, not within the scope of what should have been covered in the initial cross-examination. Ms. Huish's argument that she was denied the opportunity to present her case-in-chief is therefore simply erroneous.

By requiring Ms. Huish to complete her cross-examination of Dr. Christy after Dr. Christy's direct examination, and not permitting her to cross-examine her again about matters not raised in rebuttal, which should have been addressed, if at all, in the initial cross-examination, the trial court reasonably exercised its Rule 611 control over the mode and order of interrogating witnesses and the presentation of evidence. See Utah R. Evid. 611(b).

The trial lasted over eleven days. Of these eleven days, Ms. Huish's case-in chief spanned five and one-half days. Clearly, Ms. Huish was given a "meaningful opportunity

to be heard by submitting testimony herself and by witnesses.” In re S.H., 2007 UT App 8, ¶21, 155 P.3d 109. There was no abuse of discretion, and no deprivation of Ms. Huish’s due process rights.

II. RES JUDICATA AND ISSUE PRECLUSION DO NOT BAR MODIFICATION OF THE INITIAL JOINT CUSTODY ORDER

Because there was a substantial and material change in circumstances, the res judicata, or issue preclusion, doctrine does not bar Mr. Munro from petitioning the court to modify the custody provisions of the parties’ initial paternity decree. Although Utah appellate courts have stated that the doctrine of res judicata applies in custody actions and subsequent modification proceedings, its application in these instances is “distinguished . . . because of the equitable doctrine that allows courts to reopen determinations if the moving party can demonstrate a substantial change of circumstances.” Smith v. Smith, 793 P.2d 407, 410 (Utah Ct. App. 1990) (citing Hogge v. Hogge, 649 P.2d 51, 53 (Utah 1982)). Mr. Munro established a substantial change in circumstances that warranted modification of the custody provisions of the parties’ paternity decree. The doctrine of res judicata was therefore not offended when the court granted Mr. Munro’s petition to modify.

A. Circumstances Substantially Changed After Entry of the Paternity Decree

The trial court found that there had been a substantial and material change since entry of the paternity decree; namely, that the joint legal custody provisions of the decree were not working or were inappropriate under the circumstances. R.2789. This finding is as further detailed in the court’s subsidiary findings, found at paragraphs 1 through 6 of

the Findings of Fact and Conclusions of Law. R.2788-89. The trial court found as an additional ground for modification the petitioner's planned relocation to Kwajalein, an atoll located thousands of miles from the child's primary residence established in the decree of paternity. R.2789-90.

The Utah Supreme Court has described a change in circumstances that warrants modification of custody as one that has had "some material relationship to and substantial effect on parenting ability or the functioning of the presently existing custodial relationship." Becker v. Becker, 693 P.2d 608, 610 (Utah 1984). The court has further specifically held that "[t]he nonfunctioning of a joint custody arrangement is clearly a substantial change in circumstances which justifies reopening the custody issue." Moody v. Moody, 715 P.2d 507, 509 (Utah 1985).

Ms. Huish argues that because the parties were engaged in conflict prior to the entry of the paternity decree, and because this conflict continued unabated, no substantial change in circumstances occurred. While true that the parties' conflict unfortunately continued after entry of the decree of paternity, the substantial change in circumstances is not that conflict arose where once there was none, but rather that the joint custody arrangement did not function as it was anticipated that it would.¹

¹ In addition, under Utah Code Ann. § 30-3-10.4(3), the trial court must terminate an order of joint legal custody and enter an order of sole legal custody if it "determines that the joint legal custody order is unworkable or inappropriate under existing circumstances." Utah Code Ann. § 30-3-10.4(3). When this subsection was added to

The parties' stipulated agreement to joint custody was based on their hope and commitment that it would be a workable arrangement. See R.3408:440. Dr. Gage based her initial recommendation for joint legal custody on her hope that the parties conflict would end upon resolution of the custody issue. See R.2788; 3410:854. Despite the belief of the parties and of Dr. Gage that the joint custody arrangement would work, however, it did not. Instead, the conflict between the parties continued, and the parties' child was exposed to ongoing conflict and dissension. See R. 2789; 3410:854-55.

The foregoing findings and evidence establish that the joint custody order was unworkable under existing circumstances, which constitutes a change in circumstance sufficient to dissolve the joint custody order. The court did not err in so doing.

B. Best Interests of the Child Has Priority Over Res Judicata

While acknowledging that the res judicata doctrine applies in divorce and modification actions despite the trial court's continuing jurisdiction in these matters, the Utah Supreme Court limited the doctrine to actions in which changed circumstances are established. See Hogge v. Hogge, 639 P.2d 51, 53 (Utah 1982). The supreme court

section 30-3-10.4 in 2005, it could have been included under subsection (1), which requires a determination that the circumstances have materially and substantially changed and that a modification would be in the best interest of the child. See id. § 30-3-10.4(1). It is clear that because subsection (3) stands alone, under the plain language of the statute, this determination either does not require or presupposes a finding of a substantial change of circumstances.

established a two-part bifurcated process in “a parent seeking a change in custody of a child must first establish that there has been a substantial and material change in the circumstances upon which the original custody award was based, and second and thereafter, that a change in custody is in the best interests of the child.” Elmer v. Elmer, 776 P.2d 599, 602 (Utah 1989).

Yet, the Utah appellate courts have emphasized that when a custody determination was not adjudicated, but rather was the result of a stipulated decree, the “res judicata aspect of the [“changed circumstances”] rule must always be subservient to the best interests of the child.” Elmer v. Elmer, 776 P.2d 599, 603 (Utah 1989). Above all, “in change of custody cases involving a nonlitigated custody decree, a trial court, in applying the changed-circumstances test, should receive evidence on changed circumstances and that evidence may include evidence that pertains to the best interests of the child.” Id. at 605. The reasoning for allowing best interests evidence is that “an unadjudicated custody decree based on default or stipulation is not based on an objective, impartial determination of the best interests of the child,” and in fact, may be at odds with the best interests of the child. Id. at 603.

Therefore, even if the custody order at issue in this case were not a joint custody order, the trial court was not prohibited from modifying it upon finding that its continuation was contrary to the child’s best interests. The trial court did so find, stating at Finding No. 10: “It is clear that the current custody order has resulted in a high conflict, high stress situation that is not good for Taylor and must change for Taylor’s

best interests.” R. 2790. Petitioner has made no attempt to counter this finding, which does no less than compel a modification of the existing custody order.

C. Estoppel Does Not Apply

Mr. Munro should not be estopped from alleging a substantial and material change in circumstance. Ms. Huish suggests that Mr. Munro deluded her into entering into a stipulation, all the time planning to thereafter “ambush” her with a petition to modify. Ms. Huish cites to no record evidence to support her quixotic view of Mr. Munro’s inner thoughts and intentions. In actuality, both parties were prepared for trial at the initial custody hearing, and appeared at the trial ready to go forward. However, with the assistance of the trial court, the custody evaluator, and counsel, the parties instead forged an agreement, which was read into the record and thereafter incorporated into the parties’ paternity decree. As the trial court found, the agreement incorporated, “in sum and substance” the recommendations of Dr. Carol Gage, who was the court-appointed custody evaluator in the initial custody phase. R.2788, ¶ 2. Mr. Munro made no misrepresentations of fact and had no ability to persuade Ms. Huish one way or the other during these drawn-out negotiations. Her decisions were made entirely upon the advice of her counsel, her own desires, her understanding of the custody evaluator’s recommendations, and the input she received from the trial court.

Furthermore, even if Mr. Munro had been cunning enough at the time the stipulation was entered to plan to later seek modify it, he did not unilaterally create the circumstances that warranted its modification. Clearly, Ms. Huish’s plan to move to Kwajalein was completely outside of Mr. Munro’s control. Further, as Dr. Christy

testified, the joint custody order did not function primarily because of Ms. Huish's actions, in particular, her steadfast refusal to communicate with Mr. Munro and treat him as a co-parent of their son. See R.3406:68.

Finally, for policy reasons, parties cannot be estopped from pursuing a modification of a detrimental custody order because they stipulated to it. Logic and our case law dictates, instead, that a stipulated order be more amenable to modification, not less, as the stipulated order is not based on evidence presented to the trial court and the resulting findings. And, were estoppel to be applied in these circumstances, parties would be deterred from resolving conflicts by negotiated settlement, which is clearly contrary to public policy.

III. THE COURT PROPERLY HEARD DR. CHRISTY'S TESTIMONY IN ITS CHANGED CIRCUMSTANCES DETERMINATION

Mr. Munro called Dr. Christy as his first witness at trial in his case in chief.

R. 3406:37. Dr. Christy's testimony addressed both whether a substantial and material change in circumstances had occurred, and whether a change in custody would be in Taylor's best interests. R. 3406:37-130,162-230. It was proper for the trial court to hear best interest testimony and change in circumstance testimony together, as our appellate courts have relaxed the bifurcation requirement when the original custody determination was not litigated. See Elmer v. Elmer, 776 P.2d 599, 604 (Utah 1989); Maughan v. Maughan, 770 P.2d 156, 160 (Utah App. 1989). The court summarized these holdings, stating: "[This] moderation of the evidentiary process is justified because the trial court

has not previously had an opportunity to make a through examination of the child's best interests." Cummings v. Cummings, 821 P.2d 472, 475 (Utah Ct. App. 1991).

Both Elmer and Maughan allowed the trial court to incorporate evidence on the best interests of the child within its change of circumstances determination. In Cummings, this court relaxed the bifurcation distinction even further, holding that a trial court, when reviewing a petition for modification of custody when custody had not been previously litigated, need not bifurcate where the evidence concerning both changed circumstances and best interests would be the same. See Cummings, 821 P.2d at 475. In such a circumstance, the trial court need only "conduct a separate analysis and make separate findings as to substantial change in circumstances." Id.

In this case, Dr. Christy's testimony concerned the non-functioning of the joint custody order, as well best interests factors relating to appropriate custody orders once joint custody was terminated. The trial court heard argument on these two distinct issues separately, proceeding to hear argument regarding best interests only after having made separate findings and conclusions pertaining to changed circumstances. Clearly, the court conducted a separate analysis and made separate findings as to changed circumstances, as directed by our appellate decisions, and the court did not err in permitting Dr. Christy to testify as to both issues. Such a bifurcation is not required.

IV. THE TRIAL COURT FINDINGS OF FACT ARE SUPPORTED BY THE EVIDENCE AND ARE LEGALLY ADEQUATE

The trial court's findings of fact are sufficiently supported by the evidence and are legally adequate. Ms. Huish fails to meet her burden to prove that they are "so lacking in

support as to be against the clear weight of the evidence, and therefore, clearly erroneous.” Walton v. Walton, 814 P.2d 619, 621 (Utah Ct. App. 1991). Nor does Ms. Huish demonstrate that the findings are legally inadequate. Rather, the findings and the record establish that the court did not abuse its discretion in terminating the 2002 joint custody order and awarding sole legal custody of Taylor to Mr. Munro.

A. Finding No. 7

Ms. Huish contends the trial court did not address the salient factor of the duration of the initial physical custody arrangement, Taylor’s relative bond with his parents, in its findings and that this constitutes reversible error. See Appellant’s Brief at 31-34. Indeed, factors the trial court may consider in deciding whether to modify a custody arrangement are (1) identifying a strong bond with a particular parent, see Utah R. Jud. Admin. 4-903(5)(D), and (2) scrutinizing “a child’s need for stability,” by the duration of a prior custody arrangement, see Hudema v. Carpenter, 989 P.2d 491, 498 (Utah Ct. App. 1999). However, both rule 4-903 and Utah case law list numerous other factors that a trial court may consider, and the trial court need not consider each factor on equal footing. See id. “Generally it is within the trial court’s discretion to determine, based on the facts before it and within the confines set by the appellate courts, where a particular factor falls with the spectrum of relative importance and to accord each factor its appropriate weight.” Id.

The trial court analyzed several factors, and made several findings based on its analysis. Although typically, a court may emphasize maintaining the stability of a prior physical custody arrangement, in this matter it was of little or no significance because the

decree of paternity did not award sole physical custody of Taylor to Ms. Huish. Rather, the decree of paternity awarded each party substantial time with Taylor, with Mr. Munro having 10 days and 12 days per month in alternating months. The trial court therefore properly accorded this factor little weight.

The court also properly accorded the issue of bonding little weight. Dr. Christy's evaluation made clear that Taylor "appears to feel secure no matter which parent he is with" R.3380, at 4. Nor did any expert involved in the case identify a disparity in the level of bonding between the parties and Taylor. The court was not required, nor should it have, relied upon random and unilateral observations of Ms. Huish's friends to make findings contrary to the observations of neutral experts appointed to evaluate precisely these factors. Because the factor weighed in neither parties' favor, it was properly accorded little weight.

B. Finding No. 8

The trial court found that Ms. Huish's planned relocation to Kwajalein with the minor child, during the time the petition of modification was pending, constituted an additional change in circumstance that warranted modifying the decree. R. 2789. This finding is sufficiently supported by the evidence, being in fact undisputed, see, e.g., R. 3406:48-56; R.2205, and constitutes an additional ground for modification of the paternity decree.

As the court noted in its findings, Ms. Huish's decision, after a quick marriage, to uproot the parties' child and relocate halfway around the world to an extremely isolated atoll in the middle of the Pacific Ocean, followed by a turnabout in this position on the

first day of trial, evidenced a high degree of changeability, impulsivity, and lack of planning on her part. R.2797. It was not an abuse of the court's discretion to consider this evidence in its modification determination.

C. Finding No. 10

Ms. Huish takes issue with the court's finding that the current custody order, "has resulted in a high conflict, high stress situation that is not good for Taylor and must change for Taylor's best interests." R. 2790. Ms. Huish does not dispute the fact of the high conflict, but only that it is not good for Taylor, arguing that despite the conflict, Taylor is doing well, so the conflict must be okay.

Ms. Huish's views regarding the benefit to Taylor of his ongoing exposure to conflict are contradicted by all the testimony that was adduced on this topic. Dr. Gage testified that she agreed that "it is the consensus in the psychological research that dissension between the parents is harmful for children." R. 3410:855. Dr. Christy testified that "I think [Taylor] will become more and more aware of the conflict between his parents, and that is always unsettling for a child." R. 3406:76. At no point was any testimony adduced that supports Ms. Huish's novel position that the court erred in determining that the admittedly high conflict between the parties is not good for Taylor. This determination is clearly supported by the record, as well as common sense and human understanding, and is not an abuse of discretion.

D. Finding No. 11

The trial court stated in Finding 11 that it considered several factors, including those listed in Rule 4-903, in determining custody. See R. 2790. When the trial court

found that a particular factor was not significant in this case, it did not make a finding. See id. This does not constitute an erroneous legal conclusion as Ms. Huish contends, nor does it constitute an abuse of the court's discretion.

Ms. Huish challenges the trial court's failure to address the following factors: that Ms. Huish has had primary physical custody of Taylor since Taylor's birth; that Taylor is happy and doing well; and that Taylor is bonded to Ms. Huish and to his maternal grandmother. Although Taylor seems to be doing well in school, the lack of communication between his parents will continually cause him stress, as noted by Drs. Gage and Christy. See R. 3410:855; 3406:76. In Hudema v. Carpenter, the court emphasized that if the child has thrived in an existing arrangement, it should not be disturbed. See 989 P.2d 491, 499 (Utah Ct. App. 1999). Taylor has been in the unfortunate circumstance of being caught between his parents' failed communications in the past since the decree has been in place, which cannot be characterized as thriving. The court did not abuse its broad discretion in concluding that some factors were more significant than others in determining best interests.

E. Finding No. 13

The trial court determined that the preference of keeping Taylor together with his half-brother Patrick was not dispositive because of the children's age difference and time away from each other due to having different fathers. See R. 2790. Further, the trial court correctly concluded that these siblings could continue to have substantially similar time together with Mr. Munro being awarded primary physical custody by arranging Ms. Huish's parent-time schedule to coordinate with the time Patrick was in her care. Id. By

this, the trial court did not fail to consider this factor; rather, the trial court did not reach the conclusion pertaining to this factor that Ms. Huish urged. It was within the trial court's discretion to do so.

As this court noted in Hudema v. Carpenter, "The importance of the myriad of factors used in determining a child's best interests ranges from the possibly relevant to the critically important." Hudema, 989 P.2d 491 at 499. It is within the trial court's discretion to determine which factors carry more importance in a particular case. The court did not abuse its discretion in according this factor less weight given the circumstances present in this case.

F. Finding No. 15(a)

The evidence adequately supports the trial court's conclusion that Mr. Munro would best allow for Taylor to maintain frequent and continuing contact with Ms. Huish than the converse option. See R. 2790. The trial court's findings outline several subsidiary findings underlying this finding, all of which are amply supported by the record. For example, Dr. Christy testified that Mr. Munro would communicate better with Ms. Huish than the Ms. Huish would with him and that Mr. Munro was less negative about Ms. Huish than Ms. Huish was about him. See R. 3406:71; 3415:1674-78, 1852. "[T]he trial court's proximity to the witnesses and its opportunity to hear their testimony and observe their demeanor, places it in a far more advantaged position" to enter findings of fact. Shioji v. Shioji, 712 P.2d 197, 201 (Utah 1985). The trial court's findings will not be overturned if they are supported by the evidence.

It is Ms. Huish's burden to marshal the evidence supporting the trial court's finding to demonstrate that an abuse of discretion has occurred. Ms. Huish has failed to do this. The evidence she marshals – while partial only – amply supports the trial court's findings and outweighs the contradictory evidence. Further, the trial court's advantaged position in judging the credibility of the evidence cannot be gainsaid. The trial court had reason question Ms. Huish's credibility, as her testimony directly contradicted Dr. Christy's testimony on key points. See R.2797. And as much as Ms. Huish would like to change the record now, it nevertheless reveals that she called witness after witness to testify disparagingly about Mr. Munro. The finding is not an abuse of discretion.

G. Finding No. 15(b)

The trial court's finding that Ms. Huish is changeable and lacks stability is also amply supported by the record. Dr. Christy testified that Ms. Huish was more changeable than Mr. Munro. See R. 3406:55, 81. She also testified that Ms. Huish's emotional difficulties are not transitory, that she is "very insecure and becomes very distraught and emotional at any kind of . . . confrontation." 3415:1675-76. There was ample, additional evidence supporting this finding, both marshaled by Ms. Huish and not. The trial court did not abuse its discretion, after hearing this testimony and reviewing the evidence, in determining that Mr. Munro was better able to provide stability for Taylor.

H. Finding No. 15(c)

The trial court's findings of fact leading to its conclusion that Mr. Munro is more compliant with court orders than Ms. Huish is likewise sufficiently supported by the evidence. In this regard, this court may take judicial notice of the record on appeal,

which includes its own order of dismissal (with conditional reinstatement) due to Ms. Huish's pattern of contumacious conduct. In addition, the evidence marshaled by Ms. Huish, though partial, provides ample support for this finding.

I. Finding No. 16

In "custody matters, the trial court is accorded particularly broad discretion. Only where the trial court's judgment is so flagrantly unjust as to be an abuse of discretion" should the appellate court reverse. Shioji, 712 P.2d at 201. The trial court set forth its findings of fact at length, regarding both its grounds for modifying the decree and in finding that a change of custody was in Taylor's best interests. The findings as a whole support the trial court's conclusions and its carefully crafted custody award. The award is not an abuse of discretion and should be affirmed.

VI. MS. HUISH'S SPECIAL MASTER ARGUMENT IS INADEQUATELY BRIEFED, AND EVEN IF DEEMED ADEQUATE, MS. HUISH'S FAILURE TO OBJECT TO DR. HALE AFTER DISCLOSURE PRECLUDES HER FROM RAISING THIS ARGUMENT ON APPEAL

Ms. Huish failed to adequately brief her argument that Dr. Hale's actions as Special Master violated "canons of judicial ethics and so tainted the judicial process that Kathy was effectively deprived of her rights of due process." See Appellant's Brief, at 2.

Rule 24(a)(9) of the Utah Rules of Appellate Procedure requires an appellant to state the grounds for review. Utah appellate courts have further explained that an inadequately briefed argument is one that is supported by "[a] single, vague sentence without citation to the record or legal authority," Peterson v. Sunrider Corp., 48 P.3d 918, 926 n.9 (Utah 2002); or one that fails to provide a "meaningful legal analysis" and

"merely contain[s] one or two sentences stating [the] argument generally . . . and then broadly conclude[ing] that [appellant] is entitled to relief," State v. Gamblin, 1 P.3d 1108, 1110-11 (Utah 2000); or finally, one that baldly cites authority without "reasoned analysis based upon that authority," State v. Jaeger, 973 P.2d 404, 410 (Utah 1999). In place of legal analysis, Ms. Huish cites to one case, Plumb v. State, 809 P.2d 734, 743 (Utah 1990), for the general legal proposition that litigants are entitled to notice and the opportunity to present evidence and argument on issues before decision. Ms. Huish wholly fails to show what relevance this legal principle has in this case, or to develop legal analysis of any kind regarding how she was denied due process relating to Dr. Hale.

To the extent that Ms. Huish has attempted to throw Dr. Hale into a bad light by her claim that Dr. Hale was "paid money by Paige Bigelow" to review Dr. Gage's evaluation prior to being appointed as special master, the record unequivocally shows that this fact was disclosed to Mr. Huish before she signed Dr. Hale's special master agreement, and before she entered into the stipulation whereby Dr. Hale would continue as special master after entry of the paternity decree, and as part of its ongoing implementation. See Exs. P-135, P-112, R.229 & R. 2806. Ms. Huish thereby waived any right she may have had to raise this complaint, having determined at the time that she was comfortable going forward with Dr. Hale. Clearly, Ms. Huish and only changed her mind regarding Dr. Hale when Dr. Hale became sufficiently familiar with the case to begin reporting to the court Ms. Huish's inappropriate conduct.

As the trial court most aptly stated in its ruling following trial, "It's been very clear to the Court that if you agree with Ms. [Huish], then everything is fine, but if you

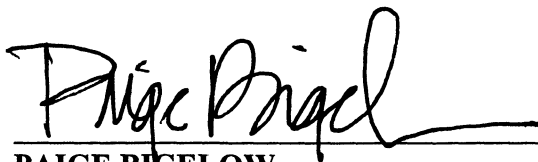
disagree with Ms. [Huish], or say anything critical of Ms. [Huish], then it appears that not only are you wrong, but you are obviously biased against her, that you are siding with Mr. Munro, and that anything from that point on is going to be met with resistance and with, and with some sort of contempt. And that is crystal clear to me through the testimony of Matt Davies, Valerie Hale, and Dr. Christy.” R.3416:2173. Ms. Huish’s claims of “bias” or impropriety pertaining to Dr. Hale fit squarely within this category and should be disregarded.

CONCLUSION

For the foregoing reasons, the trial court’s Order Modifying Decree of Divorce should be affirmed in its entirety, and this court should award Mr. Munro his costs and attorney fees incurred in defending this appeal.

RESPECTFULLY SUBMITTED this 25 day of September, 2007.

KRUSE LANDA MAYCOCK & RICKS, LLC
136 East South Temple, 21st Floor
P. O. Box 45561
Salt Lake City, Utah 84145-0561

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

PAIGE BIGELOW
Attorney for Respondent / Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2007, I caused two true and correct copies of the foregoing **BRIEF OF APPELLEE** to be mailed by United States mail, postage pre-paid, to the following:

David Drake
DAVID DRAKE, P.C.
6905 South 1300 East, #248
Midvale, UT 84047



Tab 1

☆

IMAGED

PAIGE BIGELOW (6493)
KRUSE, LANDA & MAYCOCK, L.L.C.
Attorneys for Respondent
Eighth Floor, Bank One Tower
50 West Broadway
P. O. Box 45561
Salt Lake City, Utah 84145-0561
Telephone: (801) 531-7090

FILED DISTRICT COURT
Third Judicial District

JUL - 8 2002

SALT LAKE COUNTY

By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

		ENTERED IN REGISTRY OF JUDGMENTS
KATHY LENAY HUISH,	)	DATE <u>07/10/02</u>
	)	DECREE OF PATERNITY
vs.)	
GLEN FRANK MUNRO,	)	Civil No. 994907668 PA
	)	Judge Glenn K. Iwasaki
Respondent.	)	Commissioner Thomas N. Arnett, Jr.

The above-entitled matter came on regularly for trial before the Honorable Glenn Iwasaki, District Court Judge, on the 4th day of September, 2001, in regard to the custody and financial issues, the common law marriage issue having been previously resolved at trial upon the court's order of bifurcation. The parties reached agreement on the custody and financial issues, which agreement was read upon the record, and the court approved the same. The Court subsequently conducted a telephone conference on January 29, 2002 with counsel for the parties appearing telephonically, and a hearing March 28, 2002 with counsel and the parties appearing in person and Dr. Valerie Hale, special master, appearing telephonically. The court heard the arguments and proffers of counsel and the recommendations of Dr. Valerie Hale, and made



rulings based thereon to clarify and augment the parties' oral stipulation. Based thereon, and for good cause appearing, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Respondent, Glen Frank Munro, is hereby declared to be the natural father of the minor child, Taylor Michael Munro, born on the 11th day of July, 1996. Said Declaration of Paternity is based upon the respondent's acknowledgement and consent to his paternity of said minor child.

2. The parties are hereby awarded joint legal custody of Taylor. The parties shall share equal decision-making authority to make all decisions impacting Taylor's health, well-being, education, religious training, and welfare. If after conferring in good faith regarding such a decision the parties are unable to agree, petitioner shall be permitted to make the decision, to which respondent may object by stating the reasons therefore and submitting them to Dr. Valerie Hale. Dr. Hale, in her capacity as the appointed special master in this case, shall then make the final decision. There shall be no presumption that either party's decision making authority is greater than the other's, and Dr. Hale shall give the parties' desires pertaining to any such decision equal weight, making the determination based on Taylor's best interest and not on any parental presumption.

3. Petitioner Kathy Lenay Huish shall be designated primary physical custodial parent. Taylor shall reside with petitioner in Murray, Salt Lake County, Utah, and shall attend public school in Salt Lake County, State of Utah, or a private school determined by the parties or Dr. Valerie Hale.

4. Respondent shall be entitled to, at a minimum, the following monthly parent-time with Taylor:

a) The first month beginning with the month of September, 2001, the respondent shall have parent-time consisting of two intervals per month from Wednesday when respondent shall pick up Taylor from school until Monday morning when respondent shall drop off Taylor at to school.

b) The next month, beginning with the month of October, 2001, respondent shall have parent-time consisting of three intervals per month from Thursday when respondent shall pick up Taylor from school until Monday morning when respondent shall drop off Taylor at school.

c) Said parent-time shall alternate each month so that one month respondent shall have two parent-time intervals as stated hereinabove, and the next month respondent shall have three parent-time intervals as stated hereinabove.

d) The weeks that respondent's parent-time intervals shall occur each month shall be consistent from month-to-month and shall be designated by Dr. Valerie Hale, until such time as the parties' agree otherwise or Dr. Hale determines that increased flexibility in the schedule is warranted. Until such time as Dr. Hale designates otherwise upon reviewing the parties' respective scheduling requests and attempting to maximize each party's time with Taylor, respondent's parent-time intervals shall occur on the second, third and fourth weeks in the three-interval months, and the second and fourth weeks in the two-interval months.

5. Respondent shall be entitled to the following holidays in years ending in an even number, and petitioner shall be entitled to the following holidays in years ending in an odd number:

- a) Taylor's birthday on the day before or after the actual birthday beginning at 3:00 p.m. until 9:00 p.m.;
- b) Human Rights day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
- c) Spring Break or Easter holiday beginning at 6:00 p.m. on the day that school lets out for the holiday until 7:00 p.m. on the Sunday before school resumes;
- d) Memorial Day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
- e) July 24th beginning at 6:00 p.m. on the day before the holiday until 11:00 p.m. on the holiday;
- f) Veterans 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 half of the Christmas school vacation (defined as the time period beginning on the evening Taylor gets out of school for the Christmas school break until the evening before he returns to school, except for Christmas Eve and Christmas Day), plus Christmas Eve and Christmas Day until 1:00 p.m.;

6. Respondent shall be entitled to the following holidays in years ending in an odd number, and petitioner shall be entitled to the following holidays in years ending in an even number:

- a) Taylor's birthday on the actual birthday beginning at 3:00 p.m. until 9:00 p.m.;

- b) Presidents' Day beginning at 6:00 p.m. on Friday until 7:00 p.m. on Monday;
- c) July 4th beginning at 6:00 p.m. the day before the holiday until 11:00 p.m. on the holiday;
- d) Labor Day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
- e) The fall school break, if applicable, commonly known as UEA weekend, beginning at 6:00 p.m. on Wednesday until Sunday at 7:00 p.m.;
- f) Columbus Day beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday;
- g) Thanksgiving holiday beginning Wednesday at 7:00 p.m. until Sunday at 7:00 p.m.;
- h) The second half of the Christmas school vacation (defined as the time period beginning on the evening Taylor gets out of school for the Christmas school break until the evening before he returns to school, except for Christmas Eve and Christmas Day), plus Christmas Day beginning at 1:00 p.m. until 9:00 p.m.;

7. Respondent shall be entitled to Father's Day every year beginning at 9:00 a.m. until 7:00 p.m. on the holiday. Petitioner shall be entitled to Mother's Day every year beginning at 9:00 a.m. until 7:00 p.m. on the holiday.

8. Respondent shall be entitled to twelve days of uninterrupted time with Taylor during Taylor's summer vacation from school. The uninterrupted time shall occur during a month that respondent would otherwise have three parent-time intervals of four days each. Respondent shall notify petitioner of the uninterrupted time he plans to take at least 45 days in

advance. Petitioner shall be entitled to the remaining eighteen or nineteen days of the same month as her extended time with Taylor.

9. Holidays take precedence over the monthly parent-time, and changes shall not be made to the regular rotation of the alternating monthly schedule. If the holiday falls on a regularly scheduled school day, respondent shall be responsible for Taylor's attendance at school for that school day.

10. The parties shall each be entitled to telephone contact with Taylor consisting of at least one telephone call every other day when Taylor is in the other party's physical custody.

11. The parties shall each be entitled to care for Taylor when the other party is working or unable to personally care for Taylor for any reason. Each party shall provide the other party and Dr. Valerie Hale with his or her work schedule for the ensuing month on or before the last day of each month, and shall notify the other party of any changes to said schedule or any other events necessitating surrogate care of more than 4 hours duration as soon as they know of the same.

12. The parties shall each be bound by the advisory guidelines set forth at Utah Code Ann. § 30-3-33, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

13. Dr. Valerie Hale shall continue in her role as Special Master in this case. Both parties shall cooperate with Dr. Hale to resolve any disputes that may arise between them relating to the parent-time set forth above, decision-making regarding Taylor, or any other issue relating to Taylor. Subject to either party's right to bring any matter before the court for final determination, Dr. Hale shall be authorized to:

a) Make decisions resolving conflicts between the parties that do not significantly affect the court's exclusive jurisdiction to determine fundamental issues of custody and parent-time, which decisions are to be effective as orders when made and continue in effect until modified or set aside by the court;

b) Determine appropriate school arrangements for Taylor;

c) Determine appropriate healthcare management, including mental healthcare, for Taylor;

d) Determine appropriate surrogate care arrangements for Taylor when neither party is able to provide personal care for Taylor;

e) Make decisions regarding requested alterations in the parent-time schedule;

f) Modify parent-time and/or custody on a temporary basis; and

g) Make any other decision relating to Taylor that petitioner and respondent are unable to resolve between them.

h) Respondent shall pay seventy-five percent and petitioner shall pay twenty-five percent of Dr. Hale's fees incurred from the date of her appointment as special master in this case.

14. Beginning with the month of September 2001, respondent shall pay to petitioner the sum of \$720 per month as child support with said payments being made one-half by the 5th and one-half by the 20th of each month. Said amount is based upon petitioner's gross income of \$2,209 per month and respondent's gross income of \$14,134 per month. Further, in the event Taylor attends private school, respondent shall pay any and all of Taylor's private school expenses.

15. Respondent shall maintain health insurance for Taylor as long as the same is available through his employment, and each party shall pay one-half of Taylor's portion of the premium for said insurance, together with one-half of all uninsured medical and dental expenses incurred on Taylor's behalf, pursuant to Utah Code 78-45-7.15.

16. Respondent shall maintain life insurance on his life in the face amount of at least \$100,000, naming Taylor the beneficiary thereon, until such time that child support terminates.

17. The parties shall share equally any work-related child care expenses incurred by either party. The party incurring the expense shall provide written verification of the cost and identity of the child care provider to the other party upon initial engagement and thereafter upon request.

18. Respondent shall pay to petitioner the sum of \$200.00 as his one-half share for the day care/pre-school expenses incurred by petitioner during the pendency of this matter.

19. Respondent shall pay to petitioner the sum of \$263.00, which is the interest penalty that petitioner incurred in regard to her taxes.

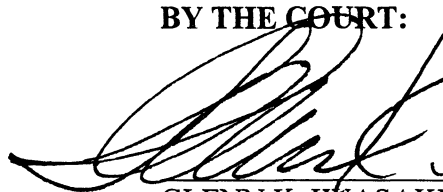
20. Petitioner is hereby awarded all of the personal property set forth in paragraph 24 of her Supplemental Proposed Findings of Fact, which is attached hereto as Exhibit "B" and incorporated herein by reference, including one-half of the videos relating to Taylor. However, based upon respondent's representation to the court that he no longer has possession of said items of personal property, the burden is on petitioner to show that, in fact, respondent does have any such item before respondent would be obligated to return the item to petitioner, except for one-half of all the photographs and videos relating to Taylor.

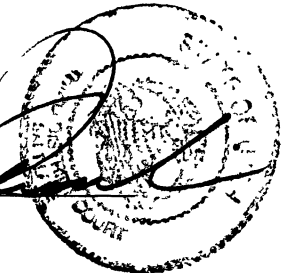
21. Petitioner shall be entitled to claim Taylor as a dependent for income tax purposes for the year 2001 and each and every odd year thereafter, and respondent shall be entitled to claim Taylor as a dependent for income tax purposes for the year 2002 and each and every even year thereafter.

22. In regard to an award of attorney's fees requested by petitioner, petitioner's counsel shall provide to the court an affidavit as to all of the attorneys fees that the petitioner has incurred, stating in said affidavit the reasonableness and necessity of the attorneys fees incurred. Respondent's counsel shall be allowed to respond to the fees affidavit, and the court thereafter shall make a determination in regard to awarding any attorneys fees to the petitioner based upon the financial need of petitioner, the ability of respondent to pay, and the reasonableness and necessity of the fees requested.

DATED this 8 day of July, 2002.

BY THE COURT:


GLENN K. IWASAKI
District Court Judge



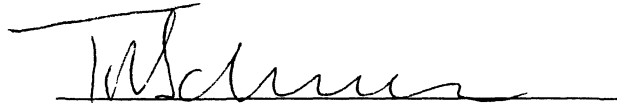
APPROVED AS TO FORM:

RICHARD S. NEMELKA
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April 2002, I caused a duplicate original of the foregoing DECREE OF PATERNITY to be faxed and mailed by United States mail, postage prepaid, to the following:

Richard S. Nemelka
NEMELKA & MANGRUM
7110 South Highland Drive
Salt Lake City, Utah 84121
Fax No.: 943-4744

A handwritten signature in black ink, appearing to read "Richard S. Nemelka", written over a horizontal line.

30-3-33. Advisory guidelines.

In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5, advisory guidelines are suggested to govern all parent-time arrangements between parents. These advisory guidelines include:

(1) parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution;

(2) the parent-time schedule shall be utilized to maximize the continuity and stability of the child's life;

(3) 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 parent-time schedule;

(4) the noncustodial parent shall pick up the child at the times specified and return the child at the times specified, and the child's regular school hours shall not be interrupted;

(5) the custodial parent shall have the child ready for parent-time 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;

(6) the court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but shall not diminish the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5;

(7) the court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time;

(8) neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule;

(9) 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;

(10) 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;

(11) each parent shall provide the other with his current address and telephone number within 24 hours of any change;

(12) each parent shall permit and encourage liberal telephone contact during reasonable hours and uncensored mail privileges with the child;

(13) parental care shall be presumed to be better care for the child than surrogate care and the

court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care;

(14) each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and

(15) 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.

History: C. 1953, 30-3-33, enacted by L. 1993, ch. 131, § 3; 1997, ch. 80, § 1; 2001, ch. 255, § 9.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, in the introductory paragraph and Subsection (6) added "and Section 30-3-35.5," deleted former Subsection (3) concerning the court's altering of visitation schedules, and redesignated the other subsections accordingly

The 2001 amendment, effective April 30, 2001, substituted "parent-time" for "visitation" and made stylistic changes

NOTES TO DECISIONS

Day care.

Subsection (13) does not entitle a noncustodial parent to provide day care but only suggests that the trial court encourage such an arrangement, so that when the trial court finds the noncustodial parent unfit to provide such services it has the discretion to deny the noncustodial parent's request to provide day care. *Childs v. Childs*, 967 P.2d 942 (Utah Ct. App. 1998), cert. denied, 982 P.2d 88 (Utah 1999)

Exhibit B

silverware, silver tea set, coffee table, end table, living room picture floral, two Waterford crystal vases, two large clay fish, two large pot vases, large Christmas tablecloth with matching glasses and dishes, large flower arrangement and vase in hallway, flower arrangement above bed in large bedroom two brand new formal dresses, a new negligee, black ski pants, and other items of Petitioner's personal clothing and effects, video tapes and books belonging to the minor child, Patrick, together with all of his personal property, clothing and effects that are still located in Las Vegas, Nevada, including a rocking horse that was made for Patrick by his grandmother. The chair and stool belonging to Taylor that was a gift to the Petitioner by another Flight Attendant, a portrait of Taylor that was obtained by the Petitioner, one-half of all the photographs, pictures and movies of the minor children which includes videos of Patrick prior to the birth of Taylor which are still in the possession of the Respondent.

Tab 2

PAIGE BIGELOW (6493)
KRUSE LANDA MAYCOCK & RICKS, LLC
Attorneys for Respondent
Eighth Floor, Bank One Tower
50 West Broadway
P. O. Box 45561
Salt Lake City, Utah 84145-0561
Telephone: (801) 531-7090

FILED DISTRICT COURT
Third Judicial District

APR 11 2005
SALT LAKE COUNTY
By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

KATHY LENAY HUISH,)	
	)	FINDINGS OF FACT AND
Petitioner,	)	CONCLUSIONS OF LAW
)	
vs.	)	Civil No. 994907668 PA
)	
GLEN FRANK MUNRO,	)	Judge Glenn K. Iwasaki
	)	Commissioner Thomas N. Arnett, Jr.
Respondent.)	

The above-entitled matter was tried to the Court on July 13, 14, 15, 16, 22, August 3, 11, 2, 19, 24, and September 15. Petitioner was present and represented by counsel, Grant W.P. Morrison and David Drake, and respondent was present and represented by counsel, Paige Bigelow. The Court, having heard the testimony of the witnesses, having reviewed the exhibits entered into evidence, having fully considered the evidence presented and the arguments of counsel, and being otherwise full informed in the premises, hereby enters the following Findings of Fact and Conclusions of Law.

7787

FINDINGS OF FACT

Grounds for Modification

1. A decree of paternity ("Decree") was entered in this case on July 8, 2002. The Decree incorporated the parties' stipulation entered on the record September 4, 2001.
2. In sum and substance, the Decree incorporates the recommendations of Dr. Carol Gage, who performed a custody evaluation in this case and submitted a report dated September 2000 and an updated report dated August 2001.
3. Dr. Gage's initial report recommended that the parties be awarded joint legal custody of their son, Taylor, now age 8, d.o.b. July 11, 1996, but noted that the dissension between the parties would need to decrease.
4. In the updated report, Dr. Gage reiterated her initial recommendation, but noted that the parties' difficulties had not improved, that the parties' ability to communicate had not improved, and that the parties remained unable to effectively communicate. Dr. Gage expressed hope that improvements would occur once the Decree was entered and the custody issues were resolved.
5. Dr. Gage's aspirations did not bear out, and the parties' ability to communicate did not improve. Dr. Gage testified at trial regarding her hopeful aspirations for the parties, "I was wrong."

6. As a result of the parties' ongoing failure of communication, lack of compromise, and inability to work together, Taylor has been exposed to high conflict and ongoing dissention between the parties.

7. For the foregoing reasons, the joint custody order in the parties' stipulated Decree is unworkable or inappropriate under existing circumstances. In accordance with Utah Code Ann. § 30-3-10.4, the court finds that the joint legal custody order should be dissolved and an order of sole legal custody entered. Further, in accordance with the principles set forth in Moody v. Moody, 715 P.2d 507 (Utah 1985), and Elmer v. Elmer, 776 P.2d 599 (Utah 1989), the Court finds that the unworkability of the joint custody order constitutes sufficient grounds to modify the order.

8. As an additional ground for modification, after entry of the parties' stipulated Decree, petitioner married and began making plans to relocate with the parties' child to Kwajalein, an atoll located thousands of miles from the child's primary residence established in the Decree, namely, Murray, Utah. Practically speaking, petitioner's intended move, and subsequent formal notification of such, precipitated respondent's petition to modify. Petitioner did not state her intention not to move to Kwajalein until the Court had taken evidence on the first day of trial and expressly requested that she declare her intentions one way or the other, so as to remove all ambiguity and to clarify the issues for the Court for the remainder of the trial. The Court finds that petitioner's planned relocation during the entire time that the petition to

modify was pending constitutes an additional change in circumstance that warrants modifying the custody provisions of the parties' Decree.

Best Interests of the Child

9. Petitioner and respondent are each good people who possess positive characteristics. Petitioner is attractive, engaging and intelligent. Respondent is detail-oriented and reliable. However, like oil and water, petitioner and respondent do not mix well together.

10. The Court does not take lightly its responsibility to craft a custody order that will be in Taylor's best interests. Taylor is doing well, though the Court cannot determine whether that is in spite of or because of the efforts of one or the other party or both parties. However, it is clear that the current custody order has resulted in a high conflict, high stress situation that is not good for Taylor and must change for Taylor's best interests.

11. The Court has considered several factors, including the factors set forth in Rule 4-903 of the Code of Judicial Administration, in determining custody. Where no findings are made with respect to a particular factor, the Court finds that the factor is not significant or weighty in this case.

12. With respect to the child's preference, the Court finds the evidence to be equivocal and, due to the child's young age, does not find this factor to be dispositive in this case.

13. With respect to the preference for keeping siblings together, the Court finds that there is an eight-year age difference between Taylor and his half-brother, Patrick, who is 16 years

old, and that the brothers have different fathers with whom they share time on different schedules. Therefore, while it is desirable for Taylor and Patrick to have continued contact with one another, and the Court supports the parties' efforts to arrange the boys' parent-time schedule to allow for continued contact, it is not necessary for custody of Taylor to be awarded to petitioner to this. The Court does not find this factor to be dispositive in this case.

14. The Court finds that both parties have shown a depth of desire for custody of Taylor.

15. The factors the Court finds to be of most importance in this case are as follows:

a. Which Parent Is Most Likely To Act In The Best Interest Of The Child, Including Allowing The Child Frequent And Continuing Contact With The Noncustodial Parent. The Court finds that petitioner has been unwilling to facilitate the joint custody order in the parties' stipulated Decree and that she is incapable of encouraging Taylor's relationship with respondent. Petitioner has exhibited a great degree of negativity toward petitioner. In this regard, the Court notes that many of petitioner's witnesses had a very low opinion of respondent, though they had little or no contact with him. Conversely, witnesses testifying in support of respondent did not display such negativity toward petitioner. Whereas respondent may have his opinion of petitioner, the Court finds that he is able to keep it to himself for Taylor's best interests, whereas petitioner is not able to do the same. Further, respondent has been and is amenable to Taylor sharing time with

petitioner, whereas petitioner is not amenable to Taylor sharing time with respondent and attempts to minimize and thwart respondent's contact with Taylor.

b. Emotional Stability. The Court finds that petitioner is changeable and lacks stability. The Court accepts Dr. Monica Christy's testimony, bolstered by her notes of interviews with petitioner during the custody evaluation ordered by the Court in this modification proceeding, which testimony was adamantly denied by petitioner, that petitioner stated she would move to Kwajalein whether or not custody of Taylor were awarded to her. Her change of position at trial evidences a high degree of changeability. Additionally, petitioner's decision, after a four-month courtship, to marry a man whose employment would require her to uproot Taylor from his home and from respondent to move thousands of miles away evidences some impulsivity and lack of planning. By contrast, respondent is less impulsive, less changeable, and is able to provide more stability for Taylor.

c. Compliance with Court Orders. The Court finds that respondent is more apt to abide by court orders than petitioner and to pay attention to and interpret the orders correctly. In this regard, the Court notes that petitioner has taken the position that her mother, Lenay Russell, was entitled to pick up Taylor from school on January 15, 2003, even though petitioner was in Florida and respondent was available to and did pick up Taylor. This position is clearly contrary to the provisions of the Decree. This and other positions taken by petitioner contrary to the provisions of the Decree have created undue

conflict that has adversely affected Taylor. By contrast, respondent has abided by the Decree and by the court's orders and has interpreted them correctly, whether he likes the them or not.

16. Based on the foregoing, the Court finds that it is in Taylor's best interest for sole legal and physical custody of Taylor to be awarded to respondent, subject to petitioner's rights of parent-time as set forth hereafter. Transition should take place October 1, 2004.

17. So long as petitioner maintains her primary residence within the counties of Summit, Davis, Tooele, Utah, Salt Lake or Weber, respondent should maintain Taylor's primary residence in one of the foregoing counties in the State of Utah.

18. Commencing October 1, 2004, respondent should enroll Taylor in the public school in respondent's Park City neighborhood, or at respondent's option, he should select a private school for Taylor that is accessible to both petitioner's and respondent's residences.

19. Respondent should notify petitioner within 24 hours of receiving notice of all significant school, social, sports, and community functions in which Taylor is participating or being honored, and petitioner should be entitled to attend and participate fully.

20. Petitioner should have access directly to all of Taylor's school reports and medical records.

21. The parties should each notify the other immediately in the event of a medical emergency involving Taylor.

22. The parties should each provide the other with his or her current residential address, telephone number and e-mail address within 24 hours of any change.

23. As sole custodial parent, respondent should have final say in the event the parties disagree on any issue pertaining to Taylor, pursuant to all statutory and guideline authority of a sole custodial parent. Upon motion, the court may appoint a special master if warranted in the future, but the court is not appointing a special master at this time.

24. Because respondent is an airline pilot and his schedule changes month-to-month, the Court will not establish a set parent-time schedule for petitioner. However, the Court urges respondent to allow liberal parent-time to petitioner, consisting of total time, including surrogate care time and holiday time, of approximately 40 percent during the school year and 50 percent during the summer, and to support and encourage the familial bonds that Taylor has with petitioner and with petitioner's family.

25. In the absence of an agreement otherwise between the parties, petitioner's parent-time with Taylor should take place in accordance with the following provisions:

a. Regular monthly schedule. Petitioner should be entitled to designate three consecutive days per month in the months of September through May and five consecutive days per month in the months of June through August as her parent-time. This time should be in addition to her surrogate care time set forth hereafter. If a day petitioner designates is a school day, the day should commence when school lets out and ends the following day when school commences, or if the following day is not a school

day, at 12 o'clock noon. If a day petitioner designates is not a school day, it should commence at 12 o'clock noon and end the following day at 12 o'clock noon, or if the following day is a school day, when school commences. On school days, petitioner should ensure that Taylor is picked up from and delivered to school in a timely manner, and that his homework is completed.

b. Surrogate care. When respondent is flying or otherwise unavailable to care for Taylor for a period exceeding 4 hours, respondent should notify petitioner so that she may have the first opportunity to provide surrogate care for Taylor during such times. Respondent should notify petitioner when he will be unavailable to care for Taylor as soon as he knows of it, and as to those times that he will be flying, he should provide his flight schedule for the ensuing month to petitioner by the 18th day of each month. Petitioner should notify respondent within 24 hours of receiving notice from him should she be unavailable to provide surrogate care for Taylor so that he may make alternate arrangements for child care. If petitioner does not notify respondent within 24 hours of receiving notice from him that she will be unavailable to provide surrogate care for Taylor, then it should be presumed that petitioner will be responsible to provide surrogate care for Taylor, and in the event petitioner later declines to do so, she should be responsible to pay child care costs incurred by respondent for that time.

c. Holiday schedule.

i. Respondent should be entitled to the following holidays in years ending in an even number, and petitioner should be entitled to the following holidays in years ending in an odd number:

1. Taylor's birthday on the day before or after the actual birthday beginning at 3:00 p.m. until 9:00 p.m.;
2. Human Rights day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
3. Spring Break or Easter holiday beginning at 6:00 p.m. on the day that school lets out for the holiday until 7:00 p.m. on the Sunday before school resumes;
4. Memorial Day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
5. July 24th beginning at 6:00 p.m. on the day before the holiday until 11:00 p.m. on the holiday;
6. Veterans Day holiday beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday; and
7. The first half of the Christmas school vacation (defined as the time period beginning on the evening Taylor gets out of school for the Christmas break until the evening before he returns to school, except that

if Christmas Day marks the halfway point, then the transition should take place the following day);

ii. Respondent should be entitled to the following holidays in years ending in an odd number, and petitioner should be entitled to the following holidays in years ending in an even number:

1. Taylor's birthday on the actual birthday beginning at 3:00 p.m. until 9:00 p.m.;
2. Presidents' Day beginning at 6:00 p.m. on Friday until 7:00 p.m. on Monday;
3. July 4th beginning at 6:00 p.m. the day before the holiday until 11:00 p.m. on the holiday;
4. Labor Day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
5. The fall school break, if applicable, commonly known as UEA weekend, beginning at 6:00 p.m. on Wednesday until Sunday at 7:00 p.m.;
6. Columbus Day beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday;
7. Thanksgiving holiday beginning Wednesday at 7:00 p.m. until Sunday at 7:00 p.m.;

8. The second half of the Christmas school vacation (defined as the time period beginning on the evening Taylor gets out of school for the Christmas break until the evening before he returns to school, except that if Christmas Day marks the halfway point, then the transition should take place the following day);

iii. Respondent should be entitled to Father's Day every year beginning at 9:00 a.m. until 7:00 p.m. on the holiday. Petitioner should be entitled to Mother's Day every year beginning at 9:00 a.m. until 7:00 p.m. on the holiday.

iv. The holiday schedule supersedes the regular monthly schedule and uninterrupted time.

d. Uninterrupted time. The parties should each be entitled to two weeks of uninterrupted time with Taylor during Taylor's summer break from school. The parties should each notify the other of the uninterrupted time he or she plans to take at least 45 days in advance. Neither party should schedule their uninterrupted time to conflict with the other party's holiday time. Uninterrupted time supersedes the regular monthly schedule, but does not supersede holiday time.

e. Family functions. Each party should make Taylor available to attend family funerals, family weddings, family reunions, important ceremonies, and events of similar significance in the life of the child or the party. Each party should notify the other

of any such family function that they would like Taylor to attend as soon as they know of it.

f. Communications. When the child is in his or her custody, the parties should each permit and encourage, during reasonable hours, reasonable and uncensored communications between the child and the other party, including mail, e-mail, and telephone communications.

g. Transportation. Petitioner should be responsible to pick up Taylor from school or respondent's home, whichever is applicable, at the commencement of her parent-time or surrogate care time, and respondent should ensure that Taylor is ready to go with petitioner. Respondent should be responsible to pick up Taylor from school or petitioner's home, whichever is applicable, at the conclusion of petitioner's parent-time or surrogate care time, and petitioner should ensure that Taylor is ready to go with respondent. On those occasions when respondent is able to drop off Taylor at petitioner's home on his way to the airport at the commencement of petitioner's parent-time or surrogate care time, he should notify petitioner and she should ensure that she or her mother is home to receive Taylor at the time designated.

26. Until such time as petitioner notifies respondent in writing of an alternate e-mail address, respondent should be deemed to have met notification requirements set forth herein upon e-mailing the required notice to petitioner at the following address:

kathylsawyer@msn.com. Until such time as respondent notifies petitioner in writing of an

alternate e-mail address, petitioner should be deemed to have met notification requirements set forth herein upon e-mailing the required notice to respondent at the following address: megadogdriver@peoplepc.com. The parties are not restricted to e-mail communication and may communicate with one another by telephone, in person, or by any other method that works for them; however, notifications should be in writing and e-mailed to the other party. Both parties should take care to restrict their communications to matters pertaining to Taylor, and should refrain from making uncivil or derogatory comments to one another.

27. Petitioner is currently on a voluntary leave of absence from Delta Air Lines, where she is employed as a flight attendant. She was earning \$41,630 per year, or \$3,469 per month, before taking her voluntary leave commencing January 2003. She has stipulated to income being imputed to her in this amount. For purposes of calculating child support and pursuant to Utah Code Ann. § 78-45-7.5(6) & (7), the Court finds that petitioner's gross monthly income is \$3,469.

28. Respondent is employed as an airline pilot for Delta Air Lines. His annual gross income has been \$197,680, or \$16,473 per month. It is expected that he will be taking a significant pay cut within the near future due to Delta Air Lines' threatened bankruptcy. However, the Court is unable to determine at this point what respondent's income will be after the pay cut and therefore declines to make such findings. Respondent may petition the court to modify child support, if appropriate, when the amount of his pay cut is known. For purposes of

calculating child support, the Court finds that respondent's gross monthly income is \$16,473 per month.

29. The Court anticipates that, between petitioner's parent-time and surrogate care, Taylor will spend approximately 40 percent of his time with petitioner, or 146 overnights per year. Therefore, the joint physical custody worksheet should be used to calculate child support, setting the number of overnights with petitioner at 146 and the number of overnights with respondent at 219. The Court emphasizes that the use of the joint physical custody worksheet is for child support purposes only, and should not be deemed to equate to an award of joint physical custody to petitioner. The Court reiterates that, in accordance with Taylor's best interests, respondent should be awarded sole legal and physical custody of Taylor.

30. Based on the parties' incomes and the foregoing time distribution, commencing October 1, 2004, respondent should pay base child support to petitioner in the amount of \$9 per month, as set forth on the child support obligation worksheet attached hereto as Exhibit "A". In the event petitioner does not provide surrogate care for Taylor as anticipated, base child support may be modified.

31. Respondent should maintain health insurance for Taylor as long as the same is available to him at reasonable cost, and each party should pay one-half of Taylor's portion of the premium for said insurance. Commencing January 1, 2005, said amount will be \$115 per month and petitioner's one-half share will be \$58 per month, for a total child support obligation owing from petitioner to respondent in the amount of \$49 per month, calculated pursuant to the

insurance adjustment worksheet attached hereto. If petitioner is able to obtain equivalent or superior health insurance coverage for Taylor for a lower monthly premium, she should have the option of doing so. If petitioner is able to obtain such coverage for Taylor, she should provide verification thereof to respondent, whereupon respondent's share of the coverage maintained by petitioner should be offset against the amount petitioner owes to respondent for her share of the coverage maintained by respondent.

32. The parties should each pay one-half of all uninsured medical expenses incurred for Taylor, including co-pays and deductibles. Medical expenses should be understood to include, but not be limited to, dental, orthodontic, optometric, ophthalmologic, and mental health expenses. The party incurring the expense should provide verification thereof within 30 days of payment, and the other party should pay his or her one-half share within 30 days thereafter.

33. Except as set forth in paragraph 25.b. above, petitioner should pay one-half of the work-related child care expenses incurred by respondent for Taylor. Respondent should provide written verification of the cost and identity of the child care provider to petitioner upon initial engagement and thereafter upon request.

34. So long as petitioner is current in her total child support obligation as set forth in paragraph 28 above by December 31, petitioner should be entitled to claim Taylor as a dependent for income tax purposes in odd-numbered years. Petitioner should not be entitled to claim the dependency exemption in any year she is not current in her child support obligation. Respondent should be entitled to claim Taylor as a dependent for income tax purposes in even-numbered

years and any year that petitioner is not entitled to claim it. In any year that either party is substantially unemployed or otherwise cannot benefit from claiming the dependency exemption, without consideration of any subsequent spouses' income, the other party should be entitled to claim the dependency exemption for that year.

35. It is fair and equitable for the petitioner to pay one-third and for respondent to pay two-thirds of the cost of the custody evaluation ordered by the court to be performed by Dr. Monica Christy in this modification proceeding, including Dr. Christy's trial fees. Because respondent has already advanced the entire fee to Dr. Christy, petitioner should pay her one-third share directly to respondent. Said payment should be made in full within 60 days of the entry of these Findings and Conclusions and the Order Modifying the Decree of Paternity.

36. The parties' decree of paternity does not allocate responsibility between the parties for payment of the 2000-2001 custody evaluation performed by Dr. Carol Gage. The overall cost of that evaluation was approximately \$8,500, of which respondent has paid \$7,100. It is fair and equitable for petitioner to be responsible for the remaining balance owed, if any, which she should pay directly to Dr. Gage.

37. It is fair and equitable for petitioner to be responsible for her own attorney fees incurred in the protracted litigation that has ensued between the parties since entry of the Decree of Paternity.

Based upon the preceding Findings of Fact, the Court now enters its:

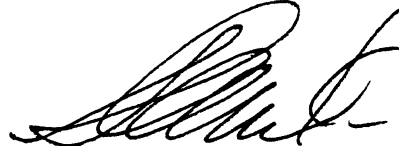
CONCLUSIONS OF LAW

1. An order modifying the parties' Decree of Paternity should enter herein and should supersede the Decree of Paternity.

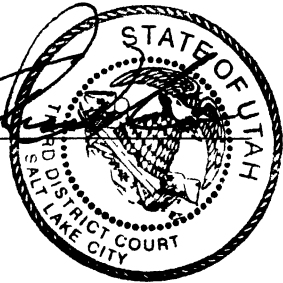
2. Said order should award custody and parent-time and allocate financial obligations between the parties as set forth in the foregoing Findings of Fact.

DATED this 11 day of April, 2005.

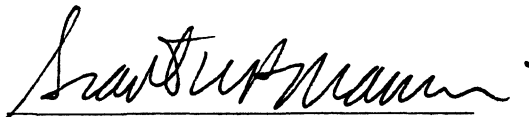
BY THE COURT:



GLENN K. IWASAKI
District Court Judge



APPROVED AS TO FORM:



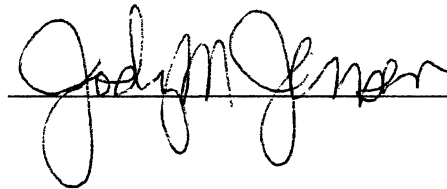
GRANT W.P. MORRISON
Attorneys for Petitioner



CERTIFICATE OF SERVICE

I hereby certify that on this 1 day of April, 2005, I caused a duplicate original of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be mailed by United States mail, postage pre-paid, to the following:

Grant W.P. Morrison
David O. Drake
MORRISON & MORRISON, LC
352 East 900 South
Salt Lake City, UT 84111



Tab 3

IMAGED

FILED DISTRICT COURT
Third Judicial District

PAIGE BIGELOW (6493)
KRUSE LANDA MAYCOCK & RICKS, LLC
Attorneys for Respondent
Eighth Floor, Bank One Tower
50 West Broadway
P. O. Box 45561
Salt Lake City, Utah 84145-0561
Telephone: (801) 531-7090

APR 11 2005

By S. S. S. SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

KATHY LENAY HUISH,)	
Petitioner,	)	ORDER MODIFYING DECREE OF
	)	PATERNITY
vs.	)	Civil No. 994907668 PA
GLEN FRANK MUNRO,	)	Judge Glenn K. Iwasaki
Respondent.	)	Commissioner Thomas N. Arnett, Jr.

The above-entitled matter was tried to the Court on July 13, 14, 15, 16, 22, August 3, 11, 2, 19, 24, and September 15. Petitioner was present and represented by counsel, Grant W.P. Morrison and David Drake, and respondent was present and represented by counsel, Paige Bigelow. The Court, having heard the testimony of the witnesses, having reviewed the exhibits entered into evidence, having fully considered the evidence presented and the arguments of counsel, and having previously entered its Findings of Fact and Conclusions of Law, now hereby

ORDERS, ADJUDGES AND DECREES as follows:

1. The parties' Decree of Paternity is hereby modified and superseded by this Order.

Order Modifying Decree of Paternity @J



JD16973794
994907668 MUNRO, GLEN FRANK

7460

2. Sole legal and physical custody of Taylor is awarded to respondent, subject to petitioner's rights of parent-time as set forth hereafter. Transition shall take place October 1, 2004.

3. So long as petitioner maintains her primary residence within the counties of Summit, Davis, Tooele, Utah, Salt Lake or Weber, respondent shall maintain Taylor's primary residence in one of the foregoing counties in the State of Utah.

4. Commencing October 1, 2004, respondent shall enroll Taylor in the public school in respondent's Park City neighborhood, or at respondent's option, he may select a private school for Taylor that is accessible to both petitioner's and respondent's residences.

5. Respondent shall notify petitioner within 24 hours of receiving notice of all significant school, social, sports, and community functions in which Taylor is participating or being honored, and petitioner shall be entitled to attend and participate fully.

6. Petitioner shall have access directly to all of Taylor's school reports and medical records.

7. The parties shall each notify the other immediately in the event of a medical emergency involving Taylor.

8. The parties shall each provide the other with his or her current residential address, telephone number and e-mail address within 24 hours of any change.

9. As sole custodial parent, respondent shall have final say in the event the parties disagree on any issue pertaining to Taylor, pursuant to all statutory and guideline authority of a

sole custodial parent. Upon motion, the court may appoint a special master if warranted in the future, but the court is not appointing a special master at this time.

10. Because respondent is an airline pilot and his schedule changes month-to-month, the Court will not establish a set parent-time schedule for petitioner. However, the Court urges respondent to allow liberal parent-time to petitioner, consisting of total time, including surrogate care time and holiday time, of approximately 40 percent during the school year and approximately 50 percent during the summer, and to support and encourage the familial bonds that Taylor has with petitioner and with petitioner's family.

11. In the absence of an agreement otherwise between the parties, petitioner's parent-time with Taylor shall take place in accordance with the following provisions:

a. Regular monthly schedule. Petitioner shall be entitled to designate three consecutive days per month in the months of September through May and five consecutive days per month in the months of June through August as her parent-time. This time shall be in addition to her surrogate care time set forth hereafter. If a day petitioner designates is a school day, it shall commence when school lets out and end the following day when school commences, or if the following day is not a school day, at 12 o'clock noon. If a day petitioner designates is not a school day, it shall commence at 12 o'clock noon and end the following day at 12 o'clock noon, or if the following day is a school day, when school commences. On school days, petitioner shall ensure that Taylor

is picked up from and delivered to school in a timely manner, and that his homework is completed.

b. Surrogate care. When respondent is flying or otherwise unavailable to care for Taylor for a period exceeding 4 hours, respondent shall notify petitioner so that she may have the first opportunity to provide surrogate care for Taylor during such times. Respondent shall notify petitioner when he will be unavailable to care for Taylor as soon as he knows of it, and as to those times that he will be flying, he shall provide his flight schedule for the ensuing month to petitioner by the 18th day of each month. Petitioner shall notify respondent within 24 hours of receiving notice from him should she be unavailable to provide surrogate care for Taylor so that he may make alternate arrangements for child care. If petitioner does not notify respondent within 24 hours of receiving notice from him that she will be unavailable to provide surrogate care for Taylor, then it shall be presumed that petitioner will be responsible to provide surrogate care for Taylor, and in the event petitioner later declines to do so, she shall be responsible to pay child care costs incurred by respondent for that time.

c. Holiday schedule.

i. Respondent shall be entitled to the following holidays in years ending in an even number, and petitioner shall be entitled to the following holidays in years ending in an odd number:

1. Taylor's birthday on the day before or after the actual birthday beginning at 3:00 p.m. until 9:00 p.m.;
2. Human Rights day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
3. Spring Break or Easter holiday beginning at 6:00 p.m. on the day that school lets out for the holiday until 7:00 p.m. on the Sunday before school resumes;
4. Memorial Day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
5. July 24th beginning at 6:00 p.m. on the day before the holiday until 11:00 p.m. on the holiday;
6. Veterans Day holiday beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday; and
7. The first half of the Christmas school vacation (defined as the time period beginning on the evening Taylor gets out of school for the Christmas break until the evening before he returns to school, except that if Christmas Day marks the halfway point, then the transition shall take place the following day);

ii. Respondent shall be entitled to the following holidays in years ending in an odd number, and petitioner shall be entitled to the following holidays in years ending in an even number:

1. Taylor's birthday on the actual birthday beginning at 3:00 p.m. until 9:00 p.m.;
2. Presidents' Day beginning at 6:00 p.m. on Friday until 7:00 p.m. on Monday;
3. July 4th beginning at 6:00 p.m. the day before the holiday until 11:00 p.m. on the holiday;
4. Labor Day beginning at 6:00 p.m. on Friday until Monday at 7:00 p.m.;
5. The fall school break, if applicable, commonly known as UEA weekend, beginning at 6:00 p.m. on Wednesday until Sunday at 7:00 p.m.;
6. Columbus Day beginning at 6:00 p.m. the day before the holiday until 7:00 p.m. on the holiday;
7. Thanksgiving holiday beginning Wednesday at 7:00 p.m. until Sunday at 7:00 p.m.;
8. The second half of the Christmas school vacation (defined as the time period beginning on the evening Taylor gets out of school for

2811

the Christmas break until the evening before he returns to school, except that if Christmas Day marks the halfway point, then the transition should take place the following day);

iii. Respondent shall be entitled to Father's Day every year beginning at 9:00 a.m. until 7:00 p.m. on the holiday. Petitioner shall be entitled to Mother's Day every year beginning at 9:00 a.m. until 7:00 p.m. on the holiday.

iv. The holiday schedule supersedes the regular monthly schedule and uninterrupted time.

d. Uninterrupted time. The parties shall each be entitled to two weeks of uninterrupted time with Taylor during Taylor's summer break from school. The parties shall each notify the other of the uninterrupted time he or she plans to take at least 45 days in advance. Neither party shall schedule their uninterrupted time to conflict with the other party's holiday time. Uninterrupted time supersedes the regular monthly schedule, but does not supersede holiday time.

e. Family functions. Each party shall make Taylor available to attend family funerals, family weddings, family reunions, important ceremonies, and events of similar significance in the life of the child or the party. Each party shall notify the other of any such family function that they would like Taylor to attend as soon as they know of it.

f. Communications. When the child is in his or her custody, the parties shall each permit and encourage, during reasonable hours, reasonable and uncensored

communications between the child and the other party, including mail, e-mail, and telephone communications.

g. Transportation. Petitioner shall be responsible to pick up Taylor from school or respondent's home, whichever is applicable, at the commencement of her parent-time or surrogate care time, and respondent shall ensure that Taylor is ready to go with petitioner. Respondent shall be responsible to pick up Taylor from school or petitioner's home, whichever is applicable, at the conclusion of petitioner's parent-time or surrogate care time, and petitioner shall ensure that Taylor is ready to go with respondent. On those occasions when respondent is able to drop off Taylor at petitioner's home on his way to the airport at the commencement of petitioner's parent-time or surrogate care time, he shall notify petitioner and petitioner shall ensure that either she or her mother is home to receive Taylor at the time designated.

12. Until such time as petitioner notifies respondent in writing of an alternate e-mail address, respondent shall be deemed to have met notification requirements set forth herein upon e-mailing the required notice to petitioner at the following address: kathylsawyer@msn.com. Until such time as respondent notifies petitioner in writing of an alternate e-mail address, petitioner shall be deemed to have met notification requirements set forth herein upon e-mailing the required notice to respondent at the following address: megadogdriver@peoplepc.com. The parties are not restricted to e-mail communication and may communicate with one another by telephone, in person, or by any other method that works for them; however, notifications shall be

made in writing and e-mailed to the other party. Both parties shall restrict their communications to matters pertaining to Taylor, and shall refrain from making uncivil or derogatory comments to one another.

13. Respondent shall pay base child support to petitioner in the amount of \$9 per month, calculated in accordance with the joint custody worksheet attached hereto as Exhibit "A" and based on income imputed to petitioner in the amount of \$3,469 per month, income to respondent in the amount of \$16,473 per month, and Taylor spending approximately 40 percent of his time with petitioner – between petitioner's parent-time and surrogate care – or 146 overnights per year. In the event petitioner does not provide surrogate care for Taylor as anticipated, base child support may be modified.

14. Respondent shall maintain health insurance for Taylor as long as the same is available to him at reasonable cost, and each party shall pay one-half of Taylor's portion of the premium for said insurance. Commencing January 1, 2005, said amount will be \$115 per month and petitioner's one-half share will be \$58 per month, for a total child support obligation owing from petitioner to respondent in the amount of \$49 per month, calculated pursuant to the insurance adjustment worksheet attached hereto as Exhibit "A". If petitioner is able to obtain equivalent or superior health insurance coverage for Taylor for a lower monthly premium, she shall have the option of doing so. If petitioner is able to obtain such coverage for Taylor, she shall provide verification thereof to respondent, whereupon respondent's share of the coverage

maintained by petitioner shall be offset against the amount petitioner owes to respondent for her share of the coverage maintained by respondent.

15. The parties shall each pay one-half of all uninsured medical expenses incurred for Taylor, including co-pays and deductibles. Medical expenses shall be understood to include, but not be limited to, dental, orthodontic, optometric, ophthalmologic, and mental health expenses. The party incurring the expense shall provide verification thereof within 30 days of payment, and the other party shall pay his or her one-half share within 30 days thereafter.

16. Except as set forth in paragraph 11.b. above, petitioner shall pay one-half of the work-related child care expenses incurred by respondent for Taylor. Respondent shall provide written verification of the cost and identity of the child care provider to petitioner upon initial engagement and thereafter upon request.

17. So long as petitioner is current in her total child support obligation as set forth in paragraph 28 above by December 31, petitioner shall be entitled to claim Taylor as a dependent for income tax purposes in odd-numbered years. Petitioner shall not be entitled to claim the dependency exemption in any year she is not current in her child support obligation. Respondent shall be entitled to claim Taylor as a dependent for income tax purposes in even-numbered years and any year that petitioner is not entitled to claim it. In any year that either party is substantially unemployed or otherwise cannot benefit from claiming the dependency exemption, without consideration of any subsequent spouses' income, the other party shall be entitled to claim the dependency exemption for that year.


18. Petitioner shall pay one-third and respondent shall pay two-thirds of the cost of the custody evaluation ordered by the court to be performed by Dr. Monica Christy in this modification proceeding, including Dr. Christy's trial fees. Because respondent has already advanced the entire fee to Dr. Christy, petitioner shall pay her one-third share directly to respondent. Said payment shall be made in full within 60 days of the entry of this Order.

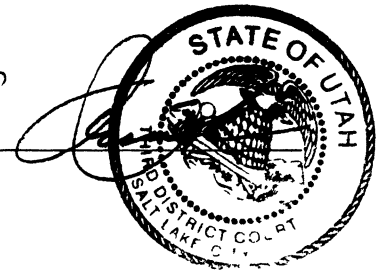
19. The parties' decree of paternity does not allocate responsibility between the parties for payment of the 2000-2001 custody evaluation performed by Dr. Carol Gage. The overall cost of that evaluation was approximately \$8,500, of which respondent has paid \$7,100. Petitioner shall pay the remaining balance owed, if any, directly to Dr. Gage.

20. The parties shall each be solely responsible for their own attorney fees incurred in this modification proceeding.

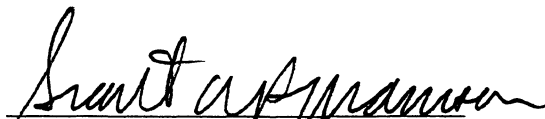
DATED this 11 day of April, 2005.

BY THE COURT:


GLENN K. IWASAKI
District Court Judge



APPROVED AS TO FORM:

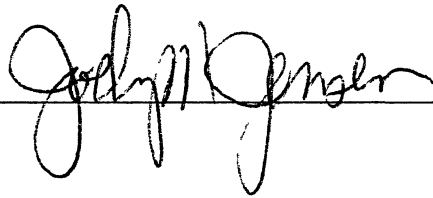

GRANT W.P. MORRISON
Attorneys for Petitioner

25814

CERTIFICATE OF SERVICE

I hereby certify that on this 1 day of April, 2005, I caused a duplicate original of the foregoing **ORDER MODIFYING DECREE OF PATERNITY** to be mailed by United States mail, postage pre-paid, to the following:

Grant W.P. Morrison
David O. Drake
MORRISON & MORRISON, LC
352 East 900 South
Salt Lake City, UT 84111



Tab 4

KRUSE, LANDA & MAYCOCK, L.L.C.

EIGHTH FLOOR, BANK ONE TOWER
50 WEST BROADWAY (300 SOUTH)
SALT LAKE CITY, UTAH 84101-2034

JAMES R. KRUSE
ELLEN MAYCOCK
DAVID R. KING
LYNDON L. RICKS
JODY L. WILLIAMS
STEVEN G. LOOSLE
RICHARD C. TAGGART
PAIGE BIGELOW
KEVIN TIMKEN
KRISTIN L. ZIMMERMAN

MAILING ADDRESS
Post Office Box 45561
Salt Lake City, Utah 84145-0561

TELEPHONE (801) 531-7090
TELECOPY (801) 531-7091

WRITER'S VOICE MAIL
EXT226

WRITER'S E-MAIL
pbigelow@klmlaw.com

May 7, 2001

VIA FACSIMILE & U.S. MAIL

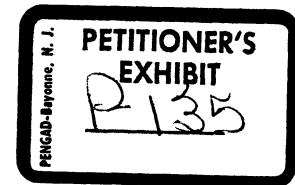
Richard S. Nemelka, Esq.
NEMELKA & MANGRUM
7110 South Highland Drive
Salt Lake City, Utah 84121
Fax No: 943-4744

RE: *Huish v. Munro*

Dear Dick:

I have telephoned you several times since the hearing on Wednesday May 2, but I have been unable to connect with you. With respect to Commissioner Arnett's sua sponte appointment of Valerie Hale as special master in this case, you need to be aware that we had recently contacted Dr. Hale to be an expert witness regarding custody. We have disclosed this on our interrogatory responses so I am assuming that you were aware of it. Our involvement with Dr. Hale has not been extensive, but she indicates that she has spoken with Dr. Gage and with Dr. Davies. She has not spoken with Glen. She has spoken with me two or three times. Please advise at once whether you will object to Dr. Hale acting as special master based on this disclosure.

Because we do not have an agreed upon access schedule for May, I believe it is imperative that a decision be made quickly regarding who will be acting as special master, so that the May access schedule can be established by that individual. Therefore, I am asking that you respond affirmatively stating you or your client's objection, if any, on or before Wednesday May 9. If I hear nothing from you, I will assume that there is no objection and will prepare the order accordingly and forward it to Dr. Hale, together with the information that she needs to prepare the May schedule.



KRUSE, LANDA & MAYCOCK, L.L.C.

May 7, 2001

Page 2

I would like to state my personal belief that Dr. Hale could be a very beneficial asset to these parties in helping them work through conflict and act in Taylor's best interest. It would appear that Commissioner Arnett shares this belief.

Very truly yours,

KRUSE, LANDA & MAYCOCK, L.L.C.

A handwritten signature in black ink, appearing to read "Paige Bigelow". The signature is fluid and cursive, with a large initial "P" and "B".

Paige Bigelow

PB:ta

cc: Glen Munro

Tab 5

JUN 13 2001

Valerie Hale, Ph.D.
CLINICAL PSYCHOLOGIST

FILED

June 13, 2001

Commissioner Thomas N. Arnett
450 South State
P.O. Box 1860
SLC, UT 84114-1860

RE: Case #994907668 Huish v. Munro

Dear Commissioner Arnett,

I have received the Court's Order that appoints me as Special Master in the
aforementioned matter. I wanted to clarify my status in this case.

I was contacted by Paige Bigelow on April 6, 2001 to provide an opinion about the
Custody Evaluation performed by Carol Gage in August of 2000.

I have never interviewed either parent, but have spoken with both attorneys.

I feel prepared to serve as Special Master in this case, as long as all parties are aware that
I was initially contacted by Ms. Bigelow to review the Custody Evaluation.

Sincerely,

Valerie Hale, Ph.D.
Clinical Psychologist

VH/dap

CC: Paige Bigelow
Richard Nemelka



Tab 6

Special Master Services Procedures Agreement Valerie Hale, Ph.D.

Carefully read the entire document and write your initials in the space to the left of each of the items to affirm that you have read, understood, and agree to the conditions of the agreement. Signing this document confirms that you and your attorney understand my policies as well as my expectations for you.

1. KH This agreement is between Valerie Hale, Ph.D. and Kathy Hines (parent).
2. KH I have read the information sheet: *Special Master Information Sheet* provided to me by Dr. Hale.
3. KH I understand that Dr. Hale will usually begin by gathering information about me and about my family. This will usually consist of the following steps:
 - Interviews of parents, including stepparents, alone.
 - Interviews of children without parents present (usually for children three and older).
 - Review of any and all custody, visitation or psychological evaluations
 - Review of all medical, psychiatric and other records for all parties.
 - Review of available court documents including pleadings, depositions and answers to interrogatories, as well as other available records.
4. KH I understand that in the course of working with Dr. Hale as the Special Master, she may determine that the following is needed:
 - Interviews with teachers, therapists, physicians, neighbors, employers, friends or others.
 - Department of Family Services involvement in the case.
 - Random drug and alcohol testing of one or both parents.
 - Referral to another professional for specialized testing if this information is needed and if Dr. Hale is unable to obtain it herself. This could include neuro-psychological or psychosocial testing (elaborated in #15 below).
5. KH I understand that Dr. Hale will be following a court order which determines her specific authority. I understand that it is usual for her decisions to be as effective as court orders when made until she is excused by the judge from serving in the position as Special Master.
6. KH I understand that Dr. Hale reports directly to the Court, but also communicates with all attorneys, evaluators, therapists and other professionals involved.
7. KH I understand that there is no confidentiality guarantee for any party obtaining Special Master services. I know that all information discovered by the Special Master, including her assessment of the parties' behavior and situation, will be reported to the court as well as to other professionals involved in this matter and will ultimately be used in determining the child(ren)'s best interests in the context of the Special Master role.
8. KH I understand that I must immediately sign release forms that will allow other professionals to communicate with Dr. Hale. These professionals include attorneys, custody and/or visitation evaluators, psychotherapists, physicians, social workers, teachers, school officials, law enforcement agencies and others who would require a written release before divulging information about me or my child(ren) to Dr. Hale.
9. KH I understand that by signing this agreement, I give Dr. Hale permission to communicate information to the attorneys, the other parties in the litigation and to other professionals who have a need to know, for as long as she deems necessary.

10. *KH* I understand that I must agree to provide all documents requested by Dr. Hale, including but not limited to the following: medical records, psychological records, previous psychological evaluations, school records, court documents, police reports, criminal background check, letters, diaries, journals, police reports or court papers. I understand that any document, tape or video recordings or other materials I submit will not be returned and so may provide copies of these materials if needed.

11. *KH* I understand that Dr. Hale will not review illegally obtained information, no matter how important it is to my case. If I have a question about submitting something for Dr. Hale's review, I will consult my attorney.

12. *KH* I understand that Dr. Hale may consult with other professionals about the content of my case if she sees fit to do so.

13. *KH* I understand that it is important for me to keep my scheduled appointments and that missed appointments could be interpreted as a sign that I am being uncooperative. I understand that true emergencies which make it impossible for me to attend my appointment or to cancel in a timely manner need to be clarified as soon as possible with Dr. Hale. I understand that issues of transportation, work schedule, day care difficulties and the like are not considered emergencies.

14. *KH* I understand that all allegations of abuse, neglect or substance use/abuse will be taken seriously and investigated. I also understand that false allegations reflect poorly on the person who made them and may impact Dr. Hale's decisions made about my case.

15. *KH* I understand that Dr. Hale reserves the right to request additional testing if she requires information that is presently unavailable, and/or outside of her scope of practice to obtain. This includes but is not limited to the right to request random drug and alcohol testing, neuro-psychological testing, psychosexual testing, educational and intelligence testing and medical evaluation. The decision to implement additional testing if needed is at Dr. Hale's discretion. The party responsible for the Special Master costs will pay the costs of such additional testing. Payments of these costs are to be remitted directly to the consulting professional.

16. *KH* I understand that Dr. Hale does not release raw test data that she has gathered, or that she possesses, to persons who are unqualified to interpret it, as directed by the American Psychological Association Ethical Code. Therefore, if such information is requested, I agree to allow Dr. Hale to release any such specified data to another psychologist or other qualified professional, *and not directly to me or to my attorney.*

17. *KH* I understand that Dr. Hale must have access to all immediate family members (the children and their parents) for as many interview and consultation sessions as she deems necessary. I understand that appointments with Dr. Hale take precedence over any established visitation schedule with the children that is in place, although Dr. Hale will make efforts to accommodate such a schedule if possible.

18. *KH* I understand that Dr. Hale must be free to contact parties outside the litigation, such as clergy, friends, family members, neighbors, employers or others who may have useful information. I give permission for such contact to take place.

19. *KH* I understand that Dr. Hale's role as the Special Master is very specific and is outlined by my court order which I have attached. I have discussed Dr. Hale's duties and limitations of authority with my attorney. I understand that Dr. Hale is not a judge, a custody evaluator, a therapist or a mediator. Instead, I understand that Dr. Hale is the person selected by the Court to make specific decisions relating to my case. I understand that the specifics of such decisions are outlined in my court order.

20. KSH I understand that Dr. Hale will determine the frequency and duration of all Special Master counseling appointments. I also understand that while the scheduling of appointment times is not flexible, although Dr. Hale will make efforts to accommodate my schedule when possible.
21. KSH I understand that if Dr. Hale determines that she cannot continue to serve as the Special Master for any reason, she will ask the Court to release her from her appointment and will continue to be held harmless for duties provided as Special Master.
22. I understand the *Special Master Financial Agreement* provided by Dr. Hale and have signed this agreement.
23. KSH I understand that the case will be charged for missed appointments and late cancellations, as outlined in the Financial Agreement. I understand that disagreements about which parent is financially responsible for a missed appointment and other conflicts are to be settled by the court and will not be addressed by Dr. Hale's office.
24. KSH I understand that the first \$1000.00 of the retainer paid to Dr. Hale is to be used for Special Master work and that \$500.00 will be retained for emergency contacts and the like. If the first \$1000.00 has been used, I must pay for additional appointments immediately. I understand that no appointments will be made and the case will not progress unless the monthly balance is kept at zero. I also understand non-payment that delays the Special Master process will be reported to the Court.
25. KSH I understand that in the event of a deposition or trial, prior to Dr. Hale's providing information or appearing at a deposition or at court, all outstanding charges must be paid, and appropriate expert witness fees must be paid in advance as outlined in the *Special Master Services Financial Agreement*.
26. KSH I understand that the goal of using a Special Master is to manage many of the day to day affairs of my legal case as it pertains to the children in general and to Dr. Hale's duties outlined in my court order in particular. I understand that when an issue arises, Dr. Hale will make every effort to schedule an appointment as soon as possible. I also understand that any difficulty I am having does not necessarily constitute a true emergency. I understand that this means that I will have to cope with the situation until my appointment with Dr. Hale. I understand that if the children or I am in danger, I will contact emergency services via 911 (e.g. police, fire, etc.) immediately. I also understand that I am to report any suspected child abuse to the Utah Department of Family Services, unless instructed by the court to refrain from doing reporting such. In sum, I understand that while Dr. Hale has been appointed to work closely with my case, she is not to be considered a crisis service or used as such on a regular basis.
27. KSH I understand that once begun, Special Master services can continue for an unspecified period of time. I understand that my attorney will seek clarification from the court as to the date or conditions that would denote the end of her services. I understand that there may be times when Special Master services are not needed and when I do not have a need to consult the Special Master for a period of a few weeks or even months.
28. KSH I understand that throughout the use of Special Master services, Dr. Hale will communicate directly to the commissioner and judge. She will also communicate with all attorneys and other professionals involved in this case. I understand that she may choose not to disclose information directly to me that my children provide to her in confidence.
29. KSH I understand that the Court has appointed Dr. Hale to the Special Master position. I understand she will be acting pursuant to a delegation of power by the Court. I agree to use her services within the spirit of this appointment.

1/1/2001

Page 4

I have read the above, discussed all of the provisions with my attorney, and I agree to utilize Special Master services under these conditions.

July 23, 01
Date

Kathy Kins
Signature of parent

7/23/01
Date

[Signature]
Signature of attorney