

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

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 IN THE MATTER OF THE)
 ADOPTION OF:) (Volume II)
)
) Case No. 082900089 FS
)
 BABY B,)
 _____)

Evidentiary Hearing
Electronically Recorded on
July 29, 2008

BEFORE: THE HONORABLE ROBERT FAUST
Third District Court Judge

APPEARANCES

For the Petitioner: Larry S. Jenkins
 _____ WOOD, CRAPO
 60 East South Temple
 Suite 500
 Salt Lake City, Utah 84111
 Telephone: (801)366-6060

For the Natural Father: Jennifer D. Reyes
 DORIUS, BOND REYES
 29 South Main Street
 P.O. Box 895
 Brigham City, Utah 84302
 Telephone: (435)723-5219

Transcribed by: Wendy Haws, CCT

1771 South California Avenue
Provo, Utah 84606
Telephone: (801) 377-2927

P R O C E E D I N G S

(Electronically recorded on July 29, 2008)

THE COURT: Are we back on the record?

COURT CLERK: Yes.

THE COURT: Thank you. All right, we're back on the record, and at this point in time, as we discussed yesterday, I think what we're going to do is go ahead and take argument from Counsel with respect to the (inaudible) and issues relating to consent, and whether or not the natural father has the right under our laws to have consent to the adoption, if you would.

MS. REYES: Your Honor, if I may, just prior to getting into that, just clarify something procedurally as far as my understanding goes. It's my understanding that based on some communication in chambers, that there's an acknowledgment by Counsel for the parties that in the event the Court were to determine that the consent of Mr. Manzanares is required, and an appeal was filed, at that point in time that wouldn't preclude the Court from going forward on a best interest hearing and making that determination and placing custody of the child with either one of the parents. I just want to make sure that that's my understanding of what was discussed, and that there's an agreement that that process would take place.

THE COURT: And Mr. Jenkins, I --

MR. JENKINS: I think that's correct, under the law, your Honor. If there's -- if an adoption is dismissed and

1 there's an appeal taken, I think the Court can still go into
2 the immediate custody issue, unless, say, the Court or Court
3 of Appeals issues a stay of that; but I think that is correct
4 on that, how the law works.

5 THE COURT: And that is the Court's understanding.
6 Unless there's something prohibiting me from doing that, I
7 think it would be the intention to do it as expeditiously as
8 possible.

9 MR. JENKINS: Sure.

10 THE COURT: For the benefit of all concerned.

11 MS. REYES: Sure.

12 THE COURT: So all right.

13 MS. REYES: Thank you, your Honor. Your Honor, with
14 regard to the consent of Robert Manzanares, the biological
15 father of the infant child at issue in this proceeding, it
16 is required and necessary for Robert Manzanares to consent to
17 this adoption, due to the fact, first of all, that there has
18 been an order issued out of the Colorado District Court, in
19 conjunction with verification with Judge Hilder, the presiding
20 Third District Court Judge. If you look specifically to our
21 exhibit, it would be Exhibit No. 8, and it's paragraph, I
22 believe, 15.

23 THE COURT: I'm sorry, 15?

24 MS. REYES: Well, actually it's 20, I apologize.
25 Paragraph 20. It reads as follows: "The Court orders that

1 the father's name shall be listed on the parties' daughter's
2 birth certificate, and the Honorable Utah Third District Judge
3 Robert K. Hilder acknowledged on the record that Utah will
4 recognize this order to place Father's name on the parties'
5 daughter's birth certificate." That was issued on March 3rd of
6 2008 by the Colorado District Court Judge.

7 That was based off of a telephone conference. That
8 Judge was in Colorado; and Judge Hilder, here in Utah, had --
9 I do have a copy of a reporter's transcript from that hearing,
10 which would evidence the conversations issued -- I mean,
11 exchanged between the two Courts. If the Court would like
12 to take judicial notice of that, I do have a courtesy copy
13 available for the Court, if that's necessary.

14 Based on that, your Honor, the fact that Robert
15 Manzanares' name is ordered to be placed on the child's birth
16 certificate, he is in fact entitled to notice. I apologize, I
17 don't have the current citation, but the old citation under the
18 old code is 78-30-4.13.

19 THE COURT: I was going to ask Counsel on that. For
20 purposes of what we're doing, are we going under the old code
21 sections, or are we under the new ones, so we're all on the
22 same page when we're talking statutes? What would you like to
23 do? I think it's the old ones, isn't it? Because it's the
24 time the petition was filed.

25 MR. JENKINS: Well, technically the new code sections

1 took affect immediately upon passage and the -- and signature
2 by the Governor, which was early February, before the petition
3 was filed.

4 THE COURT: Okay.

5 MR. JENKINS: I have no problem going either way,
6 because there's not really much difference in them; but that
7 is --

8 THE COURT: Well, I wasn't sure when they were changed.
9 So it was February?

10 MR. JENKINS: It took effect the first week of February.

11 THE COURT: All right.

12 MR. JENKINS: So --

13 THE COURT: So let's make references, then, if we can,
14 to -- if you know both of them, tell us both. If not, give us
15 at least the one you do know --

16 MR. JENKINS: Okay.

17 THE COURT: -- on that.

18 MS. REYES: Very good, your Honor.

19 THE COURT: Now, so that was another question I had.
20 I didn't mean to interrupt, but there was some reference to
21 some testimony yesterday about a letter from Mr. Jenkins about
22 noticing. I don't recall receiving or seeing any evidence in
23 regard to any notice of pending adoption in Utah being provided
24 to the natural father if one was or was not given here, or so
25 forth. So I'm interested in finding out about that as well,

1 okay? Thank you.

2 So you're saying Section 78-30-4.13 is the requirement
3 of notice to the father --

4 MS. REYES: That is correct, 7 --

5 THE COURT: -- on the birth certificate?

6 MS. REYES: -- 78-30-4.13 deals with notice; and
7 specifically there's a reference to paragraph 2 in (f), which
8 indicates if a father is listed on a birth certificate, then
9 that party is entitled to notice.

10 THE COURT: Well, we've not established that he's been
11 listed on the birth certificate yet, correct? Nobody presented
12 evidence one way or the other?

13 MS. REYES: Your Honor, paragraph 20 of the Exhibit 11
14 that's been offered and received by the Court --

15 THE COURT: Yeah, I know there's an order to do so,
16 but your -- I think the testimony your client gave yesterday
17 was they had been attempting to do so, and they don't know if
18 his name is on the birth certificate.

19 MS. REYES: Your Honor, they've been -- every effort
20 that can be made to do this has been attempted. There has
21 been communication between Mr. Jenkins and Emily Berkley in
22 Colorado. I don't know why there has been a hold up, but
23 Ms. Berkley has done everything in her power to try and get
24 that changed back.

25 With the time that the Judge issued this order, I

1 don't know if there was an issue with vital stats or there's
2 a problem. I think that actually on the birth certificate I am
3 aware -- and my client can correct me if I'm wrong, but I think
4 that the birth -- that the birth mother's name on that is --

5 MR. MANZANARES: I believe so.

6 MS. REYES: I believe that on the -- on the birth
7 certificate and currently -- I think this has been part of
8 the problem -- is the birth mother reflects Julissa Byington,
9 who is the prospective adoptive mother, rather than the actual
10 birth mother, Carrie Terry.

11 So I don't know if that's been a problem. I understand
12 that that has been an issue in getting it resolved; but what
13 I'm indicating to the Court is that there has been an order
14 mandating that his name be placed on the birth certificate.

15 THE COURT: I understand that, I guess. So I'm just
16 trying to make sure that I'm accurate in understanding nobody
17 has any birth certificate with your client's name on it as of
18 this point in time as the father?

19 MS. REYES: That is correct.

20 THE COURT: All right.

21 MS. REYES: Although there have been numerous attempts,
22 and we're still --

23 THE COURT: I under -- I understand.

24 MS. REYES: -- trying to correct, okay.

25 THE COURT: Okay. All right. Please go ahead.

1 MS. REYES: Your Honor, and then under that same Code
2 Section 78-30-4.13, paragraph 6 talks about the right of a
3 party entitled to notice to file a motion; and then 78-30-4.13
4 subsection (11) talks about at that point in time the party
5 can intervene. Then it goes into the best interest standard
6 at that point in time.

7 So our position, your Honor, is that regardless of
8 whether or not the Court determines the consent of Robert
9 Manzanares is necessary or not, under this provision he is
10 entitled to notice of this adoption, is entitled to pose an
11 objection; and then based on that, it automatically goes back
12 to the best standards scenario.

13 So it's our position that if the Court were to
14 determine that his consent is not necessary, he would still
15 have standing and the ability to come in and object to the
16 adoption petition under this section, and he would be allowed
17 an opportunity to have the Court do a best interest hearing on
18 the matter.

19 THE COURT: Are you saying that no notice was ever
20 given to him?

21 MS. REYES: I'm not. I'm not necessarily saying that.
22 I'm just saying that under the code I believe that -- and
23 because there's been an order directing that his name be placed
24 on the birth certificate, it's mandated that he be entitled to
25 notice; and that that automatically allows him the opportunity

1 to come in and object, regardless of whether or not his consent
2 is necessary under Utah law. Then it would go into a best
3 interest hearing under subsection (11), where it says that
4 the party would be considered an intervener, and the Court
5 can consider best interest at that time.

6 So I'm indicating to the Court that notice --

7 THE COURT: Let me --

8 MS. REYES: Okay.

9 THE COURT: -- let me be more specific.

10 MS. REYES: Sure.

11 THE COURT: Are you claiming that they have been
12 deficient in doing something they should have done under the
13 statute, by failing to provide him notice --

14 MS. REYES: Yes.

15 THE COURT: -- yes or no?

16 MS. REYES: Yes, they have not provided him actual
17 notice of the hearing as required under Utah law, and given him
18 the -- there's a notice that indicates he would have 30 days
19 from him receiving said notice to file a motion and object to
20 the proceedings. That has not been received by Mr. Manzanares.

21 THE COURT: Okay.

22 MR. REYES: So I would indicate that there -- there has
23 been some deficiencies in that area, yes.

24 THE COURT: How does the providing of the notice or not
25 getting notice have any impact of whether his consent is or is

1 not required to the adoption? Isn't that a separate issue?

2 MS. REYES: Your Honor, I believe it is. I believe
3 that notice of an adoption and consent of an adoption are
4 different. Because his name has been ordered to be placed
5 on the birth certificate, in fact his consent is not necessary;
6 because once a title is entitled to notice, they're entitled
7 to receive notice of the proceeding, have an opportunity to
8 object. If they fail to do that, then basically after the 30
9 days have run, then they're out.

10 Consent is a separate issue. The consent of a party
11 is necessary in situations, for instance, if his name wasn't
12 on the birth certificate, or we're dealing with a different
13 scenario. So I think that basically my understanding of
14 the statute is that the notice provision would trump any
15 requirements for consent; because the fact that they're
16 entitled to notice, that gives them the opportunity to come
17 into a -- come into Court and object, and that absolves the
18 consent requirement for Mr. Manzanares, because he's on -- he
19 was ordered to be on the birth certificate. All he has to show
20 is that he's objecting to the petition at that point in time,
21 and then the Court can hold a best interest hearing.

22 THE COURT: All right. Please.

23 MS. REYES: Okay. Your Honor, so that's the first
24 position that we have in this case. Secondary to that, your
25 Honor, is -- and this is the new code section. I apologize I

1 don't have the old one here, but I can provide that to the
2 Court at a later date. I may have it at my fingertips here,
3 but the new Code Section 78(b)-6-120, which talks about
4 necessary consent to adoption, or relinquishment to adoption,
5 paragraph 1, subsection (d), indicates, "A biological parent
6 who has been adjudicated to be the child's biological father
7 by a Court of competent jurisdiction prior to the mother's
8 execution of the consent to adopt or relinquishment of the
9 child for adoption," that mandates that that person's consent
10 be necessary.

11 What I'd indicate to the Court is that Mr. Manzanares
12 filed a paternity action on this case on approximately February
13 16th. I'm sorry, that's not true. He filed a petition for
14 adoption in this matter on --

15 THE COURT: January 16th.

16 MS. REYES: -- January 16th, there we go. Ms. Carrie
17 Terry filed a response to the petition on February 12th of 2008.
18 In paragraph 7 of her response, she admits that Mr. Manzanares
19 is the biological father to the child. So our position is, is
20 that based on the pleadings that were before the Court at that
21 time, there was basically an adjudication on the pleadings of
22 the fact that he was the -- he is the father of this child.
23 Under that scenario his consent would be required in this case.

24 THE COURT: Even though there was no Court order signed
25 at the time?

1 MS. REYES: Correct. I understand the Court's -- the
2 Court's concern for that, but I our position would be because
3 she acknowledged and admitted paternity in her response, at
4 that point in time there was no dispute, and at any given time
5 at that point further, the Court could have determined that
6 there was -- that he was the biological father of this child.

7 In fact, there was a hearing scheduled for February
8 the 20th. If that hearing would have gone forward, there
9 would have been an adjudication -- a specific adjudication,
10 not necessarily on the pleading, but basically from the bench
11 that Mr. Manzanares was the biolog -- is the biological father
12 of this child.

13 So our position is because the pleadings basically
14 stand for themselves there was an adjudication on the pleadings
15 because of her admission on February 12th to the fact that he
16 was the biological -- he is the biological father of this
17 child.

18 Then going on further, your Honor, the next step that
19 we look at with regard to consent after those two arguments is
20 whether or not under subsection 78(b)-6-122, Robert Manzanares
21 is entitled to be able to give the consent to this adoption.

22 What I would indicate to the Court is that absent
23 that, Mr. Manzanares has complied and done everything necessary
24 in the State of Colorado to preserve his rights as a father.
25 He filed his petition on January 16th, which was approximately a

1 little over a month before his daughter was born prematurely in
2 Utah. A hearing was scheduled on the petition for February 20th.

3 I don't think there's any dispute, or there's been
4 no testimony or evidence offered that Mr. Manzanares has not
5 completely and fully complied with the requirements in the
6 State of Colorado to protect his rights as the father to this
7 child.

8 The Utah Court of Appeals has addressed a case somewhat
9 similar, but with some distinctions. That would be Osborne vs.
10 Adoption Center of Choice. The citation is 70 P.3d 58, wherein
11 the Court of Appeals addressed the issue that Osborne, who was
12 the birth father on that matter, that he took absolutely no
13 action in his home state of North Carolina prior to the
14 mother's relinquishment.

15 Then the Court went on further in the Utah Supreme
16 Court affirmed the Court of Appeals ruling and indicated that
17 "because he," meaning Osborne, "has made no attempt to show
18 that he has complied with the legal requirements of this state
19 or any other state in order to establish a legally recognized
20 relationship with the child, whose adoption he intends to
21 interrupt," the Court affirmed that.

22 Here, obviously, we have some distinctions from
23 Osborne. Here, Mr. Manzanares filed an adoption proceeding
24 one month prior to his daughter's premature birth. The Court
25 in Colorado has determined that that is an acceptable practice.

1 I know that Mr. Jenkins filed a trial memorandum, which I
2 received last Friday, indicating that Courts have acknowledged
3 that you can't file a proceeding prior to the Child's birth.

4 However, those citations were all from different
5 states. I don't think there was any citation referenced in
6 Utah; but in particular, in Colorado, our Exhibit No. 11,
7 again, your Honor, the order of March 3rd of 2008, paragraph
8 15 states, "At the hearing on February 29th of '08, the Court
9 took notice and read into the record Section 19.1-102 and
10 19.4-105.5 subsection (3); and noted that a proceeding under
11 the Children's Code may be initiated prior to a child's birth."

12 So in Colorado it is an acceptable practice to file a
13 proceeding on behalf of a child. In particular, a paternity
14 action, prior to the child's birth. So I think that that --
15 that issue is resolved through the Court in Colorado affirming
16 that that is acceptable practice in Colorado, and that's been
17 acknowledged by them as a paternity filing.

18 What I would indicate as far as distinguishing the
19 issues in Osborne, is that Mr. Osborne, at the time that he
20 filed, he waited a -- I think it's approximately eight months
21 before he filed his paternity action in the state of -- of his
22 home state. The Court in there, I think -- well, it went to
23 great efforts to indicate that because he didn't timely file in
24 his home state, that was an issue for the Court, and that he
25 had made no efforts in Utah either.

1 Here, obviously, Mr. Manzanares made a timely filing
2 of efforts to protect his parental rights; and in fact his
3 petition went on further than just saying, "I want to petition
4 the Court to --to establish paternity, that I am the biological
5 father and address custody issues," so forth, he also asked for
6 injunctive relief from an adoption proceeding going forward
7 that notice was -- that notice -- Ms. Carrie was placed on
8 notice of those specific requests and relief, but yet knowing
9 that still chose to -- to come to Utah and place the child up
10 for adoption with her brother and sister-in-law without giving
11 Mr. Manzanares any notice whatsoever of her intent to do so.

12 So based on the fact that Mr. Manzanares fully and
13 strictly complied with his home state, Colorado, in establish-
14 ing his rights, that would mandate that the Court require his
15 consent in this case.

16 THE COURT: Is there a timing issue between getting his
17 rights established in Colorado versus the timing of when things
18 occurred in Utah?

19 MS. REYES: Well, your Honor, I don't know as far as
20 his ability to do anything sooner, without knowledge. I don't
21 think that the adoption proceeding was filed with this Court
22 until sometime in I believe February, if I'm not mistaken.

23 So he did everything in his power in Colorado to
24 preserve rights he had in this child, not even knowing that
25 there was going to be an action commenced here in Utah. So

1 the timing of that, I believe that he did everything possible
2 in Colorado to preserve those rights.

3 In Utah, as soon as he was made aware of the fact that
4 the child was born in Utah, which would have been approximately
5 February 25th, I believe -- no, no, I'm sorry, February 25th?

6 MR. MANZANARES: Yes.

7 MS. REYES: -- February 25th, there was hearings held
8 in Colorado on the issue on February 27th. There was a hearing
9 held on the 29th. Then there was a hearing held on March 3rd,
10 and then I believe his filing here with the Court, his motion,
11 was dated I believe the first part of March, maybe March 4th, if
12 I'm not incorrect. I mean, these are approximations.

13 Based on his understanding of what his rights were, he
14 felt he had protected any rights he had in his child by filing
15 the paternity action in Colorado, placing Ms. Carrie on notice
16 that he was attempting to protect those rights.

17 I think if we get into the next issues about whether
18 or not these qualifying circumstances existed or not, I don't
19 think he had a duty to do anything in Utah, because he had done
20 everything he could in Colorado.

21 THE COURT: Okay. Do you want to walk me through the
22 qualifying circumstances and the three-prong test there?

23 MS. REYES: Yes, your Honor, I will. That, again,
24 is found in 78(b)-6-122. I look at subsection (c) first,
25 your Honor. It indicates, "Notwithstanding provisions of

1 78(b)-6-121," which I see in this case, your Honor as the
2 general rule that a birth father file a paternity action in
3 Utah, "the consent of an unmarried biological father, in this
4 case Mr. Manzanares, "is required with respect to an adoptee
5 who is under the age of 18 if," No. 1, subsection (i) and then
6 (a), "the unmarried biological father did not know and through
7 exercise of reasonable diligence could not have known before
8 the time the mother executed the consent," which in this
9 case is February 20th, "to the adoption that a qualifying
10 circumstance existed."

11 So then the qualifying circumstances are also outlined
12 in that same code section, 78(b)-6-122. Goes on (1)(A) and
13 then little (a), "The child or the child's mother resided on a
14 permanent or temporary basis in the state."

15 I think the Court has heard testimony from Carrie
16 Terry with regard to -- with regard to her time that she spent
17 in Utah. She, I think -- I believe she testified that she was
18 here from approximately February 14th until February 24th.

19 The key in that paragraph -- in that sentence, I would
20 indicate to the Court, is "resided." Whether or not my client
21 had knowledge or through exercise of reasonable diligence would
22 have had knowledge that she was residing in Utah.

23 Your Honor, if you look at -- if you look at the issue
24 of residency, I would direct the Court to Code Section 20(a)-2-
25 105, which determines -- which basically gives, under the Utah

1 law, what residency is. Under that it says, "A person resides
2 in Utah if the person has a principal place of residence within
3 Utah and has a present intention to continue residency within
4 Utah permanently or indefinitely."

5 Again, Ms. Terry testified that she was planning to
6 come visit her ill father. Her email dated January 11th of
7 2008, which is an attached -- which is attached as an exhibit
8 to our -- with the Court as Exhibit No. 8, evidences that she
9 plans to visit her father. She filed a motion to continue with
10 the Colorado Court, indicating that she was traveling to visit
11 her ill father.

12 In the petitioner's own pleadings that have been filed
13 with the Court, the reference -- the references made there are
14 that the -- that Carrie Terry is coming to visit her ailing
15 father. I believe that's found in, let's see, page -- para
16 -- page 4, paragraph 1 of Opposition to Motion, Memorandum to
17 Dismiss, which states as follows: "The birth mother traveled
18 to Utah in mid-February to visit her ailing father, as she told
19 Mr. Manzanares she would."

20 So the issue of whether or not Mr. Manzanares had any
21 idea that she was in Utah residing temporarily or permanently,
22 I would indicate to the Court that he had no knowledge or any
23 reasonable diligence ability to find out that she was residing
24 here, because she was not residing here. She was visiting
25 Utah. She was here as a visitor.

1 I cite further, in previous pleadings with the Court,
2 that "reside" has been defined as a place -- "to dwell in
3 a place or to be a resident." That was in Ballantine's Law
4 Dictionary; and that "resident" has also been defined as "one
5 who resides in a place or one having either legal residence
6 or domicile." Again, that was found in the Ballentine's law.

7 I believe that Mr. Jenkins, Counsel for petitioners,
8 cites to a case in his trial memorandum. I believe that
9 citation is King -- let's see. King vs. Bozner. That's
10 107 P.3d 693. I think if the Court just takes a close reading
11 at that case, the Court will find basically that case was
12 dealing with a protective order, and the Court was trying to
13 determine for the purpose of a protective order if a person
14 was a co-habitant, which a part of the co-habitant definition
15 is if one resides with another.

16 The Court in that case indicated that it's appropriate for
17 Courts to make findings regarding one who intends to return
18 versus a lace of temporary sojourn. So rather than the Court
19 just saying this person's just coming here to basically visit
20 or whatnot, that there has to be findings that the party
21 intends to return.

22 Also, the Court noted that the Court determines
23 when -- in looking at residency, the Court would determine
24 other issues such as were the parties able to vote, where
25 their mailing address may be, where their children may attend

1 school.

2 If the Court recalls, Ms. Terry's testimony was
3 that her driver's license is one of Colorado, that her minor
4 daughter attends school in Colorado, and that during the time
5 that Mr. Manzanares and Carrie Terry were dating and living
6 together, that there had been no trips made by her to Utah.
7 In fact, her family had come to visit her in Colorado.

8 So I think if the Court takes a close reading of
9 that, that the Court will understand that residency is more
10 than just coming to visit a family member for approximately
11 ten days. So we believe that that qualifying circumstance
12 cannot be established.

13 If you go on further, your Honor, the next one is
14 that this is (1)(a) little (2). "The mother intended to
15 give birth to the mother in this state." Your Honor, based
16 on Ms. Carrie's own testimony with the Court yesterday, she
17 indicated that during her period of time here from February 14th
18 to February 24th, that she did not intend to give birth. I
19 think she made it very clear and said this several times, that
20 you can never intend to give birth at a given date and time.

21 So for my client to have the knowledge or the burden
22 that on February 20th she was going to give birth, or she was
23 coming here for that February visit intending to give birth,
24 her own testimony was that she wasn't intending to give birth.
25 So, you know, my client obviously couldn't have that knowledge

1 that she intended to give birth on February 20th or during her
2 visit to Utah with her father.

3 The next -- the next part of that, your Honor, is
4 that the child was born in this state. However, again, the
5 qualifying circumstance, the time that's relevant here, is the
6 time period beginning at conception, and the time ending at
7 the mother's execution of a consent to adoption. My client's
8 testimony was that he didn't know of the child being born in
9 Utah until February 25th, which would have been after the time
10 Carrie Terry executed her consent.

11 Then the next qualifying circumstance is the mother
12 intended to execute a consent and adoption or a relinquishment
13 of the child for adoption in this state or under the laws of
14 the State of Utah. Ms. Carrie represented in Court that she
15 never told Mr. Manzanares of her plans to deliver the child
16 here in Utah and place the child up for adoption here in Utah.
17 Although she told other third parties, though. She said she
18 told her boss of her intentions of her pregnancy plans and
19 whatnot, she didn't tell the father of the child that she
20 intended to come to Utah and place the baby up for adoption
21 in Utah.

22 Your Honor, there was some -- there was some discussion
23 and questions asked of my client, Mr. Manzanares with regard to
24 his knowledge of the Mormon Church, and where the Mormon Church
25 was based or whatnot. I believe there was communication with

1 Carrie Terry and Robert Manzaares of her intent to possibly
2 place the child with a Mormon family; but to have that be such
3 a broad scope, and have him believe that just because the --
4 a certain faith is disclosed, that he should automatically
5 file any type of action in the state where maybe there's more
6 members of a certain church than another, I think that that's
7 -- that's a little farfetched and unrealistic.

8 My client testified that in the state of Colorado
9 he knows many members of the LDS faith. So for her to make
10 a reference to a faith and then have him be put on notice due
11 to that, that he's to file in a certain state, I don't think
12 that that would be applicable as far as considering that as a
13 qualifying circumstance.

14 So, your Honor, I don't believe that subsection (1)(a)
15 with regard to the qualifying circumstances, I don't believe
16 that there's -- there can be a showing that Robert Manzanares
17 knew or through exercise of reasonable diligence should have
18 known any of those factors I just walked the Court through.

19 Then if we go onto the next subsection, that's (b),
20 of 78(b)-6-122, and that would be (1)(c) and then (b), "Before
21 the mother executed a consent to adoption or relinquishment of
22 the child for adoption, the unmarried biological father fully
23 complied with the requirements to establish parental rights in
24 the child, and to preserve the right to notice of a preceding
25 in connection of the adoption."

1 That's imposed by the last state where the unmarried
2 biological father knew or through exercise of reasonable
3 diligence should have know the mother resided. That obviously
4 would be Colorado, which he did. He filed his paternity action
5 in Colorado prior to the time that Carrie Terry executed her
6 consent.

7 Then it goes on and says, "or the State where the
8 child was conceived." There was testimony from both Carrie
9 Terry, the mother, and Robert Manzaneres, the father, that the
10 child was conceived in Colorado. So obviously paragraph (b)
11 has been satisfied.

12 Then we go onto subsection (c). "The unmarried
13 biological father has demonstrated, based on the totality of
14 circumstances, full commitment to his parental responsibilities
15 as described in subsection (1)(b)."

16 So you go through those different factors, your Honor.
17 (1)(b), it indicates that, No. 1, "efforts he has taken to
18 discover the location of the child or the child's mother."
19 You heard testimony that my client had tried to keep in pretty
20 frequent contact with Carrie Terry during the pregnancy after
21 she moved out of his residence on approximately September 6th or
22 9th, in that time frame, your Honor.

23 That he emailed her on several occasions, basically on
24 a bi-monthly basis, asking if there was anything he could do to
25 assist her with the pregnancy, asking if he could help pay her

1 benefits, if any were being incurred by her as a result of the
2 pregnancy.

3 Then after he was notified of the birth of his
4 daughter by one of Carrie Terry's coworkers, he contacted
5 individuals in Utah that he believed may have information.
6 He contacted, in fact, the petitioning parties in this case,
7 Scott Byington, and asked if he had any knowledge of his
8 daughter's birth or her whereabouts.

9 Although that was -- that effort was made, there was
10 no disclosure at that time of the fact that the child had been
11 placed with the Byingtons and they had an intention to adopt
12 the child. So I think Mr. Manzaneres has gone to great lengths
13 to insure that he's kept in regular contact with the birth
14 mother about her well-being and the child's well-being.

15 The second portion of that is whether he has expressed
16 or demonstrated an interest in taking responsibility for the
17 child. Again, I would refer the Court to the emails. On top
18 of that, testimony was given that Mr. Manzaneres also made
19 numerous phone calls to Carrie Terry, and was also texting her
20 on a regular basis to just insure that she understood what his
21 interests were and that he was willing and able and ready to
22 take on any parental responsibilities necessary to insure he
23 was going to have the ability to parent his child.

24 He also had his attorney of record send a couple of
25 letters to Carrie Terry indicating that he had a desire to

1 parent this child, and if she felt in necessary, to -- or if
2 she felt the inability to parent this child on her own, that he
3 would take full parental responsibilities of this child and do
4 whatever was necessary to insure that he could parent his
5 daughter.

6 Your Honor, I believe that that has been offered to
7 the Court as an exhibit. It's a letter dated February 7th, 2007
8 to Carrie Terry from Emily Berkley. It goes on to say basically
9 that "As we have stated before, it is Rob's sincere wish to
10 raise the baby once it is born. He is capable and ready
11 emotional, physically and financially to care for the baby,
12 with you or alone, and he has the full support of his family.

13 "Furthermore it is in the baby's best interest to be
14 raised by one or both of his natural parents. If you feel you
15 are not able to care for the baby, Rob will readily take on
16 all parental responsibilities. Please see my letter dated
17 November 13th of 2007."

18 So there was a letter dated November 13th of '07 sent
19 to Carrie Terry regarding Rob's wishes to parent the child and
20 an explanation of Colorado law, as well as this February 7th
21 letter. So in addition to personal efforts that he made,
22 his attorney of record in Colorado made efforts on his behalf
23 to also put Ms. Terry on notice of his interest in taking
24 responsibility for the child.

25 Also, Exhibit No. 3 evidences payments, financial

1 payments and support that Robert Manzaneres forwarded to
2 Carrie Terry. I believe there's additional -- an additional
3 accounting of some other checks that aren't reflected in
4 Exhibit 3 that are attached as Exhibit 5.

5 This gets a little confusing, but the -- our -- the
6 Court's Exhibit No. 16, which is Mr. Manzaneres' verified
7 petition for paternity that was filed in Colorado, there's
8 a sub Exhibit No. 5 to that, and that would also address
9 additional payments not reflective in Exhibit 3 that were
10 made by Mr. Manzaneres to Carrie Terry to financially support
11 the child and Carrie Terry.

12 Whether and to what extent he has -- going onto the
13 next factor, "Whether and to what extent he has developed or
14 attempted to develop a relationship with the child --" well,
15 unfortunately Mr. Manzaneres has not had the privilege to even
16 see a photograph of his daughter, let alone have any contact
17 with her. Although requests have been made, that hasn't been
18 an ability of him; but obviously coming to Court and pursuing
19 this proceeding is evidence that he is attempting to develop a
20 relationship with his minor daughter.

21 Going onto the next factor there, "Whether he offered
22 to provide, and if the offer was accepted did provide financial
23 support for the child or the child's mother." Again Exhibit 3
24 and Exhibit 16 would reflect payments that Mr. Manzaneres made
25 to Carrie Terry, and there's canceled checks there showing that

1 those payments were offered and received by Carrie Terry.

2 In fact, one of those payments was issued February 17th,
3 which is the date of his daughter's birth; and it was cashed
4 by Carrie Terry on I believe February 25th or 26th, after the
5 -- her daughter had been born. So there was financial support
6 provided and accepted by the mother on behalf of the child and
7 the mother.

8 Then whether -- the next factor, "Whether and to what
9 extent he has communicated or attempted to communicate with the
10 child or the child's mother." Obviously before the child's
11 birth he was attempting to be in regular contact with Carrie
12 Terry.

13 Since that, because this proceeding has been initiated
14 and whatnot, he has not contacted Carrie Terry, nor -- nor
15 made any attempts to contact the Byingtons, only because this
16 proceeding is going forward, and he was told by Counsel that
17 that might not be an appropriate avenue to take at this point
18 in time. Obviously through Counsel and through our efforts,
19 he's attempting to have contact with his daughter.

20 Then the next factor is "Whether he has filed legal
21 proceedings to establish his paternity of and take responsi-
22 bility for the child. Again, he filled a paternity action in
23 Colorado on January 16th, over a month prior to the birth of his
24 daughter.

25 Then it goes on to say, "Whether he has filed a notice

1 with a public official or agency relating to his paternity of
2 the child, or legal proceeding to establish paternity of the
3 child, or other evidence --" okay, so in that portion of it he
4 has filed with the Colorado Courts the required documentation
5 to establish his parental rights in the child, and has fully
6 complied with all the legal requirements there.

7 Then the other factor that the Court can consider is
8 "other evidence that demonstrates that he has a full commitment
9 to his parental responsibilities. Again, your Honor, I would
10 just have the Court defer to the emails, the financial support
11 that was received by Carrie Terry, the contacts he made with
12 other third parties where he actually contacted her brother,
13 not knowing that he had custody of his daughter, trying to
14 locate the child and do anything that he could to facilitate
15 knowledge of his daughter's birth.

16 The fact that he's now come to Utah three times, your
17 Honor, and attended hearings in person, and has made himself
18 available to testify for the Court -- he was here on July 1st
19 your Honor, after the Court issued a ruling. He went back to
20 his home State of Colorado for just a few days because of the
21 holidays, came back on I believe July 7th --

22 MR. MANZANARES: The 7th.

23 MS. REYES: -- the 7th, and then has come once again for
24 this hearing, your Honor. So I believe that that demonstrates
25 his desires to have a full -- his full commitment to parenting

1 his daughter, and his desire to assume those parental responsi-
2 bilities.

3 Your Honor, so under that code section I would indicate
4 to the Court that Mr. Manzaneres' consent is required in this
5 case; and that based on that, the Court should set a best
6 interest hearing as soon as possible to determine other issues.
7 Although I would note for the Court that cited in the order of
8 March 3rd, which again is Exhibit No. 11, the Court specifically
9 has held in that case -- this is paragraph 3 of Exhibit 11 --
10 "Utah is not the proper forum for the father's paternity
11 action, and Utah does not have jurisdiction over the action."

12 Your Honor, based on the facts of this case and the
13 law, Mr. Manzaneres has fully and strictly complied with all
14 the requirements necessary in Colorado to preserve his rights
15 as a father and entitle him to have the opportunity to object
16 to this adoption proceeding.

17 In addition to that, your Honor, Mr. Manzaneres has
18 complied with -- strictly complied with the Utah law which
19 would mandate that Robert Manzaneres' consent be necessary
20 to this proceeding, and based on his motion and objection to
21 the proceeding, the Court should dismiss the adoption and go
22 forward with the best interest hearing as soon as possible.
23 I'm happy to answer additional questions the Court may have
24 with regard to our position at this time.

25 THE COURT: No, thank you.

1 MS. REYES: Okay, thank you, your Honor. Your Honor,
2 will I have an opportunity to reply briefly after Mr. Jenkins
3 addresses the Court; is that anticipated?

4 THE COURT: Let's see.

5 MS. REYES: Okay.

6 THE COURT: We'll wait. I may have more questions.
7 Thank you.

8 MR. JENKINS: Good morning, and may it please the
9 Court, I'd like to first address a couple of the issues that
10 Ms. Reyes addressed at the opening of her argument.

11 She first discussed the -- her position that notice
12 was required to Mr. Manzaneres. I will say the formal notice
13 has not been given to Mr. Manzaneres; although we did provide
14 him information where the case was filled, so that he could
15 file his motion to dismiss.

16 THE COURT: What do you mean "formal notice"?

17 MR. JENKINS: A formal notice would be a piece of paper
18 like a summons, I guess. So we haven't sent him a piece of
19 paper that says, "This is the adoption proceeding, and come;"
20 but upon inquiry by Counsel for Mr. Manzaneres, we did provide
21 information where the case was pending so that he could file
22 his motion.

23 THE COURT: Orally?

24 MR. JENKINS: Orally, absolutely.

25 THE COURT: Thank you.

1 MR. JENKINS: But it's our position, your Honor, that
2 notice isn't required. If you read the provisions that
3 Ms. Reyes referenced in -- it's in 78(b)-6-110 --

4 THE COURT: Now, help me if you can, since I don't have
5 the current code number.

6 MR. JENKINS: Okay, I'll give you the old code.

7 THE COURT: Give us both.

8 MR. JENKINS: I will -- I actually was going to do
9 that, your Honor.

10 THE COURT: Okay, so 78(b) --

11 MR. JENKINS: Dash 6-110.

12 THE COURT: Okay.

13 MR. JENKINS: And then its sub (2)(f); and then in the
14 old code its 78-30-4.13(2)(f). The language is identical. It
15 was just re-codified.

16 THE COURT: Okay, I'm there.

17 MR. JENKINS: The language says in there says, "Any
18 person who prior to the time the mother executes her consent
19 for adoption or relinquishes the child for adoption, is
20 recorded on the birth certificate as the child's father,
21 with the knowledge and consent of the mother."

22 So the only way that he would be entitled to notice
23 under that section is if his name were on the birth certificate
24 at the time she signed her consent, and with the consent of the
25 mother. The Court order wasn't entered until a couple of weeks

1 after that; and we still don't know if his name's on the birth
2 certificate. So our position would be that that section
3 indicates notice is not required to him.

4 I would also note that in subsection (11) of both the
5 new and the old code, because being on the birth certificate
6 doesn't automatically give him a consent right, under sub (11)
7 it provides that --

8 THE COURT: He's given a notice right.

9 MR. JENKINS: -- he gets notice; and then he gets an
10 opportunity to intervene and present evidence to the Court
11 relevant to the best interests of the child. The statute
12 specifically states that it's -- the sole purpose of notice
13 is to allow him to present evidence of best interest.

14 THE COURT: Wouldn't that assume that his right to give
15 the consent is included?

16 MR. JENKINS: It really doesn't. In fact, in the
17 terminal case last year the Supreme Court issued, they made
18 that distinction in there. I don't have the case with me
19 today, but they actually have -- and they actually make the
20 distinction in there between somebody who's entitled to notice,
21 somebody who's consent is required. They say in there that if
22 they're just entitled to notice, that they can present evidence
23 as to best interest, but they can't withhold consent to stop an
24 adoption. So it's kind of --

25 THE COURT: This goes back to the old statute before

1 it was changed where the Court would then be able to decide
2 between the adopted parents and the natural parents?

3 MR. JENKINS: Well, this is actually a little different
4 provision here, your Honor. You know, there is a -- I guess
5 two years ago there was another case, the EH case, where Court
6 -- the Supreme Court looked at a situation where birth mother
7 had actually signed a relinquishment for adoption.

8 The Supreme Court said her relinquishment is valid,
9 and she can't withdraw it; but under the circumstances of that
10 case, they decided she was entitled to intervene and present
11 evidence as to the best interests of the child, which was
12 kind of interesting, ut in the same breath they upheld her
13 relinquishment and consent.

14 So a little unclear what all that means, but perhaps
15 if the Court could get to the best interest and he was entitled
16 a notice, then you know, I don't know what that would mean for
17 the Court. I assume that the Court could say the adoption is
18 not in the best interest of the child, based on evidence that
19 the birth father may present. I don't know. What I'm saying
20 is his consent's not required, and his notice wasn't even
21 required to him in this case, because his name wasn't on the
22 birth certificate.

23 In a similar vein, his consent was not required because
24 of the order of the Colorado Court. You know, the language
25 there reads fairly similarly, as far as when notice is required

1 to a father who has been adjudicated to be the child's father.

2 It also says -- this is in the old code, 78-30-4.14,
3 and it's sub (1)(d). It says, "Any biological parent who has
4 been adjudicated to be the child's biological father by a Court
5 of competent jurisdiction prior to the mother's execution of
6 consent to adoption or her relinquishment of the child for
7 adoption."

8 Again, here we don't have a Court order in dealing
9 with that issue until a few weeks after the child had been
10 placed for adoption. So neither of those provisions apply,
11 is our -- is our position.

12 Yesterday as we were -- in talking with the Court
13 in chambers, the Court expressed some concern over a couple
14 of issues I'd like to address. One was jurisdiction. Our
15 position is the Court does have jurisdiction over the adoption
16 proceeding, because under the adoption code, the Byingtons,
17 they live in Salt Lake County, they filed the adoption code
18 here. The child was even born here.

19 Even if the child had been born in another state, such
20 as Colorado, the Court would still have jurisdiction over the
21 adoption proceeding had the child been placed with a family in
22 Salt Lake County, because that is where they would need to file
23 the adoption proceeding.

24 We've also cited to the Court many cases that apply
25 the general rule of law that says that the Court applies the

1 law of the forum where the adoption is pending, even to the
2 determination of the rights of the biological parents.

3 That's pretty much a universal rule that's applied
4 by Courts across the country. The child may be born in one
5 state or whatever, but wherever the adoption's pending, that's
6 the law that governs and controls the rights of the parties
7 involved.

8 I think jurisdiction over Mr. Manzaneres is appropriate
9 here, because he's made a general appearance in the Court. He
10 has not challenged the jurisdiction of the Court. Even if
11 jurisdiction may be an issue, if the Court determines that
12 Mr. Manzaneres has not fully and strictly complied with the
13 requirements of the Utah code to establish rights, our Supreme
14 Court has said an exercise of personal jurisdiction isn't even
15 necessary.

16 In the Osborne case that Ms. Reyes referenced to the
17 Court, when the Supreme Court specifically looked at that, that
18 was the issue birth father was raising there, was "You don't
19 have jurisdiction over me to deal with me and to finalize this
20 adoption."

21 Well, the Court of Appeals and then the Supreme Court
22 affirmed it, that because his rights -- any rights he may have
23 had went away by operation of law under the Utah statute. The
24 Court didn't need to exercise personal jurisdiction over him.
25 There was absolutely nothing -- nothing involved with that.

1 As the Supreme Court said, that since no Utah Court
2 exercised personal jurisdiction over Osborne, even though the
3 Court in Utah concluded he hadn't fully and strictly complied
4 with Utah law, they said that they -- that he couldn't bring an
5 extra -- a petition for extraordinary relief in the Courts.

6 I don't think that anything that the Court in Colorado
7 has done would lead to a different conclusion. Mr. Manzaneres,
8 he filed his -- he filed in the Court at -- Court over there
9 asking the Court to make a finding of paternity.

10 In the final order of paternity, which is Exhibit 10,
11 the Colorado Court found that Mr. Manzaneres is the biological
12 father of the child, and that his name should be listed on the
13 birth certificate.

14 In the order of March 3rd, which is Exhibit 11, in an
15 order that I might add was drafted by Mr. Manzaneres' Counsel,
16 the Colorado Court found, in paragraph 3, it says, "A paternity
17 action is a child custody proceeding under the UCCJEA, although
18 the Court is not making any rulings pursuant to the UCCJEA at
19 this time."

20 Paragraph 4, "The Court will not rule regarding the
21 home state of the parties' child at this time. Then paragraph
22 19 finds that Mr. Manzaneres is the biological father, and said
23 it would sign his final order of paternity, which had already
24 been signed. Then the Court orders that the father's name be
25 listed on the birth certificate, and then there was a reference

1 in paragraph 21, it says, "This case remains open. It is not
2 being dismissed, and Colorado retains jurisdiction over this
3 matter."

4 In those orders the Court found it had jurisdiction
5 to enter an order declaring Mr. Manzaneres' paternity; but it
6 reserved for later determination whether it had jurisdiction to
7 determine custody or deal with the child.

8 THE COURT: I thought he had a previous order that
9 indicated that he had all of the rights to the child under the
10 laws of Colorado on one of these orders; did he not?

11 MR. JENKINS: It may say that in one of them; I don't
12 recall.

13 THE COURT: "Judge Wood further determined that all the
14 legal rights and responsibilities that he is entitled to by law
15 as to the child," in the February 29th hearing, final ordered
16 hearing.

17 MR. JENKINS: Oh, okay. That's Exhibit 1, okay. "Has
18 all of the legal rights and responsibilities," right. It says
19 he's the father. He has the legal rights and responsibilities
20 as a father, but it also doesn't determine custody of the child
21 or determine whether he -- you know, there's not an adoption
22 proceeding pending in Colorado. So the Court didn't look at
23 that.

24 THE COURT: What about consent, though? If he's the
25 father, doesn't that imply he has to give his consent to the

1 birth of -- or adoption of his child?

2 MR. JENKINS: Well, your Honor, I think then we go back
3 to the provision of the Utah code that says if father had been
4 adjudicated to be the father before Mom signs her consent, then
5 absolutely; but, you know, he wasn't adjudicated to be the
6 father until, you know, a few weeks after Mom had signed her
7 consent, with his knowledge that Mom had signed a consent.

8 In a situation where the Court over there didn't even
9 have any jurisdiction over the child, and has since found on
10 July 7th that, you know, Utah's the home state of the child,
11 never been to Colorado, the Court, on July 7th, determined --
12 by determining that Utah was the home state of the child, the
13 Court recognized that it didn't have jurisdiction over the
14 child, unless and until a Court in Utah defers to Colorado for
15 whatever reason. At this point the only Court that has any
16 jurisdiction over the child is this Court, and the Colorado
17 Court has recognized that.

18 You know, one thing that's always been clear in the
19 adoption code is that the burden is squarely on any putative
20 father to protect his own rights. The adoption act currently
21 provides, quote, "Each parent of the child conceived or born
22 outside of marriage is responsible for his or her own actions,
23 and is not excused from strict compliance with the provisions
24 of this chapter based upon any action, statement or omission
25 of the other parent or third parties. Thus, for compliance

1 purposes under the law, Mr. Manzaneres can't place the blame
2 for his non-compliance on anything that, say, Ms. Terry or the
3 Byingtons may have done or may have said."

4 The statute also provides that because, quote, "A
5 certain degree of finality is necessary in order to facilitate
6 the State's compelling interest, the Legislature finds that the
7 interest of the State, the mother, the child, and the adoptive
8 parents described in this section outweigh the interests of
9 an unmarried biological father who does not timely grasp the
10 opportunity to establish and demonstrate a relationship with
11 his child in accordance with the requirements of this chapter."

12 Then it says, "Furthermore, an unmarried biological
13 father has the primary responsibility to protect his rights."
14 Now, before we got to where we are now with the adoption code,
15 it used to require that all -- all putative fathers, unmarried
16 biological fathers comply with the provisions of the code, and
17 file certain notices in Utah, regardless of whether the father
18 was a resident of Utah or knew anything about a Utah adoption.

19 Way back in 1980 the Utah Supreme Court found that
20 it would probably be impossible for some fathers to comply
21 with that provision, because they wouldn't know that they
22 needed to do that. So through the case in 1980, which was
23 the Ellis case, and then in the Wells case in 1984, the Supreme
24 Court found that if a putative father could show that it was
25 impossible for him to comply with Utah law through no fault

1 of his own -- and that was the important part of that -- the
2 punitive father needed be given a reasonable opportunity to
3 comply.

4 So in light of that exception, the Legislature amended
5 the statute to incorporate it, and said that if it was not
6 possible for a putative father to file the required filings
7 before the birth mother consented to the adoption, then he had
8 ten days from the date it became possible for him to do so.

9 We've cited some cases that dealt with that statute.
10 One was the en re: adoption of W case, where the Court of
11 Appeals addressed the constitutionality of that section.
12 Interestingly, in that case, the birth mother was from Indiana.
13 She traveled to Nevada, had her baby in Nevada and -- to place
14 it for adoption. The baby was placed with a couple from Utah.
15 So a Utah adoption petition was filed.

16 The putative father had already filed a paternity
17 proceeding in Indiana before the baby was even born, because
18 he was trying to find out where mom was and what needed to
19 happen. Sometime after the baby's birth, the biological mother
20 had a telephone conversation with the putative father, and let
21 him know in that conversation that the baby had been placed
22 with a family from Utah.

23 The Court of Appeals in the W case held that that
24 information triggered the father's obligation to comply with
25 Utah law, even though he already had a paternity proceeding

1 pending in Indiana, and he didn't do anything within the ten
2 day time frame. The Court examined whether ten days was a
3 sufficient amount of time. They said, "Gee, that's kind of
4 quick, but it's Constitutional."

5 We also cited the Beltran case that involved the same
6 statute again, with the impossibility exception built in. In
7 Beltran, the putative father knew birth mother had come to
8 Utah, and knew that she was planning to place the child for
9 adoption here.

10 He filled a paternity proceeding in California where
11 they had lived, where conception had occurred, but he didn't
12 do anything to comply with Utah law. A Court of Appeals looked
13 at the evidence that he knew the birth mother was in Utah and
14 specifically the Court of Appeals looked at his -- the filings
15 he'd made in his paternity proceeding in California, which said
16 in there, "Mom's in Utah."

17 Because he didn't comply with the Utah statute, even
18 though he had these proceedings pending in California, our
19 Court of Appeals said that he hadn't established rights to the
20 child as was required.

21 Now, the statute was amended again after the Beltran
22 case; and it was in an attempt to eliminate the need for the
23 impossibility exception when working with these non-resident
24 birth fathers.

25 Until 2006 the statute provided that if a non-resident

1 birth father had no reason to know a mother was in Utah to
2 place her baby for adoption, he could protect his rights by
3 complying with the most stringent requirements of the laws of
4 the state where the mother was before.

5 This statute provided some problems, however, because
6 if he found out Utah was involved, say, just the day before or
7 a couple of days before Mom signed her consent, the way the
8 statute read, he was -- he had to comply with Utah law.

9 Trial Courts found that in those situations, there
10 weren't any reported decisions about that; but the trial
11 Courts began using an impossibility exception again, because
12 as you could imagine if the dad only finds out a day or two
13 before that the adoption's pending in Utah, it presents some
14 interesting logistical issues for getting on the Utah registry.

15 In 2006 the present statute was adopted; and it was
16 specifically adopted to look at the needs of non-resident birth
17 fathers, and to deal with that issue of what if they find out
18 about Utah just the day before or something.

19 I might add, your Honor, that it's actually more of
20 an unusual adoption that all the parties are from Utah. Mom,
21 Dad and the adoptive parents. That's the case whether we're
22 talking about Utah adoptions or any other states in the
23 country.

24 Under the current statute, if the Court is dealing
25 with the Utah birth mother, it's real easy, because its clear

1 that then the father's got to comply with Utah law; but if
2 the Court is dealing with a birth mother from another state,
3 whether the child is born in that state or in Utah, then the
4 Court has to look at what information the father may have
5 had about Utah's connection to the adoption when determining
6 whether the putative father had to fully and strictly comply.

7 Now, specifically, as Ms. Reyes has already discussed
8 the qualifying circumstances language, if a father, quote,
9 "knew or through the exercise of reasonable diligence should
10 have known," closed quote, the time -- that any time before the
11 mother executed a consent to adoption, then we kick into the
12 qualifying circumstances.

13 The first one is, is that the child or the child's
14 mother resided on a permanent or temporary basis in the State
15 of Utah. I'm not going to spend a lot of time on this. I
16 know there has been a lot of discussion about whether mother
17 could have been a resident of Utah. I note that the statute
18 specifically mentions temporary basis.

19 The cases -- what Ms. Reyes was focusing on is really
20 more of a domicile kind of a situation, where does somebody
21 actually live. Courts have been very clear that people can
22 have more than one residence. Now, whether the Court concludes
23 that or not, I don't think is really important, because I think
24 the other qualifying circumstances definitely meet here.

25 The next qualifying circumstance is that the mother

1 intended to give birth to the child in Utah; and you'll see
2 that Mr. Manzaneres in his fillings with the Court in Colorado
3 stated that; that the mother intended to deliver in Utah.
4 The child was born in this state; or last, the mother intended
5 to execute a consent to adoption or relinquishment of the
6 child for adoption in the state or under the laws of the state.
7 Mr. Manzaneres specifically stated more than once that that's
8 what was going to happen.

9 Now if a qualifying circumstance exists --

10 THE COURT: Well, let me ask you before you go off.

11 MR. JENKINS: Okay.

12 THE COURT: On the qualifying circumstances three and
13 four --

14 MR. JENKINS: Okay.

15 THE COURT: -- are they not limited by the time frame
16 listed above?

17 MR. JENKINS: They are.

18 THE COURT: So if he doesn't find out that the child
19 was born --

20 MR. JENKINS: In Utah.

21 THE COURT: -- in Utah --

22 MR. JENKINS: Uh-huh.

23 THE COURT: -- until after she executes the consent --

24 MR. JENKINS: Absolutely.

25 THE COURT: -- he's fine?

1 MR. JENKINS: Absolutely, unless through the exercise
2 of reasonable diligence he should have known.

3 THE COURT: Right, right, sure.

4 MR. JENKINS: Right, but absolutely; or that the mother
5 -- you know, the fourth one, though, intended to execute a
6 consent to adoption in the state or under the laws of the
7 state. I think the Court will see with the things that he said
8 in his filings over there, that's exactly what he said, pretty
9 much. Not in those exact words, but the same gist.

10 What the law did in 2006 and how they changed it was
11 instead of saying if he finds out the day before that she is in
12 Utah and placing the baby for adoption, we're going to give him
13 20 days to comply with Utah law. From whenever he finds out
14 that there's a connection to Utah, he has 20 days to comply
15 with Utah law, which means he files a paternity action in Utah,
16 he gets on the Utah registry.

17 There's a couple of other requirements that the
18 Court's aware of from other cases I'm sure the Court's dealt
19 with; but it's the later of 20 days, after he learns that, or
20 when mom signs her consent to the adoption. So, you know, but
21 at the very least, it provides him a 20-day window.

22 I've actually got a case on appeal right now where the
23 father learned the day before Mom placed the baby for adoption
24 that Mom was in Utah, and it was right around her due date, and
25 we're looking to see, you know, see how that's applied, because

1 in 20 days after that -- you know, waited 20 days, and he still
2 didn't do anything in Utah.

3 THE COURT: Does not subsection (10) and 14.4.14 trump
4 the 20-day requirement?

5 MR. JENKINS: I'm sorry?

6 THE COURT: Excuse the compliance within the time
7 frame? These qualifying circumstances --

8 MR. JENKINS: Okay.

9 THE COURT: -- assuming that they -- that he's able to
10 meet all of those, do they or do they not trump the time limit?

11 MR. JENKINS: The 20 days?

12 THE COURT: Right.

13 MR. JENKINS: If there's a qualifying circumstance --

14 THE COURT: Right.

15 MR. JENKINS: -- and it's shown that he knows -- has
16 knowledge of one of those, that gives him 20 days --

17 THE COURT: Okay.

18 MR. JENKINS: -- to comply. Gives him 20 days, or up
19 until the date -- and it may be longer, because if he finds
20 out sooner, then he may have more than 20 days to comply if
21 Mom doesn't sign her consent until later.

22 THE COURT: But the converse is true; if he doesn't,
23 then --

24 MR. JENKINS: If he doesn't, that's right. Absolutely.
25 If he never finds -- if he doesn't find out before Mom signs,

1 or have any reason to know --

2 THE COURT: To know, then the 20-day requirement does
3 not apply.

4 MR. JENKINS: The 20 days doesn't apply, and then you
5 look at what -- what he did in the other state. Absolutely.

6 I just want, you know, briefly to walk through what
7 the undisputed facts are here in this case, as far as what
8 Mr. Manzaneres knew. Now, you know, while he tried to argue
9 that he didn't know anything about Utah prior to the time that
10 Ms. Terry consented, the filings he made in Colorado certainly
11 belie that.

12 As I indicated earlier, the Court of Appeals in
13 Beltran specifically looked at what the father had said in
14 his fillings in the paternity proceeding in California.

15 In paragraph 12 -- and what I -- I've prepared this
16 kind of time line, and I didn't see an easel in here, but I --

17 THE COURT: Mark could you -- yeah, we've got one.
18 He'll get you one.

19 MR. JENKINS: Pull the big one?

20 THE COURT: No, I think Renee had a smaller one.

21 MR. JENKINS: I apologize, and I don't know if I can
22 hold it away, but -- whether Ms. Reyes can see it or not, but I
23 think --

24 THE COURT: Why don't you put it on this side here,
25 the jury --

1 MR. JENKINS: Put it over here?

2 THE COURT: (Inaudible).

3 MR. JENKINS: One of my complaints is that --

4 THE COURT: Yeah, if you'll put it --

5 MR. JENKINS: -- it's kind small, and I can't read it,
6 myself.

7 THE COURT: Well, I've got a pair of glasses I could
8 lend you, but I've see you've got some.

9 MR. HARDY: Do you want me to hold it?

10 THE COURT: We could --

11 MR. JENKINS: I'll bring the easel here. So we'll be
12 find in a second.

13 THE COURT: Counsel, if you need to move around so you
14 can see it, feel free to.

15 MR. JENKINS: We've created this time line, but really
16 the highlighted boxes are the ones that I'm going to focus on.
17 I'm not going to focus on many of the others, because I think
18 they're the important things that we've learned as we've gone
19 through this process the last couple of days.

20 First of all, in paragraph 21 of his petition for
21 paternity that he filed in Colorado -- and this was filed
22 on January 16th, as the Court can see; it was signed by
23 Mr. Manzaneres -- he states that he had, quote, "serious
24 and founded concerns that Mother will flee to Utah where she
25 has family to proceed with an adoption," closed quote.

1 Then he states in paragraph 20 -- this is just the
2 one prior, and this is Exhibit 16, by the way -- that he was
3 concerned, quote, "Mother plans to surreptitiously make the
4 child available for adoption immediately upon his or her
5 birth."

6 What's important about the statement in paragraph 20 is
7 he specifically refers to the email that we've got referenced
8 there that Ms. Terry had sent him, stating that she planned
9 to go to Utah in February. Mr. Manzaneres confirmed on the
10 stand yesterday that this statement in the paternity petition
11 reflected his feelings and beliefs and concerns at the time.

12 Then on February 15th, still a couple of days before
13 the baby is born, Mr. Manzaneres filed a response to the
14 motion for continuance with the Colorado Court, which is
15 Exhibit 22, where he specifically stated in paragraph 4 that,
16 quote, "Respondent is planning to give birth in Utah and place
17 the parties' unborn child up for adoption, possibly with the
18 help of the Mormon Church," closed quote.

19 In paragraph 9 of that same document, he stated
20 that, quote, "Petitioner, upon information and belief, asserts
21 that respondent plans to drive herself and her six-year-old
22 daughter to Utah at some undetermined point in the future
23 while pregnant, but that she does not have concrete plans for
24 travel," closed quote. Mr. Manzaneres also confirmed on the
25 stand yesterday that this statement reflected his belief and

1 his concerns at the time.

2 Then in his reply to Ms. Terry's response to the
3 petition for paternity, which is Exhibit 23 -- and this was
4 filed on February 19th, which was the day before Ms. Terry
5 signed her consent to the adoption -- Mr. Manzaneres stated
6 that some of Ms. Terry's responses -- and there's some that
7 we talked about yesterday -- quote, "caused Father to have
8 great alarm. As the paragraphs assert, the mother is planning
9 on surreptitiously making the unborn child available for
10 adoption and/or fleeing to Utah," closed quote.

11 Now, as we know, the child was born on February 17th in
12 Utah; and Ms. Terry consented to the adoption by the Byingtons
13 on February 20th of 2008, the day after these statements had
14 been made.

15 Our position is that these statements made in judicial
16 filings in the state of Colorado prior to the time Ms. Terry
17 delivered her baby, consented to the adoption, show that
18 clearly Mr. Manzaneres knew or should have known -- or through
19 the exercise of reasonable diligence should have known that she
20 would deliver her baby in Utah or place the baby for adoption.

21 If you look at what he says, and compare it with the
22 language of the statute for what a qualifying circumstance is,
23 the second qualifying circumstance is the mother intended to
24 give birth to the child in this state. In this February 15th
25 response to the motion for continuance, he specifically stated,

1 quote, "Respondent is planning to give birth in Utah, and place
2 the parties' unborn child up for adoption." Now, I don't know
3 how much more clear it can be, his statement of understanding
4 that, quote, "The mother intended to give birth to the child in
5 the state."

6 The fourth qualifying circumstance is that the mother
7 intended to execute a consent to adoption or relinquishment of
8 the child for adoption in the state or under the laws of the
9 state. If you look at his paternity petition filed, he says he
10 has serious and founded concerns that mother will flee to Utah,
11 where she has family, to proceed with an adoption.

12 Now, I don't know how one can proceed with an adoption
13 without executing a consent to adoption either in the state or
14 under the laws; and he says she's going to Utah to proceed with
15 an adoption.

16 In paragraph 20 of that petition, "The mother plans
17 to surreptitiously make the child available for adoption."
18 Then citing the email that Ms. Terry had sent to him just a
19 few days before. I don't know how much closer you can get.
20 Then in his February 19th filing, he restates his concern that
21 mother is planning to surreptitiously make the child available
22 for adoption and/or flee to Utah.

23 I think, as I indicated your Honor, that clearly
24 Mr. Manzaneres knew or through the exercise of reasonable
25 diligence should have known, because he said he thought that's

1 what she was going to do. He said it more than once. Said it
2 at least three times. He was required to fully and strictly
3 comply with the requirements of Utah law.

4 Even if we say that February 19th was the first time he
5 thought that, he had 20 days to comply from then, and he didn't
6 do it. That's undisputed that he never did any of the things
7 under Utah law that he was required to do. As such, we would
8 ask the Court to find that Mr. Manzaneres' consent to the
9 adoption is not required. Thank you.

10 THE COURT: What about the natural parents and the
11 adoptive -- or the natural mother and the adoptive parents
12 knowing that he was the natural father, but he had failed to
13 consciously disclose that information to Judge Hilder when he
14 was specifically taking their consent; and he was left in the
15 dark about proceedings in the paternity action that was being
16 done and the acknowledgment that he was the father over in
17 Colorado?

18 MR. JENKINS: Uh-huh. Your Honor, I can understand the
19 concern. I will state that the Legislature has specifically
20 provided that -- this is in 78(b)-6-102 sub (7). It says,
21 "The Legislature finds that an unmarried mother has a right
22 of privacy with regard to her pregnancy and adoption plan, and
23 therefore has no legal obligation to disclose the identity of
24 an unmarried biological father prior to or during an adoption
25 proceeding, has no obligation to volunteer information to the

1 Court with respect to the father.”

2 Now, I understand as a matter of -- you know, some
3 may feel that there is that obligation that might be there to
4 disclose that kind of information. If he had done the things
5 he needed to do, he would be entitled to notice of the adoption
6 proceeding.

7 Obviously the issue was going to come up. It did. We
8 provided the information on where the adoption proceeding was
9 filed, so that he could make his arguments and do the things
10 he needed to do here. You start running close to the line with
11 what the Legislature says an unmarried mother's rights are, as
12 far as privacy and things like that --

13 THE COURT: Well, I see an issue of privacy being
14 one thing; but failing to disclose what might be considered
15 material or relevant information to a Judge taking consent
16 on an adoption on a pre-existing legal proceeding, is that not
17 something different, or for you it's the same?

18 MR. JENKINS: Well, I think there's definitely an issue
19 there your, Honor; but I think the concern is, is at that point
20 I think the Byingtons' belief and my belief was is that he
21 hadn't done what he needed to do, because the filings that he
22 had made in Colorado showed that he clearly understood that she
23 was planning to come to Utah.

24 I think we understood that the issue was going to come
25 up, and we were going to deal with the issue; but when you look

1 at who's entitled to notice, see, if Ms. Terry had still wanted
2 to go ahead and sign her consent, it really is an issue to be
3 dealt with in the adoption proceeding, itself. You know, I
4 don't know what Judge Hilder would have done at that point, had
5 Ms. Terry disclosed that information.

6 THE COURT: You know, it --

7 MR. JENKINS: You know, I have had cases, and I usually
8 try to make it a policy to do that. I just took a --

9 THE COURT: Yeah, what --

10 MR. JENKINS: -- consent in Provo, informed the Judge
11 that, you know, we were going to be dealing with issues with
12 the birth father, because paternity proceeding had been filed;
13 and the Judge said, "Well, that's for another day. Let me take
14 the consent," and then we go on. So, you know, I don't know
15 that it would have changed the result that day.

16 THE COURT: Thank you.

17 MS. REYES: Your Honor, does the Court have any
18 questions for me at the onset before I just go through some
19 of these different things?

20 THE COURT: (No verbal response).

21 MS. REYES: I just wanted to note for the Court that
22 Mr. Manzaneres has not entered a general appearance in this
23 matter. In fact, he entered a limited appearance. I just
24 wanted to clarify that on the record.

25 THE COURT: So noted.

1 MS. REYES: The other issue, your Honor, with regard
2 to the birth father's name on the birth certificate, and that
3 issue, my understanding in reading of the code is that that
4 notice section absolves the consent requirement, because under
5 the notice provisions, it allows an automatic right for a party
6 entitled to notice to come in and object to the proceeding,
7 intervene, and then have the Court determine best interest.

8 So I think that it's a separate issue. If a party's
9 entitled to notice, they're treated differently, and may
10 not -- their consent may not be necessary; but they have the
11 opportunity to come in and object, just because of the standing
12 that they have there, because they've been named as the father
13 on the birth certificate. The Court doesn't even have to go to
14 the consent issue and say does this party -- is this parties'
15 consent required. So that's my reading of that provision, your
16 Honor.

17 Then also, if the Court looks at the final order of
18 paternity that was entered on March 29th of '08, Exhibit 10, I
19 believe the Court -- the very first line of that indicates the
20 Court has jurisdiction over the following parties, and I -- let
21 me grab that.

22 Your Honor, the -- in paragraph 1 of that order it
23 says, "The Court has jurisdiction over the subject matter and
24 persons herein, and venue is proper because --" and then it
25 goes on to say -- "petitioner resides in this county --" being

1 Mr. Manzaneres -- "respondent resides in this county, minor
2 child/unborn resides in this county." So it does include the
3 minor child in that order, your Honor.

4 I understand there's been something subsequent with
5 regard to the child's home state now; but at the time the
6 petition was filed and whatnot, if the Court recalls in
7 Ms. Terry's response, she puts at the very bottom, she adds
8 in her own words that the mother and child are one, for the
9 purposes of this. So I would indicate that at the point in
10 time that the paternity action was filed, she consented to
11 have jurisdiction over herself and the unborn child, in her
12 own response.

13 The other issue I wanted to clarify is -- maybe I
14 heard this wrong, but I just want to make sure that if I
15 didn't, that its clarified. Mr. Jenkins made a reference to
16 in regard to adoption of W; and I thought there was a statement
17 indicating that the birth father in that case filed a paternity
18 action before the child was born. In fact, in that case the
19 birth father filed a paternity action in his home state the day
20 after the child was born. It wasn't filed prior to. I just
21 wanted to make that distinction.

22 If I can go into the two cases that were spoken about
23 maybe in more detail then others. In regard to the adoption
24 of W, the birth father didn't file his paternity action before
25 the child was relinquished to an adoption agency or before the

1 adoption petition was filed. In fact, in that case the birth
2 father did not file a paternity action for more than eight
3 months, the way I've read it, after he was informed the child
4 was in Utah, and subject to the adoption proceedings, which
5 obviously is distinguishable from the instant case before the
6 Court.

7 The other case Beltran vs. Allen, the birth mother in
8 that case moved four months prior to the child's expected birth
9 to Provo. So she had been in Provo for four months prior to
10 the child's birth, and she was staying with her aunt until the
11 child was born.

12 In that case the mother communicated there was
13 testimony received by the Court that the mother communicated
14 with the birth father and his mother by telephone and mail,
15 and they knew she was residing in Utah, and that she intended
16 to place the child for adoption in Utah.

17 Then less than one month prior to the expected birth
18 of the child, there were also efforts made to place the birth
19 father on actual notice by the LDS Social Services -- I'm
20 assuming the agency involved in that case -- that the child
21 was being placed for adoption through the agency. Then he was
22 obviously given actual notice in that of the mother's intent to
23 place the child in Utah. So those two cases, I think, are very
24 distinguishable from the case before the Court presently.

25 Looking at the qualifying circumstances, your Honor,

1 the issue about whether or not there was intent of the mother
2 to give birth in Utah, again remember this child was born
3 premature. This child was born approximately four to five
4 weeks early. Carrie Terry testified in Court that it wasn't
5 her intent to give birth when she was here in February, that
6 she had no intent that that would happen.

7 Then, your Honor, the other issue is looking at these
8 different statements. They reference a statement made on
9 January 16th of '08 in his verified petition. Carrie Terry,
10 in her response, specifically denies that. Basically placing
11 my client on notice that, "Hey, that's not what I'm going to
12 do. I'm not going to do that. I'm not going to place the
13 child up for adoption in Utah."

14 So any thoughts he may have had at any point in time
15 about different states she may have gone to, because it was
16 made very clear to her and to the adoption agency in Colorado
17 that she was -- he was not going to consent to the adoption of
18 his child, she absolved any thoughts he may have had at that
19 point in time that there would be any -- that Utah would be a
20 factor in the case at all. That's in her response to verified
21 petition.

22 Also, with regard to Mr. Manzaneres' testimony, my
23 recollection -- obviously the Court may have to listen to
24 specific portions of the record from yesterday's testimony,
25 but my recollection is that my client didn't testify that those

1 were his beliefs and concerns. Rather, I think he was asked
2 the question of, "Do you disagree with these statements?"

3 Well, at that point in time my client did disagree
4 with the statements, because in fact these things had actually
5 taken place. The mother had come to Utah, gave birth, and
6 placed the child up for adoption in Utah. So him being asked
7 the question, "Do you disagree with these statements?" Well,
8 knowing what he knew at the time he was testifying, he didn't
9 disagree with the statements because, in fact that's what
10 happened in the case.

11 So I think it would be important for the Court to go
12 back and review the record on that and see what the actual
13 testimony is, because I don't-- I don't recall him specifically
14 saying, "Those are my beliefs and concerns at the time this
15 paperwork was filed." I think it was more of a question
16 asked, this is -- you know, read these statements. He read
17 the statements to the Court; and then, "Do you disagree with
18 these statements?"

19 Again, there was no testimony issued by my client
20 that he had reviewed any of those documents submitted on his
21 behalf by his Counsel prior to February 20th. I think the only
22 question that was asked about a time line is "When was this
23 document filed?"

24 If you look at this documents that they're referring
25 to, on the front page of the documents there's a -- there's a

1 stamped date from the Court in Colorado evidencing when the
2 documents were filed. I think the only question and answer
3 with regard to that is on the February 19th, I think he was
4 asked, "When was this filed?" and Mr. Manzaneres was looking
5 at the document, and he said, "It appears it was filed on
6 February 19th.

7 As far as him ever testifying saying, "I reviewed
8 these documents and approved them prior to my Counsel filing
9 them," there was never any testimony put on the record that
10 he had done that prior to February 20th.

11 The testimony that I think Mr. Manzaneres submitted
12 before the Court is that he had conversations with his attorney
13 off and on throughout this whole proceeding, and they may have
14 spoken about different things, but as far as him actually
15 reviewing that -- and again, I don't recall word-for-word what
16 was testified about, but I think it would be important for the
17 Court to review that, in particular.

18 The other thing, your Honor, though, that I find
19 perplexing is Mr. Manzaneres had filed his paternity action
20 to preserve his rights with regard to his ability to parent
21 and raise his daughter in Colorado. The birth -- the mother
22 had been put on notice of that.

23 Apparently the petitioners in this case were on notice
24 of that, and actually assisted with preparing responses. When
25 I say "the petitioners," I should just say Scott Byington, the

1 anticipated adopted father, had assisted his sister with the
2 preparation of pleadings in response to this. Everyone was
3 on notice of the situation. Wveryone was on notice that
4 Mr. Manzaneres wasn't willing to consent.

5 You heard testimony from Carrie Terry, and I believe
6 -- I don't know if this is word-for-word, but she said -- when
7 I -- when there was questions asked about Utah, I think the
8 Court was asking her some direct questions, her response was --
9 one of her responses was, "Well, Utah is an adoption friendly
10 state."

11 So it appears to me that there is some -- there is
12 portion of this case that there is some forum shopping going
13 on here. There was knowledge that an adoption couldn't be
14 successfully accomplished in Colorado, due to my client's,
15 you know, extraordinary efforts to ensure that everyone
16 was placed on notice that he wasn't willing to, you know,
17 adopt his daughter out. That he wanted to have those full
18 responsibilities placed on him, and that privilege to parent
19 his daughter.

20 With that filing over there, why would he subject
21 himself to a jurisdiction that's not favorable to birth
22 fathers? Why would he file a paternity action here, when
23 he had done everything he needed to in Colorado to preserve
24 his rights there; and everyone, including the petitioners in
25 this matter, were fully aware of that.

1 The other issue is the Court had -- the last question
2 was the issue about disclosing information to Judge Hilder. I
3 think there was a reference made to a specific statute, and I
4 only have the new statute here with me, but it's 78(b)-6-102,
5 and it was -- this is basically how it reads. The Court had
6 this read to them once, but I note that it just says that the
7 mother -- unmarried mother has no legal obligation to disclose
8 the identity of an unmarried biological father prior to or
9 during an adoption proceeding, has no obligation to volunteer
10 information to the Court with respect to the father.

11 It specifically says information about the father.
12 It doesn't say she doesn't have an obligation to inform the
13 Court about proceedings relating to the unborn child, the child
14 that's going to be at issue in the adoption. I think that
15 that's very important, you know.

16 Regardless if she wants to give a name to the Judge
17 of who she believes the biological father to be, I think -- I
18 think it would be very relevant and important for disclosure to
19 be made that, "Oh, and by the way, there is an actual preceding
20 going on as it relates to this child that's pending before a
21 Court in a different state which I am from, which I am a
22 resident of."

23 I think that can be distinguished there between
24 information about the father, understanding that maybe the
25 mother doesn't want to give a name or something; but I think

1 it's very relevant that the fact that all parties, including
2 the petitioners, knew the fact of the, you know, the pending
3 petition for paternity there, and the fact that the initial
4 hearing to establish paternity on that case was scheduled for
5 the exact same date that the consent was taken, approximately
6 fifteen minutes prior. I find that -- I find that a situation
7 that would warrant disclosure to a Court. So that's basically
8 all the information I wanted to provide to the Court, but I'm
9 happy again to address questions.

10 THE COURT: Thank you. We'll take a short recess.

11 (Recess taken)

12 THE COURT: Anything else from Counsel before we
13 adjourn? I'll give you a written ruling as soon as I can.

14 MR. JENKINS: I don't think so, your Honor.

15 THE COURT: All right. Thank you very much.

16 MS. REYES: Your Honor, with regard to our situation
17 over here, I don't know if the Court has any authority or any
18 abilities to do this, but my client would just ask that the
19 Court -- basically, this child is now approximately five months
20 old. He's never even seen a picture of her, had no contact
21 whatsoever with her. He would ask that there possibly be an
22 opportunity for him to at least have contact with his daughter
23 while he's here in Utah, or obviously at the very least, an
24 exchange of a photograph of her, knowing that that wouldn't
25 mean anything with regard to the Court's determination, but --

1 THE COURT: I don't feel comfortable making any decision
2 in that regard. I think I have to make my legal determinations
3 first based upon what I believe the law is that applies to his
4 rights, and what his rights are or not. If the parties want
5 to work something else out on their own, between themselves
6 informally, that's up to you; but I would be premature, I
7 believe, in making any direction or guidance in that regard.

8 MS. REYES: Okay.

9 THE COURT: Thank you.

10 (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 10th day of September 2009.

My commission expires:
February 24, 2012

Beverly Lowe
NOTARY PUBLIC
Residing in Utah County

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STATE OF UTAH)
) ss.
COUNTY OF UTAH)

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Wendy Haws
Certified Court Transcriber

WITNESS MY HAND AND SEAL this 9th day of September 2009.

My commission expires:
February 24, 2012

Beverly Lowe
NOTARY PUBLIC
Residing in Utah County