

2006

Bryner v. Blomquist : Brief of Appellee

Utah Court of Appeals

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Roger Bryner; Appellant.

Brent M. Johnson; Attorney for Appellees.

Recommended Citation

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Attorney for Commissioner Michelle Blomquist
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Salt Lake City, Utah 84114-0241
Tel: (801) 578-3800

UTAH COURT OF APPEALS

ROGER BRYNER,)	APPELLEES' BRIEF
)	
Appellant.)	
)	
vs.)	
)	
COMM. MICHELLE BLOMQUIST and)	Case No. 2006 0038-CA
KARRIE SPRAGUE,)	
)	
Appellants.)	

APPELLEES' BRIEF

ROGER BRYNER
Appellant
1042 East Ft. Union Blvd. #330
Midvale, Utah 84047

BRENT M. JOHNSON
Attorney for Appellees
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241

FILED
UTAH APPELLATE COURTS
JUL 26 2006

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UTAH COURT OF APPEALS

ROGER BRYNER,)	APPELLEES' BRIEF
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KARRIE SPRAGUE,)	
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APPELLEES' BRIEF

ROGER BRYNER
Appellant
1042 East Ft. Union Blvd. #330
Midvale, Utah 84047

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Attorney for Appellees
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STATUTE AND RULES

Rule 27, Utah Rules of Civil Procedure 1-9,11

EXHIBITS

Copy of Judge’s Order Dismissing Petition Exhibit “A”

Relevant Pages from Third District Court Case No. 044904183 Exhibit “B”

Issues for Review

1. Did the trial court correctly interpret Rule 27, Utah Rules of Civil Procedure, as permitting depositions only in exceptional circumstances?
2. Did the trial court abuse its discretion in determining that the facts alleged by the Appellant did not warrant Rule 27 relief?

Standards of Review

The trial court's interpretation of the rule is reviewed for correctness, while the trial court's application of the facts to the law is reviewed for abuse of discretion. See State v. Martin, 2002 UT 34 ¶ 29, 44 P.3d 805.

Statement of the case.

The Appellant is involved in a domestic case in the Third District Court, case no. 044904183. A copy of the relevant pages from that case history is attached as Exhibit "B." On November 10, 2005, a hearing was held in that matter in which a settlement agreement was read into the record. Proceedings of this type are usually memorialized in an audio recording. However, an audio recording was not made. The reason that a recording was not made has never been officially established. Unofficially, the tape recorder malfunctioned; a fact that was not discovered until after the proceeding.

Subsequent to the November hearing, the Appellant sought to take the depositions

of Commissioner Michelle Blomquist, who presided over the hearing, and Karrie Sprague, the clerk who assisted in the proceeding. The Appellant apparently had two separate but related aims in these proposed depositions. The first was to have the deponents testify as to their recollection of the settlement agreement, and the second was to determine what happened to the tape and recording equipment. The Appellant issued and served a subpoena on Karrie Sprague in the domestic case (See Exhibit “B,” page 33) and also filed a petition under Rule 27 of the Utah Rules of Civil Procedure, which is the current action. The trial court judge in the domestic case permitted the deposition of Ms. Sprague. (See Exhibit “B,” page 38, 1/27/06 minute entry.) The deposition was limited to Ms. Sprague’s recollection of the settlement agreement.

When the Rule 27 petition was filed, it was immediately reviewed by the trial court judge. The trial court judge rejected and dismissed the petition based on the language of Rule 27 and the allegations in the petition. R. 18-20. A copy of the judge’s order is attached as Exhibit “A.” The important language from the order is as follows:

the petitioner needs to describe the cause of action that he intends to bring and provide some explanation as to why he is not able to bring it at the present time. The petition also fails to explain why it is necessary to perpetuate testimony in this matter. Normally depositions are taken only after all parties to an action have filed pleadings which place all parties on notice of the issues raised in the litigation. This allows the

parties to focus their questioning on the actual issues presented in the case and avoid the need of deposing the same witnesses multiple times. Departure from this procedure should only be allowed under exceptional circumstances, such as where a witness is terminally ill or is expected to leave the country. The bare bones petition in this case does not provide sufficient grounds for a departure from the ordinary practice.

After the trial court's initial order in this case, the Appellant filed various motions, including a motion to make additional findings of fact (R. 56-61), a motion to clarify, (R. 55-56), a motion to reconsider (R. 62-123), and a motion for default (R. 139-141). All of these motions were denied or withdrawn. The Appellant also filed an amended petition, setting forth additional allegations. R. 21-27. This appeal followed the resolution of all the motions.

Summary of Argument

Under Rule 27 of the Utah Rules of Civil Procedure, an individual may seek pre-litigation perpetuation of testimony. However, the deposition may not be used as a fishing expedition to discover causes of action. A petition should only be granted in extraordinary circumstances when a petitioner knows the substance of the testimony that the petitioner seeks to document and the petitioner shows that the testimony might be lost unless it is immediately documented. The Petitioner has not and cannot show that testimony must be perpetuated. A petitioner must indicate that testimony might be lost

through such occurrences as the proposed deponent's anticipated departure from the country or the deponent's infirmities might result in the deponent not being around at a later time. The proposed deponents are not going anywhere. The petitioner must also show that the petitioner is presently unable to file a lawsuit, through which traditional discovery would occur. Being unable to file a lawsuit does not mean that the petitioner chooses not to file a lawsuit because of financial or other personal reasons, which are the reasons stated by the Petitioner. Finally, the petitioner must show that the petitioner has a cognizable action that can be filed in court. There is a legitimate question as to whether there is a cognizable action in this circumstance.

Argument

1. The requirements of Rule 27.

Rule 27 allows an individual to "perpetuate testimony regarding any matter that may be cognizable in any court of this state." A person seeking to perpetuate testimony files a petition stating:

(1) that the petitioner expects to be a party to an action cognizable in a court of this state but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts to be established by the proposed testimony and the reasons to perpetuate it, (4) the names or a description of the persons expected to be adverse parties and their addresses so

far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony expected to be elicited from each.

The court issues an order allowing the perpetuation of testimony if the court determines that “the perpetuation of testimony may prevent a failure or delay of justice.”

As will be discussed below, the purpose of Rule 27 is to permit an individual to record a witness’s testimony related to an action which the individual is presently unable to file and the witness’s testimony might be lost without the deposition. The Appellant’s request does not fall within the protections provided by Rule 27, nor could the Appellant recite any additional facts which would bring his request within such coverage.

A petition under Rule 27 may not be used as a “fishing expedition for the purpose of preparing a complaint.” Bainum v. Mackay, 391 P.2d 436, 436 (Utah 1964). The Appellant has admitted that he does not know what the proposed depositions would reveal. See proposed Amended Petition R. 21-27. The Appellant states that the proposed depositions might reveal causes of action. R. 23. The action appears to be a fishing expedition for the purpose of preparing a complaint and a Rule 27 action may not be used for that purpose.

Rule 27 of the Utah Rules of Civil Procedure is patterned after Rule 27 of the Federal Rules of Civil Procedure (as are many other states’ rules). It is therefore

appropriate to review other jurisdictions to see how they have interpreted the rule. See Oakwood Village LLC v. Albertsons, Inc., 2004 UT 1, ¶ 12, n.1, 104 P.3d 1226 (“when . . . there is almost no case law interpreting the Utah rule and the Utah and federal rules are identical we freely resort to federal law as a useful guide.”)

2. Relief is granted only in extraordinary situations.

The Fourth Circuit Court, in In re Application of Deiuemar, 198 F.3d 473, 484 (4th Cir. 1999) stated that “Rule 27 properly applies only in that special category of cases where it is necessary to prevent testimony from being lost.” The court also stated that “Rule 27 is not a substitute for broad discovery, nor is it designed as a means of ascertaining facts or drafting a complaint, . . . a petitioner must know the substance of the evidence [he] seeks before [he] can invoke Rule 27 perpetuation.” Id. at 485, 486. The Deiuemar court used the phrase “extraordinary circumstances” when describing the only conditions under which Rule 27 relief will be granted. Id. at 479. (“[W]e recently recognized the concept of ‘extraordinary circumstances’”).

Although Rule 27 does not use the phrase “extraordinary circumstances,” the rule contemplates extraordinary circumstances before pre-litigation discovery will be allowed. The Petitioner has suggested that the trial court has somehow engaged in activism by denying his request, and the manner in which his request was denied. However, it is the

Appellant that is seeking unjustified activism. It is the Appellant that seeks to engage in court sanctioned discovery outside of the traditional processes.

3. A petitioner must indicate that evidence could be lost.

The Third Circuit Court in Ash v. Cort, 512 F.2d 909, 912 (3rd Cir 1975) stated that “Rule 27 is not a substitute for discovery. . . . It is available in special circumstances to preserve testimony which could otherwise be lost.” In Penn Mutual Life Insurance Company v. United States of America and the Internal Revenue Service, 68 F.3d 1371 (D.C. 1995), the petitioners sought certain testimony from an IRS employee. The petitioners alleged that the Rule 27 mechanism was appropriate because “with the passage of time, [the witnesses’] ability to recall relevant facts and testify completely as to these matters may be impaired.” Id. at 1374, 1375. The D.C. Circuit Court stated that “such a general allegation is not sufficient to satisfy Rule 27's requirement that a petitioner demonstrate an immediate need to perpetuate testimony.” Id. at 1375. The court cited Ash v. Cort for the proposition that a petitioner must establish a danger that testimony may be “lost unless a deposition is immediately taken.” Id.

The Appellant has alleged that depositions must be taken immediately because the potential deponents’ “memory will dull with time.” R.25. This is an allegation or statement that could be true with any potential witness, in any potential litigation. This is

not a sufficient justification to order that depositions be taken through a Rule 27 action.

The Appellant has not indicated and cannot show, that testimony might be lost.

4. The petitioner does not seek to “perpetuate” testimony, but to uncover testimony.

In In re Petition of Sheila Roberts Ford, 170 F.R.D. 504 (M. D. Ala. 1997), a petitioner sought an order to depose a county sheriff. The petitioner anticipated bringing a wrongful death action against the appropriate parties. The court rejected the deposition request stating as follows:

Rule 27's coverage . . . extends only to the perpetuation of testimony. The term perpetuate is defined as to make perpetual, preserve from extinction, or cause to last indefinitely. Here, [the petitioner] seeks to discover or uncover testimony, not to perpetuate it. She seeks pre-complaint discovery of evidence, not pre-complaint perpetuation of it. There is nothing before the court to indicate that [the sheriff's] testimony is in imminent danger of being lost. Rather, [the petitioner] simply wants to know who shot [the victim] and why. Rule 27 simply does not provide for such discovery.

Id. at 507. In Williams v. Engen, 80 P.3d 745, 748 (Alaska 2003), the court stated that the “singular focus on perpetuating evidence strongly suggests that courts should generally refrain from applying the rule unless the petitioner demonstrates a need to prevent a failure or delay of justice specifically arising from a risk of losing evidence. In

other words, the reasons for perpetuating the proposed testimony must demonstrate danger of losing the evidence by delay.”

Rule 27 is used when a petitioner is aware of specific evidence needed for a lawsuit that the petitioner is presently unable to file. The petitioner is also aware that the evidence might be lost because the witness might not be around when the lawsuit can be filed. The rule allows such a petitioner to make a record of that evidence for the subsequent lawsuit. In this case the potential deponents are not going anywhere and the Appellant could file a lawsuit any time he chooses. Rule 27 relief is not available.

5. The Petitioner did not indicate that he is unable to bring the action.

In addition to showing that circumstances exist in which testimony might be lost, a petitioner must show that he or she is presently unable to bring the action. In McNett v. Alyeska Pipeline Service Co., 856 P.2d 1165, 1168 (Alaska 1993), the court stated that

[u]nder civil Rule 27, a petitioner must first establish that she expects to be a party to an action, but is unable to bring the action at the present time. . . . A leading treatise explains this requirement as follows: A good illustration of this situation is a case in which an executrix expected that the Commissioner of Internal Revenue would assess a deficiency federal estate tax and desired to perpetuate testimony concerning the intent of the testator in making certain gifts. The court held that the inability to bring or cause to be brought an action concerning this matter was shown by the fact that no action could be begun until the deficiency assessment was made and that even

after petitioner paid the assessment she might have to wait six months after filing a claim for a refund before suing for its recovery.

The Appellant in this case has not shown that he is unable to bring an action. In fact, he has only stated that he chooses not to bring an action for “personal reasons.” R. 23. The rule may only be used when a petitioner is unable to bring an action. The Appellant may use traditional discovery procedures when he decides that his personal reasons are no longer an obstacle to filing a lawsuit.

6. The Petitioner must show a cognizable action.

The Appellant also must show that the testimony is sought in an action that “may be cognizable in any court of this state.” The Appellant has stated that he might file a tort action against the clerk and the commissioner based on their alleged negligence concerning the recording system. It is far from clear whether such an action would be cognizable in a state court. The Appellees are court officials with judicial, quasi-judicial and/or governmental immunity. It is possible that the Appellant’s claims would not be cognizable in a state court. Although it is probably not appropriate to resolve whether a claim would be cognizable through this type of action, the fact that there is a question about whether the Appellant could ultimately proceed with his cause of action should add

weight to the previous arguments, and the Appellant's request to proceed through Rule 27 should be denied.

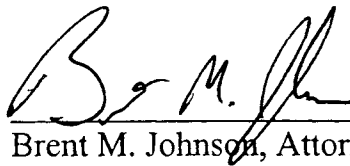
Conclusion

Taking a deposition is a fairly serious matter. The rules of civil procedure permit depositions when a civil case is filed. At that point, the parties and potential witnesses are aware of the causes of action and the scope of discovery. The subpoena can then be issued in the name of the court, giving the court control over the discovery process. This is the process that should generally be followed.

The rules of civil procedure permit a deposition to be taken without the filing of a civil action, but only in extraordinary circumstances when a witness has specific testimony that the petitioner seeks to document because the testimony might be lost before the petitioner is able to file a civil case. The Appellant's situation does not warrant Rule 27 relief.

The commissioner and the court clerk should not be subject to depositions under these circumstances. The trial court correctly determined that extraordinary circumstances do not exist. This decision was made based on the initial petition that was filed and all the subsequent motions in which the Appellant further argued the facts. There is no justification for relief.

DATED this 26th day of July, 2006.

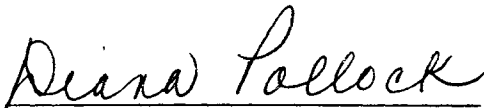


Brent M. Johnson, Attorney for
Commissioner Michelle Blomquist and
Karrie Sprague

MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing Appellee's Brief was mailed first class, postage prepaid and addressed as follows on this 26th day of July, 2006.

ROGER BRYNER
1042 East Ft. Union Blvd. #330
Midvale, Utah 84047



Diana Pollock

Exhibit “A”

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ROGER BRYNER,	:	ORDER DENYING PETITION TO DEPOSE
	:	PRIOR TO COMMENCEMENT OF ACTION
Petitioner,	:	
	:	CASE NO. 050921532 MI
vs.	:	
MICHELLE BLOMQUIST, KERRY SPRAGUE,	:	
ADMINISTRATIVE OFFICE OF THE	:	
COURTS,	:	
Deponents.	:	

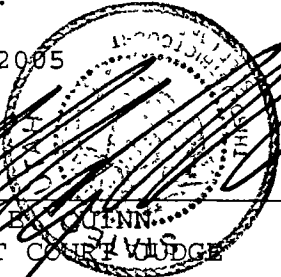
This matter is before the Court on a Petition to Depose Prior to Commencement of Action in Order to Preserve Evidence. The Court has considered the Petition and related documents submitted by petitioner in order to obtain a hearing in this matter. The Court being fully informed, renders its decision, as follows:

The Petition to Depose Prior to Commencement of Action is denied.

The Petition in this case recites the language of the rule in stating that the petitioner expects to be a party to an action cognizable in a court of this state but is presently unable to bring the action. In the Court's view, a simple recitation of Rule 27 is not sufficient. The petitioner needs to describe the cause of action that he intends to bring and provide some explanation as to why he is not able to bring it at the present time. The Petition also fails to explain why it is necessary to perpetuate testimony in this matter.

Normally depositions are taken only after all parties to an action have filed pleadings which place all parties on notice of the issues raised in the litigation. This allows the parties to focus their questioning on the actual issues presented in the case and avoids the need of deposing the same witnesses multiple times. Departure from this procedure should only be allowed under exceptional circumstances, such as where a witness is terminally ill or is expected to leave the country. The bare bones Petition in this case does not provide sufficient grounds for departure from the ordinary practice.

Dated this 6th day of December, 2005


ANTHONY E. QUINN
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Order Denying Petition to Depose Prior to Commencement of Action, to the following, this _____ day of December, 2005:

Roger Bryner
Pro se
1042 E. Fort Union Blvd. #330
Midvale, Utah 84047

EXHIBIT “B”

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

ROGER BRYNER vs. LANA BRYNER

CASE NUMBER 044904183 Divorce/Annulment

CURRENT ASSIGNED JUDGE
DENISE P LINDBERG

CURRENT ASSIGNED COMMISSIONER
T PATRICK CASEY

PARTIES

Petitioner - ROGER BRYNER
Midvale, UT 84047

Respondent - LANA BRYNER
Represented by: DAVID S DOLOWITZ
Represented by: EMILY A BROADHEAD SMOAK

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	1,035.50
	Amount Paid:	1,035.50
	Credit:	0.00
	Balance:	0.00

BAIL/CASH BONDS	Posted:	600.00
	Forfeited:	0.00
	Refunded:	0.00
	Balance:	600.00

REVENUE DETAIL - TYPE: DIVORCE PETN

	Amount Due:	95.00
	Amount Paid:	95.00
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: VITAL STATISTICS FEE

	Amount Due:	2.00
	Amount Paid:	2.00
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

	Amount Due:	1.25
--	-------------	------

in Fourth Floor - S44 with Judge HIMONAS.
10-28-05 Filed: Reply to Notice to Submit on Partial Objection
11-03-05 Filed: Notice of Hearing (12/19/05 @ 1pm w/ MRB), ATR
11-03-05 Filed: Memorandum in Opposition to Motion to Move Weekday
Visits, ATP
11-03-05 LAW AND MOTION scheduled on December 19, 2005 at 01:00 PM in
Third Floor - W34 with Commissioner BLOMQUIST.
11-03-05 MOTION FOR DEFAULT scheduled on November 16, 2005 at 02:30 PM
in Fourth Floor - S44 with Judge HIMONAS.
11-03-05 HEARING scheduled on November 16, 2005 at 02:31 PM in Fourth
Floor - S44 with Judge HIMONAS.
11-03-05 Notice - NOTICE for Case 044904183 ID 6442592
HEARING.
Date: 11/16/2005
Time: 02:31 p.m.
Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860
Before Judge: DENO HIMONAS
The reason for the change is Correct Calendar
Partial Objection to Commissioner's Recommendation
11-03-05 HEARING scheduled on November 16, 2005 at 02:31 PM in Fourth
Floor - S44 with Judge HIMONAS.

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CASE NUMBER 044904183 Divorce/Annulment

11-03-05 HEARING Cancelled.
Reason: Case has been settled.
11-03-05 MOTION FOR DEFAULT scheduled on November 16, 2005 at 02:30 PM
in Fourth Floor - S44 with Judge HIMONAS.
11-03-05 Notice - NOTICE for Case 044904183 ID 6442601
MOTION FOR DEFAULT is scheduled.
Date: 11/16/2005
Time: 02:30 p.m.
Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860
Before Judge: DENO HIMONAS
11-03-05 MOTION FOR DEFAULT Cancelled.
Reason: Case has been settled.
11-07-05 Filed: Withdrawal of Order to Show Cause (Petitioner)
11-09-05 ORDER TO SHOW CAUSE Cancelled.
Reason: Case has been settled.
11-10-05 Minute Entry - Minutes for PARENTING SETTLEMENT CONFERE
Commissioner: MICHELLE BLOMQUIST
Clerk: karries
PRESENT

Petitioner's Attorney: JARED G COLEMAN
Petitioner(s): ROGER BRYNER
Other Parties: KIM M LUHN

Attorney for the Respondent: EMILY A BROADHEAD SMOAK
Respondent(s): LANA BRYNER
Audio
Tape Number: PTC 8-05 Tape Count: 856-1533

HEARING

TAPE: PTC 8-05 COUNT: 856-1533

On Record

The parties have entered into a Stipulation which is the final settlement of all issues as follows:

1. Both parties will share legal and physical of minor child(ren) with one week on one week off beginning Monday November 14, 2005.
2. Petitioner will take children beginning today until Monday November 14, 2005.
3. If either party decides to travel with minor children Internationally then 60 days notice will be provided to the other party.
4. 48 hours notice if they are traveling out of state with minor child(ren).
5. Petitioner will pay 100% of minor child(ren) private school,

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CASE NUMBER 044904183 Divorce/Annulment

and after the school year is over Petitioner will choose private school.

6. Health insurance coverage and payment of out-of-pocket expenses pursuant to statute.

7. Both parties will attend Arbitration with Bill Roth

8. All claims pending regarding this case or third parties will be dismissed without prejudice.

9. Petitioner will pay all fees for accounting purposes.

Commissioner Blomquist approves Stipulation.

COUNT: 1533

end record

11-15-05 LAW AND MOTION Cancelled.

Reason: Case has been settled.

11-16-05 MOTION FOR DEFAULT Cancelled.

Reason: Case has been settled.

11-16-05 HEARING Cancelled.

Reason: Case has been settled.

11-18-05 Fee Account created Total Due: 1.00

11-18-05 Fee Account created Total Due: 4.00

11-18-05 CERTIFIED COPIES Payment Received: 1.00

11-18-05 CERTIFICATION Payment Received: 4.00

11-29-05 Filed: Notice of Records Taking Deposition

11-30-05 Filed: Affidavit of Stipulation on Children's School Reached on November 10th and Objection, ATP

11-30-05 Filed: Yet Another Rule 68 Offer, Petitioner

12-01-05 Filed: Motion for Child Support Including Accounting and Imputed Income, Petitioner

12-01-05 Filed: Notice of Records Taking Depositions, Petitioner
 12-02-05 Issued: Subpoena - Svetlana Bryner
 Clerk christim
 12-02-05 Issued: Subpoena - Kim Luhn
 Clerk christim
 12-02-05 Issued: Subpoena - Emily Broadhead Smoat
 Clerk christim
 12-02-05 Issued: Subpoena - Kerry Sprague
 Clerk christim
 12-02-05 Fee Account created Total Due: 11.00
 12-02-05 Fee Account created Total Due: 5.50
 12-02-05 Fee Account created Total Due: 4.00
 12-02-05 CERTIFIED COPIES Payment Received: 11.00
 Note: 21.00 cash tendered.
 12-02-05 COPY FEE Payment Received: 5.50
 12-02-05 CERTIFICATION Payment Received: 4.00
 12-02-05 Filed: Notice of Records Taking Depositions
 12-02-05 Note: *I docketed this document so I could make the petitioner
 a certified copy.*
 12-02-05 Filed: Motion to comply with law on pro-se representation and
 notice of pro-se representation
 12-05-05 Filed return: Subpoena - Emily Smoak, Petitioner

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CASE NUMBER 044904183 Divorce/Annulment

 Party Served: Smoak, Emily
 Service Type: Personal
 Service Date: December 05, 2005
 12-06-05 Filed: Respondent's Objection to Subpeona Served Upon
 Respondent, ATR
 12-06-05 Filed: Motion to Compel Kerry Sprague's Testimony, Respondent
 12-06-05 Filed: Respondent's Objection to Subpoena Served Upon
 Respondent's Attorney, Emily Broadhead Smoak, ATR
 12-06-05 Filed: Subpoena-Lana Bryner, Petitioner
 12-07-05 Filed return: Subpoena - Kim Luhn
 Party Served: Luhn, Kim
 Service Type: Personal
 Service Date: December 05, 2005
 12-08-05 Filed: Memorandum in Opposition to Motion to Compel
 12-08-05 Filed: Memorandum in Opposition to Motion to Compel
 12-19-05 Filed: Affidavit of Admissions Regarding November 10th at
 Meeting to Memorialize on December 16th and Objection,
 Petitioner
 12-19-05 Filed: Verified Motion for Order to Show Cause, Petitioner
 12-20-05 Filed: Verified Reply to Memorandum in Opposition to Motion to
 Compel Testimony of Kerry Sprague
 12-20-05 Filed: Notice to Submit on Motion to Compel Testimony of Kerry
 Sprague
 12-21-05 Filed: Respondent's Verified Motion to Enforce Settlement
 Agreement, ATR
 12-21-05 5 DAY BENCH TRIAL Cancelled.
 Reason: Case has been settled.
 12-21-05 PRETRIAL CONFERENCE Cancelled.

Reason: Case has been settled.
 12-21-05 PRETRIAL CONFERENCE Cancelled.
 Reason: Case has been settled.
 12-23-05 Filed: Notice of Withdrawal (Steven C. Russell)
 12-27-05 Filed: Rule 27 (B) Motion to Take Depositions Prior to Appeal,
 Petitioner
 12-27-05 Filed: Verified Motion to Strike Ex-Parte Motion to Enforce
 Agreement or Allow Additional Time to Respond, Petitioner
 12-27-05 Filed: Motion to Strike Ex Parte Motion to Enforce Agreement or
 Allow Additional Time to Respond, Petitioner
 12-27-05 Fee Account created Total Due: 0.50
 12-27-05 COPY FEE Payment Received: 0.50
 12-27-05 Filed: Reply to objection to subpoena served upon respondent
 12-27-05 Filed: Rule 11 motion re: objection to subpoena served upon
 respondent
 12-27-05 Filed: Notice to submit on respondent's objection to subpoena
 served upon respondent's attorney Emily Broadhead Smoak
 12-27-05 Filed: Reply to objection to subpoena served upon respondent's
 counsel Emily Broadhead Smoak
 12-28-05 Filed: Notice of Hearing (2/22/06 @ 10am w/ MRB), ATR
 12-28-05 Filed: Motion to Order Petitioner to File Pleadings Either Pro

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Se or Through Counsel But not Both With Uncorporated Memorandum
 of Law, ATP
 12-28-05 Filed: Notice of Submission of Order With Rule 7F Notice to the
 Commissioner, Petitioner
 12-28-05 Filed: Withdrawal of Counsel for Petitioner (Joseph F. Orifici)
 12-28-05 Filed: Notice of Submission of Order with Rule 7F Notice to the
 Commissioner
 12-28-05 Filed: Final Order on Custody and Support
 12-28-05 Fee Account created Total Due: 10.00
 12-28-05 Fee Account created Total Due: 8.00
 12-28-05 CERTIFIED COPIES Payment Received: 10.00
 Note: 20.00 cash tendered.
 12-28-05 CERTIFICATION Payment Received: 8.00
 12-29-05 Filed: Withdrawal of Counsel (Jared Coleman, ATP)
 12-29-05 Filed: Notice to Submit on Motion to Comply with Law on Pro Se
 Representation and Notice of Pro Se Representation, Petitioner
 12-29-05 Filed: Respondent's Objection to Petitioner's Final Order on
 Custody and Support, ATR
 12-29-05 Filed: Verified Motion for Temporary Ex-Parte Restraining Order
 12-29-05 Fee Account created Total Due: 2.00
 12-29-05 Fee Account created Total Due: 4.00
 12-29-05 CERTIFIED COPIES Payment Received: 2.00
 12-29-05 CERTIFICATION Payment Received: 4.00
 01-03-06 Filed: Memorandum in Opposition to Petitioner's Verified Motion
 for Temporary Ex Parte Restraining Order, ATR
 01-03-06 Filed: Withdrawal of exparte motion for restraining order
 01-03-06 LAW AND MOTION scheduled on February 22, 2006 at 10:00 AM in
 Third Floor - W34 with Commissioner BLOMQUIST.
 01-04-06 Filed: Respondent's Memorandum in Opposition to Petitioner's

Rule 11 Motion to Enforce Settlement Agreement, ATR
01-04-06 Filed: Memorandum in Opposition to Petitioner's Fourth Verified
Motion for Order to Show Cause, ATR
01-04-06 Filed: Memorandum in Opposition to Petitioner's Rule 11 Request
for Attorney's Re: Lack of Jurisdiction Over Non Court
Procedures and Frivolous Argument on Pro Se Issues, ATR
01-04-06 Filed: Respondent's Memorandum in Opposition to Petitioner's
Rule 27(B) Motion to Take Depositions Prior to Appeal, ATR
01-04-06 Filed: Memorandum in Opposition to Petitioner's Motion to
Strike Ex Parte Motion to Enforce Agreement or Allow
Additional Time to Respond, ATR
01-04-06 Filed: Respondent's Memorandum in Opposition to Petitioner's
Rule 11 Motion Re Memorandum in Opposition to Motion not Filed
in This Case, ATR
01-04-06 Filed: Respondent's Memorandum in Opposition to Petitioner's
Rule 11 Motion Re: Notice to Appear or Appoint Counsel, ATR
01-04-06 Filed: Notice to Appear or Appoint Counsel
01-04-06 Filed: Notice to Submit and Request to Yield Jurisdiction to
Court on Rule 27(B) Motion, Petitioner
01-04-06 Filed: Verified Reply to Objection to Final Order on Custody

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and Support, Petitioner
01-04-06 Minute Entry - Minutes for Hearing
Judge: DENO HIMONAS
Clerk: patj
TELEPHONE CONFERENCE
PRESENT

Petitioner(s): ROGER BRYNER
Other Parties: KATHLEEN ARNOVICK
Attorney for the Respondent: EMILY A BROADHEAD SMOAK
Video
Tape Count: 2.00

HEARING

COUNT: 2.00

The court held a phone conference with Roger Bryner, Emily Smoak
and Kathleen Arnovick on the record.

The issue of the wrong case # being placed on the "Notice to
appear or appoint counsel" was discussed.

01-05-06 Filed: Notice to Submit on Objection to Subpoena, Petitioner
01-09-06 Filed: Verified Petition for Extraordinary Relief Under Rule 65
(B) and Request for Hearing with Judge Himonas
01-09-06 Filed: Objection to Notice to Appear - I already did on Dec 2nd
05
01-09-06 Tracking ended for Under advisement.
01-09-06 Tracking ended for Under advisement.

01-10-06 Filed: Withdrawal of Respondent's Memorandum in Opposition to
Petitioner's Rule 11 Motion Re Memorandum in Opposition to
motion Not in This Case, ATR
01-11-06 Filed: Response to Verified Motion for Temporary Ex Parte
Restraining Order, GAL
01-12-06 Filed: Withdrawal of Respondent's Memorandum in Opposition to
Petitioner's Rule 11 Motion Re Respondent's Motion to Enforce
Settlement Agreement, ATR
01-12-06 Filed: Withdrawal of Verified Motion to Strike Ex-Parte Motion
to Enforce Agreement Dated Dec 27 05
01-12-06 Filed: Memorandum in Response to Verified Petition for
Extraordinary Relief Under Rule 65(B) and Request for Hearing
in Front of Judge Himonas
01-12-06 Filed: Notice to Submit for Decision
01-17-06 Fee Account created Total Due: 0.75
01-17-06 COPY FEE Payment Received: 0.75
01-17-06 Filed: Memorandum in Opposition to Petitioner's Motion to
Strike Exhibit A of Respondent's Motion to Enforce Settlement
Agreement, ATR

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01-17-06 Filed: Verified Motion to Disqualify Commissioner Bolmquist,
Petitioner
01-17-06 Filed: Motion to Strike Exhibit A of Respondent's Motion to
Enforce Settlement Agreement, Petitioner
01-17-06 Filed: Objection Re Respondent's Motion to Enforce Settlement
Agreement, Petitioner
01-17-06 Filed: Notice of Deposition, Petitioner
01-18-06 Filed: Memorandum in Opposition to Petitioner's Verified Motion
to Disqualify Commissioner Blomquist, ATR
01-18-06 Filed: Objection to Notice of Deposition, ATR
01-18-06 Filed: Memorandum in Opposition to Petitioner's Verified Rule
11 Motion Re Respondent's Verified Motion for Contempt Re
Payment, ATR
01-18-06 Filed: Memorandum in Opposition to Petitioner's Verified Rule
11 Motion Re Motion to Order Petitioner to File Pleadings
Either Pro Se or Through Counsel But Not Both, ATR
01-18-06 Filed: Transcript of hearing dated 2-24-05, Kelly Thacker, CCT
01-19-06 Filed: Reply to Respondent's Objection to Notice of Deposition
and Request for Phone Conference Prior to January 31st,
Petitioner
01-20-06 Filed: Notice to Submit on Verified Motion to Disqualify
Commissioner Blomquist
01-20-06 Filed: Reply to Memorandum in Opposition to Petitioners
Verified Motion to Disqualify Commissioner Blomquist
01-20-06 Filed: Reply to Memorandum in Response to Petitioners Motion
for Extraordinary Relief Under Rule 65
01-23-06 Filed: Reply to Memorandum in Opposition to Petitioners
Verified Motion to Strike Exhibit A of Respondents Motion to
Enforce
01-24-06 Notice - NOTICE for Case 044904183 ID 6512462
HEARING is scheduled.

Date: 01/26/2006
Time: 10:00 a.m.
Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860

Before Judge: DENO HIMONAS

Hearing on Verified Petition for Extraordinary Relief Under Rule 65
(B)

01-24-06 HEARING scheduled on January 26, 2006 at 10:00 AM in Fourth
Floor - S44 with Judge HIMONAS.
01-25-06 Filed: Motion to take Judicial Notice of Evidence or Postpone
Hearing on January 26th 2006
01-25-06 Fee Account created Total Due: 0.25
01-25-06 COPY FEE Payment Received: 0.25
01-26-06 Notice - NOTICE for Case 044904183 ID 6515352
1 DAY HEARING is scheduled.

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Date: 02/28/2006
Time: 10:00 a.m.
Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860

Before Judge: DENO HIMONAS

01-26-06 1 DAY HEARING scheduled on February 28, 2006 at 10:00 AM in
Fourth Floor - S44 with Judge HIMONAS.
01-26-06 Filed: Response and Agreement with Motion to Enforce Settlement
Agreement
01-26-06 Fee Account created Total Due: 15.00
01-26-06 VIDEO TAPE COPY Payment Received: 15.00
01-26-06 HEARING' scheduled on February 27, 2006 at 10:30 AM in Fourth
Floor - S44 with Judge HIMONAS.
01-26-06 Minute Entry - Minutes for Hearing
Judge: DENO HIMONAS
Clerk: patj
PRESENT

Petitioner(s): ROGER BRYNER
Other Parties: KIM M LUHN
Attorney for the Respondent: EMILY A BROADHEAD SMOAK
Video
Tape Count: 10.00

HEARING

COUNT: 10.00

This case is before the court for hearing on all motions.

Respective parties present their motions to the court.

The court denies the rule 27B motion.

The court orders Emily Smoak's notes to be provided to Roger Bryner with redactions by the end of next week. If Mr Bryner objects to the redactions he needs to file an objection and Emily Smoak will provide her notes to the court and the court will review them in camera and decide if Mr Bryner is entitled to see them. Notes to be supplied by the end of next week.

Roger to provide audible copies of tapes by the end of next week.

The parties stipulate to having the evaluators notes sealed in the file.

Mr Bryner is not allowed to depose Lana's parents.

Exhibits to be exchanged by Feb 10 at 5 PM

The court will allow a one hour deposition of Lana Bryner-parties to decide a date and time by the end of the day tomorrow.

Cross briefs are due by Feb 20 (parties to hand deliver them to the court)

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The rule 27B motion is denied.

An evidentiary hearing is set for Feb 28 at 10 AM. This is a one day hearing.

This will be held in front of Judge Himonas

01-27-06 Filed: Amended Notice of Deposition

01-27-06 LAW AND MOTION Cancelled.

Reason: Correct calendar

01-27-06 Minute Entry - Minutes for Law and Motion

Judge: DENO HIMONAS

Clerk: patj

PRESENT

Petitioner(s): ROGER BRYNER

Other Parties: BRENT JOHNSON

Video

Tape Count: 10.45

HEARING

COUNT: 10.45

This case is before the court for a hearing on the issue of the deposition of Karrie Sprague.

Roger Bryner appeared representing himself.

Brent Johnson appeared in behalf of Karrie Sprague.

Emily Smoak and Kim Luhn have waived their appearance.

After hearing argument of respective parties the court will allow a 1/2 hour deposition to be taken of Karrie Sprague.

Roger Bryner to prepare the order.

01-27-06 Fee Account created Total Due: 2.00

01-27-06 COPY FEE Payment Received: 2.00

Note: 20.00 cash tendered.

02-13-06 Filed: Motion Rule 60(b)(1) Motion to Correct Scheduling Order
02-14-06 Filed: Withdrawal of Objection to Motion to Recuse Commissioner
Blomquist, ATR
02-16-06 Filed: Pocket brief in rebuttal to SUA Sponte "chaos" issues
and alligations of problems between the parties
02-16-06 Filed: Pocket brief on credibility of respondant
02-17-06 Filed: Reply and objection to withdrawal of objection to motion
to recuse Comissioner Blomquist
02-17-06 Fee Account created Total Due: 3.00
02-17-06 COPY FEE Payment Received: 3.00
02-17-06 Filed: Brief for February 28th Hearing
02-21-06 Filed: Reply to notice to submit for decision and objection
02-21-06 Filed: Respondents trial brief
02-21-06 Filed: Motion for Extension of Time to Respons to Kim Luhn's
Motion of Jan 3 06

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02-21-06 Filed: Verified Specific Assertion of Attorney Client Privilage
with Respect to Jared Coleman
02-21-06 Filed: Motion to Postpone Hearing or Memorialize Judicial
Notice that a Tape Existed
02-22-06 Filed: Memorandum in Opposition to Motion to Postpone Hearing
02-23-06 Filed: Reply to memorandum in opposition to motion to postpone
hearing
02-28-06 Minute Entry - Minutes for Law and Motion
Judge: DENISE P LINDBERG
Clerk: michelddb
PRESENT

Petitioner(s): ROGER BRYNER
Other Parties: KIM M LUHN
Attorney for the Respondent: EMILY A BROADHEAD SMOAK
Respondent(s): LANA BRYNER
Video
Tape Number: 2/28/06 Tape Count: 10:15

HEARING

Motion to postpone hearing is denied. Guardian ad litem addresses
the court. Mr. Bryner addresses the court. Ms. Smoak addresses
the court.

Mr. Bryner invokes the exclusionary rule.
10:40 - Jared Coleman sworn and examined.
10:58 - Cross
11:02 - Redirect
11:11 - Dr. Natalie Malovich sworn and examined.
11:17 - Kim Peterson sworn and examined.
11:40 - Kerrie Sprague sworn and examined
11:44 - Plaintiff Roger Bryner is sworn and examined
12:07 - lunch recess

2:11 - Court resumes.
2:43 - Defendant Lana Bryner is sworn and examined by Mr. Bryner
3:14 - Cross
4:07 - Redirect

Parties address the court. The court takes under advisement.

03-03-06 Filed: Verified Motion for Release of Passports Pursuant to
Initial Notice of International Travel, Petitioner
03-06-06 Bond Account created Total Due: 3.00
03-06-06 Filed: Notice of Appeal
03-06-06 Bond Account created Total Due: 300.00
03-06-06 Bond Posted Payment Received: 300.00
03-06-06 Fee Account created Total Due: 205.00
03-06-06 Fee Account created Total Due: 23.50
03-06-06 Fee Account created Total Due: 16.00

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03-06-06 APPEAL Payment Received: 205.00
Note: Code Description: APPEAL
03-06-06 CERTIFIED COPIES Payment Received: 23.50
03-06-06 CERTIFICATION Payment Received: 16.00
03-06-06 Filed: Motion to Take Depositions Pending Appeal, Petitioner
03-06-06 Filed: Motion to Make Additional Findings of fact and Law,
Petitioner
03-06-06 Filed: Motion to Stay Proceedings Pending Appeal Except for
Post Adjudication Motions, Petitioner
03-07-06 Filed: Notice of Hearing (3/27/06 @ 1pm w/ MRB), ATR
03-07-06 Note: Cert/Copy of Notice of Appeal forwarded to Utah Court of
Appeals
03-08-06 Fee Account created Total Due: 1.00
03-08-06 COPY FEE Payment Received: 1.00
03-08-06 Filed: Utah Court of Appeals Letter to Roger Bryner - the
notice of appeal in this case has been filed with the Utah
Court of Appeals - 20060214-CA
03-13-06 Filed: Verified Response to Respondent's Motion for Contempt Re
Payment, Petitioner
03-13-06 Issued: Order to Show Cause Against Respondent, Petitioner
Commissioner MICHELLE BLOMQUIST
Hearing Date: March 27, 2006 Time: 01:00
03-13-06 Filed: Verified Motion for Order to Show Cause for Spoilation,
Lies, and Distruction of Evidence, Petitioner
03-13-06 Fee Account created Total Due: 0.50
03-13-06 COPY FEE Payment Received: 0.50
Note: 1.00 cash tendered. 0.50 change given.
03-13-06 Filed: Transcript of hearing dated 1-27-06, Kelly Thacker, CCT
03-13-06 Filed: Transcript of hearing dated 1-26-06, Kelly Thacker, CCT
03-13-06 Filed: Transcript of hearing dated 2-28-06, Kelly Thacker, CCT
03-13-06 Filed: Notice of request for transcripts
03-13-06 Fee Account created Total Due: 0.50
03-13-06 COPY FEE Payment Received: 0.50
Note: 5.00 cash tendered. 4.50 change given.
03-13-06 LAW AND MOTION rescheduled on March 27, 2006 at 01:00 PM
Reason: Correct Calendar.