IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF BABY B.	)	**APPELLANT'S SUPPLEMENTAL BRIEF RE: PARENTAL KIDNAPING PREVENTION ACT**
	)	
	)	Appellate Court No. 20090740-SC
	)	

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TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding..."

COMES NOW, Appellant, R.M. and hereby respectfully submits Appellant's Supplemental Brief Re: Parental Kidnaping and Prevention Act as follows:

I. THE "PKPA" OPERATES TO DIVEST THIS COURT OF JURISDICTION TO HEAR THIS CASE.

Whether the Parental Kidnaping Prevention Act "PKPA" divests the Courts of Utah from having jurisdiction to hear this matter is addressed in 28 U.S.C. § 1738(A)(g),

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

This jurisdictional prohibition applies to adoption proceedings. *J.D.S. v. Franks*, 893 P.2d 732, 739 (Ariz. 1995) (PKPA applies to adoption proceedings); *Brookshire v. Blackwell*, 682 S.E.2d 295, 298 (S.C. App. 2009) (PKPA applies specifically to adoptions); *In re Custody of K.R.*, 897 P.2d 896, 899-900 (Colo. App. 1995) (the majority of jurisdictions that have addressed the issue have concluded that the PKPA applies to adoption proceedings.)

Further, this Court has previously recognized on more than one occasion that "as a federal jurisdictional state, the PKPA establishes a policy of federal preemption in the area of custody jurisdiction". *Curtis v. Curtis*, 789 P.2d 717, 721 n. 8 (Utah Ct. App., 1990). Due to the fact the PKPA is a federal statute, the Supremacy Clause of the

Constitution of the United States requires the PKPA take precedence over state statutes, including adoption statues. The U.S. Supreme Court has ruled, "[a] state statute is void to the extent that it actually conflicts with a valid Federal statute." In effect, this means that a State law will be found to violate the Supremacy Clause when either of the following two conditions (or both) exist: (1) Compliance with both the Federal and State laws is impossible, or (2) "...state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress..." *Edgar v. Mite Corporation*, 457 U.S. 624, 631 (1982).

Moreover, unlike the UCCJEA, wherein adoption proceedings are specifically excluded, the plain language of the PKPA does not have any such exemptions regarding adoptions. When examining a statute, a Court must assume the "legislature used each term advisedly and in accordance with its ordinary meaning." State ex rel. Z.C., 165 P.3d 1206 (Utah 2007). This Court has previously held that an interpretation of the UCCJA does not dictate how the Court must interpret the PKPA because they are two separate and distinct acts, "where the PKPA and the states's version of the UCCJA conflict, the PKPA preempts state law." *E.H.H.*, 2000 UT App 368, 16 P.3d 1257 at ¶ 13.

In the instant case, the Colorado Court has issued an order and determined it has jurisdiction over the subject matter and persons therein, specifically the natural father, natural mother and minor child. (See date stamped copy of Final Order of Paternity, ¶ 1,

attached hereto as Addendum No. 1). Further, the Colorado Court has entered an order that the Colorado Paternity proceeding remains open, is not being dismissed and Colorado retains jurisdiction over the paternity matter. (R. 1130, Exhibit 11, ¶ 18, 21; See copy of Order of March 3, 2008 attached hereto as Addendum 2.). Additionally, commencement of the Colorado Paternity action seeking orders regarding allocation of parental responsibilities, custody, visitation/parent time, and injunctive relief by the natural father occurred over one month prior to the Petition for Adoption being filed in the State of Utah on February 19, 2008. (R. 1-6; R. 1130, Exhibit No. 16, Page 4-5); See copy of Colorado Paternity Petition attached hereto as Addendum 3). The fact an order was not issued from the Colorado Court until after the Utah adoption was filed is irrelevant as the PKPA provides that Utah, "shall not exercise jurisdiction in any proceeding for custody or visitation determination commenced <u>during the pendency of a proceeding in a court of another state...</u>" 28 U.S.C. § 1738A(g) (emphasis added); see also *Ex parte D.B,* 975 So.2d. 940, 955 (Ala.2007) (holding the prohibition against concurrent proceedings does not require custody determination, only that a matter be pending).

Therefore, pursuant to the PKPA, the State of Utah shall not exercise jurisdiction in the adoption matter due to the fact the Colorado court was exercising jurisdiction over the paternity proceeding at the time the Utah adoption proceeding was filed and the fact the Colorado Court continues to exercise jurisdiction.

II. THE JANUARY 16, 2008 PETITION FILED BY THE NATURAL FATHER QUALIFIES AS "ANY PROCEEDING FOR A CUSTODY OR VISITATION DETERMINATION" FOR PURPOSES OF THE PKPA.

In the state of Colorado, a paternity proceeding may be commenced prior to the birth of a child and the Colorado Court issued a specific finding evidencing this fact in their Order of March 3, 2008. (R. 1130, Exhibit No. 11, ¶ 15; See copy of Order of March 3, 2008 attached hereto as Addendum 2). Further, the Colorado Supreme Court has held the definition of "child" in the Children's Code included an unborn child and that the provisions of the Children's Code are to be liberally construed. *People v. Estergard*, 457 P.2d 698 (1969).

The January 16, 2008 Verified Petition for Paternity Pursuant to § 19-4-101, C.R.S., et seq. And to Enjoin Adoption Pursuant to § 19-5-200 et seq. is a custody and/or visitation determination for purposes of the PKPA. Again, the Petition for Paternity filed by the natural father not only addressed paternity but sought specific relief regarding the allocation of parental responsibilities (decision-making and *parenting time*) and a *request to enjoin the adoption of the child* (unborn at the time). Emphasis added. (R. 1130, Exhibit No. 16, Page 4, and 5/Wherefore clause; See Verified Petition for Paternity attached hereto as Addendum 3). In addition, physical custody was raised in the Verified Petition for Paternity filed by the natural father but was deferred as the child had not yet

been born. (R. 1130, Exhibit No. 16, ¶ 27; See Verified Petition for Paternity attached hereto as Addendum 3).

Also, the Byingtons, prospective adoptive parties, and brother and sister-in-law to the natural mother, were fully aware and had notice of the natural father's filing of the Verified Petition for Paternity even prior to the birth of the minor child as Mr. Byington assisted his sister with her preparation of her Response to Petition for Paternity which was filed with the Colorado court on February 12, 2008. (R. 1130, Page 220, Lines 12-25; R. 1130, Page 221, Lines 1-3; R. 1130, Page 223, Line 25; R. 1130, Pages 224- 227).

There have been two (2) orders issued by the Colorado Court, the first dated February 29, 2008 entitled "Final Order for Paternity." The Final Order for Paternity was filed with the Colorado Court on February 19, 2008 in anticipation of the Hearing that was scheduled for February 20, 2008. (See date stamped copy of Final Order of Paternity attached hereto as Addendum No. 1). The Final Order for Paternity was filed the same day as the Utah adoption Petition was filed, February 19, 2008. (R. 1-6). Had the natural mother appeared at the scheduled February 20, 2008 hearing in the State of Colorado, the Final Order of Paternity would have been issued on February 20, 2008. However, due to the natural mother's phone call to the Colorado Court on the morning of February 20, 2008, the February 20, 2008 hearing was continued and the Colorado Court eventually entered the Final Order for Paternity on February 29, 2008 only four (4) days after the

natural father learned that his daughter had been born. (R. 363-382, ¶ 25; R. 363-382, ¶ 31).

The second order issued by the Colorado Court is dated March 3, 2008 and entitled " Order of March 3, 2008". The Order of March 3, 2008 issued by the Colorado Court enters findings stating, "Jurisdiction is proper pursuant to the Children's Code, § 19-1-101 C.R.S., et seq., including Article 4, The Uniform Parentage Act, Utah is not the proper forum for Father's paternity action, and Utah does not have jurisdiction over the action." (R. 1130, Exhibit No. 11, ¶ 2, 3; See copy of Order of March 3, 2008 attached hereto as Addendum 2). In addition, the Order of March 3, 2008 states that the Colorado Court is not prohibited from granting a Final Order of Paternity and that the Paternity case remains open, is not being dismissed and Colorado retains jurisdiction over the paternity proceeding. (R. 1130, Exhibit 11, ¶ 18, 21; See copy of Order of March 3, 2008 attached hereto as Addendum 2.).

Here, the Verified Petition for Paternity filed in Colorado on January 16, 2008 qualifies as "any proceeding for a custody or visitation determination" for purposes of the PKPA, 28 U.S.C. § 1738A(g) including, but not limited to the foregoing reasons:

1. The Colorado Court was exercising jurisdiction over the paternity matter as of January 16, 2008, over one month prior to the adoption petition being

filed in the state of Utah and the prospective adoptive parties had notice of the Colorado Paternity filing prior to the birth of the child;

2. The Colorado Court continues to exercise jurisdiction;

3. The Colorado Paternity matter addressed the issues of custody and visitation and requested the Colorado Court to make determinations regarding custody and visitation (aka parent time) by way of referencing that physical custody would be an issue once the child was born, requesting the Court allocate parental responsibilities, not limited to parent time, and requesting the Colorado Court enjoin adoption of the minor child which is also a request for a custody determination because it involves the natural mother's actions of attempting to terminate the natural father's parental rights;

4. Prior to the birth of the minor child on February 12, 2008, the natural mother invoked the jurisdiction of the Colorado Court as she requested specific relief in her Response to Petition for Paternity, in particular, requesting the court to deny the natural father a parent/child relationship, deny the natural father's parental rights and responsibilities, allow adoption proceedings, and require the natural father pay her legal costs. (R. 1130, Exhibit No. 7; See copy of Response to Petition for Paternity attached hereto as Addendum 4);

Therefore, the Colorado Verified Petition for Paternity Pursuant to § 19-4-101, C.R.S., st. seq., and to Enjoin Adoption Pursuant to § 19-5-200, et. seq. qualifies as a proceeding for a custody or visitation determination for purposes of the PKPA.

III. COLORADO SHOULD BE DEEMED THE CHILD'S HOME STATE.

A child custody or visitation determination made by a court of a State is consistent with the provisions of the PKPA if a two part test can be met. 28 U.S.C. § 1738A (c), (1), (2). First, there should be a showing that the Court of a State has jurisdiction under the law of such state. 28 U.S.C. § 1738A (c)(1). In the present matter, as of January 16, 2008, Colorado has and continues to have jurisdiction as the Colorado proceeding is a custody or visitation determination dealing with paternity, custody, visitation/parent time and was pending prior to the Utah adoption filing.

The next portion of the two part test requires that either, (A) the State be determined the home State of the child on the date of the commencement of the proceeding, or a showing that the State was the child's home State within six months before the date of the commencement of the proceeding and the child's absence from such State is because of the removal or retention by a contestant or for other reasons and a contestant continues to live in such State or (B) no other State would have jurisdiction and it is in the best interest of the child that a court of such State assume jurisdiction." 28 U.S.C.§ 1738A (c) (2) (A) (i) & (ii), (B).

Pursuant to the PKPA a child's "home state" means, "the State in which, immediately preceding the time involved, the child lived with his parents, a parent or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period." 28 U.S.C.§ 1738A (b) (4) .

The "home state" provision governing a situation where the child is less than six months old should not apply to this case because the minor child was born prematurely while the natural mother was visiting a sick relative in Utah, the minor child did not live from birth with the prospective adoptive parties as the minor child stayed at the Neonatal Intensive Care Unit of a hospital for a period of time (R. 1130, Page 141, Lines 2-25; R. 1130, Page 142, Lines 1-8), and the natural mother had notice of natural father's specific request that mother be enjoined from making their child available for adoption over one month prior to the pre-mature birth. Utah should not be considered the home state, rather, the facts of this case warrant a determination that Colorado is the home state of the child. As of January 16, 2008, the date of the commencement of the Colorado Paternity action, the minor child had lived in Colorado with a parent, the natural mother, for six consecutive months due to the fact the natural mother was carrying the unborn child while

living in Colorado and the child became absent from Colorado because of the removal by a contestant, natural mother, and the natural mother continues to reside in Colorado.

Further, in the Response to Petition for Paternity filed by the natural mother, she requests affirmative relief that the Colorado Court, "support the fact the unborn baby and Mother are one.." (R. 1130, Exhibit No. 7; See copy of Response to Petition for Paternity attached hereto as Addendum 4). Additionally, Colorado law permits the filing of a paternity matter prior to the birth of the child at issue. C. R. S. § 19-4-105.5 (3). Thus, as of January 16, 2008, Colorado was the home state of the minor child and Colorado obtained subject matter jurisdiction over the natural father, natural mother and the unborn child the minute the natural father filed his paternity, custody and injunctive proceeding.

IV. THE STATE OF COLORADO SHARES A "SIGNIFICANT CONNECTION" WITH THE MINOR CHILD AND HER PARENTS AND POSSESSES "SUBSTANTIAL EVIDENCE CONCERNING THE CHILD'S FUTURE CARE, PROTECTION, TRAINING AND PERSONAL RELATIONSHIPS."

"The PKPA prefers home state jurisdiction under 28 U.S.C. § 1738A (c) (2) (A)" thus, if a home state can be established, the significant connection factors under subsection (B) are not relevant. *Ex parte D.B.* 975 So.2d 940 (Ala. 2007) (citing *Martinez v. Reed*, 623 F.Supp 1050, 1056 (E.D.La.1985). The natural father asserts the significant connection and substantial evidence factors are not relevant. Although, in the event this Court is reluctant to accept Colorado as the "home state" of the minor child,

then the Court should determine that Colorado continues to assume jurisdiction pursuant to the "significant connection" and "substantial evidence" provisions of the PKPA at 28 U.S.C. 1738A (c) (2) (B) (i).

Here, it is in the best interest of the minor child to have Colorado continue to assume jurisdiction as the Colorado Court on February 20, 2008, appointed a Guardian ad Litem for the benefit of the child, both parents continue to maintain residency in the State of Colorado, and the minor child has two half siblings, a sister related through the natural mother who resides with mother, and a brother, related through the natural father who resides with father. In addition, there would be substantial evidence in Colorado concerning the child's future care, protection, training and personal relationships as both parents continue to maintain residency in Colorado, and mother and father as well as their friends in Colorado and family would attest to the parental fitness of the parents, their depth and desire to raise their child and their plans and abilities to provide for the financial and emotional needs of the minor child.

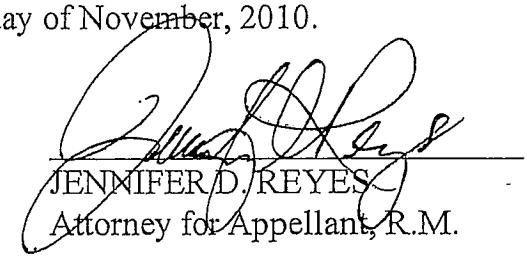
Therefore, due to the unique facts this case presents, the State of Colorado should be determined the "home state" of the minor child, or in the alternative, Colorado should continue to assume jurisdiction as previously ordered by the Colorado Court on February 29, 2008 which has never been disputed by natural mother, and considering the parents

and the minor child have significant connections with Colorado and substantial evidence concerning the child would be available in Colorado.

CONCLUSION

The PKPA operates to divest this Court of jurisdiction to hear this case. Colorado is the proper forum for any custody determinations.

RESPECTFULLY SUBMITTED, this 22nd day of November, 2010.



JENNIFER D. REYES
Attorney for Appellant, R.M.

CERTIFICATE OF SERVICE

I hereby certify on November 23, 2010, I caused a true and correct copy of the foregoing APPELLANT'S SUPPLEMENTAL BRIEF RE: PARENTAL KIDNAPING AND PREVENTION ACT through the U.S. Mail, postage pre-paid to the following:

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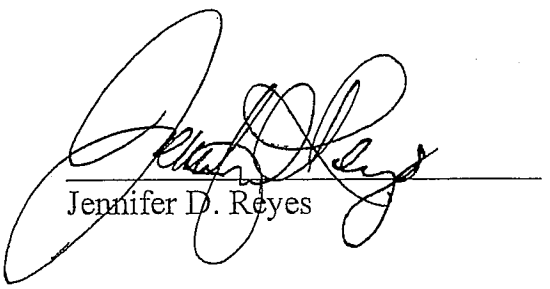

Jennifer D. Reyes

ADDENDUM 1

2008 FEB 19 PM 1:23

District Court City and County of Denver, Colorado Court Address: Denver City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202 (720) 865-8301	
In the Interest of: Petitioner: ROBERT MANZANARES v. Respondent: CARIE TERRY	COURT USE ONLY
	Case Number: 08 JV 141 Division/Courtroom

FINAL ORDER FOR PATERNITY

This matter having come on for a hearing on 2-29-2008 (date) or upon Court Review of the Petition and the Court having considered said Petition and the evidence and testimony offered in support thereof, and now being fully advised in the premises FINDS THAT:

1. The Court has jurisdiction over the subject matter and persons herein and venue is proper because:
   ☒ Petitioner resides in this County
   ☒ Respondent resides in this County
   ☒ Minor child (unborn) resides in this County

2. Information about the Children:

Full Name of Child	Present Address	Sex	Date of Birth
UNKNOWN NAME	UNKNOWN	Unknown	UNBORN

3. Genetic Testing

   ☒ Genetic testing is not necessary, as both parties admit that Petitioner is the father.

   ☐ The genetic testing received from _____ (name of genetic lab) on _____ (date) presents the following results:

☐ That _____ (name) is the biological mother of the children.

☐ That _____ (name) is not the biological father of the children.

☐ That _____ (name) is the biological father of the children.

Based on these Findings, the Court orders the following:

☐ _____(name) is not the biological father of the children and has no legal rights or responsibilities to the children.

☐ The birth certificate shall be changed to have _____(name of party) name removed from the Birth Certificate(s).

☒ Petitioner, Robert Manzanares (name) is the biological father of the child and has all of the legal rights and responsibilities that he is entitled to by law as to the child.

☐ Costs shall be assessed in the amount of $ _____ payable to _____ (name of party).

☒ Other: Petitioner shall have his name listed as the biological father on the birth certificate when the parties' child is born.

Date: 2-29-08

D. Bud Wood

☒Judge ☐Magistrate

Juvenile Court
State of Colorado
Certified to be full, true and correct copy
Court Seal MAR - 3 2008
Clerk of the Juvenile Court
By _____
Deputy Clerk

SEAL

ADDENDUM 2

District Court City and County of Denver, Colorado Court Address: Denver City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202 (720) 865-8301	
In the Interest of: Petitioner: ROBERT MANZANARES v. Respondent: CARIE TERRY	COURT USE ONLY
	Case Number: 08 JV 141 Division: 2 Courtroom: 166
ORDER OF MARCH 3, 2008	

THIS MATTER came before Division 2, the Honorable D. Brett Woods, of the Denver County Juvenile District Court on three separate hearings, held February 27, 2008, at 2:00 p.m., February 29, 2008, at 1:30 p.m., and March 3, 2008, at 3:00 p.m. upon Petitioner's *Verified Petition for Paternity Pursuant to 19-4-101, et seq. and to Enjoin Adoption Pursuant to 19-5-200, C.R.S., et seq.* Petitioner was present and was represented by counsel of record, Emily A. Berkeley and David Osborne, of Elkus and Sisson, P.C. Respondent was present and represented herself. Guardian Ad Litem Vivian Burgos, Esq., appointed by the Juvenile Court on February 20, 2008, was present at the first two hearings to represent the minor child in this matter.

After hearing the testimony of the Parties, reviewing the court file, pleadings and Exhibits, and deeming itself sufficiently advised in the premises, the Court enters the following Findings and Orders:

1. Venue is proper, Respondent Mother has not contested venue, and Petitioner Father was the proper person to bring this action.

2. Jurisdiction is proper pursuant to the Children's Code, §19-1-101, C.R.S., et seq., including Article 4, The Uniform Parentage Act.

3. Utah is not the proper forum for Father's paternity action, and Utah does not have jurisdiction over the action.

4. A paternity action is a child custody proceeding under the UCCJEA, §14-13-102 (4), although this Court is not making any rulings pursuant to the UCCJEA at this time.

5. The Court will not rule regarding the home state of the parties' child at this time.

6. The Court takes judicial notice of the case file and its contents.

7. On January 16, 2008, Father filed his *Verified Petition for Paternity Pursuant to 19-4-101, et seq. and to Enjoin Adoption Pursuant to 19-5-200, C.R.S., et seq.*, and effectuated personal service over Mother on February 1, 2008, within the City and County of Denver.

8. On February 12, 2008, Mother filed her Motion for Continuance of the February 20, 2008, hearing and her Response to Father's *Verified Petition*.

9. In paragraph 7 of her Response, Mother acknowledged that Father was the biological father of her then unborn child. Also in her Response Mother indicated that she had no knowledge of any other related proceedings.

10. On February 20, 2008, the Juvenile Court held a hearing wherein Mother did not appear. Father appeared with his counsel. The Court continued the hearing until March 5, 2008. The March 5, 2008, date has now been vacated.

11. On February 26, 2008, Father filed an Emergency Motion requesting a hearing based on the fact that Mother had given birth to the parties' daughter days earlier and had potentially made the parties' child available for adoption. Father later discovered that this was, in fact, what happened.

12. On February 27 and 29, and March 3, 2008, this Court held hearings where the parties and Father's counsel were present. The Guardian Ad Litem was present for the first two hearings. There were arguments and offers of proof at all hearings.

13. On February 27, 2008, this Court ordered the parties to submit briefs regarding whether this Court had subject matter jurisdiction over this matter, and both parties complied.

14. Mother testified that the parties' minor child is currently in Utah, in the care and custody of her brother and sister-in-law, Scott and Julissa Byington, of the Salt Lake City area. Their phone number is 801-830-6668. Mother testified that she does not know the name given to the parties' daughter, nor does she know her brother's address.

15. At the hearing on February 29, 2008, the Court took notice and read into the record §19-1-102 and 19-4-105.5(3), and noted that a proceeding under the Children's Code may be initiated prior to a child's birth.

16. At the hearing on March 3, 2008, pursuant to this Court's duty to confer with the Utah Court under the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA"), §14-13-101, C.R.S., et. seq., this Court conferred with the Honorable Utah Third District Court Judge Robert K. Hilder via telephone and on the record before making this ruling.

17. In *People v. Estergard*, 169 Colo. 445, 457 P.2d 698 (1969), the Colorado Supreme Court held that the definition of "child" in the Children's Code included an unborn child and that the provisions of the Children's Code are to be liberally construed.[1] *Id.*, 169 Colo. at 448-50, 457 P.2d at 699-700.

18. The Court is not prohibited from granting a Final Order of Paternity.

19. The Court finds that Father is the biological father of the parties' infant daughter, born February 17, 2008, and therefore grants his Petition for Paternity and signs his Final Order for Paternity.

20. The Court orders that the Father's name shall be listed on the parties' daughter's birth certificate, and the Honorable Utah Third District Court Judge Robert K. Hilder acknowledged on the record that Utah will recognize this Order to place Father's name on the parties' daughter's birth certificate.

21. This case remains open, is not being dismissed and Colorado retains jurisdiction over this matter.

22. The Court orders Father's counsel to prepare a Report of Paternity Determination.

SO ORDERED this 3 day of March, 2008.

D. Brett Woods

Honorable District Court Judge D. Brett Woods

Juvenile Court
State of Colorado
Certified to be a full, true and correct copy
Court Seal MAR - 3 2008
Clerk of the Juvenile Court
By Deputy Clerk

SEAL

ADDENDUM 3

2008 JAN 16 PM 3:08

District Court City and County of Denver, Colorado Court Address: Denver City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202 (720) 865-8301	
In the Interest of: Petitioner: ROBERT MANZANARES v. Respondent: CARIE TERRY	COURT USE ONLY
Attorneys for Petitioner: Donald C. Sisson, #35825 Reid J. Elkus, #32516 Emily A. Berkeley, #36240 Address: Elkus & Sisson, P.C. 1660 Lincoln Street, Suite 1750 Denver, Colorado 80264 Telephone Number: (303) 567-7981 Email: dsisson@elkusandsisson.com relkus@elkusandsisson.com eberkeley@elkusandsisson.com	Case Number: 08 JV 141 Division/Courtroom
VERIFIED PETITION FOR PATERNITY PURSUANT TO §19-4-101, C.R.S., et seq. and to ENJOIN ADOPTION PURSUANT TO §19-5-200, et seq.	

Petitioner, Robert Manzanares, through counsel Elkus & Sisson, P.C., asks this Court to find Petitioner to be the father of the child named in this Petition, and state that:

1. Information about the Petitioner/Father Check if in Military ☐

Date of Birth: 8/14/1977 Length of Residence in Colorado: 3 years 5 months

Current Mailing Address: 6242 Red Canyon Drive Apt D, Highlands Ranch, CO 80130

Home Phone #: _____ Work Phone #: 303-869-4470 Cell #: 303-564-1505

2. Information about the Respondent/Mother Check if in Military ☐

Date of Birth: 4/6/1977 Length of Residence in Colorado: Approx. 8 years

Current Mailing Address: 1417 South Columbine Street, Denver, CO 80210

Home Phone #: _____ Work Phone #: _____ Cell #: 720-394-6756

3. Petitioner Father (hereinafter "Father") is the other biological parent of the following child:

Full Name of Child	Present Address	Sex	Date of Birth
UNKNOWN NAME	UNKNOWN	Unknown	UNBORN

4. The Court has jurisdiction over the Respondent Mother (hereinafter "Mother").

5. Mother lives in Denver County.

6. The minor child (the "child") is not yet born. Mother has been pregnant for approximately seven (7) months. An ultrasound dated August 9, 2007, stated that Mother was 8 weeks and 3 days pregnant at that time. (*See* Exhibit 1, Ultrasound). Accordingly, Mother is approximately 31 weeks 2 days pregnant as of January 16, 2007.

7. Mother does not dispute that the child who is the subject of this Petition is the issue of Petitioner Father (hereinafter "Father") and Mother. The parties were living together and were monogamous with each other at the time the child was conceived.

8. Although unmarried, the parties planned to raise the child together until Mother consulted with officials at her church, the Church of Jesus Christ of Latter Day Saints (hereinafter the "Mormon Church"). At that time she ended her relationship with Father because he would not convert to the Mormon faith.

9. Mother was advised by Mormon Church officials that she should make the child available for adoption to a married Mormon couple.

10. After consulting with Mormon Church officials Mother informed Father that God advised her that the child is not hers, but is her "sacrifice" to a young Mormon couple who cannot have a baby. She has since repeated this assertion to Father many times.

11. Mother further informed father that the child is a "business," and that she should have aborted the child when she had the chance. She has since repeated this assertion to Father many times.

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12. Kurt Olsen, of the Latter Day Saints Family Services, contacted Father and attempted to coerce him to sign documents related to making the child available for adoption.

13. Mother has repeatedly contacted Father to attempt to persuade him to allow the child to be placed for adoption with a Mormon family.

14. Mother has contacted Father's parents and others of his family members to convince them to persuade Father to allow the child to be placed for adoption with a Mormon family.

15. Mother's ex-husband, Curt Terry, has also contacted Father and attempted to persuade him to agree to an adoption, although he also expressed concern to Father about Mother's physical and mental health.

16. Father has requested via telephone, e-mail and written correspondence that Mother share information with him about the child's well-being and health. (*See* Exhibit 2, e-mail messages from Father to Mother).

17. Father has asserted to Mother via telephone, e-mail and written correspondence his wishes to be a father to the child and to maintain an amicable relationship with Mother. (*See* Exhibit 2, e-mail messages from Father to Mother).

18. Mother has threatened Father that the "stress" of communicating with him, as well as his refusal to consent to adoption, will cause her to go into pre-term labor. Mother is using this threat as a way to convince Father that adoption is the correct choice for the child.

19. Many of Mother's communications with Father, her actions, and Father's communications with Curt Terry make Father concerned about Mother's physical and mental health.

20. Father is filing this Petition prior to the child's birth because he has serious and founded concerns that, although the unborn child will not be legally available for adoption pursuant to §19-5-203, C.R.S., Mother plans to surreptitiously make the child available for adoption immediately upon his or her birth. Mother has repeatedly asserted her intention to give the child up for adoption via telephone and e-mail, and continues to pressure Father to authorize an adoption, referring to him as a "chromosome donor." (*See* Exhibits 3 and 4, e-mails from Mother to Father dated January 11, 2008, and December 15, 2007).

21. Father has serious and founded concerns that Mother will flee to Utah, where she has family, to proceed with an adoption. Father therefore needs to establish immediate jurisdiction in Colorado, where the parties live and where the child was conceived, prior to the child's birth.

22. Father wishes to be an active part of the child's life when he or she is born. Father has been voluntarily providing financial support to Mother and, upon her suggestion that the support doesn't cover her expenses, will immediately begin providing more. (*See* Exhibits3, e-mail from Mother to Father dated January 11, 2008, and Exhibit 5, cancelled checks to Mother).

23. Father requests that he be allowed access to information about the child's health, but is not requesting medical information about Mother. Mother has refused to allow Father to have any further involvement with the unborn child, including information regarding the child's health.

24. Each party has a continuing duty to inform the Court of any proceeding in this or any other state that could affect the current proceeding.

25. Father has not participated in any proceedings regarding the child as a party or a witness, or in any other capacity concerning the allocation of parental responsibilities including decision-making and parenting time with the child.

26. Father does not know of any proceedings that could affect the current proceeding including, but not limited to proceedings relating to domestic violence or domestic abuse, enforcement of Court orders, protection/restraining orders, termination of parental rights, and adoptions.

27. The child is not born and therefore there is no issue of current physical custody.

28. Required Notice of Prior Protection/Restraining Orders. There have been no Temporary or Permanent Protection/Restraining Orders to prevent domestic abuse or any Criminal Protection/Restraining Orders or Emergency Protection Orders issued against either party.

WHEREFORE, Father respectfully requests the following:

☒ Determination that Petitioner is the father.
☒ Determine that there is a parent/child relationship between the child and Father once the child is born.
☒ If necessary, order that the Birth Certificate be changed to show ☒Petitioner ☐Respondent as the Father.
☐ Child support ordered.
☐ Child support by income assignment to ☐Petitioner's ☐Respondent's employer.
☐ Past child support including birthing expenses.
☐ Medical support for the minor child(ren).
☒ That allocation of parental responsibilities (decision-making and parenting time) be addressed upon the child's birth.

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☒ That costs be addressed.
☒ That he be allowed access to medical information concerning the child.
☒ That this Court enjoin the adoption of the child that is the subject of this Petition, immediately and prior to the child's birth, until further proceedings may be held or until further agreement of the parties.

Respectfully submitted this 16th day of January, 2008.

ELKUS & SISSON, P.C.

/s/ Emily A. Berkeley
Emily A. Berkeley
Attorney for Petitioner

VERIFICATION

I, Robert Manzanares, the Petitioner herein, being first duly sworn upon oath, declare and state that I have read the foregoing VERIFIED PETITION TO DETERMINE PATERNITY, know the contents therein, and state and agree that same is true and accurate to the best of my knowledge.

/s/ Robert Manzanares

STATE OF COLORADO)
) ss.
City & County of DENVER)

Subscribed and sworn to before me on the 16th day of January, 2008, by Robert Manzanares. Witness my hand and official seal.

My commission expires: 03/23/11

Carly C. Cables, Notary Public

CARLY C. CABLES NOTARY PUBLIC STATE OF COLORADO

ADDENDUM 4

☐ District Court ☒ Denver Juvenile Court Denver County, Colorado Denver City and County Building 1437 Bannock Street, Room 256 Denver, CO: 80202 720-865-8301	
In the Interest of: Petitioner: Robert Manzanares v. Respondent: Carie Terry	COURT USE ONLY
Attorney or Party Without Attorney (Name and Address): Carie Terry 1417 S. Columbine St. Denver, CO 80210 Phone Number: 720-394-6756 E-mail: FAX Number: Atty. Reg. #:	Case Number: 08 JV 141 Division Courtroom

RESPONSE TO PETITION FOR PATERNITY

The Respondent, Carie Terry, asks the Court to accept this document, and the exhibits, as my response (in numerical order aligned with the numerical order in the petition) to the Petition for Paternity that was filed in case #08 JV 141.

1. The information about the Petitioner is correct
2. Agree-Information about Mother is correct
3. Agree-child is not born
4. Deny, draws for legal conclusion
5. Agree
6. Agree
7. Agree
8. Deny, although unmarried, the parties were in the process of separation when she found out conception had occurred. There was NO INTENTION of co-parenting once the baby was born.
9. Deny, mother never sought Mormon officials.
10. Deny, accusation is absurd, the mother has never (and would never) refer to the unborn baby as a "sacrifice".
11. Deny, the mother's consideration and selflessness has always been for the well-being of the unborn baby.
12. Deny, the Petitioner spoke only one time with Kurt Olsen and it was back in Sept 2007 when he, the Petitioner, contacted Kurt to find out more about the adoption process and how it works.
13. Deny
14. Deny, Mother was contacted by Petitioner's family (see exhibit 4), with the expressed notion and desire to keep close relations with the Mother and her

daughter of previous marriage despite the ending of the short relationship between her son (the petitioner) and the mother.

15. Deny, the Mother's ex-spouse, Curtis Terry, and the Petitioner have had only one conversation, which occurred in Sept 2007, regarding their, the Mother and Curtis', daughter's well being due to the actions of the Petitioner.
16. Agree, Mother has complied and has constantly provided the general health and the well being of the Mother and the unborn baby to the Petitioner and his lawyer (See Exhibits 1, 2, 3, and 5).
17. Deny, the Petitioners written correspondences have been coached to appear sincere, and do not match his verbal correspondences since the ending of the relationship in August 2007.
18. Deny, Mother has informed the Petitioner that his continual harassment has been unneeded stress that the Mother and unborn baby wishes to avoid for their health and well being.
19. Deny, there has been no action or communication between the Petitioner and the Mother after mid-October 2007 except for email and written letters from Petitioner to the Mother. The communications from the Mother support only that of which she and the unborn baby are healthy, good and doing well. This is also confirmed by the stable and excellent well being of her 6 year old daughter.
20. Deny, draws for legal conclusion.
21. Deny, draws for legal conclusion.
22. Deny, Mother has concern and first hand experience of Petitioner's financial instability and his habitual drinking. The Mother has great cause of concern to of the Petitioner's motives to oppose an adoption of the unborn baby stemming from his hurt over the short relationship ending. Also, two checks mentioned in the Paternity of Petition that were marked "not cashed" were never received by the Mother.
23. Deny, Mother has provided constant communication regarding the health and well being of the unborn baby (See again, Exhibits 1, 2, 3 and 5) to the Petitioner and his lawyer.
24. Can neither agree nor deny, to date, mother has no knowledge of any other proceedings besides a Paternity Petition in case # 08 JV 141.
25. Can neither agree nor deny, to date, mother has no knowledge of the Petitioner being involved in any other proceedings.
26. Can neither agree nor deny, to date, mother has no knowledge of what proceedings the Petitioner has been involved in.
27. Agree—the baby is not born.
28. Agree.

Wherefore, the Mother respectfully requests the following of the Court:
*To support the fact that the unborn baby and the Mother are one, therefore all communication regarding the Mother's health and well being are the same of the unborn baby.

*To deny the Petitioner a parent/child relationship once the baby is born, for the best interest of the baby.
*To deny for the Birth Certificate to reflect the Petitioner as the Father, for the best interest of the baby, once born.
*To deny the Petitioner parental rights and responsibilities once baby is born, for the best interest of the baby.
*To allow adoption proceedings upon baby's birth for the best interest of the baby.
*Support the fact the Mother has sufficiently communicated medical information regarding the health of the unborn baby and Deny the Petitioner access to the mother's (and therefore the unborn baby's) medical records.
*That legal costs of the Mother's be paid by the Petitioner.

Respectfully submitted this 12th day of February, 2008.

Carie B. Terry

Carie Terry

VERIFICATION

I, Carie Terry, the Mother and Respondent herein, being first duly sworn upon oath, declare and state that I read the foregoing VERIFIED RESPONSE TO PATERNITY PETITION, know the contents therein, and state and agree that same is true and accurate to the best of my knowledge.

Carie B. Terry

Carie Terry

STATE OF COLORADO)
) ss.
City & County of DENVER)

Subscribed and sworn to before me on the 12 day of February, 2008, by Carie Terry. Witness my hand and official seal.

My commission expires: 15 Aug 2010

NOTARY PUBLIC
SEANNA C. PIDEK
STATE OF COLORADO

Seanna C. Pidek