

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

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IN THE MATTER OF THE)
ADOPTION OF:)
)
) Case No. 082900089 FS
)
BABY B,)
-----)

Hearing
Electronically Recorded on
July 1, 2008

BEFORE: THE HONORABLE ROBERT FAUST
Third District Court Judge

APPEARANCES

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P R O C E E D I N G S

(Electronically recorded on July 1, 2008)

THE COURT: All right. We're formally on the record in case No. 082900089. Counsel will go ahead and put their appearances on the record, please.

MR. JENKINS: Larry Jenkins and Lance Rich, your Honor, appearing for the petitioners.

THE COURT: Thank you.

MS. REYES: Your Honor, Jennifer Reyes appearing on behalf of the birth father, Robert Manzanares who is present here in person today.

THE COURT: Thank you. Tell me the status of where you guys are at on the case. Have you made any progress in discussing where you're at or the issues? Have you still --

MR. JENKINS: I think, your Honor, I think where we're at is our motion to dismiss the adoption petition.

THE COURT: Right.

MR. JENKINS: They -- you know, we filed that, and I think we need that heard on the merits before we can see if there's other records we can make.

THE COURT: All right. I have read the file. I understand, you know, the timing and the sequence of when things happened. The mother coming to Utah and having the birth prematurely, and proceedings going on in Denver at the same time as some things were going on here. So I'm familiar

1 with that. Okay, I'm ready if you are. All right, do you want
2 to do very brief openings?

3 MS. REYES: Sure.

4 MR. JENKINS: I think -- I think primarily what -- it
5 will just be argument, your Honor, today.

6 THE COURT: You don't want me to take evidentiary --

7 MR. JENKINS: I don't think there's a dispute as to the
8 key facts. I think what it is, is the application --

9 THE COURT: Okay, so there's no --

10 MR. JENKINS: -- of the law to the facts --

11 THE COURT: All right.

12 MR. JENKINS: -- to what the issue is.

13 THE COURT: That's fine.

14 MS. REYES: Your Honor, I don't mind giving the Court
15 just a brief background once again; but if the Court feels like
16 that wouldn't be an efficient use of the Court's time, I'm
17 happy to just discuss --

18 THE COURT: No, you can, if you want to; and there's
19 nothing wrong to make sure that I fully understand it.

20 MS. REYES: Sure, okay. Your Honor, again, Jennifer
21 Reyes on behalf of the birth father, Robert Manzanares. The
22 matter is before the Court on Mr. Manzanares' motion to dismiss
23 the adoption petition.

24 The adoption is with regard to a baby girl. She was
25 born on February 17th of 2008. She's approximately four months

1 old at this point in time, your Honor.

2 THE COURT: And I didn't mean to interrupt, but there's
3 no dispute the mother was not a resident of Utah at the time of
4 the birth, and that she was a resident of Colorado, and she was
5 merely here on a visit for an ailing family member; and that
6 the birth occurred here, correct?

7 MS. REYES: That is our position. I haven't heard any
8 response otherwise. So I don't believe it's in dispute. I'm
9 not sure if they want to articulate that with the Court or not.

10 THE COURT: All right. Please go ahead.

11 MS. REYES: Your Honor, Carie Terry, the birth mother,
12 and Robert Manzanares, in this matter, they lived together
13 for approximately eight months; and during that relationship
14 a child was conceived. This relationship continued until
15 approximately mid-September, when the birth mother, Carie
16 Terry, moved out.

17 At that point in time the parties were keeping
18 communication with each other. My client, Robert Manzanares,
19 had attended a doctor visit with the birth mother on I believe
20 August 9th of 2008. At that point in time, according to the
21 ultrasound, the child was considered to be approximately two
22 months old at that time. Then, again, in mid-September,
23 Ms. Carie chose to move out.

24 After that, Mr. Manzanares stayed in contact with her,
25 wrote her emails, requested information on how she was doing

1 and how the child was doing, requested to be involved in the
2 doctor visits. Didn't get a lot of response back other than
3 just, "We are doing fine." Mr. Manzanares throughout that
4 period of time also financially contributed and made payments
5 to Carie Terry for her care and the care of his daughter.

6 On approximately January 16th of 2008, Mr. Manzanares
7 filed a paternity action with the Colo -- Denver, Colorado
8 District Court, and it was a petition for paternity, and a
9 request to enjoin adoption.

10 During the parties' separation after September there
11 was some discussions prompted by Carie Terry that adoption
12 was something that she was desirous of. My client made it
13 clear that it was his desire to raise his daughter and take
14 all parental responsibilities needed to ensure that the child's
15 welfare was met and whatnot.

16 There was a dispute about that, and my client received
17 an email which we've attached to the Court's pleading specific-
18 ally. It would be referenced in the notice -- or I'm sorry,
19 referenced in our memorandum in support of motion to dismiss.
20 It is Exhibit -- attached as Exhibit No. 3, and it's dated
21 January 11th of 2008.

22 This is an email from Carie Terry to my client, Robert
23 Manzanares. A portion of that email indicates that she will
24 be flying to Utah to visit her father in February for a week.
25 Then it says in parentheses, "(Maybe a little longer. It

1 depends on how he or things are),” it says. “Then it will be
2 back to work and finish up the club’s construction before I
3 take time off at the end of March.”

4 According to the visit that my client attended, the
5 doctor visit, the ultrasound read that Carie Terry was due
6 approximately the end of March. The email further goes on
7 to read, “In April I will be willing to sit down and talk
8 with you about your reconsideration to consent for adoption.
9 Otherwise this will be a long process and it will benefit
10 no one, especially this baby.” That’s basically the last
11 communication my client received from Carie Terry. That was
12 dated, again, January 11th of 2008.

13 So thereafter, on January 16th, again, my client filed
14 the paternity action. The mother, birth mother, Carie Terry,
15 was served on, let’s see, February 1st of 2008. Shortly after,
16 Carie Terry, the mother, filed a response to the verified
17 petition. I would note that paragraph 7 of her response admits
18 that Robert Manzanares is the biological father of the child.

19 The Court thereafter in Denver set a hearing for
20 February 20th. Unbeknownst to my client, Carie Terry was
21 in Utah during that period of time, and the baby was born
22 prematurely on February 17th of 2008. When I say “prematurely,”
23 my client’s relying on statements that Carie Terry has made
24 with regard to the birth of the child. He hasn’t been able to
25 access medical records to verify such, but --

1 THE COURT: And then there was the petition on the 19th
2 that was filed, for the adoption.

3 MS. REYES: Right, that's correct.

4 THE COURT: Right.

5 MS. REYES: I wasn't aware of the actual timing of
6 that, your Honor. I haven't been able to obtain those in --
7 that information; but I knew it had been filed sometime prior
8 to that, because I believe the consent of the birth mother was
9 actually taken --

10 THE COURT: Oh, that's right. The consent was maybe on
11 the --

12 MS. REYES: The consent, my understanding --

13 THE COURT: -- wasn't done on the 19th.

14 MS. REYES: -- was taken, and I --

15 THE COURT: I think it was the 20th --

16 MS. REYES: I think it was the 20th.

17 THE COURT: -- at 8:45 --

18 MS. REYES: Approximately.

19 THE COURT: -- 15 minutes before the other hearing.

20 MS. REYES: Correct, yes. So the hearing in Colorado
21 was set for February 20th. A phone call was received by the
22 Court there indicating that Carie Terry would not be available
23 because she was in Utah. At approximately that same time a
24 consent was taken of her. As a result of her call into the
25 Court, the Court did reschedule that hearing.

1 My client didn't find out that his baby daughter
2 had been born until approximately the 26th, when a friend
3 -- a mutual friend of his and Ms. Terry's contacted him to
4 congratulate him on the birth of his daughter, and he didn't
5 understand what the call was all about until he said, "I know
6 that Carie is no longer with child." I believe he indicated he
7 had seen her at work. Maybe I'm wrong. I wanted to make sure.

8 MR. MANZANARES: Yes, I hadn't seen her.

9 MS. REYES: My client had not seen her, but this friend
10 called and congratulated him on the birth of his daughter,
11 because he had viewed Carie Terry at work without child.

12 So thereafter my client -- on the 26th, the same day
13 he received the information that his daughter had been born
14 sometime previous -- he still wasn't sure, I don't think, on
15 the date of the birth -- but he filed an emergency motion with
16 the district Court in Colorado where the paternity action was
17 filed.

18 A hearing was set for the 27th, and 29th respectively,
19 and Judge D. Woods heard motions and memorandum that were
20 issued by not only Mr. Manzanares, but also by the appointed
21 guardian ad litem, who was Vivian Barros at that time.

22 As a result of that emergency hearing, the Court
23 issued two different orders. They were actually -- one was
24 signed on February 29th of 2008. The Court ruled that they have
25 jurisdiction over the mother, the father and the child in this

1 matter, and that the paternity action -- the valid place to
2 handle the paternity was in Colorado.

3 Thereafter, on March 3rd of 2008, the Court entered
4 a supplemental and further order from those two hearings,
5 indicating that Robert Manzanares' name should be placed on
6 the birth certificate. That was as a result of Judge Robert
7 K. Hilder from our Court here in Utah, conversing with Judge
8 D. Woods in Colorado over that issue.

9 So procedurally that's where we're at, your Honor,
10 and then my client has filed the motion to dismiss. The basis
11 for our motion to dismiss is somewhat twofold. Basically, my
12 client, Robert Manzanares' consent is necessary to the adoption
13 of this baby girl. The premise of the consent statute stems
14 from 78(b)-6-120. It indicates the necessary consent to
15 adoption.

16 Specifically I'd have the Court take notice to
17 paragraph 1, subsection (d), which indicates, "A biological
18 parent who has been adjudicated to be the child's biological
19 father by a Court of competent jurisdiction prior to the
20 mother's execution of consent to adoption or her relinquishment
21 of the child for adoption."

22 What i would indicate to the Court here is my client
23 filed his petition, his verified petition in Colorado on
24 January 16th, approximately a month -- over a month before
25 this child was born. Carie Terry in her own response to that

1 verified petition admits in paragraph 7 that Robert Manzanares
2 is the biological father of this child; and she filed her
3 response on February 12th of 2008.

4 Her consent was taken on February 20th of 2008. Had
5 the hearing gone forward, as scheduled and planned, the Court
6 would have taken evidence with regard to that; but what I would
7 indicate to the Court, that just on the pleadings in and of
8 themselves, if you just look at the pleadings that have been
9 filed prior to the consent being taken of Carie Terry back on
10 February 12th, there was an admission of this -- of Robert
11 Manzanares being the biological father.

12 So I think the Court could indicate that under that
13 premise that an adjudication on the pleadings basically by her
14 self-admission that this is the father of the biological child,
15 and his consent is necessary. So that's one premise that we're
16 coming before the Court.

17 The second is found in subsection (f) of that same
18 statute, 78(b)-120, subsection (f). It says, "An unmarried
19 biological father of an adoptee, his consent is necessary only
20 if he strictly complies with the requirements of Section 78(b)-
21 6-121, and 78(b)-6-122.

22 So then we turn to those different sections in the
23 code. If I turn to 78(b)-6-121, paragraph 3 of that code
24 indicates, "Except as provided in 78(b)-6-122 and subsection
25 (5) thereof, with regard to a child who is six months of age or

1 less --" and that's where we're at with this child. This
2 child's only four months at this point in time -- "at the time
3 the child was placed with the adoptive parents --" my client's
4 unaware of when that placement actually took place. It's
5 assumed that probably on the 20th or the 19th when the --

6 THE COURT: And the child is still with the prospective
7 adoptive parents?

8 MS. REYES: That's the only information my client has.
9 So she believes that's correct. "The consent of an unmarried
10 biological father is not required unless prior to the time the
11 mother executes her consent for adoption --" which would have
12 been on the 20th -- "or relinquishment, and the unmarried
13 biological father --" and then it goes through several
14 different things that the father has to do.

15 Basically if I kind of put that in a nutshell, that
16 is the requirement that a biological father file a paternity
17 action in Utah and register it with the registrar so that that
18 can be found when there's a paternity search done for purposes
19 of adoption.

20 It also says at the very beginning of this -- of
21 subsection (3), "Except as provided in subsection 78(b)-6-
22 122(1). So it is saying that there's an exception to this
23 general rule.

24 So we go to the exception, which again is found in
25 78(b)-6-122. If you look at 78(b)-6-122, subsection (c), the

1 way that the statute is worded I think is -- it jumps around
2 quite a bit. So I've tried to go from the start of the process
3 going forward. So I would go to (c) first. I think that makes
4 the most logical sense in reading this.

5 It says, "The consent of an unmarried biological
6 father is required with respect to an adoptee who is under the
7 age of 18 if --" and then it goes to (a) -- "the unmarried
8 biological father did not know, and through exercise of
9 reasonable diligence could not have known before the time
10 the mother executed the consent to adoption that a qualifying
11 circumstance existed."

12 Then in that same statute it defines what "qualifying
13 circumstance" is, and that's found in subsection (1)(a). It
14 goes on to say, "A qualifying circumstance means at any point
15 during the time period beginning at the conception of the
16 child and ending at the time the mother executed a consent
17 to adoption relinquishment of the child for the adoption," one
18 of these many things can be found.

19 No. 1, "The child or the child's mother resided on a
20 permanent or temporary basis in the state." I don't believe
21 there's any contention that Carie Terry resided in the State
22 of Utah. So that's something that my client did not know,
23 and through exercise of due diligence couldn't have found out,
24 because she wasn't residing in Utah on a temporary or permanent
25 basis.

1 Then No. 2, "The mother intended to give birth to
2 the child in the state." By the petitioner's memorandum in
3 opposition, it states that this child was born premature.
4 It wasn't planned out that this child would be born in this
5 state. So I don't think that qualifying circumstance, my
6 client couldn't have known, nor through exercise of reasonable
7 diligence could have known that this child would be born in the
8 state.

9 No. 3, "The child was born in the state, or the mother
10 intended to execute a consent to adoption or relinquishment
11 of the child for adoption in Utah or under the laws of Utah."
12 Here my client didn't even know that the child had been born
13 in Utah until approximately the 26th of February.

14 Then again, by the petitioner's memorandum doesn't
15 appear and I don't think it's been stated that it was the
16 mother's intent, Carie Terry, to come and give birth to the
17 child in Utah and give the child up for adoption at that point
18 in time, because the child was born premature. I think her
19 email dated January 11th to my client shows she was going there
20 for a visit. That they would have discussions about what was
21 going to take place with their daughter in April.

22 So none of those qualifying circumstances could my
23 client, Robert Manzanares, the birth father, have known or
24 through exercise of reasonable diligence known.

25 Then you go onto No. -- the next requirement, which

1 is, "Before the mother executed a consent to adoption,
2 the unmarried biological father fully complied with the
3 requirements to establish parental rights in the child and
4 preserve the right to notice of a proceeding in connection
5 with the adoption of child, imposed by --" then it says there
6 is a subsection (i) -- "the last state where the unmarried
7 biological father knew, or through exercise of reasonable
8 diligence should have known that the mother resided," which
9 at that point in time was Colorado.

10 My client had resided there. The mother had resided
11 there. She had actually responded to a verified petition
12 admitting residency there, admitting he was the biological
13 father. So that completes that requirement of the exception.

14 Then the next requirement is that "The unmarried
15 biological father, Robert Manzanares, has demonstrated, based
16 on the totality of circumstances, a full commitment to his
17 parental responsibilities as described in subsection (1)(b)
18 above."

19 So I refer to (1)(b) above, which goes on to say
20 that "When determining whether an unmarried biological father
21 has demonstrated a full commitment to his parental responsibil-
22 ities, these things should be looked at, if applicable."

23 No. 1, "Efforts he has taken to discover the location
24 of the child's mother." As far as he knew, the child and the
25 child's mother were residing in Colorado. She was taking a

1 brief visit to visit her sick father in Utah. By her statement,
2 she was planning on coming back to finish up some work with her
3 -- with her employment at that time in March, and that they
4 would discuss the adoption issue again in April.

5 Then No. 2, "Whether he has expressed or demonstrated
6 an interest in taking responsibility for the child." He went
7 to the doctor visit with her, where the initial ultrasound
8 was taken shortly after they split up. He was emailing her,
9 constantly asking to be a part of this child's life, to be
10 involved in the medical -- the medical visits.

11 Provided financial support, which gets into the next
12 -- the next one here. "Did he provide financial support for
13 the child or the child's mother?" We've attached as exhibits
14 to our memorandum that he did provide financial support to
15 Carie Terry and for the child.

16 In fact, the last -- the last payment that he sent to
17 her I believe was cashed approximately -- and I may be a little
18 bit in error, but approximately I believe it was the 26th of
19 February or the 25th sometime, around that period. So she
20 actually cashed the check and received that benefit even after
21 the baby had been born, and my client had no specific knowledge
22 from her that the baby had been born.

23 So he did continue to make those efforts to
24 financially support the child; and the mother lived in the
25 father's home for approximately two months. Actually be a

1 little longer, be about three months during her pregnancy, and
2 he supported her financially during that period of time as
3 well.

4 The next subsection that should be considered is
5 "whether and to what extent he has communicated or attempted
6 to communicate with the child or the child's mother." Now,
7 Mr. Manzanares, up until approximately the time period when
8 the District Court said there was a hearing -- I believe it
9 was on the -- maybe it was the -- one of the hearings that
10 took place on either the 27th or the 29th.

11 There was a hearing when the Court instructed
12 Mr. Manzanares, and he hadn't made any effort to contact
13 these individuals, but I think there was just wanting some
14 ground rules that there wouldn't be any communication. That
15 it would go through the attorneys at that point in time.

16 So my client hasn't made any further efforts, because
17 of the adoption process and whatnot; but definitely through our
18 office has made requests to have photos of the child or visit,
19 and has continued to have that desire to have contact with his
20 daughter.

21 Then the next is "whether the biological father has
22 filed legal proceedings to establish his paternity of and take
23 care and responsibility for the child." Robert Manzanares
24 filed his petition on January 16th, prior to this child even
25 being born, under Utah Code. This is addressed in one of the

1 orders that Judge D. Woods signed in Colorado. The definition
2 of a child includes an unborn child.

3 So that issue's been dealt with there, to determine
4 that his paternity filing prior to the child's birth was
5 appropriate and valid, and can take place in Colorado. So
6 if you look at all of the requirements that are necessary for
7 the exception to the general rule, Robert Manzanares has done
8 everything necessary to protect his rights as the father of
9 this child, and is desirous to raise his daughter and have his
10 daughter in his care and custody.

11 We believe that because his consent is required to
12 this adoption, that it's appropriate for the Court to dismiss
13 this adoption petition. Then the issues with regard to custody
14 and the paternity action jurisdiction has been retained by
15 Colorado there to determine those issues.

16 THE COURT: What's the impact of the mother's consent
17 to giving up her parental rights here in Utah on the litigation
18 in Colorado?

19 MR. REYES: Your Honor, my understanding -- and I may
20 be a little mistaken here, but I've been in close contact with
21 Robert Manzanares' attorneys in Colorado. My understanding is,
22 is that the guardian ad litem for the child, Vivienne Burgose
23 -- I may be saying that wrong -- she has made a recommendation
24 that on a temporary basis that the father have custody of the
25 child, and that the mother be able to have visits with the

1 child, but that they be supervised for a period of time.

2 My understanding is, and I think it's -- I think
3 it's comparable to Utah law that if something goes astray in
4 an adoption proceeding, that when the Court's looking at what's
5 in the best interest of a child, a consent of a biological
6 parent or relinquishment can't necessarily be used against
7 them for determining further custody proceedings. I know
8 that that's kind of the position of the guardian ad litem in
9 Colorado with regard to placement of this child on a temporary
10 basis.

11 THE COURT: Do you have any knowledge or understanding
12 of how the circumstances came about to connect this mother with
13 these adoptive parents, how and why it would appear, at least
14 without any more information, to have happened so quickly? It
15 seems kind of strange that somebody's merely visiting another
16 state, that as soon as the child is born, it's somehow placed
17 into this whole adoption system and process --

18 MS. REYES: Right.

19 THE COURT: -- and goes on. Do you know if she was
20 planning on doing this in advance; did it happen spontaneously;
21 was this preconceived on her part --

22 MS. REYES: Your Honor, what I --

23 THE COURT: or what do you -- want do you know?

24 MS. REYES: I do know this. That her -- that the
25 adoptive placement is her brother and her sister-in-law. So

1 that placement for her is probably an ideal placement, because
2 obviously it's assumed -- at least by my client -- that she
3 would still have contact with this child throughout the child's
4 life, whereas my client wouldn't have that luxury. I believe
5 it was a family -- it's my understanding it's family members.
6 That's all my client knows.

7 THE COURT: Thank you. Counsel, can you answer that
8 -- shed anymore light on that last question that I had with
9 respect to helping me understand this --

10 MR. JENKINS: Kind of procedure and how it all happened
11 or how they --

12 THE COURT: Well, it went by so quickly. I mean, can
13 you -- I'm not prejudging it, but when you read the file or at
14 least the information, it appears that she may have had plans
15 all the way along --

16 MR. JENKINS: And you know --

17 THE COURT: -- and came here and did it and --

18 MR. JENKINS: -- she may have. You know, I do know --

19 THE COURT: -- and was trying to be deceitful to some
20 degree.

21 MR. JENKINS: Sure. One thing I do understand is that
22 she has made clear, I think, in Mr. Manzanares' filings that
23 she did in -- she did want to place the child for adoption
24 throughout the pregnancy pretty much.

25 I know, in talking to her brother, that that was

1 something that had been discussed quite a bit, and they had
2 discussed other families and things such as that. I'm not
3 sure when the decision was made that it would be her brother.

4 THE COURT: So it didn't go through any sort of
5 placement agency?

6 MR. JENKINS: No, no, it was a direct placement, just
7 to her brother. I do know that it was -- you know, the baby
8 was premature, as far as what I've been told. I haven't seen
9 the medical records either; but I also understand that she
10 would have tried to place the baby for adoption either with
11 her brother or somebody else, even if the baby had been born
12 elsewhere at a different time.

13 THE COURT: Was your firm involved in getting the
14 petitions done and so on and so forth?

15 MR. JENKINS: We drafted the petition, that we were
16 contacted shortly before and we fi --

17 THE COURT: When you say "shortly," I mean --

18 MR. JENKINS: I got contacted over that -- that --

19 THE COURT: -- a couple weeks, one day --

20 MR. JENKINS: I had had an email from --

21 THE COURT: -- give me a feeling of how --

22 MR. JENKINS: -- I had had an email from petitioner
23 saying, you know, "My sister is going to have a baby. We're
24 thinking we might want to adopt. We have -- you know, we've
25 had some conversations with them. We knew there were some

1 issues out there. We had draft --"

2 THE COURT: Okay, let's stop there.

3 MR. JENKINS: Okay.

4 THE COURT: What issues did you know were out there?

5 MR. JENKINS: I just -- I knew that he'd filed the
6 petition in Colorado, the paternity petition; but if you give
7 me a chance to walk through that, I can explain to you why I
8 -- I don't think that's entirely relevant. I think, you know,
9 from his standpoint, yes, but I think from the standpoint of
10 Utah law, which I think we all agree applies here --

11 THE COURT: Why do you think Utah law applies to a
12 citizen of another -- potentially a citizen of another state,
13 if they're just here on vacation --

14 MR. JENKINS: Your Honor --

15 THE COURT: -- or visiting a family relative and --

16 MR. JENKINS: Well, the law is quite well settled, your
17 Honor, that the law of the forum where the adoption pending is
18 the law that governs the rights of the parties involved. I
19 know that issue didn't -- you know, wasn't presented in the
20 briefing at all; but there's a long line of cases, and even if
21 you look at the Utah cases --

22 THE COURT: Even if there's a paternity action
23 precedent to that pending?

24 MR. JENKINS: Even if there's a paternity, but there's
25 actually two Utah cases, two Utah Court of Appeals cases where

1 paternity actions had been filed prior to birth in the other
2 state where Mom had come from, and we've cited them in our
3 brief. One is the en re adoption of W case. The other is the
4 Beltran vs. Allen case, where a paternity action in both cases
5 had been filed in the state where father was before baby was
6 born. Father was trying to protect his rights in that case. I
7 think in the Beltran case, Father knew that Utah was involved
8 in the placement, and I --

9 THE COURT: In those two cases was the mother a resident
10 of the states where the paternity actions were when she was --

11 MR. JENKINS: They were, your Honor. They were. They
12 had come from the other states, some had come a little earlier.
13 In fact, in the W case, the facts of that one are really quite
14 interesting, because in that case Mother was from Indiana. The
15 father had filed a paternity action in Indiana before baby was
16 born. Mom traveled to Nevada, and placed with a Nevada child
17 placing agency with a Utah couple. So the Utah couple filed a
18 petition for adoption in Utah.

19 At that time -- you know, and non-residents still
20 can't finalize in Nevada, but you know, the couple had to
21 file here. The way the putative father statute worked in
22 Utah at that time was in the mid '90's, early '90's, the way
23 it happened there is within ten days, excuse me, after Father
24 becomes aware that there is a proceeding in Utah, he was
25 required to get on the Utah registry.

1 In the W case, Mom had one telephone conversation with
2 the birth father, said, "Adoption is pending in Utah." Baby
3 hadn't even been born in Utah, anything; and there was still a
4 paternity proceeding pending in Indiana. She told him, you
5 know, the adoptive parents are from Utah; and he didn't do
6 anything in Utah.

7 Our Court of Appeals said that, you know, despite the
8 Indiana proceedings, despite the fact baby was born in Nevada,
9 we're dealing with Utah law here. Our law is reasonable; and
10 they said because he didn't comply with our statute, even
11 though he had a paternity proceeding pending in Indiana --

12 THE COURT: What more do you think he should have done
13 that he didn't do --

14 MR. JENKINS: In this case?

15 THE COURT: -- in order to protect his rights in this
16 case?

17 MR. JENKINS: In this case. Let me read you a couple
18 of things from the background of the case, and then I'll put it
19 -- that will put it in context, I think. There's a couple of
20 things that happened before Baby was born that I think are
21 important.

22 Ms. Reyes talked about one of them. One was the email
23 that Carie Terry sent to Mr. Manzanares middle of January, and
24 which may have sparked the filing of the paternity petition
25 over there. I don't know. In the middle of that email that's

1 attached to their filings, it says, "I will be flying to Utah
2 to visit my father in February for a week. Maybe a little
3 longer. It depends on how he/things are." Okay?

4 So five days later the paternity petition is filed in
5 Colorado. In that paternity petition Mr. Manzanares goes into
6 great detail about what a -- you know, the fact that Ms. Terry
7 was a member of the Church of Jesus Christ of Latter Day Saints
8 or the Mormon Church, and he references the Mormon Church and
9 their officials and things like that all the way through, and
10 the advice that they were giving Ms. Terry, which Ms. Terry
11 disputed in her answer, but there's a couple of paragraphs that
12 I think are very important.

13 After getting that email, knowing that Ms. Terry was
14 a Mormon, and then he files this. He says in paragraph 20
15 of what he filed over there, "Father is filing this petition
16 prior to the child's birth because he has serious and founded
17 concerns that although the unborn child will not be legally
18 available for adoption, Mother plans to surreptitiously make
19 the child available for adoption immediately upon his or her
20 birth."

21 Then paragraph 21 of his petition he filed over there
22 -- now, this is mid-January -- he says, "Father has serious and
23 founded concerns that Mother will flee to Utah --" that mother
24 will flee to Utah -- "where she has family --" he knew that
25 that's where Ms. Terry's family was, all here in Utah -- "to

1 proceed with an adoption.”

2 Comes right out and says it. It's a sworn statement.
3 Petition is notarized at the end. Mr. Manzanares signs it. So
4 his concern in January was that Mom was going to come to Utah,
5 was going to place their baby for adoption in Utah. That's
6 ultimately what happened.

7 Now, if you put that in the context of the statute
8 that the Legislature adopted back in 2006, Legislature made it
9 I think -- well, maybe a little more clear just to what -- how
10 things are supposed to proceed. It used to be before 2006 that
11 if a -- if a biological father found out at any time before Mom
12 consented -- a non-resident, I'm speaking of a non-resident
13 biological father -- found out at any time before Mom signed,
14 that Utah might be connected somehow to the adoption, he had to
15 comply with Utah law.

16 The Legislature became a little concerned with that,
17 because, you know, if a guy finds out the day before, and if a
18 guy lives in Massachusetts, it's kind of hard to take the steps
19 under Utah law that he needs to. There had actually been some
20 cases litigated dealing with similar issues like that.

21 So the Legislature, what they did in 2006, was they
22 said that "Look, we're going to define these qualifying
23 circumstances that shows that father knew or should have
24 known," basically -- it does say "through the exercise of
25 reasonable diligence should have known," that there was some

1 kind of connection to Utah.

2 Ms. Reyes has listed those for the Court. Those are
3 essentially that the child or the child's mother resided on
4 either a permanent or a temporary basis. I think Ms. Reyes is
5 confusing domicile with residence. You know, there's a lot of
6 good case law out there. I didn't know that that would be an
7 issue here today, but a person can only have one domicile, but
8 a person can have more than one residence. It does say
9 "temporary basis in Utah."

10 The second one, the mother intended to give birth to
11 the child in the state. Mr. Manzanares filed a sworn statement
12 in Colorado saying that Father has serious and founded concerns
13 that Mother will flee to Utah, where she will -- where she has
14 family to proceed with an adoption.

15 THE COURT: Doesn't say to go there and give birth,
16 though, correct?

17 MR. JENKINS: It doesn't say that; but one of the other
18 qualifying circumstances is, is that the mother intended to
19 execute a consent to adoption or relinquishment of the child
20 for adoption in Utah or under the laws of Utah. Even if she
21 signed it in Colorado, if she signed a Utah consent, that
22 provision would apply the way it reads; but here, she came to
23 Utah, had the baby here, she placed it for adoption here. He
24 expressly stated he had that fear and that concern that that
25 might happen.

1 So it seems to me, based on the undisputed facts,
2 based on his admissions that he either knew, or through the
3 exercise of reasonable diligence could have known that one of
4 these qualifying circumstances may have existed. He said, "I
5 think Mom's going to Utah to place the baby for adoption."
6 That was his concern.

7 So what the Legislature said was if when somebody does
8 that -- or if somebody knows that before Mom signs her consent,
9 then we're going to give them the later of 20 days after that
10 person finds that out, or the day Mom -- or the time Mom signs
11 her consent to comply with Utah law, which is what it -- you
12 know, what the Court typically sees, filing a paternity action
13 here, registering with the State, you know, including certain
14 things in the filing, things such as that.

15 That's what the statute says has to happen if a person
16 finds out. Now, the reason the Legislature gave them the later
17 of 20 days, or when Mom signs, is if you've got a birth father
18 that finds out the day before that Mom's in Utah, he suddenly
19 has 20 days to comply with the statute.

20 The en re; W case, there's only ten days to comply,
21 and the Court of Appeals said that was reasonable. I think
22 the Legislature wanted to make sure that the time frame allowed
23 a (inaudible) Father in these kinds of circumstances to comply
24 with reasonable, and that's why they gave him 20 days.

25 The point being, Mr. Manzanares has said, "I know

1 Mom -- there's a chance she might go to Utah." He said that
2 January 16th. That was a month before Mom signed. So he did
3 learn a month before. So under our statute he was required to
4 comply with the Utah provisions, not the other provisions for
5 the fathers that don't have any idea that Mom could be going to
6 Utah. He had to comply with the Utah statute, and he had over
7 a month to do it. He had a month to get that paperwork in, and
8 take care of the things that he needed to do that way.

9 I don't know if the Court is interested or not. I do
10 have a lot of cases that talk about the general rule, the law
11 of the forum applies. That's the law that the Utah Courts have
12 always applied in these proceedings. They always apply Utah
13 law; but there's actually a restatement section that says that.

14 So I've got some cases where, you know, Courts have
15 actually quoted that restatement section; and they look at the
16 birth father's rights under that state where the adoption's
17 pending, not the state where Father would have signed, or not
18 the state where Mom may have come from. They look at them
19 under the laws of the state where the adoption is pending.

20 I think it's important that if Mr. Manzanares has
21 a paternity proceeding over in Colorado, and when there's --
22 say if there's a paternity proceeding over there and a custody
23 proceeding over here, then the UCCJEA would apply to deal with
24 okay, how do we work through those issues that might be the
25 same in those two cases; but the UCCJEA expressly excludes

1 adoption proceedings.

2 I think that's an important distinction, because
3 once Mom signs a consent to adoption and a petition is filed,
4 it becomes an adoption proceeding here. I have no doubt that
5 an order that's entered in Colorado determining paternity might
6 be effective. The important thing is in this case that order
7 was not entered until, you know, a couple of weeks after Mom
8 signed. Our statute makes it clear that his consent's required
9 only if -- only if he was adjudicated before.

10 THE COURT: Well, wasn't she required to be in Court
11 on the 20th and she refused to go?

12 MR. JENKINS: I don't know that she refused -- I
13 understood --

14 THE COURT: She didn't go? She was supposed to be
15 there to (inaudible) --

16 MR. JENKINS: I had understood she'd alerted everybody
17 that she -- that she was going -- she'd told everybody she
18 was going to be in Utah that week. That was the week she'd
19 planned to go. I understood she'd even called the Court and
20 Mr. Manzanares' attorney and said, "Look, you know, I'm in
21 Utah. I can't -- I can't be there."

22 THE COURT: Right, but why is she doing that? To be
23 able to postpone the proceedings in Colorado so that she can be
24 here and give birth and then start the process, and not have to
25 be held accountable to or responsive to the proceedings --

1 MR. JENKINS: Your Honor, I don't know why she did that

2 --

3 THE COURT: -- that were going on in Colorado?

4 MR. JENKINS: -- but I know that she'd had the trip
5 planned for a while. She had tickets bought, is what I'd
6 understood; and she was on her way over. I understood she
7 didn't even find out the hearing was on the 20th until the
8 weekend before, you know, like the Friday before or something.
9 She was already on her way, is what I understood.

10 But, you know, I think there's another principal from
11 our adoption code that I think is very important, your Honor,
12 and I didn't -- I ran out without my code. The adoption code
13 makes it really clear --

14 THE COURT: Let me back up. I'm sorry to interrupt.
15 I'm just -- is she a resident in Utah now? Has she stayed here
16 since she --

17 MR. JENKINS: No, she's in Colorado.

18 THE COURT: She's back in Colorado?

19 MR. JENKINS: Uh-huh. Uh-huh.

20 THE COURT: Any reason why she decided not to come
21 today? She just figured she's out of it --

22 MR. JENKINS: She's not a party to these proceedings --

23 THE COURT: -- since she gave her consent --

24 MR. JENKINS: -- and my clients intended to be here,
25 but they flew out of town over the weekend and went standby,

1 and couldn't get back in town on the plane. They called this
2 morning and --

3 THE COURT: Yeah, I was just curious where she is.
4 So --

5 MR. JENKINS: Well, she's in Colorado. You know, I
6 think another thing that's important, your Honor, from our
7 adoption code --

8 THE COURT: Do you know when she returned to Colorado
9 after the birth of the baby?

10 MR. JENKINS: I don't. I don't.

11 THE COURT: Please, go ahead.

12 MR. JENKINS: A couple of different provisions are
13 important. I don't have the specific cites, but the adoption
14 code makes it clear that you cannot use the statements or the
15 actions of others as an excuse from strict compliance with the
16 provisions of the adoption code.

17 The statute specifically provides that even if
18 somebody defrauds you, even if a mother or somebody else
19 defrauds birth father, you cannot use that as an excuse for
20 strict compliance with the code, if you are aware that Utah
21 might be involved.

22 The code also makes it clear that it's the birth
23 father's responsibility -- he's responsible for his own
24 actions, and that he's probably the best person in the best
25 position to take care of his own actions. That's why they

1 -- you know, the Legislature went to great lengths to make it
2 clear we don't look to see what Mom did. We look to see what
3 Dad did.

4 THE COURT: But doesn't that presume that the person
5 that they're talking about is a Utah father? Are you trying
6 to imply that Utah code is saying all fathers anywhere in the
7 country have to comply with our code if you want to protect
8 your rights?

9 MR. JENKINS: No, I'm not saying that at all.

10 THE COURT: Okay, so don't you think that what we're
11 talking about here is -- the code statutes are a little bit
12 different, because we have two people from Colorado?

13 MR. JENKINS: I don't think it makes it any different
14 at all. The adoption pending here, the baby was born here.
15 We'd look to Utah law under the very -- you know, the general
16 rule of law out there. There's nothing in any of the case law
17 -- any case law that Utah has, or that any state that I'm aware
18 of would say because the parties conceived -- in fact, there's
19 one of the cases I've got here in the stack says, you know,
20 where conception occurred really has little relevance to
21 things, if, you know, baby's born somewhere else and the
22 adoption proceeding is pending somewhere else.

23 THE COURT: So couldn't conceivably mother run from
24 anywhere in the country to Utah to take advantage of Utah law?
25 Is that what you're saying?

1 MR. JENKINS: They could; and I think that one of the
2 issues there is can we stop them. I don't think we can. I
3 think just like a mother has --

4 THE COURT: So then by implication -- didn't mean to
5 cut you off -- then the requirements of what the fathers need
6 to do to protect themselves would have to apply to all other
7 fathers outside of the state of Utah if you want to protect
8 your rights, because we're going to permit Mom to come here and
9 take advantage of our laws. So we're going to have -- hold all
10 of the fathers outside of Utah to comply with our statute if
11 you want to protect your rights?

12 MR. JENKINS: Sure, and I understand where you're
13 going. Can I explain a couple of things?

14 THE COURT: Please.

15 MR. JENKINS: Okay. First of all, you know, Mom is the
16 mom.

17 THE COURT: Well --

18 MR. JENKINS: Yeah, she's been carrying that baby. She
19 has a const -- she has a Constitutional Right to travel.

20 THE COURT: She does.

21 MR. JENKINS: You know, our Supreme Court says you can
22 go anywhere you want and get an abortion. You don't have to
23 get permission from the biological father to do that. I think
24 by the same token, I think a mother, if she wants to develop
25 some kind of an adoption plan, she ought to have that right

1 to travel to someplace where she wants to go. You know, not
2 saying that that happened here, but saying in the situation
3 that you're talking about.

4 Now, I think where the distinction comes in and what
5 our Legislators looked at, our Legislators addressed it. That
6 was a concern that they have had, I think, because of the
7 way they set up the statute. That's why they've got this
8 distinction in there between birth fathers that knew or should
9 have known that Utah was involved with the adoption. Those
10 birth fathers they say, "Yeah, you've got to comply with Utah
11 law if Mom's going to place for adoption in Utah or one of
12 these other qualifying circumstances."

13 The vast majority of situations that I've dealt with,
14 or with Mother may come from another state, involve situations
15 where absolutely no evidence what the biological father may
16 know. So then the other section kicks in, the one that
17 Ms. Reyes is trying to bring Mr. Manzanares under, where
18 because we have no evidence the father may have known, then
19 we have to look to the state where Mom came from, or the state
20 where conception occurred, to see if Father has done anything.

21 So we look to those states to see; but our Legislature
22 said, "If Father knows about Utah, or should know about Utah,
23 then we're going to hold him to Utah law." Our Supreme Court
24 has said repeatedly, even with non-resident birth fathers, if
25 they're -- if they know Utah's involved, that it's okay to hold

1 them response -- excuse me, responsible for compliance with
2 Utah law.

3 That's the distinction. I think that's what the
4 Legislature was looking at to try and take care of exactly
5 what your concern is. It's a concern that I've always had.
6 One of the interesting things about our adoption code is it
7 doesn't -- thank you.

8 THE COURT: My bailiff is known well for his treatment
9 with people (inaudible).

10 MR. JENKINS: My wife says I always get cotton mouth.
11 She says always have a drink. You know, the interesting thing,
12 our adoption code says that if you've got a child of a -- of an
13 unmarried mother, then you've got to present a Utah paternity
14 search. Well, it doesn't say what happens if Mom came from
15 somewhere else.

16 So, you know, I've had Judges ask me about that,
17 because lawyers can, you know, slide in, give a Utah paternity
18 search and sometimes finalize an adoption when there's evidence
19 that Mom came from somewhere else.

20 I think, you know, the code, if you'll -- you've got
21 to show, if you don't have any evidence otherwise that the
22 father knew about Utah, you've got to show that he complied
23 with the laws of his state. Here we know that he knew. He
24 said it right in his filings in Colorado, and --

25 THE COURT: Suspected.

1 MR. JENKINS: Well, he suspected, but he also attached
2 the emails she sent him said, "I'm going to go to Utah." That's
3 why he filed and says, you know, "I'm concerned she's going to
4 flee to Utah." To me, the way the statute reads -- it just
5 says -- now where is it -- "Father knew or through the exercise
6 of diligence should have known." You know he doesn't have to
7 have actual knowledge.

8 THE COURT: Should he have known the child would have
9 been born when it was?

10 MR. JENKINS: Well, I think by what he represented in
11 the paternity proceeding over there, he should have known at
12 the very least that Mom intended to consent to adoption in
13 Utah, where he says, "She intends to flee to Utah to place the
14 child for adoption."

15 I think that's where it comes in is, you know, there's
16 any number of scenarios. He talks about -- her family talks
17 about the Mormon Church. He talks about all these things, and
18 then he attaches the email where she says, "I'm going to Utah."
19 You know, it seems to me that's pretty clear that he's saying,
20 "Mom might place this baby for adoption in Utah." I'm concerned
21 about that. That knowledge triggered the requirement that he
22 comply with Utah law. Are you looking for the adoption code?

23 THE COURT: Yeah, I'm going to get that. I want you to
24 specifically make the distinction between those two paragraphs.

25 MR. JENKINS: Okay.

1 THE COURT: It's going to be easier. Okay, go ahead.

2 MR. JENKINS: Now, you've got the 2007 version there or
3 the --

4 THE COURT: Yes, I do.

5 MR. JENKINS: Okay. In the 2007 version, before they
6 did the recodification, I believe it's in 4.14 of the adoption
7 code, which is in 78.30.

8 THE COURT: Okay.

9 MR. JENKINS: So 4.14, that -- that contains what's
10 now three sections of the adoption code; but in 4.14 it says,
11 "These are the people whose consent's required." Then if you
12 go down I believe it's sub (4) -- I don't have my book with me,
13 but I think sub (4) is the general requirements for a father --

14 THE COURT: Uh-huh.

15 MR. JENKINS: -- if the child's under six months old or
16 something like that, I think. Then sub (10), subsection (10)
17 is where the qualifying -- and subsection (6) is important in
18 there. I can't remember which is which. Sub (10) is where we
19 get into this distinction between birth fathers that knew or
20 should have known about Utah, and those that didn't.

21 In subsection (10), that was put in in 2006 to help
22 deal with this issue with birth fathers from other states.
23 In sub (10) -- and I don't remember the sub -- subs under
24 sub (10), but it is a little confusing the way it's written;
25 but basically it's like I say, if father knew or should have

1 known, then it kicks you back up to the section that requires
2 compliance with Utah law. If you'd like, I could take your
3 book and even point out where they are, but I apologize, I
4 didn't bring my version from last year.

5 THE COURT: Thank you. Okay, I think we're fine.

6 MR. JENKINS: Okay, but those are -- those are the
7 key sections. Your Honor, it's our position, first of all,
8 like I say, that Utah law applies to this. It's our position
9 that Mr. Manzanares has admitted he knew Mom would -- may come
10 to Utah to place the child for adoption. Because of that, he
11 was under an obligation to comply with Utah law. He did not.

12 The en re: W case, the Beltran case showed that even
13 though he had a paternity petition pending in the other state,
14 because of that knowledge, he was required to comply with Utah
15 law. He didn't; and we think the Court should deny his motion
16 to dismiss.

17 I guess I should tack on, your Honor, motion to dismiss
18 is actually inappropriate at this stage. If the Court finds
19 that he has rights and his consent is required, dismissal
20 doesn't come until another step or two down the procedural
21 process, but --

22 THE COURT: Which would be what?

23 MR. JENKINS: Well, the code requires that if the Court
24 finds that his consent is required, then the Court next has to
25 look at if they have fair grounds to terminate his parental

1 rights otherwise.

2 THE COURT: For a man (inaudible), sure.

3 MR. JENKINS: Right, and then we go from there.

4 THE COURT: And I don't think -- we all agree there's
5 no basis on that (inaudible).

6 MR. JENKINS: I have never -- I haven't looked at
7 anything, so I don't know.

8 THE COURT: Okay.

9 MR. JENKINS: Okay.

10 THE COURT: Thank you.

11 MR. JENKINS: Thank you.

12 MS. REYES: Your Honor, may I respond briefly?

13 THE COURT: Please.

14 MS. REYES: Your Honor, I think the language is very
15 specific, and I want to just point out to the Court the
16 qualifying circumstances. It says, "Whether the father knew,
17 or through exercise of reasonable diligence could have known,
18 No. 1, the child of the mother --" I'm sorry, point 2, "The
19 mother intended to give birth to the child in this state."

20 There's no way that Mr. Manzanares would have known
21 that she intended to give birth in Utah, due to the fact that
22 they reference a portion of his verified petition. If you
23 look at Carie Terry's response that she filed on February --
24 I'm sorry, February 12th, she denies that. He puts out there
25 that there is this possibility, I guess, that she could -- she

1 could flee to Utah. She denies that. So right there she's
2 saying, "No, I'm not going to do that."

3 In her email that she sends to him on January 11th, she
4 says, "I'm going there to care for my sick father. I'll only
5 be there for a short period of time. I'm going to come back,
6 clear up some things with work, and we're going to talk about
7 the adoption of this child further."

8 It says in there one of the qualifying circumstances
9 is that he knew or should have known through reasonable
10 diligence that she intended to give birth in Utah. The
11 pleadings filed by the petitioner show that this baby was
12 born premature, is what their claim is, that the baby was born
13 premature.

14 There's nothing that shows that she had an intent to
15 come to Utah and place the baby for adoption here. Everything
16 is contrary to that. My client would not have known that
17 that was her intent, based on her pleadings, based on her
18 correspondence with him. It was just the opposite. There
19 was no intent for her to come to Utah to place the baby here.
20 So he would have no knowledge about that.

21 I think that "intended" is important. If that wasn't
22 in there, it would be a totally different story; but it's what
23 he thought her intent was, or what her intent was at that time.

24 The other issue is his adopt -- his paternity filing
25 in Colorado asked for injunctive relief as well, and an

1 injunction from any adoptions going forward. She had notice
2 of that. She filed an answer to it, but yet the day that
3 this petition is going to be heard by the Court to make
4 determinations about that very subject, she's giving consent
5 to have this child adopted out, and isn't reporting that to
6 anyone, not even the Court. That "By the way, the reason I'm
7 not available is because I'm giving consent for this adoption
8 to take place of this child."

9 The other thing I wanted to point out is the Court has
10 the 2007 code before it, I believe, Section 78-30-4.14. This
11 gets a little onerous, but it goes on for -- so it's paragraph
12 10 --

13 THE COURT: I'm there.

14 MS. REYES: -- subsection (c), then (i), (b), and then
15 (i) again. So it's clear down the path there, but it goes on
16 to say that "The consent of an unmarried biological father is
17 required when the unmarried biological father fully complies
18 with the requirements to establish parental rights in the state
19 where the mother resided before the mother executed the consent
20 for adoption."

21 I may not be reading that word-for-word. I'm kind of
22 paraphrasing it for my own documents here; but Mr. Manzanares
23 filed a paternity action to protect his rights and establish
24 parental rights in Colorado on January 16th, previous to her
25 consent being taken, which took place on the 20th.

1 So, your Honor, that provision there, he has complied
2 with the most stringent and complete -- you know, of his own
3 home state, and the home state of the mother. The Court asked
4 a question about when Ms. Terry went back to Colorado. My
5 client isn't certain, but his understanding is it was around
6 the 25th. So it was within days.

7 Her consent is taken on the 20th, approximately five
8 days later. Could have been a little sooner. He's not sure.
9 She's back to Colorado, back to work. She went back to work on
10 I think the 26th. I think he knows that for sure, that she was
11 at work. So she had no intent to reside in Utah.

12 I've cited for the Court the statute in Utah that
13 deals with residency and determining residency, and that's
14 found in the section 20(a)-2-105 that talks about "A resident
15 is a person who resides in Utah with a specific voting precinct
16 in Utah; and a person resides in Utah if the person has a
17 personal place of residence within Utah and has a present
18 intention to continue residency within Utah permanently or
19 indefinitely."

20 Obviously she had no intent to continue residency,
21 nor did she ever maintain residency in Utah. She went back
22 to Colorado shortly, within days after the birth of this child,
23 and continued on her daily schedules. So I believe that the
24 Court had a question about that. I believe it's outlined
25 pretty clearly in the statute what's required of residency in

1 Utah, and --

2 THE COURT: What's your plan on Counsel's suggestion
3 that your motion is inappropriate because it's really not right
4 that we dismiss today? Are there other steps that need to be
5 followed henceforth if a determination is made, his consent is
6 required?

7 MS. REYES: Your Honor, I don't know if I necessarily
8 agree -- disagree with that procedurally. However, all that's
9 going to do to this child is prolong this child's ability to be
10 back with the father which we believe will happen indefinitely.
11 Mr. Manzanares is an outstanding citizen. He's a manager of a
12 bank there. He has no criminal history. There's no issues of
13 drug abuse, you know, in his past.

14 So we believe it's just a process to continue to have
15 this child placed in third-party care, and allow a bond to
16 continue to be created between those third parties, a man the
17 child -- which I think it's a factor, it's my understanding in
18 review of the law that the Court can determine issues when, you
19 know, addressing parental rights, terminations about a bond the
20 child's created with a party.

21 So in the event the Court would not be inclined to
22 dismiss this today, which I think the Court has authority to
23 do, because Utah-- I mean, I'm sorry, Colorado has jurisdiction
24 over these parties, and has jurisdiction to deal with custody
25 of this minor child, if the Court's not inclined to do that,

1 then we would ask the Court to set this on an expedited track,
2 and get a decision made and have the petitioners file any
3 documents needed within a very, very short period of time so
4 that this can be dealt with expeditiously.

5 My client does not have a return flight back to
6 Colorado yet. His work is willing to give him the time needed
7 to take care of this matter. He has many support systems,
8 including his parents who are here today, who will assist him
9 and do whatever it takes so that he can, you know, be reunited
10 with his daughter. He's never seen her, he's not seen a
11 picture of her. So I think it's just a matter of procedurally
12 prolonging the inevitable, which I don't think is what's in
13 the best interest of this child.

14 What needs to happen is this child needs to be
15 reunited with her father. There needs to be the custody
16 determinations dealt with in Colorado to determine long
17 term what's going to happen; but I don't see there being
18 any benefit to any parties whatsoever with regard to the Court
19 not dismissing it today.

20 I believe the Court has the authority to dismiss the
21 matter today. I don't think there's any basis why the Court
22 couldn't do that. The Court can make a finding --

23 THE COURT: Well, let me ask you this.

24 MS. REYES: Sure.

25 THE COURT: If I dismiss the matter today, what Court

1 authority govern -- is governing who has possession or control
2 and custody of this child?

3 MS. REYES: I understand, your Honor, and I've had long
4 discussions with Counsel in Colorado.

5 THE COURT: I'm just talking out loud.

6 MS. REYES: Sure.

7 THE COURT: Thinking out loud. I mean, was not the
8 child placed with this couple pursuant to a Utah Court's
9 authority?

10 MS. REYES: Your Honor --

11 THE COURT: Right? I mean, that's what happened,
12 right? I mean --

13 MS. REYES: I'm assuming that's what happened. I
14 haven't -- I'm not privy to the total file here. I haven't
15 been able to access the total file. However, what I would
16 indicate is that if the Court were to dismiss this action --

17 THE COURT: Or maybe this was done solely on the
18 mother's consent.

19 MS. REYES: I believe that it was done solely on the
20 mother's consent. I don't think there was anything other --

21 THE COURT: Do you know, Counsel?

22 MR. JENKINS: I believe that's probably right; although,
23 your Honor, under the adoption code there is procedure set
24 out that the Court would have jurisdiction over determining
25 custody.

1 MS. REYES: Although, your Honor, with regard to that,
2 there's --

3 THE COURT: So does Colorado --

4 MS. REYES: -- Colorado already has jurisdiction over
5 the custody issue. What I anticipate would happen, your Honor,
6 I do have -- my client has with him two certified copies of the
7 two Court orders that Judge Woods has issued --

8 THE COURT: And have they issued a decision of who
9 would get custody of the child once the Court -- if Utah
10 relinquishes?

11 MS. REYES: There hasn't been that determination made;
12 although the order that's dated -- let me just read references
13 here. The order that's dated on --

14 THE COURT: See, if I dis --

15 MS. REYES: -- the order that's dated on the 29th
16 indicates --

17 THE COURT: If I dismiss the case, don't I lose the
18 authority to decide where the child goes temporarily?

19 MR. JENKINS: You actually have statutory authority to
20 do that if you dismiss the petition, your Honor.

21 THE COURT: If I dismiss the petition?

22 MS. REYES: Your Honor, in the order that's dated by
23 Judge Woods on February 29th of '08 it says, "Petitioner Robert
24 Manzanares is the biological father of the child and has all of
25 the legal rights and responsibilities that he's entitled to by

1 law as to the child.”

2 I have spoken with Counsel in Colorado, and they
3 anticipate going before Judge Woods immediately, depending on
4 the Court’s ruling here today, to get an order in place with
5 regard to custody of the child that we would then deal with
6 here in Utah, as far as custody of the child.

7 We’re not asking for the Court to take jurisdiction
8 over custody. We believe that custody -- that Colorado has
9 jurisdiction over that issue. We do understand that that is an
10 issue and a predicament in this case. If the Court dismisses
11 the adoption, that we believe that those things can be --

12 THE COURT: So what are you asking me to do with
13 respect to the child? No decisions at all; return it to the
14 mother; give it to your client?

15 MS. REYES: Your Honor, we believe that based on the
16 orders that Judge Woods has already issue din this case, that
17 custody would go to the father. The father would take the
18 child immediately back to Colorado, and there would be an
19 immediately emergency hearing held in Colorado with the
20 guardian ad litem, the attorney’s child involved in that,
21 to determine on a temporary basis who would actually have
22 custody and parent time with the child at that point in time.

23 THE COURT: Thank you.

24 MR. JENKINS: Your Honor, nothing really necessary to
25 further up with that. I think it is -- in the 2007 version,

1 4.16 of the adoption code, provides the Court authority to
2 deal with custody upon dismissal of the adoption petition.
3 Although I don't think dismissal is appropriate here. I think
4 that Mr. Manzanares should have complied with Utah law, and
5 he didn't. I think that's an important thing. We would -- I
6 think my clients would be inclined to appeal any decision that
7 would dismiss the petition. So we would certainly need to
8 address some issues with that.

9 THE COURT: Sure. You know, I may be wrong, but I'm
10 convinced that at least half the people in my courtroom are
11 convinced I'm wrong in every decision that I make, but that's
12 just the nature of the situation.

13 Based upon the arguments that I've heard, and what
14 I've read in the file, I'm going to grant the motion to
15 dismiss. I'm going to order the return of the child to the
16 father. I'm going to further find specifically that he was
17 not in a situation that he should have known that this child
18 was going to be born here in Utah at this time.

19 The circumstances and the timing of the sequence of
20 events leads the Court to be believed that there was perhaps
21 some motive or intent to go forward and get this child adopted
22 to defeat the claims and the rights of the father of the child,
23 especially in light of the knowledge, all of the conduct,
24 behavior, legal proceedings, the Court hearings that were
25 occurring, answers, responses to the pleadings that were done

1 by both parties.

2 I think it has -- Court has the basis to believe she
3 knew what was going on, she knew what was intended, and steps
4 and actions were perhaps taken on her part to avoid and prevent
5 him from exercising and having his parental rights over this
6 child.

7 I'll ask you to prepare the appropriate findings and
8 conclusions --

9 MS. REYES: Yes.

10 THE COURT: -- for my signature and review. I guess
11 we'll need to make a determination as to when the child will
12 be returned. Do you know when your clients are going to be
13 returning?

14 MR. JENKINS: I don't, your Honor. As I indicated,
15 they're on -- they were on standby if we wouldn't -- the Court
16 to stay any decision on return pending appeal.

17 THE COURT: When did they leave?

18 MR. JENKINS: I understood they were trying to get back
19 today for this. They left last week sometime, end of the week
20 or something. I don't even know where they're at.

21 THE COURT: Well, did they do that intentionally or
22 unintentionally; do you think?

23 MR. JENKINS: No, they did not, your Honor. They
24 intended to be here today. They told me that last week.

25 MS. REYES: Your Honor --

1 THE COURT: I'm thinking, though, it's an unfortunate
2 situation for everybody, and I'm not unsympathetic, and I'm not
3 uncompassionate to their situation. I'm sure that they have a
4 lot of love and attachment and bonding to this child. It's not
5 an easy thing for anybody to do, but I just don't -- in light
6 of everything that I've heard and listened to, it's just not an
7 appropriate thing to do, for the reasons that I've articulated.
8 It's just not right.

9 So, you know, if the statute is something different,
10 and you're right, Counsel, I'm not going to be offended at all
11 if you appeal me; and people who think they have more wisdom
12 and so forth, and will have a lot more time to study and deal
13 with the issue than we do, changes that or corrects me. that's
14 fine.

15 You know, I'm happy for that -- for all who's seeking
16 the right conclusion and the appropriate resolution here, but
17 I -- under the circumstances and the facts that I'm hearing,
18 I just can't make the determination that he's in a situation
19 where based upon what he's done and the information that he
20 knew at the time, that he should be denied his rights here.

21 MS. REYES: Your Honor --

22 THE COURT: Yeah.

23 MS. REYES: I'm just going to make the Court aware that
24 my client, again, doesn't have a return flight.

25 THE COURT: I understand.

1 MS. REYES: So he's available to stay as long as it
2 takes to have --

3 THE COURT: I understand. I know --

4 MS. REYES: -- that process take place.

5 THE COURT: -- I'm thinking about it.

6 MS. REYES: Sure.

7 THE COURT: We have a difficulty. We don't know when
8 they're coming back; and you know, frankly, there may need to
9 be an appropriate amount of time to -- a day or so to let the
10 family get --

11 MS. REYES: Sure.

12 THE COURT: -- their situation in order.

13 MR. JENKINS: Your Honor, I think mention that under
14 the section of the adoption code that I referenced, 4.16, it
15 really isn't appropriate for the Court to order return to
16 Father without Mother being involved in those proceedings.
17 It specifically says in there that if the Court needs to make
18 a best interest determination, that Mom comes back into the
19 picture.

20 THE COURT: Well, as I understand it, would not my
21 custody situation merely be a temporary situation until it goes
22 to Colorado for adjudication on the merits? I'm not intending
23 to make a final determination between these two parents here.
24 I don't know that that would be an appropriate thing for me to
25 require them to come here and be here to litigate that issue.

1 I think it's just a question of returning the child
2 to the father, and letting the proceedings go forward over in
3 Colorado between the mother and the father. Are you telling me
4 that I need to make that determination here as well, for out-
5 of-state parents?

6 MR. JENKINS: Well, I'm just saying that's what the
7 adoption code says. The Court --

8 THE COURT: Yeah, that's what I'm asking.

9 MR. JENKINS: -- looks to determine --

10 THE COURT: I'm asking for your Counsel --

11 MR. JENKINS: -- and Ms. Terry certainly hasn't had an
12 opportunity to present any insight into the -- even on the
13 temporary custody argument, your Honor.

14 THE COURT: Well, that's why I'm asking --

15 MR. JENKINS: I guess --

16 THE COURT: -- you know, where is she; why wasn't she
17 here? I guess she's considered herself no longer involved,
18 because she gave consent, right? So in her mind --

19 MR. JENKINS: Well, I don't know what she's thinking.
20 To be honest, I'm not her lawyer. So --

21 THE COURT: Right, but if she gave her consent up to
22 the child here and saying, "I'm no longer her mother --"

23 MR. JENKINS: But the consent specifically says, if
24 you read it, your Honor, that "If the adoption petition is
25 dismissed, I feel it would be in the best interest of the child

1 to be returned to me." So her consent specifically says that.

2 THE COURT: Okay, give me just a moment if I -- let me
3 read 4.16. Thank you. I think Counsel's right. Have you read
4 4.16? I think he's correct.

5 MS. REYES: I have not. Although what I would indicate
6 to the Court is that I know that Judge Woods' Court is aware
7 of today's hearing, and has indi -- and through the guardian
8 ad litem and the Court's clerk, has indicated that if your
9 Honor needed to discuss issues pertinent to the custody of
10 this child, that the Court could be made available to have a
11 discussion with your Honor on that issue, on a temporary basis,
12 so we can get this child back to Colorado to have --

13 THE COURT: Well, here's --

14 MS. REYES: -- Colorado determine.

15 THE COURT: -- here's what it says. "If there are not
16 proper grounds to terminate the parental rights, the Court
17 shall dismiss the adoption petition;" and that's what you've
18 asked to be done.

19 MS. REYES: Right.

20 THE COURT: Then it says, No. 2, "Conduct an evidentiary
21 hearing to determine who should have custody of the child," and
22 I assume that's between Mother and Father.

23 Then third, "Award custody in accordance with the
24 best interest of the child. Evidence considered at the custody
25 hearing may include psychological or emotional bonding, any

1 detriment a change in custody may make, or the fact that the --
2 the fact that a parent relinquished a child for an adoption or
3 consented to the adoption may not be considered as evidence
4 that it is not in the child's best interest for custody to be
5 awarded to that such person; or if the person was unfit or
6 incompetent, neglected or abandoned or didn't have interest in
7 the custody of the child."

8 So, I mean, I think the plain reading of the statute
9 says, okay, I can dismiss the adoption petition; but if I do
10 that, also I then have to make a decision with respect to
11 custody, and I need Mother and Father here to make that
12 determination, correct?

13 MR. JENKINS: I think you're right, your Honor. I
14 think in the context of a case like this, where my clients
15 certainly intend to appeal, I think you can also include them
16 in that temporary custody determination. If you notice down
17 there further in the statute, it talks about the Court can make
18 appropriate orders regarding visitation and things such as
19 that.

20 You know, we would certainly want to be involved in
21 that to help the Court see that it would not be in the child's
22 best interest to just be immediately taken from my client's
23 care.

24 THE COURT: Well, you're -- I don't think this includes
25 the prospective adoptive parents, does it?

1 MR. JENKINS: Well, I think there's language in there
2 to that effect. You can look at the attachment the child has
3 with the prospective adoptive parents. I think in a situation
4 like this where you're dealing with temporary custody and where
5 the parties are going to appeal, I think that's certainly an
6 issue you need to take into account.

7 If the child's taken immediately back to Colorado
8 and only Mr. Manzanares or Ms. Terry have the opportunity, you
9 know, how are my clients -- what are they going to be able to
10 do when they go up on appeal and --

11 THE COURT: You're referring to subsection (3), right?

12 MR. JENKINS: I believe so. Like I say, I walked out
13 of the office without --

14 THE COURT: Well, let's consider --

15 MR. JENKINS: -- my book.

16 THE COURT: -- let me read it to you. "Evidence
17 considered at the custody hearing may include evidence of
18 psychological or emotional bonds that a child has formed with
19 a third party, including the prospective adoptive parent, and
20 any detrimental -- detriment that a change in custody may cause
21 the child."

22 MR. JENKINS: That's right, and my concern here, where
23 my clients certainly would appeal is if we had just a -- just
24 to have the excluded completely from the child's life now,
25 pending appeal, you know, it would be rather difficult. We

1 could certainly work out some kind of an arrangement we could
2 even -- see, I have a case right now where we've worked out a
3 situation with the visitation and things such as that pending
4 appeal.

5 THE COURT: Well, I just kind of have a hard time
6 understanding to a full extent -- perhaps I'm not fully
7 educated on it -- that an attachment of such a young child,
8 four months of age, I think would have different claims and
9 levels of attachments than an older child, you know?

10 MR. JENKINS: Certainly, your Honor, but I think we
11 could get the guardian ad litem's expert in here, and she could
12 tell you that there's a significant amount that occurs during
13 those few months.

14 MS. REYES: Although, your Honor, what I would indicate
15 is I don't know what kind of standing -- if the Court dismisses
16 the petition I don't know if these prospective adoptive parents
17 would have standing to initiate any type of request for custody
18 at that point in time.

19 I believe where the Court in Colorado has already
20 determined that he's the biological father of this child,
21 that as far as on a temporary basis who would have rights
22 to this child if the Court. With the Court's dismissal of
23 the petition, my client obviously would have rights above
24 and beyond those of a prospective adoptive placement.

25 That's -- like I indicate -- like I said before, your

1 Honor, I know that the Court in Colorado would be available for
2 communication. I think that where they have jurisdiction over
3 the actual custody of the two parties and the child --

4 THE COURT: They would, but they don't. The problem
5 that Counsel's pointing out is his clients have their rights.

6 MR. JENKINS: That's right, your Honor.

7 MS. REYES: Although the only thing I'm indicating to
8 the Court is I don't believe with the petition being dismissed,
9 whether or not they would have standing at this point in time
10 to say, "We're going to -- we would like to keep the child in
11 our care."

12 THE COURT: Would that not depend whether I was upheld
13 on appeal or not?

14 MS. REYES: Sure, but during the pendency of the
15 action, where it has been dismissed --

16 THE COURT: I would love to think all my orders are
17 final, and we could just close the door and move on from them
18 and that's the end of it; but we all know that it doesn't.

19 MS. REYES: Your Honor, and my client understands the
20 delicacy of this situation. He's not -- I mean, I think he's
21 willing to compromise on the timing of all of this, but he
22 hasn't been able to even see his daughter, have a picture of
23 her. He is --

24 THE COURT: I understand.

25 MS. REYES: -- requesting the Court return custody to

1 him; but if it needs to take several days to accomplish that,
2 with, you know, the situation we're faced with here, with the
3 petitioners not being present, he's willing to work with that.

4 THE COURT: And I don't think he's proposing that your
5 client continued to be --

6 MR. JENKINS: Excluded, no.

7 THE COURT: -- excluded at all during this entire
8 process or the appeal. I don't -- I never read that into
9 what he's requesting; but by the same token -- I don't know.
10 I mean --

11 MS. REYES: Although, your Honor, I believe that with
12 the Court's ruling, even though it's going up on appeal, that
13 being presented to the Colorado Court, the Colorado Court
14 could make an immediate termination with regard to custody;
15 and pending the appeal, that would be in effect. I would
16 believe that's how it would work.

17 MR. JENKINS: Well, to be honest, your Honor, under --
18 your Honor, if the Court does dismiss the adoption petition, I
19 think it probably does kick it into the UCCJEA, but Colorado
20 Court, this is the child's home state, the child's never been
21 to Colorado. The Colorado Court wouldn't have jurisdiction to
22 determine custody of the child until the child returns.

23 I think it's appropriate for the Court to make those
24 determinations where everybody's before you. We can certainly
25 set some time to consider that.

1 MS. REYES: Although, your Honor, I would note -- and
2 I apologize, I don't want to belabor this any longer -- the
3 order from Judge Wood in Colorado indicates that the Court
4 has jurisdiction as far as custody is concerned over the minor
5 child because at the time that the petition was filed, the
6 child was -- although the child wasn't born yet, the child was
7 conceived in -- and under Colorado law, an unborn child is
8 considered -- and I can quote to that directly here for the
9 Court. Let me just find that.

10 I believe that's on the March 3rd, 2008 order, and that
11 would be attached as Exhibit No. 8 to our memorandum in support
12 of motion to dismiss. If I just can have a moment, I can --
13 paragraph 3, this isn't the specific part, but it says, "Utah
14 is not the proper forum for the father's paternity action, and
15 Utah does not have jurisdiction over the action."

16 THE COURT: I'm looking for it.

17 MS. REYES: I'm sorry.

18 THE COURT: You say it was Exhibit A?

19 MS. REYES: Exhibit 8 to our memorandum. There's
20 actually two -- two orders. You're going to see the first
21 one's going to be dated February 29th, and then there's one
22 behind that, if you'll just keep turning a few pages.

23 THE COURT: All right. Well, hold on a second. One
24 second. "Order of Temporary Custody" signed by Judge Hilder?

25 MS. REYES: No, that's in the adoption. You're on --

1 THE COURT: No, no, I -- I know -- I know. Hold on.
2 I'm saying --

3 MS. REYES: I'm sorry.

4 THE COURT: -- "This order shall become null and void
5 if the adoption petition is dismissed," February 20th, 2008 by
6 Judge Hilder.

7 MS. REYES: Right.

8 THE COURT: So what Judge Hilder's order is saying is
9 if I dismiss the petition, then the order granting temporary
10 custody of the child to your clients is dismissed?

11 MR. JENKINS: That's right.

12 THE COURT: Correct?

13 MR. JENKINS: That's one I think -- that's 1-4.166, and
14 the Court need to then evaluate --

15 THE COURT: Okay. Well, then that at least takes --
16 I'm not sure if the custody for 4.16 is talking about it on a
17 temporary basis or on a permanent basis, and that's what I'm
18 struggling with.

19 MR. JENKINS: Well, I think it's both. There are some
20 Supreme Court cases that have talked about it, but I think
21 where you have a situation like this where -- where, you know,
22 the parties' rights are still in flux on appeal, and I think
23 the Court --

24 THE COURT: Well --

25 MS. REYES: Your Honor, and I think it would be

1 different if there wasn't a paternity action pending, where the
2 Court has jurisdiction over custody. In this case there is --

3 THE COURT: I agree. I think that makes sense.

4 MS. REYES: And if you go to the --

5 THE COURT: Where is that paragraph for Exhibit 8.

6 Let's look there. No. 7, 9 --

7 MS. REYES: On the order; is that what you're asking of
8 me, your Honor?

9 THE COURT: Is that the one on 2/29/08?

10 MS. REYES: On 2/29/08, no. You are actually going to
11 go just a few pages --

12 THE COURT: For a final order of paternity.

13 MS. REYES: -- right. Actually I'm sorry, your Honor.

14 The 2/29/08 does provide for jurisdiction. It's paragraph 1.

15 It says, "Petitioner resides in this County. Respondent
16 resides in this County. Minor child resides in -- or unborn
17 resides in this County."

18 "Since the Court has jurisdiction over the subject
19 matter, and persons herein and venue is proper because --" and
20 it checks those off.

21 THE COURT: Right, I understand.

22 MS. REYES: And then --

23 THE COURT: So what is it that you're talking about?

24 MS. REYES: The fact that under Colorado law -- and I'm
25 trying to find where it talks about this right here. It talks

1 about -- it's paragraph 17. The Court makes a finding that --

2 THE COURT: The order is March 3rd?

3 MS. REYES: Yes. So it's the very last page, paragraph
4 17. "In People vs. Estergard, the Colorado Supreme Court held
5 that the definition of a child in the children's code included
6 an unborn child, and that provisions of children's code are
7 deliberately construed."

8 So the Court there, the question there was whether
9 or not the Court had jurisdiction over the child, because at
10 the time the petition was filed, the child was unborn; and
11 the Court made a finding that in fact because the code -- the
12 Supreme Court case that provides for that, that the Court does
13 have jurisdiction over the child for custody purposes.

14 THE COURT: So --

15 MS. REYES: In fact, the Court has appointed a guardian
16 ad litem on behalf of the child in Colorado, as well, based on
17 that.

18 THE COURT: So how do you propose I reconcile what it
19 says in the statute in Section 4.16?

20 MS. REYES: Your Honor, if I may, may I -- may I look
21 at the statute and read it? I --

22 THE COURT: Sure.

23 MS. REYES: -- sometimes if I can sit down and just
24 look at it myself, I may be able to understand it a little
25 clearer.

1 THE COURT: Yeah.

2 MS. REYES: I apologize, I don't have that right before
3 me.

4 THE COURT: Yeah, I'll let you look.

5 MS. REYES: May I approach, your Honor?

6 THE COURT: You may.

7 MS. REYES: Thank you. The specific language of that
8 code -- I mean, the section, I'm sorry?

9 THE COURT: The section is 4.16.

10 MS. REYES: Okay.

11 THE COURT: We've got to do something with the child;
12 and I just don't know that I'm comfortable letting the child
13 sit here away from both parents during this time of appeal.

14 MS. REYES: So it's, your Honor, 78-30-4.16?

15 THE COURT: I think it was 4.16, subsection (3) --

16 MS. REYES: Okay.

17 THE COURT: -- if I remember correctly. Doesn't give a
18 lot of guidance, does it?

19 MS. REYES: Right, your Honor. I think -- I think
20 maybe the way I could distinguish this case from what the code
21 -- from what was intended here, is if we just have an adoption
22 petition here, and the adoption goes astray, the adoption's
23 dismissed, then what happens with this child; but here we have
24 a pending custody action in a different Court who has authority
25 to --

1 THE COURT: That would sub --

2 MS. REYES: -- make that determination.

3 THE COURT: -- that would substitute or step in its
4 place --

5 MS. REYES: Right.

6 THE COURT: -- rather than the whole matter being here
7 -- heard here in Utah.

8 MS. REYES: And the mother would be obviously privy and
9 available to attend any hearings or determinations in Colorado.
10 She's a resident up there. She would be given appropriate
11 notice.

12 THE COURT: But the one I'm hung up on is the section
13 where it says, "Yet take into consideration the child's
14 attachment and bonding to the third parties." "Take into
15 consideration," I don't know it says they have to be part of
16 the hearing, does it?

17 MR. JENKINS: I don't know they have to be part of the
18 hearing, but I don't know how you can do that unless they're --

19 THE COURT: Well, the main factor that I'm looking at
20 again that in some ways a fortunate situation is that the child
21 is not substantially older --

22 MR. JENKINS: Uh-huh.

23 THE COURT: -- than the child is.

24 MS. REYES: Your Honor, and part of this, I guess I'm
25 reading the statute wondering -- I think that starting out, the

1 portion of the statute talks about termination of parental
2 rights. So I think what's anticipated is that a petition to
3 terminate rights is filed, and then this evidentiary hearing
4 is held to determine what's in the best interest, if it's going
5 to --

6 THE COURT: It's not completely helpful, is it?

7 MS. REYES: It's not, and I apologize I'm not better
8 at deciphering it, but I do believe where a Court currently
9 has jurisdiction over the parties, that this Court could defer
10 the issue of custody to that Court's ruling.

11 My client would abide by any requirements of this
12 Court to have the child return to Colorado within a short
13 period of time. That's his expectation. He just hasn't made
14 plans to go back because he didn't know what the situation
15 would be as far as if he was going to be reunited with his
16 daughter.

17 THE COURT: I think what makes the most sense is I
18 think the child needs to be returned to the father, for one,
19 (inaudible) on a temporary basis. It has to be. If the
20 Court in Colorado wants to take up the issue again, and make
21 a determination between those two parties, fine; but I don't
22 feel comfortable making a decision to leave the child during
23 the pendency of appeal, or you know, while all of this gets
24 sorted out with the prospective adoptive petitioners, because
25 two reasons. One, Judge Hilder's order granting them custody

1 is terminated, because I've decided to grant the petition to
2 dismiss the adoption petition.

3 So custody is going to go back to Dad on a temporary
4 basis. We'll let the Courts in Colorado make the determination,
5 a resolution there as far as the rights, so on and so forth
6 there.

7 MS. REYES: All right, and I will make the --

8 THE COURT: Get your order in so they can get their
9 appeal going.

10 MS. REYES: Sure.

11 THE COURT: And prepare your appropriate findings and
12 the conclusions that you need. Let Counsel look at it --

13 MS. REYES: Sure.

14 THE COURT: -- and review it, so he has an opportunity
15 to make any objections that you feel are appropriate.

16 MR. JENKINS: Do I assume that the Court's ruling also
17 denied my request to stay pending appeal?

18 THE COURT: Yes.

19 MR. JENKINS: Thank you, your Honor.

20 THE COURT: Set a time frame for the change of the
21 custody back.

22 MS. REYES: Okay.

23 THE COURT: Any suggestions?

24 MS. REYES: Well, not knowing when his client will
25 return to Utah, I'm assuming they'll be able to return no

1 later than I would think tomorrow. If they're on standby,
2 they should be able to do that. My client would like to --
3 we've spoken about this with hopeful anticipation he'd be
4 reunited with his daughter, that, you know, obviously they're
5 going to have to have some good communication amongst them
6 about what kind of formula this child's on, what kind of
7 diapers that, you know, that -- I mean, my child -- my client
8 has all of the necessary things for this child available to
9 him. He's brought clothing, he's brought diapers, he's brought
10 everything except for a car seat, that he would need to know a
11 few things from them as far as, you know, the formula, and he's
12 hopeful that they can have some good dialogue and communication
13 about that for the benefit of the child.

14 Obviously he would hope to have the child in his
15 care as soon as possible, but I think he would understand the
16 circumstance. So I think a reasonable time frame -- today is
17 what, Tuesday? Maybe they have some communication --

18 THE COURT: I was going to suggest rather than me
19 imposing a firm deadline, which I will do, to give you guys
20 some flexibility that makes sense for both of their situations
21 when they come home and the chance to get their -- well, let's
22 set a deadline no later than a certain date. If it can be
23 accomplished sooner, fine. You know, there's no sense dragging
24 it out; but I'm just thinking that no sooner -- or excuse me,
25 no later than the 7th of July.

1 MR. JENKINS: Okay.

2 THE COURT: That's almost a week from today. That
3 gives you a couple of -- I don't know when they're coming back.
4 They may not get back until tomorrow. They may need a day or
5 two. If they can get it accomplished, then fine. If it takes
6 the weekend to get some of this taken care of, fine.

7 I -- you know, I could order on Friday, but -- you
8 know, and I understand your client's just sitting here waiting
9 this entire time, but I do think that there's -- if they know
10 that they need to do it and they need to get it taken care
11 of, I want to give you -- them as much time as they need to
12 appropriately and adequately share and pass this information
13 and get it taken care of. So if they can get it done sooner,
14 there's nothing that prohibits that.

15 MS. REYES: Sure.

16 THE COURT: I would encourage it sooner rather than
17 later.

18 MS. REYES: And your Honor, would my -- would the
19 communication go from attorneys, or I'm assuming that they're
20 going to have to talk at some time.

21 THE COURT: Do you --

22 MR. REYES: Would he be available -- would he be able
23 to communicate with them directly? I think there was some --

24 MR. JENKINS: I think we ought to work that out,
25 absolutely.

1 THE COURT: You two are excellent attorneys. You two
2 are very skilled in handling -- working through problems and
3 difficulties. Do what makes the most sense for your clients.

4 MR. JENKINS: Okay.

5 THE COURT: I don't think we're going to have issues
6 and concerns on our part, because Mom's not involved. I know
7 it's going to be highly emotional. Use your good sense and
8 common judgment on what to do to make it easier and smoother
9 for everybody, being sensitive to the situation for both of
10 them.

11 Maybe they don't want to be involved. I mean, we
12 don't know how they're going to react or how they're going to
13 take it. Maybe they don't want to see their client. Maybe
14 they don't want to be around him. Maybe it's going to be
15 harder for them.

16 So even though you guys may be willing, they may not
17 want to. So you two be sensitive to what your clients' wants
18 and desires are, and don't be offended either way if they do or
19 don't want to have interface with you directly. Just handle it
20 and move forward from there.

21 Anything else that I'm missing or can cover, make it
22 easy --

23 MR. JENKINS: I think that covers it.

24 THE COURT: -- easier for either one of you? All
25 right.

1

MR. JENKINS: Okay.

2

THE COURT: Thank you.

3

MS. REYES: Thank you.

4

MR. JENKINS: Thank you.

5

(Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these proceedings.

That I have authorized Wendy Haws to prepare said transcript, as an independent contractor working under my license as a certified court reporter appropriately authorized under Utah statutes.

That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

Wendy Haws
Certified Court Transcriber

WITNESS MY HAND AND SEAL this 5th day of October 2009.

My commission expires:
February 24, 2012

Beverly Lowe
NOTARY PUBLIC
Residing in Utah County