

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

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

Hearing
Electronically Recorded on
December 18, 2008

BEFORE: THE HONORABLE ROBERT FAUST
Third District Court Judge

APPEARANCES

For the Petitioner:	<u>Larry S. Jenkins</u> WOOD, CRAPO 60 East South Temple Suite 500 Salt Lake City, Utah 84111 Telephone: (801)366-6060
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For the Natural Father:	<u>Jennifer D. Reyes</u> DORIUS, BOND REYES 29 South Main Street P.O. Box 895 Brigham City, Utah 84302 Telephone: (435)723-5210
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____ Also Present: _____ David Hardy

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P R O C E E D I N G S

(Electronically recorded on December 18, 2008)

THE COURT: All right, we're on the record in case No. 08290089. If the parties and Counsel will go ahead and put their appearances on the record, please.

MR. JENKINS: Larry Jenkins and Lance Richter, your Honor, for the petitioner, the Byingtons, who are also here and with the child.

THE COURT: Okay, thank you. Nice to see you again, Mr. Jenkins. Counsel.

MS. REYES: Good afternoon, your Honor. Jennifer Reyes appearing on behalf of Robert Manzanares, who is present here in person.

THE COURT: Thank you.

MR. HARDY: Your Honor, David Hardy here on behalf of the proposed intervener, Carie Terry.

THE COURT: Thank you. Do we have anybody in the courtroom that we should not be having, or is any of the parties asking any of these matters be private or confidential?

(No verbal response)

THE COURT: No? All right. My understanding is we have various motions. I suppose, first of all, maybe the one that makes sense to start with would be the motion in limine.

MR. JENKINS: I think so.

THE COURT: All right, Counsel, please.

1 MR. HARDY: I was consulting with my client real
2 briefly, your Honor. All right. Your Honor, our motion, as
3 has been briefed, is one on behalf of Carie Terry to intervene,
4 and seeking reconsideration.

5 As to the intervention, this is of course governed
6 by Rule 24, and I think it's pretty clear. The standard that
7 governs whether Ms. Terry should be allowed to intervene in
8 these proceedings is as a matter of right, whether she claims
9 an interest in -- an interest relating to the property or
10 transaction, or the child in this case here, which is the
11 subject, and is so situated that disposition of this action,
12 may of a practical matter, impair or impede her ability to
13 protect that interest.

14 I think it's fairly clear that Ms. Terry has an
15 interest in the subject of these proceedings, being the
16 biological mother of the child. Certainly based on decisions
17 that have been made, this Court's recent order, although she
18 has desired that the child be placed for adoption and adopted,
19 she recognizes the possibility that this may devolve to a
20 custody hearing involving her.

21 Therefore, she has a critical interest in the subject
22 matter here. Further, she has a need to protect that interest.
23 So I think it's fairly clear that she should be entitled to
24 intervene in these proceedings.

25 One issue that was raised in opposition to the motion

1 to intervene was an issue of timeliness. I'll just address
2 that briefly. Are you shaking your head or --

3 THE COURT: No, no, I was just saying Counsel she's
4 going to come give us a date. So please keep going.

5 MR. HARDY: Okay. Ms. Terry was, of course, present
6 for the proceedings in this case previously, but there was not
7 a need for her to intervene until this Court's recent order.
8 So her intervention was done timely in connection with that.

9 So there should be no -- I don't see any concern in
10 timeliness or with respect to her interest. Therefore, on that
11 basis, intervention should be granted. She should be allowed
12 to intervene in these proceedings, and argue in connection with
13 her relinquishment.

14 THE COURT: All right.

15 MR. HARDY: With respect to reconsideration, she seeks
16 -- we seek reconsideration of this Court's order which would
17 vacate her consent to the adoption.

18 THE COURT: And how do you address the issue there's no
19 such thing as a motion to reconsider under Utah law?

20 MR. HARDY: Well, I recognize that appellate Courts
21 have said as much, but they have also said that reconsideration
22 is in fact appropriate. I would point the Court specifically
23 to Rule 54 of the Utah Rules of Civil Procedure, dealing with
24 judgments, which states that an order or any form of decision
25 is subject to revision at any time before the entry of judgment

1 adjudicating all the claims and the rights and liabilities of
2 the parties.

3 I further refer the Court to the Stonehawker case,
4 which was recited in our reply, which indicated that while
5 a motion for reconsideration is not effective as to delay
6 for purposes of filing the notice of appeal, that the Court
7 certainly can reconsider its decisions.

8 It's been my experience in various Courts that prior
9 to the entry of a final judgment, the Court certainly can
10 reconsider its decisions based upon new issues that are
11 presented, changes in the law, any number of things.

12 So it's certainly within the power of the Court prior
13 to a final order being entered to reconsider its decision. I
14 think that's fairly clear from the jurisprudence in this state.

15 With respect to the issue itself, we seek reconsider-
16 ation of the order based upon the fact-- based upon the Court's
17 determination that the consent to adoption should be vacated
18 based on misrepresentations or failure to -- misrepresentations
19 or misrepresentations by omission which were made in connection
20 with the consent.

21 In so doing, we note that under the Utah Adoption Act
22 -- and I refer specifically to Section 78(b)-6-124 of the Act,
23 when a birth mother comes before a Court or before an officer
24 or before an agency for the purpose of consenting to adoption,
25 the standard -- what is to be looked at is whether the consent

1 is freely and voluntarily given. That's the standard.

2 It's not a determination of all things in connection
3 with the child. The question before the Court is whether the
4 consent was freely and voluntarily given. Thus, when Ms. Terry
5 came before Judge Hilder for purposes of her consent, that was
6 the issue that he addressed. That was the issue which was of
7 concern to him, was whether it was freely and voluntarily
8 given.

9 Now, in connection with the Court's order, referring
10 to fraud upon the Court or misrepresentations, or misrepresent-
11 ations by omission, there's no reference in the Court's order,
12 and to my knowledge, having reviewed the records, no indication
13 of an affirmative misrepresentation made by Ms. Terry to the
14 Court.

15 The things which she stated, the disclosures that
16 she made were accurate. She did not disclose the Colorado
17 proceedings; but in order for this misrepresenta -- for this
18 to be a misrepresentation by omission, it would need to satisfy
19 standards. Specifically, there would need to be a duty on her
20 part to make that disclosure.

21 In fact, the cases that we've referred to with respect
22 to a misrepresentation by omission refer to the fact that there
23 needs to be material information which is not disclosed of that
24 material information by the speaker, and then a legal duty to
25 communicate.

1 That standard is not satisfied here for several
2 reasons. First of all, the existence of the Colorado action
3 was not material to the proceeding before the Court, because
4 the issue was whether there was a free and voluntary consent,
5 not what was going on in Colorado and what may be going on
6 there.

7 In that respect I'd note that it is not uncommon for
8 a -- the biological mother of a child to consent, even though
9 there may be a father who has established parental rights. It
10 may be a husband who is the biological father. There may be a
11 father who has complied with the standards of Utah law. Those
12 do not bear on whether the consent is freely and voluntarily
13 given. Therefore it is not material to the validity of the
14 consent.

15 In this situation it was not material to Judge Hilder
16 in accepting the consent whether or not there was a proceeding
17 in Colorado and what was going on in Colorado. Likewise, there
18 is no law, no support for the proposition that Ms. Terry had
19 an obligation to make that disclosure. There's no authority
20 which would indicate that in that -- in that context, such a
21 disclosure would need to be made.

22 This is not a case which is governed by the Uniform
23 Child Custody and Jurisdiction Enforcement Act, where you may
24 need to make a disclosure or statement, "There are no other
25 proceedings pending." This is an adoption case governed by the

1 Utah Adoption Act, which specifically under Utah law is not
2 subject to the UCCJEA. So there is no obligation to disclose
3 this; and likewise, it was not material to Judge Hilder's
4 acceptance of the relinquishment.

5 Additionally we would refer to the provisions, and I
6 know that this has been raised previously to the Court, but
7 Ms. Terry had a right of privacy. She was not required to
8 disclose information regarding the father, which is a further
9 basis for the fact that it's not material and there's no duty
10 on her part to make that disclosure.

11 Now, our position, your Honor, is that it was not
12 correct for the Court to enter an order vacating her consent
13 to adoption. Rather, her consent should be effective. It
14 should be determined to be effective; and instead, the Court
15 should in this matter look to Mr. Manzanares' actions and
16 whether he complied with the requirements of the Utah Code in
17 order to establish parental rights.

18 THE COURT: Thank you.

19 MR. JENKINS: Question about proceeding, your Honor.
20 Where we join in the motion, should I go --

21 THE COURT: Let's hear, and then she can only -- need
22 to get up once.

23 MR. JENKINS: Thank you, your Honor. Larry Jenkins
24 appearing for the petitioners. I just want to hit a couple
25 of points, is all, on this. First of all, we don't object to

1 Ms. Terry's request for intervention. We certainly don't
2 object there; and we also join in her motion to reconsider.
3 We join in all the arguments that Mr. Hardy has made.

4 With respect to the Court's comment that no such thing
5 as a motion to reconsider, I might note that in a sense, you
6 know, the Court's memorandum decision already changed Judge
7 Hilder's initial ruling on the issue, is what it appears to
8 me. Judge Hilder considered the facts, considered the issue
9 back in March, and determined that the orders then were still
10 valid.

11 I think reconsideration is appropriate here, because
12 the hearing that we had in July, the evidentiary hearing, was
13 noticed up as a hearing on the birth father issues, whether
14 -- whether Mr. Manzanares had complied with the requirements
15 of Utah law. There was no notice given to anybody that the
16 hearing was going to be about Ms. Terry's consent. There was
17 no opportunity to even present argument or brief the issue
18 regarding the consent. You'll notice that the Court was re-
19 examining that issue.

20 I think a couple of points are important. One, the en
21 re: adoption W case that we cite in our briefing makes it clear
22 that a birth father does not even have standing to challenge
23 the consent of a birth mother. So Mr. Manzanares couldn't have
24 consent -- or excuse me, couldn't have challenged Ms. Terry's
25 consent here. The birth father in en re: W argued that the

1 mother had been coerced into signing her consent; but the Court
2 there, the Court of Appeals wrote that, quote, "Mr. Royal has
3 no standing to raise the issue, and we decline to address it,"
4 closed quote.

5 That's -- if Mr. Manzanares wasn't able to raise it
6 and Ms. Terry does not ask that her consent be set aside, I
7 think the question becomes what power the Court has to do that
8 on its own motion.

9 In the memorandum decision the Court indicate that
10 its decision was based on the fact that information about the
11 paternity action in Colorado was, quote, "relevant and material
12 information that was crucial to the appropriate exercise of the
13 Court's jurisdiction and authority to enter certain orders,"
14 closed quote.

15 Now, as Mr. Hardy has indicated, I think this has
16 reference to the UCCJEA, because if the adoption proceeding
17 is governed by the UCCJEA, then that would be definitely a
18 true statement. Under the UCCJEA a Court may not exercise
19 jurisdiction over a child custody proceeding, as defined
20 therein, if another such proceeding was previously filed in
21 the Court of another state.

22 If another proceeding was pre -- if another proceeding
23 was previously filed in another state, the UCCJEA requires that
24 a party disclose information about that proceeding in its
25 initial pleading before the Court or in an affidavit that's

1 filed at the same time.

2 Now, assuming that those provisions apply to this
3 proceeding, the UCCJEA sets out the remedy for a failure
4 to disclose. It says that "For failure to comply with the
5 disclosure requirement, the Court," quote, "'upon its own
6 motion or that of a party,'" closed quote, "would stay the
7 proceeding until the information is provided," closed quote.
8 That's in 78(b)-13-209.

9 I note that in this case the Court became aware of
10 the relevant information about the Colorado proceeding on
11 March 3rd, 2008, when Judge Hilder participated in the UCCJEA
12 conference call with the Colorado Court that is hearing
13 Mr. Manzanares' paternity proceeding.

14 We didn't become aware of Judge Hilder's minute entry
15 on that until near the end of October; but in that minute
16 entry Judge Hilder noted that on February 20th he had taken
17 Ms. Terry's consent, and entered an order of temporary custody.
18 Judge Hilder further noted that he was informed during the
19 tel -- the conference call that Mr. Manzanares had filed a
20 paternity action in Colorado on January 16th --

21 THE COURT: Yeah, I'm aware of what's in there, so --

22 MR. JENKINS: Okay.

23 THE COURT: -- tell me where you're -- where you're
24 going with it.

25 MR. JENKINS: Okay. Basically all of the relevant

1 facts were set out to Judge Hilder at that time; but because
2 he was made aware of all those proceedings at that time the
3 disclosure was made, there was no need for Judge Hilder to stay
4 these proceedings under the provisions of the UCCJEA if they
5 ere applicable, unless he felt that the Colorado proceedings
6 took precedence over these adoption proceedings.

7 The Colorado -- the Colorado Judge specifically
8 raised the question with Judge Hilder about whether the UCCJEA
9 applied. Judge Hilder indicated he did not believe that it did;
10 and according to the minute entry, the Judge in Colorado agreed
11 to that.

12 Then despite knowing that the previously filed
13 Colorado paternity proceeding, Judge Hilder, quote, "stated
14 his position that Utah had jurisdiction of the adoption action,
15 and that the present orders are valid," closed quote.

16 I guess the point I'm making is -- he also indicated
17 in the minute entry that the Colorado Judge had stated that
18 he, quote, "would issue no further orders regarding custody
19 or writs of assistance," closed quote. It was noted that
20 Mr. Manzanares had retained Counsel in Utah.

21 So the Court, by way of Judge Hilder, had already
22 considered the impact of a failure to disclose a Colorado
23 paternity proceeding, and what impact those proceedings
24 actually had on this case. Judge Hilder properly applied
25 the use of CJEA by concluding that it wasn't applicable in

1 these proceedings.

2 He also considered what impact the previously filed
3 paternity proceedings should have on the order that he had
4 entered.

5 THE COURT: Why do you say that?

6 MR. JENKINS: Pardon?

7 THE COURT: Why do you say that last statement? What's
8 the basis for that?

9 MR. JENKINS: I think if you'll look at the -- at the
10 minute entry, there was a specific reference to him saying that
11 the Court has jurisdiction. I think there is also discussion
12 in there about the Colorado Court would not issue any further
13 orders; so let -- you know, come to Utah, let's deal with it
14 in the adoption proceedings. That's the clear import of that
15 minute entry that Judge Hilder entered back in March.

16 I don't see anything in the memorandum decision
17 giving a reason why Judge Hilder's determination back in
18 March ought to be overturned. I don't think the UCCJEA would
19 require a different result, even if it were applicable to these
20 proceedings.

21 If petitioner were required under the law, under the
22 UCCJEA to disclose the paternity proceedings and their initial
23 pleadings, the Court then was re -- could have stayed these
24 proceedings until that disclosure was made. As I indicated,
25 there was no need for that because by March 3rd, the Court

1 became aware of the Colorado proceedings; and while being
2 aware of the Colorado proceedings, indicated that it was going
3 forward. There is no indication in anything that Judge Hilder
4 wrote that adoption proceedings were going to be put on hold
5 until there was some determination over there.

6 My point being, your Honor, in addition to the issues
7 that Mr. Hardy has addressed and raised, we don't believe that
8 the consent issue, that the disclosure with the paternity
9 proceedings have any material -- material relevance to the
10 consent hearing. I think the issues that we've looked at, the
11 Court had already become aware of those facts and had already
12 made some determination to move forward when Judge Hilder was
13 handling the case back in March. That would be our submission
14 on the issue. Thank you.

15 THE COURT: Thank you.

16 MS. REYES: Your Honor, with the -- with regard to the
17 first motion, the motion to intervene, we've indicated to the
18 Court that we believe that under the Rules of Civil Procedure
19 that such a motion needs to be presented to the Court in a
20 timely fashion.

21 Specifically Rule 24 of Utah Rules of Civil Procedure
22 states, "Upon timely application of notice the fact that this
23 matter that Mr. Manzanares has brought before the Court's
24 attention has been pending since March of 2008." So nearly a
25 year now.

1 That motion that he filed initially was a motion to
2 dismiss the adoption petition. So they indicate that there was
3 really no need for her to intervene until the Court's August
4 memorandum decision. However, I note the initial request by
5 Mr. Manzanares was that the adoption petition be dismissed,
6 and a result of a dismissal of the adoption petition is for the
7 Court to determine best interest of a child and where custody
8 should -- should go with regard to the minor child.

9 So it seems illogical to try and argue that her need
10 to intervene did not come ripe, I guess, until the memorandum
11 decision was issued, because from March of 2008 she was put on
12 knowledge that it was the request of Mr. Manzanares to have the
13 adoption petition dismissed and for him to have custody of the
14 parties' minor daughter. So we believe that an eight-month
15 delay would not be considered reasonable under the rules, and
16 we'd ask the Court to deny the motion to intervene on that
17 basis.

18 In addition to that, Ms. Terry has been involved in
19 these proceedings and has had the opportunity to come before
20 the Court and ask for specific relief. She was present during
21 the two-day evidentiary hearing in July, had Counsel with her
22 at that point in time; but chose not to intervene as a party,
23 but was merely a witness on behalf of the petitioners at that
24 point in time. We believe that under the rules, a timely
25 application has not been made, and that the motion to intervene

1 should be denied.

2 I don't know if the Court has any questions for me. I
3 can move onto the next --

4 THE COURT: No, let's move on.

5 MS. REYES: Your Honor, with regard to the next motion
6 that's been filed, the motion to reconsider, we would note
7 that there is substantial case law that would indicate that
8 the Courts disfavor motions to reconsider, that there actually
9 is no such motion under the Rules of Civil Procedure, and that
10 they are somewhat futile.

11 The Court -- the Utah Supreme Court has done an
12 analogy which I outlined in my objection and response, which
13 would indicate that if motions to reconsider were permitted,
14 parties could have matters go on indefinitely, asking the
15 Court to reconsider their motions and reconsider their
16 reconsideration of a motion and so forth.

17 We believe that what the Court did is permissible
18 and appropriate under the circumstances. Specifically the
19 rule that I think has been referred to is -- not the rule, but
20 the statute is 78(b)-6-102 subsection (7), where the thought
21 is, is that there was no obligation -- that Ms. Terry had no
22 obligation to inform the Court with regard to Mr. Manzanares.

23 As I read that subsection, I note it says, "An
24 unmarried mother has a right of privacy with regard to her
25 pregnancy and adoption plan; and therefore has no legal

1 obligation to disclose the identity of an unmarried biological
2 father prior to or during any adoption proceeding, and has no
3 obligation to volunteer information to the Court with respect
4 to the father.”

5 I note that those two things, identity of the unmarried
6 biological father and with respect to the father all hone in
7 on the father; but what we have here is when Ms. Terry came to
8 the Court on February 20th to have her consent taken, and asked
9 the Court to issue a temporary custody of her daughter to her
10 brother and sister-in-law, the Byingtons, the issue at that
11 point in time was in essence a proceeding dealing with the
12 child. It's dealing with the child and custody of a minor
13 child.

14 So even though I would indicate to the Court the way
15 that subsection (7) reads is that it refers to the father, I
16 still think under the provisions of subsection (7) Ms. Terry
17 had an obligation to inform the Court that there is a pending
18 custody dispute with regard to this minor child in Colorado,
19 which was the state that I resided in before I came here to
20 Utah.

21 Further, I believe that when there was a request to
22 have temporary custody placed with the Byingtons, that there
23 was also a duty for them in their verified petition -- if the
24 Court recalls, testimony was taken of the Byingtons -- well,
25 actually I believe just Mr. Byington at that Court date; and

1 there was discussions that he knew -- as soon as his sister
2 got served with the paternity action, she had contacted him
3 and asked him for counsel and advice, and he had procured, you
4 know, some information to her; but he had knowledge that there
5 was a custody dispute pending in Colorado with regard to the
6 birth father of their -- of this child.

7 So in their petition, when they're informing the
8 Court of "We're asking for custody of this child," I think it
9 was mandated that they disclose to the Court, "And by the way,
10 we are asking for custody of the child, but there has been a
11 previously filed request in the home state of the parents of
12 this child that is requesting as well," which could have been a
13 jurisdictional issue at some point in time.

14 I know there are distinctions for paternity actions
15 under the UCCJEA and under the adoption statute. However, I
16 think that that was material information. The argument is, is
17 that none of this information was material to the consent of
18 Ms. Terry; but I note that it was material, because on that
19 same date the Court dealt with temporary custody of the child
20 based on Ms. Terry's consent.

21 So it is relevant and material, and the proceedings
22 at issue were dealing with a child, and so I believe that the
23 Court's memorandum decision to vacate the consent of Ms. Terry
24 is permissible and appropriate. Again, the request for -- in
25 the petition for adoption, there was a request for custody; and

1 in the consent there's mention of a change of custody from Mom
2 to the prospective adoptive parents, which happen to be the --
3 I guess other family members of the minor child.

4 So the other thing that is of -- very important to
5 note is the fact that -- how this all came into play. On
6 February 20th, when Ms. Terry's consent was to be taken, she
7 was also required to be at a hearing that was scheduled in
8 Colorado, just 15 minutes after her consent was actually taken.

9 A telephone call was made. I know that there was a
10 motion filed previous by Ms. Terry with the Colorado Court; but
11 a phone call was made on that day by Ms. Terry to the clerk of
12 the Court indicating she would not be available, due to the
13 fact she was in Utah visiting her ill father.

14 There was no mention in that Court proceeding to the
15 clerk of the Court that she had just given her consent for
16 adoption of the child which was at issue in that proceeding.
17 Had the Court not continued the February 20th date, there
18 would have been an adjudication of the initial petition that
19 Mr. Manzanares filed, adjudicating him as the biological child
20 of -- I'm sorry, biological father of the child, and giving
21 him the rights that were ascertained at a later hearing, which
22 was on February 29th, which gives him all legal rights and
23 duties as they related to the minor child, and mandated that
24 his name be placed on the birth certificate, as well as making
25 an adjudication that he is the biological father of this child.

1 Although that was never denied by the biological
2 mother, Ms. Terry, in her responsive pleadings to the initial
3 petition. She made an admission that he was the biological
4 father. So we are asking the Court to deny the motion to
5 reconsider, and again believe that under the rules, the Court
6 had the authority, and has the authority to enforce the orders
7 in the memorandum decision.

8 Of note, the Court's already pointed out in its
9 memorandum decision that when issues of -- which the Court
10 consider to be fraudulent either by omissions or directly, the
11 Court at any time on their own accord can raise those issues
12 and address those with the parties.

13 Just one last note here. There were some discussions
14 about the interaction that Judge Hilder and Judge Woods from
15 the Denver Juvenile Court had on March 3rd of 2008. I have
16 in front of me a certified copy of the reporter's transcript
17 from that telephone conversation; and I note that the Court
18 says -- this is Judge Hilder speaking. It says, "You have
19 clear jurisdiction to do what you did on paternity; and the
20 father can certainly contest the adoption." That was relayed
21 in the Court on that date.

22 Of note, there is also Judge Hilder indicating --
23 well, I should back up. Judge Wood indicates, "And I do
24 order -- I did order the father's name be added to the birth
25 certificate, whether Utah will recognize that or not." Judge

1 Hilder further went on and said, "I think we would, Judge,
2 actually."

3 So there was a lot of things that Judge Woods and
4 Judge Hilder agreed upon, and Judge Hilder was not aware of
5 this action until this phone call took place on March 3rd of
6 2008. Based on that, he advised the parties in open Court
7 that Mr. Manzanares should come to Utah and proceed in Utah
8 to object to the adoption proceeding which was done within I
9 believe a day after this hearing was held.

10 So we believe that it is appropriate that the Court's
11 memorandum decision stay in place, and that the motion to
12 vacate or reconsider vacation of Carie Terry's consent be
13 denied.

14 THE COURT: Thank you. Followup?

15 MR. HARDY: Your Honor, briefly, on just a few issues.
16 First of all, with respect to the timeliness of the motion to
17 intervene, I think we've covered this. I'd just point out
18 that in the pleadings, in the papers that were filed prior to
19 this Court's hearing of the matter, there was not a specific
20 request, nor was it articulated that there was going to be
21 a challenge to the validity of Ms. Terry's consent. On that
22 basis, where the purpose for intervention here is to argue for
23 the effectiveness of her consent, the motion to intervene is in
24 fact timely.

25 With respect to reconsideration and the validity of a

1 motion, the Stonehawker case which I referred to earlier is a
2 2008 case from the Utah Court of Appeals. So we're not dealing
3 with ancient law. It's a decision January 10, 2008, footnote
4 10 provides specifically "A trial Court may reconsider or
5 revise its non-final judgment."

6 So the Court is certainly empowered to -- the Court's
7 also empowered to avoid the difficulties which were referred to
8 that it could go on and on. The Court certainly has within its
9 power to stop frivolous filings.

10 One thing that Ms. Reyes referred to as well in her
11 argument related to the temporary custody order which was
12 entered, I would note that the temporary custody order entered
13 is distinct from the consent. The temporary custody order
14 was issued in response to a motion made by the petitioners in
15 this matter, not by Ms. Terry.

16 The consent was a separate proceeding; and therefore
17 the fact that there was a temporary custody order does not
18 indicate that the proceedings in Colorado, which were paternity
19 proceedings, does not indicate that those were material and
20 required disclosure to Judge -- to Judge Hilder.

21 Finally with respect to timing-wise, based on the
22 consent of being entered before any proceedings in Colorado
23 would have -- would have taken place, I don't think the
24 disclosures to the Colorado Court are material to the present
25 motion.

1 THE COURT: Thank you. Mr. Jenkins.

2 MR. JENKINS: Thank you, your Honor. Just a couple
3 of quick points. First of all, as Ms. Reyes indicated, the
4 hearing in July was on Mr. Manzanares' motion to dismiss. As
5 I indicated, Mr. Manzanares doesn't have standing to challenge
6 Ms. Terry's consent. So I think because of that, because the
7 consent was essentially vacated in an order coming from that
8 motion to dismiss hearing, I think it's appropriate to allow
9 her to intervene and re -- and have the issue reconsidered
10 based on the briefing.

11 I would note also that we haven't received a copy of
12 the transcript from Colorado that Ms. Reyes has; but I note
13 that the quotes that she referenced from Judge Hilder support
14 our position that he's -- he indicated at that hearing that the
15 father can certainly contest the adoption in Utah, and advised
16 him to do so. He certainly was not saying that the adoption
17 proceedings should be put on hold until paternity proceedings
18 were determined. I would submit it on that.

19 THE COURT: Any followup?

20 MS. REYES: Just briefly, your Honor. I would note
21 that Mr. Manzanares' initial motion to dismiss the adoption
22 was to challenge the whole adoption, which would include the
23 consent of the mother.

24 Also, the temporary custody order, if you look at
25 that, the grounds for granting the temporary custody order

1 includes the consent -- the executed consent by Carie Terry.
2 Also, with regard to Mr. Manzanares not having standing to
3 object or -- object of the consent of Carie Terry, I would
4 note that he's been adjudicated as the biological father of
5 the parties' minor daughter, and has initiated, as soon as
6 he was able, a proceeding to contest the adoption. We would
7 indicate that we do believe that he has standing.

8 We did indicate in our pleading, previous in our -- in
9 our motions that we filed that prior to and at this juncture,
10 Ms. Carie didn't have standing to object or intervene in the
11 motions that were pending before the Court on Mr. Manzanares'
12 basis; and shortly thereafter the motion to intervene from
13 Ms. Terry was filed.

14 So up until this point in time, we don't believe that
15 Ms. Terry has had standing to come in and ask the Court for
16 specific relief, because she's never been asked to be a party
17 to the action. Although she has been put on notice since March
18 of 2008, and had abilities to do so.

19 THE COURT: Doesn't she become a party to the action
20 by virtue of the subsequent sections that are outlined in the
21 statute, that if the Court has to proceed to the point to
22 determine they -- what's in the best interests of the child?

23 MS. REYES: Your Honor, I do believe at a certain
24 point in time, under the -- I have the certain code here --
25 I do believe that she would probably be involved in a contested

1 adoption proceeding under 78(b)-6-133. At that juncture if the
2 Court goes ahead and dismisses the adoption proceeding and has
3 to determine best interest of the child, then I do believe at
4 that juncture the Court looks at different issues including who
5 was a fit and proper person to be awarded custody of the minor
6 child, which obviously would include both of the birth parents.
7 So I do believe at that juncture she would most likely be
8 involved.

9 THE COURT: So why not let her in now?

10 MS. REYES: I understand the Court's position.

11 THE COURT: I mean, what's the downside and what's the
12 upside?

13 MS. REYES: Right.

14 THE COURT: Why -- why does it really matter?

15 MS. REYES: And that may be a true statement, your
16 Honor.

17 THE COURT: To keep her -- to keep her out?

18 MS. REYES: Not knowing what the Court may do, though,
19 is the unknown at this point in time; but assuming the Court
20 goes ahead and grants the motion to dismiss the adoption
21 petition, then I would agree, it wouldn't really matter if
22 she's involved at this juncture a week from now.

23 However, if the Court is just inclined to dismiss
24 the adoption matter, then I -- I do think that that may be a
25 different issue at that point in time. So --

1 THE COURT: All right.

2 MS. REYES: Thank you.

3 THE COURT: Thank you. I was just looking through the
4 file. My recollection is, is we had some other motions to hear
5 as well.

6 MS. REYES: Yes.

7 THE COURT: Can we cover those to make sure that we're
8 ready to hear those?

9 MR. JENKINS: Other motions?

10 MR. HARDY: Mr. Jenkins is having trouble hearing, your
11 Honor.

12 THE COURT: Yes, I speak softly, and I apologize.

13 MR. JENKINS: I might need to turn my hearing aid up.

14 THE COURT: I'll bring my mic down. Then it will work,
15 won't it? You filed a motion and memorandum for visitation;
16 but I don't know that that's yet ripe. Is it?

17 MS. REYES: Your Honor, we've filed several other
18 motions previous to that.

19 THE COURT: And I'm trying to -- I can't --

20 MS. REYES: Okay.

21 THE COURT: -- access my computer for assistance.

22 COURT CLERK: It is (inaudible) right now. It's the
23 wit -- it's the to dismiss immediate custody transfer, custody
24 determination and (inaudible).

25 THE COURT: So there's two more?

1 MS. REYES: There's actually, your Honor, we --

2 THE COURT: Yeah, let's outline the other ones to make
3 sure --

4 MS. REYES: Yes.

5 THE COURT: -- because I can't pull it up on my screen,
6 and I --

7 MS. REYES: Okay.

8 THE COURT: -- know there are.

9 MS. REYES: Yes, your Honor.

10 THE COURT: All right.

11 MS. REYES: Mr. Manzanares has filed basically five
12 separate motions; although four of them are contained in one
13 pleading, but the relief is requested as --

14 THE COURT: All right, let's -- let's outline those.

15 MS. REYES: Yes, renewed motion to dismiss petition for
16 adoption. The second would be motion for immediate custody of
17 the minor child to the father, Robert Manzanares.

18 THE COURT: Okay.

19 MS. REYES: The third would be motion to transfer
20 custody determination to Colorado; and a motion for attorney
21 fees; and then the fifth motion, your Honor, would be the
22 motion and memorandum for visitation.

23 THE COURT: And has everybody had an opportunity to
24 respond to all of those motions? They're fully briefed and
25 ready to submit, correct, or not?

1 MS. REYES: Your Honor, I filed the --

2 THE COURT: Because we thought we were waiting on the
3 motion to intervene, to allow them the opportunity to either
4 respond or not; were we not?

5 COURT CLERK: Yes, memorandum in opposition was on
6 November 12th.

7 THE COURT: Okay, go ahead.

8 MS. REYES: Your Honor, I believe that there has been
9 an oppositions post to my motions that have been filed. I
10 filed my motions --

11 THE COURT: By whom?

12 MS. REYES: -- on October 8th of --

13 THE COURT: By whom? Let's make sure we know who's --
14 all by Mr. Jenkins? Any by the mother's Counsel?

15 MR. HARDY: We have no filed any --

16 THE COURT: Because you're waiting --

17 MR. HARDY: -- in opposition.

18 THE COURT: -- you're waiting for permission --

19 MR. HARDY: That would be --

20 THE COURT: -- to get in. All right. Did we -- I'm
21 looking also, do we have a notice to submit on those five
22 motions?

23 MR. JENKINS: I think there was a notice to submit on
24 the first four, your Honor; but that was without any input from
25 Ms. Terry, since she hadn't been made a party.

1 THE COURT: All right.

2 MS. REYES: Your Honor, that is true. I did file a
3 motion -- a notice to submit; and I can provide the Court with
4 the approximate time on that.

5 THE COURT: No, I think you did, and --

6 MS. REYES: Yes.

7 THE COURT: -- I think we were waiting for the iss --

8 COURT CLERK: I think we were waiting for the other
9 ones.

10 THE COURT: Yeah, we were waiting for this one on the
11 motion to intervene, and to reconsider.

12 (Court confers with clerk off the record)

13 THE COURT: If you'll give us just a moment.

14 MS. REYES: Yes.

15 COURT CLERK: Please remain seated.

16 THE COURT: All right, any other matters that you think
17 we need to hear today, based -- I reviewed the record, and my
18 understanding of where we're at, based upon my minute entry of
19 November the 24th, is is that the Court was going to make a
20 decision on the (inaudible) motion, and delay and waive, defer
21 consideration is what I said.

22 "I will defer consideration of the renewed motion to
23 dismiss until Ms. Terry's motion has been fully briefed and
24 submitted to the Court. Then I'll schedule the matter for
25 consideration on it."

1 So I'm going to take the motion to intervene under
2 consideration. I'll render a decision on the motion to
3 intervene and motion to reconsider. Then after that matter
4 has been decided, if the intervention is granted, you will
5 have an opportunity to respond to all pending motions. Then
6 I will set a hearing on those.

7 MS. REYES: Your Honor, just for the record, it was my
8 understanding based on the notice that we got, it said hearing
9 on motions," and it had a plural --

10 THE COURT: I know, and I'm just --

11 MS. REYES: -- and so I was anticipating the Court
12 hearing --

13 THE COURT: -- had a discussion with my clerk about
14 that to get clarification on it; and the most accurate thing
15 that we found is the thing on the November 24th. I apologize if
16 that has placed you at getting prepared prematurely for today's
17 hearing.

18 Mr. Jenkins, anything else?

19 MR. JENKINS: That's it, your Honor.

20 THE COURT: All right, thank you.

21 (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