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JUVENILE COURT  
CITY AND COUNTY OF DENVER  
STATE OF COLORADO  
1437 Bannock St., Room 157  
Denver, CO 80202

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IN THE INTEREST OF:

CASE NO. 08JV141  
DIVISION 2

PETITIONER:  
ROBERT MANZANARES

v.

RESPONDENT: CARIE TERRY

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REPORTER'S TRANSCRIPT  
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The hearing in this matter commenced on  
Monday, March 3, 2008, before the HONORABLE D. BRETT  
WOODS, Judge of the Denver Juvenile Court.

1 AFTERNOON SESSION, MONDAY, MARCH 3, 2008

2 (The following proceedings were had and  
3 entered of record:)

4 THE COURT: Well, then I can call this up  
5 just briefly, 2008JV0141. Parties can enter their  
6 appearances on this matter.

7 MS. BERKELEY: Thank you, Your Honor. Emily  
8 A. Berkeley, Registration 36240, who is here with  
9 Petitioner Robert Manzanares.

10 THE COURT: All right.

11 MS. BERKELEY: Then co-counsel Dave Osborne  
12 here as well.

13 MR. OSBORNE: Good morning, Your Honor,  
14 Registration 32319.

15 THE COURT: Good afternoon.

16 MR. OSBORNE: Or good afternoon, sorry.

17 THE COURT: All right. Thank you. Ma'am?

18 RESPONDENT: Hi, Carie Terry.

19 THE COURT: All right. Thank you. I heard  
20 the paternity issue, decided the paternity issue on  
21 Friday. An order was presented to me after that. The  
22 order appeared broader to me than the issues I had  
23 decided. That there was some further discussions then  
24 after that, and then I said I could reconvene the  
25 hearing today at 3:00 pursuant to the terms of the

1 Uniform Child-custody Jurisdiction and Enforcement  
2 Act.

3 I have arranged to have a consultation  
4 hearing with the judge in Utah at four p.m., and the  
5 judge in Utah who's apparently a Judge Hilder, who I  
6 have not met or spoken to but my staff was in contact  
7 with their office, is available to speak with us at  
8 3:00 for purposes of the -- excuse me, at 4:00 for  
9 purposes of a consultation hearing as is called for by  
10 the Child-custody Jurisdiction and Enforcement Act, so  
11 unless there was anything prior to that, at 4:00 we'll  
12 just have the hearing at 4:00.

13 MS. BERKELEY: Your Honor, you had asked me  
14 some other questions at the last hearing and I'm  
15 prepared to do oral argument before we consult with  
16 him.

17 THE COURT: All right.

18 RESPONDENT: Your Honor, I also have more  
19 support as well.

20 THE COURT: Okay. Well, I don't have a lot  
21 of time because really squeezing this in and just  
22 waiting for other attorneys to come in from the other  
23 divisions. Did you have -- so give each about two  
24 minutes.

25 MS. BERKELEY: Two minutes.

1 THE COURT: Pretty quick. Or unless they  
2 come in but go ahead.

3 MS. BERKELEY: Okay. Your Honor, well  
4 basically as you know, we're here to talk about the  
5 home state because the parties' daughter was born on  
6 Utah soil not because mom moved to Utah for a job and  
7 not because she had any other reason except to divest  
8 this court of jurisdiction and give her child to her  
9 own brother so she could see the child and  
10 Mr. Manzanares the father could no longer see the  
11 child, so basically it's her own misconduct that has  
12 allowed us to be here today and has caused us to be  
13 here three times in the last five days.

14 Except for the home -- the one home state  
15 definition, all other issues are in favor of  
16 jurisdiction being in Colorado. To begin, UCCJEA,  
17 14-13-208, is the unclean hands statute. Unclean  
18 hands statute is nearly identical in Utah. I have  
19 researched them both and essentially to ensure that  
20 parents will not receive unfair advantage from  
21 unjustifiable conduct. And almost in every case it's  
22 because a parent has fled the state whatever state  
23 they're in to divest the court of jurisdiction for  
24 more favorable laws.

25 There's several instances of fraud in this

1 case, and I don't know if we have time to go through  
2 them all, but I can question mother at some point  
3 about them. For example, Mr. Manzanares was sending  
4 her support checks because she said her pregnancy was  
5 so expensive. She signed the child over on the 20th  
6 of February. On the 25th of February after returning  
7 to Colorado she cashed the check he sent to her on the  
8 17th of February. All sorts of other examples. Sent  
9 e-mails. Example -- you still have that?

10 THE COURT: I do.

11 MS. BERKELEY: -- of the e-mails. First  
12 e-mail I think Exhibit 4 she says we'll sit down and  
13 talk about the reconsideration for adoption in April.  
14 She obviously was trying to get him not to pursue his  
15 rights. Also in her response, if you look in the  
16 wherefore, she requested this Court give her authority  
17 to place the child for adoption clearly submitting to  
18 the jurisdiction of this court on the adoption issue  
19 and then just went and crossed state lines and gave  
20 birth and signed the child over for adoption in any  
21 case.

22 She also states to the Court she told  
23 Mr. Manzanares and I exactly when she was going to  
24 Utah, but she also says there was no oral  
25 communications after October '07, and you can clearly

1 see from all the writings including her response she  
2 never gave a specific date. She just kind of said  
3 sometime in February. We were scheduled for a hearing  
4 with Magistrate Janske -- Janske.

5 THE COURT: Janske.

6 MS. BERKELEY: Janske and we took the first  
7 date. According to the statute had to be done within  
8 a certain amount of days and took the first day they  
9 had. She knew about it. Probably saw the exhibits  
10 she had e-mailed and mail of the summons. Also she  
11 had a duty to inform the Court of any proceeding which  
12 could have affected this proceeding. She did not.  
13 You guys found out from us.

14 And you know, she also potentially, and she  
15 says she didn't, but we would still request her  
16 medical records of an induced birth.

17 Also another -- another important thing is  
18 the simultaneous proceedings statute. Utah and  
19 Colorado are very similar to each other.

20 THE COURT: I'm sorry, what was that?

21 MS. BERKELEY: It's simultaneous  
22 proceedings. In Colorado it's 14-13-206 and in Utah  
23 it's 78-45c-206, and in Utah the statute -- and let me  
24 say in advance, you already ruled there was a  
25 paternity proceeding in this case, and you also ruled

1 that is a custody proceeding under the UCCJEA 102 --  
2 14-13-102.

3           If you look at the Utah statute, it says  
4 except as otherwise provided in section 78-45-204,  
5 which does not apply, Court of this state may not,  
6 Utah, exercise jurisdiction under this chapter at the  
7 time of the commencement of the proceedings in Utah if  
8 a proceeding concerning custody of the child has been  
9 previously commenced in the court of another state.  
10 We commenced a custody proceeding a month before she  
11 commenced anything in Utah.

12           In addition, our lawyers in Utah looked up  
13 this case number -- this allegedly custody case number  
14 and they said that's an adoption case, and even if  
15 there was a temporary custody thing and adoption case,  
16 that is just standard and under the UCC -- I'm sorry,  
17 under the adoption statute and UCCJEA even according  
18 to her attorneys, it's not a custody proceeding so --  
19 and that's in their brief.

20           Oh, and also under Rule -- under 206 --  
21 14-13-206, the forum here is clearly more convenient.  
22 If something happens in Utah, these parties are going  
23 to have to fly to Salt Lake City every single time  
24 something happens to protect their rights and that --  
25 that's ridiculous quite frankly. Tell me if time is

1 up. I can keep talking.

2 THE COURT: All right. Anything else you  
3 have?

4 MS. BERKELEY: Yeah. Just -- just briefly.  
5 Finally, under Title 19 and under Title 14 at the very  
6 least this Court might recognize there is a potential  
7 conflict in the law and under the UCCJEA the purpose  
8 is to avoid simultaneous proceedings and avoid parents  
9 absconding with kids.

10 If there is a conflict between 19 -- Title  
11 19 and Title 14, it should clearly be resolved in  
12 favor of equities and in favor of just basic statutory  
13 construction of law. I do have a case In re Petition  
14 of S.O. -- S, as in Sam, O -- and that cite 795 P.2d  
15 254, and --

16 THE COURT: Is that a Colorado case?

17 MS. BERKELEY: It is Colorado, correct,  
18 Supreme Court and statutory construction case and case  
19 of adoption -- challenge to adoption, and it says we  
20 presume the legislature intends a just and reasonable  
21 result when it enacts a statute and we seek to avoid  
22 an interpretation leading to an absurd result, and  
23 just can't see how this Court wouldn't think it would  
24 be an absurd result to allow mom to abscond with a  
25 child -- to go over state lines, adopt her child out



1 to her own brother, and come back and say Colorado  
2 doesn't have any jurisdiction. She already submitted.

3 Also you already ruled in your final order  
4 the child was a resident of Colorado until mom --

5 THE COURT: All right.

6 MS. BERKELEY: And also which I already  
7 cited in People v. Estergard, Court construed the  
8 child as an unborn child in a paternity proceeding.  
9 And, you know, if the Court didn't do that --

10 THE COURT: No, I understand what you're  
11 saying.

12 MS. BERKELEY: Says would permit a parent to  
13 evade responsibilities by leaving the state at any  
14 time prior to the birth of the child. I just -- yeah.

15 THE COURT: All right. Thank you. All  
16 right, ma'am.

17 RESPONDENT: Okay.

18 THE COURT: I don't see the other attorneys  
19 here. Ms. Terry?

20 RESPONDENT: I'm just going to get right to  
21 the point, Your Honor, instead of disputing all the  
22 fluff we already went over on Friday.

23 THE CLERK: One brief moment. Excuse me, I  
24 hate to interrupt.

25 THE COURT: Go ahead, ma'am.

1                   RESPONDENT: Of all the things that I  
2 provided to the Court on Friday to just disprove the  
3 things undersigned counsel stated with, you know, the  
4 clean hands act or the forum shopping or whatever she  
5 is using, that kind of stuff, I want to get straight  
6 to the point, Your Honor, because about the fact this  
7 case revolves around jurisdiction and jurisdiction and  
8 the home state where the child is born. The home  
9 state is by where the child is born and resides from  
10 birth.

11                   The Utah Supreme Court in Alma Evans  
12 Trucking v. Roach wrote that the ordinary and usual  
13 meaning of the word child is a child which has been  
14 born. United States Supreme Court also upheld this.  
15 In Burns --

16                   THE COURT: Have you a citation on your  
17 case?

18                   RESPONDENT: Burns v. Alcala -- Your Honor,  
19 I have a copy for each of you.

20                   THE COURT: Thank you.

21                   RESPONDENT: United States Supreme Court  
22 states that the ordinary meaning of the word child  
23 refers to an individual already born with an existence  
24 separate from its mother meaning that the home state  
25 is when the child is born, not before the child is

1 born, and that claiming jurisdiction before a child is  
2 born is negated.

3           Again if you look at the briefing that I  
4 submitted on Thursday saying that the -- the home  
5 state is where the child lived from birth and resides,  
6 since there is adoption proceedings and where custody  
7 proceedings are already taking place in Utah, Utah  
8 does uphold that home state along with the United  
9 States Supreme Court is where the child is born and  
10 resides from birth.

11           Your Honor, there is no law about me being  
12 able to travel and visit family. No, I did not plan  
13 to have the child four weeks early, and I did notify  
14 the Petitioner and undersigned counsel I was leaving  
15 town from an e-mail I sent them on January 11 saying I  
16 would be in Utah visiting my father who has  
17 Parkinson's, and they did know of that, and again  
18 negating their saying that I knew about the hearing.

19           Obviously you can tell from the information  
20 I gave the Court on Friday that I did not know of the  
21 hearing until I already was a couple days before I was  
22 leaving to go to Utah and already had those plans to  
23 visit my father. That is why I submitted a motion to  
24 continue to the court because I was and already had  
25 planned to be out of town, and they did know that, and

1 again they did hold onto the summons instead of giving  
2 it to me on February 1 and tried to slide by that I  
3 might not show up in court in contempt of court from  
4 them not letting me know.

5           So, Your Honor, as you can see, I also have  
6 a case in Arkansas and in Florida that the same thing  
7 occurred. UCCJEA tried to avoid jurisdictional  
8 conflicts, and they allowed a court to assume  
9 jurisdiction in an initial child-custody determination  
10 based on if the child has no home state, but this  
11 child does have a home state and looking at these --  
12 looking at these laws, the United States Supreme  
13 Court, Colorado, and Utah uphold is that it is from  
14 where the child is born and resides from birth.

15           And I would also like to ask, Your Honor, if  
16 undersigned counsel says Colorado upholds a  
17 contradictory law how is that really --

18           THE COURT: All right. Thank you. You  
19 don't need to ask them. You're addressing me. Okay.  
20 Thank you. Well, I've been informed that some of the  
21 other matters are going to have to be ready because  
22 some other attorneys are in contested hearings, so  
23 I'll do what I can without them. Counsel, reconvene  
24 this at four o'clock.

25           Again the issues I have are that -- a couple

1 of issues we can talk about. I don't know if the Utah  
2 judge will be able to assist us with that or not, but  
3 had wanted me to ask or go ahead and sign a rather  
4 broad order and that could be something that Utah  
5 courts are not going to particularly honor and some of  
6 the arguments that you're making are arguments that  
7 perhaps need to be made in Utah not necessarily here.

8 I had declared paternity in the case because  
9 the statute allows me to declare paternity. I have  
10 directed that the birth certificate reflect the name  
11 of the father, so those are two things that I am  
12 certain that I have done. And again some of the  
13 arguments you're making I'm not sure are arguments  
14 that should be made to me necessarily or arguments to  
15 be made to the Court in Utah because the child is not  
16 here, child is in Utah.

17 You are essentially asking me to sign sort  
18 of a pickup order to have the child picked up and  
19 brought back to Colorado, and I can easily foresee a  
20 circumstance where the Court in Utah would sign an  
21 order saying, no, don't do that and then I have a  
22 police officer who's standing there and has  
23 conflicting orders and may have to figure out which  
24 one they're going to exercise. And so that is kind of  
25 the real problem we got here.

1           So these arguments you're making there may  
2 be a full faith and credit argument I suppose that the  
3 child's name -- excuse me, the father's name needs to  
4 be applied to the birth certificate in Utah as again  
5 the Parentage Act in Colorado allows me to declare  
6 paternity prior to the birth of the child. In this  
7 case I did declare paternity although it did come  
8 after the birth of the child, so again the arguments  
9 you're asking me to make or to accept I'm not sure are  
10 appropriate for here although we will have the Utah  
11 judge on the phone at approximately four o'clock for  
12 the purposes of consultation which are required.

13           There is also the problem, which is the  
14 plain statute, which is the Uniform Child-custody  
15 Jurisdiction and Enforcement Act, does not govern an  
16 adoption proceeding and that's the proceeding which  
17 has been commenced in Utah and though it's possible  
18 there that judge will say it just doesn't govern.

19           MS. BERKELEY: Your Honor, so when the  
20 judge -- we'll all get to talk to the Utah judge?

21           THE COURT: It's on the record and in open  
22 court and this judge in Utah may not even know about  
23 what happened here.

24           RESPONDENT: Your Honor, he's actually the  
25 one who signed -- his signature's on the adoption and

1 temporary custody proceedings which I presented to the  
2 Court on Friday.

3 THE COURT: I understand that, but I'm not  
4 sure the judge knows about this case.

5 RESPONDENT: Wanted to let you know that.

6 THE COURT: Judge -- all the judge knows is  
7 there's some kind of matter going on in Colorado, and  
8 I can -- that's the purpose of consulting because the  
9 purpose of this consultation is to try to avoid these  
10 jurisdictional --

11 MS. BERKELEY: All right. Your Honor, we  
12 thank you. Just 78-45-206 that Utah -- 78-45-206, I  
13 guess maybe the question is how can Utah possibly  
14 exercise jurisdiction based on that, and also I think  
15 I'm sure if you sign -- Utah counsel tells them  
16 whatever order you sign because you had jurisdiction  
17 under full faith and credit under the UCCJEA.

18 THE COURT: Order I can sign and I have said  
19 I can sign I declared paternity and I declared the  
20 gentleman here is the father and his name should be on  
21 the birth certificate. Those are the two things that  
22 I'm absolutely sure I have done and Colorado allows me  
23 to do.

24 Now you're getting in terms of now -- and I  
25 understand what your argument was in terms of

1 presumption, which there is a presumption in law  
2 children should be with their parents, and I  
3 understand that that is Colorado law and all of that.

4           But there is a placement order that has been  
5 placed in Utah, so placement has been made, so when  
6 you get into changing placement, then you get into the  
7 whole issue of best interests, what serves the best  
8 interests, and all of that, and we haven't had -- I  
9 know what the presumption is, but we haven't had any  
10 evidence in this case. I don't know what the  
11 circumstances of the child are. I don't know where  
12 the child is. I don't know who the child is living  
13 with. If I don't know if the child's being mistreated  
14 in any way, hard for me to make a best interests  
15 ruling.

16           MS. BERKELEY: Your Honor, the best  
17 interests -- UCCJEA specifically leaves out the best  
18 interest, if you look at the comments, leaves out that  
19 language and puts in 208 -- 14-13-208, and Ms. Terry's  
20 argument, you know, repeatedly saying home state, home  
21 state doesn't apply -- to avoid absconding and saying  
22 it's the home state.

23           THE COURT: I'll look at that again, but I  
24 understand again since the child isn't here my  
25 thinking is this fight is in Utah, not here.



1 MS. BERKELEY: If you just look at it so  
2 many cases saying the child's not in Colorado because  
3 mom absconded.

4 THE COURT: If you have a case that says I  
5 can sign an order saying a child in another state  
6 needs to be picked up, brought back to this state  
7 because the mother left and went and had the child in  
8 another state, I'll be happy to take a look at it.

9 MS. BERKELEY: Okay. Just 208 is the same  
10 there as here.

11 THE COURT: Maybe the judges will have to  
12 have some sort of a joint evidentiary hearing and  
13 maybe they will say you're right and it's with  
14 Colorado to make that call. That's the whole purpose  
15 of this --

16 MS. BERKELEY: Okay.

17 THE COURT: -- to have a preliminary  
18 consultation with the judge in Utah, and it's all I  
19 can do to try to figure out Colorado law let alone  
20 trying to figure out the law from another  
21 jurisdiction. It's an interesting and difficult  
22 problem for everyone. All right. Thank you.

23 (A recess was taken from 3:30 to 4:05 p.m.)

24 (Calling the judge in Utah.)

25 JUDGE HILDER: Judge Hilder.

1 THE COURT: Good afternoon, sir. This is  
2 Judge Brett Woods. I'm the judge with Juvenile Court  
3 here in Denver, Colorado, and it's a pleasure to have  
4 you with us today and to speak with us.

5 JUDGE HILDER: I'm happy. Can I get your  
6 name again.

7 THE COURT: It's Brett, B-R-E-T-T. Last  
8 name Woods, W-O-O-D-S.

9 JUDGE HILDER: Not that hard, judge. Thank  
10 you.

11 THE COURT: Thank you, sir.

12 JUDGE HILDER: Sounds like you're on the  
13 record.

14 THE COURT: We're on the record here on my  
15 end as well.

16 JUDGE HILDER: Well, on your record and  
17 that's fine. I can add my record but might not work  
18 as well if I go on speaker phone.

19 THE COURT: I understand.

20 JUDGE HILDER: Okay.

21 THE COURT: Let me explain to you why I have  
22 initiated the phone call for you today and doing it  
23 pursuant to the Uniform Child-custody Jurisdiction and  
24 Enforcement Act.

25 JUDGE HILDER: Uh-huh.

1 THE COURT: And we have some people here in  
2 my courtroom as well. I have the Petitioner Robert  
3 Manzanares who is here and he's represented by  
4 counsel, and he is the Petitioner father in the case.  
5 I have Respondent mother and her name is Carie Terry,  
6 and she's here today in court. She is not represented  
7 by an attorney although I understand she has an  
8 attorney in Utah apparently, and you may have --

9 JUDGE HILDER: I met Ms. Terry I think on  
10 the 20th of February.

11 THE COURT: All right. Well, let me just  
12 explain, and I don't know if we're going to be able to  
13 answer anything today or not, but let me just tell you  
14 what happened here. There was a case filed in  
15 Colorado. It was 2008JV141. It was filed in the  
16 Juvenile Court of the City and County of Denver. It  
17 was filed under our paternity law here in Colorado,  
18 and the case was to seek a declaration of paternity  
19 that Mr. Manzanares is the father of the child of Ms.  
20 Terry and apparently Ms. Terry gave birth to the child  
21 in Utah.

22 JUDGE HILDER: Uh-huh.

23 THE COURT: There was also apparently a  
24 request to enjoin the adoption that was filed but  
25 under the terms of our paternity statute. Long story

1 short, last week I held a brief hearing on the issue  
2 of paternity. That was held I believe on the 27th of  
3 February.

4 Prior to that it had been scheduled for a  
5 hearing earlier than that on the 20th before one of  
6 our magistrates, and Ms. Terry had appeared, filed  
7 responsive pleadings, I should state asked for that  
8 hearing to be continued. For whatever reason it was  
9 continued. Apparently shortly after that she had the  
10 baby in Utah and ended up in my division last week on  
11 the 27th.

12 And I ordered the parties who were here to  
13 brief the issue of jurisdiction, and then I came back  
14 with it on the 29th, and on the 29th entered an order  
15 that at least pursuant to the Colorado Children's Code  
16 and our paternity statute that Mr. Manzanares is the  
17 father of the child.

18 And the reason I was able to do that, sir,  
19 was because our paternity statute here in Colorado  
20 provides that a paternity case can be filed before the  
21 child is born, and it expressly provides that, and it  
22 also expressly provides and Colorado case law has held  
23 that the child need not be a party to it. The only  
24 people that need to be a party are the mother and the  
25 father and that I had found based on the filing here

1 and their appearance that Mr. Manzanares is the father  
2 of the child, and I declared paternity.

3 I also declared that his name should be  
4 added to the birth certificate although I understand  
5 the child was not born in Colorado but was born in  
6 Utah. The Petitioners have asked that I enter some  
7 fairly broad orders essentially asking that the child  
8 be picked up and brought back to Colorado and at least  
9 so far I have declined to do that and all I have done  
10 is said there is a paternity case and I have declared  
11 paternity.

12 They want to argue I believe that there may  
13 have been some actions that would rise to the level of  
14 unclean hands on the part of the mother in terms of  
15 leaving Colorado and having the baby in Utah and so  
16 on, and they have also tried to argue to me that  
17 Colorado is the home state of the child even though  
18 the child was born in Utah. And they are making that  
19 argument again under the Uniform Child-custody  
20 Jurisdiction and Enforcement Act.

21 JUDGE HILDER: Can I ask a question here,  
22 Judge Woods?

23 THE COURT: Sure.

24 JUDGE HILDER: As codified in Utah but  
25 amazingly I had this issue at three o'clock on a New

1 Mexico case but both Utah and New Mexico adopted the  
2 Act and the Act specifically does not apply to an  
3 adoption proceeding.

4 THE COURT: I have noted that, and I have  
5 raised that.

6 JUDGE HILDER: True for Colorado, yes.

7 THE COURT: Yes. We have a section -- in  
8 Colorado section 14-13-103.

9 JUDGE HILDER: We have the same 103  
10 subsection so probably have identical language.

11 THE COURT: I think we do, so I have -- I  
12 don't know what has happened in Utah, but what I told  
13 the parties here is that first of all I'm not sure  
14 that I can enter the orders they want me to enter, and  
15 that even if I did, I'm not certain they would be  
16 recognized in Utah, and mostly I want to avoid a  
17 situation where I have some police officer in Utah  
18 having to have an order from me in one hand and  
19 perhaps an order from you in the other and trying to  
20 figure out which one they have to do.

21 JUDGE HILDER: Why we're talking, and I  
22 really appreciate it, and what we do seem to have,  
23 judge, just so you know what at this end sounds like  
24 we have two actions, one for paternity with you and  
25 adoption with me and the adoption in Utah is all about

1 jurisdictional requirements. Utah is frankly very  
2 aggressive on jurisdiction on adoptions but this is  
3 not a case that's particularly unusual. It's based on  
4 the residency of the proposed adoptive parents who  
5 have filed a petition, and it's also based on the  
6 birth of the child in Utah.

7           And I did take the consent to the adoption  
8 by the proposed adoptive parents, and I heard at the  
9 time and I'm sure Ms. Terry will tell you this I think  
10 she was planning the birth in Colorado but she came to  
11 visit her father I forget for illness or some special  
12 reasons. Baby was a surprise. It wasn't planned in  
13 Utah but happened. It happened on the 17th. Baby was  
14 early.

15           THE COURT: Judge, just so you know, there  
16 have been allegations made in this case and again I  
17 haven't taken evidence, but there have been  
18 allegations and offers of proof made in this case that  
19 Ms. Terry intended to have the baby in Utah and that  
20 again we haven't had an evidentiary hearing although  
21 there have been offers made including offers of proof  
22 in the form of e-mails that people have suggested on  
23 our end Ms. Terry planned to for lack of the better  
24 way of putting it sneak out of Colorado and have the  
25 baby in Utah.

1           JUDGE HILDER: Yeah. I haven't had  
2 evidentiary hearings either and may not be remembering  
3 it correctly because my hearing was about consent and  
4 temporary placement, and on the 20th the baby was  
5 three days old. A consent was given, and I think I  
6 can say without breaching anything, this consent was a  
7 bit different because it consented to the adoption by  
8 specific people. I don't know if Ms. Terry told you  
9 who they are, but files are sealed so if she didn't  
10 tell, I probably cannot, but it was conditioned on  
11 that couple adopting or custody goes back to the  
12 natural mother -- biological mother and that's all  
13 that happened here except placement of course with the  
14 adoptive parents.

15           I think the dilemma we have, judge, and both  
16 do have a dilemma is I have clear jurisdiction under  
17 the adoption statute to do what I did. You have clear  
18 jurisdiction to do what you did on paternity and the  
19 UCCJEA does not apply and the father certainly can  
20 contest the adoption. We have a six-month waiting  
21 period. You probably know that.

22           THE COURT: I gathered that. I understand  
23 you've been in the process also -- of also  
24 recodification of the adoption laws.

25           JUDGE HILDER: This is actually the



1 recodified although now people are actively looking at  
2 it again to see what they got right and what they got  
3 wrong, but Utah is very aggressive. In fact, you can  
4 adopt in Utah if all you have in Utah is a licensed  
5 child placement agency with a registered office, no  
6 parents, no child, no adoptive parents and probably --  
7 well, broadest in the country. I wouldn't be  
8 surprised if it is, but this case wasn't the case.  
9 Baby was born here, adoptive parents are here, and  
10 it's our statute, but that's where it is.

11           It doesn't mean the natural father who you  
12 have now determined to be the father does not have  
13 rights to contest and refuse consent. It's really  
14 just a question of timing I think as much as anything.  
15 I don't know if you're trying to address the temporary  
16 custody, but I do have an order here giving custody to  
17 the proposed adoptive parents, and frankly I wish we  
18 could get the lawyers together and start talking about  
19 what they want to do, but one thing I don't think  
20 either have the UCCJEA.

21           THE COURT: I'm somewhat -- I just wanted to  
22 make sure what was happening there and it has been  
23 represented to me that there might have been an  
24 adoption proceeding but -- and I did get the case  
25 number but wanted to confirm on the record.

1 JUDGE HILDER: Petition -- no question.

2 THE COURT: Okay.

3 JUDGE HILDER: 082900089 and that is  
4 actually assigned to our Judge Robert Faust. I'm the  
5 presiding judge of the district, and I do more of  
6 these than I wish because I have to cover when judges  
7 are missing, and Judge Faust wasn't here that day so  
8 that's the only reason I did the consent, but I  
9 appreciate you calling me. But I don't know how you'd  
10 like to go from here.

11 THE COURT: Well, what I told the parties  
12 and again would be my thinking on this that really  
13 this issue I have declared paternity in Colorado. I  
14 do think I could do that based on our law.

15 JUDGE HILDER: Paternity I think you can.

16 THE COURT: And that I did order the  
17 father's name be added to the birth certificate  
18 whether Utah will recognize that or not.

19 JUDGE HILDER: I think we would, judge,  
20 actually.

21 THE COURT: That would give him some  
22 standing to object in Utah because I did that and want  
23 you to be clear this case was filed in our court --  
24 the paternity action was filed in our court -- certify  
25 whatever records we need to certify to you but let me

1 give you the date -- it was filed at 3:01 p.m. on  
2 January 16, 2008.

3 JUDGE HILDER: Yeah. A month before the  
4 baby was born and I see no issue there. And I think  
5 you are right what is at issue here is the standing of  
6 the father and you've got a paternity order, and I  
7 think -- I think at this point has to be addressed  
8 here in terms of contesting the adoption. If it was  
9 about an immediate custody order, that's a call you'd  
10 have to make of course, judge, but --

11 THE COURT: Well, quite frankly if I made an  
12 immediate custody order I'm not confident it would  
13 apply in Utah.

14 JUDGE HILDER: I'm not either. I don't want  
15 to get at odds, but I'm not --

16 THE COURT: I agree.

17 JUDGE HILDER: Because mine's under full  
18 jurisdiction, but I mean I think -- wish the lawyers  
19 would start talking at that point. I think they need  
20 to. I think the orders that need to be in place are  
21 in place in both states and father has standing as you  
22 say.

23 THE COURT: All right. Well, judge, what  
24 questions may I answer for you, if any?

25 JUDGE HILDER: You answered enough of them,

1 Judge Woods, and I appreciate it. As I say, I don't  
2 get these every day but second one in an hour so some  
3 days are just like that, aren't they?

4 THE COURT: Yes, they are.

5 JUDGE HILDER: Except the one I got from New  
6 Mexico father didn't act until after the consent was  
7 taken, and I think that's fairly significant that time  
8 frame because Utah does caught up with biological  
9 father fairly --

10 THE COURT: I don't know what registration  
11 does or doesn't do in Utah. For all you to figure  
12 out, but again I did not declare he was a putative  
13 father, I have declared that he is in fact the father.

14 JUDGE HILDER: You didn't get to do that  
15 until what, 29th, because of the delayed hearings; is  
16 that right?

17 THE COURT: Yes, that's right.

18 JUDGE HILDER: Action had been pending?

19 THE COURT: It's been pending in Colorado  
20 since that date in January.

21 JUDGE HILDER: Now as you say, Ms. Terry is  
22 there, just needs to get to her lawyer here.

23 THE COURT: Absolutely.

24 JUDGE HILDER: Father needs to do whatever  
25 he wants to -- I frankly say the sooner he appears in

1 the action the better.

2 THE COURT: Absolutely.

3 JUDGE HILDER: At that point I think talk  
4 about the custody issue.

5 THE COURT: Right. Because as I have said  
6 to the parties here and I know going on and on, but  
7 I've got the actual parties here I have explained in  
8 some detail that the child is not here. Child is in  
9 Utah and the custody order from what I understand was  
10 entered in Utah. You have confirmed that, so if there  
11 is a problem with custody, that is something that I  
12 think needs to be taken up with you. In other words,  
13 battle is there; it's not here.

14 JUDGE HILDER: I think that is correct,  
15 judge. I think, you know, with the custody order  
16 February 20 also.

17 THE COURT: All right.

18 JUDGE HILDER: Is there any question the  
19 parties have of my court -- I don't know how well they  
20 can hear this.

21 THE COURT: We're on a pretty good speaker  
22 phone here today. Let me ask since Petitioner father  
23 is here -- I know usually mother is Petitioner but in  
24 this case it was the father, so I'll just run down the  
25 line and start with the Petitioner first. Counsel for

1 the Petitioner father, did you have any questions you  
2 wanted to ask the judge?

3 MR. OSBORNE: Certainly. Good afternoon,  
4 Your Honor.

5 JUDGE HILDER: Good afternoon.

6 MR. OSBORNE: This is David Osborne. I'm a  
7 Colorado attorney, Registration Number 32319, and I  
8 know this isn't necessarily your case that you just  
9 happen to be in the courtroom when this came on, but  
10 do you remember if you asked Ms. Terry if there were  
11 any proceedings that were pending at the time she came  
12 in seeking the adoption consent?

13 JUDGE HILDER: I'm almost sure I did not,  
14 counsel.

15 MR. OSBORNE: Okay.

16 JUDGE HILDER: There is a record. It would  
17 be sealed but could become available, but I'm almost  
18 sure I did not.

19 MR. OSBORNE: I take it then unaware of the  
20 proceeding that had been filed in Colorado?

21 JUDGE HILDER: I believe that's correct.

22 MR. OSBORNE: Okay. Now our client has  
23 retained counsel in Utah, Dale Dorius.

24 JUDGE HILDER: Okay.

25 MR. OSBORNE: And I believe the Respondent

1 has also retained counsel in Utah, Mr. Jenkins.

2 JUDGE HILDER: Mr. Jenkins is representing  
3 the Petitioner. I do not know if he's representing  
4 the natural mother.

5 MR. OSBORNE: Okay. I don't -- she's  
6 signifying yes.

7 JUDGE HILDER: I don't know if he would  
8 agree with that, but he's an extremely experienced  
9 adoption counsel. In fact, he's one of the main  
10 drafters of the Act.

11 MR. OSBORNE: Okay.

12 JUDGE HILDER: So he may well suggest  
13 someone else step in for her, but he would be the one  
14 to contact and probably have his number. Do you?

15 MR. OSBORNE: I do. I do. Now I understand  
16 that -- that the position of the Court as well as the  
17 position of the Court here in Colorado is that the  
18 UCCJEA does not apply to adoption proceedings.

19 JUDGE HILDER: Correct.

20 MR. OSBORNE: If that adoption proceeding is  
21 vacated for lack of a better word if determined that  
22 father does not consent and the Court in Utah makes a  
23 determination that the adoption proceeding is over,  
24 will the Court consider transferring the custody  
25 issues and parental rights issues back to Colorado

1 because both the parents reside in Colorado and quite  
2 frankly would probably be a more convenient forum?

3 JUDGE HILDER: It's an interesting question.  
4 May be premature. I think what would have to happen  
5 is dismissal of the adoption which could indeed occur  
6 and with both parents there indeed may wish that, but  
7 went under the UCCJEA, I think if Judge Woods agrees  
8 the paternity action would fit under the UCCJEA, then  
9 if there was no agreement, we'd simply consult and see  
10 where it belongs.

11 THE COURT: In other words you would be  
12 calling me instead of me calling you?

13 JUDGE HILDER: I think so.

14 THE COURT: I think so.

15 MR. OSBORNE: These are just all questions.  
16 My client is obviously very anxious -- he's just found  
17 out he's recently a father and is missing out on  
18 important milestones as the weeks progress. Just in  
19 general, what is your expected time line on getting  
20 this matter heard in Utah?

21 JUDGE HILDER: Well, as I say, assigned to  
22 Judge Faust and unless -- I happen to be presiding a  
23 28 judge court and I have discretion to reassign if  
24 there was a problem, but Judge Faust does not let  
25 grass grow under his feet. You're ready to start



1 talking -- first have to of course make an appearance  
2 though -- Judge Faust would hear it quickly. I would  
3 think very quickly.

4 MR. OSBORNE: You can expect probably to  
5 hear from -- from our client's counsel in Utah  
6 probably either this afternoon or tomorrow or at least  
7 Judge Faust will.

8 JUDGE HILDER: Yeah. That's where they need  
9 to go.

10 MR. OSBORNE: Get this moving right away.

11 JUDGE HILDER: Okay.

12 MR. OSBORNE: Thank you, Your Honor. I  
13 appreciate your time.

14 JUDGE HILDER: Thank you, sir.

15 THE COURT: Judge, you could -- I know the  
16 file was sealed, but can you confirm the case number  
17 for us again.

18 JUDGE HILDER: 082900089.

19 THE COURT: All right. Let me just, if you  
20 don't mind, I will ask the Respondent mother who is  
21 not represented in this court by an attorney if she  
22 had anything she wanted to ask Your Honor.

23 JUDGE HILDER: Ms. Terry.

24 RESPONDENT: Hi, Judge Hilder, how are you?

25 JUDGE HILDER: Fine, thank you.

1           RESPONDENT: Good. I did not have -- have  
2 anything to ask, but I do appreciate you confirming  
3 what I had presented to this Court that Utah did have  
4 home state jurisdiction since that is where the child  
5 is born, and I do appreciate your time talking to the  
6 Court today and confirming this case does need to be  
7 contested in Utah.

8           JUDGE HILDER: Okay. Thank you, Ms. Terry.

9           THE COURT: And, judge, of course you and  
10 both -- Ms. Terry vehemently argued the issue of home  
11 state under the UCCJEA because of course you and I  
12 both agreed that Act does not apply because it was an  
13 adoption.

14           JUDGE HILDER: As Petitioner's in your court  
15 counsel suggests should the adoption be dismissed that  
16 may well change but not there yet.

17           THE COURT: Absolutely. Judge, anything  
18 else I can answer for you?

19           JUDGE HILDER: No. Thank you very much,  
20 judge, for taking the time to act on this and do it  
21 quickly.

22           THE COURT: All right. I appreciate your  
23 courtesy today.

24           JUDGE HILDER: Thank you very much.

25           THE COURT: Good afternoon to you.

1 JUDGE HILDER: Good afternoon to you, sir.

2 THE COURT: All right. So, counsel, I think  
3 at this time I have, as I stated -- let me just say  
4 the judge has hung up. I declared paternity. I did  
5 that on February 29. I am not dismissing this case.  
6 This case remains open. Paternity remains declared as  
7 to the father, and I have ordered that the father's  
8 name be placed on the birth certificate.

9 If you can prepare an order for me that  
10 states those two things, I'll sign it, and then  
11 parties will take up their further matters in whatever  
12 other court that may be.

13 MR. OSBORNE: Your Honor --

14 RESPONDENT: Thank you.

15 MR. OSBORNE: I'm sorry to interrupt.

16 THE COURT: This case is not dismissed.

17 RESPONDENT: I thought dismissing us right  
18 now.

19 THE COURT: Yes, I think I'm done.

20 MR. OSBORNE: I have a question and this may  
21 be a source of confusion for myself as well as Ms.  
22 Berkeley and this is a final order for paternity that  
23 was signed by you, Your Honor, on 2-29-08?

24 THE COURT: Right.

25 MR. OSBORNE: It says Petitioner Robert

1 Manzanares is the biological father of the child and  
2 has all legal rights and responsibilities that he's  
3 entitled to by law and also says Petitioner shall have  
4 his name listed as biological father on the birth  
5 certificate when the parties' child is born and this  
6 was signed by you on 2-29-08.

7 THE COURT: You want -- that's the order I  
8 entered. If the child has been born, which everyone  
9 agrees once again it has, so want to submit an amended  
10 order because that is certainly in conformity with  
11 what I ordered, which is that he's the father and when  
12 the baby's born his name goes on the birth  
13 certificate.

14 I really think that is all I can do in the  
15 paternity case, and now the fact the child is not here  
16 in this state those issues now move to the other state  
17 whatever that state may be apparently happens to be  
18 Utah.

19 MR. OSBORNE: Okay. I think part of the  
20 reason for confusion there's actually specific boxes  
21 that were checked, and one of those that minor child  
22 resides in this county, and I think what you're saying  
23 is based on paternity unborn child Court can exercise  
24 jurisdiction over?

25 THE COURT: Yes. I ruled because our

1 statute is very clear and which is that -- and I'd  
2 rather -- gave a very detailed ruling which you can  
3 get a copy of, I'd rather not have to read it again.

4 MR. OSBORNE: We will -- we've already  
5 requested a copy.

6 THE COURT: But our statute specifically  
7 provides -- just find it here again. Of course I'm  
8 not finding it now, but as I recall, our statute  
9 specifically provides that it can be filed -- the Act  
10 further provides that a case may be filed and  
11 commenced before the child is born. The Act provides  
12 that the child may be made a party to the statute, but  
13 it does not require it, and I so found and that is  
14 consistent with the Colorado Supreme Court decision  
15 that I cited, which is the Estergard case at 457 P.2d  
16 page 698. That was a 1969 decision. Since that time  
17 the statute in fact has been amended, and the specific  
18 section of the statute is section 19-4-105.5(3). Just  
19 all look it up together.

20 MS. BERKELEY: Did you say 105.3?

21 THE COURT: 105.5. 105.5(3). Got it right  
22 here -- 19-4-105.5. Are you there?

23 MR. OSBORNE: Yes.

24 THE COURT: Go down to paragraph 3. Why  
25 don't you get your client over there and Ms. Terry

1 wants to be over there you can all look at it.  
2 Everybody look at the same thing. Just read it  
3 together. First word is proceedings, right?  
4 Proceedings under this article may be commenced prior  
5 to the birth of a child.

6 RESPONDENT: Does that mean proceedings --  
7 does that mean paternity proceeding?

8 THE COURT: Yes, ma'am.

9 RESPONDENT: Okay. Thank you.

10 THE COURT: If you look up at top Uniform  
11 Parentage Act at the top of the page, this is the  
12 parentage law in the state of Colorado. And so you  
13 can file before the child is born and that's what you  
14 did.

15 MS. BERKELEY: Right. Just move to dismiss  
16 in Utah.

17 MR. OSBORNE: There are specific questions  
18 actually we need -- while we're here on the record --  
19 specifically for our final order of paternity, due to  
20 the fact that the child is now born, we need to know  
21 the full name of the child if she has a name, the  
22 present address, and the official date of birth so we  
23 can get that on the order.

24 THE COURT: Can you provide those things?

25 RESPONDENT: I don't know what they named

1 her, and I don't have -- I don't have their address,  
2 and everybody knows her birth -- well, I'm sorry, you  
3 weren't here on Friday. She was born February 17,  
4 Sunday.

5 MR. OSBORNE: Do you know approximately what  
6 time?

7 RESPONDENT: 3 a.m. -- 3:00.

8 THE COURT: I believe a Pioneer Hospital in  
9 Utah. Is that my recollection?

10 RESPONDENT: Uh-huh.

11 MR. OSBORNE: Pioneer Hospital in Utah.

12 THE COURT: I understand -- now and the  
13 birth certificate I believe as more information comes  
14 in it can be corrected, but it was a girl.

15 MR. OSBORNE: I know that.

16 THE COURT: And you folks talk about it.  
17 Maybe gets listed as Jane Doe and all others claiming  
18 interest in the minor child. You folks have to figure  
19 that out.

20 MR. OSBORNE: You can get that information  
21 and get it to us as --

22 RESPONDENT: According to the Utah HIPAA  
23 laws, I cannot, but you can talk to your lawyer and  
24 get that.

25 MR. OSBORNE: This is your brother's

1 address?

2           RESPONDENT: Honestly I really don't know  
3 his address. I don't keep his address. I know how to  
4 get there, but I don't know his address.

5           MR. OSBORNE: Can you provide that to us.

6           RESPONDENT: You can ask your lawyer to talk  
7 to my lawyer to get it.

8           MR. OSBORNE: I am a lawyer.

9           THE COURT: Hang on. This once again you  
10 can file your birth certificate and file the report of  
11 the birth with me and then based on whatever  
12 information you get, again I think the action goes out  
13 to Utah and needs to be amended, then file.

14           MR. OSBORNE: Just want to make sure we had  
15 accurate records.

16           THE COURT: Certainly. You do need to  
17 file -- fill out and file a report of paternity  
18 determination to be filed here. Law does require you  
19 to fill out and file a report of paternity  
20 determination, and I believe it's filed with our  
21 court, but you do need to file a report of paternity  
22 determination so want to get on that and do whatever  
23 you do.

24           MR. OSBORNE: Okay.

25           MS. BERKELEY: She had her attorney on the



1 phone with the phone open.

2 THE COURT: If you want to make a record  
3 about that, make a record. I understand parties  
4 wanted to make another record.

5 MS. BERKELEY: Just a couple --

6 THE COURT: But --

7 MS. BERKELEY: Your Honor, this is Emily  
8 Berkeley, 36240, for Petitioner. I just wanted to say  
9 that Ms. Terry -- we all just saw her, she had her  
10 phone on and open and concealed, and her attorney in  
11 Utah listened to the entire proceeding, and she just  
12 picked up her phone and walked out and she walked out  
13 saying did you hear all that. We believe it's her  
14 attorney and also we looked Pioneer Hospital did not  
15 have any babies born on the 17th.

16 THE COURT: Again I would -- you can make  
17 that record and I would refer you to Utah. Again I  
18 have declared paternity in the case.

19 MS. BERKELEY: Thank you.

20 (The proceedings were concluded.)

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REPORTER'S CERTIFICATE

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The above and foregoing is a true and complete transcription of my stenotype notes taken in my capacity as Official Reporter of Division 2, Juvenile Court, Denver County, Colorado, at the time and place above set forth.

Dated at Denver, Colorado, this

27<sup>th</sup> day of March, 2008.

Kari Larson  
Kari Larson, RPR, CSR